

(2008) 09 RAJ CK 0043
In the Rajasthan High Court

Assistant Commissioner, Commercial Tax	APPELLANT
Vs	
Sanskrit Comfort System Pvt. Ltd.	RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35
Income Tax Act, 1961 — Section 10, 11, 12, 13, 14
Limitation Act, 1963 — Section 10, 12, 13, 14, 29

Citation : (2008) 18 VST 512

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—This revision petition u/s 86(2) of the Rajasthan Sales Tax Act, 1994 ("the Act of 1994"), filed by the Revenue on March 29, 2003 against the order dated August 1, 2002 as passed by the Rajasthan Tax Board, Ajmer in Appeal No. 1177/1999 is reported to be barred by limitation by two days ; and the petitioner has moved an application u/s 5 of the Limitation Act, 1963 ("the Limitation Act") for condonation of delay that has been opposed on behalf of the non-petitioner as being incompetent.

2. Though, this Court is satisfied that on merits this revision petition remains bereft of substance ; and further, the fate of this revision petition remains sealed with the order impugned herein having already been found not calling for interference by this Court while rejecting the cognate revision petition (S. B. Sales Taxes Revision Petition Nos. 584/2005) on February 2, 2006 and, admittedly, the order passed by this Court on February 2, 2006 in rejecting the said revision petition has attained finality; but and however, for the learned Counsel for the petitioner having pressed on the revision petition and submissions having been made on the question of applicability of Section 5, Limitation Act for condonation of delay in filing the revision petition to this Court u/s 86 of the Act of 1994 and such issue being of recurrence, it appears

appropriate to deal with the submissions as made at the Bar.

3. Learned Counsel Mr. Rajesh Jain appearing for the non-petitioner with the learned Counsel Ms. Ajanta Saraswat, while opposing the application for condonation of delay has argued with emphasis that the Act of 1994 is a complete code in itself and the scheme of this enactment makes it clear that it has independent provisions relating to all aspects like filing of returns, assessment, search, seizure, imposition of penalty, appeal, revision, period of limitation, etc.,; and separate periods of limitation have been provided under different provisions like Section 26(1), 26(5) and so also for filing of first appeal u/s 84 and filing of next appeal before Tax Board u/s 85 ; and these provisions specify a period of limitation and the further period to which the delay could be condoned.

4. However, learned Counsel underscored the submission, Section 86 providing for revision to this Court does not contain any provision for condonation of delay while providing different periods of limitation, one for the revision petition by a dealer u/s 86(1) at 90 days, and another for a revision petition by the Revenue u/s 86(2) of; the Act at 180 days. Learned Counsel would submit that as per the phraseology of Section 86(2) where it is enjoined that the revision through the officer or in-charge of check-post shall be filed within 180 days, the expression "shall" carries all the mandatory requirements that cannot be altered and hence applicability of Section 5 of the Limitation Act is ruled out. Learned Counsel referred to the decisions in *Miles India Limited v. Assistant Collector of Customs* [1987] 30 ELT 641 (SC) , *Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills Ltd., Jalandhar* , *Commissioner, Sales Tax Vs. General Manager, Northern Railway, Gopal Sardar Vs. Karuna Sardar* , *Fairgrowth Investments Ltd. Vs. The Custodian, Commissioner of C. Ex., Meerut-II v. Salora International* [2006] 206 ELT 61 (All) , *Hukumdev Narain Yadav Vs. Lalit Narain Mishra* , *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur* , *Delta Impex Vs. Commissioner of Customs* , *Pranam Enterprises Vs. Commissioner of Sales Tax and Others* , *Jhabboo Lal Kesara Rolling Mills Vs. Union of India (UOI) and Others* , *Commissioner of Sales Tax, Maharashtra State Vs. N.H. Polymers, and Commnr. of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida* . Learned Counsel submitted that the decisions aforesaid even when not in relation to the Rajasthan Sales Tax, the principles therein would apply for interpretation of Section 86. According to learned Counsel, for Section 35G of the Central Excise Act being similar to the provisions of Section 86(2) of the Rajasthan Act, the principles particularly in *Salora International* [2006] 206 ELT 61 (All) , *Gopal Sardar Vs. Karuna Sardar* , and *Fairgrowth Investments Ltd. Vs. The Custodian*, would apply and the learned Counsel has referred to the decisions in *Commissioner of Central Excise Coimbatore and Others Vs. Jawahar Mills Ltd. and Others* , *M/s. Devi Dass Gopal Krishan Pvt. Ltd., etc. etc., Vs. State of Punjab and another etc. etc.*, and *At Ravji v. State of Gujarat* [1993] 89 STC 228 (Guj) to submit that the interpretation of Supreme Court qua the provisions in *pari materia* would cover the issue.

