THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.9872 OF 2015

ORDER: *(Per Hon'ble Sri Justice M.Satyanarayana Murthy)*

With the consent of both Sri V.Bhaskar Reddy, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, the writ petition is disposed of at the stage of admission itself.

This writ petition is filed challenging the endorsement dated 27.02.2015 issued by the 3rd respondent in G.I.No.7563/2003-04 (APGST) refusing to rectify the mistakes under Rule 50 of APGST Rules and to declare the same as illegal and contrary to the provisions of APGST Act and consequently set aside the re-assessment proceedings passed by the 3rd respondent dated 09.06.2009 for the assessment year 2003-04 under the APGST Act.

The petitioner is a private limited company incorporated under the Companies Act, 1956 having its registered office at Mumbai, State of Maharashtra and having its branches all over India and one such branch is situated at Guntur. The petitioner is carrying on Cotton business and registered dealer on the rolls of the 3rd respondent both under Andhra Pradesh General Sales Tax Act (hereinafter, for short, referred to as "APGST Act") and Central Sales Tax (hereinafter, for short, referred to as "CST Act").

For the assessment year 2003-2004, the 3rd respondent initially completed the assessment vide proceedings dated 05.01.2007 on a gross, exempted and net turnover of Rs.16,41,999/-, Rs.16,41,999/- and Nil respectively, on the ground that the petitioner being the last purchaser of cotton F.B. Bales for the purpose of stock transfer to the head office and the said turnover being considered separately under the CST Act on a turnover of Rs.6,39,99,039/-.

After completion of initial assessment under APGST Act by the 3rd respondent, he himself proposed to revise the assessment order under Section 14 (4) (2) of APGST Act on the ground that the petitioner has purchased the cotton lint from the registered dealer within the State to a tune of Rs.6,76,42,960/- for the purpose of stock transfer to their head office and exemption was allowed by the assessing authority on the ground that the entire turnover was assessed to tax treating it as interstate sales. According to G.O.Ms.No.537 dated 24.03.1984, exemption from the tax payable by any dealer under Section 6 read with item 4 to 9 of the 3rd schedule of the Act, which are liable to tax at the point of last purchase in the state provided that such goods are sold in the course of interstate trade and tax due thereon has been paid under the CST Act. According to the explanation, for the purpose of above notification the dealer shall be entitled for exemption only when the tax has been actually paid on the interstate sales of cotton lint and such exemption cannot be allowed in case where the interstate sales of these goods are exempted for any reason, as per provisions contained in CST Act, 1956 or the notification, if any issued under this explanation added by G.O.Ms.No.493 revenue, dated 17.07.2001. Thus, the petitioner is not eligible for exemption on the turnover of Rs.6,76,42,960/- being the last purchase value of the cotton F.P. bales, since, the value of the stock transferred to their head office has been exempted and not suffered tax under CST Act. Accordingly, the petitioner was asked to file objections within 15 days from the date of receipt of show-cause notice dated 12.05.2009, which was served on the petitioner on 16.05.2009. On receipt of show-cause notice, the petitioner's local consultant sought one month time, but the 3rd respondent without granting further time as sought for by the local consultant, passed revised assessment proceedings dated 09.06.2009 levying tax at 4% on Rs.6,76,42,960/- and the same was served on the petitioner's local consultant on 15.06.2009 holding that the time stipulated for filing objections has already been completed by 31.05.2009.

The petitioner specifically contended that the re-assessment proceedings passed by the 3rd respondent are invalid under law and contrary to the law laid down by this Court. Hence, the re-assessment order is liable to be set aside.

The petitioner filed an application under Rule 50 of APGST Rules on 28.08.2009 pursuant to the revised assessment proceedings dated 09.06.2009 requesting the 3rd respondent to rectify the clerical and arithmetical mistake apparent on the face of revised proceedings, based on the series of decisions of this Court and other High Courts. As there was no response from the 3rd respondent against the application, allegedly, filed under Rule 50 of the APGST Rules the petitioner was under the bonafide impression that the 3rd respondent would consider the application. But, to the surprise of the petitioner, the 3rd respondent issued notice dated 16.02.2015 to the petitioner's registered office at Mumbai demanding tax amount of Rs.35,85,287/- which includes a demand of Rs.27,05,718/- for the year 2003-04 and Rs.8,79,579/-

for the year 2004-05 under CST Act. Immediately, the petitioner filed another application on 26.02.2015 under Rule 50 of the APGST Rules, bringing to the notice of the 3rd respondent about the filing of application under Rule 50 of the AP GST Rules on 28.08.2009, but the 3rd respondent arbitrarily demanded tax both under APGST Act and CST Act, changing his opinion by revising the assessment order.

