

(2014) 08 GUJ CK 0081

In the Gujarat High Court

Case No : Special Civil Application No. 12147 of 2013

Jayminbhai Navinbhai Doshi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Bombay Stamp Act, 1958 — Section 27, 31, 32A, 32B, 34
Central Excises and Salt Act, 1944 — Section 35H, 35H[1]
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, 151
Constitution of India, 1950 — Article 12, 226
Contract Act, 1872 — Section 25
Easements Act, 1882 — Section 2, 25, 26
Limitation Act, 1963 — Section 10, 11, 12, 12, 13, 13
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 24
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : AIR 2014 Guj 220 : (2015) 1 GLH 167

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; Paresh Upadhyay, J.; J.B. Pardiwala, J

Bench : Full Bench

Advocate : Haresh N. Joshi, Umang K. Chokshi, Kuldeep Vaidya, V.H. Kansara, Vijay H. Nangesh, Jalram D. Jain, Nayan B. Parekh, Hardik B. Shah, Devdip Brahmabhatt and Viral K. Shah, Advocate for the Appellant; Maithili Mehta, Asst. Govt. Pleader and Satyam V. Chhaya, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—All these References were taken up for hearing together as the same question of law as formulated below has been referred before this Bench by the learned single Judge in all the Special Civil Applications:

"In absence of specific exclusion of applicability of Limitation Act, 1963 [Act, 1963] in Bombay Stamp Act, application under Section 53 of the Act, 1958 [Act, 1958] whether delay in filing appeal/application under Section 53 of the Act, 1958 beyond the prescribed time limit of within 90 days from the date of passing

the order by the Collector/competent authority could be condoned by the Chief Controlling Revenue Authority/Appellate Authority or the High Court exercising powers under Article 226 of the Constitution of India, as the case may be by taking recourse to Sections 3, 5 and 29 of the Act, 1963?"

1.1 It appears that before the learned single Judge, the petitioners challenged the orders passed by the authority under section 53 of the Bombay Stamp Act, 1958 ["the Act" for short] by which, the said authority, viz. the Chief Controlling Revenue Authority refused to condone the delay in filing the proceedings on the ground that those were not filed within 90 days from the date of order passed by the competent authority because of lack of power of such authority to condone the delay. In some of the Special Civil Applications, the initial or the basic order passed by the competent authority has also been challenged. Consequently, the aforesaid question was referred by the learned single Judge in view of some conflicting decisions of the learned Judges of this Court. Hence, these References.

In order to appreciate the aforesaid question, it will be profitable to refer to the provisions contained in sections 3, 5 and 29 of the Limitation Act and also the provisions contained in sections 53, 54, 55 and 57 of the Bombay Stamp Act, 1958.

Sections 3, 5 and 29 of Limitation Act

3. Bar of limitation.--[1] Subject to the provisions contained in sections 4 to 24 [inclusive], every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

2. For the purposes of this Act--

[a] a suit is instituted--

[i] in an ordinary case, when the plaint is presented to the proper officer;

[ii] in the case of a pauper, when his application for leave to sue as a pauper is made; and

[iii] in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

[b] any claim by way of a set-off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted--

[i] in the case of a set-off, on the same date as the suit in which the set-off is pleaded;

[ii] in the case of a counter-claim, on the date on which the counter-claim is made in court;

[c] an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

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5. Extension of prescribed period in certain cases.--Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 [5 of 1908], may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

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29. Savings.--[1] Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 [9 of 1872].

[2] 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 to 24 [inclusive] shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

[3] Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

[4] Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 [5 of 1882], may for the time being extend.

Sections 53, 54, 55 and 57 of the Bombay Stamp Act, 1958:

53. Control of and statement of case to Chief Controlling Revenue Authority:

[1] The powers exercisable by a Collector under Chapter III except sub-section [3] of section 32A Chapter IV and Chapter V and under clause [a] of the first proviso to section 27 shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

Provided that the Chief Controlling Revenue Authority shall not entertain an application made by a person under sub-section [1] unless

[a] such application is presented within a period of ninety days from the date of order of the Collector.

[b] such person deposits twenty-five per cent, of the amount of duty or as the

case may be, amount of difference of duty payable by him in respect of subject-matter of the instrument for which application has been made.

