

(1981) 04 MP CK 0025
In the Madhya Pradesh High Court
Case No : M.P. No. 142 of 1979

Harlal	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 10-04-1981

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 39

Citation : (1982) J LJ 73

Hon'ble Judges : G.P. Singh, C.J.; K.K. Dube, J.; H.G. Mishra, J

Bench : Full Bench

Advocate : N.D. Singhal, for the Appellant; S.L. Saxena, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Dube, J.—The petitioner desiring to file a revision u/s 39 of the M P. General Sales Tax Act, 1958, sent his revision application by registered post on 7th October 1976. The limitation for revision is one year and according to the department would expire on 7th October, 1976. The revision thus sent reached the authority concerned on 12th October, 1976. The revising authority after giving a show cause notice as was necessary under the rules, dismissed the revision on the ground that it was not made within the period of limitation. In the view taken by the department, the revision application, even though sent by post, ought to have reached the revising authority before the limitation expired. The petitioner seeks to challenge this order by this petition under Article 226 of the Constitution of India.

2. Section 39(1)(e) provides a dealer to make a revision application within the prescribed period. Under rule 57 (4) a revision application has to be, as far as possible, in Form XXVII and shall be presented within 12 months from the date of the order against which it is filed. Under sub-rule (5) of rule 57, the applicant is given a choice either to present it himself or through his authorised agent or to send it by registered post to such an authority. The question that arises for

consideration is as to whether the revision application, when sent by registered post, must be sent in such a manner that it ought to reach the revising authority before the period of limitation expired, or whether it was enough if the revision application was given to the postal authorities within the period of limitation for being sent to the revising authority and when such an application was given to the postal authorities within the period of limitation it was inconsequential as to when it reached the revising authority.

3. The Board relied on its decision in *Hukumat Rai v. Commissioner of Sales Tax* 1964 RN 148. The Board was of the view that the key word in the section is "filed". The revision cannot be taken to have been filed unless it reaches the authority concerned. It was then observed that the provision of sending by post was not meant to give a latitude to the applicant in a way that the revision would not reach the authority concerned within the period of limitation. The Board also relied on a decision of the Nagpur High Court in *Motilal Hiralal Sisodia v. Commissioner of Income Tax* AIR 1951 Nag 224.

4. It was contended by the petitioner that as the Act and the rules provided that the revision could be sent by registered post, the postal authorities became the agent of the department and that once it was handed over to the postal authorities and accepted by them, it amounted to a valid presentation to the authority concerned. Reliance was sought on a decision of the House of Lords in *Badische Anilin Und Soda v. The Basle Chemical Works Rindschedler* 1898 AC 200.

5. In *Satish Chandra Gupta Vs. Commissioner of Sales Tax*, , the word "sent" in the expression "registered post" was construed by the Allahabad High Court as meaning presentation to the authority concerned, the handing over of the memorandum of appeal or revision by the assessee to the post office on the last day of limitation for sending the same by registered post to the appellate or revisional authority, as the case may be, was deemed to be presentation of the memorandum of appeal or revision to the authority concerned within the prescribed period. It was observed that personal presentation of the appeal as well as postal presentation of the appeal were envisaged by the rule and, therefore, sending by post was as much a presentation to the revising authority as when it had been actually presented to such an authority.

6. *Motilal Hiralal's* case (supra) is dealing with a matter under the Income Tax Act where the scheme is entirely different. There is a significant difference between a revision application made under the Sales Tax Act and an application made u/s 66 of the Income Tax Act. As pointed out in *Motilal Hiralal's* case (supra), the presence of sub-rule (2) of rule 7 could not be ignored. The impact of rule 7 (1) would be that when an application u/s 66 of the Income Tax Act was sent by registered post, it would be deemed to have been presented when it reached the Registrar of the Income Tax Appellate Tribunal. It was, therefore, envisaged that the application must reach the Registrar within the period of limitation provided. There is no similar provision like sub-rule (2) of rule 7 in the

Sales Tax Act or the rules framed thereunder. The rules being different it would not be permissible to import the ratio of the above income tax case while interpreting the Sales tax scheme,

