

(2016) 04 GAU CK 0067

In the Gauhati High Court

Case No : MC 1041, 1019, 1021, 1022, of 2015 in Rev. Pet. SI. No. 250005, 250008, 250006, 250007, of 2015 MC 2833, 2834, 2835, 2838, of 2014 In Rev Pet No. 30, 31, 32, and 33 of 2014.

Patel Brothers

APPELLANT

Vs

State of Assam and Ors

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Assam Value Added Tax Act, 2003 — Section 84
Limitation Act, 1963 — Section 5

Citation : (2016) 4 GauLJ 33 : (2016) 4 GauLR 86 : (2016) 2 GauLT 1217 : (2016) 2 NEJ 270

Hon'ble Judges : Ajit Singh, C.J.;Suman Shyam, J.

Bench : Division Bench

Advocate : G.K. Joshi and R.K. Joshi, Advocates, for the Appellant; U. Rajbongshi, AAG and S. Chetia, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Suman Shyam, J - Since a common question of law as to whether the provisions of section 5 of the Limitations Act, 1963 would be applicable to a revision filed under Section 81(1) of the Assam Value Added Tax Act, 2003 arises for determination in this series of applications, we propose to dispose of all these Miscellaneous Applications by this common order. For a proper appreciation of the issue, the facts involved in MC 1041/2015 are briefly stated herein below, taking the same as the lead case.

2. The petitioner was engaged in the business of purchasing tea from Gauhati Tea Auction Centre and is a registered dealer under the Assam General Sales Tax Act, 1993 as well as the Assam Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956. Based on the sales turnover ,the petitioner had submitted the declaration in Form "C" pertaining to the assessment years 1998-1999,1999-2000,2000-2001 and 2001-2002 reflecting the total value of sale. Acting on such representation made by the petitioner, the respondent No.

2, i.e. the Superintendent of Taxes, had computed the assessment, thereby, allowing full exemption of sales tax to the aforesaid sale transactions as per the provisions of Section 8(5) of the CST Act, 1956. However, subsequently the Form "C" submitted by the petitioner turned out to be fake documents as a result of which the respondent No. 2 had passed an order dated 29/06/2004 for the years 1998-99 reducing the exemption earlier granted to the petitioner besides imposing penalty. Similar orders of re-assessment were also passed in respect of the other assessment years giving rise to the connected proceedings. Aggrieved by the order dated 29/06/2004, the petitioner had preferred an appeal before the respondent No. 3 (Appellate Authority) whereby an application was also filed praying for stay of the demand. However, by the order dated 29/07/2005, the respondent No. 3 had directed the petitioner to deposit 25% of the demanded dues within 30 days with an observation that the appeal would be admitted on deposit of such amount and the balance amount would be deemed to be stayed. The petitioner preferred an appeal before the Assam Board of Revenue (Appellate Tribunal) against the said order dated 29/07/2005 which was dismissed by the order dated 26/08/2008. A review application filed against the aforesaid order also came to be dismissed by the Appellate Tribunal by its order dated 27/08/2013. Situated thus, the petitioner has approached this Court by filing a revision under section 81(1) of the Assam Value Added Tax Act, 2003 read with Section 9(2) of the Central Sales Tax Act, 1956 seeking a revision of the common judgement and order dated 27/08/2013, accompanied by an application under Section 5 of the Limitation Act, 1963 praying for condoning the delay of 335 days in preferring the revision.

3. Heard Mr. G.K. Joshi, learned senior counsel assisted by Mr. R.K. Joshi, learned counsels appearing on behalf of the petitioner in all the cases. Also heard Mr. U. Rajbongshi, learned Additional Advocate General, Assam assisted by Mr. S. Chetia, learned counsel appearing for the State respondents.

