
(1992) 01 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 284 of 1983

E. Sefton and Co. Private Ltd.

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 17-01-1992

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35, 36
Finance (No. 2) Act, 1980 — Section 50, 50(1), 50(2), 50(3)
Limitation Act, 1908 — Section 10, 12, 14, 16, 18
Limitation Act, 1963 — Section 29(2), 5

Citation : (1993) 63 ELT 626

Hon'ble Judges : S.P. Srivastava, J; S.D. Agarwala, J

Bench : Division Bench

Advocate : R.N. Bhalla, for the Appellant; V.K. Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

S.P. Srivastava, J.—Feeling aggrieved by an order dated 13th February, 1979, passed by respondent No. 3, the Assistant Collector of Central Excise, Mirzapur, the petitioner filed an appeal u/s 35 of the Central Excises and Salt Act, 1944, before the respondent No. 2, the Appellate Collector of Central Excise, New Delhi. The order dated 13-2-1979 had been served on the petitioner on 15-2-1979. The appeal had been filed on 28-5-1979. The period of limitation for filing the appeal prescribed u/s 35 of the Act as it stood at that time was only three months. The aforesaid appeal, which had been filed on 28-5-1979 was therefore barred by eleven days on the date of its filing. In this view of the matter, the petitioner prayed for the condonation of the delay in filing the appeal on the grounds mentioned in the memo of appeal itself.

2. The Appellate Authority rejected the aforesaid appeal as time barred on account of the same having been filed after the expiry of the statutory period of limitation, without going into the merits of the appeal and also without going into the question of sufficiency or otherwise of the grounds put forward by the

appellant seeking condonation of delay. The petitioner challenged the aforesaid order by means of revision u/s 36 of the Central Excises and Salt Act, 1944, before the Central Government but that revision was also dismissed vide its order dated 22-11-1982, without going into the merits, holding that the Appellate Authority was justified in rejecting the appeal at the threshold on account of the bar of limitation.

3. The learned counsel for the petitioner has challenged the correctness of the aforesaid orders passed by the Appellate as well as the Revisional Authority on the grounds: that the appeal filed by the petitioner could not have been rejected without going into the question of sufficiency of the cause shown by the petitioner seeking condonation of the short delay of about 11 days in filing the appeal. The submission of the learned Counsel for the petitioner is, that by virtue of Section 29(2) of the Indian Limitation Act, the provisions contained in Section 5 of the said Act had become automatically applicable and the period of limitation prescribed in Section 35 of the Act could be determined with the aid and assistance of Section 5 of the Limitation Act but the respondent Authorities have acted with manifest illegality in proceeding on the assumption that the petitioner was not entitled to the protection of the aforesaid provisions and it is on this account that the said Authorities did not go into the question of condonation of delay and had illegally rejected the appeal as not entertainable on account of the same having been filed after the statutory period of limitation prescribed u/s 35 of the Act.

4. The question, which therefore, arises for consideration is as to whether the period of limitation prescribed under the aforesaid provision could be determined with the aid and assistance of Section 5 of the Indian Limitation Act, 1963, and the petitioner was entitled to the benefits available thereunder.

5. In this connection, it will be necessary to refer to the provisos contained u/s 35 of the Central Excises and Salt Act, 1944 as it stood in the year 1979.

"35. Appeals. (1) Any person deeming himself aggrieved by any decision or order passed by a Central Excise Officer under this Act or the rules made thereunder (not being an order passed u/s 35A) may, within three months from the date of such decision or order, appeal therefrom to the (Central Board of Excise & Customs as constituted under the Central Boards of Revenue Act, 1963), or, in such cases as the Central Government directs, to any Central Excise Officer not inferior in rank to an Assistant Collector of Central Excise and empowered in that behalf by the Central Government. Such authority or Officer may thereupon make such further inquiry and pass such order as he thinks fit. Confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order.

(2) Every order passed in appeal under this Section shall, subject to the power of

revision conferred by Section 36, be final."

Section 29(2) of the Indian Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that 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 to 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. (Emphasis supplied)

7. Section 29(2), Indian Limitation Act, 1963 therefore, governs cases where a special law prescribes a period of limitation different from the period prescribed under the said Limitation Act. The period of limitation prescribed under the provisions of Central Excises and Salt Act, 1944, which is a special law, being an Act dealing with a particular subject and creating a special jurisdiction, is different from the period prescribed under the aforesaid Limitation Act. Thus, all the ingredients of Sub-section (2) of Section 29, Limitation Act stand satisfied in the present case and the provisions contained in Section 5 of the Indian Limitation Act will automatically come into play by virtue of the aforesaid section, unless it could be shown that the said provision stands expressly excluded by such special law.

