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THE COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW

v.

PARSON TOOLS AND PLANTS, KANPUR

February 27, 1975.

B [Y. V. CHANDRACHUD, R. S. SARKARIA AND A. C. GUPTA, JJ.]

Interpretation of Statutes—Legislature wilfully omitting to incorporate an analogous law in subsequent statute—Language plain and unambiguous—Courts if competent to supply the omission by analogy or implication.

Interpretation of Statutes—Law of limitation—Special statute prescribing certain period of limitation—Provision for extension upto specified time-limit on sufficient cause being shown—Time-limit, if could be extended on anology of s. 14(2) *of Limitation Act.*

C

U.P. Sales Tax Act, 1948 *and U.P. Sales-tax Rules, Rule* 68*—Appellate Authority and Judge (Revisions) under the Act, if Courts within the meaning of s.* 14(2) *of Limitation Act.*

U.P. Sales Tax Act, 1948, *s.* 10(3)(*i*) *and s.* 10(3*B*)*—Revision application —Revising Authority not conferred with discretion to extend period of limitation beyond six months even on sufficient cause shown—Principle of s.* 14(2) *of Limitation Act, if could be imported into s.* 10(3*B*) *by analogy.*

D

The Sales-Tax Officer assessed tax for the assessment years 1958-1959 and 1959-60, on the respondent assessee by two separate orders. The assessee filed appeals against those orders before the Appellate Authority. On May 10, 1963, when the appeals came up for hearing, the assessee was absent. The appeals were, therefore, dismissed in default by virtue of Rule 68(5) of the U.P. Sales-tax Rules. Sub-rule (6) of Rule 68 provided for setting aside such dismissal and for re-admission of the appeal. On the same day (May 10, 1963), the assessee made two applications in accordance with Sub-rule (6) for setting aside the E dismissal. During the pendency of those applications, Subrule (5) of Rule 68 was declared *ultra vires* the rule-making authority by Manchanda J. of the High Court who further held that the Appellate-Authority could not dismiss an appeal in default but was bound to decide it on merits even though the appellant be absent. When these applications under r. 68(6) came up for hearing on 20-10-64, the Appellate-Authority dismissed them outright in view of the ruling of Manchanda J. Against the order of dismissal of his appeals, the assessee on 16-12-1964 filed two revision petitions under s. 10 of the Sales-tax Act, before F the [Judge (Revisions) Sales-tax]. These revisions petitions having been filed more than 18 months after the dismissal of the appeals,—which was the maximum period of limitation prescribed by sub-s. (3) of s. 10—were *prima facie* time-barred. They were however, accompanied by two applications in which the assessee prayed for exclusion of the time spent by him in prosecuting the abortive proceedings under r. 68(6) for setting aside the dismissal of his appeals. The Revisional Authority found that the assessee had been pursuing his remedy under r. 68(6) with due diligence and in good faith. It therefore excluded the time spent in those proceedings from computation of limitation by applying s. 14, G Limitation Act and in consequence, held that the revision petitions were within time. On the motion of the Commissioner of Sales-tax, the Judge (Revisions) Sales-tax made two references under s. 11(1) of the Sales-tax Act to the High Court for answering the following question of law :

> "Whether under the circumstances of the case, s. 14 of the Limitation Act extended the period for filing of the revisions by the time during which the restoration applications remained pending as being prosecuted *bona fide*."

H

The references were heard by a Full Bench of three learned Judges, each of whom wrote a separate Judgment. Dwivedi J. with whom Singh J. agreed after reframing the question held "that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default can be

excluded from computing the period of limitation for filing the revision by the application of the principle underlying s. 14(2), Limitation Act."

Hari Swarup J. was of the opinion: "The Judge (Revisions) Sales-tax while hearing the revisions under s. 10 of the U.P. Sales Tax Act does not act as a *Court* but only as a revenue tribunal and hence the provisions of the Indian Limitation Act cannot apply to proceedings before him. If the Limitation Act does not apply then neither s. 29(2) nor s. 14(2) of the Limitation Act will apply to proceedings before him." The learned Judge was further of the view that the principle of s. 14(2) also, could not be invoked to extend the time beyond the maximum fixed by the Legislature in sub-section (3-B) of s. 10 of the Sales-tax Act.

