2019 INSC 1200

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8276-8277 OF 2019
(ARISING OUT OF S.L.P. (C) NOS.15280-15281 OF 2019)

SUPERINTENDING ENGINEER/ DEHAR POWER HOUSE CIRCLE BHAKRA BEAS MANAGEMENT BOARD (PW) SLAPPER & ANOTHER ....APPELLANTS

VERSUS

EXCISE AND TAXATION OFFICER, SUNDER NAGAR/ASSESSING AUTHORITY ....RESPONDENTS

WITH
CIVIL APPEAL NO. 8278 OF 2019
(ARISING OUT OF S.L.P. (C) NO.15283 OF 2019)

CIVIL APPEAL NO. 8279 OF 2019
(ARISING OUT OF S.L.P. (C) NO.15284 OF 2019)

CIVIL APPEAL NO. 8280 OF 2019
(ARISING OUT OF S.L.P. (C) NO.15285 OF 2019)

CIVIL APPEAL NO. 8281 OF 2019
(ARISING OUT OF S.L.P. (C) NO.15288 OF 2019)

J U D G M E N T

ARUN MISHRA, J.

1. The question involved is whether the High Court while exercising revisional power under Section 48 of the Himachal Pradesh Value Added Tax Act, 2005 ('the Act of 2005'), condone the delay in case a

revision under Section 48 of the Act of 2005, is filed beyond 90 days from the date of communication of the order or it excludes the applicability of Section 29 of the Limitation Act, 1963, and in consequence of Section 5 of the Limitation Act.

2. The High Court vide impugned judgment and order dated 19.11.2018, has refused to condone the delay in the revision filed under Section 48 read with Section 64(5) of the Act of 2005, against the order passed by Himachal Pradesh Tax Tribunal. The Division Bench of the High Court relying upon the decision of a Coordinate Bench in CMP(M) No.1371 of 2017 titled *State of Himachal Pradesh & others v. Tritronics India Private Limited,* has held that provision of Section 5 of the Limitation Act, cannot be applied and the High Court cannot condone the delay. The revision has to be filed within 90 days, as provided in Section 48 of the Act of 2005.

3. The provisions contained in Section 48 of the Act of 2005, relating to the revisional power of the High Court, read as under:

> "48. Revision to High Court. - (1) Any person aggrieved by an order made by the tribunal under sub-section (2) of section 45 or under sub-section (3) of section 46, may, within 90 days of the communication of such order, apply to the High Court of Himachal Pradesh for revision of such order if it involves any question of law arising out of erroneous decision of law or failure to decide a question of law.
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> (2) The application for revision under sub-section (1) shall precisely state the question of law involved in the order, and it shall be competent for the High Court to formulate the question of law.

> (3) Where an application under this section is pending, the High Court may, or on application, in this behalf, stay recovery of any disputed amount of tax, penalty or interest payable or refund of any amount due under the order sought to be revised:
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> Provided that no order for stay of recovery of such disputed amount shall remain in force for more than 30 days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.
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> (4) The application for revision under sub-section (1) or the application for stay under sub-section (3) shall be heard and decided by a bench consisting of not less than two judges.
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> (5) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard."

4. The Division Bench of the High Court of Himachal Pradesh held that considering the expression used in the provisions contained in Section 48(1), the High Court could not condone the delay in filing revision. The language contained therein excludes the applicability of Section 5 of the Limitation Act. The Court cannot also exercise the inherent powers to condone the delay. The High Court has taken into consideration the provisions contained in Assam Value Added Tax, 2003. The provisions contained in Section 81 of the Assam Value Added Tax, 2003, is held to be *pari materia* with the provisions of Section 48 of the Act of 2005. The High Court has also referred to Section 84 of the Assam Value Added Tax, 2003, which provides that provisions of Sections 4 and 12 of the Limitation Act, shall apply in computing the period of limitation in relation to the provisions contained in the chapter. It was further observed that in the Act of

2005, there is no provision to infer that any provisions of the Limitation Act apply. The decision in *Patel Brothers v. State of Assam & Ors.,* (2017) 2 SCC 350, has been relied on, in which while considering the provisions contained in Section 81 of the Assam Value Added Tax, 2003, it was held that provisions contained in Section 5 of the Limitation Act, stand excluded by necessary implication by the language employed in Section 84. The High Court has also referred to the decision of this Court in *Commissioner of Customs and Central Excise v. Hongo India Private Limited,* (2009) 5 SCC 791, rendered in the context of the provisions contained in Section 35 of the Central Excise Act, 1944, in which it has been held that reference has to be made to the High Court within 180 days, and there is no power of the High Court to condone the delay after the expiry of the prescribed period of 180 days. Thus, the High Court has held that provisions of Section 5 of the Limitation Act, are not applicable and stand excluded in the matter of revision filed under Section 48 of the Act of 2005.

