

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.526 of 2016

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1. Bihar State Industrial Development Corporation, a Government Company incorporated under the Companies Act, 1956 having its registered office at Indhira Bhawan, R.C. Singh Path, Patna 800001 through its Managing Director

.... Petitioner/s

Versus

1. Employees Provident Fund Organization, Serpentine Road, Patna - through the Commissioner
2. Regional Provident Fund Commissioner, Employees Provident Fund Organization, Sub - Regional office, Adampur Chowk, Bhagalpur 812001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Prasad, Adv.

For the Respondent/s : Mr. Prashant Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-04-2017

The present writ application has been filed challenging the order dated 24.09.2015 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi (for short 'Tribunal') in ATA No. 1082(3) of 2015 whereby the appeal preferred by the petitioner against the order dated 25.06.2014 passed by the Regional Provident Fund Commissioner, Employees Provident Fund Organization, Sub-Regional Office, Bhagalpur has been dismissed on the ground of limitation.

2. The order under challenge before the Tribunal was passed on 25.06.2014. The petitioner has admitted that the order was received by it on 22.07.2014. Earlier a writ application bearing



C.W.J.C. No. 5448 of 2015 was preferred by the petitioner against the aforesaid order dated 25.06.2014. The aforesaid writ application was disposed of vide order dated 02.09.2015 with an observation that the period from 07.04.2015 till 02.09.2015 shall be excluded while considering the limitation matter.

3. In the appeal filed on behalf of the petitioner under Section 7(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') challenging the order dated 25.06.2014 passed under Section 14-B of the Act, an application for condonation of delay was also filed on behalf of the petitioner. It was pleaded that the petitioner establishment could not file the appeal within time before the Tribunal under wrong advice of the counsel. It was also pleaded that when the writ application bearing C.W.J.C. No. 5448 of 2015 was disposed of vide order dated 02.09.2015 with an observation that the period from 07.04.2015 till 02.09.2015 shall be excluded while considering the limitation matter, the petitioner immediately filed the appeal before the Tribunal.

4. However, the Tribunal dismissed the appeal considering the fact that under the Act the petitioner was required to file appeal within a period of limitation of 60 days after receiving the impugned order whereas the appeal was filed on behalf of the petitioner before the Tribunal on 17.09.2015 after a period of more than one year.

5. It is contended by the learned counsel for the petitioner



that the Tribunal dismissed the appeal being time barred without appreciating the fact that prior to C.W.J.C. No. 5448 of 2015 a writ application being C.W.J.C. No. 3302 of 2015 was filed by the General Manager, Bihar Spun Silk Mill, Bhagalpur in his own name and under the wrong advice impleading the Managing Director, Bihar State Industrial Development Corporation Ltd. as respondent no.3, which was withdrawn with liberty to file a fresh application and accordingly a fresh writ application bearing C.W.J.C. No. 5448 of 2015 was filed. He submitted that for the said reason the period spent during pendency of C.W.J.C. No. 3302 of 2015 should have been excluded. He submitted that various other facts, such as, present financial condition of the petitioner and the fact that in similar situation ATA No. 1083(3) of 2015 had been admitted should have been considered by the Tribunal. He submitted that the impugned order passed by the Tribunal is wholly illegal, arbitrary and bad in law and the petitioner will suffer irreparable loss and damages if the order passed by the Tribunal is ordered to sustain.

6. On the other hand, learned counsel for the respondents submitted that the order passed by the Tribunal is in accordance with the order dated 02.09.2015 passed in C.W.J.C. No.5448 of 2015. He submitted that the order under challenge before the Tribunal was passed on 25.06.2014 and the petitioner had admitted that it was received by him on 22.07.2014. The aforesaid writ application was



dismissed as withdrawn with an observation that the period from 07.04.2015 till 02.09.2015 shall be excluded while considering the limitation matter. He contended that the limitation for filing the appeal had already expired prior to filing of the writ application on 07.04.2015. Thus, even after ignoring the period from 07.04.2015 to 02.09.2015, the appeal was barred by limitation and it has been rightly dismissed as being barred by limitation. He submitted that Rule 7(2) of Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997 (for short 'the Rules') provides for limitation of a period of 60 days for filing an appeal which shall be extended for a further period of 60 days by the Tribunal. Thus, the Tribunal has been vested with the power to condone the delay in filing the appeal only upto 120 days, meaning thereby, the appeal should be filed within a maximum period of 120 days and thereafter the Tribunal has not been vested with any power to condone the delay.

