(2014) 10 RAJ CK 0049

In the Rajasthan High Court

Case No : . Sales Tax Revision No. 392 of 2011

Assistant Commercial Taxes Officer, Flying Squad-II APPELLANT

Vs

S.K. Traders RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Rajasthan Value Added Tax Act, 2003 — Section 33

Citation : (2015) 81 VST 481

Hon'ble Judges : J.K. Ranka, J.

Bench : Single Bench

Advocate : Tanvi Sahai on behalf of R.B. Mathur, for the Appellant

Judgement

J.K. Ranka, J.?This revision petition was admitted vide order dated December 12, 2013 on the following substantial questions of law:

"(1) Whether, in the facts and circumstances of the case, the Rajasthan Tax Board was justified in law in completely changing and reviewing its earlier order in rectification application which is having limited scope.

(2) Whether, in the facts and circumstances of the case, the Rajasthan Tax Board has acted illegally and perversely in deleting the penalty under section 78(5) when there was violation of provisions of section 78(2)(a) and rule 53 and the declaration form ST-18A was not submitted at the time of checking and even with the reply despite opportunity granted by the assessing authority."

Counsel for the petitioner-Revenue submits that the Tax Board vide its order dated November 27, 2007 decided the issue in favour of the Revenue, after considering the facts, invoices, bills and upheld the imposition of penalty under section 78(5) of the Rajasthan Sales Tax Act, 1994 (for short, "the Act") and came to the conclusion that along with the bill, the declaration form ST-18A was not found along with the goods. Counsel for the Revenue contends that the Tax Board in the impugned order dated January 19, 2011, on the same material and same facts, has reviewed the order dated November 27, 2007, after re-apprising or reviewing the findings given in its own earlier order and has reversed the finding arrived at by the Tax Board in its impugned order dated January 19, 2011. She contends that the Tax Board, in the impugned order, ought not to have reviewed the judgment/order when it, in its earlier order, had categorically, on the same facts and material, came to the conclusion of sustaining the penalty, reversed the order of the Deputy Commissioner (Appeals) and upheld the order passed by the assessing officer. She further contends that no occasion arose for passing of the impugned order and there is no mistake apparent under section 33 by which the order could have been rectified. She contends that in the garb of the rectification order, by the impugned order, the Tax Board has totally reviewed its earlier view which is unjustified. She contends that the scope of rectification under section 33 is limited and only the mistake apparent on the face of record or clerical or minor errors, can be rectified under section 33 . She relied upon judgment of the honourable apex court rendered in the case of Assistant Commercial Taxes Officer Vs. Makkad Plastic Agencies, ; [2011] 4 JT SC 203.

2. No one appears on behalf of the respondent-assessee despite of service.

3. I have considered the arguments advanced by counsel for the Revenue and perused the impugned order so also the order dated November 27, 2007.

4. In my view, the present order of the Tax Board deserves to be quashed and set aside for the simple reason that on perusal of the order, it is noticed that the Tax Board has reviewed its own order dated November 27, 2007 in the garb of the rectification order. In my view, the scope of section 33 under the RVAT Act, 2003 or section 37 of the RST Act, 1994 is limited and for ready reference, section 33 of the Act is reproduced as under:

"33. Rectification of a mistake.--(1) With a view to rectifying any mistake apparent from the record, any officer appointed or any authority constituted under this Act may rectify suo motu or otherwise any order passed by him.

Explanation.--A mistake apparent from the record shall include an order which was valid when it was made and is subsequently rendered invalid by an amendment of the law having retrospective operation or by a judgment of the Supreme Court, the Rajasthan High Court or the Rajasthan Tax Board.

(2) No application for rectification shall be filed under sub-section (1) after the expiry of a period of three years from the date of the order sought to be rectified.

(3) Where an application under sub-section (1) is presented to the assessing authority, appellate authority or Tax Board and a receipt thereof is obtained, it shall be disposed of within a period of one year from the date of presentation and where such application is not disposed of within the said period, the same shall be deemed to have been accepted.

(4) No rectification under this section shall be made after the expiry of four years from the date of the order sought to be rectified.

(5) An order of rectification which has the effect of increasing the liability of a dealer in any way, shall not be made without affording him an opportunity of being heard."

5. On perusal of the above section, it is quite clear that the scope of rectification, in my view, is limited and the matter though can be rectified on a mistake apparent, obvious and glaring but every mistake cannot be corrected/rectified by the Tax Board. The honourable apex court, in the case of Assistant Commercial Taxes Officer Vs. Makkad Plastic Agencies, ; [2011] 4 JT SC 203, observed as under (page 7 in 42 VST):

"Both the aforesaid two decisions which were rendered while considering taxation laws are squarely applicable to the facts of the present case. It is also now an established proposition of law that review is a creature of the statute and such an order of review could be passed only when an express power of review is provided in the statute. In the absence of any statutory provision for review, exercise of power of review under the garb of clarification/modification/correction is not permissible. In coming to the said conclusion we are fortified by the decision of this court in Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, .

Section 37 of the Act of 1994 provides for a power to rectify any mistake apparent on the record. Such power is vested on the authority to rectify an obvious mistake which is apparent on the face of the records and for which a re-appreciation of the entire records is neither possible nor called for. When the subsequent order dated January 22, 2009 passed by the Taxation Board is analysed and scrutinised it would be clear/apparent that the Taxation Board while passing that order exceeded its jurisdiction by re-appreciating the evidence on record and holding that there was no mala fide intention on the part of assessee-respondent for tax evasion. Such re-appreciation of the evidence to come to a contrary finding was not available under section 37 of the Act of 1994 while exercising the power of rectification of error apparent on the face of the records."

6. Under the Act review is impermissible for coming to a totally different conclusion what was reached earlier. Earlier view cannot be changed in the garb of rectification unless there is a glaring and obvious mistake apparent on the face of record. The honourable apex court in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, held as under (page 53 in 82 ITR):

"...A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions..."

7. The honourable apex court in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face

of record.

8. The honourable apex court in the case of Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, held as under (page 366 in 17 STC):

"...The wrong conclusion, if any, arrived at by the Commissioner in his earlier order, because of the fact that the said two arguments were not advanced before him, cannot be said to be errors apparent on the face of the record arising or occurring from an accidental slip or omission. The errors, if any, arose because the Department did not raise those points before the Commissioner. They were also errors not apparent on the face of the record for the decision depends upon consideration of arguable questions of limitation and construction of documents. Indeed the Commissioner re-heard arguments and came to a conclusion different from that which he arrived on the earlier occasion. This is not permissible under rule 83 of the Rules."

9. In my view, rectification implies the correction of an error or removal of defects or imperfections and could not be used to appreciate the evidence on new facts which were not placed earlier. Rectification implies an error, mistake or defect which after rectification is made right.

10. In view of what has been observed herein above, the order of the Tax Board, by which the order has been rectified, certainly appears to be reviewing its own order and coming to a different conclusion than what was reached by the Tax Board earlier on November 27, 2007. Consequently, the instant sales tax revision petition stands allowed. The question of law is decided in favour of Revenue by holding that the Tax Board was unjustified in reviewing the order in the garb of rectification order dated January 19, 2011. No costs.