

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 09.01.2024

DELIVERED ON: 09.01.2024

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA
M.A.T. 2475 of 2023
With
I.A. No. CAN 1 of 2023
Sajal Kumar Das
Vs.
State of West Bengal & Ors.**

Appearance:-

**Mr. Rishi Raju
Mr. Suvrnil Saha
Mr. Shoham Sanyal**

.....for the appellant

**Mr. A. Ray
Md. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal**

.....for the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated 4th December, 2023 in W.P.A. No.25754 of 2023. By the said order, the learned writ Court while entertaining the writ petition, declined to pass any interim order.

2. At the request and with the consent of the learned advocates on either side, the writ petition and the appeal are taken up for disposal by this common judgment and order.
3. The appellant had impugned an order passed by the appellate authority dated 23rd August, 2023, by which the appellate authority exercised its power under Section 161 of the W.B.G.S.T. Act, which deals with the power of rectification of errors apparent on the face of record.
4. The subject-matter in issue was regarding cancellation of the appellant's registration, which was done by the original authority by order dated 10th January, 2022. As against the said order, an appeal was preferred to the Senior Joint Commissioner of Revenue, Dharmatala Circle and the appeal was allowed by order dated 9th November, 2022. After about 2 and ½ months, an application was filed by the original authority viz. the Assistant Commissioner of Revenue, Bowbazar Charge under Section 161 of the W.B.G.S.T. Act to rectify the order passed in the appeal petition dated 9th November, 2022. The said application has been allowed by the appellate authority by order dated 23rd August, 2023 digitally signed on 24th August, 2023, which is impugned in the writ petition.
5. The legal issue, which requires consideration in this appeal is as regards the scope of Section 161 of the Act. Section 161 of the Act states that without prejudice to the provisions of Section 160, and notwithstanding anything contained in any other provisions of the Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other

document, either on its own motion or where such error is brought to its notice by any officer appointed under the Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

6. The language adopted in Section 161 of the W.B.G.S.T. Act is in *pari materia* with the language Order 47 Rule 1 of the Code of Civil Procedure, which also provides for review of an order made on account of some mistake or error apparent on the face of the record.
7. It is a settled legal position that the review court has only limited jurisdiction by definite limits fixed by the language used in Order 47 Rule 1 of the Code of Civil Procedure. It is also equally well-settled that a Court or an authority exercising power of review has to do so by pointing out an error, which is apparent on the face of the record, which cannot be by way of a long-drawn reasoning, which would tantamount to rewriting the earlier decision. Equally well-settled is the legal principle that a review is not an appeal in disguise.
8. Bearing the above legal principles in mind, if we examine the facts of the case, we find that in the application filed by the Assistant Commissioner of Revenue, Bowbazar Charge under Section 161 of the Act, though the officer accepts three of the statements of fact to be true, with regard to the fact that the writ petitioner is a proprietorship concern, it was duly registered as a taxable person under the CGST Act and W.B.G.S.T. Act and that it has been regularly filing its monthly returns disclosing trading transactions and also discharging the G.S.T. liability within the due dates strictly in accordance with the G.S.T. Act and the rules framed thereunder and that

the appellant is a small business concern dealing as supplier of industrial hardware goods and has been issued permanent trade license from the Kolkata Municipal Corporation and is conducting business in the place, as stipulated in the leave and license agreement, which has been extended from time to time and that the assessee has been regularly paying its legitimate tax due to the Government. The above facts have been candidly and clearly admitted by the Assistant Commissioner in his petition filed under Section 161 of the Act.

9. Thereafter, the Assistant Commissioner proceeds to extract the various replies given by the appellant/assessee to various issues pointed out in the show-cause notice and as a footnote of each of such reply, the Assessing Officer states that the statement of fact is not true.
10. Thus, what the authorities sought to do in an application under Section 161 of the Act is seeking for rewriting and reviewing the entire decision rendered by the appellate authority dated November 9, 2022, which is clearly impermissible under Section 161 of the Act.
11. The mistake is committed by the appellate authority in not considering the scope of his power of Section 161 and the authority erroneously proceeded to rewrite its decision by recalling the earlier conclusion and ultimately holding against the assessee that the order of cancellation of license should not be revoked.
12. *Pari materia* provision is also available under Section 129B of the Customs Act and while examining the scope of the power, it has been held in the case of **Commissioner of Customs, Kolkata Vs. Sunil Ghosh** reported in **2005 SCC Online Calcutta 766** that the power under Section 129B(2) of

the Customs Act is similar to Section 152 of the Code of Civil Procedure, which provides for amendment of an order or rectification of a mistake apparent from the record. But, this provision does not empower the Appellate Tribunal to undertake review. There are various other statutes as well, where such power has been given and while interpreting the said power, it has been consistently held that a power of rectification is not akin to a power of review.

13. The Hon'ble Supreme Court in **Sasi (Dead) through Legal Representatives Vs. Aravindakshan Nair & Ors.** reported in **(2017) 4 SCC 692** has held that: *"mere erroneous decision is distinguished from decision which could be characterised as vitiated by error apparent."* It was further held that: *"review of an order is permissible, if any, grounds mentioned under Order 41 Rule 1 is made out. Review is not appeal in disguise, where erroneous decision re-heard and corrected but lies for patent error. Error which is not self-evident and has to be detected by process of reasoning, can hardly be called as error apparent on the face of record."*
14. That apart, if the power of rectification as mentioned in Section 161 is to be construed as a power to review an earlier decision, then the statute mandates that the authority should be able to point out the error, which is apparent on the face of the record in a decision taken by him on November 9, 2022. Unfortunately, the order passed by the appellate authority dated 23rd August, 2023 digitally signed on 24th August, 2023 does not point out any error, which is apparent on the face of the record.

15. The order suffers from illegality inasmuch as the appellate authority has rewritten its earlier order, which is impermissible in exercise of its powers under Section 161 of the Act.
16. For the above reasons, the appeal, writ petition as well as the connected application (I.A. No. CAN 1 of 2023) are allowed and the order passed by the appellate authority dated 23rd August, 2023 digitally signed on 24th August, 2023 is quashed and the order passed by the appellate authority dated 9th November, 2022 stands restored. The respondent/department is directed to restore the appellant's registration within three weeks from date.
17. No costs.
18. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(SUPRATIM BHATTACHARYA, J.)