These appeals have been preferred on the basis of the special leave granted by this court.

Allowing the appeals,

HELD: (i) If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducting in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of Legislature", the primary function of a court of law being *jus dicere* and not *jus dare*. [749D-E]

(ii) If the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of s. 14(2) of the Limitation Act. [751D-E]

Ramdutt Ramkissen Dass v. *E. D. Sesson & Co.* A.I.R. 1929, P.C. 103 and *Purshottam Dass Hassaram* v. *Impex (India) Ltd.* A.I.R. 1954 Bom. 309, referred to.

(iii) In view of the pronouncements of this Court in *Shrimati Ujjam Bhai* v. *State of U.P.*, [1963] 2 S.C.R. 778 and *Jagannath Prasad* v. *State of U.P.* [1963] 2 S.C.R. 850, there is no room for argument that the Appellate-Authority and the Judge (Revisions) exercising jurisdiction under the U.P. Sales Tax Act, 1948, are 'Courts'. They are merely administrative Tribunals and "not courts". Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such Tribunals. [747E]

(iv) Three features of the scheme of provisions of s. 10(3)(i) and section 10(3B) are note-worthy. The first is that no limitation has been prescribed for the *suo motu* exercise of its jurisdiction by the Revising Authority. The *second* is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The *third* is that the Revising Authority has no discretion to extend this period beyond a further period of six months, even on sufficient cause shown. The three stark features of the scheme and language of these provisions, unmistakably show that the legislature has deliberately excluded the application of the principles of Ss. 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-s. (3-B) of s. 10 of the Act. [748D-F]

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1458-1459 of 1970.

Appeal by special leave from the judgment and order dated the 1st January, 1970 of the Allahabad High Court in S.T.R. No. 344 and S.T.R. No. 347 of 1967.

A *N. D. Karkhanis* and *O. P. Rana,* for the appellant.

No. appearance, for the respondent.

The Judgment of the Court was delivered by

SARKARIA, J.—The common question of law for determination in these appeals by special leave is : Whether s. 14(2) of the Limitation Act, in terms, or, in principle, can be invoked for excluding the B time spent in prosecuting an application under Rule 68(6) of the U.P. Sales Tax Rules for setting aside the order of dismissal of appeal in default, under the U.P. Sales Tax Act, 1948 (for short, the Sales-tax Act) from computation of the period of limitation for filing a revision under that Act ?

It arises out of these circumstances.

C The respondent, M/s. Parson Tools and Plants (hereinafter referred to as the assessee) carries on business at Kanpur. The Sales-tax Officer assessed tax for the assessment years, 1958-1959 and 1959-60, on the assessee by two separate orders. The assessee filed appeals against those orders before the Appellate Authority. On May 10, 1963, when the appeals came up for hearing, the assessee was absent. The appeals were, therefore, dismissed in default by virtue of Rule D 68(5) of the U.P. Sales-tax Rules. Sub-rule (6) of Rules 68 provided for setting aside such dismissal and re-admission of the appeal. On the same day (May 10, 1963), the assessee made two applications in accordance with Sub rule (6) for setting aside the dismissal. During the pendency of those applications, Sub-rule (5) of Rule 68 was declared *ultra vires* the rule-making authority by Manchanda J. of the High Court who further held that the Appellate-Authority E could not dismiss an appeal in default but was bound to decide it on merits even though the appellant be absent. When these applications under Rule 68(6) came up for hearing, on 20-10-1964, the Appellate-Authority dismissed them outright in view of the ruling of Manchanda J. Against the order of dismissal of his appeals, the assessee on 16-12-1964 filed two revision petitions under s. 10 of the Sales-tax Act, before the Revisional Authority (Judge (Revisions) F Sales-tax). These revision petitions having been filed more than 18 months after the dismissal of the appeals, which was the maximum period of limitation prescribed by sub-. 73) of s 10—were *prima facie* time-barred. They were however, accompanied by two applications in which the assessee prayed for exclusion of the time spent by him in prosecuting the abortive proceedings under Rule 68(6) for setting aside the dismissal of his appeals. The Revisional Authority G found that the assessee had been pursuing his remedy under Rule 68(6) with due diligence and in good faith. It therefore excluded the time spent in those proceedings from computation of limitation by applying s. 14, Limitation Act and in consequence, held that the revision petitions were within time. On the motion of the Commissioner of Sales-tax, the Revisional Authority made two references under s. 11(1) of the Sales-tax Act to the High Court for answering H the following question of law :

