
(2008) 01 P&H CK 0046
In the Punjab And Haryana At Chandigarh

Moi Engineering Limited

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 68

Citation : (2009) 21 VST 445

Hon'ble Judges : Ajay Tewari, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the assessee u/s 68 of the Punjab Value Added Tax Act, 2005 (in short, "the 2005 Act") against the order of the VAT Tribunal in Appeal Nos. 515-517 of 2004-05 dated September 6, 2007, for the assessment year 1994-95. The assessment and other proceedings have taken place under the Punjab General Sales Tax Act, 1948 (in short, "the 1948 Act") which was applicable prior to April 1, 2005.

2. In para 3 of the appeal, the following substantial questions of law have been proposed:

(i) Whether, on the facts and circumstances of the case, the impugned order (A-9) passed by the Tribunal in rectification proceedings on September 6, 2007, was beyond the scope of rectification jurisdiction u/s 21A(2) of the PGST Act, 1948 and therefore without jurisdiction, hence liable to be set aside?

(ii) Whether the impugned order, annexure A-9, is beyond the prescribed period of limitation of two years, given in Section 21A(2) of the Act and therefore without jurisdiction and, hence liable to be quashed?

(iii) Whether, on the facts and circumstances of the case, the learned Tribunal was bound to adjudicate all the issues raised in original appeal which were not decided by the Tribunal while passing the original order?

(iv) Whether the order passed by the Assessing Authority is barred by limitation as prescribed u/s 11(3) as amended by notification dated March 3, 1998?

(v) Whether, on the facts and circumstances of the case, the original order of assessment was time-barred even under the unamended Section 11(4) of the PGST Act, as no notice of best judgment assessment was ever given to the assessee before passing any order?

3. The appellant is a dealer registered under the provisions of the 1948 Act and 2005 Act and filed four quarterly returns for the assessment year 1994-95 and paid tax according to the returns. The assessing authority issued notice dated October 24, 1997 u/s 11(2) of the 1948 Act and made assessment creating additional demand vide orders dated April 29, 2004. It was observed that the assessee failed to attend the proceedings and assessment could not be finalised earlier due to non-co-operation of the assessee. After fresh notice, Shri Rajiv Lumba, Advocate appeared and took adjournment. Thereafter, written objections were filed. The assessee refused to produce the account books on the ground that the Assessing Authority had no jurisdiction to frame assessment. The Assessing Authority rejected the objection as to jurisdiction on the strength of notification dated September 28, 1992 conferring powers of assessing authority on AETC (Inspection). It was observed that the conferment of the said power had already been upheld by the High Court in *Devi Dass Gopal Krishan Vs. The State of Punjab*, . It was further observed that transfer under rule 39A of the case from ETO to AETC (Inspection) was valid. The plea of assessment being time-barred was also rejected. It was observed that the amendment was dated March 3, 1998 prescribing the time-period of three years from the last date for furnishing the last return. The amendment was held to be prospective which did not affect the earlier assessment years for which no time-limit was laid down. The Assessing Authority created a demand of Rs. 1,53,901 in addition to tax of Rs. 3,103 paid by the assessee. The assessee preferred appeals which were dismissed. The appellate authority affirmed the view of the Assessing Authority that limitation prescribed under the Amending Act 12 of 1998 was not applicable to the present case which was for the assessment year 1994-95. Thereafter, the assessee preferred second appeal before the Tribunal. Main contention raised was that the orders of assessment were after the period of limitation prescribed for assessment and demand for additional tax was without jurisdiction. The Tribunal allowed the appeal vide order dated July 8, 2005. The Tribunal held that the statutory period of three years laid down in the amending Act was applicable and the assessment was time-barred. Observations of the Tribunal are as under:

4.... The learned Counsel for the State is unable to give any reasonable explanation for not completing the assessment within the statutory period of three years as per the latest amendment made in the law. Accordingly, the orders of the appellate authority as well as the Assessing Authority are set aside, the tax liability as per the GTO already deposited by the appellant shall be treated as final and the learned Counsel for the appellant also agrees that he

shall not claim any refund at any time.

