

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Central Sales Tax Appeal No. 17 of 2015

(Arising out of Order-in-Appeal No. dated passed by the Commissioner (Appeals),
Central Excise & Central Goods & Services Tax,)

The State of Tamil Nadu

...Appellant

Represented by the
Joint Commissioner of Commercial Taxes,
Chennai (Central) Division,
PJPAM Building,
1, Greams Road,
Chennai- 600006

VERSUS

Tvl. Ganapathy Smelters Ltd.

...Respondent

No.14, III Floor, Parsan Complex
Anna Salai
Chennai- 600006

APPEARANCE:

Shri C. Kranthi Kumar, Advocate for the State of Tamil Nadu
None for the respondent

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision: 08.08.2025

FINAL ORDER NO. 51194/2025

JUSTICE DILIP GUPTA

The State of Tamil Nadu has filed this appeal to assail the order dated 28.07.2015 passed by the Tamil Nadu Sales Tax Appellate Tribunal¹. The appeal before the Sales Tax Appellate Tribunal was filed by the State of Tamil Nadu to assail the order dated 12.12.2012 passed by the Appellate Deputy Commissioner setting aside the order of assessment for the year 1992-1993 and thereby allowing the appeal filed by Tvl. Ganapathy Smelters Ltd², which has been arrayed as a respondent in this appeal.

1 the Sales Tax Appellate Tribunal

2 the respondent

2. The respondent was served with a notice of this appeal and on 26.07.2024, Shri Selvaraj Mahendran, learned counsel had appeared for the respondent. However, learned counsel did not appear on 13.09.2024 or on 17.01.2025, even though learned counsel for appellant had informed Shri Selvaraj Mahendran that the matter would be taken.

2. On **17.01.2025**, the following order was passed by this Tribunal:

"Shri C. Kranthi Kumar, learned counsel for the appellant has stated that pursuant to the order dated 30.09.2024 passed by this Bench he had informed Shri Selvaraj Mahendran, learned counsel appearing for the respondent that the matter would be taken up by the Tribunal on 22.11.2024. However, on that date and on 13.12.2024, the matter could be taken up and the matter has been listed today. Learned counsel for the respondent has, however, not appeared. List on March 21, 2025. Learned counsel for the appellant may inform about the order passed today. It is made clear that the appeal may be decided on merits, even if the learned counsel for the respondent does not appear."

3. On **16.05.2025**, following order was passed:

"Case has been called out, but no one has appeared on behalf of the respondent though Shri C. Kranthi Kumar, learned counsel for the appellant has appeared. List on July 18, 2025. It is made clear that the appeal may be decided even if the learned counsel for the respondent does not appear."

4. When the matter was taken up on **July 18, 2025**, the following order was passed:

"On January 17, 2025, the following order was passed :

"Shri C. Kranthi Kumar, learned counsel for the appellant has stated that pursuant to the order dated 30.09.2024 passed by this Bench he had informed Shri Selvaraj Mahendran, learned counsel

appearing for the respondent that the matter would be taken up by the Tribunal on 22.11.2024. However, on that date and on 13.12.2024, the matter could be taken up and the matter has been listed today. Learned counsel for the respondent has, however, not appeared. List on March 21, 2025. Learned counsel for the appellant may inform about the order passed today. It is made clear that the appeal may be decided on merits, even if the learned counsel for the respondent does not appear."

2. On May 16, 2025, the following order was passed :

"Case has been called out, but no one has appeared on behalf of the respondent though Shri C. Kranthi Kumar, learned counsel for the appellant has appeared. List on July 18, 2025. It is made clear that the appeal may be decided even if the learned counsel for the respondent does not appear."

3. **Today, learned counsel for the respondent has not appeared.**

4. In such circumstances, submissions have been made by Shri C. Kranthi Kumar, learned counsel appearing for the State of Tamil Nadu. Learned counsel submitted that the Deputy Commissioner (CT)-III, FAC, Chennai, who decided the appeal filed by the respondent, had no jurisdiction to entertain the appeal which was filed on March 22, 2012 for the reason that section 18A(i) of the Central Sales Tax, 1956, which was inserted in Chapter 5A w.e.f May 08, 2010, conferred jurisdiction only on the "highest appellate authority of the State" against an order passed by the assessing authority. Learned counsel, therefore, submitted that the order dated June 30, 2011 passed by the assessing officer could have only been assailed in an appeal before the "highest appellate authority of the State" which, according to the learned counsel, would be the Sales Tax Appellate Tribunal of Tamil Nadu. However, to substantiate the submission, learned counsel for the State of Tamil Nadu seeks time.