8. The apex court in its decision in the case of Mangu Ram Vs. Municipal Corporation of Delhi, has, while considering the effect of the provision contained in Section 29(2) of the Indian Limitation Act, 1963 has observed thus :

"...There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, Sub-section (2) is concerned. Whereas under the Indian Limitation Act, 1908 Section 29, Sub-section (2) clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22 shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, Sub-section (2) of the Limitation Act, 1963, enacts in so many terms that for the purposes of determining the period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29, Sub-section (2), clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, Sub-section (2) of the Limitation Act, 1963 in clear and unambiguous terms provides for the applicability of Sections...."

It was further observed that:

"... Mere provision of a period of Limitation in howsoever peremptory or

imperative language is not sufficient to displace the applicability of Section 5...."

The learned counsel for the petitioner has, on the strength of the above observations submitted that the words "expressly excluded" as contained in Section 29(2) of the Indian Limitation Act, 1963 signify an express exclusion by words and not by a process of construction or of reasoning or inference and has asserted that the benefits of Section 5 of the Indian Limitation Act could be availed of for the purpose of extending the period of limitation prescribed by a special or local law by virtue of Section 29(2) thereof and it was only if, the special or local law expressly excluded the applicability of Section 5 of the Limitation Act that it would stand displaced.

10. The above legal position however, can be of no avail to the petitioner. It has to be noticed in this connection that Section 5 of the Indian Limitation Act contains a provision for extension of prescribed period of limitation in certain cases if the court is satisfied about the sufficiency of the cause for not preferring the appeal or making the application within such period. It is obvious, therefore, that the proceedings referred to in Section 5 of the Indian Limitation Act are proceedings before a court. If we examine the scheme of the Central Excises and Salt Act, 1944 and the provisions contained therein it will be apparent that the authorities contemplated therein are instrumentalities of the State and are not a part of the judiciary. Their functions are the assessment and collection of the excise duty and in the process of the assessment of the duties envisaged under the Act they followed a pattern of action which may be considered judicial. However, these authorities are not thereby converted into courts. In the case of *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , it has been observed that the scheme of the Indian Limitation Act only deals with applications to Courts. Further in the case of *Sakuru Vs. Tanaji*, it has been clearly held that the provisions of the Limitation Act, 1963 apply only to proceeding in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified power conferred on courts.

11. It is, therefore, clear that even Section 29(2) of the Limitation Act, 1963 cannot make Section 5 of the aforesaid Act applicable to the proceedings under the Central Excises and Salt Act, 1944 and, therefore, the petitioner is not entitled to the benefits of the said provision.

12. However, it cannot be over-looked that Section 35 of the Central Excises and Salt Act was amended by the Finance (2) Act, 1980 which was published in Gazette of India on 21-8-1980. u/s 50 of the aforesaid Act many amendments were made in the Central Excises and Salt Act. The provisions contained in Section 50 provided that the amendments directed to be made by Sub-section (2) shall come into force on such date as the Central Government may by notification in the official gazette appoint. It was further provided in Sub-section (3) of Section 50 aforesaid that if any difficulty arises in giving effect to the

provisions of any Act referred to in Sub-section (1) as amended by the amendments thereto directed in the Vth Schedule (particularly in relation to the transition to the provisions of that Act as so amended) the Central Government may by general or special order do anything not inconsistent with such provisions as so amended which appears to be necessary or expedient for the purpose of removing difficulty provided that no such order shall be made after an expiry of two years from the date on which such amendments came into force.

13. The amendments which were envisaged u/s 50 of the Finance (2) Act, 1980 so far as Section 35 relating to appeals were concerned vested the Collector (Appeals) with the jurisdiction to condone the delay in filing an appeal by a further period of three months. The proviso added to Section 35 is as follows :-

"Provided that the Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months."

14. It may further be noticed that although the Finance Act had come into force on 21-8-1980 the notification specifying the date from which the amendment was to come into force was issued by the Central Government vide the Notification SSR No. 597 (E) dated 11-10-1982 and it was with effect from that date that the aforesaid proviso became effective.

15. In the present case the appeal had been filed on 28-5-1979. It was decided on 21-8-1979 by the Appellate Collector of Central Excises, New Delhi. Against the said order a revision u/s 36 of the Act was filed on 12-6-1982 which was dismissed on 22-11-1982. Thus it is apparent that the proviso had come into force during the pendency of the proceedings in shape of revision before the Central Government.