4. The Revenue filed rectification application u/s 21A(2) of the 1948 Act on November 27, 2006. It was submitted that the Act was amended on March 3, 1998 prescribing the period of limitation but the same could not apply in the case of assessment in question which was prior to the amendment. The amendment had to be treated as prospective in absence of the same being expressly or by necessary implication being retrospective. The Revenue also filed identical application on April 18, 2007. First application was dismissed as not pressed on August 27, 2007 on the ground that another application had been filed and the second application was allowed vide order dated September 6, 2007 which has been impugned in the present writ petition. Therein, it was observed that since prior to amendment, no period was prescribed for framing assessment u/s 11(4) and period prescribed was u/s 11(4) only to proceed to assess, the assessment was not barred by limitation. The Assessing Authority had already proceeded to assess by giving notice dated October 24, 1997. Amendment which came into force only on April 20, 1998 did not have retrospective effect. Matter was governed by old Section 11(4) of the Act. Prayer on behalf of the assessee that in case the order of the Tribunal was to be rectified, the matter should be decided afresh, was also rejected as being beyond the scope of rectification application. Reliance was placed on judgments of this Court in *Emkay Industries v. State of Punjab* [2005] 139 STC 57 and *Khazan Chand Nathi Ram v. State of Haryana* [2004] 136 STC 261.

5. In spite of opportunity given, no reply has been filed on behalf of the State.

6. We have heard learned Counsel for the parties and perused the record.

7. The learned Counsel for the appellant submitted that by virtue of amendment made in the year 1998, the period of three years was laid down for completing the assessment and even if the said period is taken to have commenced from the date of amendment, the same came to an end on March 3, 2001 while the order of assessment was beyond the period of six years from the date of amendment. The amendment was applicable to the present case which was pending on the date the amendment came into force. The provision being procedural was applicable to pending proceedings and its applicability did not depend on the date of filing of return or commencement of the lis. General principle of prospective application of amendment not applying to lis already commenced prior to amendment could not apply to a procedural provision. Provision introducing limitation was a procedural provision. Such a provision would apply to all pending proceedings. In any case, the period of three years prescribed in the amending provision can apply from the date of coming into force of the amendment if not from the date of ending of the year of assessment and to that extent, the provision may be prospective and the same made in the year 2004 or thereafter could not be justified. In any case, the Tribunal having held the bar of limitation to be applicable, in rectification proceedings, the said order could not be set aside even if two views are possible with regard to the view already taken by the

Tribunal. Even where no limitation was prescribed, assessments must be completed in reasonable time.

8. The learned Counsel for the Revenue/State submitted that u/s 11 of the Act, no period of limitation having been prescribed, the impugned order of assessment passed on April 29, 2004 or other dates were valid orders of assessment. In respect of years of assessment preceding the amendment, the amendment could not be looked into. The learned Counsel for the State referred to letter dated August 22, 2002 written by the assessee stating that the company was sick company and reference was pending before the BIFR. The company has sought various concessions including deferment of sales tax liability. It was submitted that limitation had to commence from the date of the said letter.

9. Before we proceed to deal with the questions proposed on behalf of the appellant, it will be appropriate to refer to the provisions of Section 11 of the Act before and after the amendment:

	Before amendment After amendment	
--	------------------------------------	--

11. Assessment of tax.--(1) If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall pass an order of assessment on the basis of such returns within a period of three years from the last date prescribed for furnishing the last return in respect of such period.

(2) If the Assessing Authority is not satisfied without requiring the presence of dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as

or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer. order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period.

(4) If a dealer having furnished returns in respect of a period fails to comply with the terms of notice issued under Sub-Section (2), the Assessing Authority shall, within five years after the expiry of such period of three years from the first date period proceed to assess to the best of his prescribed for furnishing the last return in judgment the amount of tax due from the respect of such period, pass an order of dealer. assessment to the best of his judgment.

(5) If a dealer does not furnish returns in respect of any period by the prescribed respect of any period by the last date pre- date, the Assessing Authority shall, scribed, the Assessing Authority shall, within five years after the expiry of such within a period of five years from the last period, after giving the dealer a reasona- date prescribed for furnishing the return in ble opportunity of being heard, proceed to respect of such period and after giving the assess to the best of his judgment, the dealer a reasonable opportunity of being amount of tax, if any, due from the dealer. heard, pass an order of assessment to the best of his judgment.

