HIGH COURT OF MADHYA PRADESH AT JABALPUR

W. P. No.13653/2015

M/s C.L.C. Textile Park Pvt. Limited

- V/s -

Assistant Commissioner & Ors..

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- V/s -

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Present : **Hon'ble Shri Justice Rajendra Menon**.

Hon'ble Shri Justice S. K. Palo.

In both the cases:

Shri Sumit Nema with Shri Mukesh Agrawal, learned counsel for the petitioners.

Shri Deepak Awasthy, Govt. Advocate for the respondents/State.

O R D E R
31/03/2016

As common questions are involved in both these writ petitions, they are being decided by this common order.

In W.P. No.13653/2015 challenge is made to the order dated 13.05.2015 passed by the Commercial Tax Commissioner rejecting an application for rectification filed under Section 54(1) of the M.P. VAT Act. Similarly, in W.P. No.13655/2015 also an order passed on 13.05.2015 has been challenged. In W.P. No.13653/2015 the rectification was sought for in the matter of imposition of Vat whereas in W.P. No.13655/2015 rectification was sought for in the matter of assessment of entry tax on purchase of plant and machinery.

2. After the assessment orders were passed and in both the cases

petitioners preferred an application for rectification under Section 54(1) and pointed out various errors and mistakes in the order of assessment. Grievance of the petitioners is that the applications for rectification/correction of mistake has been rejected, behind their back, without notice to them, without hearing them and as the principles of natural justice are violated it is said that the orders are unsustainable.

3. Shri Sumit Nema, learned counsel appearing for the petitioners invited out attention to Section 54(1) of the M.P. VAT Act and argued that under this provision, the Assistant Commissioner has given power for rectification either on his own motion or on an application made by the dealer and if the application is filed then the rectification is permissible in accordance to the procedure contemplated under the Rules. He submitted that the procedure for rectification is contemplated under Rule 65 of the M.P. VAT Act Rules, 2006 and under this Rule, notice on rectification is required to be issued in Form No.45. It is said that in this case as the rectification has been ordered without issuance of notice as is required, the action is unsustainable. He also invited out attention to Section 254(1) of the Income Tax Act and argued that under this provision, also rectification of mistake in the matter of assessment of Income Tax is contemplated and the procedure and the statutory rules for rectification of mistake by the Appellant Tribunal as is contemplated under Section 254(2) is identical to the provisions of Section 54 of the M.P. VAT Act. Shri Nema submits that while interpreting the provisions of Section 254(2) of Income Tax Act. A Full Bench of the Delhi High Court in the case of **Smart P. Ltd Vs. Income Tax Appellate Tribunal** reported in **I.T.R 182 page 384** has held that the principles of natural justice has to be read into the Rules of rectification contemplated under Section 254(2) and if the aforesaid principles is applied in the present case also, the order impugned passed without notice to the petitioner is unsustainable.

4. Shri Deepak Awasthy, Government Advocate for the Revenue submitted that under the Provisions contemplated for rectification i.e. 54(1) & 54(2), an application for rectification or a procedure for rectification can be initiated *suo motu* at the instance of the Commissioner or an application made by the dealer and if a rectification is to be made, it has to be in such manner as may be prescribed. He further invites our attention to the Provisions of Section 55(1) and Proviso - 2 thereto to say that notice before passing orders

of rectification is only necessary if the orders to be passed on rectification has the effect of enhancing the tax or reducing the amount of refund, it is said that in the instant case there was no such effect and the orders were passed on the application made by the petitioners themselves and, therefore, notice was not necessary. That apart, Shri Deepak Awashty took us through the grounds for rectification and argued that the grounds on which rectification or correction of mistake was sought were not the once on which an application under Section 54(2) was maintainable. That apart, he argued that merely on account of violation of the principles of natural justice, interference into the matter is not called for until and unless pre-judice caused is not demonstrated by the petitioners. It was stated by Shri Deepak Awasthy that mechanically in every case violation of the principles of natural justice cannot be a ground for interference unless pre-judice caused is not demonstrated before making such a prayer accordingly, Shri Awasthy prays for dismissal of the petitions.

