Before Rajesh Bindal & Harinder Singh Sidhu, JJ.

SINGHI OIL AND GENERAL MILLS — *Petitioner*

versus

STATE OF PUNJAB AND OTHERS — *Respondents*

CWP No.1020 of 2005

December 19, 2016

Constitution of India, 1950—Art. 226—Punjab General Sales Tax Act, 1948— S.21 A (2)—Punjab General Sales Rules, 1949—Rule 29 (xii) & S.5 (3)—Rectification of mistakes—Jurisdiction to decide—Patent error—How to be established—Petitioner, a registered dealer under the Sales Tax laws, engaged in the business of manufacturing and sale of oil—For assessment year 1999-2000 it filed returns of sales—Assessing Authority framed assessment on 13.03.2002 and refund of Rs.1,07,387/- was issued—Revisional Authority under S.21 A (2) initiated suo motu action to rectify the order and disallowed the claim of refund—Revision before the Tribunal—The issue was whether to give retrospective effect to notification dated 15.04.2002, whereby S.5 (3) was included in Rule 29 (xii) dealing with deduction of purchase value of goods subjected to tax from the gross turnover of the assessee—The Tribunal held though the notification was subsequent to the assessment proceedings, it being in the nature of clarification will have retrospective application—The tax already paid ordered to be refunded or adjusted—Subsequently, the Assessing Authority filed rectification application under S.21 A of the Act—The Tribunal, presided by a different Presiding Officer, rectified the earlier order holding that it made the amendment to Rule 29 (xii) applicable retrospectively on a wrong interpretation of law which could clearly be termed as patent error—Held, the power to rectify a mistake should be exercised when the mistake is a patent one and quite obvious—Cannot be such which can be ascertained by a long drawn process of reasoning—While rectifying a mistake an erroneous view of law or a debatable point cannot be decided—Incorrect application of law can also not be corrected—The question as to whether a particular amendment to a statute or a rule is prospective or retrospective being clarificatory/declaratory, is clearly a debatable issue on which two views are possible—Hence, the issue whether amendment to Rule 29 (xii) was retrospective in nature, being a decision on a debatable question of law, could not have been

construed a mistake apparent on the record and was not liable to be rectified in exercise of power under S.21-A—Petition allowed by setting aside the Tribunal's later order and restoring the earlier one.

Held that, explaining the scope of the power under the aforesaid section, it was held that power to rectify a mistake should be exercised when the mistake is a patent one and is quite obvious. The mistake cannot be such which can be ascertained by a long-drawn process of reasoning. It was held that while rectifying a mistake, an erroneous view of law or a debatable point cannot be decided. It was specifically held that incorrect application of law can also not be corrected. The Court observed as under:

> **"21.** This Court has decided in several cases that a mistake apparent on record must be an obvious and patent mistake and the mistake should not be such which can be established by a long-drawn process of reasoning. In T.S. Balaram v. Volkart Bros this Court has already decided that power to rectify a mistake should be exercised when the mistake is a patent one and should be quite obvious. As stated hereinabove, the mistake cannot be such which can be ascertained by a long-drawn process of reasoning. Similarly, this Court has decided in ITO v. Asok Textiles Ltd., that while rectifying a mistake, an erroneous view of law or a debatable point cannot be decided. Moreover, incorrect application of law can also not be corrected."

Similarly, in **Mepco Industries Ltd. v. CIT, (2010) 1 SCC 434,** it was held that decision on debatable point of law cannot be treated as "mistake apparent from the record".

> **"18.** Before concluding, we may state that in Deva Metal Powders (P) Ltd. v. CTT, a Division Bench of this Court held that a "rectifiable mistake" must exist and the same must be apparent from the record. It must be a patent mistake, which is obvious and whose discovery is not dependent on elaborate arguments. To the same effect is the judgment of this Court in CCE v. ASCU Ltd., wherein it has been held that a "rectifiable mistake" is a mistake which is obvious and not something which has to be established by a long-drawn process of reasoning or where two opinions are possible. Decision on debatable point of law cannot be treated as "mistake apparent from the record"." (Para 13)