(6) If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been lia- been liable to pay tax under this Act in ble to pay tax under this Act in respect of respect of any period but has failed to any period but has failed to apply for regis- apply for registration, the Assessing Authority shall, Authority shall, within five years after the within five years after the expiry of such expiry of such period, after giving the period, after giving the dealer a reasonable dealer a reasonable opportunity of being opportunity of being heard, proceed to heard, proceed to assess to the best of his assess, to the best of his judgment, the judgment, the amount of tax, if any, due amount of tax, if any, due from the dealer from the dealer in respect of such period in respect of such period and all subse- and all subsequent periods and in cases quent periods and in case where such where such dealer has wilfully failed to dealer has wilfully failed to apply for regis- apply for registration, the Assessing Authority may direct Authority may direct that the dealer shall that the dealer shall pay by way of penalty, pay by way of penalty, in addition to the in addition to the amount so assessed, a amount so assessed, a

sum not exceeding sum not exceeding one-and-a-half times one-and-a-half times that amount. that amount.

(7) The amount of any tax, penalty or interest payable under this Act shall be paid by the dealer in the manner prescribed, by such date as may be specified in the notice issued by the Assessing Authority for the purpose and the date so specified shall not be less than fifteen days and not more than thirty days from the date of service of such notice: such notice:

Provided that the Assessing Authority may, with the prior approval of the Assistant Excise and Taxation Commissioner, in-charge of the district extend the date of such payment or allow payment by instalments against an adequate security or bank guarantee.

(8) If the tax assessed under this Act or any instalment thereof is not paid by any dealer within the time specified thereof in the notice of assessment or in the order permitting payment in instalments, the Commissioner or any other person appointed to assist him under sub-section (1) of section 3 may, after giving such dealer an opportunity of being heard, impose on him a penalty not exceeding the sum due from him.

(9) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act.

(10) The Commissioner may, for reasons to be recorded in writing, extend the period of three years, for passing the order of assessment for such further period as he may deem fit.

(11) Where the proceedings of the assessment are stayed by an order of any court, the period for which such stay remains in force, shall not count towards computing the period of three years specified under this section for passing the order of assessment.

(12) The Assessing Authority may, on his own motion, review any assessment order passed by him and such review shall be completed within a period of one

year from the date of the order under review.

Re : Question No. (i)

10. According to the learned Counsel for the assessee, the impugned order was beyond the scope of rectification in view of the law laid down by the honourable Supreme Court in *Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., and T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, .

11. The learned Counsel for the assessee also referred to judgments of the honourable Supreme Court in *Anant Gopal Sheorey Vs. The State of Bombay*, and *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, and judgments of this Court in *Commissioner of Income Tax Vs. Mrs. Manjula Sood*, , *Commissioner of Income Tax, Patiala II v. Sadhu Ram* [1980] 127 ITR 517 and *Haryana Iron and Steel Rolling Mills Vs. Commissioner of Income Tax*, , which laid down that procedural law is retrospective and that limitation law is procedural law.

12. The learned Counsel for the assessee has also relied on judgments of the honourable Supreme Court in *The State of Orissa Vs. Dabaki Devi and Others*, , *The State of Gujarat Vs. Patil Raghav Natha and Others*, and *State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd.* [2007] 10 VST 180 to submit that where no period was laid down, power should be exercised within reasonable time.

13. The learned Counsel for the Revenue/State submitted that rectification could be sought by the Revenue also and rectification could be allowed if there was error apparent on the record. Subsequent contrary view of a higher court could also be a ground for holding that the view of the Tribunal suffered from error apparent on the record. Reliance has been placed on judgments in *P.S. Jain Motor Company (PB.) Pvt. Ltd. v. State of Punjab* [1992] 84 STC 177 (P&H), *Mysore Cements Limited v. Deputy Commissioner of Commercial Taxes (Assessment-V), City Division-II* [1994] 93 STC 464 (Karn) and *Jagatjit Distilling and Allied Industries Limited Vs. The Assessing Authority and Others*, . It was also submitted that it had been held by the honourable Supreme Court in *State of Punjab v. Murlidhar Mahabir Parshad* [1968] 21 STC 29 that under the 1948 Act, once notice for assessment had been served, the assessment has to be treated to be within limitation. The Tribunal in its order dated July 8, 2005 having simply referred to the amended provisions, committed an error apparent on the face of record by observing that the assessment was barred by limitation. The Tribunal had not gone into the question whether the new amendment was applicable or not. In the order of rectification, it was rightly held that new amendment did not apply. Reliance has also been placed on judgments of this Court in *Emkay Industries* [2005] 139 STC 57 holding that the amendment was applicable if notice for assessment was after the coming into force of the Act and not otherwise.

14. Scope of rectification is well known and has been subject-matter of

consideration by the honourable Supreme Court, inter alia, in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, , Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., .