5. We have heard learned counsel for the parties and we have considered the statutory provision for rectification, as if contemplated under Section 54(1) of the Vat Act, the statutory provision provides and empowers the Commissioner either on his own motion at any time within one calender year from the date of passing of the order or on an application made by the dealer within one calender year from the date of passing of the order to rectify an order passed by him in such manner as may be prescribed. The provision empowers the Commissioner to correct any clerical, arithmetical mistake or any error arising therein from any omission. The provision contemplates and creates a prohibition in the matter of entertaining an application after a particular period of time and proviso (ii) mandates 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 has given notice in the prescribed form to the dealer and has allowed a dealer a reasonable opportunity of being heard. The prescribed procedure is contemplated under Rule 65 of the M.P. Vat Rules 1966 and it says that the notice required for rectification under Section 54(1) shall be issued in Form No. - 45. Section 254 of the Income Tax Act also provides for orders to be passed by the Income Tax Appellate Tribunal and Sub-Section – II of this Section contemplates a similar provision as is provided for under Section 54 of the Vat Act in the matter of correction and rectification of mistake. Except for the fact that under the Income Tax, the

period during which the rectification is permissible is four years from the date of passing of the order whereas in the Vat Act the period is one year, there is no other difference. Both the Acts are para materia with each other and the proviso to sub-section 254 (2) also mandates that before effecting any enhancement or change in assessment or reducing the refund or before increasing the liability of the assessee, notice has to be issued. According to Shri Deepak Awasthy notice of hearing is to be issued only if the order proposed to be passed by the Commissioner has the effect of reducing the tax liability or doing something which may have adverse affect on the assessee.

In this case, the question is as to whether opportunity of hearing should be granted when the rectification is sought for by the assessee himself and he wants certain corrections in the orders on grounds as are raised in the rectification application.

Even though Shri Deepak Awasthy tried to indicate that the grounds raised in the application do not permit its maintainability or filing of an application for rectification, at this stage in these proceedings we are not required to nor are we inclined to go into this aspect of the matter. We are only required to consider the submission made by Shri Sumit Nema to say that dismissal of the rectification application without notice to the petitioners and without hearing them is unsustainable.

We find that the Full Bench of the Delhi High Court has dealt with this question in the case of **Smart Private Limited** (supra). In the case before the Full Bench of Delhi High Court, the provision of section 254(2) of the Income Tax Act was interpreted and Justice Kripal (as he then was and who has authored the Judgment) after taking note of the provisions of section 254(2) of the Income Tax Act has discussed in detail the import and effect of the provisions of Section 254(2). The learned Judge has considered the provision and has dealt with the question in the following manner:-

> *"In order to understand the full import and effect of section 254(2), it has first to be seen at whose instance an order under section 254(2) can be passed. In the absence of any such specific mention, the said provision should be so construed as to make it meaningful and effective. There are three entities or*

parties who are directly involved in or concerned with the passing of an appellate order. They are the Tribunal itself and the appellate and the respondent before it. This being so, it is possible that the Tribunal may, suo motu from the opinion that there is a mistake apparent from the record which requires an order passed by it under section 254(1) to be rectified or amended. In addition thereto, the existence of any mistake apparent from the record can be brought to the notice of the Income-tax Appellate Tribunal by either of the parties to the appeal, namely, the assessed or the Income-tax Officer. The power under section 254(2) can thus be exercised by the Tribunal either suo motu or at the instance of either of the parties before it.

In the present case, we are not concerned with the circumstances under which an order under section 254(2) can be passed. No arguments have been addressed on the question as to what is the meaning of the words "rectifying any mistake apparent from the record" occurring in section 254(2) and, therefore, we do not propose to go into this question. All that we have to consider is whether the proviso to section 254(2) limits the hearing to be provided only to a case which has the effect of enhancing an assessment or reducing a refund or increasing the liability of the assessee.

An assessee or an Income-tax Officer can require the Tribunal to pass orders under section 254(2). Ordinarily, this would be done when either of the parties, or in a particular case, even both of them, move applications before the Tribunal. When an application is filed by an assessed for rectification of a mistake, the said application may either be dismissed or allowed. If the application is dismissed, it would mean no modification is made by the Tribunal in its order passed under section 254(1). On the other hand, when an application filed by an assessed is allowed, it may have the effect of reducing its tax liability.

An application filed by the Income-tax Officer may, likewise, be either dismissed or allowed. If such an application is allowed, there will be a possibility, as contemplated by the proviso to section 254(2), whereby the tax liability of the assessed is adversely affected.

The proviso to section 254(2), construed literally, provides only for a hearing to be granted to an assessed. It does not provide for the Tribunal giving any opportunity to the Income-tax Officer to be heard. Moreover, the opportunity to the assessed is to be granted only if the amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee.