7. I have heard the rival contentions advanced on behalf of the parties and perused the record.

8. I am of the view that the Tribunal was right in dismissing the appeal being beyond limitation. The relevant provision of the Rule is quoted hereunder :-

“7(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.



Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.”

9. Thus, Rule 7(2) of the Rules prescribes the period of 60 days from the date of issue of notification/order to prefer an appeal to the Tribunal. Proviso to Rule 7(2) empowers the Tribunal to extend the said period by a further period of 60 days on being satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period.

10. In the instant case, admittedly, copy of the order dated 25.06.2014 was received by the petitioner on 22.07.2014 but the appeal was filed on behalf of the petitioner on 17.09.2015. In C.W.J.C. No. 5448 of 2015 this Court directed the Tribunal to ignore the period from 07.04.2015 to 02.09.2015 while considering the period of limitation. However, if the period of limitation is taken to be 120 days for filing the appeal, it had already lapsed prior to the filing of the writ application on 07.04.2015. Thus, even after ignoring the period from 07.04.2015 to 02.09.2015, the appeal was barred by limitation.

11. The issue of condonation of delay for filing the appeal is no more *res integra*.

12. In ***Commissioner of Customs and Central Excise Vs. Hongo India Private Limited & Anr. [(2009) 5 SC 791]*** the question



that fell for determination before the Supreme Court was “*whether the High Court has power to condone the delay in presentation of the reference application under unamended Section 35-H(1) of the Central Excise Act, 1944 beyond the prescribed period by applying Section 5 of the Limitation Act, 1963*”. After elaborate discussion over the issue, the Supreme Court held that whenever statutory provision is made to file an appeal within a particular period then in such cases the provisions of the Limitation Act is not made applicable.

13. So far as the contention of the petitioner with regard to non-consideration of the period spent during pendency of C.W.J.C. No. 3302 of 2015 preferred by the petitioner for condonation of delay is concerned, in the opinion of this Court, the argument is misconceived.

14. In the case of *the Commissioner of Sales Tax, U.P., Lucknow Vs. M/s Parson Tools and Plants, Kanpur [(1975) 4 SCC 22]*, the Supreme Court while dealing with the common question of law for determination in the Special Leave “*Whether Section 14(2) of the Limitation Act, in terms, or, in principle, can be invoked for excluding the 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”, held that the object, the scheme and language of Section 10 of the Sales-tax Act do not permit the invocation of Section 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 Act and answered the question referred in the negative.

15. While answering the reference in the case of *the Commissioner of Sales Tax, U.P., Lucknow Vs. M/s Parson Tools and Plants, Kanpur* (Supra), the Supreme Court observed in para 23 as under:-

“23. We have said enough and we may say it again that where the legislature 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 Hailsham 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 supplement the language of a statute merely because in one view 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.”

15. In *M/s Patel Brothers Vs. State of Assam & Ors.* [AIR 2017 SC 383], the Supreme Court held that that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications. The Court observed in para 19 as under :-

“19. The High Court has rightly pointed out the well settled principle of law that “the court cannot interpret the statute the way they have developed the common law ‘which in a constitutional sense means judicially developed equity’. In abrogating or modifying a rule of the common law the court exercises the same power of creation that built up the common law through its existence by the judges of the past. The court can exercise no such power in respect of statute, therefore, in the task of interpreting and applying a statute, Judges have to be conscious that in the end the statute is the master not the servant of the judgment and no judge has a choice between implementing it and disobeying it.” What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications.”

15. Thus, in view of the fact that the limitation is prescribed by specific Rule and condonation has also to be considered within the purview of that Rule alone and provisions of the Limitation Act



cannot be imported into the Act and the Rules, this Court is of the view that the Tribunal did not have powers to condone the delay beyond the period of 120 days as stipulated in Rule 7(2) of the Rules.

16. Since this Court is of the opinion that the appeal was barred by limitation and could not have been entertained by the Tribunal and was rightly dismissed on the ground of limitation, this Court shall refrain itself from examining other grounds taken by the petitioner in the present writ application.

17. The writ application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13-04-2017
Transmission Date	