Provided further that where in any particular case the Chief Controlling Authority is of the opinion that the deposit of the amount by the applicant may cause undue hardship to him, the authority may in its discretion, either unconditionally or subject to such conditions as it may think fit to impose, dispense with a part of the amount deposited, so however that the part of the amount so dispensed with shall not exceed fifty per cent, of the amount deposited or required to be deposited.

[2] If any Collector, acting under section 31, Section 32A, section 39 or section 40, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

[3] Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty [if any] in conformity with such decision.

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54. Statement of case by Chief Controlling Revenue Authority to High Court:

[1] The Chief Controlling Revenue Authority may state any case referred to it under sub-section [2] of section 53, or otherwise coming to its notice and refer such case, with its own opinion thereon, to the High Court.

[1A] Notwithstanding anything contained in sub-section [1], any person aggrieved by the decision of the Chief Controlling Revenue Authority under Section 53 regarding the amount of duty with which any instrument is chargeable may, if the amount of duty payable as a result of such decision in a case where the instrument is not charged with any duty or the amount required to make up such duty in a case where the instrument is charged with insufficient duty, exceeds rupees two thousand, by application presented within a period of sixty days from the date of such decision and accompanied by a fee of rupees one hundred, require the Chief Controlling Revenue Authority to draw up a statement of the case and refer it to the High Court and the Chief Controlling Revenue Authority shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Chief Controlling Revenue Authority may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

[2] Every such case shall be decided by not less than three Judges of the High Court and in case of difference, the opinion of the majority shall prevail.

[3] The costs of any reference to the High Court made under sub-section [1A],

which shall not include the fee for making the reference shall be in the discretion of the High Court.

55. Power of High Court to call for further particulars as to case stated:

If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Revenue Authority by which it was stated, to make such additions thereto or alternations therein as the High Court may direct in mat behalf.

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57. Statement of case by other Courts to High Court:

[1] If any Court, other than the High Court, feels doubt as to the amount of duty to be paid in respect of any instrument under clause [a] of proviso to Section 34, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court.

[2] The High Court shall deal with the case as if it had been referred under section 54, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue Authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

[3] Reference made under sub-section [1], when made by a Court subordinate to a District Court, shall be made through the District Court and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

2. After hearing the learned counsel for the parties and after going through the provisions contained in the Act, we find that the Bombay Stamp Act is a self-contained Code dealing with all relevant matters exhaustively therein and its provisions show an intention to depart from the common rule, *qui facit per lalium facit per se*. In the Bombay Stamp Act, 1958, there is no provision incorporated by which the provision of the Limitation Act is extended to the proceedings under the said Statute. It is now settled law that the provision of the Limitation Act applies only to Court and Court alone, and it does not even apply to any Tribunal or any other proceedings dealt with by the Executives unless by virtue of the Statute creating such Tribunal or the Authority, the provision of the Limitation Act has been specifically made applicable. At this stage, we may profitably refer to the following observations of the Supreme Court in the case of *L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. and Another*, :

"33. The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than Courts such as quasi-

judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal where the Code of Civil Procedure or Code of Criminal Procedure is applicable, the Limitation Act, 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the Court under Section 151 of the Code of Civil Procedure or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the Court and, thus, no question of any limitation arises. (See Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, ; M/s. Hindustan Times Limited Vs. Union of India and Others, and Mt. Laxmi-bai (supra))."

(Emphasis supplied).

3. Thus, in the instant case, the authority under section 53 of the Act not being a Court cannot take the assistance of the provisions contained in section 29[2] of the Limitation Act unless by an express provision in the Act itself, the provisions of the Limitation Act is made applicable to the proceedings under the Act. Section 54, as quoted earlier, however, unlike Section 53, specifically gives power to the Chief Controlling Revenue Authority to condone delay in preferring an application in terms of section 54 for decision by High Court beyond the period of limitation fixed therein, namely, sixty days, but that power of condonation by the Chief Controlling Revenue Authority is also limited to only further period not exceeding thirty days.

4. We, therefore, find that the Legislature was quite conscious that the Act in question being a self-contained and exhaustive Code, the Limitation Act of its own will have no application to a proceeding under the said Act and for that reason, the proviso to section 54 of the Act has conferred specific power upon the Chief Controlling Revenue Authority to condone the delay and that too to a limited period of further thirty days beyond the period of limitation fixed in the said section 54 of the Act. A comparison between section 53 and section 54 makes it clear that it was the clear intention of the Legislature not to give power of condonation to the Chief Controlling Revenue Authority for delayed application against orders passed by the Collector under Chapter III (except sub-section (3) of Section 32A), Chapter IV and Chapter V and under clause (a) of the first proviso to Section 27 of the Act under Section 53 whereas it intended to give power of such condonation to a limited extent of 30 days only to the Chief Controlling Revenue Authority as provided in section 54(1A) for reference to the High Court.