5. The provisions contained in Section 29 of the Limitation Act deals with savings. The provisions in respect to the limitation prescribed for any suit, appeal or application by any special or local law, is different from the period prescribed by the Schedule, the provisions of Section 3 shall apply if the Schedule prescribed such period. The provisions contained in Sections 4 to 24 shall apply only

in so far as and to the extent to which they are not expressly excluded. Section 29(2) is extracted hereunder:

> "**29. Savings.—**
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> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."
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> (emphasis added)

6. Section 5 of the Limitation Act deals with the extension of the prescribed period in particular exigencies. The provision applies to the Court and is excluded in the application to the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908). It provides that if the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within limitation, the Court may admit the same after the prescribed period. *Explanation* attached to Section 5 makes it clear that in case the appellant or the applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period, may be sufficient cause within the meaning of Section 5.

7. Learned counsel appearing on behalf of appellants has placed reliance on *Hukumdev Narain Yadav v. Lalit Narain Mishra,* (1974) 2 SCC 133, in which it has been observed that in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine to what extent the scheme of special law exclude the operation of Limitation Act. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to condone the delay under the Special Act. In the context of Section 86 of Representation of People Act, it has been held that the High Court is bound to dismiss an election petition, which does not comply with the provisions of Section 81, 82 or 117. The election petition has to be preferred within the period prescribed in Section 81. Thus, the provision was held to be mandatory. The non-compliance with which visits the penalty of the petition being dismissed. Following observations have been made:

> "17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before

> us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is, in this case, the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial."
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> (emphasis added)

8. In *Sakuru v. Tanaji,* AIR 1985 SC 1279, it has been held that the provisions of the Limitation Act apply only to proceedings in Courts and not to appeals or applications of bodies other than Courts such as quasi-judicial Tribunals or executive authorities. Though the bodies or

authorities may be conferred with the powers under the Codes of Civil or Criminal Procedure, however, special statute may contain an express provision conferring on the Appellate Authority the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. In the absence of such provisions, Section 5 would have no application.

9. In *Lata Kamat v. Vilas,* (1989) 2 SCC 613, provisions contained in Section 28(4) of the Hindu Marriage Act, came up for consideration, wherein it was held that limitation prescribed therein is different from the Schedule of Limitation Act. Regarding the provisions of Section 29(2) of the Limitation Act, it was observed that the provisions of the Hindu Marriage Act do not exclude the operation of the provisions of Sections 4 to 24 of Limitation Act. They have been held to be applicable. Therefore, the time required for obtaining the copy of judgment has to be excluded, as provided in Section 12(2) of Limitation Act. The Court observed:

> "12. The Schedule in the Limitation Act does not provide for an appeal under the Hindu Marriage Act, but it is only provided in sub-section (4) of Section 28 of the Hindu Marriage Act. Thus the limitation provided, in sub-section (4) of Section 28, is different from the Schedule of the Limitation Act. According to sub-section (2) of Section 29, provisions contained in Sections 4 to 24 will be applicable unless they are not expressly excluded. It is clear that the provisions of the Act do not exclude the operation of provisions of Sections 4 to 24 of the Limitation Act, and therefore it could not be said that these provisions will not be applicable. It is therefore clear that to an appeal under Section 28 of the

Hindu Marriage Act, provisions contained in Section 12 sub-section (2) will be applicable; therefore, the time required for obtaining copies of the judgment will have to be excluded for computing the period of limitation for appeal. A Division Bench of Delhi High Court in *Chandra Dev Chadha case*[1]held as under: (AIR pp. 24-25)

