

Commissioner Of Sales Tax, U.P vs Madan Lal Dan & Sons, Bareilly on 22 September, 1976

Equivalent citations: 1977 AIR 523, 1977 SCR (1) 683, AIR 1977 SUPREME COURT 523, 1976 4 SCC 464, 1977 TAX. L. R. 1626, 1977 (1) SCR 683, 1976 8 STA 23, 38 STC 543, 1977 SCC (TAX) 27, 1977 UPTC 1, 1976 U J (SC) 935

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, N.L. Untwalia, Jaswant Singh

PETITIONER:
COMMISSIONER OF SALES TAX, U.P.

Vs.

RESPONDENT:
MADAN LAL DAN & SONS, BAREILLY

DATE OF JUDGMENT 22/09/1976

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
UNTWALIA, N.L.
SINGH, JASWANT

CITATION:
1977 AIR 523 1977 SCR (1) 683
1976 SCC (4) 464

ACT:
Limitation Act, 1963, S. 12(2), whether applicable to revision petitions filed under-section 10, U.P. Sales Tax Act--Time spent in obtaining second copy, of impugned order, whether to be excluded in computing limitation period for filing revision petitions.

HEADNOTE:
The Assistant Commissioner (Judicial) Sales Tax, Bareilly, disposed of the respondents' appeal made against an order of the Sales Tax Officer. A copy of the order was served on the respondent, but he lost it. Later, he obtained another copy and filed a revision petition under-section 10 of the U.P. Sales Tax Act. The same was opposed

as being time-barred, but the Judge (Revision) accepted the respondent's contention that ~~Section~~ 12(2) of the Limitation Act, he was entitled to exclude the time spent in obtaining the second copy of the order, while computing the limitation period. The question whether such exclusion was permissible, was referred to the High Court which answered in the affirmative.

The appellant contended that the U.P. Sales Tax Act itself provided for a specific period of limitation; and therefore ~~Limitation~~ Act was not applicable, and also that, a copy of the order was not required to be filed with the revision petition, and so the time spent in obtaining a second copy could not be excluded in computation of limitation.

Dismissing the appeal the Court,

HELD: (1) Where the copy served upon a party is lost and there is no alternative for that party except to apply for a fresh copy in order to be in a position to file revision petition, the time spent in obtaining that copy would necessarily have to be excluded ~~Section~~ 12(2) of the Limitation Act, 1963. State of Uttar Pradesh v. Maharaj Narain & Ors. [1968] 2 SCR. 842 followed. [688 B--C]

(2) The provision ~~Section~~ 12(2) of the Limitation Act would apply even though the copy mentioned in that Sub-section is not required to be filed alongwith the Memorandum of appeal. The same position should hold good in case of revision petitions even ~~Limitation~~ Act of 1963 came into force. 1686 B, D--687 FI

J.N. Surty v.T.S. Chettyar (55 IA 161), The Punjab Co-operative Bank Ltd., Lahore v. The Official Liquidators, the Punjab Cotton Press Co. Ltd. (1941) ILR 22 Lahore Series 191, MT. Lalitkuari v. Mahaprasad N. Singh (1947) ILR 26 Panta Series 157, Additional Collector of Customs, Calcutta & Anr. v. M/s. Best & Co. (AIR 1966 SC 1713) S.A. Gaffoor v. Ayesha Beghum & Ors. (C.A. 2406/1969 decided on 18-8-1970 Unreported Judgment of Supreme Court, 1970 Vol. 2, page 784) followed.

(3) For the purpose of determining any period of limitation prescribed for any application by any special or local law, the provisions contain ~~Section~~ 12(2), inter alia. shall apply in so far as, and to the extent to which they are not expressly excluded by such special or local law, and there is nothing in the U.P. Sales Tax Act expressly excluding the application ~~Section~~ 12(2) of the Limitation Act. [685 H, 686 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1726 of 1971. (Appeal by Special Leave from the Judgment and Order dated 20-4-1971 of the Allahabad High Court in Misc. Sales Tax Reference

No. 137 of 1970).12--1234SCI/76 S.C. Manchanda, M.V. Goswami and O.P. Rana, for the Appellants.

The Judgment of the Court was delivered by KHANNA, J. This is an appeal by special leave against the judgment of Allahabad High Court whereby the High Court answered the following question referred to it under section 11 (3) of the UP Sales Tax Act (hereinafter referred to as the Act) in favour of the dealer-respondent and against the revenue:

"Whether the time taken by the dealer in obtaining another copy of the impugned appellate order could be excluded for the purpose of limitation for filing revision under section 10 (1) of the UP Sales Tax Act when one copy of the appellate order was served upon the dealer under the provisions of the Act ?"