4. At the outset, the State counsel has raised objection regarding maintainability of the applications filed by the petitioner under section 5 of the Limitations Act, 1963 praying for condonation of delay stating that section 81(1) of the Assam Value Added Tax Act, 2003 (for short the Act of 2003) does not confer any jurisdiction upon the High Court to entertain a revision petition against an order passed by the appellate Tribunal beyond the statutory period of 60 days and that section 5 of the Limitations Act, 1963 is not applicable to a proceeding under section 81(1) of the Act. The learned State Counsel submits that in view of the specific provisions contained in section 84 of the Act of 2003, there is no scope for condonation of delay of 335 days in preferring the connected revision petition before this court. In support of his aforesaid argument, the learned counsel places reliance on a decision of the Supreme Court in the case of Commissioner of Customs and Central Excise v. Hongo India Private Ltd. reported in (2009) 5 SCC 791 as well as another decision of the Division bench of this Court in the case of Commissioner of Income Tax v. Williamson Tea (Assam) Ltd. reported in (2010) 1 GLR 57.

5. Mr. Joshi, learned senior counsel, on the other hand submits that even though section 81(1) of the Act of 2003 prescribes a period of 60 days within which the revision is to be filed before the High Court, yet, in view of the provisions contained in Section 29(2) of the Limitation Act, 1963, the High Court would have ample power to condone the delay by invoking the provisions of Section 5 of the Limitation Act, 1963. By referring to section 79 of the Act of 2003, the learned senior counsel submits that discretion has been conferred upon the appellate authority to condone the delay in filing an appeal up-to a further period of 180 days if an appeal is presented beyond the prescribed period of 60 days. Similar provisions can be found in section 80 of the Act of 2003, whereby even the Appellate Tribunal has been conferred with the power to accept appeals filed after the expiry of 50 days for a further period of 120 days. It is, therefore, completely illogical, submits Mr Joshi, that the Legislator would have intended to deny such discretionary power of condoning the delay to the High Court, which is the superior forum under the Act. He submits that the High Court being the last Court, the inherent power to condone the delay by taking recourse to section 29(2) of the Limitation Act must be read into section 81 of the Act of 2003, as such an interpretation will not only be reasonable but would also subserve the ends of justice. In support of his aforesaid arguments, Mr. Joshi has relied upon the following decisions :-

I. (2005) 7 SC 510 (Popat and Kotecha Property v. State Bank of India Staff Association).

II. (1978) 41 STC 409

III. 60 ITR, CIT v. Sahajada Nand

6. We have carefully noted the rival submissions made on behalf of the parties. In order to resolve the contentious issue involved in this proceeding, it would be essential to refer to the relevant provisions of the Act of 2003 as well as section 29(2) of the Limitations Act, 1963. Section 81 of the Act of 2003 provides for filing a revision before the High Court against a decision of an Appellate Tribunal within 60 days after being notified of the decision of the Tribunal. Section 81 is quoted herein below :-

"81. Revision to High Court -

(1) Any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within sixty days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court; and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings.

(2) A revision to the High Court may be made on question of law or an erroneous decision or failure to decide a question of law that shall be raised in the revision.

(3) The Commissioner shall also be made a party to the proceedings before the High Court where revision is filed by the dealer or other person.

(4) The High Court may on application either by the petitioner or by any of the respondents review any order passed by it provided such application is made within one year from the date of receipt of the judgement.

(5) A revision or review application presented before the High Court under this section shall be heard by the bench consisting of not less than two judges."

7. Section 84 of the Act of 2003 provides that Section 4 and 12 of the Limitation Act, 1963 would be applicable in computing the period of limitation. The said provision reads as follows :-

"84. Application of section 4 and 12 of Limitation Act, 1963 - In computing the period of limitation under this chapter, the provisions of section 4 and 12 of the Limitation Act, 1963 (Central Act 36 of 1963) shall, so far as may be, apply."

