
(1968) 04 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 413 of 1967

Guest Keen Williams Ltd.

APPELLANT

Vs

The Additional Member, Board of Revenue

RESPONDENT

Date of Decision : 22-04-1968

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (1968) 22 STC 198

Hon'ble Judges : K.L. Roy, J;B.N. Banerjee, J

Bench : Division Bench

Advocate : Sankar Ghosh and G.S. Khettry, for the Appellant; K.C. Mukherji, for the Respondent

Judgement

Banerjee, J.—A point of limitation has been raised in this Rule, by Mr. K. C. Mukherji, learned counsel for the respondent, as a plea in bar. We feel bound to deal with the plea as a preliminary point.

2. There is no dispute that the order in revision was made by the Board of Revenue on 28th January, 1967. There is also no dispute that the communication of the order was made to the petitioner on 4th March, 1967. The petitioner made the application, under Sub-section (1) of Section 21 of the Bengal Finance (Sales Tax) Act, on 16th May, 1967, for a reference of certain points of law to this Court.

3. Section 21, Sub-section (1), is couched in the following language :

Within sixty days from the passing by the Board of Revenue of any order under Sub-section (3) of Section 20 affecting any liability of any dealer to pay tax under this Act, such dealer may, by application in writing accompanied by a fee of one hundred rupees, require the Board to refer to the High Court any question of law arising out of such order.

4. It was not disputed that time would begin to run not from the date of the making of the order by the Board of Revenue but from the date of the communication of the order to the petitioner, that is to say, from 4th March,

1967. This is also the view which was expressed by this Court in *Director of Supplies and Disposals, Calcutta v. Member, Board of Revenue, Government of West Bengal* [1960] 11 S.T.C. 589. Calculating from 4th March, 1967, the period of 60 days prescribed by Sub-section (1) of Section 21 expired long before 16th May, 1967, when the application for reference to this Court was made by the petitioner.

5. Mr. Sankar Ghosh, learned counsel for the petitioner, submitted that if the time for obtaining copy of the judgment of the Board of Revenue be taken into account, u/s 12 of the Limitation Act, the application made on 16th May, 1967, would be still in time.

6. In view of the decision of the Supreme Court in *Addl. Collector of Customs, Calcutta and Another Vs. Best and Co.*, Mr. Mukherji did not contend that because it was not necessary to annex a copy of the judgment to an application for reference, the petitioner need not have waited for obtaining copy of such judgment. He, however, contended that on a plain reading of Section 12 of the Limitation Act, the petitioner was not entitled to the exclusion of time for obtaining a copy of the judgment in making an application under Sub-section (1) of Section 21 of the West Bengal Finance (Sales Tax) Act.

7. Sub-section (2) of Section 12 of the Limitation Act reads:-

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.

8. The words "or for revision" were not in the old Limitation Act of 1908 but were added in the Limitation Act of 1963. This is the difference between Sub-section (2) of Section 12 of the Limitation Act as it stood and as it now stands.

9. The point akin to what we have to decide in this Rule, came up for decision in this Court under the Act of 1908, in *Director of Supplies and Disposals, Calcutta v. Member, Board of Revenue, Government of West Bengal* [1960] 11 S.T.C. 589. In that decision Lahiri, C.J. (Bachawat, J., agreeing with him) observed :

The time taken for obtaining a certified copy of the order can be deducted if Section 12(2) of the Indian Limitation Act applies to this case. According to Section 29 of the Indian Limitation Act the provisions of Section 4, Sections 9 to 18 and Section 22 will apply to a special or local law only in so far as and to such extent to which they are not expressly excluded by the special or local law. There is nothing in the Bengal Finance (Sales Tax) Act of 1941 to exclude the operation of the whole or any part of Section 12 of the Indian Limitation Act. Accordingly, Section 12 is certainly attracted to a proceeding under the Bengal Finance (Sales Tax) Act. But the difficulty of applying Section 12(2) to a proceeding like the present one is that the operation of Section 12(2) is limited to an appeal, an

application for leave to appeal, and an application for a review of judgment. The application filed by the assessee before the Board of Revenue u/s 21(1) of the Bengal Finance (Sales Tax) Act, 1941, does not come under any of the categories mentioned in Section 12(2) of the Indian Limitation Act. It is neither an appeal nor an application for leave to appeal nor an application for review. The result is that Section 12(2) though attracted to a proceeding under the Bengal Finance (Sales Tax) Act by Section 29 of the Indian Limitation Act, excludes itself by its own language from the present proceeding and the assessee is not entitled to exclude the time requisite for obtaining a copy of the order against which the application for reference u/s 21(1) of the Bengal Finance (Sales Tax) Act was filed.

