Before N.K. Sodhi & N.K. Sud, JJ

MAM CHAND ROLLER FLOUR MILLS PVT. LTD.,—*Petitioner*

versus

CHIEF ADMINISTRATOR, HARYANA STATE AGRICULTURAL MARKETING BOARD & OTHERS,—*Respondents*

C.W.P. 19467 of 1998

28th March, 2000

Punjab Agricultural Produce Markets Act, 1961—Sec. 40—Punjab Agricultural Produce Markets (General) Rules, 1962—Rls. 31(13) (i), 23 and 40—Constitution of India, 1950—Art. 226 Writ challenging the assessment order levied by the respondent dismissed by the High Court to avail alternate remedy of appeal-Chief Administrator dismissing the appeal and stay application without affording an opportunity of hearing to the petitioner for the complying with the mandatory provisions of Rl. 31(13)(i)—Rl. 31(13) (i) imposes a condition of prior deposit of assessed fee in full for entertainment of an appeal—Right to appeal—Legislature can impose conditions for exercise of such right—Rl. 31(13) (i) held to be intra vires*—Petitioner failed to deposit the assessed fee upto this date—In the absence of any discretion with the appellate authority to entertain a belated appeal, the same would have to be dismissed on the ground of limitation—Writ dismissed.*

Held, that a plain reading of the provisions of sub rule (13) (i) of Rule 31 clearly shows that the prior deposit of the amount of fee assessed is a condition precendent for entertainment of an appeal. It is a well settled position that the right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. Further while granting the right of appeal it is also open to the legislature to impose conditions for exercise of such right. There is no legal or constitutional impediment to the imposition of such conditions. We, therefore, do not find any merit in the contention of the petitioner that the provisions of sub rule (13) (i) of Rule 31 imposing a condition for payment of assessed fee as a condition precedent to entertainment of an appeal is ultra vires.

(Paras 5)

Further held, that an appeal is entertained when it is admitted for consideration and not when it is filed. Further for deciding whether an appeal is to be admitted for hearing or not it would be

necessary to fix a date of hearing and give an opportunity of being heard to the appellant. Viewed from this angle normally we would have set aside the order of the Chief Administrator dismissing the appeal on the ground of non-deposit of assessed fee without first fixing a date of hearing. However, in the facts and circumstances of the case, we feel that no useful purpose will be served as admittedly even if the matter was restored to the Chief Administrator the appeal will have to be dismissed as the petitioner has not deposited the assessed fee upto this date. The period of limitation for filing an appeal provided in Rule 40(2) is 30 days and there is no discretion given to the appellate authority to entertain an appeal beyond the period of limitation. Thus, even if the order of dismissal of appeal was to be set aside on the technical ground of not affording an opportunity of being heard to the petitioner, the same result will follow because even if the petitioner now deposits the assessed fee, the appeal will be deemed to have been filed on the date when the fee is so deposited. This admittedly would be beyond the period of limitation as per rule 40 (2). In the absence of any discretion with the appellate authority to entertain a belated appeal, the appeal would have to be dismissed on the ground of limitation.

(Para 8)

Rajesh Bindal, Advocate *for the petitioner.*

K.K. Gupta, Advocate *for the respondents.*

JUDGMENT

N.K. Sud, J.

(1) The petitioner is a registered dealer under the Punjab Agricultural Produce Markets Act, 1961, (for short "the Act") and is dealing in the sale, purchase, storage and processing of agricultural produce within the notified market area of the Market Committee, Sadhaura in the State of Haryana. The Administrator, Market Committee Sadhaura made an assessment for the period 1st April, 1996 to 31st March, 1997 and determined the total market fee leviable on the petitioner at Rs. 1,62,836.89 out of which the petitioner had deposited a sum of Rs. 38,139.74. Thus, a sum of Rs. 1,24,697.15 was determined as recoverable from the petitioner. The petitioner was also held liable for payment of an equal amount as penalty for submitting a false return. The petitioer filed CWP 15384 of 1997 before this Court challenging the assessment order dated 12th September, 1997. The said writ petition was dismissed on 13th October, 1997 as not maintainable on the ground that an appeal was

competent against the order of assessment and the petitioner had not availed of that remedy. The petitioner thereafter filed an appeal before the Chairman, Haryana State Agricultural Marketing Board, Panchkula. The appeal was accompanied by an application dated 14th October, 1997 where in it had been prayed that the recovery of the amount of market fee and penalty be stayed during the pendency of the appeal. The stay application and the appeal were dismissed by the Chief Administrator,—*vide* his order dated 22nd October, 1998 in the following terms :—