7. What the Act and the rules envisage is presentation of the memorandum of revision. It may be presented before the revising authority, or it may be sent by registered post. Therefore, the terminus ad quem would not be when the revision application reaches the revising authority, but it would be when it was given to the postal authorities, and was accepted by them for being sent. If a contrary view is taken, the limitation available for sending the revision application by post would be reduced in those cases where it was intended to be sent by registered post. The rules provide that the revision application should be presented within 12 months. Sub-rules (4) and (5) of rule 57 must be construed harmoniously. Sub-rule (4) prescribes the period of limitation, while sub rule (5) lays down the mode of presentation. It appears to us that when the Act and the rules envisage the sending of the revision application by registered post, it was enough that the revision application was presented to the postal authorities within the period of limitation. Thus construed, the period of limitation for sending the revision by registered post is not reduced. There is nothing in the Act or the rules which would indicate the curtailment of the limitation, as was the case under the Income Tax Act and the rules made thereunder. We would respectfully agree with the view taken by the Allahabad High Court in Satish Chandra Gupta's case (supra). In our view, therefore, when the revision application was given to the postal authorities for being sent to the revising authority within the period of limitation. It should be construed that it has been presented within the period of limitation to the revising authority. We, therefore allow this petition and direct that the Board of Revenue should entertain the revision and decide the same on merits.

8. In the result, the petition succeeds and is allowed. The order of the Board of Revenue that the revision application was presented beyond the period of limitation is set aside. We direct that the Board of Revenue shall admit the revision and shall decide it according to law. There shall be no order as to costs of this petition. The outstanding amount of security be refunded to the petitioner.

Mishra, J.

9. I had the advantage of going through the order proposed by brother. K. K. Dube, J I regret my inability to agree with him.

10. Shortly put, facts leading to this petition are :

The Sales-tax Officer, Guna, passed an assessment order dated 1-8-1975, levying purchase tax of Rs. 5,076 on the petitioner. This order was communicated to the petitioner on 10-11-1975. The petitioner, feeling aggrieved by the said order sent a revision application u/s 39 (1) of the M. P. General Sales Tax Act, 1958 (for short the Act") by registered post on 7-10-1976 to the revising authority, the Deputy Commr. Sales Tax, Gwalior. It reached the revising

authority on 12-10-1976. After giving a show cause notice to the petitioner, the revising authority dismissed the revision as time barred on the ground that the revision will be deemed to have been made on the date of its receipt and not on the date when it sent by registered post. Hence this petition.

11. In this petition, it is contended that the revision application should be deemed to have been presented to the revising authority the day when it was sent by registered post as the post-office should be regarded as an agent of such authority within the contemplation of sub rules (4) and (5) of rule 57 of the M. P. Sales Tax Rules, 1959 (for Short M. P. Rules").

12. The petition is resisted by the respondent No. 1 on the ground that the revision will be deemed to have been made to the revising authority only on the date it is received by such authority and not when it was sent by registered post; and that post office has not been authorised to receive the revision applications on behalf of the revising authority.

13. By section 39 (1), the Act inter alia provides as under:--

The Commissioner may, either of his own motion or on application by a (dealer or person) made within the prescribed period from the date of the order, call for the record of the proceeding in which any order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, as he considers necessary and subject to the provisions of this Act, may pass, such order thereon, not being an order prejudicial to the (dealer or person) as he thinks fit.

(Emphasis supplied)

14. Rule 57 of the M. P. Rules lays down inter alia the procedure for submission of applications for revision. Sub-rules (4) and (5) of rule 57, which are relevant to the situation, are extracted below:-

(4) An application for revision shall, as far as possible, be in Form XXVII and shall be presented within twelve months from the date of the order against which it is filed.

(5) The memorandum of appeal or application for revision shall be in duplicate and shall either be presented to the appellate or revising authority by the appellant or the applicant or his agent or sent to such authority by registered post. When an appeal or revision is presented by a person duly authorised by the appellant or the applicant as required by sub-section (1) of section 21, it shall be accompanied by a duly stamped letter of authority appointing him as such.

(Emphasis supplied).

