

(1975) 01 OHC CK 0009

In the Orissa High Court

Case No : Original Jurisdiction Case No. 654 of 1973

Raghunath Agarwalla

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 16-01-1975

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (1975) 41 CLT 297 : (1975) 36 STC 461

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : B.K. Mohanti, S.R. Das, P.K. Misra, D.K. Panda and U. Dubey, for the Appellant; The Standing Counsel (Sales Tax), for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The assessee is before us praying for a writ of certiorari to quash the order dated 14th July, 1973, passed by the Member, Additional Sales Tax Tribunal, Orissa, in Reference Application No. 3 of 1973-74 filed u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act").

2. Second Appeal No. 1091 of 1971-72 carried by the assessee u/s 23(3) of the Act was disposed of by the Additional Tribunal on 12th January, 1973. On 15th March, 1973, copies of the second appellate order were served on the Commissioner of Sales Tax as required under Rule 73 of the Orissa Sales Tax Rules (hereinafter called the "Rules"). u/s 24(1) of the Act, within sixty days from the date of receipt of the copy of the order of the Tribunal made under Sub-section (3) of Section 23 affecting any liability of any dealer to pay tax, such dealer or, as the case may be, the State Government, is entitled to make an application in writing to the Tribunal to refer to the High Court any question of law arising out of the appellate order. According to the petitioner, the application u/s 24(1) of the Act was due to be filed on or before 14th May, 1973, but it was actually filed on 30th May, 1973, along with an application for condonation of delay u/s 5 of the Limitation Act, 1963. The impugned order runs thus :

Heard the Advocate for opponent who is the assessee. It was contended that the petition is barred by time and it need be rejected summarily. It is undisputed that question of limitation will be strictly construed, if some right has accrued to the opponent. Here, nothing was shown to me as to what right has accrued to the opponent. In view of that and in view of the facts and circumstances pleaded in the petition, I am of the opinion that the delay be condoned and the petition be disposed of on merit....

Mr. Mohanti for the petitioner takes the stand that Section 24(1) of the Act provides a fixed period of sixty days within which time the application has to be made to the Tribunal. No discretion is vested in the Tribunal under the Act for extending the period limited by the statute. As the Tribunal is not a "court", Section 5 of the Limitation Act does not apply and, therefore, the Additional Tribunal had no jurisdiction to condone limitation. Therefore, according to Mr. Mohanti, the Additional Tribunal having acted in excess of jurisdiction, the impugned order should be quashed.

3. That the various tribunals created under the Act are not "courts" was decided by this court in the case of Chakoo Bhai Ghelabhai v. State of Orissa [1956] 7 S.T.C. 36. Panigrahi, C. J., quoted the weighty observations of Lord Sankey in the case of Shell Company of Australia v. Federal Commissioners [1931] A.C. 278, where It was observed:

A tribunal is not necessarily a "court" in the strict sense because (1) it gives a final decision, nor (2) because it hears witnesses on oath, nor (3) because two or more contending parties appear before it between whom it has to decide, nor (4) because it gives a decision which affects the rights of subjects, nor (5) because there is an appeal to a court, nor (6) because it is a body to which a matter is referred by another body. An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a court.

The ultimate conclusion reached in this court was that the tribunals set up under the Act were not "courts". The Supreme Court upheld this conclusion of Panigrahi, C. J., in the case of State of Orissa v. Chakobhai Ghelabhai & Co. [1960] 11 S.T.C. 716 (S.C.) S. K. Das, J. (as the learned Judge then was), observed :

...The High Court held that the assessing authorities including the Assistant Collector of Sales Tax and the Collector of Commercial Taxes, Orissa, were not courts in the strict sense of the term "court", though they exercised quasi-judicial functions under the Act. We think that that is a correct view....

In view of these pronouncements, it is unnecessary to refer at length to other authorities. We would hold that the Tribunal set up under the Act is not a "court".

The next aspect for consideration is, even if the Tribunal was not a "court", would section- 5 of the Limitation Act apply to a proceeding before it ? In order to decide that aspect, the following two provisions of the Limitation Act are

pertinent to be considered :

Section 5. Any appeal or any application, other than an application under any of the provisions of Order 21 of the CPC (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....

Section 29(1)....

(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....

In the old Limitation Act of 1908, Sub-section (2) of Section 29 was differently worded and ran thus :

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law ; and

(b) the remaining provisions of this Act shall not apply.

While the learned standing counsel takes the stand that by the change of law in Sub-section (2) of Section 29 of the new Act, Section 5 automatically stands applicable to a reference application under the Act u/s 24, Mr. Mohanti for the assessee-petitioner contends that the Tribunal being not a "court", which is a basic requirement for application of the Limitation Act, Section 5 cannot be applied to a proceeding before it merely on the authority of Section 29(2) of the Limitation Act.

Section 5 in terms refers to a proceeding before the "court". It Is clear, therefore, that by itself, it has no application to a proceeding before the Tribunal under the Act. Does Sub-section (2) of Section 29 of the Limitation Act make Section 5 thereof applicable to proceedings under the taxing Act ? Mr. Mohanti relies upon a recent Bench decision of the Calcutta High Court in the case of Commissioner of Income Tax (Central) Vs. Assam Oil Company Ltd., , wherein the court decided

upon an examination of the provisions in the Income Tax Act of 1961 relating to reference applications that by the medium of Sub-section (2) of Section 29 of the Limitation Act, Section 5 is not made applicable to such a proceeding. On the other hand, the learned standing counsel relies upon some authorities which we shall presently deal with.