5. List on August 08, 2025."

(emphasis supplied)

5. The appeal has, accordingly, been heard in the absence of learned counsel for the respondent.

6. A preliminary objection has been raised by the learned counsel for the appellant that the Appellate Deputy Commissioner did not have the jurisdiction to hear the appeal filed by the respondent against the assessment order dated 30.06.2011 for the year 1992-93. Learned counsel for the appellant points out that though this issue about jurisdiction of the Appellate Deputy Commissioner to hear the appeal was raised before the Sales Tax Appellate Tribunal, but it was neither considered nor decided. Learned counsel for the appellant also submitted that since the jurisdiction issue goes to the root of the matter, it is open to the appellant to raise this issue in this appeal. In support of this contention, learned counsel for the appellant has placed reliance upon a decision of the Supreme Court in **Kiran Singh And Others** versus **Chaman Paswan And Others**³.

7. Elaborating the submission about jurisdiction of the Appellate Deputy Commissioner, learned counsel for the appellant pointed out that section 18A was inserted in the Central Sales Tax Act, 1956⁴ by Finance Act No. 14 of 2010 with effect from 08.05.2010 and this section 18A provides that any person aggrieved by an order made by the Assessing Authority under sub-section (2) of section 6A of the Central Sales Tax Act, may prefer an appeal to the highest appellate authority of the State against such an order. The highest appellate authority of the State has been described in the Explanation to section

3. (1954) 1 SCC 710

4. Central Sales Tax Act

18A of the Central Sales Tax Act. Learned counsel for the appellant also pointed out that the highest appellate authority of the State is the Tamil Nadu Sales Tax Appellate Tribunal appointed under section 30 of the Tamil Nadu General Sales Tax Act, 1959 and, according to the learned counsel for the appellant, this Tribunal was constituted in 1959 itself much before the passing of the order dated 30.06.2011 by the Assessing Authority. Thus, according to the learned counsel for the appellant, the appeal against the said order should have been filed before the Tamil Nadu Sales Tax Appellate Tribunal and not before the Appellate Deputy Commissioner.

8. This submission advanced by the learned counsel for the appellant has been considered.

9. In order to appreciate this contention, it would be appropriate to reproduce section 18A of the Central Sales Tax Act that was inserted with effect from 08.05.2010. It is as follows:

**“Chapter VA
Appeals to the highest appellate authority of the State**

18A. Appeals to highest appellate authority of State.--

(1) Notwithstanding anything contained in a State Act, any person aggrieved by an order made by the assessing authority under sub-section (2) of section 6A, or an order made under the provisions of sub-section (5) of that section, may, notwithstanding anything contained in the general sales tax law of the appropriate State, prefer an appeal to the highest appellate authority of the State against such order:

Provided that any incidental issues including the rate of tax, computation of assessable turnover and penalty may be raised in such appeal.

(2) An appeal under sub-section (1) shall be filed within sixty days from the date on which the order referred to in that sub-section is communicated to the aggrieved person:

Provided that any appeal forwarded by the highest appellate authority of a State to the first appellate authority under the proviso to sub-section (2) of section 25 and pending before such authority immediately before the appointed day shall be transferred, on such appointed day, to the highest appellate authority of the State and the same shall be treated as an appeal filed under sub-section (1) and dealt with accordingly.

Explanation.--For the purposes of this sub-section, "appointed day" means such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) The highest appellate authority of a State may, after giving both the parties an opportunity of being heard, pass appropriate order.

(4) The highest appellate authority of the State may, as far as practicable, hear and decide such appeal within a period of six months from the date of filing of the appeal.

(5) Notwithstanding anything contained in a State Act, the highest appellate authority of a State may, on the application of the appellant and after considering relevant facts, including the deposit of any amount towards local or central sales tax in other States on the same goods, pass an order of stay subject to such terms and conditions as it thinks fit, and such order may, inter alia, indicate the portion of tax as assessed, to be deposited prior to admission of the appeal.