Further held that, now the question as to whether a particular amendment to a statute or a Rule is prospective or retrospective being clarificatory/declaratory, has at times posed considerable difficulty in interpretation. The High Courts and Hon'ble the Supreme Court have grappled with this question, with the contending parties urging one view or the other. It is, thus, clearly an issue of a debatable nature on which two views are possible. Hence, whether the amendment to Rule 29(xii) vide notification dated 15.4.2002 was merely clarificatory and hence retrospective in nature, being a decision on a debatable question of law, could not have been construed to be a mistake apparent on the record and was not liable to be rectified in exercise of power under Section 21-A of the Act. Even if the earlier view was an erroneous view in law, it was, as per the aforementioned decisions, not amenable to be corrected in exercise of the power under Section 21-A.

(Para 14)

K.L.Goyal, Sr. Advocate with
Sandeep Goyal, Advocate
for the petitioner.

Piyush Bansal, DAG, Punjab.

HARINDER SINGH SIDHU, J.

(1) The short question raised in this petition is whether the Sales Tax Tribunal, Punjab, Chandigarh (for brevity, 'the Tribunal') could have validly exercise its jurisdiction while deciding the rectification application, filed under Section 21A(2) of the Punjab General Sales Tax Act, 1948 (for brevity, “the Act”).

(2) The petitioner is a registered dealer under the Sales Tax laws and is engaged in the business of manufacturing and sale of oil. For Assessment Year 1999-2000, it filed its returns of sales with the Assessing Authority, Ropar. The Assessing Authority framed assessment vide order dated 13.3.2002 and the refund of Rs.1,07,382/- was issued. Subsequently, the Revisional Authority, in exercise of its powers under Sections 21(1) of the 1948 Act initiated suo motu action to rectify the order. After hearing the petitioner the Revisional Authority, Ropar, disallowed the claim of refund vide order dated 30.7.2003.

(3) The petitioner filed Revision Petition before the Tribunal. The question before the Tribunal was the implication of the notification dated 15.4.2002 whereby Section 5(3) had also been included in Rule

29(xii) of the Punjab General Sales Tax Rules, 1949 (for short "the Rules") which deals with deduction of purchase value of goods subjected to tax from the gross turnover of the assessee.

(4) Before the Tribunal, it was submitted on behalf of the petitioner that it had purchased cotton seeds for crushing to extract oil. Such purchase of cotton seeds attracts tax at first stage of sale as per Schedule-D. Accordingly, the cotton seed had already suffered tax when it was crushed to extract oil. The oil and oil cakes manufactured out of cotton seeds were also taxable at first sale as provided under Section 5(1-A) of the Act. It was explained that generally all goods were taxable at last stage of sale except those notified under Section 5(1-A) and Section 5(3). Section 5(1-A) deals with non-declared goods while 5(3) deals with declared goods. It was argued that as per the scheme of the Act, if the finished manufactured goods were taxable at the point of its sale/purchase then the dealer would be entitled to claim rebate of tax paid on the raw materials used for such manufacture. After 3.5.1993, all declared goods which were earlier taxed at the point of last stage of sale came to be taxed at the first stage and this was duly notified under Section 5(3) of the Act. Hence, after 3.5.1993, all declared goods notified under Section 5(3) and non-declared goods notified under Section 5(1-A) were to be taxed at the first stage of sale. Though Rule 29(i) was amended on 9.7.1993 to provide for deduction from the gross turnover of a registered dealer of the sale or purchase of goods which had already been subjected to tax under Section 5(1-A) or Section 5(3), but Rule 29(xii) only provided for deduction of the purchase value of goods which had been subjected to tax under Section 5(1-A). It was only on 15.4.2002 that Section 5(3) was included in Rule 29(xii).

(5) It was argued before the Tribunal that the omission of Section 5(3) in Rule 29(xii) was clearly an inadvertent mistake, which was rectified vide notification dated 15.4.2002. Hence, the notification dated 15.4.2002 being in the nature of a clarification ought to be given retrospective effect. On behalf of the Revenue it was argued that as Section 5(3) was incorporated in Rule 29(xii) only on 15.4.2002, it did not cover the case of the petitioner, which related to the assessment year 1999-2000.