> "There is mandatory provision in the rule 31 (13) (i) of P.A.P.M.(G) Rules 1962 to deposit Market Fee as due before entertaining an appeal by the competent authority. Since you have not deposited Market Fee, therefore, your appeal is dismissed. The stay application is also rejected."

(2) It is against this order that the present writ petition has been filed. Shri Rajesh Bindal learned counsel appeared on behalf of the petitioner and contended that the Chief Administrator was not justified in dismissing the appeal and the stay application without granting an opportunity of being heard to the petitioner. According to him even though sub rule (13) (i) of Rule 31 of the Punjab Agricultural Produce Markets (General) Rules, 1962, (for short "the Rules") provides that no appeal shall be entertained unless the amount of fee assessed has been deposited in full, yet when an application had been filed along with the appeal with a prayer to stay the recovery of the disputed demand, it was incumbent upon the Chief Administrator to first dispose of the stay application after affording an opportunity of being heard to the petitioner. In case he was not inclined to accept the prayer, he ought to have afforded an opportunity to the petitioner to deposit the fee. It was argued that the action of the Chief Administrator in dismissing the stay application and the appeal simultaneously was, therefore, against the principles of equity and natural justice. For this purpose the learned counsel for the petitioner placed reliance on the decision of the Supreme Court in *Shyam Kishore and others* vs. *Municipal Corporation of Delhi and another, (1)* and also on the decisions of this Court in *ANZ Grindlays Bank Limited, Amritsar* vs. *Municipal Corporation, Amritsar and others (2)* and *Shree Markande Metal (India) Pvt. Ltd.* vs. *The State of Haryana and others (3).* It was then contended that the assessment had been framed for levy of tax

(1) A.I.R. 1992 S.C. 2279.
(2) 1999 (1) 121 P.L.R. 254.
(3) 1995 (2) A.I.J. 743.

and penalty under sub rules (8) and (9) of Rule 31 read with Section 23 of the Act and such an order being not appealable could be validly challenged in the present writ petition. He referred to the provisions of Section 40 of the Act to contend that an appeal was provided only against an order passed by a Committee under Section 13 whereas the assessment order had been framed under Section 23 of the Act. It was then contended that sub rule (13) (i) of Rule 31 *ultra vires* as it over-rides the provisions of the Act itself. According to him Section 40 of the Act, which provides for the filing of an appeal, contains no condition about the pre-deposit of the fee, and therefore, while prescribing the procedure for filing the appeal in the rules, no such condition could be incorporated.

(3) Sh. K.K. Gupta, learned counsel for the respondents, refuted the arguments advanced on behalf of the petitioner. According to him the provisions of sub rule (13) (i) of Rule 31 are unequivocal and do not leave any discretion with the Chief Adminstrator to entertain an appeal unless the amount of fee assessed had been deposited in full nor do they confer any right on the petitioner to make an application for entertaining the appeal without payment of the fee. It was also contended that the application for stay dated 14th October, 1997 (Annexure P-7) did not even contain a prayer for entertainment of the appeal without payment of tax. It was merely a prayer for stay of demand during the pendency of the appeal. Thus, according to him, the Chief Administrator was justified in not entertaining the appeal. The learned counsel also pointed out that after the dismissal of the earlier civil writ petition No. 15384 of 1997 on 13th October, 1997 the petitioner could not contend that the assessment order was not appealable. While dismissing the writ petition this court had clearly observed that admittedly an appeal is competent against the impugned order of assessment and that the petitioner should first avail the remedy in appeal. The learned counsel also pointed out that the provisions of sub rule (13) (i) of Rule 31 could not be said to be *ultra vires* as Section 40 of the Act clearly provides and this sub rule lays down such procedure. Further, the requirements of payment of the assessed fee cannot be said to be unduly onerous so as to render the right of appeal totally illusory.