Accordingly, a revision application u/s 39 (1) of the Act has to be presented to the revising authority within 12 months of the date of the impugned order, as prescribed by sub-rule (4). Sub rule (5) of rule 57 prescribes three modes in which a revision application may be filed, namely, that the applicant may either

(a) present it himself; (b) get it presented by duly authorised agent; or (c) send it by registered post. The combined effect of section 39(1) of the Act and sub-rules (4) and (5) of rule 57 appears to be that, in any case, the revision application shall be made to the revising authority within the prescribed limitation. As such, in case the revision applicant elects to employ an agent for presenting it to revising authority or hands it over to a post officer for being carried to such authority, in either case, it has to reach the revising authority within the prescribed period of limitation. Accordingly, it is the date of receipt of the revision application by the revising authority which is to be regarded as date of its presentation and not the date of the revision application being handed over either to agent of the revision applicant or to a post office for being carried to the revising authority. In *F.N. Roy Vs. Collector of Customs, Calcutta*, it has been held that;

Date of receipt by the appellate authority of memorandum of appeal is the date of filing appeal and not the date of posting the memorandum

There does not appear to be any legal impediment in extending and applying the ratio of the case of *F. N Roy (supra)* to the present situation.

15. The object of sub-rule (5) of rule 57 in prescribing sending of revision application by registered post as one of mode of its submission, appears to be merely to make that mode permissible mode. In the absence of the such an enabling rule, a revision application could not be sent by registered post. The "presentation" in its accepted connotation means submission to the Court or such officer as it appoints in this behalf. No provision has been shown whereby a post office may be regarded to have been appointed by or for the revising authority as a functionary in this behalf. Acceptance of contention of the petitioner will involve re-writing of the rule and/or importing something more in it. It is law well settled that a construction which involves re-writing or importing into an existing provision has to be avoided. Had the intention of the framers of the rules been to provide so, the rule 57 (5) of the M. P. Rules would have been differently worded. On the language employed therein, construction suggested on behalf of the petitioner does not merit acceptance.

16. No doubt, in *Satish Chandra Gupta v. Commr. of Sales Tax* (1971) 28 STC 740 the word "sent" occurring, in rule 67(1) of the U. P. Sales Tax Rules, 1948, (for short "the U. P. Rules", was construed as "presented". The rule 67 (1) of the U. P. Rules reads as under :--

Appeal how to be presented:--"The memorandum of appeal shall be presented by the appellant or his lawyer or duly authorised agent to the Assistant Commissioner (Judicial) or may be sent by registered post addressed to the Assistant Commissioner (Judicial).

The marginal note of the said rule is "Appeal how to be presented". Moreover, the scheme of the U P. Rules does not appear to be identical to that of the M. P. Rules. The construction put on the word "sent" in the case of *Satish Chandra*

Gupta (supra) appears to proceed on considerations of convenience. This is apparent from the following observation made therein;--

Considerations of convenience strongly suggest that the word "sent" should be construed as "presented".

Beneficial construction, however, has its own limitations. Argument *um eb inconveniente* is only to be resorted to when the law is ambiguous. Otherwise Courts have not been given power to devise their own technique for saving claims from the bar which the statutes of limitation create, as held in *Gulabsingh v. Nathu Ram* AIR (30 1941 Nag 145 . This is also what flows from the following observations made in AIR 1941 6 (Privy Council) .

Limitation Act ought to receive such a construction as the language in its plain meaning imports. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recongnized by it.