(6) The Tribunal in its order dated 30.04.2004 held in favour of the petitioner observed as under:-

"... ... ... It is true that the notification dated

> 15.3.2002 including section 5(3) in rule 29(xii) is subsequent to the assessment proceedings of this case and have not been given retrospective effect. However, since under Rule 29(xi) goods notified under section 5 (1-A) and 5(3) are both eligible for adjustment of the tax already suffered when they are subsequently sold or purchased it seems that the claim of the ld. counsel for the applicant that section 5(3) had not been earlier included along with section 5(1-A) in rule 29 (xii) by oversight and that notification dated 15.4.2002 which so included it was issued by way of a clarification is credible. Accepting this logic the ruling of the Hon'ble Supreme Court of India referred to above would support his prayer. No contrary ruling of the Supreme Court on this issue has been brought to my notice. Hence, the petitioner's plea has to be accepted. Accordingly, this Revision petition succeeds, and the tax already paid on cotton seed is directed to be either refunded to the petitioner or adjusted against his subsequent return."

(7) The Assessing Authority filed an application dated 12.8.2004 being Rectification Application No.34 of 2004-2005 under Section 21A of the Act for rectification of the order dated 30.4.2004. This time, the Tribunal, presided over by different officer, allowed the rectification application vide order dated 11.11.2004 holding as under:-

> "8. I have considered the facts of the case and submissions made by both the parries. I am convinced that the arguments advanced by the Learned counsel for the State are more appropriate to the facts of the case. A perusal of the order of the Tribunal clearly indicates that the Tribunal stretched its imagination beyond the legal frame work provided by law and has gone out of its way to make the amendment made in rule 29(xii) vide notification dated 15.4.2002 applicable retrospectively, whereas no such provision had been made. The arguments advanced by the Learned Counsel for the dealer that the provisions under rule 29(xi) and 29(xii) were similarly and applicable to each case are not valid. A reading of the two rules clearly brings out that rule 29(xi) is applicable to trading activity and rule 29(xii) applies to a manufacturing unit. The Learned Counsel for the dealer has accepted that the unit owned by the dealer was a manufacturing unit. Accordingly under no stretch of

imagination the logic could be extended to the application of rule 29(xi) to the extent case. Since the rule 29(xii) during the assessment year contained only provision for covering item covered by rule 5(1-A) relating to undeclared goods, there is no justification for granting any relief to the dealer by including items covered by section 5(3) of the Act. Under these circumstances, I am fully convinced that the order of the Tribunal was patently a wrong order arrived at on the basis of a wrong interpretation of law which could clearly be termed as a patent error which makes the correct rectification application entertainable. Accordingly, the rectification application is accepted. The order of the Tribunal is modified and it is held that the revision petition filed by the dealer did not merit any consideration and the same is dismissed "

It was held that the earlier order making the said amendment in rule 29(xii) applicable retrospectively, without there being any such provision, was a patently wrong order, based on a wrong interpretation of law which could clearly be termed as a patent error. Hence the rectification application was maintainable. The earlier order dated of the Tribunal dated 30.4.2004 was modified and the revision petition was dismissed.

(8) Ld. Counsel for the petitioner has argued that the order passed in the rectification application is wholly unsustainable. He argued that the jurisdiction under Section 21- A of the Act is limited to rectifying any mistake apparent from the record, but in this case the successor Presiding officer has entered into the merits of the controversy. The order reflects a change of opinion. The Ld. State counsel on the other hand argued that the earlier order of Tribunal was clearly illegal on the face of it. The Tribunal has no jurisdiction to declare a provision which is to operate prospectively as having retrospective application. No process of reasoning was required to discern this defect of the earlier order which was clearly apparent from the record.

(9) We have heard Ld. Counsel for the parties and perused the record.

(10) Section 21-A is reproduced below:

"**Section 21-A**

[RECTIFICATION OF MISTAKES]

The Commissioner or the officer on whom powers of the Commissioner under sub-section (1) of Section 21 have been conferred by the State Government may, at any time within two years from the date of any order passed by him, of his own motion, rectify any mistake apparent from the record and shall within a like period rectify any such mistake which has been brought to this notice by any person affected by order;

Provided that no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund, unless the Commissioner or the Officer on whom powers of the Commissioner under sub-section (1) of section 21 have been conferred by the State Government has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

The provisions of sub-section (1) shall apply to the rectification of a mistake by a Tribunal as they apply to the rectification of a mistake by the Commissioner.