If hearing, on an application being moved under section 254(2), is to be confined only to those cases which are covered by the proviso to the said provision, the effect would

> *be that, on an application for rectification filed by the assessed, no hearing will be granted to the Department because the proviso does not specifically provide for such a hearing to be given. If an application filed by the assessed under section 254(2) is allowed, then there may be reduction in the tax liability or an increase in the refund or reduction in the assessment. Any such order passed would, in effect, be prejudicial to the interests of the Revenue. When section 254(1) specifically contemplates hearing being given to the Revenue, on an appeal filed by the assessed, which appeal, if allowed, may have the effect of reducing the assessment or the tax liability or increasing the refund, it cannot possibly stand to reason that a hearing to the Department is not contemplated when the success of an application under section 254(2) by an assessed may have the same effect as if the assesse's appeal under section 254(1) has been allowed. It is now well-settled that, even where hearing is not specifically provided, principles of natural justice have to be complied with before any order adverse to any party is passed especially by a judicial or a quasi-judicial authority. This principle would be negated if section 254(2) is to be given a narrow construction, as sought to be placed by Shri. B. Gupta, and the hearing is limited only in the cases as contemplated by the proviso thereto.*

and, after analyzing the various eventualities as are indicated hereinabove i.e. the effect of an application filed by the assessee; the effect of the application filed by the revenue; and the effect of suo motu action being initiated by the Tribunal, the learned Full Bench has come to a conclusion that principles of natural justice have to be read into the provisions of section 254(2) and it has been held that this provision has been inserted in the statute by way of abundant caution to give certain right to a person who is aggrieved by an order passed, and if being aggrieved by certain order passed the statute gives a power to the aggrieved person to file an application, a presumption has to be drawn that the statute correspondingly gives a right to that person for an opportunity of hearing with regard to acceptance or otherwise of the application filed by virtue of the right which accrues to the person on account of the statutory provision.

When a statutory provision contemplates a provision for moving an application for the purpose of challenging an order passed or even for the purpose of bringing to the notice of the authorities, who passed the order, some mistake or error in the order, an assumption has to be drawn that the statute gives a right to the person concerned to have an opportunity of hearing with regard to his grievance and if that is the intention for incorporating a

provision in the statute that principles of natural justice has to be read into the order this is what is held by the Full Bench of Delhi High Court and we see no reason to take a different view.

In this regard, we may also take analogy with regard to a principle laid down by the Supreme Court in the matter of reading into a statutory provision, the requirement of grant of opportunity of hearing or the principles of natural justice when orders are passed and the statute are silent with regard to grant of such opportunity.

In cases of disciplinary action initiated against employees and while taking action for imposition of penalty on the basis of findings recorded by the Enquiry Officer, Supreme Court has considered the question of grant of opportunity in cases where the disciplinary authority dis-agrees with the finding of the Enquiry Officer.

In the case of **Yoginath D. Bhade Vs. State of Maharashtra, (1997) 7 SCC 739**, and again in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Mishra - 1998(7) SCC 84**, it has been held by the Supreme Court that even if a statutory rule does not provide for an opportunity of hearing if the order impugned has the effect of affecting the rights of person adversely then the requirement of the principles of natural justice has to be read into the Rules.

In the instant case also, if we apply the principles of reading into the statute i.e. section 54(1), the requirement of the principles of natural justice, we find that the legislature was conscious of the fact that a dealer or the department or the revenue may after orders of assessment are passed, find some error in the orders passed, therefore, the rule makers incorporated a provision i.e. 54(1) providing for an application to be filed or suo motu action to be taken for rectification of a mistake or correcting of an order. Once such a provision is provided by incorporation in the statutory rules or regulations, the intention of the legislature has to be given full effect to and when an application for rectification is filed by a dealer and if he is not granted an opportunity to explain to the statutory authority, the grounds and circumstances on which he wants the rectification to be ordered, it would be nothing but negating and nullifying the statutory provision and destroying the effect of the statute itself. The very purpose of giving a right to a dealer to file

an application as contemplated under section 54(1) would also mean that he has a right to point out to the statutory authority the mistake if any, said to have been committed or the justification for seeking correction of the mistake and if he is not given an opportunity of hearing and if his application is rejected without hearing him, behind his back, it would be a case where the requirement of principles of natural justice are violated and, therefore, we have no hesitation in holding that the requirement of grant of opportunity of hearing or following the principles of natural justice before rejecting an application under section 54(1), has to be read into the rules and in dismissing the application on the grounds as indicated in the impugned orders dated 13.05.2015, without hearing the petitioners, an error has been committed by the department.

Accordingly, we allow both the petitions; quash the orders; and, remand the matter back to the Assistant Commissioner, Commercial Tax, Chhindwara with a direction to issue notice to the petitioners, hear them on the application for rectification and, thereafter pass an order in accordance with law.

We may indicate that except for holding the order to be unsustainable on account of non-grant of opportunity of hearing, the question as to whether the application was maintainable; the rectification on the grounds canvassed in the application are permissible, are left open to be decided by the competent authority after notice to the petitioners.

We have only considered the question in these petitions limited to the extent of grant of opportunity of hearing before deciding the application under section 54(1) and all other questions pertaining to merits of the claim for rectification have not been adverted to by us.

(Rajendra Menon)
Judge

(S.K. Palo)
Judge

N.Mohan/-