(4) We have heard the counsel for the parties and have perused the relevant records. Section 40 of the Act provides for filing an appeal against the order passed by a committee and sub rule (13) of Rule 31 and Rule 40 of the Rules prescribe the manner in which such an appeal is to be filed and dealt with. For the sake of convenience the relevant provisions are being reproduced as

under :—

Section 40

"Any person objecting to an order passed by a Committee under section 13 or an order passed under sub-section (5) of section 33 may appeal to the Board in the manner prescribed and the Board's decision on appeal shall be final."

Sub Rule (13) of Rule 31

"(13) (i) An appeal against an assessment order made under sub rules (8) and (9) shall lie to the Chief Administrator of the Board. No such appeal shall be entertained unless the applicant has deposited the amount of fee assessed as due from him in full with the Committee concerned.

(ii) The Chief Administrator of the Board after hearing the appellant and also the Committee making the assessment, or, if he deems necessary, after such enquiry as he may think proper may accept, modify or reject the assessment order appealed against.

(iii) The Chief Administrator of the Board may waive the whole or a part of the penalty imposed under sub rule (9), in a case where such penalty would, in his judgment mean undue hardship to the appellant.

(iv) The order passed by the Chief Administrator shall be final and conclusive."

Rule 40

"40. Procedure for appeals—(1) Every appeal preferred under sub-section (4) of section 10, sub-section (3) of section 29 and section 40 shall bear a court fee stamp of one rupee and shall be presented to the appellate authority in the form of a memorandum by the appellant or his duly authorised agent. The memorandum shall set forth concisely the grounds of objection to the order appealed against shall also be accompanied by a copy of such order.

(2) The limitation for filing an appeal under section 40 shall be thirty days from the date of order appealed against.

(3) In computing the period or limitation for filing an appeal under the Act the period spent in obtaining a copy of the order shall be excluded

(4) The appeal shall be decided after notice to and hearing the parties concerned, if they so desire, and after making such further enquiry as the appellate authority may consider necessary.

(5) A copy of the decision on the appeal shall be supplied to the Board or the Committee concerned free of charge, and on demand to the appellant on payment of fifty paise per page or a part thereof subject to a minimum of one rupee."

(5) A plain reading of the aforesaid provisions clearly shows that the prior deposit of the amount of fee assessed is a condition precedent for entertainment of an appeal. It is a well settled position that the right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. Further while granting the right of appeal it is also open to the legislature to impose conditions for exercise of such right. There is no legal or constitutional impediment to the imposition of such condition. We, therefore, do not find any merit in the contention of the petitioner that the provisions of sub rule (13) (i) of Rule 31 imposing a condition for payment of assessed fee as a condition precedent to entertainment of an appeal is ultra-vires. We are fortified in this behalf by the authority of a full bench of the Apex Court in *Shyam Kishore* vs. *Municipal Corporation of Delhi, (Supra).*

(6) We are also in agreement with Sh. K.K. Gupta the learned counsel for the respondents that after the dismissal of CWP 15384 of 1997 on the ground that an alternate remedy of appeal was available, it was not open to the petitioner to once again contend in the present writ petition that the assessment order was not appealable under the Act. Even on merits we are satisfied that the contention of the learned counsel for the petitioner that an order of assessment made under Rule 31 read with Section 23 was not covered by the orders against which appeal could be filed under section 40. A plain readng of Section 40 shows that it provides for an appeal against an order passed by a Committee under Section 13. Sub section (1) of Section 13 reads as under :—

"13 (1) It shall be the duty of a Committee—

(a) to enforce the provisions of this Act and the rules and bye-laws made thereunder in the notified market area and, when so required by the Board, to establish a market therein providing such facilities for a persons visiting it in connection with the purchase, sale, storage, weighment

and processing of agricultural produce concerned as the Board may from time to time direct ;

(b) to control and regulate the admission to the market, to determine the conditions for the use of the market and to prosecute or confiscate the agricultural produce belonging to person trading without a valid licence ;

(c) to bring, prosecute, or defend or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration, on behalf of the Committee or otherwise when directed by the Board."