> "Whether under the circumstances of the case, section 14 of the Limitation Act extended the period for filing

of the revisions by the time during which the restoration applications remained pending as being prosecuted *bona fide.*"

The references were heard by a Full Bench of three learned Judges, each of whom wrote a separate Judgment. Dwivedi J. with whom Singh J. agreed after reframing the question held "that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default can be excluded from computing the period of limitation for filing the revision by the application of the principle underlying s. 14(2). Limitation Act."

Hari Swarup J. was of the opinion: "The Judge (Revisions) Sales-tax while hearing the revisions under s. 10 of the U.P. Sales Tax Act does not act as a *Court* but only as a revenue tribunal and hence the provisions of the Indian Limitation Act cannot apply to proceedings before him. If the Limitation Act does not apply then neither s. 29(2) nor s. 14(2) of the Limitation Act will apply to proceedings before him." The learned Judge was further of the view that the principle of s. 14(2) also, could not be invoked to extend the time beyond the maximum fixed by the Legislature in sub-section (3-B) of s. 10 of the Sales-tax Act.

Sub-section (2) of s. 14, Limitation Act, runs thus:

> "In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another *civil proceedings,* whether in a *Court* of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a *Court* which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it." (emphasis added).

If will be seen that this sub-section will apply only if—

(1) both the prior and subsequent procedings are civil proceedings prosecuted by the same party;

(2) the prior proceedings had been prosecuted with due diligence and in good faith;

(3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature;

(4) both the proceedings are proceedings in a Court.

Mr. Karkhanis, learned Counsel appearing for the appellant does not dispute the view taken by the High Court that the proceedings in question under the Sales-tax Act could be deemed as civil proceedings. Learned Counsel, however, contends that the authorities, irrespective of whether they exercise, original, appellate or revisional

A jurisdiction under the Sales-tax Act are not 'Courts' within the contemplation of s. 14(2) of the Limitation Act. It is pointed out that this question stands concluded by this Court's decision in *Jagannath Prasad* v. *State of U.P.*(1)

Mr. Karkhanis is right that this matter is no longer *res integra.* B In *Shrimati Ujjam Bhai* v. *State of U.P.*(2) Hidayatullah J. (as he then was) speaking for the Court, observed :

> "The taxing authorities are instrumentalities of the State. They are not a part of the legislature, nor are they a part of the judiciary. Their functions are the assessment and collection of taxes and in the process of assessing taxes, they C follow a pattern of action which is considered Judicial. They are not thereby converted into Courts of Civil judicature. They will remain the instrumentalities of the State and are within the definition of "State" in Article 12."

The above observations were quoted with approval by this Court in *Jagannath Prasad's case* (supra), and it was held that a Sales-tax D Officer under U.P. Sales-tax Act, 1948 was not a *Court* within the meaning of s. 195 of the Code of Criminal Procedure although he is required to perform certain quasi-judicial functions. The decision in *Jagannath Prasad's case,* it seems, was not brought to the notice of the High Court. In view of these prononcements of this Court, there is no room for argument that the Appellate-Authority and the Judge (Revisions) Sales-tax exercising jurisdiction under the Sales-E tax Act, are courts." They are merely administrative Tribunals and "not courts." Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such Tribunals.