> "The Hindu Marriage Act is a special law. That this 'special law' prescribes 'for an appeal a period of limitation' is also-evident. The period of limitation is 30 days. It is a period different from that prescribed in the First Schedule to the Limitation Act, 1963. But when we turn to the First Schedule, we find there is no provision in the First Schedule for an appeal against the decree or order passed under the Hindu Marriage Act. Now it has been held that the test of a 'prescription of a period of limitation different from the period prescribed by the First Schedule' as laid down in Section 29(2), Limitation Act, 1963 is satisfied even in a case where a difference between the special law and Limitation Act arose by omissions to provide for a limitation to a particular proceeding under the Limitation Act, see, *Canara Bank, Bombay* v. *Warden Insurance Co. Ltd., Bombay,* AIR 1953 Bom 35, approved by the Supreme Court in *Vidyacharan Shukla* v. *Khubchand Baghel*[2].
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> Once the test is satisfied, the provisions of Sections 3, 4 to 24, Limitation Act, 1963 would at once apply to the special law. The result is that the court hearing the appeal from the decree or order passed under the Hindu Marriage Act would under Section 3 of the Limitation Act have the power to dismiss the appeal if made after the period of limitation of 30 days prescribed therefor by the special law. Similarly, under Section 5 for sufficient cause, it will have the power to condone the delay. Likewise, under Section 12(2), the time spent in obtaining a certified copy of the decree or order appealed from will be excluded. If it is so, Section 12(2) of the Limitation Act is attracted, and the appellants in all three appeals will be entitled to exclude the time taken by them for obtaining a certified copy of the decree and order. The appeals are, therefore, within time."

Similar is the view taken by the Calcutta High Court in *Sipra Dey case*[3]and also the M.P. High Court in *Kantibai case*[4]. It is therefore clear that the contention advanced by the learned counsel for the respondent based on the Limitation Act also is of no substance."

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1 AIR 1979 Del 22
2 AIR 1964 SC 1099
3 AIR 1988 Cal 28
4 AIR 1978 MP 245

10. In *State of W.B. & Ors. v. Kartick Chandra Das & Ors,* (1996) 5 SCC 342, provisions of Section 29 of the Limitation Act came up for consideration concerning the letters patent appeal filed in contempt proceedings. It has been observed that there is no express exclusion of provisions of Sections 4 to 24 of Limitation Act by a special or local law, thus, on the strength of Section 29(2), Section 5 of Limitation Act becomes applicable. The Court held:

> 4. It is not in dispute that under Section 19 of the Contempt of Courts Act, 1971, an appeal would lie to the Division Bench, and limitation of 30 days from the date of the order has been prescribed subject to the exclusion of the time taken for obtaining the certified copy thereof. We have seen that the Appellate Side Rules of the Calcutta High Court applicable to the area other than the city of Calcutta had not expressly excluded the application of the limitation under the Limitation Act.
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> 5. The learned counsel for the respondent sought to contend that by operation of Rule 3 of Chapter 8 of the Appellate Side Rules under the Letters Patent the memorandum of appeal drawn up under Order 41 Rule 1 CPC requires to be complied with as envisaged thereunder since it had not been provided with any limitation. The Division Bench was, therefore, right in holding that the Limitation Act was not extended for an appeal filed under clause 15 of the Letters Patent against the order passed by the learned Single Judge under the provisions of the Contempt of Courts Act. It is seen that under the Contempt of Courts Act, the High Court has framed the Rules. Rule 35 envisages that:
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> > "35. In respect of appeals from the orders of any Judge or Bench of the original side, the rules of the original side relating to appeals and in respect of appeals from the order of any Judge or Bench of the appellate side, the rules of the appellate side shall apply mutatis mutandis."
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> Therefore, for the appeals filed under clause 15 of the Letters Patent against the order of the learned Single Judge for the contempt proceedings by necessary consequences, the procedure prescribed in the appellate side would also be applicable and followed.
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> 7. In consequence, by operation of Section 29(2) read with Section 3 of the Limitation Act, limitation stands prescribed as a special law under Section 19 of the Contempt of Courts Act, and limitation in filing Letters Patent appeal stands attracted. In consequence,

> Sections 4 to 24 of the Limitation Act stands attracted to Letters Patent appeal insofar as and to the extent to which they are not expressly excluded either by special or local law. Since the rules made on the appellate side, either for entertaining the appeals under clause 15 of the Letters Patent or appeals arising under the contempt of courts, had not expressly excluded, Section 5 of the Limitation Act becomes applicable. We hold that Section 5 of the Limitation Act does apply to the appeals filed against the order of the learned Single Judge for the enforcement by way of a contempt. The High Court, therefore, was not right in holding that Section 5 of the Limitation Act does not apply. The delay stands condoned. Since the High Court had not dealt with the matter on merits, we decline to express any opinion on merits. The case stands remitted to the Division Bench for decision on merits."

11. In *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker*, (1995) 5 SCC 5, the question arose whether Appellate Authority constituted under Section 18 of Kerala Buildings (Lease and Rent Control) Act, 1965 has the power to condone the delay in filing of the appeal. The Appellate Authority dismissed the appeal on the ground that it had no power to condone the delay. The application for condonation of delay was not maintainable. This Court held that the Appellate Authority under Section 18 of Kerala Buildings (Lease and Rent Control) Act, 1965, acts as a Court and not a *persona designatum*, it can condone the delay under Section 5 of Limitation Act as the two requirements for the applicability of Section 29 are satisfied, namely, (i) different periods of limitation being prescribed under the local law; and (ii) there is no express exclusion of provisions of Limitation Act. Following are the relevant observations:

> "9. If the aforesaid two requirements are satisfied, the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:

(*i*) In such a case, Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.

