

(1960) 05 OHC CK 0006
In the Orissa High Court
Case No : S.J.C. No's. 40 and 41 of 1958

M.A. Tullock and Co.

APPELLANT

Vs

The State of Orissa: No. 2

RESPONDENT

Date of Decision : 02-05-1960

Acts Referred:

Limitation Act, 1963 — Section 5
Orissa Sales Tax Act, 1947 — Section 24(2)

Citation : (1961) 12 STC 289

Hon'ble Judges : Narasimham, C.J.;G.C. Das, J

Bench : Division Bench

Advocate : Jogesh Ch. Das, B.K. Mukherjee, S. Acharya and A.K. Tripathy, for the Appellant; The Advocate-General and G.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—These two applications were made u/s 24(2) of the Orissa Sales Tax Act requesting this Court to direct the Sales Tax Tribunal, Orissa, to refer some questions of law for the decision of this Court. A similar application u/s 24(1) of the said Act had been made before the Tribunal requesting it to refer several questions of law for the opinion of this Court. The learned Tribunal accepted the reference in respect of some of the questions but rejected it with regard to the rest by his order dated 25th August, 1958. The present application deals with those questions, which the Tribunal refused to refer to this Court for opinion.

2. At the commencement of the hearing a preliminary objection was raised by Mr. G. K. Misra for the Sales Tax Department on the ground of limitation. The order of the Tribunal was passed on 25th August, 1958, whereas these applications were filed on 26th September, 1958, two days after the expiry of the period of thirty days from the date of refusal, as required by Section 24(2) of the Orissa Sales Tax Act. This preliminary point was argued by counsel for both sides.

3. Prior to 1957 there was only a revisional authority over the decisions of

subordinate Sales Tax Authorities and that authority was given the power to make a reference u/s 24(1) as it stood then. That authority was a revenue authority and it does not appear that in the proceedings before him, the rules usually followed by judicial tribunals were observed. But by the Orissa Sales Tax (Amendment) Act, 1957 (Orissa Act XX of 1957), which came into force on the 2nd December, 1957, a new judicial authority known as the Sales Tax Tribunal was constituted and Section 3(2) of that Act required that the member of the Tribunal should be a member of the superior judicial service or eligible for appointment to such service. Second appellate powers were conferred on the Tribunal and it was primarily his duty u/s 24(1) to make a reference to the High Court if any point of law arose out of his order and if he refused to make such reference the aggrieved party was given the liberty to approach this Court u/s 24(2) of the Act. In consequence of this amendment some of the rules in the Orissa Sales Tax Rules, 1947, were also amended. The material rule for our purpose is Rule 70 which is as follows:-

70. When the hearing of an appeal or application is complete, the Tribunal shall pass its order in writing forthwith or shall fix a date for the same and inform the parties concerned.

This rule is based on the practice followed in the ordinary civil courts for delivery of orders and judgments and it is at variance with the practice usually followed in the case of appeals and revisions before revenue authorities where no date is fixed for delivery of judgments or orders. When a judgment or order is pronounced by such authorities it is merely communicated to the parties. Rule 73 may also be quoted :-

73. Three copies of every order u/s 23 or u/s 24 passed by the Tribunal shall be forwarded to the Commissioner as soon as practicable. A copy of it shall also be supplied free of cost and without application to the other party to the appeal or application for reference.

4. The "circumstances under which the Tribunal's orders were passed on 25th August, 1958, will be clear from the certified copies of his orders dated 5th August, 1958, 20th August, 1958, and 25th August, 1958, which have been filed by the petitioner himself. It will be noticed that on 5th August, 1958, the Tribunal informed the parties that the "judgment" would be delivered on the 20th August. But on the 20th the judgment was not delivered and then the Tribunal posted the case to 25th August, 1958, "for orders". On the 25th August, he delivered judgment. Though the learned Tribunal has used the expressions "order" and "judgment" as synonymous, Rule 70 quoted above speaks only of "order" passed by the Tribunal. But this slight discrepancy in the expressions used is immaterial because the parties knew fully well that an order passed by the Tribunal refusing to refer certain questions to the High Court may also be described, though somewhat inaccurately, as a judgment. The parties were present before him on 5th August, 1958. They knew that the case was adjourned for delivery of judgment on 20th August, 1958, and if they had appeared before the Tribunal on

that date, they would have known that the case was again posted to 25th August, 1958, for delivery of judgment, (as on 20th August, 1958, judgment could not be delivered). Hence the limitation would start from 25th August, 1958, and the present application u/s 24(2) is clearly barred by time. We have no power to condone the delay u/s 5 of the Limitation Act as that section has not been applied to proceedings under the Sales Tax Act.