It is clear from clause (a) that a Committee is duty bound to enforce the provisions of the Act and the Rules and bye-laws made thereunder. While framing the assessment under Section 23 read with Rule 31 the Committee is performing its duties under the Act and Rules and as such the assessment order passed under these provisions can clearly be held to be an order passed by the Committee under Section 13. In this view of the matter also, the contention of the learned counsel for the petitioner is devoid of any merit.

(7) The question now for our consideration is whether the Chief Administrator was justified in dismissing the appeal on the ground of non deposit of assessed fee without affording an opportunity of being heard to the petitioner. The argument on behalf of the petitioner is that the requirement of sub rule (13)(i) of Rule 31 about the pre-deposit of the assessed fee is for entertainment of the appeal and not for filling of the appeal. The stage of entertaining the appeal is subsequent to the stage of filing of the appeal. The Supreme Court while interpreting a similar provision of the U.P. Sales Tax Act, 1948 in *Laxmiratan Engineering Work Ltd.* vs. *The Assistant Commissioner (4)* had explained the meaning of the word 'entertained' in paragraphs 7 and 10 of the judgment as under :—

"(7) To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word 'entertained' in this context ? Does it mean that no appeal shall be received or filed or does it meant that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available ? The

(4) A.I.R. 1968 S.C. 488

dictionary meaning of the word 'entertain' was brought to our notice by the parties, and both sides agreed that it means either 'to deal with or admit to consideration'. We are also of the same opinion. The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso ? Is it 'entertained' when it is admitted and the date is fixed for hearing or is it finally 'entertained' when it is heard and disposed of ? Numerous cases exist in the law reports in which the word 'entertained' or similar cognate expressions have been interpreted by the Court. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present, we must say that if the legislature intended that the word 'file or receive' was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expressions have in fact been used....."

"(10) .....When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax."

(8) We are, therefore, in agreement with the contention of the petitioner that an appeal is entertained when it is admitted for consideration and not when it is filed. Further for deciding whether an appeal is to be admitted for hearing or not it would be necessary to fix a date of hearing and give an opportunity of being heard to the appellant. Viewed from this angle normally we would have set aside the order of the Chief Administrator dismissing the appeal on the ground of non deposit of assessed fee without first fixing a date of hearing. However, in the facts and circumstances of the present case, we feel that no useful purpose will be served as admittedly even if the matter was restored to the Chief Administrator the appeal will have to be dismissed as the petitioner has not deposited the assessed fee upto this date. The relevant provisions of the Act and the Rules as already reproduced above, clearly show that the period of limitation for filing an appeal provided in Rule 40 (2) is 30 days and there is no discretion given to the appellate authority to entertain an appeal beyond the period of limitation. Thus, even if the oder of dismissal of appeal was to be set aside on the technical ground of not affording an oportunity of being heard to the petitioner, the same result will follow because even

if the petitioner now deposits the assessed fee, the appeal will be deemed to have been filied on the date when the fee is so deposited. This admittedly would be beyond the period of limitation as per rule 40(2). In the absence of any discretion with the appellate authority to entertain a belated appeal, the appeal would have to be dismissed on the ground of limitation. The view that we are taking is in conformity with the law laid down by the Apex Court in Laxmiratan Engineering Works Limited 's case (supra). In that case the Supreme Court was dealing with the provisions of Section 9 of the U.P. Sales Tax Act which provided that an appeal could be filed within 30 days form the date of the sevice of the copy of order or notice of assessment. The proviso to the said Section requires that no appeal shall be entertained unless it is accompanied by satisfactory proof of payment of the admitted tax. In that case, the tax had been deposited before the appeal had been filed but the necessary proof had not been enclosed with the appeal. In other words the consideration which prevailed wih the Apex Court was that the tax had been deposited within the period of limitation prescribed for filing the appeal and as such failure to attach the proof of its payment with the memorandum of appeal was only a technical defect which could at best made the memorandum defective. In fact in paras 9 and 13 of this judgment at pages 492 and 493 this distinction had clearly been brought about as under :—

> "(9) .....In a single bench decision of the same court reported in Bawan Ram *v.* Kunj Beharilal, AIR 1962 All 42 one of us (Bhargava J.) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case the word 'entertain' is not interpreted but it is held that the court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time."