(*ii*) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

10. In the light of the aforesaid analysis of the relevant clauses of Section 29(2) of the Limitation Act, let us see whether Section 18 of the Rent Act providing for a statutory appeal to the appellate authority satisfies the aforesaid twin conditions for attracting the applicability of Section 29(2) of the Limitation Act. It cannot be disputed that Kerala Rent Act is a special Act or a local law. It also cannot be disputed that it prescribes for appeal under Section 18 a period of limitation which is different from the period prescribed by the Schedule as the Schedule to the Limitation Act does not contemplate any period of limitation for filing appeal before the appellate authority under Section 18 of the Rent Act or in other words it prescribes nil period of limitation for such an appeal. It is now well settled that a situation wherein a period of limitation is prescribed by a special or local law for an appeal or application and for which there is no provision made in the Schedule to the Act, the second condition for attracting Section 29(2) would get satisfied. As laid down by a majority decision of the Constitution Bench of this Court in the case of *Vidyacharan Shukla* v. *Khubchand Baghel*[5], when the First Schedule of the Limitation Act prescribes no time-limit for a particular appeal, but the special law prescribes a time-limit for it, it can be said that under the First Schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period, while the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is, therefore, different from that prescribed in the former, and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act.

11. It is also obvious that once the aforesaid two conditions are satisfied, Section 29(2), on its own force will get attracted to appeals filed before appellate authority under Section 18 of the Rent Act. When Section 29(2) applies to appeals under Section 18 of the Rent Act, for computing the period of limitation prescribed for appeals under that Section, all the provisions of Sections 4 to 24 of the Limitation Act would apply. Section 5, being one of them, would, therefore, get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act, taking out the applicability of Section 5 of the Limitation Act to appeals filed

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5 AIR 1964 SC 1099

> before appellate authority under Section 18 of the Act. Consequently, all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in the light of Section 29(2) of Limitation Act can be said to have been satisfied. That was the view taken by the minority decision of the learned Single Judge of Kerala High Court in *Jokkim Fernandez* v. *Amina Kunhi Umma*[6]. The majority did not agree on account of its wrong supposition that appellate authority functioning under Section 18 of the Rent Act is a persona designata. Once that presumption is found to be erroneous as discussed by us earlier, it becomes at once clear that minority view in the said decision was the correct view and the majority view was an erroneous view."

It has been held that if there is no express exclusion in the local or special law, then the provisions contained in Sections 4 to 24 of the Limitation Act shall apply by the provisions contained in Section 29(2) of the Limitation Act.

12. In *Mangu Ram v. Municipal Corporation of Delhi,* (1976) 1 SCC 392, question came up for consideration when the application of Section 5 of the Limitation Act is to be excluded and whether peremptory or imperative language of the special or local law can exclude the application of Section 5, if not otherwise explicitly excluded. The Municipal Corporation of Delhi against the acquittal order, filed an application in the High Court of Delhi under Section 417, sub-Section (3) of Code of Criminal Procedure, 1898 for special leave to appeal from the order of acquittal. Section 417(4) of the Code of Criminal Procedure required that application for special leave should be filed before the expiry of sixty days. The application for special leave should have been filed on 25.8.1971, but it was filed on

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6 AIR 1974 Ker 162

27.8.1971. The argument was raised that time frame is sixty days as prescribed in Section 417(4) for making an application for special leave under sub-Section (3) of that section was mandatory and inexorable time limit which could not be relieved against or relaxed, and it excluded the applicability of Section 5 of the Limitation Act. It has also been held that the provision of a period of limitation in a howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The provisions of Section 5 of the Limitation Act have been held to be applicable to condone the delay in applying under Section 417(4), Code of Criminal Procedure. The Court has observed:

