

(1981) 06 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 142 of 1979

Harlal Vaishya

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 23-06-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 66
Limitation Act, 1963 — Section 5

Citation : (1981) 26 MPLJ 706 : (1981) MPLJ 706 : (1983) 53 STC 271

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

Bench : Full Bench

Advocate : N.D. Singhal and V.S. Dabir, for the Appellant; S.L. Saxena, Government Advocate and M.A. Shah, Deputy 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.

Section 39(1)(b) provides for 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.

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 application 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.

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 Fabrik v. Basle*

Chemical Works, Bindschedler [1898] AC 200.

In *Satish Chandra Gupta v. Commissioner of Sales Tax* [1971] 28 STC 740 (MP), the word "sent" in the expression "sent by 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.

Motilal Hiralal's case AIR 1951 Nag 224 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 AIR 1951 Nag 224, the presence of Sub-rule (2) of Rule 7 could not be ignored. The impact of Rule 7(2) 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.

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 quern 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 Vs. Commissioner of Sales Tax, . 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.

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.

H.G. Mishra, J.

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

Shortly put, facts leading to this petition are :

The Sales Tax Officer, Guna, passed an assessment order dated 1st August, 1975, levying purchase tax of Rs. 5,076 on the petitioner. This order was communicated to the petitioner on 10th October, 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 7th October, 1976, to the revising authority, the Deputy Commissioner, Sales Tax, Gwalior. It reached the revising authority on 12th October, 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 was sent by registered post. Hence this petition.

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. General Sales Tax Rules, 1959 (for short "the M.P. Rules").

The petition is resisted by 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 the post office has not been authorised to receive the

revision applications on behalf of the revising authority.

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.

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.

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 the revising authority or hands it over to a post office 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 the date of its presentation and not the date of the revision application being handed over either to the 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 Vs. Collector of Customs, Calcutta*, to the present situation.

The object of Sub-rule (5) of Rule 57 in prescribing sending of revision application by registered post as one of the modes of its submission, appears to be merely to make that mode a permissible mode. In the absence of 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 rewriting of the rule and/or importing something more in it. It is law well-settled that a construction which involves rewriting or importing into an existing provision has to be avoided. Had the intention of the framers of the rules been to provide so, Rule 57(5) of the M.P. Rules would have been differently worded. On the language employed therein, the construction suggested on behalf of the petitioner does not merit acceptance.

No doubt, in *Satish Chandra Gupta v. Commissioner of Sales Tax* [1971] 28 STC 740 (MP) 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 "present". 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* [1971] 28 STC 740 (MP) 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 ep 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 AIR 1944 145 (Nagpur) . 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 recognized 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 the 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 the 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 the post office is regarded as the agent of

the revising authority for the purposes of presentation of revision application, the applicant may even after years prove 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, the post office cannot be treated to be an 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 the combined operation of Section 39(1) of the Act and Sub-rules (4) and (5) of Rule 57 of the M.P. Rules.

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 the absence of such caution it is the date of 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 (sic) treated to have been made beyond limitation.

Before parting with the case, it has to be stated that the case of Satish Chandra Gupta [1971] 28 STC 740 (MP) seeks reliance on the ratio of

(1949) 17 ITR 420 , which had been expressly dissented by this Court in Motilal v. Income Tax Commissioner AIR 1951 Nag 224 and in

Commercial and Industrial Bank v. Income Tax Commissioner AIR 1954 Hyd 169 , Vishwanath Gopal Oil Mill Vs. S.C. Prashar and Another,

and Aligarh District Wholesale Cloth Dealers" Syndicate Vs. Commissioner of Income Tax, Uttar Pradesh, . Moreover, the case of Popsing Rice

Mill v. Income Tax Commissioner AIR 1949 Pri 53 stands overruled by a Full Bench of the Orissa High Court in Govinda Choudhary Vs.

Commissioner of Income Tax, .

For the reasons stated above, with due deference to the learned Judges who decided the case of Satish Chandra Gupta [1971] 28 STC 740

(MP), 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 Rules 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 Badische Anilin Und Soda Fabrik v. Basle Chemical

Works, Bindschedler [1898] AC 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 *Badische Anilin Und Soda Fabrik v. Johnson & Co. and Basle Chemical Works*,

Bindschedler affirmed.

The ratio of *Badische Anilin Und Soda Fabrik v. Basle Chemical Works, Bindschedler* [1898] AC 200 thus falls within the domain of law of

contract. Such a principle can hardly be of any relevance in the present situation. This is what runs from the following observations made in *Motilal*

v. Income Tax Commissioner AIR 1951 Nag 224 at 226 :

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.

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.

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.

(10th April, 1981)

G.P. Singh, C.J.

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

The petitioner was assessed to purchase tax by an 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.

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"".

Honourable Dube, J., is of the opinion that if a revision application is sent by registered post within the period of limitation, it should be deemed to be 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.

Honourable 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.

After giving my anxious consideration to the views expressed by the learned Judges, I find myself in agreement with the view expressed by

Honourable 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 Honourable Mishra, J.

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

petitioner.

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

(23rd June, 1981)

On a difference of opinion between K.K. Dube, J., and one of us (Mishra, J.), the matter was placed before Honourable the Chief Justice, who

heard the matter himself and recorded his opinion, dated 10th April, 1981, concurring with the opinion of one of us (Mishra, J.) dated 4th

November, 1980.

Now, the matter has been placed before us for final disposal.

In accordance with the majority opinion, which consists of the opinion of the third Honourable Judge (namely, Honourable the Chief Justice, Shri

G. P. Singh) and that of one of us (Mishra, J.), the petition is dismissed without any order as to costs. The security amount shall be refunded to the

petitioner.