(1980) 08 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 7 of 1975

Unitron Limited — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 27-08-1980

Acts Referred:

Contract Act, 1872 — Section 25
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Punjab General Sales Tax Act, 1948 — Section 20

Citation : (1982) 49 STC 34

Hon'ble Judges : M.R. Sharma, J;Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : H.L. Sibal and L.M. Suri, for the Appellant; Bhoop Singh, Additional Advocate-General, for the Respondent

Judgement

B.S. Dhillon, J.—A common question of law arises in General Sales Tax References Nos. 7, 8 and 9 of 1975; therefore, they are being disposed of by this common judgment.

2. The Sales Tax Tribunal, Haryana (hereinafter referred to as the Tribunal), has referred the following question of law in all the three above-mentioned references to this Court for its ppinion :

Whether, on the facts and circumstances of these cases, the provisions of Section 5 of the Limitation Act, 1963, are applicable to the proceedings before the Sales Tax Tribunal under the Punjab General Sales Tax Act, 1948 (now read with the Haryana General Sales Tax Act, 1973) ?

3. The facts are not in dispute. The assessment proceedings in all these cases were commenced and completed by the assessing authority under the provisions of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act).Section 20(4) of the Act provides that no appeal shall be entertained unless it is filed within sixty days from the date of communication of the order appealed against, or such longer period as the appellate authority may allow, for reasons

to be recorded in writing. The provisions of Sub-section (4) of sSection 20 of the Act were amended by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, wherein the power of the appellate authority to entertain appeal after the expiry of 60 days for reasons to be recorded in writing was taken away and it was provided that no appeal shall be entertained unless it is filed within 60 days from the date of the order appealed against.

4. When the second appeals were filed before the Tribunal, the same were filed beyond a period of 60 days. A plea was raised before the Tribunal that the provisions of the Limitation Act would be applicable to the appeals and that the delay in filing the appeal be condoned for the reasons given in the application for condonation of delay. The Tribunal came to the conclusion that the provisions of Section 5 of the Limitation Act, 1963, were not applicable to the proceedings in question before it, and, therefore, the Tribunal had no power to condone the delay. The appeals were thus dismissed as barred by limitation.

5. The provisions of Section 29 of the Limitation Act, 1963, are as follows:

29. (1) Nothing in this Act shall affectSection 25 of the Indian -Contract Act, 1872.

(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 inSections 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.

* * * * * * * * As is apparerit from a bare reading of the provisions of Sub-section (2), the provisions of Sections 4 to 24 (inclusive) of the Limitation Act, have been made applicable for purposes of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, but they shall not be applicable to the extent to which they are expressly excluded by such special or local law. As is clear, the provisions of Section 20(4) of the Act expressly excluded the provisions of the Limitation Act as regards appeal, but power to entertain appeal after the expiry of 60 days was given to the appellate authority in the said provision itself. It may be observed that whether the provisions of Sections 4 to 24 of the Limitation Act applied to the appeal under a special statute or not, will depend on the nature of the statute and if from the provisions of the concerned statute, it can be concluded that any of the provisions of Sections 4 to 24 of the Limitation Act were expressly excluded, they would not be applicable. In the present case, the statute itself gave power to the appellate authority to entertain an appeal after the expiry of 60 days for the reasons to be recorded in writing. In this situation, Mr. Sibal, the learned counsel for the assessee, conceded that the provisions of the Limitation Act for

condonation of delay in filing of the appeal would not be applicable in the present case.

6. The Tribunal after having recorded a finding that the provisions of the Limitation Act are not applicable, dismissed the appeals filed by the assessee as barred by limitation. The Tribunal was under an erroneous impression of law that the amended provisions of Sub-section (4) of Section 20 of the Act, as amended by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, would be applicable to the appeals. That is not the correct position in law. It is not disputed that the provisions of Sub-section (4) of Section 20 of the Act were not amended retrospectively. The amendment was prospective. It is well-settled that appeal is a vested right and in continuation of the original proceedings. Since the proceedings in the present case were initiated under the Act, as it stood then before the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967, was enacted and the assessing authority passed the orders under that very provision; therefore, the appeals against the assessment orders will be in continuation of the original proceedings, which proceedings were initiated and determined at first stage under the provisions of the Act before Sub-section (4) of Section 20 was amended in 1967. Reference in this connSection may be made to a Bench decision of this Court in Mohinder Singh v. Baldev Kaur [F. A. O. No. 79 of 1980 decided on 9th April 1980 (P & H)]. That being the position, the Tribunal had jurisdiction in view of the provisions of Section 20(4) of the Act, as it then stood, to condone the delay if the Tribunal was satisfied for the reasons to be recorded. As already observed, the Tribunal did not go into this question at all, holding that it had'' no power to condone the delay in filing the second appeals. In this view of the matter, holding that the provisions of Section 5 of the Limitation Act, 1963, are not applicable to the proceedings before the Tribunal in the facts and circumstances of the case, we send the case back to the Tribunal to consider the case of the assessee under the provisions of Sub-section (4) of Section 20 of the Act, as it then stood, before the amendment was effected by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967. We order accordingly. No costs.