5. Learned Counsel Mr. Rishabh Sancheti arguing on behalf of the petitioner has countered with equal emphasis that exclusion of power to condone delay and applicability of Section 5 of the limitation cannot be readily inferred and when the statute has not provided either way, i.e., nether inclusion nor exclusion of the provisions of the Limitation Act, and further when the entire scheme of the enactment is looked at, it is clear that wherever the proceedings were to be taken before the authorities other than the court and limitation was provided therefore and it was intended by the Legislature that delay could be condoned, specific provisions in that regard have been made. But, according to the learned Counsel, the revision petition u/s 86 being to the High Court, no such provision was required to be made as the court has the powers to condone delay unless expressly excluded per Section 29(2) of the Limitation Act. Learned Counsel emphasised that there is no express exclusion of the provisions of the Limitation Act u/s 86 of the Act of 1994 and then, in the overall scheme of the Act of 1994, such exclusion cannot be even inferred. The learned Counsel submitted that Section 35 of the Central Excise Act having provided a limitation period of 60 days for appeal to the Commissioner and then outer-limit of 30 days for the purpose of condonation of delay also, by necessary implication excludes the applicability of Section 5 of the Limitation Act because Section 5 does not provide for any such outer-limit. Hence, according to the learned Counsel, the decision in relation to the Central Excise Act shall have no bearing on the question at hand.

6. Learned Counsel Anjay Kothari, appearing in some of other such revision petitions has also, with permission, made submissions in this matter supporting the submissions as made by Mr. Sancheti that Section 5, Limitation Act is applicable and available for condonation of delay in filing such revision petitions. Learned Counsel Mr. Kothari has submitted that in the scheme of the Act of 1994 where the first appellate authority and the second appellate authority have been invested with the powers to condone the delay to an unlimited extent, there cannot be any rationale behind taking away such power when it relates to the jurisdiction of the High Court. Learned Counsel submitted that the provisions of Section 84 and Section 85 providing for condonation of delay by the first appellate authority and by the Tax Board by necessary implication bring about applicability of Section 5 of the Limitation Act with express provision for such powers to condone delay to an unlimited extent; and, according to the learned Counsel, in view of inclusion of the provisions of the Limitation Act in such provisions in the Act of 1994, the omission to state such powers of condonation in Section 86 cannot be taken to mean express exclusion of the Limitation Act for the purpose of Section 86 but, other way round, such powers of condonation of delay are required to be read in Section 86 by necessary implication.

7. Learned Counsel submitted that in view of the phraseology of Section 29 of the Limitation Act, it is the scheme of special law or local law that would be determinative of the question as to whether Limitation Act does or does not apply. Learned Counsel has referred to the Full Bench decision of the honourable Bombay High Court in the case of Commissioner of Income Tax v. Velingkar

Brothers [2007] 280 ITR 382.

8. Having given a thoughtful consideration to the rival submissions, this Court is inclined to agree with the submissions that applicability of Section 5 of the Limitation Act is not excluded for the purpose of a revision petition filed u/s 86 of the Act of 1994 ; and delay in filing such revision petition could be condoned under the said provision.

