

(1979) 08 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 729, 730 and 731 of 1972

Ashok Automobiles (Ranchi) Private Ltd.

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 31-08-1979

Acts Referred:

Limitation Act, 1963 — Section 12

Citation : (1980) 45 STC 500

Hon'ble Judges : Umesh Chandra Sharma, J;Uday Sinha, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Rana Pratap Singh No. 2 and N.K. Agrawal, for the Appellant; K.N. Jain, Government Pleader 6, G.S. Sharma, Junior Counsel to Advocate-General, S.K.P. Sinha and G.K. Agrawal, Junior Counsel to Government Pleader 6, for the Respondent

Final Decision : Allowed

Judgement

Uday Sinha, J.—These three applications have been heard together, as the parties are common and a common question of law falls for consideration. The petitioner has prayed for quashing annexure-7 in each of the three applications. By annexure-7, the Bihar Commercial Taxes Tribunal reviewed and recalled its orders dated 2nd September, 1969, and 10th December, 1971. The applications arise in the circumstances hereinafter stated.

2. The petitioner is an incorporated company in the State with its registered office at Ranchi. The three applications relate to the assessment of the firm under the Bihar Sales Tax Act for the assessment years 1962-63, 1963-64 and 1964-65. Adverse assessment orders having been passed against the petitioner, appeals were filed which proved futile. The petitioner thereafter moved the Commercial Taxes Tribunal in revision by three applications relating to the three assessment years. The revisions were dismissed by the Tribunal by judgment dated 6th May, 1969. The law enjoins filing of certified copy of the order passed by the Tribunal in revision along with the petition for reference u/s 33(1) of the

Bihar Sales Tax Act, 1959. The petitioner, therefore, applied for grant of certified copy for filing an application before the Commercial Taxes Tribunal for review (sic) u/s 33(1) of the Bihar Sales Tax Act, 1959. Copy was granted to the petitioner on 23rd August, 1969. The application u/s 33(1) was thereafter filed on 27th August, 1969. The order sheet of the Tribunal shows that the Tribunal came to the conclusion that the application for reference had been filed in time, after excluding the time taken in the grant of certified copy of the order complained against. The same order shows that the application was ordered to be listed for admission as well as hearing on merit on 21st February, 1970. Notices were issued to both the parties. It appears that the application for reference was finally heard on 26th November, 1971. On that day the counsel for the department not only challenged his prayer for making a reference on merit, but also contended that the application u/s 33(1) had been filed beyond time and, therefore, it was fit to be dismissed. The time allowed by Section 33(1) of the Sales Tax Act for filing an application for reference is ninety days. It is not in controversy that rightly or wrongly it has been long-standing settled practice of the Sales Tax Tribunal to exclude the time taken in obtaining certified copy of the impugned order in the matter of computation of limitation in respect of reference applications. The Tribunal after hearing the parties recorded order No. 13 on 10th December, 1971. An English rendering of the order of that date would read as follows:

Decision has been taken to make a reference to the High Court. Commissioner, Sales Tax, may be requested to make available the originals and the documents mentioned below.

3. Long after recording the above order, the Tribunal by order dated 29th March, 1972, modified its orders dated 2nd September, 1969, and 10th December, 1971, and held that the reference applications will not be entertained on the ground of their being barred by limitation. The Tribunal specifically stated in paragraph 6 that the department has sufficient reason to request the Tribunal to review its order dated 2nd September, 1969, and the Tribunal observed that "which we hereby do". In paragraph 8, the Tribunal observed that "as it is not possible to state a case to the High Court in view of the applications for reference being barred by limitation, that order is also recalled". The petitioner, being aggrieved by the order of the Tribunal dated 29th March, 1972 (annexure-7), has moved this Court for quashing.

4. The submissions urged on behalf of the petitioner are firstly that the Tribunal committed gross error of law in taking the view that the petitioner was not entitled to exclusion of time taken in obtaining the certified copy of the order under revision for the purpose of filing an application for reference u/s 33(1) of the Sales Tax Act. The basic ground for passing annexure-7 being erroneous there was an error apparent on the face of the record. It is, therefore, liable to be quashed. The second submission urged on behalf of the petitioner is that there was no apparent mistake in the orders passed on 2nd September, 1969,

and 10th December, 1971, and, therefore, the Tribunal had no jurisdiction to review them.

5. The counsel for the respondents has conceded that if the time taken for grant of certified copy were to be excluded in the matter of computation of limitation, the application would be in time and no question of limitation would arise. Mr. Jain for the respondents, however, hotly contested the claim of the petitioner to exclude the time taken for the grant of certified copy of the order. The learned counsel for the petitioner relied upon the provisions of Section 12(2) of the Limitation Act, 1963, which reads as follows:

12. (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

6. On the basis of the above provision it was contended that the petitioner was entitled to exclude the time taken in the grant of the certified copy. The learned counsel for the petitioner placed reliance in this behalf upon *The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly*, . The submission urged on behalf of the petitioner is entirely misconceived and must be rejected. From the provisions of Section 12(2) of the Limitation Act quoted above, it will be seen that the benefit of the section can be extended in computing the period for (a) an appeal, (b) an application for leave to appeal, (c) an application for revision, and (d) an application for review of a judgment. An application for referring the matter to the High Court does not fall within the ambit of this section. It will necessarily follow that the benefit of Section 12(2) of the Limitation Act cannot be extended to an application u/s 33 of the Bihar Sales Tax Act for requiring the Tribunal to refer to the High Court any question of law arising out of such order. In that view of the matter, reliance placed upon the case of *The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly*, , has no substance. The submission must, therefore, be rejected.