Further question that remains is : Is the general *principle* underlying s.14 (2) applicable on grounds of justice, equity and good conscience for excluding the time spent in prosecuting the abortive F applications under Rule 68(6) before the Appellate Authority, for computing limitation for the purpose of revision applications. Mr. Karkhanis maintains that the answer to this question, also, must be in the negative because definite indications are available in the scheme and language of the Sales-tax Act, which exclude the application of s. 14(2), Limitation Act even in principle or by analogy. Learned Counsel further submits that the *ratio* of the Privy Council decision in G *Ramdutt Ramkissen Dass* v. *E. D. Sesson & Co.*(3) relied upon by the majority judgment of the High Court is not applicable for computing limitation prescribed under the Sales-tax Act. Reference in this connection has been made to *Purshottam Dass Hassaram* v. *Impex (India) Ltd.*(4) wherein a Division Bench of the Bombay High Court explained the rule of decision in *Ramdutt's case* (supra) and found it to be inapplicable for the purpose of computing limitation for ap-H plications under the Arbitration Act, 1940.

(1) [1963] 2, S.C.R. 850. (2) [1963] 1, S.C.R. 778.

(3) AIR 1929 P. C. 103, (4) A.I.R. 1954 Bom. 309,

The material part of s.10 runs thus :

"(3) (i). The Revision Authority.....may, for the purpose of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion call for and examine, either on its own motion or on the application of the Commissioner of Sales-tax or the person aggrieved, the record of such order and pass such order as it may think fit.

* * * * * *

(3A) .....

(3B) The application under sub-section (3) shall be made within one year from the date of service of the order complained of, but the Revising Authority may on proof of sufficient cause entertain an application within a further period of six months."

Three features of the scheme of the above provision are noteworthy. The *first* is that no limitation has been prescribed for the *suo motu* exercise of its jurisdiction by the Revising Authority. The *second* is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The *third* is that the Revising Authority has no discretion to extend this period *beyond* a further period of six months, even on sufficient cause shown. As rightly pointed out in the minority judgment of the High Court, pendency of proceedings of the nature contemplated by s. 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation for filing a revision application, but s. 10 (3-B) of the Sales-tax Act, gives no jurisdiction to the Revising Authority to extend the limitation, even in such a case, for a further period of more than six months.

The three stark features of the scheme and language of the above provision, unmistakably show that the legislature has deliberately excluded the application of the principles underlying ss. 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-s. (3-B) of s. 10 of the Sales-tax Act. Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the financial stability of the State. Section 10 is therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time-schedule.

It cannot be said that by excluding the unrestricted application of the principles of ss. 5 and 14 of the Limitation Act, the Legislature has made the provisions of s. 10, unduly oppressive. In most cases, the discretion to extend limitation, on sufficient cause being shown for a further period of six months only, given by sub-s. (3-B) would be enough to afford relief. Cases are no doubt conceivable where an aggrieved party, despite sufficient cause, is unable to make an

A application for revision within this maximum period of 18 months. Such harsh cases would be rare. Even in such exceptional cases of extreme hardship, the Revising Authoritly may, on its own motion, entertain revision and grant relief.

Be that as it may, from the scheme and language of S. 10, the B intention of the Legislature to exclude the unrestricted application of the principles of ss. 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the Legislature did not, after due application of mind, incorporate in the Sales-tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according C to the intent of them that made it". "The will of the legislature is the supreme law of the land, and demands perfect obdience".(1) "Judicial power is never exercised" said Marshall C. J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words, to the will of the law".

D If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so would be entrenching upon E the preserves of Legislatures, 'The primary function of a court of law being *jus dicere* and not *jus dare*.'

In the light of what has been said above, we are of the opinion that the High Court was in error in importing whole hog the principle of s. 14(2) of the Limitation Act into s. 10 (3-B) of the Sales-tax Act.

F

The *ratio* of the Privy Council decision in *Ramdutt Ramkissen Dass* v. *E. D. Sasson & Co.* (Supra) relied upon by the High Court is not on speaking terms with the clear language of s. 10 (3-B) of the Sales-tax Act. That decision was rendered long before the passage of the Indian Arbitration Act, 1940. It lost its efficacy after the enactment of the Arbitration Act which contained a specific G provision in regard to exclusion of time from computation of limitation.