9. The provisions relating to appeals and revisions under the Act of 1994 are contained in its Chapter-IX. While Section 84 provides for an appeal to the appellate authority against any order of an Assistant Commissioner, a Commercial Taxes Officer, an Assistant Commercial Taxes Officer or in-charge of a check-post, Section 85 provides for appeals to the Tax Board against kind of the orders referred in its Sub-section (1) ; and Section 86 provides for revision to the High Court against the order passed by the Tax Board u/s 85 or u/s 37 (for rectification of mistake). The relevant parts of the provisions as contained in Section 84 to Section 86 read as under:

84. Appeal to the appellate authority.-(1) Subject to the provisions of Section 88, an appeal against any order of an Assistant Commissioner, a Commercial Taxes Officer, an Assistant Commercial Taxes Officer or in-charge of a check-post shall lie to the appellate authority.

(2) The appeal shall be presented within sixty days of the date on which the order sought to be appealed against is communicated ; but the appellate authority may admit an appeal even after the said period of sixty days if it satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(3) to (8) ...

85. Appeal to the Tax Board.-(1) An appeal shall lie to the Tax Board against:

(a) an order of the State Level Screening Committee or the District Level Screening Committee passed under the Incentive Schemes or Deferment Schemes notified u/s 15 or under Sub-section (3) of Section 25;

(b) an order passed by the Commissioner with regard to determination of a disputed question u/s 40 or in any proceeding in exercise of his revisional powers u/s 87 ;

[(bb) an order passed by the Commissioner or a Deputy Commissioner (Administration) under Sub-section (2) of Section 30 ; and]

(c) an order passed by an appellate authority.

(2) Any person aggrieved by any order referred to in clauses (a), (b) and (c) of Sub-section (1), may file an appeal before the Tax Board within ninety days of the date on which the order sought to be appealed against is communicated to him in writing.

(3) Notwithstanding anything contained in Sub-section (2) the Commissioner or a Deputy Commissioner (Administration) authorised specially or generally by the Commissioner may, if aggrieved by any order referred to in clauses (a), (b) and (c) of Sub-section (1), direct any officer or in-charge of a check-post to file an appeal before the Tax Board and such officer or in-charge shall file such appeal under his signatures within one-hundred-and-eighty days of the date on which the order sought to be appealed against is communicated in writing to the Commissioner or the Deputy Commissioner.

(4) ...

(5) The respondent may, on receipt of notice that an appeal against an order referred to in Sub-section (1) has been preferred by the appellant, notwithstanding that he may not have appealed against such order, within one-hundred-and-twenty days in the case of an officer of the Commercial Taxes Department and within sixty days in the case of a dealer, of receipt of the notice, file a memorandum of cross-objections verified in the prescribed manner, against any part of the said referred order and such memorandum shall be disposed of by the Tax Board as if it were an appeal within the time specified in Sub-section (2) or (3).

(6) The Tax Board may admit an appeal or permit the filing of memorandum of cross-objections after the expiry of the limitation provided in Sub-sections (2), (3) and (5), if it is satisfied that there was sufficient cause for not presenting the same within that limitation.

(7) to (11) . . .

86. Revision to the High Court.-(1) Any dealer aggrieved by an order passed by the Tax Board under Sub-section (11) of Section 85 or under Sub-section (1) of Section 37, may, within, ninety days from the date of service of such order, apply to the High Court in the prescribed form accompanied by the prescribed fee, for revision of such order on the ground that it involves a question of law.

(2) The Commissioner may, if he feels aggrieved by any order passed by the Tax Board under Sub-section (11) of Section 85 or under Sub-section (1) of Section 37, direct, any officer or in-charge of a check-post to apply to the High Court for revision of such order on the ground that it involves a question of law ; and such officer or in-charge of a check-post shall make the application to the High Court within one-hundred-and-eighty days of the date on which the order sought to be revised is communicated in writing to the Commissioner.

(3) The application for revision under Sub-section (1) or Sub-section (2) shall state the question of law involved in the order sought to be revised, and the High Court may formulate the question of law in any form or allow any other question of law to be raised.

(4) The High Court shall after hearing the parties to the revision, decide the question of law stated to it or formulated by it, and shall thereupon pass such

order as is necessary to dispose of the case.

(5) Any person feeling aggrieved by an order passed under Sub-section (4) may apply for a review of the order to the High Court and the High Court may make such order thereon as it thinks fit.