> "6. The question which arose for consideration in *Kaushalya Rani case* was apparently the same as in the present case, namely, whether the time limit of sixty days prescribed in sub-section (4) of Section 417 for making an application for special leave under sub-section (3) of that section could be extended by invoking Section 5 of the Indian Limitation Act, 1908. This Court held that sub-section (4) of Section 417 laid down a special period of limitation for an application by a complainant for special leave to appeal against an order of acquittal and
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> "in that sense, this rule of sixty days bar is a special law, that is to say, a rule of limitation which is specially provided for in the Code itself, which does not ordinarily provide for a period of limitation for appeals or applications.
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> This Court pointed out that since
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> "the special rule of limitation laid down in sub-section (4) of Section 417 of the Code is a special law of limitation governing appeals by private prosecutors, there is no difficulty in coming to the conclusion that Section 5 of the Limitation Act is wholly out of the way, in view of Section 29(2)(*b*) of the Limitation Act."
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> The applicability of Section 5 of the Indian Limitation Act, 1908 was thus held to be excluded in determining the period of limitation of sixty days prescribed in sub-section (4) of Section 417 by reason of Section 29(2)(*b*) of that Act, which provided in so many terms that

"for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the remaining provisions of this Act"

that is, sections other than Sections 4, 9 to 18, and 22 "shall not apply." Now, there can be no doubt that if the present case were governed by the Indian Limitation Act, 1908, this decision would wholly apply and the Municipal Corporation of Delhi would not be entitled to invoke the aid of Section 5 of that Act for the purpose of extending the period of limitation of sixty days prescribed in sub-section (4) of Section 417 for an application by a complainant for special leave to appeal against an order of acquittal. But the Indian Limitation Act, 1908 has clearly no application in the present case since that Act is repealed by the Limitation Act, 1963 which came into force with effect from January 1, 1964, and the present case must, therefore, be decided by reference to the provisions of the Limitation Act, 1963.

7. There is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2), is concerned. Whereas, under the Indian Limitation Act, 1908, Section 29, sub-section (2), clause (*b*) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (*b*) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in clear and unambiguous terms, provides for the applicability of Section 5 and the ratio of the decision in *Kaushalya Rani case*[7] can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(*b*) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5 that it would stand displaced. Here, as pointed out by this Court in *Kaushalya Rani case*, the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation,

7 AIR 1964 SC 260

> and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it. The High Court, in the present case, did not, therefore, act without jurisdiction in holding that the application preferred by the Municipal Corporation of Delhi was not barred by the time limit of sixty days laid down in sub-section (4) of Section 417 since the Municipal Corporation of Delhi had sufficient cause for not preferring the application within such time limit. The order granting special leave was in the circumstances, not an order outside the power of the High Court."

13. In *Union of India v. Popular Construction Co.,* (2001) 8 SCC 470, the Court considered the question of applicability of the provisions contained in Section 5 of the Limitation Act to the proceedings under Section 34(3) of the Arbitration and Conciliation Act, 1996. The provisions contained in Section 34 of the Arbitration and Conciliation Act, 1996, came up for consideration. Relevant provisions contained in Section 34(3) is extracted hereunder:

> "**34. Application for setting aside arbitral award.—**
> (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request

> had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:
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> Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of thirty days, but not thereafter."

Proviso to Section 34(3) provides three months period for making an application. The Court, if satisfied on sufficient cause shown, may entertain the application within a further period of thirty days, but not thereafter. In *Popular Construction Co.* (supra) the Court held:

> "8. Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5" [8].
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> 11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded[9].
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> 12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act and would, therefore, bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

It has been held that had the proviso to Section 34 merely provided for a period within which the Court could exercise its

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8 Mangu Ram v. Municipal Corpn. of Delhi, (1976) 1 SCC 392 at p. 397, para 7.
9 *Patel Naranbhai Margabhai v. Dhulabhai Galbabhai*, (1992) 4 SCC 264.

discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act. However, the expression in Section 34 "but not thereafter" would amount to express exclusion within the meaning of Section 29(2) of the Limitation Act.

14. In *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department & Ors.*, 2008 (7) SCC 169, the question arose for consideration concerning the limitation period prescribed in Section 34(3) of the Arbitration & Conciliation Act, for setting aside of the arbitral award. It has been held that Section 14 of the Limitation Act is not excluded. However, applicability of Section 5 of the Limitation Act is excluded. Following is the relevant discussion:

> "53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act, which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.

> 54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation but relates to exclusion of certain period while computing the period of limitation. Neither subsection (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders[10], therefore, lays down the correct legal position."

