
(2003) 2 RLW 915 : (2002) 3 WLN 545

Rajasthan High Court

Case No: Civil Revision Petition No. 249 of 2002

P.S. Metal and Tubes
(P) Ltd.

APPELLANT

Vs

State of Rajasthan and
Others

RESPONDENT

Date of Decision: March 21, 2002

Acts Referred:

- Rajasthan Sales and Purchase Tax Act, 1994 - Section 86

Citation: (2003) 2 RLW 915 : (2002) 3 WLN 545

Hon'ble Judges: B.S. Chauhan, J

Bench: Single Bench

Advocate: Vineet Kothari, for the Appellant;

Final Decision: Dismissed

Judgement

Chauhan, J.

The instant revision has been filed against the order dated 31.8.2001 (Annex.5), by which the appeal against the order dated 6.8.97 rejecting the application of the petitioner-assessee by the District Level Scrutiny Committee (for short, "DLSC") for exemption of sales tax on the ground of being filed at a belated stage, has been rejected by the Rajasthan Tax Board.

2. The facts and circumstances giving rise to this case are that petitioner established a new industry and on 31.5.97 he applied, in a prescribed form (Annex.3), for the benefit under the Sales Tax incentive Scheme, 1989 (Annex.2) (hereinafter called "the Scheme"), which provided for exemption of tax etc. on fulfilling certain conditions in case the eligibility certificate is granted under Para 5 thereof. In Column 8 thereof, the date of commencement of commercial production was mentioned as 4.8.96. The said application had been rejected by the DLSC- the Competent Committee constituted under the said Scheme- vide order dated 6.8.97 (Annex.4) being time barred as it could have been filed

only within the period of 180 days from the date of commencement of commercial production in terms of the said scheme. Being aggrieved and dissatisfied, petitioner filed an appeal, which has been dismissed by the Tax Board vide impugned judgment and order dated 31.8.2001. Hence, this revision.

3. Mr. Vineet Kothari, learned counsel for the petitioner has submitted that there had been some error etc. and petitioner, while submitting the application for grant of benefit of the scheme, had mentioned that the commercial production started from 4.8.96 though it was not correct and the actual date of commencement of the commercial production was 2.10.96. Petitioner's application stood rejected by the DLSC being time barred, vide order dt.6.8.97, without giving any opportunity of hearing to him and the appellate Board has not considered the matter in correct perspective, therefore, the case requires interference by this Court in exercise of its revisional powers.

4. The facts are not in dispute. Petitioner, while submitting the application, had mentioned that commercial production commenced on 4.8.96. Subsequently, it got amended by him from the Competent Authority though not submitted to the DLSC that the commercial production started from 2.10.96 for the reason that the certificate by the district Industrial Centra, Rajsamand, making that correction, was issued on 29.11.97, though the application had already been rejected by the DLSC on 6.8.97. Even if it is assumed that the commercial production started from 2.10.96, limitation for submitting the application under Para 5(b) of the Scheme was 180 days from the date of commencement of commercial production. However, it provided that the application could be entertained beyond the said limitation on "sufficient grounds" by the competent authority.

5. Even if the commercial production started on 2.10.96, the limitation, i.e. 180 days, expired on 1.4.97, but the application was filed by the petitioner on 31.5.97, thus, it was time barred for about 60 days and admittedly, no application for condonation of such a delay was ever filed, what to say of showing any "sufficient ground" for condoning the delay. Thus, there was no obligation on the part of the DLSC to consider the application hopelessly time-barred if the application for condonation of delay, showing "sufficient ground" has not been filed along with the said application. In such a case, principles of natural justice are not attracted. The DLSC was not under any obligation to ask the petitioner to file application for condonation of delay and show some artificial non-existent sufficient grounds for condoning the delay.

6. Moreso, before the Tax Board, there was no material, on the basis of which a contrary view could have been taken for the reason that as per petitioner's own submission/contention/ averments and documents filed by the assessee-petitioner himself, the application was time barred. Therefore, what was there for the DLSC to inquire about and give an opportunity of hearing to the petitioner.

7. Whether the application was within the time or not, is a question of fact and on the admission of the petitioner itself, finding has been recorded by the DLSC as well as by

the Appellate Board that it was time-barred, 1 fail to understand how this Court can interfere with those orders in exercise of revisional power u/s 86 of the Rajasthan Sales and Purchase Tax Act, 1994 (for short, "the Act, 1994").

