(2014) 09 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 27647 of 2013

Sonia Overseas Pvt. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 2
Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 128, 128(1)
Limitation Act, 1963 — Section 10, 11, 12, 13, 14, 14
Tamil Nadu Shops and Establishments Act, 1947 — Section 41(2)

Citation : (2015) 316 ELT 578 : (2015) 177 PLR 380 : (2015) 1 RCR(Civil) 114

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Jagmohan Bansal, Advocates for the Appellant; Sunish Bindlish, Advocates for the Respondent

Judgement

Ajay Kumar Mittal, J.—In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order-in-appeal dated 27.11.2013 (Annexure P-14) passed by the Commissioner (Appeals) under Section 128 of the Customs Act, 1962 (in short "the 1962 Act") vide which respondent No. 4 had dismissed the application for condonation of delay as well as the main appeal. Put shortly, the facts, necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner imports Zinc ash and Zinc Skimming for manufacture of fertilizer used by the farmers for agriculture purposes. The respondents in respect of goods imported assessed all the consignments taking assessable value as 40% of the London Metal Exchange (LME) which was considered in case of material without metallic contents and in case of metallic contents, value was further loaded as per formula (Annexure P-1) laid down by the Commissioner of Customs, Nhava Sheva. Various importers filed CWP No. 6292 of 2010 before this Court against the parameters laid by the respondents.

This Court vide order dated 7.4.2010 (Annexure P-2) disposed of the writ petition and directed the Chief Commissioner, Central Excise and Customs to look into the matter and take a decision thereon in accordance with law. In pursuance of the order passed by this Court, the Chief Commissioner vide order dated 7.5.2010 (Annexure P-4) approved the formula. The Commissioner (Appeals) also upheld the application of formula. The Commissioner (Appeals) vide order dated 15.1.2010 (Annexure P-3) upheld the assessment order passed by the adjudicating authority. The importers filed CWP Nos. 9146-52 of 2010 for quashing of the assessment order dated 15.1.2010 (Annexure P-3) and order dated 7.4.2010 (Annexure P-4) passed by the Chief Commissioner. This Court vide order dated 1.12.2010 (Annexure P-5) while disapproving the formula, quashed the aforesaid orders (Annexures P-3 and P-4) and remanded the matter to the Assessing Officer to pass a fresh order in accordance with law. Thereafter, M/s. Gupta Agri Care (P) Ltd. imported a consignment after passing of order dated 1.12.2010 by this Court and filed bill of entry and declared assessable value to the tune of USD 1125 PMT. However, respondent No. 2 assessed the value of the consignment as USD 1217 PMT. M/s. Gupta Agri Care (P) Ltd. filed CWP No. 1773 of 2011 before this Court against the assessment order dated 10.1.2011 and this Court vide order dated 18.3.2011 (Annexure P-6) allowed the writ petition. The assessment order dated 10.1.2011 was quashed and the matter was remanded to the Assessing Officer for deciding the same afresh in accordance with law. After that, on imported consignments, bill of entry was assessed on transaction value (Annexure P-7). In January 2013, the respondent started making assessment on the basis of formula laid down by the Commissioner of Customs, Nhava Sheva. In April, 2013, one container of Zinc Skimming was imported by the petitioner from Metaenterprices Ltd., United Kingdom. The petitioner filed bill of entry No. 9983040 dated 29.4.2013 along with copy of quality certificate, commercial invoice and packing list. The respondent drew the samples and sent the same for test to the Central Revenue Control Laboratory (CRCL), New Delhi and received the report in the third week of May, 2013. The Customs House Agent of the petitioner visited the office of the respondent and he was shown the copy of the test report. As per the test report, total zinc contents were 70% and metallic contents were 8%. The petitioner declared the value of the goods as USD 605 PMT. It was asked to write on the bill of entry that goods be assessed as per formula. However, the respondent unofficially detained the consignment of the petitioner. The petitioner filed CWP No. 12322 of 2013 before this Court for release of consignment. During the pendency of the writ petition, the respondent issued a show cause notice dated 12.6.2013 (Annexure P-9) for assessing the value in terms of the formula. The petitioner filed a reply dated 22.6.2013 (Annexure P-10) to the said show cause notice. The adjudicating authority vide order dated 16.7.2013 (Annexure P-11) assessed the value applying the formula. However, the petitioner paid short duty amounting to Rs. 15,693/-. The petitioner filed amended writ petition seeking quashing of the order dated 16.7.2013 (Annexure P-11). Since the said order was appealable, this Court vide order dated 31.10.2013 (Annexure P-12) disposed of the writ petition and relegated the petitioner to the remedy of appeal. It was further observed that in case the appeal was barred by limitation, the application of the petitioner shall be considered sympathetically taking into consideration pendency of the writ petition and the appeal shall be decided on merits. The application for condonation of delay was directed to be decided within 15 days of its filing. Thereafter, the petitioner filed an appeal along with application for condonation of delay pleading for exclusion of time in terms of Section 14 of Limitation Act, 1963 (in short "the 1963 Act") before respondent No. 4 against the order dated 16.7.2013 (Annexure P-11). The Commissioner (Appeals) vide order dated 27.11.2013 (Annexure P-14) dismissed the application for condonation of delay as well as the main appeal. Hence, the present writ petition.