Where any such rectification has the effect of reducing the amount of the tax or penalty, the Commissioner shall in the prescribed manner order the refund of the amount so due to such person.

Where any such rectification has the effect of enhancing the amount of the tax or penalty or reducing the amount of the refund, the Commissioner shall order the recovery of the amount due from such person in the manner provided for in section 11 and 11-B (Relevant Rules 63, 64)"

As per this section, the Tribunal may, at any time within two years from the date of any order passed by it, rectify any mistake apparent from the record. This may be done either on its own motion or on the matter being brought to its notice by any person.

(10) Similar provisions in different statutes have been the subject matter of consideration of Courts.

(11) In ***CCE*** versus ***RDC Concrete (I) (P) Ltd.***[1] the Supreme

[1] (2011) 12 SCC 166

Court was construing Section 35-C(2) of the Central Excise Act, 1944 as per which the Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectify any mistake apparent from the record, amend any order passed by it and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.

(12) Explaining the scope of the power under the aforesaid section, it was held that power to rectify a mistake should be exercised when the mistake is a patent one and is quite obvious. The mistake cannot be such which can be ascertained by a long-drawn process of reasoning. It was held that while rectifying a mistake, an erroneous view of law or a debatable point cannot be decided. It was specifically held that incorrect application of law can also not be corrected. The Court observed as under:

> **"21.** This Court has decided in several cases that a mistake apparent on record must be an obvious and patent mistake and the mistake should not be such which can be established by a long-drawn process of reasoning. In T.S. Balaram v. Volkart Bros this Court has already decided that power to rectify a mistake should be exercised when the mistake is a patent one and should be quite obvious. As stated hereinabove, the mistake cannot be such which can be ascertained by a long-drawn process of reasoning. Similarly, this Court has decided in ITO v. Asok Textiles Ltd., that while rectifying a mistake, an erroneous view of law or a debatable point cannot be decided. Moreover, incorrect application of law can also not be corrected."

(13) Similarly, in ***Mepco Industries Ltd.*** versus ***CIT***[2], it was held that decision on debatable point of law cannot be treated as "mistake apparent from the record".

> **"18.** Before concluding, we may state that in Deva Metal Powders (P) Ltd. v. CTT, a Division Bench of this Court held that a "rectifiable mistake" must exist and the same must be apparent from the record. It must be a patent mistake, which is obvious and whose discovery is not dependent on elaborate arguments. To the same effect is the judgment of this Court in CCE v. ASCU Ltd., wherein it has been held

[2] (2010) 1 SCC 434

that a "rectifiable mistake" is a mistake which is obvious and not something which has to be established by a long-drawn process of reasoning or where two opinions are possible. Decision on debatable point of law cannot be treated as "mistake apparent from the record"."

(14) Now, the question as to whether a particular amendment to a statute or a Rule is prospective or retrospective being clarificatory / declaratory, has at times posed considerable difficulty in interpretation. The High Courts and Hon'ble the Supreme Court have grappled with this question, with the contending parties urging one view or the other. It is, thus, clearly an issue of a debatable nature on which two views are possible. Hence, whether the amendment to Rule 29(xii) vide notification dated 15.4.2002 was merely clarificatory and hence retrospective in nature, being a decision on a debatable question of law, could not have been construed to be a mistake apparent on the record and was not liable to be rectified in exercise of power under Section 21-A of the Act. Even if the earlier view was an erroneous view in law, it was, as per the aforementioned decisions, not amenable to be corrected in exercise of the power under Section 21-A.

(15) For the aforementioned reasons, the writ petition succeeds. The order dated 11.11.2004 (Annexure P-8) passed by the Tribunal allowing the rectification application of the respondent State is set aside and order dated 30.04.2004 (Annexure P-6) is restored.

(16) The writ petition is accordingly disposed of.

Tribhuvan Dahiya