The first case cited by the learned standing counsel is that of Imperial Bucket Co., a firm Vs. Sm. Bhagwati Basak, . The court was dealing with the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act of 1950. Examining the applicability of Section 29(2)(a) of the Limitation Act of 1908 to such a proceeding, the court said :

My conclusion, therefore, is that the rules of construction referred to above do not justify the court in adding to the words "suit, appeal, or application" the words "to court". The words "suit, appeal or application" must be read in their plain sense as inclusive of any suit or appeal or application prescribed by a special or local law.

Our attention has also been drawn by Mr. Dev to the case of Charles E. Ring v. Collector of Bombay AIR 1948 Bom. 387, which was decided by Tendolkar, J., sitting singly. In that case, the question arose as to the period of limitation for an application for review u/s 38 of the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act (Act 7 of 1944). In the case cited, there was no period of limitation prescribed by the special Act, and as such Section 29(2)(a) could hardly apply.

The contention was that the period of limitation should be determined by a reference to Article 173, Schedule I, Limitation Act. It was suggested that as the application for review u/s 38 of the aforesaid Rent Control Act of 1944 had to be made not to a court, the exemption sections detailed in Section 29(2)(a), Limitation Act, could not be availed of. It was in that connection that the learned Judge made the observation relied on.

In my opinion, that case does not govern the present case. In any event, in my view, there is no justification for construing Section 29(2)(a), Limitation Act, in a restricted sense. The section ought to have its full operation being intended to remove a hardship which existed before the amendment of that section by the Indian Limitation (Amendment) Act (Act 10 of 1922).

My conclusion, therefore, is that the time for filing the appeal should be extended by applying the provisions of Section 12, Limitation Act.

That Section 12 of the Limitation Act is applicable was also decided in this court in the case of Bharat Sabaigrass Ltd. v. Collector of Commercial Taxes [1952] 3 S.T.C. 483 and in the Punjab High Court in the case of Chiranji Lal & Bros. v. State of Delhi [1966] 18 S.T.C. 240. The point in the Punjab case [1966] 18 S.T.C. 240 was as to whether the time taken for obtaining a certified copy of the impugned order was available to be added to the period of limitation prescribed

for filing of the revision. Rule 62 of the Delhi Sales Tax Rules, 1951, required a certified copy of the impugned order to accompany the petition and the court extended the principle of Section 12(2) of the Limitation Act. The question as to whether the benefit would not be available because the Tribunal under the Act was not a court was not examined and both these decisions were rendered when the old Limitation Act was in force.

Next is the case of *Vasanji Ghela & Co. v. State of Maharashtra* [1968] 22 S.T.C. 104. A Bench of the Bombay High Court was examining the applicability of Section 5 of the Limitation Act in view of the amended provision in Section 29(2) thereof. The court referred to several decisions. One of those was that of the Supreme Court in the case of *Vidyacharan Shukla Vs. Khubchand Baghel and Others*, where with reference to the appeal under the Representation of the People Act, the scope of Section 29(2) of the Limitation Act was examined. They also referred to the decision of their own court in the case of *The Employees' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another*. The earlier Division Bench of the Bombay High Court took the view that an application filed under the Employees' State Insurance Act, in the absence of a period of limitation, would be governed by Article 137 of the Limitation Act by virtue of Section 29(2) of the new Limitation Act. Relying on these authorities, the Division Bench took the view that Section 5 of the Limitation Act stood extended to a reference application under the Bombay Sales Tax Act.

We may also refer to a Bench decision of the Calcutta High Court not cited by counsel for parties in the case of *Shri Sunit Pramanik Vs. Santipur Industries Co-operative Society Ltd. and Another*. The point for examination before the court was the application of the provisions of the Limitation Act to an appeal under the Bengal Co-operative Societies Act through the medium of Section 29(2) of the Limitation Act of 1963. The court concluded:

"It is clear, therefore, that by reason of Sub-section (2) of Section 29 of the Limitation Act of 1963, the period of limitation prescribed by the Co-operative Societies Act, which we have referred to above, shall be deemed to be a period of limitation prescribed by the Limitation Act. And the provisions of Sections 4 to 24 of the Limitation Act would apply to the said period."

In view of these authorities and considerable amount of consensus of judicial opinion, we are prepared to hold that by virtue of Section 29(2) of the Limitation Act, 1963, the provisions contained in Sections 4 to 24 thereof shall apply to proceedings under the Orissa Sales Tax Act to the extent they are not inconsistent with any specific provision in the taxing Act.

5. On the aforesaid analysis, the Additional Tribunal had jurisdiction to deal with the application u/s 5 of the Limitation Act for condonation of the delay in filing of the reference application u/s 24(1) of the Act.

6. Mr. Mohanti rightly had not challenged the exercise of discretion by the

Additional Tribunal in the matter of condonation of delay and we have, therefore, not examined that aspect.

7. The learned standing counsel had raised a point before us that there was indeed no delay because the period of limitation prescribed u/s 24(1) of the Act was to run from the date of service of the appellate order of the Tribunal on the Sales Tax Officer of the circle concerned as envisaged in Rule 82 of the Rules and not from the date of service of the order on the Commissioner as contemplated under Rule 73 thereof. In view of our conclusion on the question raised by the petitioner it is unnecessary to enter into an examination of that aspect.

8. In the result, the writ application fails and is dismissed, but without costs.

K.B. Panda, J.

9. I agree.