2. The following twin issues that arise for resolving the controversy raised herein are:-

(i) Whether the time spent in prosecuting litigation diligently and bona fide before the Commissioner (Appeals) under the 1962 Act is to be excluded under Section 14 of the 1963 Act while determining whether the appeal was within limitation or not?

(ii) Whether the Commissioner (Appeals) under the 1962 Act could be considered as ''Court'' within the meaning of Section 14 of 1963 Act.

3. Adverting to issue No. (i), Section 14 and relevant portion of Section 29(2) of the 1963 Act, necessary for the purpose of deciding the lis provide as follows:-

"14. Exclusion of time of proceeding bona fide in court without jurisdiction.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation. - For the purposes of this section,

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

"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."

4. The following conditions have to be satisfied for taking benefit of Section 14 of the 1963 Act:-

"(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court;

(6) The above conditions must co-exist."

5. Section 14 of 1963 Act is contained in Part III of the Act which provides for ''Exclusion of Time'' for computation of period of limitation. On a plain reading of Section 14 of the 1963 Act, it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity and it is required to be interpreted so as to advance the cause of justice rather than abort the proceedings. While applying this provision, it has to be kept in mind that an element of mistake is inherent in the invocation of Section 14 and it is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum.

6. Under Section 29(2) of the 1963 Act, Sections 4 to 24 (inclusive) shall apply

to the special statute only in so far as, and to the extent, they are not expressly excluded by such special or local law. If none of them are excluded, then in that situation all of them would be applicable. In our opinion, the language mentioned in Section 29(2) of the 1963 Act does not require that the special statute should expressly provide for exclusion of specific provision but it is to be gathered from the substance of the language mentioned in the statute whether the effect thereof is nothing but exclusionary. The Supreme Court in Union of India Vs. M/s Popular Construction Co., while analyzing Section 29(2) of the 1963 Act in view of its earlier decision in Hukumdev Narain Yadav Vs. Lalit Narain Mishra, had observed as under:-

"Apart from the language, ''express exclusion'' may follow from the scheme and object of the special or local law. "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 excluded their operation."