15. Since judgment in Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., is a recent one, we may refer to the observations in the said judgment. Referring to earlier judgments in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, , it was observed as under:

10 Para 8 at page 755 of [2007] 10 VST . This Court in Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, held as follows:

"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

11 Para 9 [2007] 10 VST 755. An error apparent on the face of the record for acquiring jurisdiction to effect rectification must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, need to be noted:

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

13 Para 10 at [2007] 10 VST 755. In our view rectification of an order does not mean obliteration of the order originally passed and its substitution by a new order. What the Revenue intends to do in the present case is precisely the substitution of the order which according to us is not permissible under the provisions of Section 22 and, therefore, the High Court was not justified in holding that there was mistake apparent on the face of the record. In order to bring an application u/s 22, the mistake must be "apparent" from the record. Section 22 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. It is, no doubt, true that a mistake capable of being rectified u/s 22 is not confined to clerical or arithmetical mistake. On the other hand, it does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof....

16. In the present case, the Tribunal held that the assessment was barred by limitation without going into the question whether the amendment introduced on March 3, 1998 was applicable to proceedings already pending for which notice for assessment had already been given. The Tribunal held that this was an error apparent as the amendment did not extinguish the period of limitation still available for the pending assessments. View of the Tribunal is based on a judgment of this Court in *Emkay Industries* [2005] 139 STC 57 which is directly on the point. Order of the Tribunal was, thus, clearly within the scope of rectification. The view of the Tribunal is also supported by judgment of the honourable Supreme Court in *Murlidhar Mahabir Parshad* [1968] 21 STC 29. It is well-settled that pending proceedings which are initiated within applicable limitation, do not stand extinguished unless it is expressly so provided under the new law nor closed proceedings are revived.

17. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, , the honourable Supreme Court observed:

9... Amendment of the law of limitation could not destroy the plaintiffs right of action which was in existence when the Act came into force. We are conscious of the distinction which was sought to be made in the application of these principles. It was said that the right could not be destroyed but recourse to suit would be available under the old law of limitation. We, however, think that giving retrospective effect to the change of law in relation to the forum, in the context of the object of the change, is imperative. That being so the principles aforesaid for overcoming the bar of limitation will be applicable.

18. This position has been summed up as under in "Principles of Statutory Interpretation" by Justice G.P. Singh, Tenth Edition:

.... Statutes of limitation are thus retrospective in so far as they apply to all legal proceedings brought after their operation for enforcing causes of action accrued earlier, but they are prospective in the sense that they neither have the effect of reviving a right of action which is already barred on the date of their coming into operation, nor do they have the effect of extinguishing a right of action subsisting on that date. But a statute may, expressly or impliedly by retrospectively extending limitation, revive a barred claim....

19. In view of the above settled legal position, we are of the view that the assessment was not barred by limitation. In *Murlidhar Mahabir Parshad* 1968] 21 STC 29(SC), the honourable Supreme Court held that if notice of assessment had already been given, the assessment was to be treated to be within limitation. In

Emkay Industries [2005] 139 STC 57, this Court held that if notice of assessment was after the date of coming into force of the amendment, the period of limitation will apply and not otherwise. In the present case, notice of assessment was prior to the enforcement of amending law. The order of the Tribunal dated July 8, 2005, thus, suffered from error apparent on the face of record, which could be rectified.

20. Accordingly, question No. (i) is decided against the assessee and in 20 favour of the Revenue.

Re : Question No. (ii)

21. The learned Counsel for the assessee submitted that the order of rectification was passed on September 6, 2007, while original order of the Tribunal was dated July 8, 2005 and thus, order of rectification was beyond limitation. Reliance has been placed on judgment of this Court in State of Punjab v. P.O. Sales Tax Tribunal [2000] 119 STC 82.

22. The learned Counsel for the State is unable to show any contrary view. In view of judgment of this Court relied upon on behalf of the assessee, we hold that the order of the Tribunal was beyond the limitation for rectification and on that ground, the impugned order is liable to be quashed.

Re: Question No. (iii)

23. If the order of the Tribunal holding the assessment to be barred by limitation was to be set aside, the Tribunal was bound to adjudicate on all issues in the original appeal. However, in view of our answer to question No. (ii), this question has become academic.

24. In view of our finding on question No. (i), these questions are to be answered in favour of the Revenue. We order accordingly.

As a result of above discussion, this appeal is allowed and the impugned order of the Tribunal dated September 6, 2007 is set aside.