The 3rd respondent without affording any opportunity of personal hearing, issued endorsement dated 27.02.2015, which is under challenge in the writ petition, stating that the original assessment order under APGST was passed on 05.01.2007 and the assessment was also revised by the then Commercial Tax Officer vide proceedings dated 09.06.2009 and the same was received by the dealer on 15.06.2009. Therefore, the 3rd respondent has no jurisdiction to revise and pass order as requested by the dealer on the application filed under Rule 50 of the APGST Rules.

Though the petitioner sought for personal hearing on the rectification application filed under Rule 50 of the APGST Rules, no opportunity was afforded and thereby the endorsement dated 27.02.2015 which is under challenge in the writ petition is illegal and contrary to the law declared by this Court in "***Campaign for Housing and Tenural Rights (CHATRI), Hyderabad v. Government of Andhra Pradesh and others***[1]". Hence, the petitioner sought to set aside the endorsement of the 3rd respondent dated 27.02.2015 and to declare the re-assessment order passed by the 3rd respondent as illegal and arbitrary.

During hearing, Sri V.Bhaskar Reddy, learned counsel for the petitioner, contended that the 3rd respondent has no authority to revise the assessment order passed under Section 21 of APGST Act, but revised the original assessment order without any jurisdiction. Moreover, the petitioner filed an application under Rule 50 of APGST Rules dated 28.08.2009, but the same was not considered by the 3rd respondent and has issued notice dated 16.02.2015, thereupon the petitioner filed another application under Rule 50 of APGST Rules dated 26.02.2015 by referring to earlier application dated 28.08.2009, but without affording any opportunity of personal hearing to the petitioner, the rectification application filed under Rule 50 of APGST Rules was disposed of arbitrarily and illegally by the 3rd respondent on the ground that he has no jurisdiction to rectify the mistakes after long lapse of time. The conduct of the

3rd respondent keeping the application filed by the petitioner on 28.08.2009 pending for years together is nothing but negligence on the part of the 3rd respondent and even on the application dated 26.02.2015 filed under Rule 50 of APGST Rules no personal hearing was afforded, thereby the endorsement dated 27.02.2015 is against the principles of natural justice and the same is liable to be set aside. It is further contended that passing of revised assessment order is without any jurisdiction and the same is admitted by the 3rd respondent in the endorsement. Thus, the 3rd respondent was conscious about the jurisdiction, but passed an erroneous order, hence the same is liable to be set aside. Learned counsel for the petitioner, finally prayed to set aside the endorsement of the 3rd respondent dated 27.02.2015 and re-assessment proceedings passed by the 3rd respondent dated 09.06.2009 for the assessment year 2003-04.

Whereas, Sri S.Suri Babu, learned special standing counsel

for Commercial Taxes, contended that no application dated 28.08.2009 under Rule 50 of APGST Rules was submitted for rectification of arithmetical and clerical mistakes, even otherwise the mistakes pointed out by the petitioner cannot be construed as arithmetical and clerical mistakes, at best the remedy open to the petitioner is to file an appeal before the appropriate authority against the assessment order. Conveniently, the petitioner submitted an application under Rule 50 of APGST Rules dated 26.02.2015 by giving reference of earlier application dated 28.08.2009 without submitting the same to the 3rd respondent and no such application is available in the entire office file of the 3rd respondent and furnished the office file for perusal of this Court. Therefore, the endorsement dated 27.02.2015 is in accordance with law and the same cannot be set aside. It is further contended that the petitioner also sought for relief of setting aside the re-assessment order dated 09.06.2009, but the said re-assessment order is not the result of endorsement dated 27.02.2015 and if the petitioner is aggrieved by such
re-assessment order, his remedy lies elsewhere. But to circumvent the Law, the petitioner filed the petition at belated stage claiming discretionary relief under Article 226 of the Constitution of India, hence prayed to dismiss the writ petition.

