M/S Patel Brothers vs State Of Assam And Ors on 4 January, 2017

Equivalent citations: AIR 2017 SUPREME COURT 383, 2017 (2) SCC 350, (2017) 1 PAT LJR 407, (2017) 2 KCCR 78, (2017) 1 MAD LW 920, AIR 2017 SC (CIVIL) 1218, (2017) 1 MAD LJ 871, (2017) 1 SCALE 302, (2017) 1 JLJR 289, (2017) 1 CAL HN 150, 2018 (127) ALR SOC 39 (SC)

Author: A.K. Sikri

Bench: Abhay Manohar Sapre, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 49-50 OF 2017
(ARISING OUT OF SLP (C) NOS. 21865-21872 OF 2016)

M/S PATEL BROTHERS	.....APPELLANT(S)	
VERSUS		
STATE OF ASSAM AND ORS.	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2. The question of law which has fallen for determination in these appeals is as to whether provisions of Section 5 of the Limitation Act, 1963 are applicable in respect of revision petition filed in the High Court under Section 81 of the Assam Value Added Tax Act, 2003 (hereinafter referred to as the 'VAT Act').

In order to decide this question, which is a pure question of law, it is not necessary to state the facts in greater detail. The seminal facts which require reproduction are mentioned below:

> The appellant was running a business of purchasing tea and is a registered dealer under the Assam General Sales Tax Act, 1993 as well as the VAT Act and the Central Sales Tax Act, 1956. Based on the sales of his business, the appellant had submitted

the declaration in Form 'C' for the years 1998-1999, 1999-2000, 2000-2001 and 2001-2002 reflecting the value of sales. Based on the representation made by the appellant, Respondent No. 2/Superintendent of Tax allowed full exemption of sales tax as per Section 8(5) of Central Sales Tax Act, 1956. But, the information given by the appellant turned out to be false and as a result of which Respondent No. 2 passed an order dated 29.06.2004 reducing the exemption granted to the petitioner for the year 19998-99 along with imposing penalty. Similar orders of re-assessment were passed in respect of the other assessment years giving rise to the connected proceedings. Aggrieved by the order dated, 29.06.2004, the appellant preferred appeals before Respondent No. 3/Appellate Authority along with applications for the stay of the demand. By order dated 29.07.2005, Respondent No. 3 had directed the appellant to deposit 25% of the demanded dues within 30 days and stayed rest of the demand. The appellant preferred appeals before the Assam Board of Revenue/Appellate Tribunal against the order dated 29.07.2005, which was dismissed by the order dated 26.08.2008. A review application filed against the aforesaid order came to be dismissed by the Appellate Tribunal by the order dated 27.08.2013. Aggrieved, appellant filed Revision Petitions under section 81(1) of the VAT Act.

Section 81 of the VAT Act also prescribes a limitation period of 60 days within which such revision petition is to be preferred to High Court. Since there was a delay of 335 days in filing these revision petitions, these petitions were filed along with applications under Section 5 of the Limitation Act, 1963, seeking condonation of delay. The High Court has dismissed the applications for condonation of delay holding that provisions of Section 5 of the Limitation Act, 1963 are not applicable. For this purpose, the High Court has referred to Section 84 of the VAT Act which makes provisions of Sections 4 and 12 of the Limitation Act, 1963 to such petitions. On that basis, it is held by the High Court that since only Sections 4 and 12 of the Limitation Act, 1963 are made specifically applicable to these proceedings, by necessary implication Section 5 of the Limitation Act stands excluded.

It was argued by Mr. Chowdhury, learned counsel appearing for the appellant, that the approach of the High Court in dealing with the provisions of VAT Act and applicability of Limitation Act, 1963 to such proceedings was faulty inasmuch as the High Court did not take note of and discussed other provisions of the VAT Act and also failed to give due weightage to Section 29(2) of the Limitation Act, 1963.

In the first instance, he referred to Section 79 of the VAT Act which is a provision relating to appeals to the Appellate Authority. As per Section 79(1) of the VAT Act, appeal against the order of the taxing authority can be filed with the appellate authority within 60 days from the date of receipt of such order of the taxing authority. Sub- section (2) of Section 79 of the VAT Act empowers the appellate authority to entertain the appeal even beyond 60 days, provided it is presented within a further period of 180 days, if the appellate authority is satisfied that the

appellant was prevented by sufficient cause from presenting the appeal within the stipulated period of 60 days[1].

