

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL Nos. 7320-7322/2000

M/s. Sabari Jewellery

Appellant (s)

Versus

Dy.Commercial Tax Officer & Anr.

Respondent (s)

(With office report)  
with  
Civil Appeal Nos. 7323-7325/2000  
(With office report)

Date: 16/02/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s)

Mr. M.L.Varma, Sr. Adv..  
Mr. K.B. Sandeep,Mr. M.R.Shah,  
Mr. K.K. Mani, Adv.

For Respondent(s) Mr. T.L.V.Iyer, Sr. Adv.

Mr. Raghavendra S Srivatsa, Adv.  
Mr. Subramonium Prasad,Mr. J.K. Singh, Adv.

RR-Ex-Parte

UPON hearing the counsel the Court made the following  
O R D E R

The Appeals are dismissed.

(Parveen Kr. Chawla)  
Court Master

(Kanwal Singh)  
Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.7320-22 OF 2000

M/s Sabari Jewellery

..Appellant(s)

VERSUS

Dy. Commercial Tax Officer & Anr.

.Respondent(s)

WITH

CIVIL APPEAL NOS.7323-7325 OF 2000

O R D E R

These appeals are disposed of by this common order. For the sake of convenience, the facts are taken from Civil Appeal Nos. 7320-22 of 2000.

These appeals, by grant of special leave, are filed against the order dated 2.3.2000 passed by the Tamil Nadu Taxation Special Tribunal, Chennai (for short 'the Tribunal') in Original Petition Nos. 213, 214 and 215 of 2000. The Tribunal by the impugned order has dismissed the Petitions.

Appellant was served with a Show Cause Notice proposing to make re-assessment in certain cases and original assessment in certain other cases. Show Cause Notice was issued on the ground that transfer of old jewellery by the customers while placing the orders of new ornaments is 'other valuable consideration' under the definition of Sale under the Tamil Nadu General Sales Tax Act, 1959 (for short 'the Act').

Against the show cause notice, appellant filed the Original Petitions before the Tribunal under Section 7 of the Tamil Nadu Taxation Special Tribunals Act, 1992. The Tribunal dismissed the Original Petitions by observing:

"We are of the opinion that it must be left open to the assessing authority to consider the decisions and take a proper view and thereafter, there are remedies open to the assesseees for filing appeals and revisions. It would not be proper at this stage to entertain these Original Petitions and decide the issue without sufficient materials before us. In this view of the matter, we dismiss all the Original Petitions, permitting the respective assesseees to file objections to the notices and face the consequences. If the petitioners have not filed objections already, they are given time to file objections till 20.3.2000. If such objections are filed, the respondents are directed to consider the same on merits and pass orders, in accordance with law."

We agree with the view taken by the Tribunal that the appellant could not seek quashing of the show cause notice without availing of statutory remedies of appeal or revision provided under the Statute.

While issuing notice in the Special Leave Petition on 17.4.2000, this

Court gave the following interim directions:

"...In the meanwhile, the assessment proceedings may be taken but final order will not be passed."

Thereafter on 11.12.2000 while granting leave this Court modified the interim directions in the following terms:

"..Let the assessment be completed but payment of tax,  
if any, which is disputed may not be realised."

Counsel for the respondent has brought to our notice that the  
assessment has already been framed.

We dismiss these appeals reserving liberty with the appellant to avail  
statutory remedy of filing an appeal provided under the Act. If the appellant has  
not already filed the appeal, then, it may file the same along with an application  
for condonation of delay within 30 days from today and if such an appeal is filed,  
the appellate authority shall decide the same in accordance with law taking into  
consideration the fact that appellant could not file the appeal earlier in view of  
the pendency of the matter before this Court. Counsel appearing for the  
respondents states that he would not raise the question of limitation before the  
appellate authority provided it is filed within 30 days from today.

The Appeals are dismissed in the above terms. No costs.

...J.

.....

[ASHOK BHAN ]

NEW DELHI; .....

FEBRUARY 16, 2006. [S.H.KAPADIA]