

Simbhaoli Sugar Mills Co. Ltd. vs Commissioner Of Sales Tax, U.P., ... on 6 April, 1953

Equivalent citations: AIR1953ALL558, AIR 1953 ALLAHABAD 558

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is an application under section 11(2) (b) of the U. P. Sales Tax Act (No. XV of 1048). The order of the Judge (Revisions) Sales Tax, U. P. was passed on 29-11-1950. The applicant then made an application under Section 11 that certain questions may be referred to this Court for decision. This application was dismissed by the Judge (Revisions) Sales Tax, U. P. on 20-8-1951. The office made a report that the application was beyond time and that it should have been filed by 19-9-1951. This office report was made on two grounds: firstly, that there was no provision in the U. P. Sales Tax Act for exclusion of the time taken in obtaining copies of the relevant orders and, secondly, that the application should have been filed within thirty days of the order of the Revising Authority refusing to refer a case to this Court and not within thirty days from the date of the service of the notice of such order. The applicant had claimed that the notice of the order was served on the applicant on 14-9-1951.

Though the applicant contended that his application was not barred by limitation, to be on the safe side, he filed an application under Section 5 of the Limitation Act also. Notice of this application was issued and we had the case listed before us so that both the questions of law which appear from the office report may be heard and decided in the presence of counsel for the parties. No one has appeared on behalf of the State and, after hearing Mr. Mittal, learned counsel for the applicant, we have come to the conclusion that an application under Section 11(2) (b) has to be made within thirty days of the order of the Revising Authority refusing to refer a case to this Court and not within thirty days from the date of the service of notice of such order. Section 11(2)(b) of the Act is as follows:

"11(2) If, for reasons to be recorded in writing, the Revising Authority refuses to make such reference, the applicant may, within thirty days of such refusal, either -

(a)

(b) apply to the High Court against such refusal."

Learned counsel has urged that "within thirty days of such refusal" must mean within thirty days of the knowledge of such refusal. We are afraid we cannot accept this contention. Within thirty days of such refusal must mean within thirty days of the date when the Revising Authority had refused to make the reference. A perusal of Section 66(1) of the Indian Income-tax

Act would make the point abundantly clear. In Section 66(1), Income-tax Act the applicant has to apply for a reference within sixty days of the date upon which he is served with notice of an order under Sub-section (4) of Section 33 to the Appellate Tribunal and if the Tribunal refuses to make a reference then under Section 66(2) he can apply for a reference within six months "from the date on which he is served with notice of the refusal."

If the Legislature had intended that thirty days under Section 11(2) of the U. P. Sales Tax Act should count from the date of the service of notice of such refusal then they would have said so. In view of the clear language of Section 11(2)(b) we cannot hold that the application should be made within thirty days of the date of receipt of notice of the refusal and not within thirty days of the date of refusal,

2. On the other point, as to whether the time taken in filing the requisite copies should or should not be excluded, there is a Division Bench ruling of this Court in -- 'Amritsar Sugar Mill Co. Ltd., v. Commr. Sales Tax, U. P., Lucknow', AIR 1952 All 816 (A). We are bound by that decision and it is, therefore, not necessary to go into this question further. If the time taken in filing the requisite copies are included in the computation of the period then the application would be within time. We, therefore, hold that the application was within time and direct that notice of the application be issued to the other side.