MADHYA PRADESH HIGH COURT

Govind Singh Gurudatta Singh

Vs.

State of M. P.

First Appeal No. 124 of 1957, Decided on 26.10.1960. from decree of Addl. Dist. J. Satna
(T.C. Shrivastava and S.P. Bhargava, JJ.)

29.07.1957. 26.10.1960

JUDGMENT

Shrivastava, J.

1. This first appeal has been filed by the plaintiff against the dismissal of his suit by the Additional District Judge, Satna, on 29-07-1957.

2. The appellant, who was a dealer in Satna, was liable to be assessed to sales tax in accordance with the provisions of the C. P. and Berar Sales Tax Act, 1947, as applied to Vindhya Pradesh. According to the rules framed for payment of sales tax, it was necessary for him to file a return of his turnover during every quarter along with a deposit of the tax payable on the amount of turnover so disclosed. Accordingly, for the last two quarters of the year 1950 he made the necessary deposit. Assessment for these periods was made on 27-9-1951 and 28-9-1951 (Ex. P-3 and Ex. P-4) and the appellant was found entitled to a refund of Rs. 209-11-0 and Rs. 290-4-0 respectively for the two quarters. In spite of applications being filed for refund of the amount, the appellant was not paid back the amounts. For the first quarter of the year 1951, he again made a similar deposit and according to the assessment order passed on 8-5-1953 he was ordered to pay Rs. 1335/-. He filed an appeal against the assessment Order depositing the extra amount of tax assessed against him. In appeal, the case was remanded and on 6-3-1954 an order was passed ordering a refund of Rs. 1337/- (Ex. P-7). Once again, the appellant applied for refund on 6-3-1954, but no orders were passed on that application. The fact remained that the amount was not refunded. Accordingly, he filed the suit, out of which this appeal arises, on 24-11-1956 for refund of the three amounts.

3. The respondent (State Government) did not dispute that the appellant was entitled to refund of the three amounts, as claimed. It was, however, pleaded that as no orders on the application for refund had been passed, the appellant could not maintain the suit. Further, it was pleaded that the claim was barred by time.

4. The trial Court found that the suit was maintainable, but dismissed the claim as barred by time.

5. The only question on which, arguments were addressed to us by the parties is the question of limitation. According to Shri G.P. Singh for the appellant, Article 120 of the Limitation Act applies to the case and therefore the claim should be held to be within time. According to Shri R.J. Bhave, for the State, the case is governed by Article 96 of the Limitation Act. He concedes that the claim for Rs. 1337/- due as refund for the third quarter is within time and should have been decreed. He disputes the claim for the refund of the amounts for the last two quarters of 1950 only.

6. Before we discuss the question of limitation we may refer to the provisions of the Sales Tax Act and the rules under which refund is claimable. Section 13 provides that where the Commissioner is satisfied that the tax paid by the dealer exceeds the amount assessed, he shall cause a refund to be made of the amount. It will thus be seen that the Commissioner Is under a statutory obligation to refund the amount. Rules 40 to 48 framed under the Sales Tax Act deal with the procedure to be followed in making the refund. A dealer who wants a refund of the excess tax has to make an application for refund stating the grounds on which the refund is claimed. The proper Sales Tax Authority then directs the amount to be refunded and within thirty days of such an order the amount has to be paid back to the applicant. Under certain circumstances, the amount can be refunded towards the tax due for the following quarters.

7. The learned judge of the trial Court held that Article 16 of the Limitation Act applied to the case and the suit should, therefore, have been filed within one year from the date on which, the refund became due. Shri G.P. Singh points out that the amount was not deposited under protest as required by Article 16. The reason for the deposit, in the instant case, was that under Section 22 of the Sales Tax Act every appeal had to be accompanied by a satisfactory proof of the payment of the tax. It was under the compulsion of law that the amount was deposited by the appellant along with the

memorandum of appeal The trial Court referred to the decision in *State of Vindhya Pradesh v. Raghunath Mannulal,* [1] in which Article 16 of the Limitation Act was held applicable; but the circumstances of that cage were quite different. In that case, the party was assessed to sales tax on exports made by him and he made the deposit expressly under protest. He then brought a suit claiming the amount as having been illegally assessed. The case as laid in the plaint itself thus fell within the wordings of Article 16, We agree with Shri G.P. Singh that Article 16 has no application to the present case.

8. Shri Bhave for the State also did not support the judgment of the trial Court on the ground that Article 16 of the Limitation Act applied to the case. According to him, the case falls under Article 96. That article provides that a suit for relief on the ground of mistake should be filed within three years from the date when the mistake becomes known to the plaintiff. In the instant case, the deposit was. certainly made under a mistake of fact that the amount deposited was due as sales tax. The mistake may have been that certain items not liable to tax were included in the return as liable, or some other mistake of fact. According to Article 96, the suit has to be filed within three years from the date of the discovery of the mistake. The mistake in this case was discovered on the date when the assessment was made. However, we do not think that Article it has application to the case. An assessee who pays money in excess of the proper amount of tax is not entitled to a refund of the amount as of right as soon as he discovers his mistake. The special provisions under the Sales Tax Act and the rules made thereunder provide for refund only after assessment has been made and the amount paid has been found to exceed the proper amount of tax. Accordingly, the cause of action is not really furnished by the discovery of the mistake but by the making of the assessment. In view of these special provisions in the statute, Article 96 cannot obviously apply. It is pertinent to observe that if the mistake in making the deposit is discovered by an assessee and the assessment is delayed for more than three years after the discovery of the mistake, his claim to have refund will be barred by time under Article 96. This is obviously not a result intended by the provisions of the Sales Tax Act which make it the duty of the Commissioner to refund the amount. As the Addl. Government Advocate has not referred to any other Articles as applicable to the present case, it must be held that Article 120, which is a residuary Article, applies to the case. The claim for all the three quarters would thus be within time.

9. In the *Secretary of State v. Guru Proshad,* [2] a Full Bench of the Calcutta High Court held that a suit for residue of sale proceeds of an estate sold for recovery of

Government dues was governed by Article 120 of the Limitation Act. We may refer to the following observations from that decision :

> "The Limitation Act does not prescribe any period of limitation for money due under a statutory liability to pay it, so the suit is, I think, within Article 120; in other words, the period of limitation is six years, which begins to run from the time when a demand for the money is made by persons who could give the receipts required by the section."

From these observations, it is clear that Article 120 applies to cases where an officer of the Government is bound under a statute to make a payment. Similarly, in *Municipal Board of Ghazipur v. Deokinandan Prasad,* [3] it was held that a suit for refund of excess amount paid as octroi duty was governed by Article 120 of the Limitation Act.

10. We hold that the present case was governed by Article 120 of the Limitation Act and as the suit was brought within six years from the date of the cause of action for refund, the claim was within time.

11. The appellant has also claimed interest on the amount of refund. We do not allow any interest for the period before suit. However, we direct that the amount of refund shall carry interest from the date of suit until realisation at 3 per cent per annum.

12. In tile result, the decree of the trial Court dismissing the suit is set aside. Instead, the claim of the appellant is decreed for Rs. 1836-15-0. This amount shall carry interest at 3 per cent per annum from the date of suit until realisation. The respondent shall pay the costs of the appellant throughout.

Appeal allowed.

Cases Referred.

1. AIR 1952 Vind Pra 32
2. ILR 20 Cal 51 (FB)
3. ILR 36 All 550 : AIR 1914 All 338