Considering rival contentions of both parities and on perusal of the endorsement dated 27.02.2015, which is under challenge, the points that arise for consideration are:

(1) Whether there are any arithmetical and clerical mistakes in the assessment order dated 09.06.2009, if so, whether the 3rd respondent is competent to exercise his power under Rule 50 of APGST Rules?

(2) Whether the endorsement dated 27.02.2015 is

illegal and liable to be set aside?

(3) Whether the assessment order is a consequential order to endorsement of the 3rd respondent, if not, the order be declared as illegal and arbitrary?

<u>P O I N T Nos.1 and 2</u>:

The first and foremost contention of Sri V.Bhaskar Reddy, learned counsel for the petitioner, is that the petitioner pointed out certain arithmetical and clerical mistakes in the assessment order by filing an application on 26.02.2015 specifically contending that a turnover of Rs.6,39,99,039/- was exempted from tax on verification of documentary evidence, but the 3rd respondent revised the original assessment order and passed revised assessment order; in the revised assessment order the said turnover was assessed to tax. This is purely a clerical error and also drawn the attention of this Court to Section 38 of the APGST Act, which exempts outside State sales, sales in the course of the import of the goods into, or export of the goods out of the territory of India and in the course of inter-State trade or commerce, but the 3rd respondent did not consider the same. He also brought to the notice of the 3rd respondent, the law declared in several judgments regarding exercise of power under Rule 50 of APGST Rules.

The specific contention raised in the application dated 26.02.2015 is that on receipt of the revised proceedings dated 09.06.2009, the petitioner noticed certain apparent clerical mistakes and filed rectification petition under Rule 50 of APGST Rules. For better appreciation, it is apposite to extract Rule 50 of APGST Rules, which is as follows:

Rule 50:

(1) Any assessing, appellate or revising authority may at anytime within four years from the date of any order passed

by him rectify any clerical or arithmetical mistake apparent from the record:

Provided that no such rectification which has the effect of enhancing an assessment or any penalty or fee shall be made unless the assessing, appellate or revising authority has given notice to the dealer (of his intention to dos o and has allowed him a reasonable opportunity of being heard).

(2) Where such rectification has the effect of reducing an assessment, penalty or fee the assessing authority shall make any refund which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing an assessment, penalty or fee, the assessment authority shall serve on the dealer a revised notice in Form B-3 and thereupon the provisions of the Act and these rules, shall apply as if such notice has been served in the first instance.

(4) Any assessing authority may at any time within one year from the date of service of an assessment order passed by him, revise the order, in respect of the claim for deduction on account of returned goods, referred to in clause (b) of Rule 6, where the claim for deduction is received after the final assessment has been made, provided that the claim for deduction on account of such returned goods is preferred within a period of six months from the date on which the goods sold have been received back or the goods purchased have been returned as the case may be.

(5) The assessing authority shall order refund of the tax due to the dealer, if any, as a result of deduction allowed under sub-rule (4).

Rule 50 of APGST Rules is similar to Section 152 of Code of Civil Procedure, which permits the Civil Court to rectify any clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties to the judgment or decree.

The power under Section 152 of Code of Civil Procedure is more wider that the power of 3rd respondent under Rule 50 of

APGST Rules, as four years limitation is prescribed in Rule 50 of APGST Rules, but whereas in Section 152 of Code of Civil Procedure no limitation is prescribed.

Before deciding the issue, it is appropriate to find out what is arithmetical or clerical mistake in the re-assessment order to exercise power under Rule 50 of APGST Rules.

As per WEST's Legal Thesaurus/ Dictionary the word "clerical error" means a mistake in writing or copying a document (e.g. an omission)

Arithmetical error means an error in calculation, such mistakes either clerical or arithmetical mistakes can be corrected by exercising power under Rule 50 of APGST Rules.

Arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate this point it was said that in a case where the order contains something which is not mentioned in the decree, it would be a case of unintentional omission or mistake as the mistake or omission is attributable to the Court or authority which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits can be entertained to facilitate such rectification of mistakes.