8. The power of revision, conferred u/s 86 of the Act upon this Court, can be exercised only when the case involves a question of law, which means a case involving the construction of a Statute or document of title. A finding on a question of fact may also be open to attack as erroneous in law when there is no evidence to support it or it is perverse. (Vide *Shree Meenakshi Mills Ltd. v. Income Tax Commissioner (1)*, wherein the Hon"ble Supreme Court held as under: -

"A finding on a question of fact is open to attack as erroneous in law only if it is not supported by any evidence, or if it is unreasonable and perverse, but that where there is evidence to consider, the decision of the Tribunal is final even though the Court might not, on the materials, have come to the same conclusion if it had the power to substitute its own judgment."

9. Similar view has been reiterated in *Bhagirathi Agrawal and Bros. v. State of Orissa (2)*, wherein the Court stressly observed that the question of fact cannot be decided on surmises and Fictions and unless the judgment is shown to be perverse or based on no evidence, the revisional power cannot be exercised.

10. In *A.C.T.O. v. Ramesh Leather Store and ors. (3)*, a Division Bench of this Court held that a question of fact cannot be agitated in revision, but the said case was entertained on the ground that it raised a legal question as to whether certain goods fell within a particular entry or not, as it was held to be a question if law.

11. There was no application for condonation of delay. Had it been there and the DLSC or the Appellate Board recorded the conclusion that there was no "sufficient ground" for condoning the delay, that could have also been a finding of fact of nonexistent of sufficient ground for condoning the delay and could not have been entertained in revisional jurisdiction. In *Manindra Land & Building Corporation Ltd. v. Bhutnath Banerjee (4)*, wherein the Apex Court observed as under:-

"..... Whether there was sufficient cause, was exclusively within the jurisdiction of the Court and the Court could decide it rightly or wrongly It is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed. Section 5 of the Limitation Act, on the other hand, empowers the Court to admit an application, to which its provisions are made applicable, even when presented after the expiry of the specified period of limitation, if it is satisfied that the applicant had sufficient cause for not presenting it within the time, and if so satisfied, to admit it..... We are, therefore, of the opinion that the High Court fell in error in interfering with the finding of facts arrived at by the subordinate judge with respect to the appellants having sufficient cause for not making an application for bringing the respondents on record within time

and for not applying for setting- aside the abatement within time." .

12. Mr. Kothari has placed reliance upon the judgment of the Madhya Pradesh High Court in *Patel Feb. Machinery Manufactures v. General Manager, District Industries Centre, Bhopal and Ors.*, (5). The facts in that case had been that the application of the assessee therein for grant of eligibility certificate in order to claim exemption from payment of sales tax, had been dismissed by the Competent Committee on the ground that it had been made beyond the period prescribed for that purpose. The petitioner made a representation to the Authority and send a reminder, but no reply was received. The petitioner thereupon filed a writ petition that before passing the order, i.e. dismissing the application, no opportunity was given to the petitioner to explain whether the application was or not within the limitation. The petition was allowed and direction was issued to reconsider the application. The said judgment, with all the respect, runs counter to the law laid down by the Hon"ble Supreme Court in *Manindra Land & Building Corporation (supra)* wherein it has been categorically held that where the application is time barred, the Court shall not consider it.

13. Moreso, the facts are quite distinguishable as in the instant case, petitioner has not filed any representation before the DLSC after rejection of his application. Even otherwise, question of reconsideration may not be permissible in absence of specific provision conferring such power upon the authority as it performs quasi-judicial function. (Vide *Baijnath Ram Goyanka v. Nand Kumar Singh* (6); *Patel Chunilbhai Dajibha v. Narayanrao Khanderrao jambekar* (7); *Harbhajan Singh v. Karam Singh* (8); *Patel narsi Thakershi and Ors. v. Pradyuman Singhji Arjun Singhji* (9); *Major Chandra Bhan Singh v. Latafatulla Khan and Ors* (10); *Dr. Smt. 1 Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur and Ors.* (11); and *State of Orissa and Ors. v. Commissioner of Land Records and Settlement* (12). Even if the power of review was there, petitioner does not claim to have filed any such application before the DLSC.