5. The learned counsel appearing on behalf of the petitioners, in this connection, referred to a decision of a learned single Judge of this Court in the case of Integrated Proteins Pvt. Ltd. v. Chief Controlling Revenue Authority, reported in 2007 GLHELHC 217536 (sic), wherein, the learned single Judge held that there is

no express exclusion of applicability of sections 4 to 24 of the Limitation Act, and thus, the provision contained in section 29[2] of the Limitation Act applies to the appellate authority, namely, the Deputy Controller of Stamp and as such, the appellate authority refused to exercise jurisdiction vested in it by law.

5.1 With great respect to the learned single Judge, we are unable to follow the said decision in view of the fact that the Deputy Collector or the appellate authority under section 32B of the Act not being a Court could not invoke the aid of section 29[2] of the Limitation Act as pointed out by the Supreme Court in the case of L.S. Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. and Another, .

6. The learned advocates for the petitioners also relied upon another decision of a learned single Judge rendered in Special Civil Application No. 654 of 2009 [Maheshkumar Champalalji Shah for Care Marketing v. State of Gujarat & 2], in support of their contention that delay could be condoned. In the said case, the petitioner had challenged the order passed by the Deputy Collector in the month of April, 2006 on the ground that the appeal was filed by the petitioner beyond the period of limitation and hence, the appeal could not be entertained. It appeared from the record that before passing such order, the Deputy Collector had neither issued any notice nor was any opportunity of being heard given to the petitioner. According to the petitioner, obviously there was violation of principles of natural justice. The above contention was opposed by the learned AGP on the ground that the appeal was filed late and there was no application for condonation of delay and in that view of the matter, there was no question of condoning the delay. The learned single Judge, however, turned down the aforesaid contention holding that the impugned order passed by the Deputy Collector did not indicate that such fact was pointed out to the petitioner that no application for condonation of delay was filed and that if an opportunity of being heard was given to the petitioner, he could have cured the said defect either by preferring an application for condonation of delay or making oral request to that effect. The learned single Judge, thus, accepted that there was violation of principles of natural justice and accordingly, the matter was remanded to the Deputy Collector with a direction to decide the said matter afresh after giving an opportunity of being heard.

6.1 With great respect to the learned single Judge, we are unable to accept the said view inasmuch as the petitioner himself not having filed any application for condonation of delay and having filed appeal beyond the period of limitation, no duty was cast upon the respondent to point out such fact and the Appellate Authority rightly dismissed such appeal in the absence of any provision enabling the appellate authority to even condone the delay.

7. The learned advocates for the petitioners have also relied upon the decision of the learned single Judge in the case of Premjibhai Kesharabhai Raghvani v. State of Gujarat & 2 in Special Civil Application No. 19649 of 2005 dated 24th October, 2005. It appears that in the said case, the learned single Judge made the following observations:

"4.0 When the statutory authority has been empowered to hear the appeal against the order of the Deputy Collector, the authority ought to have taken a practical view of the matter and the appeal should have been considered on merits. It is required to be noted that the higher authority is required to consider the decision of the lower authority on merits in order to give substantial justice to the parties if there are any error on the part of the lower authorities. In my view the authority denying the right of appeal on a technical plea of limitation is not just and proper.

4.1 In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, it is held that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Under the circumstances, the respondent authority ought to have condoned the delay and considered the appeal on merits."

7.1 With great respect to the learned single Judge, we are unable to follow the principle laid down by His Lordship. It is now well-known that appeal is a creature of a statute and if there is specific period of limitation fixed for preferring an appeal, without any power of condonation of delay, no question of advancement of substantial justice arises for not filing the appeal within the period of limitation. We are also unable to accept the view of the learned single Judge that plea of limitation is a technical plea and it can be ignored by the appellate authority. Reliance on the decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, is also, in our view, not appropriate inasmuch as in the said case, a prayer for condonation of delay was made which was permissible under the law and thus, the Supreme Court took a liberal view and condoned the delay. The said principle does not apply to a case where statute has not provided any provision for condonation of delay.