7. The 1962 Act is a Special Statute. Under Section 128(1) by the said Act, remedy of appeal has been provided as under:-

"128(1). Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

8. We have to see the scheme of the special law under the 1962 Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. The 1962 Act is an independent Act as from perusal of various chapters and sections thereof, it is clear that it provides for search, seizure, arrest, confiscation of goods, conveyance, imposition of penalties, settlement of cases, appeals including the appeal to the Supreme Court and hearing before the Supreme Court, period of limitation, offences and prosecution. Being a complete Code by itself, the nature of remedy provided therein would be governed by the said Act. If, on an examination of the relevant sections, it is clear that the provisions of the 1963 Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. As noticed above, wherever the special law does not exclude the provisions of Sections 4 to 24 of the 1963 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 1963 Act, therefore, to be judged not from the terms of the 1963 Act but by the provisions of the 1962 Act relating to filing of appeal. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying Section 14, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an appeal filed under Section 128 of the 1962 Act. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Neither there is any express provision nor by necessary implication, it could be concluded that applicability of Section 14 of 1963 Act to an appeal filed under Section 128 of the 1962 Act would stand excluded. Thus, having regard to the intention of the legislature, this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

9. The Division Bench of this Court in Vijay Brothers and Others Vs. Union of India (UOI) and Others, dealing with similar situation had held that Section 14 of 1963 Act was applicable to proceedings under Section 128 of the 1962 Act. It was recorded as under:-

"The provisions of Section 29 of the Limitation Act, 1963 are clear and also covered by the Authority of decision in Mangu Ram Vs. Municipal Corporation of Delhi, . According to it unless application of Section 14 of the said Act is expressly excluded by a special law, it shall be applied to the special law. The Supreme Court was of the view in the The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, , that there are three features in the scheme of Act which unmistakingly go to show that the legislature had deliberately excluded the application of Sections 5 and 14 of Limitation Act - (i) no limitation has been prescribed for suo motu exercise of its jurisdiction by the Revising Authority, (ii) Period of one year prescribed as limitation in filing revision application is unnecessarily long; and (iii) Revising Authority has no discretion to extend this period beyond a period of six months, even on sufficient cause.

The only point, therefore, for consideration is whether there is any thing in Section 128 of the Customs Act, 1962, which expressly excluded the applicability of Section 14 to it. The limitation of three months provided under the main part of Section 128 of the Customs Act, 1962 is the normal provision for an appeal. Neither it is extraordinary, nor can it be called as unusually a long period so as to make it unconscionable to think that the time taken by the party in seeking the same relief in good faith in a different forum has to be excluded. Nor is there any provision in the Customs Act, which enables a party to invoke the suo motu appellate powers. None of the three features which were pointed out in above said Supreme Court judgment are available in this case under Section 128 of

Customs Act, 1962 in order to come to the conclusion that the provision deliberately excluded applicability of Section 14 of the Limitation Act, 1963. Thus, Section 14 is applicable to the proceedings under Section 128 of the Customs Act, 1962."

10. The Supreme Court in State of Goa Vs. Western Builders, held that Section 14 of the 1963 Act is applicable to Section 34 of the Arbitration and Conciliation Act, 1996 as there is no specific prohibition and statute should be interpreted which advances the cause of justice. This view was reiterated by three Judges Bench of the Apex Court in Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, .

11. The judgments in Hukumdev Narain Yadav and Popular Construction''s cases (supra); Gopal Sardar Vs. Karuna Sardar, ; Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, ; Union of India v. Jagadish Prasad Jalan, 2012 ELT 525 (Cal.) (FB); M/s. Raj Chemicals Vs. Union of India and Others, and M/s. Kaizen Organics Pvt. Ltd. Vs. Union of India and Others, relied upon by learned counsel for the respondents are relating to applicability of Section 5 of 1963 Act. Section 5 of the 1963 Act falls under Part II relating to ''Extension of prescribed period in certain cases'' for limitation of suits, appeals and application. What proviso to Section 128 of 1962 Act contemplates is regarding extension of limitation in terms of Section 5 and does not relate to exclusion of time contemplated under Section 14 of 1963 Act. In our opinion, ''Exclusion of time'' for computation of period of limitation under Section 14 of 1963 Act is one thing and ''Extension of prescribed period in certain cases under Section 5 of 1963 Act is another. Two things cannot be equated as similar. Further, there is fundamental distinction between the discretion to be exercised under Section 5 of the 1963 Act and exclusion of the time provided in Section 14 of the said Act. The power to excuse delay and grant an extension of time under Section 5 is discretionary whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. Section 5 is broader in its sweep, than Section 14 in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Sections 5 and 14 are different. The effect of Section 14 is that in order to ascertain what is the date of expiration of the ''prescribed period'', the days spent in prosecuting the prior proceedings before wrong forum with due diligence, have to be added to what is primarily the period of limitation prescribed. There being distinction between applicability of provisions of Sections 5 and 14 of 1963 Act as they operate in different scenario, no advantage can be derived by learned counsel for the respondent from these pronouncements. Accordingly, issue No. (i) is held in favour of the petitioner.