8. From a reading of the aforementioned provisions of the Act of 2003, what can be seen is that the intention of the legislature was to limit the application of the Limitations Act, 1963 only to sections 4 and 12 of the Act, to a proceeding under this chapter and section 5 has been consciously excluded from the purview of section 84. From a reading of section 84 of the Act of 2003, it is evident that the Legislature did not intend to confer upon the High Court the discretionary jurisdiction of condoning delay in filing a revision petition by invoking section 5 of the Limitations Act, 1963. Had the legislator intended to confer such discretionary power upon the High Court to condone the delay in filing a revision beyond the prescribe period of 60 days by invoking section 5 of the Limitations Act, 1963 then there was no reason for not including section 5 also in section 84 of the Act 2003.

9. A scrutiny of the scheme of the Act of 2003 goes to show that it is a complete code not only laying down the forums but also prescribing the time limit within which each forum would be competent to entertain the appeal or the revision. The underlying object of the Act appears to be to shorten the length of the proceedings initiated under the different provisions contained therein but also to ensure finality of the decisions made there under. The fact that the period of limitation prescribed therein has been equally made applicable to the assessee as well as the revenue lends ample credence to such a conclusion. We are, therefore, of the un-hesitant view that the application of section 5 of the Limitations Act, 1963 to a proceeding under section 81(1) of the Act of 2003 stands excluded by necessary implication by virtue of the language employed in section 84.

10. By referring to the provision of section 29(2) of the Limitations Act. 1963, the learned senior counsel appearing for the petitioner has sought to canvas that in the absence of any specific provisions contained in the Act of 2003 expressly excluding the application of Section 5 of the Limitation Act, 1963 section 29(2) will come into play since the Act of 2003 is a special/ local Act where there is no period of limitation prescribed under the Limitation Act. Relying upon the decision of the State of Kerala and others v. Dr. S.G. Sarvothama Prabhu reported in

(1999) 2 SCC 622, Mr. Joshi submits that since the words in Section 29(2) of the Limitation Act, 1963 are unambiguous, clear and explicit, there is no scope for interpretation of the said provision contrary to the language of the statute.

11. Section 29(2) of the Limitations Act, 1963 reads as follows:-

"29(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 in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

12. In the case of Union of India v. Popular Construction Co. Reported in (2001) 8 SCC 470, the apex Court, while dealing with the question of applicability of Section 5 of the Limitation Act, 1963 for condoning the delay in filing an application under Section 34 of the Act, 1996, has held that Arbitration and Conciliation Act, 1996 is a special law providing a limitation period different from that prescribed under the Limitation Act and as such section 29(2) of the Limitation Act will not have any application in a proceeding under Section 34 for setting aside arbitral award. In the said decision, the Apex Court had observed that :-

"10. This decision recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in *Hukumdev Narain Yadav v. Lalit Narain Mishra* reported in (1974) 2 SCC 133 (SCC p. 146, para 17).

"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."

13. Similar view has been taken in a subsequent decision in the case of *Fairgrowth Investments Ltd. v. Custodian* reported in (2004) 11 SCC 472 wherein the Apex Court was confronted with a similar question regarding applicability of section 29(2) of the Limitation Act, 1963 in a proceeding under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, wherein it was observed that any assumption that power to condone the delay is implicit in several statutory provisions would render Section 29(2) of the Limitation Act as redundant. The Apex Court has held that where words are unequivocal, the principles of interpretation cannot be applied to read something more.

14. In the case of *Commissioner of Customs and Central Excise v. Hongpo India Private Ltd. and another* (supra), the Apex Court had dealt with a similar issue regarding the power of the High Court to condone delay beyond the period

specified under Section 35-H of the Central Excise Act wherein and where under it was provided that an appeal and reference to High Court should be made within 180 days from the date of communication of the decision or order. Opining that the time limit prescribed for making reference to the High Court is absolute and unextendable by Court under section 5 of the Limitation Act, 1963, the Apex Court had made the following observations :-

"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."

