

(2013) 09 OHC CK 0008
In the Orissa High Court
Case No : F.A.O. No. 207 of 2005

Union of India

APPELLANT

Vs

Ashok Kumar Sahoo

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2014) 2 ACC 88 : (2014) 2 ACC 524 : AIR 2014 Ori 46 : (2014) 117 CLT 356 : (2014) 1 ILR (Ori) 881 : (2013) 2 OLR 1020

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : Anindya Ku. Mishra, for the Appellant; S. Udgata, for the Respondent

Judgement

M.M. Das, J.

Misc. Case No. 239 of 2005

1. This is an application for condonation of delay in filing the present appeal by applying the provisions u/s 5 of the Limitation Act. The appeal has been preferred against an order dated 10.1.2005 passed by the Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar. Admittedly, there is a delay of 70 days in filing the appeal. The appeal has been preferred u/s 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as "the Act"). Section 23 of the Act provides as follows:

23. Appeals - (1) Save as provided in Sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.

(2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety

days from the date of the order appealed against.

2. An objection has been filed by the respondent to this misc. case petition wherein the explanation given for the delay by the appellant has been refuted inasmuch as it has been stated that Section 5 of the Limitation Act has no application to an appeal u/s 23 of the Act. It would be opt to refer to Section 17 of the Act which prescribes the power with the Claims Tribunal to condone the delay under Sub-section (2) thereof. Section 17 of the Act reads as follows:

17. Limitation - (1) The Claims Tribunal shall not admit an application for any claim -

(a) under sub-clause (i) of clause (a) of Sub-section (1) of Section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway.

(b) under sub-clause (ii) of clause (a) of Sub-section (1) or, as the case may be, Sub-section (1A) of Section 13 unless the application is made within one year of occurrence of the accident;

(c) under clause (b) of Sub-section (1) of Section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration.

3. Learned counsel for the respondent-opposite party in this misc. case petition relying upon the decision in the case of Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, submitted that in the said case, the Hon"ble Supreme Court while deciding a case u/s 35H(1) of the Central Excise Act, 1944 observed that as per the scheme of the Central Excise Act, Section 5 of the Limitation Act for condonation of delay in filing an application u/s 35H of the Act does not apply.

4. Mr. Mishra, learned counsel appearing for the appellant drew the attention of this Court to Section 29(2) of the Limitation Act which provides that 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 in so far as, and to the extent to which, they are not expressly excluded by such special or local law. u/s 23(3) of the Railway Claims Tribunal Act provides the period of limitation for preferring an appeal to be 90 days. Though no provision for condonation of delay is provided under the said section, in the absence of express exclusion of application of the Limitation Act, delay can be condoned by virtue of applicability of Section 5 of the Limitation Act in terms of Section 29(2) of the said Act. He further submitted that it would be an anomalous construction to exclude power of condonation of delay in filing an appeal as condonation is permissible in

preferring an original application u/s 17 of the Railway Claims Tribunal Act. It was contended by Mr. Mishra that applicability of Section 5 of the Limitation Act having not specifically excluded in the Act, the said provision will be applicable in case of an appeal preferred u/s 23 of the Act.

5. Examining, the scheme of the Act more specifically Section 18 thereof, it would be seen that the Tribunal is vested with certain powers of the Civil Court under the CPC. The Tribunal is also vested with power of review and to set aside an ex parte order respectively under Rule 19 and 32 of the Rules framed under the Act. Mr. Mishra, therefore, submitted that the Railway Claims Tribunal Act cannot be said to be a complete Code in itself with complete exclusion of application of the provisions of the Limitation Act and the Code of Civil Procedure.

6. In the decision cited by the respondent-opposite party in the case of the Commissioner of Customs and Central Excise (supra), the Supreme Court examining the scheme of the Central Excise Act came to the conclusion that the said Act is a complete code by itself (see paragraphs 15, 32, 33 and 35).

7. Considering the above submission, this Court finds that Section 35H of the Central Excise Act is neither in pari materia to Section 23 of the Railway Claims Tribunal Act nor the scheme of the Railway Claims Tribunal Act expressly excludes the application of the Limitation Act, the same being not a complete code by itself and there being no express exclusion of application of the Limitation Act.

8. In the case of Smt. Sarojini Mallick Vs. State of Orissa and Others, , this Court examining the scope of applicability of the provisions of Section 5 of the Limitation Act to a revision preferred u/s 12(2) of the Orissa Prevention of Land Encroachment Act, 1972 held that since, no doubt, no limitation is prescribed for a revision u/s 12(2) of the said Act, the only provision which can be made applicable for computing the period of limitation for filing of the revision under the said provision shall be the period as prescribed under the residual clause in Section 133 of the Limitation Act which prescribes the period of three years for all applications for which no specific provision is made under the Limitation Act or any Special Act. The above finding has been arrived at by taking into consideration the Section 13 of the said Act which provides the period of limitation in relation to an appeal.

9. In the instant case, it is found on analyzing the scheme of the Act that the provision u/s 17(2) of the Act has been made giving the jurisdiction to the Tribunal to entertain an application after the period specified under Sub-section (1) thereof on showing sufficient cause for not making the application within such period and there is no such provision in Section 23 in respect of an appeal preferred against an order of the Tribunal. In the absence of any specific provision excluding the applicability of the Limitation Act, this Court is of the view that Section 5 of the Limitation Act is applicable to an appeal preferred u/s 23 of the Railway Claims Tribunal Act. Now coming to the merit of the misc. case,

considering the grounds stated, I am of the view that delay in filing the appeal should be condoned subject to payment of cost. In the result, therefore, the delay in filing the FAO is condoned subject to payment of cost of Rs. 1000/- (Rupees one thousand) to the learned counsel for the respondent within a period of two weeks hence.

The misc. case is accordingly allowed.