
(2010) 09 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21419 of 2010

Lease Plan India Limited

APPELLANT

Vs

The Commercial Tax Officer

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Andhra Pradesh General Sales Tax Rules, 1957 — Rule 50
Andhra Pradesh Value Added Tax Act, 2005 — Section 4(8)
Andhra Pradesh Value Added Tax Rules, 2005 — Rule 60
Income Tax Act, 1922 — Section 35

Citation : (2011) 6 RCR(Civil) 1678 : (2011) 39 VST 428

Hon'ble Judges : V.V.S. Rao, J;Ramesh, J

Bench : Division Bench

Advocate : M.V.J.K. Kumar, for the Appellant; A.V. Krishna Kaundinya, Special Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The Petitioner is a value added tax dealer on the rolls of the Respondent. They are engaged in the business of purchase of motor vehicles as lessors and leasing the vehicles to the customers/clients on payment of lease rentals. For the period from November 2007 to August 2009 the Respondent passed assessment order u/s 4(8) of the Andhra Pradesh Value Added Tax Act, 2005 (VAT Act). Feeling aggrieved, the Petitioner filed a writ petition, being W.P. No. 12915 of 2010. This Court stayed the collection on condition of the Petitioner company depositing a sum of Rs. 1.00 crore (Rupees one crore only). While the matter was pending, the Petitioner filed an application on 29.05.2010 purportedly under Rule 60 of the Andhra Pradesh Value Added Tax Rules, 2005 (the Rules), for rectification of the mistakes in the assessment order. By impugned endorsement dated 10.06.2010, the Respondent declined to consider the application. The endorsement is assailed in the writ petition.

2. Counsel for the Petitioner mainly contends that the non-exercise of power vested in the Respondent under Rule 60 of the Rules has resulted in civil

consequences. Therefore, he would urge that an opportunity of being heard is mandatory to comply with the rules of natural justice, especially, when the Petitioner made a request for such hearing. Reliance is placed on various precedents of this Court as well as the Supreme Court.

3. In sales tax jurisprudence, it is now fairly well settled that the Assessing Officer or the appellate authority or the revisional authority, being quasi judicial authorities, are, in law, required to record reasons and afford a reasonable opportunity including an opportunity of being heard whenever such a request is made see *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, *Sangam Health Care Products Limited, Secunderabad v. Commercial Tax Officer, S.D. Road Circle, Hyderabad* (2005) 41 APSTJ 99, *Gopikrishna Granites India Limited v. The Additional Commissioner of Commercial Taxes (Legal)* (2006) 42 APSTJ 14, *Kamadhenu Feeds (P) Limited, Narakoduru, Guntur District v. The Commercial Tax Officer, Gandhichowk Circle, Tenali* (2007) 45 APSTJ 62, and *S. Lalaiah & Co. v. The Deputy Commissioner (CT), Saroornagar Division, Nampally, Hyderabad* (2007) 45 APSTJ 116 . Laying considerable emphasis on these judgments, Counsel assails the impugned endorsement. We are afraid, we cannot accept the submission. The compliance with the rules of natural justice is not a straightjacket formula to be used to strike down quasi-judicial or administrative action. If the Petitioner fails to show the prejudice caused by such non compliance, the Court can even interpret the requirement of compliance with the natural justice as directed see *State Bank of Patiala and others Vs. S.K. Sharma*, . Further, it is also well settled that when the preliminary legislative authority or delegated legislative authority excludes the rule of audi alteram partem, the Court cannot read such requirement into law see *Union of India and Another Vs. Tulsiram Patel and Others*, Thus, the mandatory compliance with the rule depends on the provision that falls for construction, and the facts and circumstances of each case.

4. Here we may read Rule 60 of the Rules.

60. Correction of Errors: Any authority prescribed, appellate or revising authority may at any time within four years from the date of any order passed by him rectify any clerical or arithmetical mistake apparent from the record. No such rectification which has the effect of enhancing the tax liability or penalty shall be made unless a notice is given to the person concerned to provide him with a reasonable opportunity of being heard.