The matter relates to the assessment year 1960-61. An appeal filed by the respondent against the order of the Sales Tax Officer was disposed of by the Assistant Commissioner (Judicial) Sales Tax, Bareilly. The copy of the appellate order was served on the dealer respondent on August 2, 1965. The respondent, it appears, lost the copy of the appellate order which had been served upon him. On June 15, 1966 the respondent made an application for obtaining another copy of the above order. The copy was ready on August 17, 1967 and was delivered to the respondent on the following day, i.e. August 18, 1967. Revision under section 10 of the Act was thereafter filed by the respondent before the Judge (Revision) Sales Tax on September 9, 1967. Sub-section (3B) of section 10 of the Act prescribes the period of limitation for filing such a revision. According to that sub-section, such a revision application "shall be made within one year from the date of service of the order complained of but the Revising authority may on proof of sufficient cause entertain an application within a further period of six months." Question was then agitated before the Judge (Revision) as to whether the revision application was within time. The respondent claimed that under section 12(2) of the Limitation Act, he was entitled to excluded in computing the period of limitation for filing the revision, the time spent for obtaining a copy of the appellate order. This contention was accepted by the Judge (Revision). He also observed that the fact that the said copy was not required to be filed along with the revision petition would not stand in the way of the respondent relying upon section 12(2) of the Limitation Act. The Judge (Revision) thereafter dealt with the merits of the case and partly allowed the revision petition. At the instance of the Commissioner of Sales Tax, the question reproduced above was referred to the High Court. The High Court, as stated above, answered the question in favour of the respondent and in doing so placed reliance upon the provision of section 12(2) of the Limitation Act, 1963 (Act 36 of 1963) which reads as under:

"(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for ob-

taining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded."

It may be stated that the language of section 12(2) of the Act of 1963 is in variance with that of section 12(2) of the Indian Limitation Act, 1908 (Act 9 of 1908) so far as the applicability of section

12(2) is concerned in computing the period of limitation for filing revision application. Section 12(2) of the Indian Limitation Act, 1908 read as under:

"(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judg-

ment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded."

Bare perusal of sub-section (2) of section 12 of the Act of 1908 would show that it did not deal with the period of limitation prescribed for an application for revision. As against that, the language of sub-section (2) of section 12 of the Act of 1963 makes it manifest that its provisions would also apply in computing the period of limitation for application for revision. There can, therefore, be no manner of doubt that in a case like the present which is governed by the Act of 1963, the provisions of sub-section (2) of section 12 can be invoked for computing the period of limitation for the application for revision if the other necessary conditions are fulfilled. It is, however, contended by Mr. Manchanda that the UP Sales Tax Act constitutes a complete code in itself and as that Act prescribes the period of limitation for filing of revision petition, the High Court was in error in relying upon the provisions of sub-section (2) of section 12 of the Limitation Act, 1963. This contention, in our opinion, is wholly bereft of force.

Sub-section (2) of section 29 of the Limitation Act, 1963 reads as under:

"(2) Where any special or local law pre-

scribes 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." There can be no manner of doubt that the UP Sales Tax Act answers to the description of a special or local law. According to sub-section (2) of section 29 of the Limitation Act, reproduced above, for the purpose of determining any period of limitation prescribed for any application by any special or local law, the provisions contained in section 12(2), inter alia, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. There is nothing in the U.P Sales Tax Act expressly excluding the application of section 12(2) of the Limitation Act for determining the period of limitation prescribed for revision application. The conclusion would, therefore, follow that the provisions of section 12(2) of the Limitation Act of 1963 can be relied upon in computing the period of limitation prescribed for filing a revision petition under section 10 of the UP Sales Tax Act. It has been argued by Mr. Manchanda that it was not essential for the dealer-respondent to file a copy of the order of the Assistant Commissioner along with the revision petition. As such, according to the learned counsel, the dealer-respondent could not exclude the time spent in obtaining the copy. This contention is equally devoid of force. There

is nothing in the language of section 12(2) of the Limitation Act to justify the inference that the time spent for obtaining copy of the order sought to be revised can be excluded only if such a copy is required to be filed along with the revision application. All that section 12(2) states in this connection is that in computing the period of limitation for a revision, the time requisite for obtaining a copy of the order sought to be revised shall be excluded. It would be impermissible to read in section 12(2) a proviso that the time requisite for obtaining copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded only if such copy has to be filed along with the memorandum of appeal or application for leave to appeal or for revision or for review of judgment, when the legislature has not inserted such a proviso in section 12(2). It is also plain that without procuring copy of the order of the Assistant Commissioner the respondent and his legal adviser would not have been in a position to decide as to whether revision petition should be filed against that order and if so, what grounds should be taken in the revision petition.