10. To address the question as to whether delay in filing the revision petition u/s 86 of the Act of 1994 could be condoned with application of Section 5 of the Limitation Act, relevant it is to notice Section 29(2) of the Limitation Act, 1963 that reads as under:

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 - 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

11. Thus, wherever any special or local law has prescribed for any suit, appeal or application a period of limitation different from that provided by the Schedule to the Limitation Act, by virtue of the first part of Section 29(2), the provisions of Section 3 of the Limitation Act become applicable with the fiction as if the period provided by the special or local law were the period provided by the Schedule to the Limitation Act. The implication of such provision is that, subject to the provisions contained in Sections 4 - 24 of the Limitation Act, every suit instituted, appeal preferred, and application made after the prescribed period is required to be dismissed even if limitation is not set up as a defence (vide Section 3 of the Limitation Act). It is this provision of Section 3 of the Limitation Act whereby and whereunder a belated proceeding, taken up beyond the period of limitation, is liable to be dismissed ; but it is, of course, subject to the provisions of Sections 4 - 24 of the Limitation Act. Therefore, if because of applicability of any of the said provisions of Sections 4 - 24, the period of limitation is available to be extended or enlarged or any period is to be excluded, the bar of limitation would be considered subject to such provisions of extension, enlargement or exclusion, as the case may be.

12. When the fiction has been created by the first part of Section 29(2) to make applicable for the purpose of a special or local law the provision of Section 3 of the Limitation Act, the necessary corollary has been provided in the second part thereof that for the purpose of determining any period of limitation prescribed for any suit, appeal, or application by such special or local law, the provisions contained in Sections 4 - 24 of the Limitation Act shall apply but with the rider that they shall apply only in so far as they are not expressly excluded by such special or local law ; and only to the extent to which they are not so expressly excluded.

13. Such conditioning of applicability of provisions contained in Sections 4 - 24 of the Limitation Act to the extent not expressly excluded stands defined by the principles enunciated by the honourable Supreme Court in Fairgrowth Investments Ltd. Vs. The Custodian, with reference to the principles in previous decisions including those in Gopal Sardar Vs. Karuna Sardar, that the expression "exclusion" for the purpose of Section 29 of the Act includes "exclusion by necessary implication". It is apparent from the provisions of Section 29 read with the principles enunciated by the honourable Supreme Court in the decisions cited at Bar that inapplicability of section provisions of the Limitation Act comes into being when they are excluded, either expressly or by necessary implication. In fact, for the purpose of the provision "necessary implication" is akin to "express exclusion" as laid down by the honourable Supreme Court in Fairgrowth Investments Ltd. Vs. The Custodian, and other related cases.

14. Learned Counsel for the non-petitioner has referred to number of decisions to support the contention that applicability of Section 5 of the Limitation Act is excluded by necessary implication for the purpose of Section 86 of the Act of 1994. However, from the decisions cited by learned Counsel for the non-petitioner, it is difficult to discern the principle as if mere omission of stating applicability of the provisions of the Limitation Act by itself would be decisive of the matter and necessary implication has to be taken of their exclusion. It is ultimately the scheme of the particular provisions and nature of remedy that would be determinative if there is available any such implication or not. For the operation and purport of Chapter IX of the Act of 1994 being different on the material aspects and implication does not appear available against the applicability of Section 5 of the Limitation Act, it does not appear necessary to elongate this discussion with reference to all the cited decisions; however, the decisions strongly relied upon by the learned Counsel may be noticed.

15. In the case of Fairgrowth Investments Ltd. Vs. The Custodian, , the honourable Supreme Court was concerned with the question as to whether the Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, has power to condone the delay in filing the petition u/s 4(2) of the said Act. In holding that Section 29(2) of the Limitation Act does not apply to such proceedings, the honourable Supreme Court was pleased to refer to the position that the time-limit for filing the petition for objection u/s 4(2) was mandatory and compulsive in the sense that the period prescribed cannot be extended by the court under any inherent jurisdiction ; and then, there had been an express provision for condonation of delay u/s 10(3) of the said Act and further, there had been overriding provision in Section 13 of the said Act.