15. In the decision of the Division Bench of this court in the case of Commissioner of Income Tax v. Williamson Tea (Assam) Ltd. (Supra), a question as to the applicability of section 5 of the Limitation Act in case of appeal to High Court under the Income Tax Act, 1961, had arisen for consideration of this Court, whereby it was held that section 5 of the Limitation Act would have no application in such matters and the delay in preferring an appeal cannot be done by relying upon order IV Rule 3A of the CPC when it is presented beyond the period of limitation.

16. What crystallizes from the aforesaid judicial pronouncements is that the statutory period for preferring appeal and/or revision under a special Act cannot be enlarged by taking recourse to section 29(2) of the Limitation Act when there is an express or implied exclusion of the applicability of the provision of section 5 of the Limitation Act, 1963. As has been mentioned above, the language employed in section 84 of the Act of 2003 clearly indicates that the provisions of the Limitation Act, save and except section 4 and 12, have been excluded from their applicability to any proceeding under that chapter and as such section 5 of the Limitation Act, 1963 would have no applicability in a proceeding filed under Section 81(1) of the Act of 2003.

17. By relying upon the decision of the Apex Court in the case of M/s. Polestar

Electronic (Pvt) Ltd. v. Additional Commissioner, Sales Tax and another reported in (1978) 1 SCC 636, Mr. Joshi had submitted that while interpreting a statutory enactment, the Court is required to gather true intention of the Legislator from the language used by it and it is not permissible to the Court to speculate about the legislative intent. He submits that due to the clearer language and expression used in section 29(2) of the Limitation Act, this Court should accept the applicability of the Limitation Act rather than to speculate on the true legislative intent. Having regard to the ratio laid down in the case Hongo India Pvt Ltd (supra), we do not find force in the said submission made by the learned senior counsel.

18. By referring to the order dated 25/06/2014 passed by the Division bench of this Court in M.C. 1771/2014 Mr. Joshi submits that by the said order the delay of 82 days in filing revision petition under section 81(1) of the Act had been condoned by invoking section 5 of the Limitation Act for the ends of justice and as such the learned counsel submits that a similar approach is called for even in the present batch of applications. A perusal of the order dated 25/06/2014 goes to show that the same was passed without considering the aforementioned authoritative pronouncements of the Apex court on the question of applicability of section 5 of the limitations Act. It further appears that neither did the department raise any question as regards maintainability of the application filed under section 5 of the Limitations Act nor was the applicability of section 5 to the proceeding under the Act of 2003 an issue before this court. As such, the order dated 25/06/2014 appears to have been passed in the facts of that case without laying down any binding precedent. As such, we are afraid, the order dated 25/06/2014 relied upon by Mr. Joshi would be of no assistance to him.

19. It is well settled principle of law that :

"the Courts cannot interpret a statute the way they have developed the common law "which in a constitutional sense means judicially developed equity". In abrogating or modifying a rule of the common law the Courts exercise "the same power of creation that built up the common law through its existence by judges of the past". The court can exercise no such power in respect of statutes. Therefore, in their task of interpreting and applying a statute, Judges have to be conscious that in the end the statute is the master and not the servant of the judgement and that no Judge has a choice between implementing the law and disobeying it."

[See Principles of Statutory Interpretation 14th Edition Page 26- by Justice G.P. Singh]. What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking section 5 of the limitations Act so as to supplement the provisions of the Act when the Act of 2003 excludes the operation of section 5 by necessary implications. In the present case whether or not there is an express or implied exclusion of the operation of any of the provisions of the Limitations Act, 1963 is to be considered not on the basis of the language used in section 29(2) of the

Limitations Act but by giving a purposive interpretation to the relevant provisions of the Act of 2003.

20. For the discussions and reasons indicated herein-above, we are of the opinion that the applications filed under section 5 of the Limitations Act, 1963 are not maintainable in law and as such the same are hereby dismissed. Accordingly, the connected revision petitions shall also stand disposed of.

21. No order as to cost.