

(1990) 07 KL CK 0065

High Court Of Kerala

Case No: A.S. No. 129 of 1983

Premier Cable Company Ltd.

APPELLANT

Vs

Govt. of India

RESPONDENT

Date of Decision: July 25, 1990

Acts Referred:

- Constitution of India, 1950 - Article 226
- Limitation Act, 1908 - Article 120
- Limitation Act, 1963 - Article 113, 58

Citation: (1991) ECR 532 : (1991) 51 ELT 242 : (1991) 1 ILR (Ker) 49 : (1992) 193 ITR 719

Hon'ble Judges: K. Sukhumaran, J; G. Rajaseharan, J

Bench: Division Bench

Advocate: E.R. Venkiteswaran, for the Appellant; N.N.Sugunapalan, Senior Central Govt. Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

K. Sukhumaran, J.

A question touching the law of limitation arises for decision in this appeal. In a sense, it has general application. Though many principles are settled in that area, nice distinctions were sought to be made out on behalf of the appellant. Driven to the wall, the appellant had necessarily to take an extreme position necessity is the mother of invention.

2. The plaintiff lost its suit for a declaration that the levy of central excise was without the authority of law. The levy was made by an order dated 4-3-1975 and despatched to the plaintiff on 22-3-1975. In essence, the controversies centred round the inclusion of the cost of paper covering in the rectangular aluminium strips. The assessing authority in the order Extn. 81 took the view that duty was leviable only under Item 27(b). According to the appellant, duty was imposable only under Item No. 68 relating to rectangular aluminium conductors.

3. The levy was complained against in an appeal, filed belatedly on 10-1-1976. The appeal was rejected as barred by time. A revision suffered the same fate by order dated 19-3-1977 served on the plaintiff on 30-4-1977.
4. Soon thereafter the authorities hurried with the recovery steps. A demand for payment made by letter Ext. A7. dated 25-5-1977 was resisted by the reply Ext. A4 dated 6-6-1977.
5. With a Damocles sword of coercive recovery process hanging over its head, the Court's jurisdiction under Article 226 was invoked by the plaintiff by filing writ petition. O.P. No. 2711 of 1977. The writ petition was also dismissed. As the law stood at that time, the authorities had no power to condone the delay in filing the appeal or revision. Remedies indicated internally under the statute, and externally by the extraordinary jurisdiction of this Court under Article 226 of the Constitution were thus unavailable to the plaintiff.
6. The plaintiff then approached the civil court, by filing the suit in the sub-court, Irinjalakuda on 14-7-1980. The court found the suit not maintainable in that court. The plaint was re-presented before the Sub Court, Parur.
7. The defendants, the Govt. of India, the Asst. Collector of Central Excise and the Supdt. of Central Excise, Alwaye, resisted the suit on various contentions including the one on limitation. The trial court found the levy to be erroneous and the suit to be maintainable, but barred by time.
8. The court below took the view that the period of limitation would start running from the date of the final order Ext. A3 dated 19-3-1977. According to the plaintiff, a cause of action arose only on 25-5-1977 when a demand was made for the difference in duty. The defendants contended that demand had been made even earlier on 15-5-76 by the service of Ext. 85 order. According to the court below, the notice Ext. A7 dated 25-5-77 had in turn referred to the earlier order Ext. B5. That was issued on 15-5-1976.
9. The court below took the view that the cause of action should be reckoned from the date of demand Ext. B5 on 15-5-1976. The plaintiff could not pick and choose a date on which the right to sue had accrued. It applied Article 113 of the Limitation Act and non-suited the plaintiff. It is now clear that in the relevant Article applicable to a suit of this nature is Article 58 of the Limitation Act, 1963. That article reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
xx	xx	xx
58. To obtain any other declaration	Three years	When the right to sue first accrues
		xx

Article 113 relied on and discussed by the court below reads:

Description of suit	Period of limitation	Time from which period begins to run
113.Any suit for which no period of limitation is provided elsewhere in this Schedule	Three years	When the right to sue accrues.

The corresponding Article 120 of the Limitation Act, 1908 reads:

Description of suit	Period of limitation	Time from which period begins to run.
120.Suit for which no period of limitation is provided elsewhere in the Schedule	Six years	When the right to sue accrues.

10. Mark the difference in the two Articles. Article 120 in the 1908 Act, and Article 113 of the 1963 Act merely mention "when the right to sue accrues". Even then that Article had received judicial interpretation. Indicating that limitation would start from the date of the first accrual of the cause of action. (Vide [Mst. Rukhmabai Vs. Lala Laxminarayan and Others](#), ; Maharajah of Pithapuram v. Venkataraju, AIR 1949, Madras 542), and in particular, the sentence regarding:

"It is undoubtedly true that if a trespass or a similar negation of a person's right took place at a particular date and that trespass or denial of rights continued from the date, the date from which limitation runs is the date when that right was first denied or the trespass took place :..."

It is difficult to assume that Ext. B5 would not furnish a cause of action. That order had all the power and potency to invade the plaintiff's rights. Such an invasion can be treated as the sine qua non of cause of action. Doubtless a cause of action arose on that date in that view of the matter. May be, in the scheme of a taming statute like the Central Excises and Salt Act, 1944, further demands or reminders might arise, if there had been modification of the order by the superior statutory authorities, or if there be non-payment after the original demand. Assuming that causes of action would arise on such occasions of renewed or further demands, that will not obliterate the fact that a cause of action had arisen when the demand had been first made.

11. The position undergoes a change, when, consequent upon a superior decision, the original order becomes merged in an appellate, revisional or other order. The first order disappears from the scene altogether. Only one is visible, namely the ultimate order. Only one cause of action is therefore positable namely that which arose on the basis of the ultimate order. Limitation has to be computed from the date of the ultimate order, in all such cases where there is such a merger. This

proposition is also now settled by the authoritative pronouncement of the Supreme Court. See [Raghubir Jha Vs. State of Bihar and Others,](#) .

12. What will be the position if an appeal is not entertained on the ground that it was barred? The theory of merger has obviously no application in such a situation according to the pronouncement of the Supreme Court in [S.S. Rathore Vs. State of Madhya Pradesh,](#) . Though it concerns a case of disciplinary proceedings, the principle has applicability in other situations too. As has been already noticed above, the statute itself, as it stood at the relevant time, did not contain even a power which would enable the authorities to condone the delay. There is therefore no possibility whatever of a merger, if an appeal is not filed within the time. Article 58 will get attracted with its emphasis on the date on which the cause of action first arose.

13. A more elaborate discussion is unnecessary in view of the detailed discussion and clear pronouncement of the Supreme Court in (1989) supra.

14. In the light of the above discussion, we have necessarily to hold that the suit filed much beyond three years after the service of Ext. B5 demand, was barred by time. The conclusion of the court below is therefore sustainable for the reasons indicated above. We therefore dismiss the appeal, but without any order as to costs.