16. In Gopal Sardar Vs. Karuna Sardar, , the honourable Supreme Court held that the applicability of Section 5 of the Limitation Act was expressly excluded particularly after noticing the scheme of the West Bengal Act and finding that the Legislature did not intend to give benefit of Section 5 of the Limitation Act having

regard to the nature of right of pre-emption which is considered a weak right.

17. In *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , the honourable Supreme Court considered the question of limitation for filing an election petition under the Representation of the People Act, 1951 and observed that the court has to see as to whether the scheme of the special law and the nature of remedy provided therein are such that the Legislature intended it to be a complete code by itself which along would govern the special matters provided by it. The honourable apex court said further:

... If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 - 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.

18. In *Parson Tool's* [1975] 35 STC 413 the honourable Supreme Court had considered the provision as contained in Section 10(3B) of the U.P. Sales Tax Act, 1948 whereby the revision as provided under Sub-section (3) was to be made within one year from the date of service of the order complained of but the revising authority could have entertained an application on proof of sufficient cause within a further period of six months. The honourable court said:

Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only up to a specified time-limit and no further, then the Tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

19. The decisions in *Commnr. of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida*, and *Salora International* [2006] 206 ELT 61 (All) had been of the cases relating to Section 35H of the Central Excise Act, 1944 for filing an application for reference and the legislative intent was determined on comparing other provisions of the statute. Looking to the scheme of the said Act and the nature of remedy, applicability of Section 5, Limitation Act was ruled against. Noticeable it is that under the said Act, so far as the appeal before the Commissioner (Appeals) is concerned, there is a limited power for condonation of delay although there is no such restriction while making the provisions of Section 5, Limitation Act applicable to the appeals and cross appeals before the Tribunal. The said enactment has its own scheme and it is difficult to agree with the

submissions of the learned Counsel for the non-petitioner that the said decisions related with Central Excise Act would directly apply for the purpose of interpretation of the provisions of the Rajasthan Sales Tax Act.

20. The distinction in the case of Commissioner of Sales Tax, Maharashtra State Vs. N.H. Polymers, is also apparent because in the Bombay Sales Tax Act, 1959 by virtue of definite provision as contained in its Section 59, only the provisions of Sections 4 and 12 of the Limitation Act were made applicable and the honourable court held that once the Act has specifically made applicable only the provisions of Sections 4 and 12 of the Act, it expressly bars the other provisions of the Limitation Act.

21. On a comprehension of the principles available from the decisions cited by learned Counsel for the parties, it is apparent that ultimately it is the scheme of the particular provision and the particular enactment that would be decisive of the matter; and otherwise, the exclusion of the provisions of the Limitation Act is not lightly inferred; as observed by the Full Bench of the honourable Bombay High Court in The Commissioner of Income Tax Vs. Velingkar Brothers, that,:

11. . . . The exclusion of the provisions of Sections 4 - 24 of the Limitation Act as provided in Section 29(2) cannot be lightly inferred. Implied exclusion is not readily inferred. To infer the exclusion of Section 5 of the Limitation Act, 1963, by necessary implication, the language of Section 260A must suggest that the provision contained therein is mandatory and compulsive and, though not expressly stated, the Legislature intended unequivocally that the provisions of Section 5 of the Limitation Act are impliedly excluded.

22. While looking at Section 86 of the Act of 1994, it is apparent that exclusion of Section 5 of the Limitation Act has not been stated in express terms. Thus, the only question is as to whether exclusion of Section 5, Limitation Act has to be taken as having been provided by necessary implication?

23. Once it comes to the question of necessary implication, either the language of the provision itself must suggest that the provision is so compulsive that the only intent of the Legislature available is of exclusion of the provisions of Section 5 of the Limitation Act for the purpose of condonation of delay or such exclusion must be available to be gathered by the scheme of the Act.

