

(1969) 11 AHC CK 0033

In the Allahabad High Court

Case No : Sales Tax Reference No's. 616 and 617 of 1965

Ladha Hosiery Company

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 18-11-1969

Acts Referred:

Limitation Act, 1963 — Section 12, 29, 5

Citation : (1970) 25 STC 225

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : S.B.L. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.S. Pathak, J.

1 The assessee was assessed to tax under the U.P. Sales Tax Act for the assessment years 1958-59 and 1959-60 by assessment order made on 13th August, 1961. Copies of these assessment orders were supplied to him by the Sales Tax Officer along with the respective notices of demand, and these were received by the assessee on 23rd September, 1961. On 30th September, 1961, the assessee applied for certified copies of the assessment orders. On 3rd October, 1961, the assessee applied to the Assistant Commissioner (Executive) Sales Tax for an order staying the recovery of the tax assessed and along with that he filed the copies of the assessment orders received directly from the Sales Tax Officer. Thereafter, the certified copies for which he had applied on 30th September, 1961, were received by him on 22nd October, 1961. On 1st November, 1961, he filed appeals against the assessment orders and with them filed the certified copies so received. On 30th May, 1963, the appellate authority dismissed the appeals as barred by limitation. The assessee then applied in revision, but the Additional Revising Authority, Sales Tax, rejected the revision applications holding that the assessee should have filed the copies received directly from the Sales Tax Officer along with the appeals filed by him and if he

was unable to do so because he had filed them with the stay applications, he should have obtained a second set of copies within the period of limitation for filing the appeals and should have filed them with the appeals. The assessee's prayer that the delay in filing the appeals should be condoned u/s 5 of the Limitation Act was rejected. At the instance of the assessee the following three questions have been referred :

(1) Whether the copies of the assessment orders supplied to the assessee along with the notices of demand, were such certified copies which could validly accompany the memo. of appeals ?

(2) Whether upon the facts and in the circumstances of the case the assessee could get the benefit of Section 12 of the Limitation Act in respect of the second set of certified copies on stamped folio papers supplied by him ?

(3) Whether upon the facts and in the circumstances of the case the assessee was entitled to the condonation of delay u/s 5 of the Limitation Act ?

2. We shall take the second question first. The point raised by that question is whether the benefit of Section 12 of the Limitation Act can be given to the assessee in respect of the certified copies filed by him along with the memorandum of appeal. A Full Bench of this Court in *Gopaldas Sarvadaya Vs. Commissioner of Sales Tax, U.P.*, has held that Section 12(2) of the Limitation Act applies to proceedings under the U.P. Sales Tax Act by virtue of Section 29 of the Limitation Act, the U.P. Sales Tax Act being a special law within the meaning of the said Section 29. Proceeding, therefore, on the basis that Section 12(2) of the Limitation Act applies for the purposes of computing the period of limitation in filing an appeal against an assessment order, the question is whether the benefit of that provision can be invoked by the assessee in respect of the certified copies applied for and received by him. In *State of Uttar Pradesh Vs. Maharaj Narain and Others*, the Supreme Court held that the provisions of Section 12(2) were to be considered in relation to the certified copy of the judgment under appeal which was annexed with the memorandum of appeal and that it was not for the court to enquire whether the appellant had applied for and obtained other certified copies and what was the shortest time requisite for obtaining a certified copy. The Supreme Court observed :

If the appellate courts are required to find out in every appeal filed before them the minimum time required for obtaining a copy of the order appealed from, it would be unworkable. In that event every time an appeal is filed, the court not only will have to see whether the appeal is in time on the basis of the information available from the copy of the order filed along with the memorandum of appeal but it must go further and hold an enquiry whether any other copy had been made available to the appellant and if so, what was the time taken by the court to make available that copy. This would lead to a great deal of confusion and enquiries into the alleged laches or dilatoriness in respect not of copies produced with the memorandum of appeal but about other copies which

he might have got and used for other purposes with which the court has nothing to do.

3. While expressing this opinion, the Supreme Court approved of the view taken by this court in *State Vs. Kashi Prasad*, .

4. In this view of the matter, it is clear that the assessee was entitled to the benefit of Section 12(2) of the Limitation Act in respect of the certified copies filed by him along with his appeals, and the circumstance that he had earlier received copies of the assessment orders directly from the Sales Tax Officer must be held to be of no consequence for the purposes of computing the limitation for filing the appeals. The second question is answered in the affirmative.

5. In the view that we have taken, learned counsel for the assessee does not press for a decision on the first and third questions. We accordingly return no answers to those questions.

6. The assessee is entitled to his costs which we assess at Rs. 100 as one set of costs in the two cases. Counsel's fee is also assessed in the same figure.