7. The second submission urged on behalf of the petitioner is, however, weighty and must succeed. The learned counsel for the respondents endeavoured to show that the orders passed on 2nd September, 1969, and 10th December, 1971, were not orders, but mere tentative decisions. Something may be said in that behalf so far as the submission in relation to order dated 2nd September, 1969, is concerned. But the order dated 10th December, 1971, was passed after hearing the parties. It cannot, therefore, be taken to be a mere tentative decision. Although it does not set out what questions were referred to the High Court, yet it does give an indication that the plea of the department that the application was barred by time had been rejected by the Tribunal. The reliance placed by the learned counsel for the respondents upon *Commissioner of Wealth-tax Vs. Sayaji Mills Ltd.*, and *Commissioner of Income Tax Vs. Income Tax Appellate Tribunal, "D" Bench and Another (Stadmed Pvt. Ltd.)*, , have no

application to the present case. The order dated 10th December, 1971, shows in unmistakable terms that the judicial mind had formed the conclusion that the application was not barred by time. In that view of the matter, even if it does not contain the question to be referred to the High Court, yet it was a settler on the question of maintainability of the reference application. Annexure-7, therefore, cannot but be read as an order of review. The argument on the question of the petition u/s 22 being barred by time had been heard by the Tribunal on 26th November, 1971. On that date the order passed was as follows:

Heard arguments of Sri Tarkeshwar Prasad, Advocate, assisted by Sri Rana Pratap Singh II for the applicant and of Sri R.A. Prasad, Advocate, for the opposite party. Put up on 10th December, 1971, for orders.

8. On 10th December, 1971, the Tribunal passed the order as follows:*The order in Hindi is not printed here. An English version of the same has been given in paragraph 2 of the judgment. See page 502 supra.

* * *

9. In that view of the matter, the order dated 10th December, 1971, also be read as an order condoning the delay in filing the application. There was no apparent error in the order dated 10th December, 1971, and, therefore, the Tribunal had no jurisdiction to review and recall the order dated 10th December, 1971, which had been passed after hearing both the parties.

10. The real question to be considered by the Commercial Taxes Tribunal was whether the petitioner was misled by the long-standing practice of the Tribunal to exclude the time taken in grant of copy for purposes of limitation in the matter of an application u/s 33 of the Bihar Sales Tax Act. The petitioner and his counsel may well have filed the application beyond time under the mistaken notion that the time taken in grant of certified copy of the revisional orders would be excluded. Mr. K.N. Jain, the learned Government Pleader, who is well-acquainted with the procedure of Commercial Taxes Tribunal candidly conceded that it is the established practice of the Tribunal to exclude the time taken in grant of certified copy for purposes of limitation. It has been stated on behalf of the petitioner that before the Commercial Taxes Tribunal it had been contended firstly that the application was within time (on the basis that the time taken for grant of certified copies had to be excluded) and that even if it was not within time, the petitioner had acted bona fide in accordance with the legal advice tendered by his counsel. The learned counsel for the petitioner has referred us to the contents of paragraphs 16 and 17 of the petition. Special reliance had been placed upon the following in paragraph 17 of the petition:

On behalf of the petitioner, it had been indicated that the petitioner acted bona fide in accordance with the legal advice tendered by his counsel which was duly supported by Tribunal's order No. 2 dated 2nd September, 1969, duly communicated by the Tribunal to the petitioner. It was further indicated that the practice of the Tribunal was to obtain a certified copy and annex the same with

an application for reference and deduction has been made in the past for time taken in obtaining the copy.

11. The above averments have been controverted by the respondents. The denial, however, does not take us very far. The order certainly does not show what was submitted on behalf of the petitioner, but the fact that by the order dated 10th December, 1971, the Tribunal mentioned in the order sheet that a decision had been taken to make a reference to the High Court. It is obvious that on oral application the Tribunal may have considered the bona fide mistake as an extenuating circumstance and condoned the delay in filing the application. The Tribunal having condoned the delay, it was not open to it to review it, as there was no apparent error on the face of it. An erroneous decision on a question of fact or law is no ground for reviewing a judicial order since it is not an error apparent on the face of the record (see *Budhram Kashiram v. State of Bihar* [1970] 26 S.T.C. 505 and *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*,). Annexure-7 was, therefore, passed without jurisdiction and must be quashed.

12. For the reasons stated above, the applications are allowed; let a writ of certiorari issue quashing the order of the Sales Tax Tribunal dated 29th March, 1972, contained in annexure-7 in each case. The Tribunal will now dispose of the reference applications filed by the petitioner. There will be no order for costs.

U.C. SHARMA, J.

I agree.