

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
MAHARASHTRA VALUE ADDED TAX APPEAL NO.7 OF 2022**

PBA Infrastructure Ltd.

....Appellant

V/s.

The State of Maharashtra

...Respondent

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Mr. Ishaan V. Patkar a/w Mr. Durgesh G. Desai i/b Alaksha Legal for Appellant.

Mr. Himanshu Takke for Respondent.

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**CORAM : K.R. SHRIRAM &  
FIRDOSH. P. POONIWALLA, JJ  
DATED : 26<sup>th</sup> JULY 2023.**

**PC. :**

1 Appellant is a company engaged in the construction of roads, bridges, culverts etc. Appellant is aggrieved by an order dated 11<sup>th</sup> December 2020 passed by Maharashtra Sales Tax Tribunal (Tribunal) dismissing the appellant's appeal.

2 Appellant has been purchasing High Speed Diesel (HSD) from various parties since the year 2005. Appellant was of the view that the set off in respect of HSD was available under the Maharashtra Value Added Rules 2005 (the Rules). On 4<sup>th</sup> January 2011 an investigation was carried out by the Sales Tax Authorities at appellant's place of business. The authorities disputed the admissibility of set off on the purchases of HSD on the ground that under Rule 54(b) of the Rules, the set off was barred. Appellant, therefore, on 3<sup>rd</sup> February 2011 filed an application under Section 56 of the Maharashtra Value Added Tax Act 2002 (the Act) for determination of

disputed questions as to the admissibility of the set off on purchase of HSD. It is appellant's case that on 2<sup>nd</sup> December 2010, the Tribunal in its order and judgment in *Gupta Metallics & Power Ltd. Vs. The State of Maharashtra* had held that under the Rules, appellant was entitled to set off on the purchases of HSD. Notwithstanding this ruling in favour of appellant, appellant for some reason applied under Section 56 of the Act for determination of disputed questions. However, in a judgment passed by this court on 17<sup>th</sup> August 2012 in *Additonal Commissioner of Sales Tax Vs. Gupta Metallics & Power Ltd.* (Sales Tax Appeal No.13 of 2011 in VAT Second Appeal No.55 of 2010), the court held that the provisions of Section 54(b) did not allow the set off to be granted on purchase of HSD. In the meanwhile, the law itself came to be amended on 16<sup>th</sup> February 2012, by which Rules 52 and 54 of the Rules were amended to nullify the effect of Tribunal's judgment in *Gupta Metallics* (supra). In view of this judgment of the High Court which has attained finality, the Commissioner of Sales Tax before whom appellant's application under Section 56 of the Act was pending, closed the file. Appellant's prayer to the Commissioner to hold that the effect of amendment should have only prospective effect was not granted. Appellant wanted the Commissioner to hold that appellant's liability in respect of set off of HSD purchases it had claimed prior to the date of the High Court's judgment dated 17<sup>th</sup> August 2012 in *Gupta Metallics* (supra), be not effected.

3      Against this order of the Commissioner passed under Section 56 of the

Act appellant preferred the appeal before the Tribunal, which rejected appellant's claim that prospective effect be granted on the bar of set off on the purchase of HSD. Mr. Patkar submitted that as the High Court settled the law only on 17<sup>th</sup> August 2012, appellant should be permitted to claim set off until that date. We cannot accept that submission.

4 The Hon'ble Apex Court in *Assistant Commissioner of Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd.*<sup>1</sup> has held that a judicial decision acts retrospectively. The Judges do not make law, they only discover or find the correct law. The law has always been the same and if a subsequent decision alters the earlier one, the later decision does not make a new law. It only discovers the correct principle of law which has to be applied retrospectively. The Hon'ble Apex Court held that even when an earlier decision of the court operated for quite sometime, the decision rendered later on would have retrospective effect, clarifying the legal position which was earlier not correctly understood. Paragraph nos. 40 to 44 of the said judgment read as under :

*"40. The core issue, therefore, is whether non-consideration of a decision of Jurisdictional Court (in this case a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a "mistake apparent from the record"? In our opinion, both – the Tribunal and the High Court - were right in holding that such a mistake can be said to be a "mistake apparent from the record" which could be rectified under Section 254(2).*

*41. A similar question came up for consideration before the High Court of Gujarat in Suhrid Geigy Ltd.'s case (supra). It was held by the Division Bench of the High Court that if the point is covered by a decision of the Jurisdictional Court rendered prior or even subsequent to the order of rectification, it could be said to be "mistake apparent from the record" under Section 254(2) of the Act and could be*

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1. (2008) 305 ITR 227 (SC)

*corrected by the Tribunal.*

*42. In our judgment, it is also well-settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.*

*43. Salmond in his well-known work states; "(T)he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicata or accounts that have been settled in the meantime". (emphasis supplied)*

*44. It is no doubt true that after a historic decision in Golak Nath v. State of Punjab AIR 1967 SC 1643, this Court has accepted the doctrine of 'prospective overruling'. It is based on the philosophy: "The past cannot always be erased by a new judicial declaration". It may, however, be stated that this is an exception to the general rule of the doctrine of precedent."*

5       Therefore, we cannot agree to Mr. Patkar's submission. In our view, the Tribunal was justified in rejecting the claim because the High Court has clarified in *Gupta Metallics* (supra) that the provisions of Section 54(b) of the Act did not allow the set off to be granted on purchase of HSD. Certainly, the Commissioner in an application under Section 56 of the Act cannot say it will have prospective effect.

6       In the circumstances, we see no reason to interfere. Appeal dismissed.

**(FIRDOSH P POONIWALLA, J.)**

**(K.R. SHRIRAM, J.)**