8. In this connection, it will not be out of place to refer to the following observations of the Supreme Court in the case of Sakuru Vs. Tanaji, in the context of a situation like the present one where there is no power conferred upon an authority to condone delay in filing appeal:

"It is well settled by the decisions of this Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., ; Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and Smt. Sushila Devi Vs. Ramanandan Prasad and Others, that the provisions of the Limitation Act, 1963 apply only to proceedings 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 powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under S. 90 of the Act not being a Court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express

provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of S. 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of S. 5 of the Limitation Act for condonation of the delay in the filing of the appeal. The only provision relied on by the appellant in this connection is S. 93 of the Act which, as it stood at the relevant time, was in the following terms:

"93. Limitation-Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period."

On a plain reading of the section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to "computation of the period of limitation". The provisions relating to computation of the period of limitation are contained in Ss. 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with "computation of the period of limitation". It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period under S. 5 can arise. We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in Venkaiah's case that S. 93 of the Act did not have the effect of rendering the provision of Sec. 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector."

(Emphasis supplied by us).

8.1 In the cases before us, such power of condonation to a limited extent has been conferred to the Chief Controlling Revenue Authority while exercising power under Section 54(1A) but such power of condonation is not conferred while entertaining an application for exercising power under Section 53(1) of the Act.

9. Another decision relied upon by the learned counsel for the petitioners is in the case of Gujarat Ambuja Export Ltd. v. State of Gujarat & others, reported in 2012 [1] GCD 476 [Guj.]. In the said decision, the petitioner, which is a company incorporated under the provisions of the Companies Act, 1956, entered into a sale deed dated 10th November, 1997 for land admeasuring 7315 sq. mts. situated in Block No. 471 at village Dalpura, District-Sabarkantha. According to the petitioner, through inadvertence, the sale deed had been executed between the same parties, as the name of the petitioner had been changed on 24th May, 1993. The sale deed came to be presented to the Sub Registrar on 11th October, 1997 for the purpose of registration. The Sub Registrar forwarded the same to the Respondent No. 3 for proper determination of duty under section 31 of the Act. The Respondent No. 3 passed an order dated 17th February, 2000 under

section 32A of the Act determining the market value of the property at Rs. 35,35,400/- and demanding the payment of Rs. 1,25,040/- as stamp duty and Rs. 250/- as penalty from the petitioner to be paid within ninety days. The petitioner challenged the said order by filing a Civil Suit before the court of 4th Additional Senior Civil Judge, Banaskantha at Himmatnagar. The Civil Suit was filed on 26th April, 2000 and remained pending up to 31st January, 2011. It was dismissed for want of jurisdiction. After dismissal of the Civil Suit, the petitioner approached the Respondent No. 3 under the provision of section 53 of the Act by filing an appeal, the said appeal was dismissed.

9.1 It was contended on behalf of the petitioner before the High Court that his clients had been pursuing wrong remedy of a civil suit which failed for want of jurisdiction and that according to section 14 of the Limitation Act, the period spent between filing of the suit and the date of the order in the suit could not have been counted for the purpose of calculating the period of ninety days for preferring an appeal as required under section 51 of the Act. In such circumstances, the learned single Judge was of the view that as the petitioner was pursuing wrong remedy before a Civil Court, the matter should be required to be remanded to the Respondent No. 2 in order to consider and decide the question whether the petitioner could avail of the benefit of section 14 of the Limitation Act.

9.2 With great respect to the learned single Judge, we are unable to appreciate such view when the learned Judge herself recorded the principles laid down in the case of Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, , where in paragraph-21, the Supreme Court, specifically held that in order to apply the provision of section 14 of the Limitation Act both the proceedings should be in a Court which was not the case before the learned single Judge.

10. Lastly, strong reliance was placed by the learned advocates for the petitioners on the case of Corporation Bank v. Jaishreeben, D/o. P.F. Damodar Kilakar, reported in 2013 [1] GLH 628. In the said case, the question was whether the delay in initiation of a proceeding under section 17 of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, can be condoned by invoking section 29[2] of the Limitation Act, although the proceeding was of the original nature. In our view, for the purpose of the decision in the present Reference cases, the said decision cannot have any application for the simple reason that under the Securitisation Act itself, the provision of Recovery of Debts Due to Banks and Financial Institutions Act has been made applicable and according to section 24 of the RDDB Act, the provision of Limitation Act, 1963 shall, as far as may be, apply to an application made to a Tribunal. Thus, section 24 of the RDDB Act was specifically enacted to take aid of the Limitation Act as far as may be applicable, because the Legislature was quite conscious that but for such a provision in the Act, the Limitation Act of its own force will not be applicable to the proceedings before the Tribunal. Thus, factually