5. The first limb of the Rule enables any prescribed authority to rectify any clerical or arithmetical mistake apparent from the record. The exercise of such power is circumscribed only by the time factor. Any such exercise should be within four years from the date of the order passed by such authority. The second limb mandates compliance with natural justice only when the exercise of rectification power, by the prescribed authority, has "effect of enhancing the tax liability or penalty". In such a case, needless to mention, the rule requires a notice to be given to the person concerned and to be provided with an

opportunity of being heard. When the provision is very clear, it is not possible to construe the rule as mandating a notice or a reasonable opportunity of being heard in cases other than those where the tax liability or penalty is enhanced.

6. The reliance placed by the Counsel on the decision of the Division Bench of the Supreme Court in *M.K. Venkatachalam* is misconceived. It was a case where the Supreme Court interpreted Section 35 of the Income Tax Act, 1922. The said provision enabled the authority to suo motu rectify a mistake apparent from the record. The purport of "mistake apparent from the record" "error apparent on the face of the record" "impropriety, irregularity and illegality" and "clerical or arithmetical mistake apparent from the record" have different meaning. A mistake apparent on the face of the record certainly cannot be equated with a clerical or arithmetical mistake apparent on the face of the record. In para 6 of the reported judgment, their Lordships observed that.

7. It is in the light of this position that the extent of the Income Tax Officer's power u/s 35 to rectify mistakes apparent from the record must be determined; and in doing so, the scope and effect of the expression "mistake apparent from the record" has to be ascertained. At the time when the Income-tax Officer applied his mind to the question of rectifying the alleged mistake, there can be no doubt that he had to read the principal Act as containing the inserted proviso as from 1-4-1952. If that be the true position then the order which he made giving credit to the Respondent for Rs. 50,603-15-0 is plainly and obviously inconsistent with a specific and clear provision of the statute and that must inevitably be treated as a mistake of law apparent from the record. If a mistake of fact apparent from the record of the assessment order can be rectified u/s 35, we see no reason why a mistake of law which is glaring and obvious cannot be similarly rectified. Prima facie it may appear some-what strange that an order which was good and valid when it was made should be treated as patently invalid and wrong by virtue of the retrospective operation of the Amendment Act. But such a result is necessarily involved in the legal fiction about the retrospective operation of the Amendment Act....

8. In an unreported judgment in *Arora Enterprises v. The Deputy Commissioner of Commercial Taxes, Abids Division, Hyderabad* W.P. No. 10717 of 2010, dated 30.07.2010, a Division Bench of this Court to which one of us (RR, J) was a Member, considered Rule 50 of Andhra Pradesh General Sales Tax Rules, 1957, which is ipsissima verba of Rule 60 of the Rules. Construing Rule 50, it was held.

In order to attract Rule 50, the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. "Mistake" means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception. "Apparent" means visible; capable of being seen; obvious; plain. It means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming". A mistake which can be rectified under Rule 50 is one which is patent,

which is obvious and whose discovery is not dependent on argument or elaboration. Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., Rectification of an order does not mean obliteration of the order originally passed and its substitution by a new order. In order to bring an application under Rule 50, the mistake must be "apparent" from the record. Rule 50 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error. Rule 50 does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. (Deva Metal Powders (P) Ltd.). An error which is apparent from the record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law. A decision on a debatable point of law, or a disputed question of fact, is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears ex facie and is incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectification. (Deva Metal Powders (P) Ltd.).

9. We have considered the factual background of the present case in the light of the ratio laid down by the Division Bench in M/s. Arora Enterprises. We do not find any error in the impugned assessment, nor we countenance the submission that there should be a notice of hearing in every case which does not fall within the ambit of the second limb of Rule 60 of the Rules.

10. The Writ Petition, for the above reasons, stands dismissed. No costs.