The learned counsel next referred to Section 80 of the VAT Act[2] which deals with appeals to the Appellate Tribunal inter alia against the orders of the Appellate Authority. Here also, period of 60 days for preferring such an appeal is provided under sub-section (3) of Section 80 of the VAT Act and proviso to sub-section (3) empowers the Appellate Tribunal to condone the delay, if the appeal is preferred within a further period of 120 days, on sufficient cause being shown for not filing the appeal within 60 days of limitation prescribed. The learned counsel contrasted the aforesaid provisions of Sections 79 and 80 with Section 81[3] of the VAT Act and pointed out that whereas there was specific provision for condonation of delay in filing appeals under Sections 79 and 80 of the VAT Act, no such equivalent provision was made in Section 81 of the VAT Act. As per Section 81 of the VAT Act, revision can be preferred to the High Court against the order of the Appellate Tribunal within 60 days. However, there is no provision giving specific power to the High Court to condone the delay if the revision is preferred beyond 60 days. As per the learned counsel, the reason for not providing such a provision was that provisions of Limitation Act, 1963 including Section 5 thereof were applicable.

Insofar as Section 84 of the VAT Act[4] is concerned, it was submitted that Sections 4 and 12 of the Limitation Act, 1963 were made applicable for specific purpose of computing the period of limitation under the said Chapter and High Court committed a grave error while holding that because of the aforesaid provision only Sections 4 and 12 of the Limitation Act, 1963 were made applicable to the VAT Act thereby excluding other provisions of the Act.

For this purpose, the learned counsel relied upon Section 29(2) of the Limitation Act, 1963[5] which makes provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act, 1963 applicable in case of suit, appeal or application under any special or local law, where these provisions are not expressly excluded by such special or local law.

It was argued that in the absence of any provision expressly excluding the applicability of Sections 4 to 24 of the Limitation Act, 1963, those Sections were applicable qua revision petitions filed under Section 81 of the VAT Act and, therefore, Section 5 of the Limitation Act, 1963 was also applicable to such proceedings. To placate his aforesaid submissions, the learned counsel relied upon the judgment of this Court in the case of Mangu Ram v. Municipal Corporation of Delhi & Anr.[6]. In that case, special leave petitions were filed against the condonation of delay to the application for grant of special leave under Section 417, Cr.P.C., 1898 against acquittal of the petitioners by the trial court, in spite of the mandatory period of limitation provided in sub-section (4) of Section 417. Question arose whether in the case of Kaushalya Rani v. Gopal Singh[7], which held Section 417, Cr.P.C., 1898 a special law and excluded application of Section 5 on a construction of Section 29(2)(b) of the old Act of 1908 applied under the corresponding provision of Limitation Act, 1963 which governed the case. The Court held that since the case was governed by Limitation Act, 1963, judgment in Kaushalya Rani case did not apply. For applicability of the Limitation Act, 1963 to such

proceedings, the Court referred to Section 29(2) of the Limitation Act, 1963 holding that there is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2), is concerned. Under the Indian Limitation Act, 1908, clause (b) to sub- section (2) of Section 29 provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the application of Section 5 was in clear and specific terms excluded. But under Section 29(2) of Act, the provisions of Section 5 shall apply in case of special or local law to the extent to which they are not expressly excluded by such special or local law. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29 (2), it is only if the special or local law expressly excludes the applicability of Section 5 that it would stand displaced. The Court held that there is nothing in Section 417(4), Cr.P.C., which excludes the application of Section 5 of Limitation Act, 1963.

Learned counsel for the appellant also referred to the case of State of Madhya Pradesh & Anr. v. Anshuman Shukla[8]. In that case, question of applicability of Section 5 of the Limitation Act arose in relation to revision petition that can be preferred under Section 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (as it stood prior to its amendment in 2005). The Court held that since unamended Section 19 did not contain any express rider on power of the High Court to entertain applications for revision after expiry of prescribed limitation thereunder, provisions of Limitation Act, 1963 would become applicable vide Section 29(2) thereof. It further held that as the High Court was conferred with suo moto power under Section 19 of Adhiniyam, 1983 to call for record of an award at any time, there was no legislative intent to exclude the applicability of Section 5 of the Limitation Act, 1963.