The matter indeed is not *res integra*. In the case of *J.N. Surty v. T.S. Chettyar*(1), the Judicial Committee after noticing the conflict in the decisions of the High Courts held that section 12(2) of the Indian Limitation Act, 1908 applies even when by a rule of the High Court a memorandum of appeal need not be accompanied by a copy of the decree, Lord Phillimore speaking on behalf of the Judicial Committee observed:

"Their Lordships have now to return to the grammatical construction of the Act, and they find plain words directing that the time requisite for obtaining the two documents is to be excluded from computation. Sect. 12 makes no reference to the Code of Civil Procedure or to any other Act. It does not say when the time is to be excluded, but simply enacts it as a positive direction.

If, indeed, it could be shown that in some particular class of cases there could be no object in obtaining the two documents, an argument might be offered that no time could (1) 55 I.A. 161.

be requisite for obtaining something not requisite. But this, is not so. The decree may be complicated, and it may be open to draw it up in two different ways, and the practitioner may well want to see its form before attacking it by his memorandum of appeal. As to the judgment, no doubt when the case does not come from up country, the practitioner will have heard it delivered, but he may not carry all the points of a long judgment in his memory, and as Sir John Edge says, the Legislature may not wish him to hurry to make a decision till he has well considered it."

Following the above decision, it was held by a Full Bench consisting of five Judges of the Lahore High Court in the case of *The Punjab Co-operative Bank Ltd., Lahore v. The Official Liquidators, The Punjab Cotton Press Co. Ltd.* C) that even though under the Rules and Orders of the High Court no copy of the judgment is required to be filed along with the memorandum of appeal preferred under section 202 of the Indian Companies Act from an order of a single Judge, the provisions of section 12 of the Indian Limitation Act would be attracted. The provisions of section 12 were also held to govern an appeal under Letters Patent.

A Full Bench of the Patna High Court in the case of *Mt. Lalitkuari v. Mahaprasad N. Singh*(2) also held that the provisions of section 12 of the Limitation Act were applicable to Letters Patent appeals under clause 10 of the Letters Patent.

The above decision of the Judicial Committee was followed by this Court in the case of *Additional Collector of Customs, Calcutta & Anr. v. M/s. Best & Co.*(3) Similar view was expressed by this Court in the case of *S. A. Gaffoor v. Ayesha Beghum & Ors.*(4) It is plain that since 1928 when the Judicial Committee decided the case of *Surty* (supra), the view which has been consistently taken by the Courts in India is that the:

provisions of section 12(2) of the Limitation Act would apply even though the copy mentioned in that subsection is not required to be filed along with the memorandum of appeal. The same position should hold good in case of revision petitions ever since Limitation Act of 1963 came into force.

Lastly, it has been argued that the copy of the order of the Assistant Commissioner was served upon the respondent, and as such,; was not necessary for the respondent to apply for copy of the said order. In this respect we find that the copy which was served upon the respondent was lost by him. The loss of that copy necessitated the filing of an application for obtaining another copy of the order of the Assistant Commissioner.

(1) (1941) ILR 22 Lahore Series 191. (2) (1947) I.L.R. 26 Patna Series 157. A.I.R. 1966 S.C. 1713.

(4) CA No. 2406 of 1969 decided on August 18, 1970.

(See Unreported judgements of Supreme Court. 1970. Vol. 2. page 784).

In the case of *State of Uttar Pradesh v. Maharaj Narain & Ors.*(1) the appellant obtained three copies of the order appealed against by applying on three different dates for the copy. The appellant filed along with the memorandum of appeal that copy which had taken the maximum time for its preparation and sought to exclude such maximum time in computing the period of limitation for filing the appeal, This Court, while holding the appeal to be within time, observed that the expression time requisite in section 12(2) of the Limitation Act cannot be understood as the time absolutely necessary for obtaining the copy of the order and that what is deductible under section 12(2) is not the minimum time within which a copy of the order appealed against could have been obtained. If that be the position of law in a case where there was no allegation of the loss of any copy, a fortiori it would follow that where as in the present case the copy served upon a party is lost and there is no alternative for that party except to apply for a fresh copy in order to be in a position to file revision petition, the time spent in obtaining that copy would necessarily have to be excluded under section 12(2) of the Limitation Act, 1963.

The High Court, in our opinion, correctly answered the question referred to it in favour of the dealer-respondent and against the revenue. The appeal fails and is dismissed. As no one appeared on behalf of the respondent, we make no order as to costs.

M.R.
dismissed.
(1) [1968] 2 S.C.R. 842.

Appeal