

Amritsar Sugar Mill Co. Ltd. vs Commissioner, Sales Tax on 6 February, 1952

Equivalent citations: AIR1952ALL816, AIR 1952 ALLAHABAD 816

JUDGMENT

Wali Ullah, J.

1. This is an application under Section 11 (2) (b), U. P. Sales Tax Act (Act XV [15] of 1948). This application was filed on 1-2-1932. Under Section 11 (2) of the Act it was necessary to file this application within 30 days of the refusal by the revising authority, i.e., Judge (Revision) to refer to the High Court any question of law. There is a report by the Stamp Reporter of the Court that the application is beyond limitation by 16 days. On the other hand, it is contended by learned counsel for the applicant that if the time required for obtaining a copy of the order refusing to state a case be taken into account, the application made must be held to be within time.

2. The question which we have to decide is whether the benefit of Section 12, Limitation' Act is available to the applicant in this case. It is clear that there is no provision in regard to this matter contained in the Sales Tax Act. All that it lays down is that such an application, as this must be made within " thirty days of such refusal. " Learned counsel has, however, contended that the general provision contained in the Limitation Act--Section 29 (2) (a)--read in the light of the provisions of the U. P. Sales Tax Act would entitle the applicant to the benefit of the provisions of Section 12, Limitation Act. The argument is that, there being no specific provision contained in the U. P. Sales Tax Act itself--which is a special law as also a local law--the benefit of the provisions of Section 12 which allows exclusion of time requisite for obtaining a copy of the order is available to the applicant and this, according to learned counsel, is clearly permissible by reason of the provisions of Section 29 (2) (a), Limitation Act. The question whether the general provisions of the Limitation Act can be applied to a special law or a local law has been decided by a Pull Bench of this Court in the case of Dropadi v. Hira Lal, 34 ALL. 496. In that case the Full Bench was concerned with the Provincial Insolvency Act. It was held that:

"The Provincial Insolvency Act is a special law within the meaning of Section 29, Limitation Act, but, inasmuch as it is not in itself a complete Code, there is nothing to prevent the application thereto of the general provisions of the Indian Limitation Act, Such general provisions do not 'affect or alter' the period prescribed by a special law, but only the manner in which that period is to be computed."

3. Learned counsel has invited our attention to the decision of a Bench of two learned Judges of this Court to which one of us was a party in the case of Badha Kishan Bhagwan Din v. Commr. of Sales-tax, Uttar Pradesh, Lucknow, 1951 ALL L. J. 681, where it was made clear that a copy of the

order refusing to state a case must be filed along with the application to this Court under Section 11 (2) (b) of the Act. In view of this decision, it is clear that it was necessary for the applicant to file a certified copy of the order of the Judge (Revision) by which he refused to state a case to this Court.

4. In support of his argument, learned counsel has invited our attention to the fact that in cases arising out of the refusal of the Income-tax Appellate Tribunal to state a case to the High Court the assessee has a right to apply to the High Court under Section 66 (2), Income-tax Act within six months from the date on which he is served with a notice of refusal to state a case. The Income-tax Act prior to the amendment made by Act XXII [22] of 1930 and Act XVIII [18] of 1933 did not contain any specific provision with regard to the computation of period of limitation, nor was there any provision by which the benefit of Section 12, Limitation Act could be available to an application made to the High Court by the assessee. In spite of this fact, however, it was held that owing to the provisions contained in Section 29, Limitation Act benefit of Section 12, Limitation Act was available to the assessee in making his application or appeal, to the High Court.

5. Learned counsel has placed before us a bench decision of the Patna High Court in the case of Mohan Lal Hardeo Das v. Commr. of Income-tax, Bihar & Orissa, A. I. R. 1930 pat. 14, where it was held that:

"On general principles and in view of S, 29, Limitation Act, the period required for obtaining the copies of the order under Section 31 or 32 of the Act shall be excluded in computing the period of limitation for an application for reference by an assessee under Section 66 (2) and (3)."

It was further held that :

"The general provisions of Limitation Act are founded mainly on equitable considerations which apply as much to the period of limitation prescribed by the special Act, as to period of limitation prescribed by the Limitation Act itself."

The learned Judges followed the Full Bench decision of our Court in the case of Dropadi v. Hira Lal, 34 ALL. 496.

6. In view of what has gone before, it is in our view only just and equitable that the benefit of Section 12, Limitation Act should be available to an applicant of the present character. We are, therefore, clearly of opinion that by reason of the provisions of Section 29, Limitation Act an applicant under Section 11 (2) (b) of the Act must have the benefit of the provisions contained in Section 12, Limitation Act, i.e., that the time requisite for obtaining a copy of the order which is necessary to be filed along with his application must be excluded in computing the period of limitation.

7. We accordingly hold that this application is within time.