14. In *Daksha Sankhala v. State of Rajasthan* (13), it has been held that where the facts are undisputed or undeniable and only one conclusion is possible, compliance or principles of natural justice will be a futile exercise or a useless formality and, ¹/₂thus, not necessary to observe.

15. In *Chairman, Board of Mining Examination & Chief Inspector of Mines and Anr. v. Ramjee*, (14), the Hon"ble Supreme Court observed as under:-

"Natural justice is not unruly horse, no lurking land line, nor a judicial cure all. If fairness is shown by the decision/maker to the man proceeded against, the form, features and fundamentals of such essential process, properly being conditioned by fact and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the

belt - that is the conscience of the matter."

16. The Apex Court has reiterated time and again that the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application would depend upon the scheme and policy of the statute and relevant circumstances involved in a particular case. (Vide *Union of India v. P.K. Roy and Ors.* (15); *Channabasappa Basappa Happali v. State of Mysore* (16); and *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.* (17).

17. Thus, in view of the above, I am of considered opinion that in such circumstances, opportunity of hearing is not required at all.

18. Mr. Kothari has further placed reliance upon the judgment of this Court in *Bajaj Industries v. District Level Committee and Ors.* (18), wherein the assessee had filed an application within the time but it was returned to him being defective and when he filed it again, it became time barred. In such circumstances, this Court held that delay should have been condoned. While deciding the said case, reliance was placed upon the judgment of the Hon'ble Supreme Court in *Collector, Land Acquisition v. Mst. Katiji* (19); and *Fertilizer Corporation of India v. State of Bihar* (20), wherein it was held that as the procedural requirement requires liberal construction, the delay should be condoned. In a case where there is no application for condonation of delay, the ratio of the said judgment has no application and the facts of that case are distinguishable.

19. In absence of any application for condonation of delay, entertaining an application would amount to extending the period of limitation which itself amounts to legislation a role not assigned to the Authority as held by the Hon'ble Supreme Court in *P.K. Ramchandran v. State of Kerala and Anr.* (21), observing that the law of limitation hardly affects a particular party but it has to be applied with all its rigors when the Statute so prescribes and Courts have no power to extend the period of limitation on equitable ground. The said judgment was followed by the Division Bench of this Court in *Jaya Bhaduri v. State of Rajasthan and Ors.* (22).

20. The petitioner-assessee cannot be permitted to take advantage of this wrong for not filing the application for condonation of delay and, thus, he cannot be permitted to blame the opposite party for not complying with the principles of natural justice though compliance of the same was not required.

21. Scope of legal maxim "*nullus commodum capere potest de injuria sua propria*" (No man can take advantage of his own wrong), was explained by the Apex Court in *Ashok Kapil v. Sona Jose Alice and Anr.* (23), the Court held that law requires to be interpreted to prevent the wrong-doer from taking advantage of his own wrong. Nor he can secure the assistance of the Court of Law enjoying the fruits of his wrong. It also stands fortified by the judgments of the Supreme Court in *Yashwant Deorao Deshmukh v. Walchand Ramchand Kothari* (24); *G.S. Lamba and Ors. v. Union of India and Ors.* (25); and *T.*

Srinivasan v. T. Varalakshmi (26). Similar view has been taken by a Division Bench of this Court in State of Rajasthan v. Prakash Chandra and Ors. (27).

22. In Hamood Joharan and Ors. v. Abdul Balam (28), the Supreme Court dealt with a similar case of entertaining the application filed beyond limitation and dismissed the contention of liberal interpretation on any ground, observing as under:-

"Furnishing of stamps paper was an act entirely within the domain and control of the appellant and any delay in the matter of furnishing of the same cannot possibly be said to be putting a stop to the period of limitation being run-up and can take advantage of his own wrong; as a matter of fact, in the contextual facts Any other interpretation would lead to an utter absurdity and mockery of the provision of the Statutes. Suspension of the period of limitation by reason of one's own failure cannot be said to be a fallacious argument."

23. Thus, in view of the above, I find no ground to interfere. The case is limited only to the extent: whether the application filed by the petitioner was within time. As per his own admission, it was time barred, therefore, I am of considered opinion that it has been rightly rejected. As no legal question is involved, revision cannot be entertained.

24. The revision is accordingly dismissed.