
(1970) 10 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Case No. 1 of 1968

Piare Lal Khushbakhat Rai

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 28-10-1970

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 22, 23

Citation : (1971) 27 STC 398

Hon'ble Judges : D.K. Mahajan, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : Gokal Chand Mittal and Parkash Chand Jain, for the Appellant; S.K. Jain, for the Respondent

Judgement

1. This order will dispose of sales tax cases Nos. 1 and 2 of 1968, both of which are by the same firm; only they relate to two different years. These petitions are u/s 22(2)(b) of the Punjab General Sales Tax Act, 1948 (hereinafter called the Act), for issuing a direction to the Sales Tax Tribunal, Punjab, to refer the questions of law, as mentioned in these petitions, along with the statement of the case to this court for opinion. The petitioner-firm had filed applications u/s 22(1) of the Act for referring those questions of law to this court for opinion along with the statement of the case but those applications were rejected on the ground that they were barred by time. The reason stated by the learned Tribunal for holding the applications as barred by time is that the petitioner-firm was not entitled to the deduction of the time spent in obtaining certified copies of the order of the learned Financial Commissioner against which the applications were made.

2. The facts bearing on the point of limitation are that the Financial Commissioner had reserved orders when he heard the revisions. Those orders were passed on 28th September, 1966, but were communicated to the counsel for the petitioner-firm on 14th October, 1966. An application for the copy of the order in each case was made on 10th November, 1966, and the certified copy

was ready on 21st November, 1966. The last date of limitation after deducting the days spent in obtaining the certified copy in each case was 25th December, 1966, and that day being a holiday, the applications were filed on 26th December, 1966. The learned Tribunal was of the opinion that the provisions of Section 12(2) of the Indian Limitation Act did not apply and, therefore, the petitioner-firm was not entitled to the deduction of the time spent in obtaining certified copy of the order of the Financial Commissioner in each case. Reliance has been placed by the learned Tribunal on *Govindji v. Commissioner of Sales Tax, Madhya Pradesh* [1955] 6 S.T.C. 183(MP) which supports that view. But, a reference to the commentary by Chitaley on the Indian Limitation Act shows that there is a conflict of decisions on this point among the various High Courts. Even if technically Section 12(2) of the Indian Limitation Act did not apply, the delay in filing the application could have been condoned u/s 5 of the Indian Limitation Act by extending the period of limitation by the number of days spent in obtaining the certified copy. The Lahore view as stated in *Muhammad Hayat Haji Muhammad Sardar v. Commissioner of Income Tax, Punjab and Anr.* AIR 1929 Lah. 170 was definitely in favour of allowing the period spent in obtaining a certified copy of the order while computing the period of limitation for a reference application. In the case relied upon by the learned Tribunal it has also been held that:

the expression "passing an order" in Section 23(1) must be so construed as to mean that it is passed in the presence of the parties or is passed on the date of which due notice is given to the parties or where no such date is fixed on the date the party receives a copy of the order. Merely intimating that the appeal or application is dismissed is not enough. There is nothing in the Sales Tax Act to prevent the Board of Revenue or other authorities acting under the Act from giving the assessee sufficient notice of the day on which it would pass its decision to enable him, if he chooses to be present, to hear it; and if that is done, limitation would run from that day if the decision is announced on that date. This is the date of communication though the assessee may not care to listen.

3. In Section 22 of the Act a similar expression has been used, that is, "within 60 days from the passing of an order". If the view stated in the above case has to be taken into consideration, then the period of limitation would start from the date the petitioner obtained the copy of the order as admittedly the copy of the order was never sent to the counsel for the petitioner. Only an intimation was sent that the revision had been dismissed. We are, therefore, of the opinion that the applications of the petitioner-firm u/s 22(1) of the Act were wrongly rejected as barred by time without proper consideration of the various authorities and the view-points as have been set out above. We, accordingly, set aside the orders dated 21st February, 1968, rejecting the applications as barred by time and direct the learned Tribunal to decide the applications afresh after hearing the parties. There is no order as to costs.