12. Examining the issue whether the Commissioner (Appeals) would satisfy the test of being a ''Court'' within the meaning of Section 14 of the 1963 Act, it may be noticed that drawing support from the Constitution Bench judgments in The

Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, and Maqbool Hussain Vs. The State of Bombay, , the Supreme Court in P. Sarathy Vs. State Bank of India, had authoritatively pronounced that the Deputy Commissioner of Labour (Appeals) which was an authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals was a ''Court'' within the meaning of Section 14 of the 1963 Act and the proceedings before him were civil proceedings. It was observed as under:-

"15. Applying the above principles in the instant case, we are of the opinion that the Deputy Commissioner of Labour (Appeals), which was an Authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals, was a "court" within the meaning of Section 14 of the Limitation Act and the proceedings pending before him were civil proceedings. It is not disputed that the appellant could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time."

13. It was noticed as under:-

"It will be noticed that Section 14 of the Limitation Act does not speak of a "civil court" but speaks only of a "court". It is not necessary that the court spoken of in Section 14 should be a "civil court". Any Authority or Tribunal having the trappings of a court would be a "court" within the meaning of this Article."

14. Following the aforesaid pronouncement, Karnataka High Court in HMT Ltd. v. Commissioner of Customs, Chennai, 2009 (239) ELT 239 had expressed similar view.

15. Further, Single Judge of this Court in Pritam Kaur Vs. Sher Singh, had opined in the same manner as under:-

"...Thus, for all intents and purposes the Collector under the Act will be deemed to be the Court while deciding the dispute as contemplated under the Act. The Court contemplated under Section 14 of the Limitation Act does not necessarily mean the Civil Court under the Civil Procedure Code. Any Tribunal or Authority deciding the civil rights of the parties will be deemed to be a Court for that purpose. In Bhupendra Singh Vs. Thakur Gulab Singh, , it has been observed in para 9 thereof that the word ''Court'' used in that section must be construed liberally. The contention of the counsel in that case was that the Court of Wards was not a Court within the meaning of section 14 of the Act which was repelled. Similarly, in Bhupendra Singh Vs. Thakur Gulab Singh, , it was held that in the proceedings before the Arbitrator, he should, exclude the time spent in prosecuting in good faith, the same claim before another Arbitrator who was without jurisdiction. In that case Section 14 of the Limitation Act was being considered. In view of this pronouncement, I am of the considered view that the proceedings before the Collector will be deemed to be civil proceedings in a Court."

It was quoted with approval by the Supreme Court in P. Sarathy''s case (supra).

16. The legal position that emerges from the various pronouncements referred to above is that the provisions of the 1963 Act apply only to ''courts''. Such courts may not be civil courts. These courts may not necessarily be constituted under the Code of Civil Procedure or the Code of Criminal Procedure. The forum that functions as a court or has trappings of the court would be a court for the purposes of applicability of the 1963 Act. The jurisdiction to entertain proceedings, appeals or revisions under the special laws is sometimes given to the ordinary courts, and sometimes given to separate tribunals constituted under the special law. Such tribunals constituted under the special law which function as courts or having trappings of courts may be treated as courts for the purposes of the 1963 Act but not all bodies or authorities hearing appeals or revisions under special law, having no trappings of the court or which do not function as a court. The Commissioner (Appeals) hears appeals against the order of the authority lower in rank than him and is empowered to decide whether the order was valid or not. He is required to follow principles of natural justice before deciding the lis. The order passed by him is binding on the parties. The Commissioner (Appeals) may not be a civil court within the meaning of Civil Procedure Code but has trapping of a court and would be a court within the meaning of Section 14 of the 1963 Act.