24. The submission on the expression "shall" as contained in Section 86(2) of the Act of 1994 that it has made the period of 180 days for revision to the High Court at the instance of Commissioner to be an imperative period and not available for any alteration, in the opinion of this Court, is not correct on the purport and import of the phraseology of the said provision. Section 86 of the Act of 1994 in its terms gives a right to any dealer aggrieved of the order passed by the Tax Board u/s 85(11) or u/s 37(1) of the Act that he may, within 90 days from the date of service of order, apply to this Court for revision in the manner prescribed ; whereas Section 86(2) gives such a right to the Department but in the manner that if the Commissioner would feel aggrieved of any such order

passed by the Tax Board u/s 85(11) or Section 37(1) of the Act, he may direct any officer or in-charge of check-post to apply to this Court for revision. It is imperative for such officer or in-charge of the check-post to make application to the High court within 180 days from the date the impugned order was communicated to the Commissioner. The expression "shall" has its role and operation only to make it obligatory for the officer concerned, who has been directed by the Commissioner, to apply for revision. It is too far stretched to submit that the expression "shall" as occurring in Section 86(2) of the Act brings about any implication that the revision petition if filed beyond 180 days, the applicability of the provisions relating to condonation of delay is also ruled out. The revisionist in such matters is essentially the Commissioner and he directs filing of revision through a particular officer. The expression "shall" refers to the obligation of the officer concerned who has been directed by the commissioner to file such revision petition ; the officer cannot refuse to file such revision petition. The expression "shall" in Section 86(2) does not go beyond that; does not provide any indication that the provisions of Section 5 of the Limitation Act are necessarily excluded ; and has no relevance to the question at hands.

25. In the considered opinion of this Court, there is nothing in the Act of 1994 to indicate that the applicability of Section 5 of the Limitation Act is excluded for the purpose of its Section 86; and Section 86 of the Act of 1994 does not necessarily imply any such exclusion.

26. Of course, Section 86 does not in terms incorporate the applicability of the relevant provisions of the Limitation Act, but in view of the requirement of Section 29 of the Limitation Act and the law laid down by the honourable Supreme Court, it is to be seen if there is exclusion of the provisions of Section 5 of the Limitation Act. Expressly, there is no such exclusion provided; and for necessary implication, in the scheme of the Act and in the scheme of Chapter IX of the Act of 1994 dealing with appeals and revisions, this Court is unable to find any indication available so as to exclude the applicability of Section 5 of the Limitation Act for the purpose of Section 86 of the Act. Indications, whatever, available from Sections 84 and 85 are that the Legislature has provided for the powers with the first appellate authority and the Tax Board to condone delay without specifying any limit thereupon in terms of length or cause. In the overall scheme of the enactment, the interpretation as suggested by the learned Counsel for the petitioner and the learned intervening counsel appear to be more plausible that in relation to the revision to the High Court, no such power of condonation of delay per Section 5 of the Limitation Act was required to be spelt out, it being the obvious ; and of course, if the legislative intent was to curtail such power, either express provision would have been there or other provisions would have indicated so.

27. The other provisions only indicate that so far first and second appeals are concerned, the authorities have unlimited power to condone delay. The remedy provided by Section 86 of the Act of 1994 is applying for revision, on a question

of law, to this Court in continuation of appeals under Sections 84 and 85. The nature of remedy being considered herein has all traces of a substantive right, more akin to appeal even when named a revision. Yet, the provision of Section 86 cannot be considered a complete code in itself; and mere omission of stating powers for condonation of delay in Section 86, looking to the nature of remedy and the scheme of the Act of 1994, does not lead to the necessary implication that Section 5, Limitation Act is excluded. One could notice that Sub-section (5) of Section 86 provides that any person aggrieved by an order passed under Sub-section (4) may apply for a review of the order to the High Court without providing the period of limitation therefor. Obviously, one shall have to look at article 124 of the Limitation Act for period of limitation for such review. Overall scheme of the enactment, in all indications, does only repel the argument about inapplicability of Section 5 of the Limitation Act for the purpose of revision u/s 86 of the Act of 1994.