the said decision cannot have any application to the present case where in the Act in question there is no such provision like section 24 of the RDDB Act. The other question decided in the said case was, in a proceeding under section 17 of the Securitisation Act being original proceeding, as laid down by the Supreme Court in the case of Transcore Vs. Union of India (UOI) and Another, , whether section 5 of the Limitation Act could apply to such original proceeding which is like a suit. The learned Division Bench answered the said question by holding that section 5 of the Limitation Act applies even to the original proceeding under section 17 of the Securitisation Act. We do not propose to enter into such question as the same is not necessary for the purpose of answering the References. We, thus, find that the above decision of the Division Bench of this High Court is of no assistance to the petitioners.

11. The learned advocates for the petitioners lastly contended that there being no express bar created in the Act, the provisions of section 29[2] would apply. We have already pointed out that the appellate authority being not a Court, it cannot have any application. In this connection, we may profitably refer to a three Judge-Bench decision of the Supreme Court in the case of Commissioner of Customs & Central Excise v. Hongo India Private Limited and Anr. reported in [2009] 5 SCC 791 : (AIR 2009 SC (Supp) 2325), where the question was whether delay in filing of a Reference before the High Court could be condoned by High Court beyond the period specified in section 35H of the Central Excise Act. In the above context, in paragraphs 34 to 36, the Supreme Court made the following observations:

"34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29[2] would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. 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 considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 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. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the

provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under section 35-H[1] to make a reference to the High Court is absolute and unextendable by a court under section 5 of the Limitation Act. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act."

(Emphasis supplied by us).

12. In view of the above observations of the Supreme Court, where even the High Court's jurisdiction under the Act was found to be excluded by operation of section 35H of the Central Excise Act, by applying the same principle, it must be concluded that by providing no power of condonation under Section 53 and by giving power of condonation only to the limited extent to the proceedings under section 54(1A), the Legislature has made its intention clear that so far the present cases are concerned, the authority under Section 53(1) had no power of condonation. However, in the present cases, since the reference has also been made on the question as to the power of condonation of delay by High Court in exercise of the power conferred under Article 226 of the Constitution of India, we also propose to answer the said question.

13. It is now settled law that the Limitation Act has no application to a proceeding under Article 226 of the Constitution and consequently, no period of limitation is prescribed either under the Limitation Act or in the Constitution of India for moving an application under Article 226 and thus, there is no scope of taking aid of Section 29(2) of the Limitation Act in a proceeding under Article 226 of the Constitution.

14. A person is entitled to move High Court under Article 226 of the Constitution when by the illegal action or inaction on the part of a "State" within the meaning of Article 12 of the Constitution, any of his legal or fundamental rights is infringed. In the Special Civil Applications out of which the present References arise, the petitioners have alleged violation of their legal rights accrued by virtue of the provisions contained in the Act itself. In view of our finding that the Chief Controlling Revenue Authority exercising power under Section 53(1) of the Act has no power of condonation of delay in filing the application beyond the period mentioned therein, for the refusal on the part of the said authority to condone delay for want of jurisdiction, none of the legal rights of the petitioners have been infringed and thus, if the Chief Controlling Authority has no power of condonation, it necessarily follows that the High Court in exercise of power under Article 226 of the Constitution against the order of the Chief Controlling Revenue Authority cannot condone the delay when the Chief Controlling Revenue Authority did not possess such power and rightly refused to condone. Thus, by taking recourse to Section 29(2) of the Limitation Act, the High Court cannot

condone such delay in the proceeding under Article 226 of the Constitution.

15. On consideration of the entire materials on record, we, thus, dispose of these References by answering the question referred by the learned single Judge in the negative.

15.1 The References are, thus, disposed of.

15.2 We may clarify here that apart from the questions referred to us, we have otherwise not gone into the merit of the original order passed by the competent authority. In some of the Special Civil Applications, we are informed, the original orders of the competent authority without taking recourse to Section 53 of the Act are the subject-matters of challenge. It is needless to mention that those matters should be disposed of by the learned single Judge in accordance with the law.

The Registry is directed to list the matters before the appropriate Court with our answer given above.