Section 152 of Code of Civil Procedure is analogous to Rule 50 of APGST Rules. Section 152 of Code of Civil Procedure and Rule 50 of APGST Rules provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or authority or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided thereof. The powers under Rule 50 of APGST Rules are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Rule 50 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Rule cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts or authority below have been liberally construing and applying the provisions of Sections 151 and 152 of Code of Civil Procedure or Rule 50 of APGST Rules even after passing of effective orders in the lis, pending before them. No Court or authority can, under the cover of Section 152 of Code of Civil Procedure or Rule 50 of APGST Rules, modify, alter or add to the terms of its original judgment, decree or order. ***("Dwaraka Das v. State of Madhya Pradesh and Anr[2]"; "Jayalakshmi Coelho v. Oswald Joseph Coelho[3]"; "State of Punjab v. Darshan Singh[4]")*** .

The Apex Court in "***J.K.Synthetics Ltd v. K.P.Agrawal and another[5]"*** while dealing with Section 6 (6) of U.P. Industrial Disputes Act, 1947, which is analogous to Section 152 of Code of Civil Procedure and Rule 50 of APGST Rules, while placing reliance on a judgment rendered in "***Master Constructions Co. (P) Ltd v. State of Orissa[6]"*** laid down certain guidelines which are follows:

> ***"(a) If there is an arithmetical or clerical or typographical error in the order, it can be corrected.***
>
> ***(b) Where the court had said something which it did not intend to say or omitted something which it intended to say, by reason of any accidental slip/omission on the part of the court, such inadvertent mistake can be corrected.***
>
> ***(c) The power cannot be exercised where the matter involves rehearing on merits, or reconsideration of questions of fact or law, or consideration of fresh material, or new arguments which were not advanced when the original order was made. Nor can the power be exercised to change the reasoning and conclusions."***

As seen from the legal position, there would hardly be any doubt about the proposition that in terms of Section 152 C.P.C. or under Rule 50 of APGST Rules any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the Court or authority under APGST Act. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice. The basis of the provision under Section 152 C.P.C. and Rule 50 of APGST Rules is found on the maxim "*Act us Curiae Neminem Gravabit*" i.e. an act of Court shall prejudice no man as observed in "***Assam Tea Corporation Ltd. V. Narayan Singh and another***[7]". Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified.

At the same time, the Court cannot exercise power under Section 152 of Code of Civil Procedure or under Rule 50 of APGST Rules to substitute its opinion, which was already expressed in the original judgment or order, it amounts to reviewing the judgment or order by substituting a different opinion that what the Court or authority expressed and in the guise of Rule 50 of APGST Rules and Section 152 of Code of Civil Procedure the Court cannot alter the entire judgment changing its opinion.

To exercise power under Rule 50 of APGST Rule or Section 152 of Code of Civil Procedure, the Court must find that there is a clerical or arithmetical mistake and that the provision cannot be invoked to modify, alter or add to the terms of the original order or decree so as to, in effect, pass an effective judicial order after the judgment in the case and indirectly amounts to setting aside the order. Liberal use of the provisions under Section 152 of Code of Civil Procedure by the Courts beyond its scope has been deprecated. ["***Thirugnanavalli Ammal v. P.Venugopala Pillai[8]", "Maharaj Puttu Lal v. Sripal Singh[9]" and "State of Bihar and another v. Nilmani Sahu and another[10]"***].

The Division Bench of this Court in "***Arora Enterprises v. Deputy Commissioner of Commercial Taxes, Abids Division, Hyderabad and another[11]"*** considered the scope of Rule 50 of

APGST Rules along with Sections 20 and 21 of APGST Act and reiterated the same principles, which are discussed in the earlier paragraphs. Thus, in view of the settled law only arithmetical errors or clerical errors can be rectified by exercising the power under Rule 50 APGST Rules by the authorities concerned under the APGST Act, but the authorities cannot substitute their opinion for the conclusion already arrived in the order by exercising such power.

In the present case, the petitioner filed application dated 26.02.2015 for rectification based on two G.Os, but the 3rd respondent rejected the same on the ground that such power cannot be exercised since the mistakes pointed out are not clerical or arithmetical errors, while informing that the assessment order passed on 05.01.2007 and re-assessment order was passed on 09.06.2009, and the same was received on 15.06.2009, as such the application dated 26.02.2015 cannot be entertained, as the rule contemplates '4' years limitation for filing such application.