> "(13) .....We are of opinion that by the word "entertain" here is meant the first occasion on which the court takes up the matter for consideration. It may be at the admission stage or if by the rules of that Tribunal the appeals are automatically admitted, it will be the time of hearing of the appeal.

But on the first occasion when the court takes up the matter for consideration, satisfactory proof must be presented that the tax was paid within the period of limitation available for the appeal." (Emphasis supplied).

(9) It is, therefore, amply clear that even at the time of entertaining an appeal what is to be verified is whether the amount had been paid within the period of limitation prescribed for filing an appeal or not. In the present case it has already been noticed that not only the assessed fee had not been deposited within the period of limitation prescribed under Rule 40(2) but remains unpaid even upto this date.

(10) We may also deal with the case law cited on behalf of the petitioner which is clearly distinguishable. In *Shyam Kishore's* case (Supra) the Supreme Court was dealing with the provisions of section 170 of the Delhi Municipal Corporation Act (1957) which reads as under :

"10. Conditions of right to appeal.

No. appeal shall be heard or determined under S. 169 unless—

(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under S. 14 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under S. 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof :

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within that period .

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation."

In para 41 of the this judgment the Supreme Court has observed as under :—

"It seems to us the words of S. 170(b) are capable of a broader interpretation. A perusal of S. 170 shows that the section uses three different expressions "heard or determined", "brought" and "admitted" in relation to an appeal and some significance is to be attached to the use of the expression "heard and determined". In like situations, other statutes such as the one considered by this Court in Lakhshmi Rattan Engineering Works Ltd. *v.* Assistant Commr. of Sales Tax (AIR 1968 SC 488) and those contained in certain other enactments like the Bombay and Calcutta Municipal Acts specifically prohibit the very entertainment of the appeal if the tax is not paid. When the DMC Act has carefully avoided the use of that word, we must give full effect to the differential wording. Also, the absence of a language in C1. (b) of the proviso similar to that in C1. (a) which indicates that an appeal filed beyond the period of limitation will not stand admitted unless the delay is condoned also warrants an inference that the payment of disputed tax is not a condition precedent to the entertainment or admission of the appeal. In the present statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre-deposit of the disputed tax. Such an interpretation will provide some much needed relief from the harshness of the provision. These are not days in which the calculation of the property tax is simple and uncomplicated ; the determination of the annual value of the property, except when based on the actual rent received from the property, involves various subjective factors and, not unoften, there is a wide gulf between the tax admitted to be due and the tax demanded. Sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very well cripple him altogether. This apart, an assessee may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provision so rigidly as to disable him from doing this. Again, when an appeal comes on for hearing, the appellate judge, in appropriate cases, where he feels there is some great hardship or injustice involved, may be inclined to adjourn the appeal for some

time to enable the assessee to pay up the tax. Though it will not be expedient or proper to encourage adjournment of an appeal, where it is ripe for hearing otherwise, only on this ground and as a matter of course, an interpretation which leaves some room for the exercise of a judicial discretion in this regard, where the equities of the case deserve it, may not be inappropriate. The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax, if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal ; that would result in modifying the language of the proviso to read : "no appeal shall be disposed of untill the tax is paid". Short of this, however, there is on reason to restrict the powers unduly ; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read C1. (b) of S.170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself."

It is, therefore, evident that the Supreme Court was dealing with the expression "heard or determined" and not the expression "entertained" with which we are concerned in this case. The Supreme Court itself has brought about the difference in these expressions. Further-more clause (a) of section 170 conferred a discretion on the appellate authority to admit an appeal after the expiry of the prescribed period if the appellant could show a sufficient cause for the delay. However, no

such discretion is vested in the appellate authority under the Punjab Agricultural Produce Markets Act, 1961.