Mr. Nalin Kohli, learned senior counsel appearing for the respondents, on the other hand, submitted that the High Court had exhaustively dealt with the issue and rightly found that since Section 84 of the VAT Act confined the applicability of Limitation Act only in respect of Sections 4 and 12 thereof to the proceedings under the said Chapter, by necessary implication the other provisions of the Limitation Act, 1963 including Section 5 thereof stood excluded. He submitted that for the purpose of finding whether other provisions are excluded or not, the focus should be on the scheme of the special law as laid down in Hukumdev Narain Yadav v. Lalit Narain Mishra[9] wherein it was held that even if there exists no express exclusion in the special law, the Court has right to examine the provisions of the special law to arrive at a conclusion as to whether the legislative intent was to exclude the operation of the Limitation Act. According to him, Section 84 of the VAT Act clearly depicted such a legislative intent.

After examining the matter in the light of law laid down in various judgments cited by both the parties, we are of the view that the High Court has given correct interpretation to the provisions of Section 81 of the VAT Act, when this provision is read along with Section 84 thereof.

In the case of Commissioner of Customs and Central Excise v. Hongo India Private Limited & Anr.[10], the question that fell for determination was that as to whether the High Court had power to condone the delay in presentation of the reference application under unamended Section 35-H(1) of the Central Excise Act, 1994 beyond the period prescribed by applying Section 5 of the Limitation Act. Unamended Section 35-H dealt with reference application to the High Court. Under sub-section

(1) thereof, such reference application could be preferred within a period of 180 days of the date upon which the aggrieved party is served with notice of an order under Section 35-C of the Central Excise Act. There was no provision to extend the period of limitation for filing the application to the High Court beyond the said period and to condone the delay. Pertinently, under the scheme of the Central Excise Act as well, in case of appeal to the Commissioner under Section 35 of the Act, which should be filed within 60 days, there was a specific provision for condonation of delay upto 30 days if sufficient cause is shown. Likewise, appeal to the Appellate Tribunal could be filed within 90 days under Section 35-B thereof and sub-section (5) of Section 35-B gave power to the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Further, Section 35-EE provided 90 days time for filing revision by the Central Government and proviso thereto empowers the revisional authority to condone the delay for a further period of 90 days. However, when it came to making reference to the High Court under Section 35-G of the Act, the provision only prescribed the limitation period of 180 days with no further clause empowering the High Court to condone the delay beyond the said period of 180 days. It was, thus, in almost similar circumstances, the judgment was rendered by this Court. The categorical opinion of the Court was that in the absence of any such power, the High Court did not have power to condone the delay. In that case also, provisions of Section 29(2) of the Limitation Act, 1963 were pressed into service. But this argument was rejected in the following manner:

30. In the earlier part of our order, we have adverted to Chapter VI- A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

31. In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd. [(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following Singh Enterprises v. CCE [(2008) 3 SCC 70] concluded that: (Punjab Fibres Ltd. case [(2008) 3 SCC 73] , SCC p. 75, para 8) "8. ... the High Court was justified in holding that there was no power for condonation of delay in filing reference application."

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section

5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision." In the process, the Court also explained the expression 'expressly excluded' appearing in Section 29(2) of the Limitation Act, 1963 in the following manner:

> "34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.
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> 35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that 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 exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court." The aforesaid judgment is a complete answer to the arguments of the appellant.

It may be relevant to mention here that after the judgment in Hongo India Private Limited & Anr., Section 35-H of the Central Excise Act, 1994 was amended by the Parliament by Act 32 of 2003 with effect from 14.05.2003 giving power to the High Court to condone the delay by inserting sub-section (2A). It is, therefore, for the legislature to set right the deficiency, if it intends to give power to the High Court to condone the delay in filing revision petition under Section 81 of the VAT Act.

