2025:AHC:156782

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 613 of 2020

Opasil Pigments And Chemicals (P) Ltd.

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Aditya Pandey
Counsel for Respondent(s)	:	C.S.C.

With

WRIT TAX No. - 604 of 2020

M/S Shyam Enterprises

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Aditya Pandey
Counsel for Respondent(s)	:	C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Aditya Pandey, learned counsel for the petitioner and Mr. R.S. Pandey, learned ACSC for the State respondents.

2. Similar controversy has been raised in both the writ petitions, therefore, with the consent of the parties, both the writ petitions are being decided by a common order treating Writ Tax No. 613 of 2020 as leading case.

Writ Tax No. 613 of 2020

3. By means of present petition, the petitioner is assailing the order dated 4.8.2020 passed by respondent no. 2.

4. Learned counsel for the petitioner submits that by the order dated 8.2.2020, the appeal of the petitioner was allowed and penalty under Section 129 (3) was quashed but a letter was sent by respondent no. 3

mentioning therein that an special leave petition has been preferred before the Apex Court and the order was recalled on the application under Section 161 of GST Act.

5. Learned counsel for the petitioner submits that application under Section 161 cannot unilaterally be allowed as the same amounts to review of the order, which is not permissible under Section 161 of the Act.

6. In support of his submission, learned counsel for the petitioner has relied upon the judgement of Apex Court in the case of **M/s Deva Metal Powders Pvt. Ltd. Vs. Commissioner of Trade Tax, UP, 2008 NTN (Vol. 36)-4,** in which it has been held that an error apparent on the fact of record for acquiring jurisdiction to effect rectification must be such which may strike on a mere looking at the record and would not require any long drawn process of reasoning.

7. *Per contra,* learned ACSC supports the impugned order and submits that since special leave petition was preferred before the Apex Court, the order has rightly been passed.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. The goods of the applicant were seized and for release of the same, order under Section 129 (1) of UP GST / CGST Act was passed against which Writ Tax No. 865 of 2019 was filed in which an interim order dated 1.8.2019 has been passed directing the seizing authority to release the goods of the petitioner along with vehicle forthwith subject to deposit of security other than cash or bank guarantee or in alternative accept an indemnity bond, equal to the value of tax and penalty to the satisfaction of seizing authority. However the respondents instead of complying the said order insisted to deposit of security against which Contempt Application (Civil) No. 5428 of 2019 was filed in which no interim order was passed. In the meantime, the petitioner has filed an appeal under Section 107 before the appellate authority, which was allowed vide order dated 8.2.2020 on its merit. Thereafter respondent no. 3 moved an application to which the order allowing the appeal was recalled only on the basis that respondent no. 3 has filed Special Leave to Appeal No. 21569 of 2019

before the Apex Court.

10. The record shows that the order allowing the appeal of the petitioner cannot be recalled merely on the basis of filing of Special Leave to Appeal before the Apex Court in which neither any interim order has been granted nor any prohibition was laid staying the proceedings for passing of the order by the appellate Court, which is a statutory remedy provided under the Act. Section 161 cannot be used as a mechanism for recalling the order of appeal, which has been decided on its own merit in favour of the assessee. The rectification of error apparent on the face of record must be reflected at a glance. In other words, if no long drawn process of reasoning is required then only rectification application can be allowed. The case in hand does not fall within the purview of Section 161 of the Act. Respondent no. 3, if at all was aggrieved, ought to have taken legal remedy available under the Act instead of filing of rectification application.

11. Hon'ble the Apex Court in the case of **M/s Deva Metal Powders Pvt. Ltd. (supra)** has held as under:-

> *"9. 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 v. Mallikarjun Bhavanappa Tiruymale [AIR 1960 SC 137] need to be noted:*
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> > *"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."

10. A bare look at Section 22 of the Act makes it clear that a mistake apparent from the record is rectifiable. In order to attract the application of Section 22, the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. "Mistake" means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception. "Apparent" means visible; capable of being seen, obvious; plain. It means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming." A mistake which can be rectified under Section 22 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration. 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 under Section 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 under Section 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. As observed by this Court in Master Construction Co. (P) Ltd. v. State of Orissa [1966] 17 STC 360, an error which is apparent from

record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law."

12. In view of above, the rectification order/ impugned orders passed in both the writ petitions cannot be sustained in the eyes of law and same are hereby quashed. The order allowing the appeal is restored.

13. Both the writ petitions are **allowed** accordingly.

(Piyush Agrawal,J.)

September 4, 2025
Rahul Dwivedi/-