While construing rule 57(5) in the light of the aforesaid principles, resort to considerations of convenience does not appear to be permissible In section 39(1) of the Act, the words used are "made within". In sub-rule (4) the words used are "presented within" and in sub-rule (5) the expressions used are "presented to or sent to." This use of different words and/or expressions is not without significance. Whenever, different words are used, they cannot be understood to convey the same meaning. The difference in the language employed in section 39(1) and sub-rules (4) and (5) of rule 57 appears to be purposeful. In case of resort to the first two of the three permissible modes of submission of revision stated above, namely, in case of presentation by the applicant or through his agent, the revision will be deemed to have been duly filed only on the day it is presented to the revising authority, whereas in the case of resort to the third method, namely, that of sending by registered post, the act of registration will be taken to mark beginning of the process of the revision application being carried to the revising authority. This process is completed on the day it is received by such authority. It is on the day of such receipt that the revision application will be deemed to have been made to the revising authority. Letters have been known to be delayed for months in the post. There may be even cases where letters never reach the addressee. If revision is regarded to be duly presented on the day it is sent by registered cover and post office is regarded as agent of the revising authority for the purposes of presentation of revision application, the applicant may even after years Drove that he had made the revision application and can claim redress even though the application never reached the revising authority. This cannot be the contemplation of the law. Accordingly, post-office cannot be treated to be agent of the revising authority and the revision application cannot be deemed to have been presented on the day it is handed over in registered cover to the post-office for transmission to the revising authority. This is the position of law which appears to emerge from combined

operation of section 39(1) of the Act and sub-rules (4) and (5) of rule 57 of the M. P. Rules.

17. No doubt, in rule 57 of the M. P. Rules there is provision corresponding to sub-rule (2) of rule 7 of the Income Tax Rules. Rule 7 (2) of the Income Tax Rules appears to sound a caution that on being sent by post the application shall be deemed to be presented on the day it is received in the office of the tribunal. Even in absence of such caution it is the date of the receipt, and not the date of posting, that can be regarded as the date of presentation of a revision application, as discussed above. Accordingly here the terminus ad quern, is the date of receipt of the revision application in the office of the revising authority. This will be true even if any one of the three permissible modes of submission of the revision application is resorted to. Consequently, if the revision does not reach the destination within twelve months as prescribed by sub-rule (4) of rule 57 of the M. P. Rules read with section 39(1) of the Act, the revision application be treated to have been made beyond limitation,

18. Before parting with the case, it has to be stated that the case of Satish Chandra Gupta (supra) seeks reliance on ratio of Popsing Rice Mill v. I. T. Commr. B & O. AIR (sic) Ori 5, which had been expressly dissented of this Court in Mittal v. I. T. Commr AIR (sic) Nag. 224; and in C& I Bank v. I. T. Commr. AIR 1954 Hyd (sic) , Vishwanath Gopal Oil Mill Vs. S.C. Prashar and Another, ; Aligarh District Wholesale Cloth Dealers' Syndicate Vs. Commissioner of Income Tax, Uttar Pradesh, Moreover, the case of (1949) 17 ITR 420 stands overruled by Full Bench of the Orissa High Court in Govinda v. I. T. Commr, B. & O. Patna AIR (sic) Ori 137.

19. For the reasons stated above, with due difference to learned Judges who decided the case of Satish Chandra Gupta (supra), I regret my inability to agree with the view taken therein Even if reliance on the ratio of cases on construction of rule 7 (2) of the income Tax Rule be regarded to be not available for construing provisions of the Act and the M P. Rules, in view of the language employed in section 39 (1) and sub rules (4) and (5) of rule 57 of the M.P. Rules and their scheme, the revision application cannot be regarded to have been presented to the revising authority on the day it is handed over to a post office under a registered cover for being taken to such authority, as discussed above. In this case, the petitioner appears to have sought reliance on the ratio of The Badische Anilin Und Soda Fabrik v. The Basle Chemical Works Rindsehder 1898 LRAC 200. In that case, a trader in England ordered goods from a foreign manufacturer in Switzerland to be sent by post to England. The manufacturer addressed the goods to the trader in England and delivered them to the Swiss Post Office, by whom they were forwarded to England. The goods were manufactured according to an invention protected by an English patent:-

Held, that since the contract of sale was completed by delivery to the Post Office in Switzerland, and since the Post Office was the agent of the buyer and not of the vendor, the vendor had not made, used, exercised or vended the invention within

the ambit of the patent, and that the patentee had no right of action against the vendor for an infringement of the patent

The decision of the Court of Appeal (1897) 2 Ch. 322 affirmed.