The case in point is *Purshottam Dass Hussaram* v. *Index (India) Ltd.* (supra). In this Bombay case, the question was, whether the suit was barred by limitation. It was not disputed that Article 115 H of the Limitation Act governed the limitation and if no other factor was to be taken into consideration, the suit was filed beyond time. But what was relied upon by the plaintiff for the purpose of saving

(1) see Maxwell on Interpretation of Statutes, 11th Edn., pp. 1, 2 and 251.

limitation was the fact that there were certain infructuous arbitration proceedings and if the time taken in prosecuting those proceedings was excluded under s. 14, the suit would be within limitation. It was held that if s. 14 were to be construed strictly, the plaintiff would not be entitled to exclude the period in question.

On the authority of *Ramdutt Ramkissen's case* (supra), it was then contended that the time taken in arbitration proceedings should be excluded *on the analogy* of s. 14. This contention was also negatived on the ground that since the decision of the Privy Council, the legislature had in s. 37(5) of the Arbitration Act, 1940, provided as to what extent the provisions of the Limitation Act would be applicable to the proceedings before the arbitrator. Section 37(5) was as follows :

> "Where the court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908, for the commencement of the proceedings (including arbitration) with respect to the difference referred."

The reasons advanced, the observations made and the rule enunciated by Chagla C.J., who spoke for the Bench in that case, are opposite and may be extracted with advantage :

> ".....we have now a statutory provision for exclusion of time taken up in arbitration proceedings when a suit is filed, and the question arises of computing the period of limitation with regard to that suit, and the time that has got to be excluded is only that time which is taken up as provided in s. 37(5). There must be an order of the Court setting aside an award or there must be an order of the Court declaring that the arbitration agreement shall cease to have effect, and the period between the commencement of the arbitration and the date of this order is the period that has got to be excluded.
>
> It is therefore no longer open to the Court to rely on s. 14 Limitation Act as applying by analogy to arbitration proceedings. If the Legislature intended that s. 14 should apply and that all the time taken up in arbitration proceedings should be excluded, then there was no reason to enact s. 37(5). The very fact that s. 37(5) has been enacted clearly shows that the whole period referred to in s. 14, Limitation Act is not to be excluded but the limited period indicated in s. 37(5).

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"It may seem rather curious—and it may also in certain cases result in hardship—as to why the legislature should not have excluded all time taken up in good faith before an arbitrator just as the time taken up in prosecuting a suit or an appeal in good faith is excluded. But obviously the
B Legislature did not intend that parties should waste time infructuous proceedings before arbitrators. The Legislature has clearly indicated that limitation having once begun to run, no time could be excluded merely because parties chose to go before an arbitrator without getting an award or without coming to Court to get the necessary order indi-
C cated in s. 37(5)."

What the learned Chief Justice said about the inapplicability of s. 14, Limitation Act, in the context of s. 37(5) of the Arbitration Act, holds good with added force with reference to s. 10 (3-B) of the Sales-tax Act.

D Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, than the tribunal concerned has no jurisdiction to treat within limitation, an
E application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of s. 14(2) of the Limitation Act.

We have said enough and we may say it again that where the legis-
F lature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hail-
G sham (1) has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself :

"It is true of course that the courts will lean heavily against any construction of a statute which would be manifestly fair. But they have no power to amend or supple-
H ment the language of a statute merely because in one view

(1) At p. 11 in Pearl Berg v. Varty [1972] 2 All E. R. 6.

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of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment."

B

For all the reasons aforesaid, we are of the opinion that the object, the scheme and language of s.10 of the Sales-tax Act do not permit the invocation of s.14(2) of the Limitation Act, either, in terms, or, in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales-tax. Accordingly, we answer the question referred, in the negative.

C

In the result, we set aside the judgment of the High Court and accept these appeals. Since the appeals have been heard ex-parte, there will be no order as to costs.

D

V.M.K. *Appeals allowed*

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