

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
SURJIT SINGH : DECISION
for Redetermination of a Deficiency/Revision of a : DTA No. 814412
Determination or for Refund of Sales and Use Taxes under :
Article(s) 28 and 29 of the Tax Law for the Period :
March 1, 1994 through May 31, 1994. :

Petitioner Surjit Singh, P.O. Box 1067 McAfee, New Jersey 07428, filed an exception to the order of the Administrative Law Judge issued on December 11, 1995. Petitioner appeared by Felix J. Catena, Esq. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Christina L. Seifert, Esq., of counsel).

Petitioner did not file a brief on exception. The Division of Taxation submitted a letter stating it would not be filing a brief on December 29, 1995, which date began the six-month period for the issuance of this decision. Oral argument was not requested.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether petitioner timely filed a petition with the Division of Tax Appeals.

FINDINGS OF FACT

We find the facts as follows.

On July 14, 1995, the Bureau of Conciliation and Mediation Services issued a Conciliation Order Dismissing Request to petitioner.

Petitioner filed a petition for revision of a determination of sales and use tax for the period March 1, 1994 through May 31, 1994 on October 13, 1995.

On November 2, 1995, Frank A. Landers of the Division of Tax Appeals' Petition Intake, Review and Exception Unit issued a Notice of Intent to Dismiss Petition to petitioner's

representative Felix J. Catena for failure to file a timely petition. The Notice stated that the petition was not filed until October 13, 1995 or 91 days after the issuance of the Conciliation Order Dismissing Request on July 14, 1995.

Petitioner responded to the Notice of Intent to Dismiss Petition by submitting a letter, dated November 8, 1995, in which he requested an exception to the 90-day filing requirement.

A copy of the Notice of Intent to Dismiss Petition was also sent to the Division of Taxation (hereinafter the "Division"). In response, the Division submitted affidavits and documentary evidence establishing that the Conciliation Order Dismissing Request was sent by certified mail to petitioner on July 14, 1995 at petitioner's last known address at 874 Rt. 9, Staatsburg, New York 12580-6019. The affidavits submitted by the Division described the customary office practice in preparing and mailing conciliation orders. The documentary evidence consisted of a certified mailing record which lists on page three Surjit Singh as addressee and bears a postmark of July 14, 1995. At the bottom of page three, the page listing petitioner as addressee, the number "15" has been filled in as the "Number of Pieces Listed by Sender," and the number "15" has also been filled in as the "Total Number of Pieces Received at Post Office." The page also contains a postal employee's initials further verifying receipt at the post office on July 14, 1995 of the piece of certified mail in question.

On December 11, 1995, the Administrative Law Judge, sua sponte, ordered that the petition be dismissed with prejudice on the ground that it was not timely filed within the 90-day period prescribed by Tax Law § 170(3-a)(e). The Administrative Law Judge found that the petition was not filed until October 13, 1995 or 91 days after the Conciliation Order Dismissing Request was issued on July 14, 1995.

Petitioner filed an exception to the order of the Administrative Law Judge dismissing his petition with the Tax Appeals Tribunal.

OPINION

Tax Law § 170(3-a)(e) provides, in pertinent part, that a conciliation order shall be binding upon the taxpayer unless the taxpayer petitions for a hearing within 90 days after the Conciliation Order is issued.

When the timeliness of the petition is at issue, the Division must establish proper mailing of the Conciliation Order. We find that the Division has met its burden to establish proper mailing of the Conciliation Order Dismissing Request to petitioner on July 14, 1995 by submitting affidavits describing its general mailing procedure and the mailing records which show that the procedure was followed in this matter.

On exception, petitioner argues the merits of his case. Without a timely petition having been filed, this Tribunal has no jurisdiction over the matter and cannot address the merits of petitioner's case.

We affirm the order of the Administrative Law Judge. The Conciliation Order Dismissing Request was issued to petitioner on July 14, 1995. The petition in this matter was not filed until October 13, 1995, or 91 days later. Therefore, the petition was not timely filed within the 90-day period.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Surjit Singh is denied;
2. The order of the Administrative Law Judge is affirmed; and
3. The petition of Surjit Singh is dismissed with prejudice.

DATED: Troy, New York
February 15, 1996

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Donald C. DeWitt
Donald C. DeWitt
Commissioner