15. In *Commissioner of Customs & Central Excise v. Hongo India Pvt. Ltd. & Anr.*, (2009) 5 SCC 791, the question arose for consideration whether the High Court has the power to condone delay beyond the period specified in section 35-H of the Central Excise Act. The limitation for an appeal and reference is within 180 days from the date of communication of the decision or order. Because of the provisions and the Act, it was held that the time limit prescribed for making a reference to the High Court is absolute and unextendible by Court under section 5 of the Limitation Act. The Central Excise Act has been held to be a complete Code by itself. The import of “expressly excluded” in section 29(2) was considered, and it has been observed that even in the absence of express exclusion, the court can examine

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10 (2006) 6 SCC 239

the extent of exclusion of Limitation Act by a special law, based on the provisions or the nature of the subject matter. This Court has considered the scheme of the various provisions and the scheme thereunder thus:

> "4. Chapter VI-A of the Act deals with appeals. As per Section 35, any person aggrieved by any decision or order passed by a Central Excise Officer may file an appeal to the Commissioner of Central Excise (Appeals) within sixty days from the date of the communication to him of such decision or order. The proviso to sub-section (1) enables the Commissioner (Appeals) if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, to allow it to be presented within a further period of thirty days.
>
> 5. Section 35-B speaks about appeals to the Appellate Tribunal. Any person aggrieved by certain decisions/orders passed by the Commissioner of Central Excise or the Commissioner (Appeals), may prefer an appeal to the Appellate Tribunal within three months from the date on which the order sought to be appealed against is communicated to the officer concerned or the other party. Sub-section (5) enables the Appellate Tribunal to condone delay even beyond the prescribed period if there was sufficient cause for not presenting it within that period.
>
> 6. Section 35-EE provides for revision by the Central Government. As per sub-section (2), an application under sub-section (1) shall be made within three months from the date of the communication. However, proviso to sub-section (2) enables the revisional authority to condone the delay for a further period of ninety days, if sufficient cause is shown.
>
> 7. Unamended Section 35-G speaks about appeal to the High Court. Sub-section 2(a) enables the aggrieved person to file an appeal to the High Court within 180 days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party. There is no provision to condone the delay in filing appeal beyond the prescribed period of 180 days.
>
> 8. Unamended Section 35-H speaks about reference application to the High Court. As per sub-section (1), the Commissioner of Central Excise or the other party within a period of 180 days of the date upon which he is served with notice of an order under Section 35-C direct the Tribunal to refer to the High Court any question of law arising from such order of the Tribunal. Here again, as per sub-section (1), application for reference is to be made to the High Court within 180 days, and there is no provision to extend the period of

> limitation for filing the application to the High Court beyond the said period and to condone the delay.
>
> 9. In these three appeals, we are concerned with "reference application" made to the High Court under Section 35-H(1) of the Act before amendment of the Central Excise Act by Act 49 of 2005 (w.e.f. 28-12-2005) by which several provisions of the Act were omitted including Section 35-H. However, in view of the reference made, it is but proper to consider the question referred before us.
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> ** ** **
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> 32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G, and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days, which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

The Court has also taken note of the fact that the sufficient period of limitation of 180 days has been provided for reference, provision for condonation of delay was not made in filing the reference. The legislature intended that there should not be any condonation of delay beyond 180 days. The Court has observed with respect to the sufficiency of a period of 180 days which is more than the period prescribed for an appeal and revision thus:

> "33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court, which is more than the period prescribed for an appeal and revision."

Under the scheme of the Act and the provision of limitation of 180 days, for filing reference to the High Court was more than the period prescribed for an appeal and revision.

16. In *State of Madhya Pradesh & Anr. v. Anshuman Shukla*, (2014) 10 SCC 814, a 3-Judge Bench of this Court held that even if the amendment to section 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 was made in 2005, as the court had the power to take suo moto cognizance and call for record of an award at any time, there was no legislative intent to exclude the applicability of section 5 of the Limitation Act. Apart from that, this Court observed that section 19 of the Act of 1983, did not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed limitation thereunder. Thus, the provisions of section 29(2) are applicable in the absence of such rider, and delay in filing the revision was condoned. The Court observed:

> "32. Section 19 of the 1983 Act does not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed period of three months. On the contrary, the High Court is conferred with suo motu power, to call for the record of an award at any time. It cannot, therefore, be said that the legislative intent was to exclude the applicability of Section 5 of the Limitation Act to Section 19 of the 1983 Act.
>
> 33. In our opinion, it is unnecessary to delve into the question whether the Arbitral Tribunal constituted under the Act is a court or not for answering the issue in the present case as the delay in filing the revision has occurred before the High Court, and not the Arbitral Tribunal.
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> **Answer to Point (ii)**

> 34. In light of the reasons recorded above, we are of the opinion that the case of *Nagar Palika Parishad, Morena*[11], was decided erroneously. Section 5 of the Limitation Act is applicable to Section 19 of the 1983 Act. No express exclusion has been incorporated therein, and there is neither any evidence to suggest that the legislative intent was to bar the application of Section 5 of the Limitation Act on Section 19 of the 1983 Act. The cases which were relied upon to dismiss the special leave petition, namely, *Nasiruddin*[12] and *Popular Construction*[13], can be distinguished both in terms of the facts as well as the law applicable, and thus, have no bearing on the facts of the present case."