Conveniently, the petitioner invented a story of submitting an application for rectification under Rule 50 of APGST Rules dated 28.08.2009 before the authorities concerned pointing out the law laid down by various Courts, but the proof of submitting such application was not produced before this Court.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, contended that no such application was received by the office of the 3rd respondent for rectification dated 28.08.2009. The copy of the application filed along with the petition does not disclose the date of submitting such application to the 3rd respondent by the petitioner, the record along with distribution register pertaining to the year 2009 produced before this Court by the 3rd respondent did not contain any such application. On the particular day i.e. 28.08.2009, no such application was received. If really, such application was received, it would have been distributed to the concerned official as per the distribution register. But the office distributed certain papers received by it on 24.08.2009 and 31.08.2009. Therefore, submission of application for rectification within the time as contended by the petitioner itself is doubtful and the same cannot be accepted.

Undisputedly, the petitioner submitted an application under Rule 50 of APGST Rules on 26.02.2015 bears the seal of the office of the 3rd respondent with date etc. But the earlier application dated 28.08.2009 does not bear such office seal acknowledging the receipt of that application, mere giving reference of application dated 28.08.2009 in the application dated 26.02.2015 is not suffice to believe submission of application on 28.08.2009 and it appears that the petitioner conveniently make such reference in the application having noticed the limitation prescribed under Rule 50 of APGST Rules. Hence, the application dated 26.02.2015 under Rule 50 of APGST Rules is beyond limitation and the same cannot be entertained. On this ground also, endorsement issued by the 3rd respondent on 27.02.2015 rejecting the rectification application dated 26.02.2015, is upheld.

If the contentions raised in the rectification application dated 26.02.2015 are accepted, it would amount to reviewing the order itself as those contentions touches the merits of the order. If the petitioner is aggrieved by such an order, the remedy open to him is to file an appeal before the concerned authorities. But the petitioner, in spite of redressing his grievance by filing an appeal, the petitioner conveniently invented the theory of rectification of arithmetical or clerical mistakes, after long lapse of time. In any view of the matter, the mistakes pointed by the petitioner in the rectification application are neither clerical nor arithmetical mistakes nor errors apparent on the face of the record, as held by the Apex Court in the judgments referred supra.

Similarly, in the guise of arithmetical or clerical mistake on reconsideration of the matter came to a fresh conclusion than what the court already arrived while deciding the matter, cannot be permitted. The Court cannot exercise the power under Section 152 Code of Civil Procedure or the Rule 50 of APGST Rules by the authorities concerned as held in ***(Bai Shakriben (dead) by Natwar Melsingh and others v. Special Land Acquisition Officer and another*** [12] ***"***

In those circumstances, the endorsement of the 3rd respondent dated 27.02.2015 cannot be found fault. Hence, we find no merit in the contentions raised by the counsel for the petitioner. Accordingly, the point Nos.1 and 2 are held in favour of the respondents and against the petitioner.

P O I N T No.3:

One of the reliefs claimed by the petitioner is to set aside reassessment/revised order dated 09.06.2009 as a consequence of setting aside the endorsement dated 27.02.2015 issued by the 3rd respondent. In fact, the reassessment order was passed on 09.06.2009, which was communicated to the petitioner on 15.06.2009. The assessment order dated 09.06.2009 cannot be set aside as it attained finality and that apart the petitioner approached this Court six (6) years from the date of communication of the reassessment order dated 15.06.2009. Thus, there are clear latches on the part of the petitioner even to question the reassessment/revised order dated 09.06.2009, which was received by the petitioner on 15.06.2009. However, we are not inclined to examine the power of 3rd respondent to revise or reassess the original assessment order. Since the endorsement dated 27.02.2015 was upheld, the reassessment order cannot be set aside. The point is held accordingly in favour of the respondents and against the petitioner.

The writ petition is, accordingly, dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE RAMESH RANGANATHAN

JUSTICE M.SATYANARAYANA MURTHY

01.07.2016.
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[1] 2010 (2) ALD 789 (DB)

[2] (1999) 1 SCR 524

[3] (2001) 2 SCR 207

[4] AIR 2003 SC 4179

[5] 2007 (5) ALT 5 (SC)

[6] (1966) 3 SCR 99

[7] AIR 1981 Guwahati 41

[8] AIR 1940 Madras 29

[9] AIR 1937 Oudh 191

[10] (1996) 11 SCC 528

[11] (2011) 37 VST 113 (AP)

[12] AIR 1996 SC 3323