17. Learned counsel for the respondent, inter alia, had referred to the judgments of various High Courts in Navinton Ltd. v. Union of India 2006 (205) ELT 71 (Bom.); Makjai Laboratories Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-II, ; Management of Messrs. Associated Industries Ltd. Vs. Bipin Behari Singh and Another, ; Jokkim Fernadez Vs. Amina Kunhi Umma, ; Ulahannan Chacko and Others Vs. Pareed Marakkar and Others, and Sheetal Enterprises Vs. Union of India (UOI) and Others, to contend that the Commissioner (Appeals) would not be ''court'' within the provisions of Section 14 of the 1963 Act. Suffice it to notice, in view of the authoritative and binding pronouncement of the Apex Court in P. Sarathy''s case (supra), the same would not come to the rescue of the respondents.

18. We now advert to the decision of Three Judges Bench of the Apex Court in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, on which main reliance was placed upon by learned counsel for the respondents. In M/s. Parson Tools and Plants'' case (supra), two assessment orders had been made under the provisions of U.P. Sales Tax Act, 1948. On May 10, 1963, the appeals filed against the same came up for hearing and the same were dismissed in default under Rule 68(5) of the U.P. Sales Tax Rules as no one

had appeared on behalf of the assessee. However, sub rule (6) of Rule 68 of that Rule provided for setting aside such dismissal and readmission of the appeal. Two applications were filed by the assessee for setting aside the dismissal on the same very day. Sub Rule (5) of Rule 68 was declared ultra vires by the High Court during the pendency of those applications whereby it was held that the appeals against the assessment orders cannot be dismissed in default by the appellate authority and it was bound to decide the lis on merits even though the appellant was absent. However, the appellate authority dismissed the applications on 20.10.1964 in view of Rule 68(5) of the UP Sales Tax Rules as Rule 68(5) was already declared ultra vires. It was thereafter that the assessee preferred revision petition on 16.12.1964 against the order of dismissal before the revisional authority which were belated more than 18 months from the date of dismissal of the appeals. Two applications for excluding the time spent in prosecuting the abortive proceedings under Rule 68(6) were also filed. The revisional authority after condoning the delay heard the revision petitions on merits holding to be within time. However, two references were made to the High Court for answering the questions. It was in these facts that the Supreme Court held the revisional jurisdiction under the UP Sales Tax Act barred the applicability of Sections 5 and 14 of the 1963 Act. It was held that the revisional authority under the U.P. Sales Tax Act was not a court and, therefore, the provisions of Sections 5 and 14 of the 1963 Act were not applicable.

19. The provisions of special statute would be required to be scanned for concluding whether a body, authority or Tribunal empowered to hear appeals or revisions would satisfy the test of being a court. The provisions of the 1962 Act being different in material and substance from U.P. Sales Tax Act, the judgment would not be of any benefit to the respondents. Subsequent three Judges Bench of the Supreme Court in M/s. Consolidated Engg. Enterprise''s case (supra) had also distinguished the said prouncement in M/s. Parson Tools and Plants'' case (supra) in the following terms:-

"15. The plea that in view of the decision rendered by three Judge Bench of this Court in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, the provisions of Section 14 of the Limitation Act should not be held to be applicable to an application filed under Section 34 of the Act, has no substance. The question determined in the Commissioner of Sales Tax, Uttar Pradesh (supra) was "whether under the circumstances of the case, Section 14 of the Limitation Act extended the period for filing of the revisions by the time during which the restoration application remained pending as being prosecuted bona fide. In the said case, Sales-Tax Officer had made two assessment orders. The assessee had filed appeals before the Appellate Authority. The appeals were dismissed in default as the assessee did not remain present on the specified date. The assessee filed two applications for setting aside such dismissal under Rule 68(6) of the U.P. Sales Tax Rules. During the pendency of the application a Single Judge of Allahabad High Court declared Rule 68(5) of the Rules ultra vires under which the appeals were dismissed for default. In view of the ruling of High