The ratio of *The Radsche Anilin Und Soda Fabrik v. The Basle Chemical Works, Rindschedler* (supra) thus, falls within domain of Law of Contract. Such a principle can hardly be of any relevance in present situation. This is what runs from the following observations made in *Motilal v. I. T. Commr.* AIR 1951 Nag 223 (DB) :--

What may be found to be convenient in the domain of contracts, regard being had to mercantile usage, is not necessarily of consequence in other spheres,

20. No case has also been made out by the petitioner for giving benefit of section 5 of the Limitation Act. The discretion in the matter is not shown to have been exercised arbitrarily by the revising authority.

21. In view of the aforesaid discussion, the petition deserves to be disallowed and is hereby dismissed. In view of the nature of the controversy I make no order as to costs. Outstanding amount of security, if any, may be refunded to the petitioner.

OPINION

G.P. Singh, C.J.

22. This petition comes before me on a difference of opinion between Hon. K. K. Dube, J. and Hon. H. G. Mishra, J.

23. The petitioner was assessed to purchase tax by order of the Sales Tax Officer, Guna, passed on 1st August 1975. This order was communicated to the petitioner on 10th October, 1975. The petitioner sent a revision application by registered post on 7th October, 1976 to the Deputy Commissioner of Sales Tax. The revision reached the Deputy Commissioner on 12th October, 1976. The revision was dismissed as barred by limitation on the ground that it must be deemed to have been made on the date of its receipt. The petitioner then filed this petition under Article 226 of the Constitution for challenging the order of The Deputy Commissioner dismissing the revision.

24. Section 39(1) of the M. P. General Sales Tax Act, 1958, which deals with revisions, requires that the application for revision be "made within the prescribed period from the date of the order." The period is prescribed by rule 57 of the rules made under the Act. Sub-rule (4) of rule 57 provides that an application for revision "shall be presented within twelve months from the date of the order." Sub-rule (5) of rule 57 then provides that the application for revision "shall either be presented to the revising authority by the applicant or his agent or sent to such authority by registered post."

25. Hon. Dube, J. is of opinion that if revision application is sent by registered

post within the period of limitation, it should be deemed to made within the prescribed period u/s 39 (1) even though it was received by the revising authority after the expiry of the period of limitation. Hon. Mishra, J. is, however, of the view that sub-rule (5) of rule 57 only enables the applicant to send the revision application by registered post and that the revision application must be deemed to have been made or presented on the date when it is received by the revising authority and that if the revision application is received beyond the prescribed period by the revising authority, it would be held to be barred by limitation even though it was sent by registered post within the prescribed period.

26. After giving my anxious consideration to the view expressed by the learned Judges, I find myself in agreement with the view expressed by Hon. Mishra, J. The expressions "made within" and "presented within" as they respectively occur in section 39 (1) and sub-rule (4) of rule 57, in my opinion, have the same meaning. The application for revision must be made or presented to the revising authority within twelve months from the date of the order. The presentation may be by the applicant in person or by his agent or by sending to such authority by registered post. But when the mode of presentation is by sending by registered post, the presentation is not complete until the application is received by the revising authority. It is only on the receipt of the application by the revising authority that it can be said to be made or presented. In the context of section 188 of the Sea Customs Act, 1878, the Supreme Court in *F.N. Roy Vs. Collector of Customs, Calcutta*, laid down that the date of filing of appeal before the Central Board of Revenue when the memorandum of appeal is sent by post is the date of receipt and not the date of posting. On the same principle, a revision application sent by registered post must be taken to have been made or presented on the date it is received by the revising authority. Sub-rule (5) of rule 57 does not provide that when a revision application is sent by registered post, it should be deemed to have been made or presented on the date of posting. On a proper construction, this sub-rule only enables presentation by sending by registered post but it does not make the date of posting, the date of presentation of the revision. These are briefly my reasons for holding that the revision application filed by the petitioner was barred by limitation. I need not give my reasons in detail for I am generally in agreement with the reasons given by Hon. Mishra, J.

27. In the view I have taken, the petition deserve to be dismissed without any order as to costs. The security amount will be refunded to the petitioner.

28. The case shall now be placed before a division Bench for final disposal in accordance with the majority opinion.