

(1990) 07 KL CK 0007
In the High Court Of Kerala
Case No : A. S. No. 129 of 1983

The Premier Cable Company Ltd.

APPELLANT

Vs

Govt. of India and others.

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Constitution of India, 1950 — Article 113, 226, 58

Citation : (1990) 2 KLJ 241

Hon'ble Judges : K. Sukumaran, J;G. Rajaseki Iaran, J

Bench : Division Bench

Advocate : E.R. Venkiteswaran, for the Appellant; N.N. Sugunapalan (Senior Central Govt. Standing Counsel), for the Respondent

Final Decision : Dismissed

Judgement

Sukumaran, J.—A question touching the law of limitation arises for decision in this appeal. In a sense, it has general application. Through many principles are settled in that area, nice, distinctions were sought to be made out on behalf of the appellant. Driven to the wall, the appellant had necessarily to take an extreme position; necessity is the mother of invention. The plaintiff lost its suit for a declaration that the levy of central excise was without the authority of law. The levy was made by an order dated 4-3-1975 and despatched to the plaintiff on 22-3-1975. In essence, the controversies centered round the inclusion of the cost of paper covering in the rectangular aluminum strips. The assessing authority in the order Exts. B1, took the view that duty was livable under item 27(b). According to the appellant, duty was imposable only under item No. 68 relating to rectangular aluminium conductors.

2. The levy was complained against in an appeal, filed belatedly on 10-1-1976. The appeal was rejected as barred by time. A revision suffered the same fate by order dated 19-3-1977 served on the plaintiff on 30-4-1977.

3. Soon thereafter the authorities hurried with the recovery steps. A demand for

payment made by letter Ext. A7 dated 25-5-1977 was resisted by the reply Ext. A4 dated 6-6-1977.

4. With a Damocles' sword of coercive recovery process hanging over its head, this Court's jurisdiction under Article 226 was invoked by the plaintiff by filing writ petition, O. P. No. 2711 of 1977. The writ petition was also dismissed. As the law stood at that time, the authorities had no power to condone the delay in filing the appeal or revision. Remedies indicated internally under the statute, and externally by the extraordinary jurisdiction of this Court under Article 226 of the Constitution were thus unavailable to the plaintiff.

5. The plaintiff then approached the civil court, by filing the suit in the sub court, Irinjalakuda on 14-7-1980. The court found the suit not maintainable in that court. The plaint was re-presented before the Sub Court, Parur.

6. The defendants, the Govt. of India, the Asst. Collector of Central Excise and the Supdt. of Central Excise, Alwaye, resisted the suit on various contentions including the one on limitation. The trial court found the levy to be erroneous and the suit to be maintainable, but barred by time.

7. The court below took the view that the period of limitation would start running from the date of the final order Ext. A3 dated 19-3-1977. According to the plaintiff, a cause of action arose only on 25-5-1977 when a demand was made for the difference in duty; The defendants contended that demand had been made even earlier on 15-5-1976 by the service of Ext. B5 order. According to the court below, the notice Ext. A7 dated 25-5-1977 had in turn referred to the earlier order Ext. B5. That was issued on 15-5-1976.

8. The court below took the view that the cause of action should be reckoned from the date of demand Ext B5 on 15-5-1976. The plaintiff could not pick and choose a date on which the right to sue had accrued-It applied Article 113 of the Limitation Act and non-suited the plaintiff. It is now clear that the relevant Article applicable to a suit of this nature is Article 58 of the Limitation Act, 1963. That article reads as follows :

Description of suit

Period of limitation

Time from which period begins to run

XX

58. To obtain any other declaration XX

XX

Three years XX

XX

When the right to sue first accrues.

XX

Article 113 relied on and

discussed by the

(emphasis supplied) court below reads:

Description of suit

period of limitation

Time from which period begins to run

113. Any suit for which no period of limitation is provided elsewhere in this Schedule.

Three years

When the right to sue accrues

The corresponding Article

120 of the Limitation Act, 1908 reads:

Description of suit

Period of limitation

Time from which period begins to run.

120. Suit for which no period of limitation is provided elsewhere in this Schedule

Six years

When the right to sue accrues.

9. Mark the difference in the two Articles. Article 120 in the 1908 Act, and Article 113 of the 1963 Act merely mention "when the right to sue accrues." Even then, that Article had received judicial interpretation, indicating that limitation would start from the date of the first accrual of the cause of action. (Vide *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, , *Maharajah of Pithapuram v. Venkataraju*, AIR 1949 Madras 542, and in particular, the sentence regarding:

It is undoubtedly true that if a trespass or a similar negation of a person's rights took place at a particular date and that trespass or denial of rights continued from the date, the date from which limitation runs is the date when that right was first denied or the trespass took place;

It is difficult to assume that Ext. B5 would not furnish a cause of action. That order had all the power and potency to invade the plaintiff's rights. Such an invasion can be treated as the sine qua non of cause of action. Doubtless, a cause of action arose on that date in that view of the matter. May be in the

scheme of a taxing statute like the Central Excise and Salt Act, 1944, further demands or reminders might arise, if there had been modification of the orders by the superior statutory authorities, or if there be non-payment after the original demand. Assuming that causes of action would arise on such occasions of renewed or further demands, that will not obliterate the fact that a cause of action had arisen when the demand had been first made.

10. The position undergoes a change, when, consequent upon a superior decision, the original order becomes merged in an appellate, revisional or other order. The first order disappears from the scene altogether. Only one is visible, namely the ultimate order. Only one cause of action is therefore positable, namely that which arose on the basis of the ultimate order. Limitation has to be computed from the date of the ultimate order, in all such cases where there is such a merger. This proposition is also now settled by the authoritative pronouncement of the Supreme Court. See *Raghubir Jha Vs. State of Bihar and Others*, .

11. What will be the position if an appeal is not entertained on the ground that it was barred? The theory of merger has obviously no application in such a situation according to the pronouncement of the Supreme Court in *S.S. Rathore Vs. State of Madhya Pradesh*, . Though it concerns a case of disciplinary proceedings, the principle has applicability in other situations too. As has been already noticed above, the statute itself, as it stood at the relevant time, did not contain even a power which would enable the authorities to condone the delay. There is therefore no possibility whatever of a merger, if an appeal is not filed within the time. Article 58 will get attracted with its emphasis on the date on which the cause of action first arose.

12. A more elaborate discussion is unnecessary in view of the detailed discussion and clear pronouncement of the Supreme Court in *S.S. Rathore Vs. State of Madhya Pradesh*, . In the light of the above discussion, we have necessarily to hold that the suit filed much beyond three years after the Service of Ext. B5 demand, was barred by time. The conclusion of the court below is therefore sustainable for the reasons indicated above. We therefore dismiss the appeal, but without any order as to costs.