The provision of section 19(1) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 is extracted hereunder:

> "19. High Court's power of revision.—(1) The High Court may *suo motu* at any time or on an application for revision made to it within three months of the award by an aggrieved party, call for the record of any case in which an award has been made under this Act by issuing a requisition to the Tribunal, and upon receipt of such requisition, the Tribunal shall send or cause to be sent to that Court the concerned award and record thereof."

17. In *Patel Brothers v. State of Assam & Ors.*, 2017 (2) SCC 350, the question came up for consideration concerning the provisions contained in the Assam Value Added Tax Act. This Court considered the provisions contained in sections 81 and 84 of the VAT Act read with sections 5 and 29(2) of the Limitation Act. In the matter of condoning the delay in filing revision in the High Court, it has been held that given the provisions contained in sections 81 and 84 of the VAT Act, the provisions of section 5 of the Limitation Act cannot be said to be applicable. There can be implied exclusion of the provisions

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11 (2004) 2 MPJR (SN) 374
12 (2003) 2 SCC 577
13 (2001) 8 SCC 470

of section 29(2) of the Limitation Act. Even in the absence of express exclusion of the provisions of the Limitation Act, it is open to a court to consider the implied exclusion. It has been held:

> "20. Thus, the approach which is to be adopted by the Court in such cases is to examine the provisions of the special law to arrive at a conclusion as to whether there was legislative intent to exclude the operation of the Limitation Act. In the instant case, we find that Section 84 of the VAT Act made only Sections 4 and 12 of the Limitation Act applicable to the proceedings under the VAT Act. The apparent legislative intent, which can be clearly evinced, is to exclude other provisions, including Section 5 of the Limitation Act. Section 29(2) stipulates that in the absence of any express provision in a special law, provisions of Sections 4 to 24 of the Limitation Act would apply. If the intention of the legislature was to make Section 5, or for that matter, other provisions of the Limitation Act applicable to the proceedings under the VAT Act, there was no necessity to make specific provision like Section 84 thereby making only Sections 4 and 12 of the Limitation Act applicable to such proceedings, inasmuch as these two sections would also have become applicable by virtue of Section 29(2) of the Limitation Act. It is, thus, clear that the legislature intended only Sections 4 and 12 of the Limitation Act, out of Sections 4 to 24 of the said Act, applicable under the VAT Act, thereby excluding the applicability of the other provisions.
>
> 21. The judgment in *Mangu Ram*[14], would not come to the aid of the appellant as the Court found that there was no provision under CrPC from which legislative intent to exclude Section 5 of the Limitation Act could be discerned and, therefore, Section 29(2) of the Limitation Act was taken aid of. Similar situation prevailed in *Anshuman Shukla case*[15]. On the contrary, in the instant case, a scrutiny of the scheme of the VAT Act goes to show that it is a complete code not only laying down the forum but also prescribing the time-limit within which each forum would be competent to entertain the appeal or revision. The underlying object of the Act appears to be not only to shorten the length of the proceedings initiated under the different provisions contained therein but also to ensure finality of the decision made thereunder. The fact that the period of limitation described therein has been equally made applicable to the assessee as well as the Revenue lends ample credence to such a conclusion. We, therefore, unhesitatingly hold that the application of Section 5 of the Limitation Act, 1963 to a proceeding under Section 81(1) of the VAT Act, stands excluded by necessary implication, by virtue of the language employed in Section 84."

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14 (1976) 1 SCC 392
15 (2014) 10 SCC 814

This Court has considered section 84 of the VAT Act of Assam. Same is as follows:

> "84. Application of Sections 4 and 12 of the Limitation Act, 1963.— In computing the period of limitation under this Chapter, the provisions of Sections 4 and 12 of the Limitation Act, 1963, shall, so far as may be, apply."

Section 81 deals with revision, and section 84 deals with the Limitation Act. Section 84 makes a vital difference for the Chapter in which the provision of section 81 finds a place. Only the provisions of sections 4 and 12 of the Limitation Act are made applicable, and other provisions stand excluded by limited application of the provisions of the Limitation Act. The decision under the Assam VAT Act has turned on the aforesaid crucial provision of section 84.

18. In *M. P. Steel Corporation v. Commissioner of Central Excise*, (2015) 7 SCC 58, this Court considered the connotations of the court and civil proceedings under section 14 of the Limitation Act and the provisions were held applicable to the proceedings in the case of the appeal being filed under section 120 of the Customs Act.

