
(2014) 08 DEL CK 0204
In the Delhi High Court
Case No : W.P.(C) No. 3821/2014

Rosa Power Supply Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 307 ELT 638

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Sujit Ghosh, Nakul Mohta and Sashank, Advocate for the Appellant;
Kiran Jai, CGSC and Chandra Shekhar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This petition under Article 226 of the Constitution of India, filed in or about the second half of May, 2014, impugns the four orders, all dated 21st March, 2011 of the respondent no.3 Zonal Joint Director General of Foreign Trade, intimating to the petitioner the decision taken in the meeting of the Policy Interpretation Committee held on 15th March, 2011 under the Chairmanship of the Director General of Foreign Trade, of denying Deemed Export Benefits (DEB) "if the Bill of Entry is in the name of the project authority" as was in the case of the petitioner and accordingly denying the DEB to the petitioner. The petition of course also impugns the minutes of the said meeting dated 15th March, 2011 and seeks a direction to the respondents to give the DEB to the petitioner, which during the hearing was disclosed to be in the value of Rs.72 crores.

2. Though the petition, as per the Roster of this Court, was listed before the learned Single Judge, but finding that the challenge is also to certain notifications and circulars of the Foreign Trade Policy on the basis of interpretation whereof the DEB was denied to the petitioner, was ordered to be listed before this Bench.

3. We, at the outset enquired from the counsel for the petitioner as to how the claim in the petition which is in the nature of a monetary claim is maintainable. The said claim of the petitioner, as aforesaid was rejected on 21st March, 2011. No Article to the Schedule to the Limitation Act, 1963 is found to provide for limitation for such a claim. Mention may however be made of A. Venkata Subba Rao Vs. State of Andhra Pradesh, , holding that the limitation for a suit for recovery of amount illegally appropriated by the Government is governed by Article 62 of the Schedule to the Limitation Act, 1908 (which is equivalent to Article 24 of the Limitation Act, 1963), prescribing the limitation of three years commencing from the date when the money is received , for a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiffs use. The argument that the residuary Article (120 of the 1908 Act and 113 of the 1963 Act) providing a limitation of six years under the 1908 Act would be applicable was rejected. It was generally observed that a suit for recovery of tax illegally collected is governed by the said Article 62 and has to be brought within three years from when the tax was illegally collected. The said view was followed in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, . However, the present is not a case of illegal recovery of tax or other monies by the Government. We are concerned with the denial by the Government of a monetary benefit to which the petitioner claims to be entitled. Thus Article 113 would apply, which prescribes limitation of three years from the date when the right to sue accrues. There is no doubt that the right to sue in the present case accrued on 21st March, 2011 when the claim of the petitioner for DEB was rejected. The challenge thereto could have been made within three years i.e. on or before 20th March, 2014. The present petition has been filed after more than one month therefrom. We may further add that the distinction which existed under the 1908 Act, between Article 62 thereof providing limitation of three years and Article 120 thereof, providing limitation of six years, also does not exist under the 1963 Act. Thus, even if Article 24 thereof were to be held to apply, the limitation would not change.

4. The petitioner also, conscious of the said aspect though in the writ petition in para no.23 has stated that "delay and laches is not applicable in the present case, as the impugned order came as a shock to the petitioner and it was exploring the options to take up the matter with the officials of the DGFT, Central Government and various other authorities" but has not given any particulars. The only plea is of the petitioner after the receipt of the letter dated 21st March, 2011 having sent letter dated 20th September, 2011 stating that the decision taken in the meeting held on 15th March, 2011 was not applicable to the petitioner and asking the respondents to release the payments towards DEB due to the petitioner. However the petitioner admits that no response was received thereto. However the same does not advance the case of the petitioner. In fact, the counsel is unable to show that there was any duty of the respondents to respond to such letter. The counsel for the petitioner is also unable to tell whether any remedy of appeal was available to the petitioner against the

decision taken in the meeting dated 15th March, 2011 or against the communication dated 21st March, 2011. It is the settled principle of law (See S.S. Rathore Vs. State of Madhya Pradesh, followed by the Division Benches of this Court in judgment dated 7th August, 2012 in LPA No.559/2012 titled Indian Hydraulic Industries (P) Ltd. Vs. NDPL and in judgment dated 30th January, 2012 in W.P.(C) No.586/2012 titled Rifleman T.K. Bhardwaj Vs. Director General of Audit and Others, and Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another,) that repeated representations and rejection thereof neither extend the period of limitation nor is a satisfactory explanation of the delay.

5. The counsel for the petitioner except for drawing attention to the letter dated 20th September, 2011 is not able to show any plea or document to the effect that the matter remained alive thereafter.

6. The counsel for the respondents appearing on advance notice informs that this petition has been filed after another writ petition was allowed by this Court and against which order SLP (SLP) has been preferred to the Supreme Court.

7. The present is clearly a case of the petitioner having indulged in fence sitting. The petitioner clearly chose not to pursue its own claim and was satisfied with the rejection of its request. The petitioner, in our opinion, cannot be permitted to revive such a claim which it had given up and / or which had become stale merely because some other who was not satisfied with a similar rejection of its claim having challenged the same and the said challenge having succeeded.

8. The matter in fact is not res integra. A Division Bench of this Court (of which one of us Rajiv Sahai Endlaw, J. was a member), in Govt. of NCT of Delhi and Others Vs. New Variety Tent House and Another, has held that money claim, suit for which has become barred by time / limitation, cannot be allowed in writ jurisdiction. Reliance was placed on State of Madhya Pradesh Vs. Bhailal Bhai and Others, laying down that though the provisions of Limitation Act do not apply to the grant of relief under Article 226 of the Constitution of India however the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured and on Tilokchand Motichand supra laying down that the extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies, the recovery of which by suit is barred by limitation and that where the writ remedy under Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the Court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in writ jurisdiction. We find that the SLP being CC No.12686/2012 was dismissed in limine on 3rd August, 2012.

9. Reference in this regard may also be made with benefit to yet another

judgment of the Division Bench of this Court in Standing Conference of Public Enterprises Vs. BSES Rajdhani Power Limited and Others, holding that since the suit for recovery of amount in question, had it been filed on the date the writ petition was filed, would have been barred by limitation, it would not be appropriate to direct payment of the aforesaid amount, in exercise of discretionary jurisdiction under Article 226 of the Constitution. Mention with benefit may also be made of D. Cawasji and Co. and Others Vs. State of Mysore and Another, .

10. Mention may also be made of Abbas Ahmad Choudhary Vs. State of Assam, [also noticed in New Variety Tent House (supra)] laying down that normally a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability.

11. The counsel for the petitioner after the hearing has handed over copies of the judgment in H.D. Vora Vs. State of Maharashtra and Others, and Miss Parvati K. Moorjani Vs. A. Fonseca AIR 1988 Bombay 366 (FB). While in the former, the plea of laches was rejected for the reason of the petitioner having a very strong case and the order impugned being invalid on the first count, in the latter, the Court inspite of holding the petition to be delayed and barred by laches, did not reject the same for the reason that a large number of petitions were pending decision on the points raised in the petition. We fail to see the applicability of either to the present controversy which as aforesaid is but a monetary claim of the petitioner. It is not the case of the petitioner that the decision dated 15th March, 2011 was by an authority which was not competent to take the decision.

12. There is thus no merit in the petition which is dismissed.

No costs.