16. The proviso referred to above which was added to Section 35 of the Central Excises and Salt Act provided for extension of period of limitation and was thus, a part of the procedural law. In the case of L. Laiq Ram Vs. Har Prasad and Others, , it has been observed thus, it is no doubt true that statute cannot be construed to have retrospective effect unless its language makes it clear that the intention was that it should have retrospective effect but this principle cannot be applied to enactments dealing with procedure which are always retrospective to this extent that provisions will apply to proceedings already commenced at the time of their enactment.

17. Further the Supreme Court in its decision reported in Anant Gopal Sheorey Vs. The State of Bombay, had observed as follows :-

"No person has a vested right in any course of procedure. He has only right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending in and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the

altered mode. In other words, a change in the law or procedure operates retrospectively and unlike the law relating to vested right is not only prospective."

(emphasis supplied)

18. In the decision of the Supreme Court reported in *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, it has been observed that cases are no doubt conceivable where an aggrieved party despite sufficient cause, is unable to make an application for revision within the maximum period prescribed. It has been observed that even in such exceptional cases of extreme hardship, revising authority may on its own motion entertain revision and grant relief.

19. In the present case, we find that it is only to mitigate the oppressiveness of Section 35 of the Central Excises and Salt Act, that steps were taken under the Finance (2) Act, 1980 to provide for extension of the period of limitation and that is why a proviso was added vesting the Appellate Authority with the jurisdiction to condone the delay and extend the period of limitation to six months. The provision relating to limitation is a part of procedural law. The provision to condone the delay had come into existence while the revision was pending. In the circumstances of the case, therefore, it is apparent that the proviso being part of the law of procedure, had to be treated to be retrospective in operation and the petitioner was entitled to its benefit and the hearing of the appeal on merits in case the cause for not presenting the appeal within time was held to be sufficient.

20. The present writ petition had been filed on 28-2-1983. By an order of the same date passed on the stay application, the respondents had been restrained from realising a sum of Rs. 17,464.07 P. short levy in pursuance of the order dated 24-11-1977 passed by the Superintendent, Central Excise, M.O.R.I., Mirzapur subject to certain conditions. The aforesaid stay order was confirmed on 30-11-1983. The petitioner had given an explanation for the delay of about 11 days in filing the appeal and had asserted that the relevant records files etc., were not available as they were at Allahabad in connection with the writ petition being Writ Petition No. 644-C of 1979-E. Sefton & Co. Private Limited pending in the High Court. The assertions made by the petitioner in connection with the condonation of delay in filing the appeal had not been controverted in any manner before the Appellate Authority by the Department. As a matter of fact, there is nothing to indicate that any objection had been raised by the Department to the condonation of delay in filing the appeal. It is by now well settled that while considering the application for condonation of delay, the Appellate Authority should not have taken a strict and pedantic stand, which can cause injustice and such an application should be considered from the point of view which will defend the cause of justice. The expression sufficient cause as contemplated under the proviso to Section 35 of the Act is quite elastic and it should be applied in a meaningful manner to subserve the ends of justice. As observed by the Hon"ble Supreme Court in its decision in the case of *Collector,*

Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. Following the aforesaid decision this Court observed in its decision in the case of Paliwal Steel Pvt. Ltd. v. Union of India and Ors. - 1985 (35) E.L.T. 465 that while considering the question of limitation, there should be a liberal approach and if the delay is not on account of culpable negligence and deliberate and mala fide intention, it should ordinarily be condoned.

21. We would have remanded the case for consideration of the question relating to the condonation of delay but we find that, as observed earlier, the assertions made by the petitioner for seeking condonation of delay in filing the appeal had not been controverted. As a matter of fact there is nothing to indicate that the prayer in this regard was ever objected to which could necessitate an enquiry into disputed questions of fact. In this view of the matter we do not find it necessary to do so.

22. In our opinion, it was a fit case where the short delay in filing the appeal in question should have been condoned by the Appellate Authority and the appeal should have been entertained and decided on merits.

23. In view of what has been said above, we allow the writ petition in part and quash the order dated 21-8-1979 passed by the respondent No. 2; a true copy of which has been filed as Annexure 5 to this writ petition and the order dated 22-11-1982, passed by the respondent No. 1; a true copy of which has been filed as Annexure 8 to the writ petition with a direction to the respondent No. 2 the Appellate Collector of Central Excise, New Delhi to restore the appeal to its original number and decide the same on merits treating the same to be well within time, in accordance with law. There shall be no order as to costs.