Court, the Appellate Authority dismissed the appeals. The assessee, therefore, filed two revision petitions. They were filed more than 18 months after the dismissal of the appeals. The revisions were accompanied by two applications in which the assessee had prayed for exclusion of time spent by him in presenting the aborting proceedings under Rule 68(6) for setting aside the dismissal of his appeals. The revisional authority excluded the time spent in those proceedings from computation of limitation by applying Section 14 of the Limitation Act. The High Court dismissed the Reference made on the motion of the Commissioner of Sales-Tax. In appeal, this Court held that (1) if the legislature in a special statute prescribes a certain period of limitation, then the Tribunal concerned has no jurisdiction to treat within limitation, an application, by excluding the time spent in prosecuting in good faith, on the analogy of Section 14(2) of the Limitation Act and (2) the Appellate Authority and Revisional Authority were not ''courts'' but were merely administrative Tribunals and, therefore, Section 14 of the Limitation Act did not, in terms, apply to the proceedings before such Tribunals. From the judgment of the Supreme Court in Commissioner of Sales Tax, U.P. (supra), it is evident that essentially what weighed with the Court in holding that Section 14 of the Limitation Act was not applicable, was that the Appellate Authority and Revisional Authority were not ''courts''. The stark features of the revisional powers pointed out by the court, showed that the legislature had deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act. Here in this case, the Court is not called upon to examine scope of revisional powers. The Court in this case is dealing with Section 34 of the Act which confers powers on the Court of the first instance to set aside an award rendered by an arbitrator, on specified grounds. It is not the case of the contractor that the forums before which the Government of India undertaking had initiated proceedings for setting aside the arbitral award are not ''courts''. In view of these glaring distinguishing features, this Court is of the opinion that the decision rendered in the case of Commissioner of Sales Tax, Uttar Pradesh, Lucknow (supra) did not decide the issue which falls for consideration of this Court and, therefore, the said decision cannot be construed to mean that the provisions of Section 14 of the Limitation Act are not applicable, to an application submitted under Section 34 of the Act of 1996."

20. The Division Bench of this Court in Vijay Brothers and others'' case (supra) had elaborately dealt with the judgment in M/s. Parson Tools and Plants''s case (supra) and after noticing the distinguishing features under the 1962 Act held that Section 14 of the 1963 Act was applicable.

21. Similarly decisions of the Apex Court in Smt. Ujjam Bai Vs. State of Uttar Pradesh, , Jagannath Prasad Vs. The State of Uttar Pradesh, , Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, , Smt. Sushila Devi Vs. Ramanandan Prasad and Others, , Sakuru Vs. Tanaji, , Birla Cement Works Vs. G.M., Western Railways, and another, , Prakash H. Jain Vs. Ms. Marie Fernandes, and Officer on Special Duty (Land Acquisition)

and Another Vs. Shah Manilal Chandulal and Others, on the basis of which support was sought to be gathered by learned counsel for the respondents are all relating to different statutes and, thus, do not advance his case. For the foregoing reasons, we are of the view that Section 14 of the 1963 Act is applicable to the proceedings under the 1962 Act in respect of an appeal provided under Section 128 and the time spent in the High Court in the abortive attempt to invoke its jurisdiction under Articles 226/227 of the Constitution will have to be excluded. After excluding the time in pursuing the litigation, the appeal filed before the Commissioner (Appeals) would be within the period of limitation. The bona fides of the petitioner in pursuing the remedy under Articles 226/227 of the Constitution was never in dispute. Accordingly, the writ petition is allowed and the impugned order dated 27.11.2013 (Annexure P-14) is set aside. The matter is remitted to the appellate authority who shall proceed to decide the appeal on merits in accordance with law.