(11) In *ANZ Grindlays Bank Ltd's case (Supra)* this Court was dealing with the provisions of sections 146 and 147 of the Punjab Municipal Corporation Act, 1976. Here again, a discretion for entertaining the appeal after the period of limitation had been conferred on the appellate authority if the appellant could attribute the delay to a sufficient casue. Further in that case the appeal had been dismissed on the ground of failure of the appellant to make prior deposit of tax before filing the appeal on 5th Augest, 1997 and the petitioner had deposited the disputed amount on the very next day on 6th August, 1997 and had thereafter approached the High Court. This was one of the major considerations which weighed with this Court while setting aside the appellate order. In the present case, admittedly the petitioner has not deposited the assessed fee upto this date even though its appeal has been dismissed on 22nd October, 1998.

(12) The decision of this court in *Sh. Markande Metal (India) Pvt. Ltd's case (supra)* also does not advance the case of the petitioner. No proposition of law has been laid down in that case. The judgment of this Court was based on special circumstances of the case granting relief in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. This case cannot be said to be an authority on any legal proposition.

(13) After the conclusion of the arguments the learned counsel for the petitoner has also brought to our notice a decision of Madras High Court in *National Insurance Company Limited, Athur* vs. *Sengoda Gounder and others* (5). This case relates to the provisions of Section 173 of the Motor Vehicles Act, 1988 laying down the limitation for filing the appeal and also the requirement of deposit of a certain amount before an appeal can be entertained. Here again a discretion is conferred on the High Court to entertain an appeal even after the expiry of limitation if a suffcient cause for the delay can be shown. Further the High Court also noticed that the condition for payment of Rs. 25,000 or 50% of the awarded amount was to be deposited "in the manner directed by the High Court". These, words were interpreted to mean that the direction about the manner of payment had to come from the High Court which could be done only when the appeal was taken up for consideration. In fact in para 16 of this judgment, the learned single Judge has referred to another case of that Court in *State of Tamil*

(5) 1999 (1) I.C.C. 110

Nadu vs. *E.P. Nawab Marakkadai (6)* which supports the view that we have taken. In that case it was held that where the assessed tax under the Tamil Nadu General Sales Tax Act (1 of 1959) had been deposited after the expiry of limitation prescribed for filing the appeal, the appeal could not be entertained. The said case was distinguished in para 16 of the judgment as under :—

> "When we come back to the case reported in State of Tamil Nadu *v.* E.P. Nawab Markkadai, (1996) 100 S.T.C. 1, the facts of the case are not applicable to the case on hand as I have already indicated.The said case deals with the proviso to Sec. 31(1) of the Tamil Nadu General Sales Tax Act (1 of 1959). There the words used in the proviso are "no appeal shall be entertained under this sub-section, unless it is accompanied by satisfactory proof of payment of tax admitted by the appellant". The appeal (memorandum) has to be accompanied by proof for payment. But in the proviso to section 173 of the Motor Vehicles Act, 1998, there is no such mandatory provisions for accompanying the satisfactory proof of payment of amount. Further, in the aforesaid Full Bench case, the time limit of preferring the appeal is 30 days and the discretion given to the Court for condonation of the delay is limited to 15 days. That is why the learned Judges have observed as follows :
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> > "....:it follows that if the payment of admitted tax is made beyond the period of 30 days prescribed for the filing of an appeal and beyond the further period of 15 days in respect of which alone the appellate authority has power to condone the delay, then the appellate authority has to necessarily reject the appeal as barred by limitation."
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> But under Sec. 173 of the Motor Vehicles Act, 1988, the appeal can be filed within 90 days, further if there is delay to any length of time it can be condoned if sufficient cause is down."

Thus, this authority in fact goes against the petitioner and supports the view taken by us.

(14) We, therefore, see no merit in this petition which is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

R.N.R.

(6) (1996) S.T.C. 1