Argument predicated on 'no express exclusion' loses its force having regard to the principle of law enshrined in Hukumdev Narain Yadav. Therein, the Court made following observations while

examining whether the Limitation Act would be applicable to the provisions of the Representation of the People Act or not:

> "17. ... but what we have to see is whether the scheme of the special law, that is in this case the Act, and 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. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, 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 exclude their operation." Thus, the approach which is to be adopted by the Court in such cases is to examine the provisions of special law to arrive at a conclusion as to whether there was legislative intent to exclude the operation of Limitation Act. In the instant case, we find that Section 84 of the VAT Act made only Sections 4 and 12 of the Limitation Act applicable to the proceedings under the VAT Act. The apparent legislative intent, which can be clearly evinced, is to exclude other provisions, including Section 5 of the Limitation Act. Section 29(2) stipulates that in the absence of any express provision in a special law, provisions of Sections 4 to 24 of the Limitation Act would apply. If the intention of the legislature was to make Section 5, or for that matter, other provisions of the Limitation Act applicable to the proceedings under the VAT Act, there was no necessity to make specific provision like Section 84 thereby making only Sections 4 and 12 of the Limitation Act applicable to such proceedings, inasmuch as these two Sections would also have become applicable by virtue of Section 29(2) of the Limitation Act. It is, thus, clear that the Legislature intended only Sections 4 and 12 of the Limitation Act, out of Sections 4 to 24 of the said Act, applicable under the VAT Act thereby excluding the applicability of the other provisions.

Judgment in the case of Mangu Ram would not come to the aid of the appellant as the Court found that there was no provision under the Cr.P.C. from which legislative intent to exclude Section 5 of the Limitation Act could be discerned and, therefore, Section 29(2) of the Limitation Act was taken aid of. Similar situation prevailed in Anshuman Shukla's case. On the contrary, in the instant case, a scrutiny of the scheme of VAT Act goes to show that it is a complete code not only laying down the forum but also prescribing the time limit within which each forum would be competent to entertain the appeal or revision. The underlying object of the Act appears to be not only to shorten the length of the proceedings initiated under the different provisions contained therein, but also to ensure finality of the decision made there under. The fact that the period of limitation described therein has been equally made applicable to the assessee as well as the revenue lends ample credence to such a conclusion. We, therefore, unhesitantly hold that the application of Section 5 of the Limitation Act, 1963 to a proceeding under Section 81(1) of the VAT Act stands excluded by necessary implication, by virtue of the language employed in section 84.

The High Court has rightly pointed out the well settled principle of law that "the court cannot interpret the statute the way they have developed the common law 'which in a constitutional sense means judicially developed equity'. In abrogating or modifying a rule of the common law the court exercises the same power of creation that built up the common law through its existence by the judges of the past. The court can exercise no such power in respect of statue, therefore, in the task of interpreting and applying a statue, Judges have to be conscious that in the end the statue is the master not the servant of the judgment and no judge has a choice between implementing it and disobeying it." What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications.

We, thus, do not find any infirmity in the judgment rendered by the High Court. The present appeals are devoid of any merit and are, accordingly, dismissed.

.....J. (A.K. SIKRI) .....J. (ABHAY MANOHAR SAPRE) NEW DELHI;

JANUARY 04, 2017.

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[1] Relevant portion of Section 79 of the VAT Act reads as under: "79. Appeals to the appellate authority: (1) Any person aggrieved by an order passed under the Act by a taxing authority lower in rank than a Deputy Commissioner of Taxes, may appeal to the Appellate Authority, in the manner as may be prescribed, within sixty days from the date of receipt of such order.

(2) Where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, it may admit an appeal after the expiry of the said period provided it is presented within a further period of one hundred eighty days" [2] 80. Appeals to the Appellate Tribunal: (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order,-

(a) an order passed by the Appellate Authority under Section 79, and

(b) an order passed by an authority not below the rank of Deputy Commissioner of Taxes.

(2) omitted.

(3) Every appeal under sub-section (1) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the person;

Provided that the Appellate tribunal may admit an appeal after the expiry of sixty days if he is satisfied that the Appellant had sufficient reasons for not filing the appeal within the aforesaid time,

if, it is within a further period of one hundred twenty days.

[3] “81. Revision to High Court : (1) Any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within sixty days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court, and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings.” [4] Section 84 of the VAT Act reads as under: “84. Application of Section 4 and 12 of Limitation Act, 1963 : In computing the period of limitation under this chapter, the provisions of Section 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.” [5] Section 29(2) of the Limitation Act, 1963 reads as under: “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 ?