28. It could, in the passing, be observed that an example of exclusion by necessary implication of some of the provisions of the Limitation Act is available to be noticed in these very provisions of Section 86 of the Act of 1994. The limitation periods, 90 days for the dealer and 180 days for the department, have been provided essentially with reference to the date of service of the order sought to be challenged. Sub-sections (2) to (4) of Section 12 of the Limitation Act provide for exclusion of time taken in obtaining copy of decree, order, judgment, award, as the case may be. These provisions of Section 12 of the Limitation Act, by virtue of the provisions contained in Section 86 of the Act of 1994 could be considered to have been excluded by very necessary implication because there would not be, for the revisionist, any "time taken in obtaining copy". This kind of exclusion by necessary implication, in the opinion of this Court, is not available qua Section 5 of the Limitation Act.

29. In the aforesaid view of the matter, the objection as raised by the learned Counsel for the non-petitioner on maintainability of the application u/s 5 of the Limitation Act is required to be, and is, overruled.

30. The revision petition is barred by limitation by two days and in the overall circumstances of the case, it appears appropriate to condone the delay in filing the revision petition. Delay is, accordingly, condoned.

31. The revision petition be registered to its regular number.

32. Coming to the merits, as noticed at the outset, this revision petition is required to be dismissed.

33. The non-petitioner-dealer has been engaged in room coolers business. In relation to assessment year 1994-1995 it was assessed while taking the tax payable at ten per cent on the room coolers by assessment order dated December 22, 1995 ; the matter was reopened and while placing room coolers in the category of electronic goods, the dealer was assessed with levy of 12 per cent tax. Similarly, the order was made in relation to assessment year

1995-1996 taking the tax payable on the room coolers at 12 per cent. The appeals taken by the dealer to the Deputy Commissioner (Appeals) were, however, allowed on March 24, 1999 and the learned appellate authority found with reference to the notifications dated March 4, 1992, March 7, 1994 and March 27, 1995 that earlier, in the notification dated March 4, 1992, the "room coolers" were liable to 12 per cent tax for being included in entry No. 87, viz., "refrigerators, room coolers, water coolers, deep freezers and components and parts thereof". However, in the notification dated March 7, 1994 the entry of "refrigerators, water coolers, deep freezers and components and parts thereof" was placed at item No. 83 but "room coolers" were specifically omitted therefrom. In the notification dated March 27, 1995, entry No. 87 referred to "air-conditioners, air-conditioners plants and apparatus and appliances, refrigerators, water coolers, deep freezers and components and parts thereof" but room coolers were again omitted. The learned appellate authority held that in both the notifications dated March 7, 1994 and March 27, 1995, room coolers fell in the residuary entry and were liable for sales tax at ten per cent. The budget speech of the Chief Minister was also referred in that regard to find that "room coolers" were intended to be excluded from the concerned entry providing for 12 per cent tax and to be placed in the entry referable to ten , per cent tax.

34. The learned Tax Board has, again, referred to the said notifications and found that in the later notifications dated March 7, 1994 and March 27, 1995 room coolers were omitted from the entry referring to 12 per cent tax and such omission was in accord with the specific declaration made in the budget speech by the Chief Minister that now room coolers would be subject to ten per cent tax rather than 12 per cent. The learned Tax Board has precisely found that earlier room coolers were specifically stated in the concerned entry and their deletion in the latter notifications was directly co-related with the budget speech.

35. On a comprehension of the facts noticed by the learned appellate authority and having examined the notifications with the said budget speech, this Court is satisfied that the learned appellate authorities have rightly construed the later notifications as being intended to exclude the room coolers from the entry referable to 12 per cent rate of tax. The view as taken by the appellate authorities calls for no interference.

36. Noteworthy it is that by the impugned order dated August 1, 2002 three appeals taken by the Department involving the same issue were decided together by the learned Tax Board. The admitted position is that other two revision petitions taken against the same order have already been dismissed by this Court on February 2, 2006 including S.B. Civil Revision Petition No. 584/2005 relating to very same dealer (the non-petitioner) on the very same question. It has also not been disputed that the said order as passed by this Court on February 2, 2006 has become final and was not challenged further.

37. For all the reasons aforesaid, this revision petition is required to be, and is, dismissed on merits. No costs.