Explanation.---For the purposes of this section and sections 20, 21, 22 and 25, "highest appellate authority of a State", with its grammatical variations, means any authority or tribunal or court, except the High Court, established or constituted under the general

**sales tax law of a State, by
whatever name called.'.**

(emphasis supplied)

10. It would be seen from a perusal of Section 18A (1) of the Central Sales Tax Act that any person aggrieved by an order made by the assessing authority can prefer an appeal to the highest appellate authority of the State. The Explanation to section 18A of the Central Sales Tax Act provides that "highest appellate authority of a State" means any authority or tribunal or court, except the High Court, established or constituted under the general sales tax law of a State, by whatever name called.

11. In this case, the general state tax law is the Tamil Nadu General Sales Tax Act, 1959⁵. Section 30 of the Tamil Nadu Sales Tax Act deals with the appointment of an appellate Tribunal and sub section (1) of section 30 is reproduced below:

"30.(1) The Government shall appoint an Appellate Tribunal consisting of subject to the provisions of Tribunal. sub-section (1-A) a Chairman and two other members to exercise the functions conferred on the Appellate Tribunal by or under this Act. The Chairman shall be a Judicial Officer not below the rank of a District Judge and the other two members shall possess such qualifications as may be prescribed."

12. It would also be pertinent to refer to section 36 of the Tamil Nadu Sales Tax Act. This section deals with appeal to the Appellate Tribunal and sub -section (1) is reproduced below:

"36. (1) Any person objecting to an order passed by the Appellate Assistant Commissioner under sub-section (3) of section 31, or an order passed by the Deputy Com-missioner under sub-section (3) of section 31-A or sub-section (1) of section 32 may, within a period of sixty days from the date on which the order was served on

him in the manner prescribed, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for to presenting the appeal within the said period."

13. Though the appellant has not produced the relevant notification constituting the Appellate Tribunal, but learned counsel for the appellant has placed the provisions of the Tamil Nadu Value Added Tax Act, 2006⁶ which came into force on 01.01.2007. Section 88 of this Act repeals the Tamil Nadu General Sales Tax Act, 1959. However, sub section 3(e) of section 88 provides that notwithstanding the repeal, the Chairman or any Member of the Appellate Tribunal appointed under section 30 of the Tamil Nadu General Sales Tax Act and continuing in office as such immediately before the commencement of Tamil Nadu Value Added Tax Act, shall be deemed to have been appointed as Chairman and Members of the Appellate Tribunal under the Tamil Nadu Value Added Tax Act and shall continue in office as such till they cease to be such Chairman or Member.

14. It is, therefore, clear that when the Tamil Nadu Value Added Tax Act, 2006 was enacted, the Appellate Tribunal constituted under section 30 of the Tamil Nadu General Sales Tax Act had been constituted.

15. The order in the present case was passed by the Assessing Officer on 30.06.2011, on which date section 18A of the General Sales Tax Act had come into force. An appeal against this assessment order could have been filed only before the highest appellate authority of the State, namely the Tamil Nadu Sales Tax Appellate Tribunal and not

6 . Tamil Nadu Value Added Tax Act

before the Appellate Deputy Commissioner. However, the respondent had filed an appeal before the Appellate Deputy Commissioner, which appeal was not maintainable.

16. In **Kiran Singh**, the Supreme Court held that it is a fundamental principle well established that a decree passed without jurisdiction is a nullity, and that its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. The Supreme Court emphasized that a defective jurisdiction strikes at the very authority of the court to pass any decree. In the present case, as the appeal itself was not maintainable, the order passed by the Appellate Deputy Commissioner would be without jurisdiction.

17. The Sales Tax Appellate Tribunal should have examined this issue as it goes to the root of the matter. The Sales Tax Appellate Tribunal, therefore, committed an error in dismissing the appeal filed by the State of Tamil Nadu.

18. In the result, the order dated 28.07.015 passed by the Tamil Nadu Sales Tax Appellate Tribunal and the order dated 12.12.2012 passed by the Appellate Deputy Commissioner are set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)