5. Mr. Das for the petitioner urged for the first time before this Court that on 20th August, 1958, the petitioner was not present before the Tribunal either in person or through an Advocate and consequently he could not know that the case was adjourned to 25th August, 1958. There is no affidavit in support of this statement. On the other hand in the affidavit filed by him before this Court, on 4th November, 1958) this fact was suppressed. The affidavit merely stated that until the receipt of the Tribunal's order (25th August, 1958), on 2nd September, 1958, he did not know anything about the contents of that order. Even if I accept the statement of the petitioner that he did not appear before the Tribunal on the 20th August, 1958, that would not help him in any way. It was his own fault that he did not appear before the Tribunal on that date, knowing fully well that the case had been fixed for delivery of judgment on that day. Had he appeared before the Tribunal on that day he would surely have known about the subsequent date to which the case was posted, namely 25th August, 1958, and on the latter date he would have known about the actual order passed against him. There was thus an adequate opportunity given to the petitioner to know the exact date on which the judgment was delivered : and if he failed to appear before the Tribunal on that date the fault was entirely his.

6. Learned counsel for the petitioner then referred to certain decisions of this Court, namely *Bharat Sabaigrass Ltd. Vs. The Collector of Commercial Taxes*, and *Satrughan Mall Vs. Revenue Commissioner*, . In my opinion they will not help him. Those decisions were based on the rules as they stood prior to the constitution of the Sales Tax Tribunal and the insertion of the special Rule 70 dealing with the mode of delivery of judgments by the Tribunal. Hence the observations in the aforesaid decisions cannot be applied too literally in the present case. Moreover if these decisions are carefully scrutinised they will be found to be distinguishable. Thus in *Bharat Sabaigrass Ltd. Vs. The Collector of Commercial Taxes*, it was pointed out, following a Madras decision in *O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax*, that if a person is given a right to resort to a particular remedy to get rid of an adverse order within a prescribed time, the limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing that order and therefore must be presumed to have had knowledge of that order. Here as already pointed out the petitioner had ample opportunities of knowing the contents of the order of the Tribunal on the date of the order, i.e., 25th August, 1958. Similarly *Satrughan Mall Vs. Revenue Commissioner*, , refers to an order under the Orissa Agricultural Income Tax Act passed by the Commissioner in exercise of his revisional powers though that authority was not

required, under the rules made under that Act, to fix a date for delivery of judgment as in Rule 70 of the Orissa Sales Tax Rules. On the facts of that case, therefore, the Court held that the date on which the contents of the order were actually communicated to the petitioner should be the starting point for computing the period of limitation.

7. Mr. Das also relied on a Bombay decision reported in Abdul Aziz Ansari Vs. The State of Bombay, , but that case also is distinguishable; it does not appear that there was a rule similar to Rule 70 of the Orissa Sales Tax Rules in the Bombay rules.

8. Finally, Mr. Das relied on the last portion of Rule 73 of the Orissa Sales Tax Rules which says that a copy of the order shall be supplied free of cost without application to the petitioner and that as such a copy was sent to him by post on 26th August, 1958, and received by him on or about the 2nd September, limitation should start only from the latter date. In my opinion, this argument is untenable in view of the express provision in Rule 70. It is the look-out of the petitioner to appear personally or through a counsel on the date actually fixed for delivery of judgment or on any other date to which it was adjourned. The mere fact that by virtue of Rule 73 he was entitled to a free copy of the order without even applying for the same would not save limitation. Section 24(2) of the Orissa Sales Tax Act expressly says that the period of thirty days shall count from the date of refusal by the Tribunal, and the date of refusal in this case must be the date on which the petitioner would have known of the order if he had appeared before the Tribunal.

9. For these reasons it must be held that this application is time-barred and we have no power to condone the delay. The preliminary objection raised by Mr. G. K. Misra is accordingly upheld.

The petition is dismissed, but in the circumstances there will be no order for costs.

G.C. Das, J.

10. I agree.