19. In *Commissioner of Customs, Central Excise, Noida v. Punjab Fibres Ltd., Noida*, (2008) 3 SCC 73, a question arose of condonation of delay in filing reference application to the High Court. It has been held that section 5 is not applicable. In the said case, the court has

followed the decision in *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur & Ors.*, (2008) 3 SCC 70. In *Singh Enterprises* (supra), it has been held:

> "6. At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows:
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> > "35. Appeals to Commissioner (Appeals).—(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order:
> >
> > Provided that the Commissioner (Appeals) may if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.
> >
> > (2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."
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> ** ** **
>
> 8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days, but in terms of the proviso, further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days, which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

20. In *Chaudharana Steels Private Ltd. v. Commissioner of Central Excise, Allahabad*, (2009) 15 SCC 183, the question of delay in filing an appeal under section 35-G of the Central Excise Act, 1944 came up for consideration. The Court held that the High Court has no power to condone the delay and followed the decision in *Punjab Fibres Ltd.* (supra).

21. In the light of the decisions as mentioned earlier, when we examine the scheme of the Act of 2005, the provisions contained in section 45 provides for an appeal from every original order passed under the Act or the Rules made thereunder. Sub-section (4) of section 45 provides appeal to be filed within 60 days, or such more extended period as the appellate authority may allow, for reasons to be recorded in writing. Thus, because of the provisions contained in section 45(4), the principles of section 5 would apply to an appeal before the appellate authority, which otherwise in the absence of specific provision would not have applied to authority. The revision is provided to the Commissioner suo motu under the provisions of section 46(1), and the period provided is 5 years for suo motu exercise of revisional power. However, the tribunal has the power to entertain application within 60 days from the date of communication of the order. When we consider the provisions of section 48, revision is provided to the High Court, and an aggrieved person may within 90 days of the

communication of such order, file a revision. Section 48(1) nowhere expressly excludes the applicability of provisions of the Limitation Act. The provisions of section 5 are applicable to Section 48 as they are not expressly excluded by the provisions under the Act of 2005. More so, in view of the provisions in section 45(4), which makes provisions to condone the delay like the Limitation Act, conferring power upon an authority also to condone delay. Further, *suo motu* revision has also been provided under section 46. In section 48, there is no express exclusion. Because of the scheme of the Act, it cannot be inferred that by implication, the provisions of section 5 of the Limitation Act are excluded. Provisions contained in section 29(2) of the Limitation Act would be attracted as there is no express exclusion or by implication, in view of the provisions of the Act of 2005. We hold that by virtue of the provisions contained in section 29(2), provisions of section 5 of the Limitation Act would apply to proceedings under Section 48 of the Act of 2005.

22. The High Court has relied upon the decision of this Court in *Patel Brothers* (supra) in the context of the Assam VAT Act in which the abovementioned provision of section 84 made the difference, which makes specific provision that only sections 4 and 12 of the Limitation Act are applicable. Consequently, it follows that other provisions are not applicable. The decision in *Hongo India Private Limited* (supra) also

turned on the scheme of the Excise Act. The scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act. Thus, the decision in *Hongo India Private Limited* (supra) also cannot be said to be applicable to interpret the Himachal Pradesh VAT Act. As the revision under the Act of 2005 lies to the High Court, the provisions of section 5 of the Limitation Act are applicable, and there is no express exclusion of the provisions of section 5 and as per section 29(2), unless a special law expressly excludes the provision, sections 4 to 24 of the Limitation Act are applicable. When we consider the scheme of the Himachal Pradesh VAT Act, 2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of section 5 applicable even to an authority in the matter of filing an appeal but for the said provision the authority would not have the power to condone the delay. By implication also, it is apparent that the provisions of Section 5 of the Limitation Act have not been ousted; they have the play for condoning the limitation under Section 48 of the Act of 2005. *Suo motu* provision of revisional power is also provided to the Commissioner within 5 years. Thus, the intendment is not to exclude the Limitation Act. We condone the delay in filing of revision.

23. We are of the considered view that the decision of the High Court cannot be said to be sustainable. The provisions of Section 5 of the

Limitation Act are held applicable to the revisional provision under Section 48 of the Act of 2005. The impugned judgments and orders are set aside; the cases are remitted to the High Court to examine the same on merits in accordance with the law.

.....J.
(Arun Mishra)

.....J.
(M.R. Shah)

New Delhi;
October 25, 2019.

.....J.
(B.R. Gavai)