10. Mr. Sankar Ghosh, learned counsel for the petitioner, however, submitted that the addition of the words "or for revision" widened the scope of Sub-section (2) of Section 12 to such an extent as would include application for reference within its ambit. In other words, he submitted that the words "or for revision" were so wide in their scope as would include not only an application for revision under Sub-section (3) of Section 20 but would include within its meaning also an application for reference to the High Court, the object of such reference being to obtain an authoritative pronouncement on a question of law troubling the Board of Revenue in revision, so that, enlightened by such a pronouncement, the Board may dispose of the revision case satisfactorily and according to law.

11. We are unable to give effect to this contention. Sub-section (1) of Section 20 of the Bengal Finance (Sales Tax) Act, 1941, contains a provision for appeal to the prescribed authority. Sub-section (3) of Section 20 prescribes :

Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the rules thereunder by a person appointed u/s 3 to assist him, and subject as aforesaid, the Board of Revenue may, in like manner, revise any assessment made or order passed by the Commissioner.

12. Sub-section (4) of Section 20 provides :

Subject to such rules as may be prescribed, any assessment made or order passed under this Act or the rules made thereunder by any person appointed u/s 3 or Section 3A may be reviewed by the person passing it upon application or of his own motion.

13. Sub-rule (5) of Rule 80 of the Bengal Sales Tax Rules, 1941, provides:

The Commissioner or any other authority to whom power in this behalf has been delegated by the Commissioner, shall not, of his own motion, revise any assessment made or order passed under the Act or the rules thereunder if-

(i) the time within which an appeal or application for revision, as the case may be, may be made before him has not expired ; or

(ii) the assessment has been made or the order has been passed more than four years previously :

Provided that any assessment made or order passed under the Act before the commencement of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, may be revised by such authority at any time within four years from the commencement of the said Amendment Act if the time within which an appeal or application for revision, as the case may be, may be made has expired.

14. Under the scheme of Section 20 of the Act, a revision means a revision by the Commissioner or by the Board of Revenue. While making an application for such revision the provision of Sub-section (2) of Section 12 of the Limitation Act may be attracted under the new Limitation Act. Only after the revision case has been disposed of by the Board of Revenue, the question of an application for reference to this Court arises. It is difficult to hold that such an application is also one for revision. Mr. Sankar Ghosh, however, contended that regard being had to the scope of Sub-section (3) of Section 21, the revision case before the Board of Revenue remains in suspended animation, after an order for reference has been made. After this Court answers the questions referred, in a particular manner, the Board is bound to dispose of the revision case finally in accordance with the answers given. This, he submitted, made an application for reference, an application in the revision case and such an application itself would fall within the sweep of the expression "or for revision".

15. In our opinion this will be straining the meaning of the expression "or for revision" much too far. An application for reference to this Court follows a particular decision in a revision case and that application is not tantamount to an application for revision.

16. In the view that we take, we hold that the application before the Board of Revenue was barred by limitation.

17. Now, the application before this Court, after refusal by the Board of Revenue to refer, was made within the prescribed time as in Sub-section (2) of Section 21. That sub-section reads as follows:

If, for reasons to be recorded in writing, the Board of Revenue refuses to make such reference, the applicant may, within thirty days of such refusal, either-

- (a) withdraw his application (and if he does so, the fee paid shall be refunded), or
- (b) apply to the High Court against such refusal.

(3) If upon the receipt of an application under Clause (b) of Sub-section (2), the High Court is not satisfied of the correctness of the Board's decision, it may require the Board to state the case and refer it, and on receipt of such requisition, the Board shall state and refer the case accordingly.

18. We have already expressed the view that in holding that the application for reference was barred by limitation the Board was not in error. That being so we

cannot dispute the correctness of the Board's decision, which certainly means the decision of the Board refusing to refer. This being so, we cannot exercise our powers under Sub-section (2) of Section 21 now and call upon the Board to refer questions of law before this Court. In the result, this rule must be discharged on the preliminary ground of limitation. We, however, do not make any order as to costs.

K.L. Roy, J.

19. I agree.