

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

VAT No. 69 of 2008  
Date of decision 10 .3.2009

M/s Girnar Impex Ltd.

...Appellant

Versus

State of Punjab and others

... Respondents.

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr.Akshay Bhan ,Advocate for the appellant  
Mr. Pyush Kant Jain, Addl. AG Punjab

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether the judgement should be reported in the Digest ?

M.M.KUMAR, J.

The assessee appellant has approached this Court by filing the instant appeal under Section 68 of the Punjab Value Added Tax Act, 2005 challenging order dated 20.11.2007 (A.6) passed in Misc. (Rect) No.12 of 2007-08 in Misc. (Rect) No.62 of 2006-07 and in Misc. (Rect.) No.108 of 2005-06 in Appeal No. 75 of 2006 decided on 20.11.2007. The assessee-appellant has further challenged order dated 9.9.2005 passed in Appeal No. 75 of 2005-06 by the Punjab Value Added Tax Tribunal, Chandigarh (for brevity 'the Tribunal'). The assessee- appellant has claimed various questions of law for determination of this Court which are allegedly arising from the aforesaid order. However, at the time of arguments only one question has been pressed in respect of the assessment year 1996-97 which is as under:

“ Whether the assessment framed by the Assessing Authority

on 13.5.2002 ( A.1) is barred by limitation under Section 11 ( 2 and 3) of Punjab General Sales Tax Act, 1948?”

Brief facts of the case necessary for disposal of the controversy are that the assessee- appellant was dealer registered under the Punjab General Sales Act, 1948 (for brevity 'the Act') and Central Sales Tax Act,1956. Thereafter it has been registered under the Punjab Value Added Tax Act, 2005 as well as under the Central Sales Tax Act, 1956. The assessee-appellant is running business of manufacturing and sale of various types of iron goods at Ludhiana and has also been exporting the goods out of India. It had filed quarterly returns for the assessment year 1996-97 as per the requirements of Section 10 of the 1948 Act within the time prescribed. The gross turnover of the assessee- appellant during the assessment year 1996-97 was Rs. 6,11,76,441.15. It was claimed that there was no tax payable by the appellant-company. However, the Deputy Excise and Taxation Commissioner, Patiala- respondent no.3 issued a notice in Form ST XIV under Section 11(2) of the Act for framing assessment in respect of the assessee-appellant company. The assessee- appellant is stated to have attended the proceedings through its counsel and furnished 148 ST XII form in support of its claim for sale to registered dealers of the State of Punjab alongwith 39 bills of lading in support of its claim that the goods were exported out of India. The documents were taken on record by the Assessing Authority. The assessment was finalized on 13.5.2004 which infact alleged to have been framed in December, 2008. The petitioner has for the first time claimed in the third rectification application that the assessment was time barred as it was beyond the period of three years after the last date of appearance before the Assessing Authority specified in the

notice issued under Section 11(2) of the Act.

The assessee-appellant filed an application under Section 20(5) of the Act seeking rectification of the order dated 13.5.2002 passed by respondent no.3 whereby directions were also issued to deposit rupees ten lacs for entertainment of appeal. The assessee-appellant filed an appeal under Section 20(1) of the Act against order dated 13.5.2002 which was dismissed vide order dated 23.2.2005 ( A.3). However, penalty under Section 23 of the Act was reduced to Rupees 1,000/-. Thereafter, the assessee- appellant made an effort by filing another appeal before the Tribunal under Section 20(2) of the Act which was also dismissed on 9.9.2005 by the Tribunal.

The Assessee-appellant thereafter filed three misc. applications seeking rectification of the order dated 9.9.2005. The first application being Misc. (Rect.)No.108 of 2005-06 was dismissed on 21.3.2006. Thereafter another application was filed being Misc. (Rect.) No.62 of 2006-07 which was also dismissed on 15.5.2007. The Tribunal has observed that all the issues raised by the assessee-appellant during the hearing of the appeal and the first rectification application were adjudicated and the appellant failed to point out any mistake apparent on the face of the record legal or factual which required rectification. The assessee-appellant again filed another Misc. (Rect.) No. 12 of 2007-08 under Section 21(a) of the Act with a prayer seeking rectification of the order dated 15.5.2007. however, the same was again dismissed by the Tribunal on 20.11.2007. It is pertinent to notice that the assessee-appellant made an attempt to raise the issue of limitation and the plea was rejected with the following observations:

“ I have considered arguments of both the parties and have

gone through the facts of the case. The issue of limitation now raised by the applicant in his third rectification application was never raised earlier during hearing of their appeal or during hearing of their earlier two rectification applications. Counsel for the applicant stated that he raised this issues at the time of arguments during the hearing of appeal, but the Tribunal did not mention the same in its order. This plea of the applicant cannot be accepted in view of the fact that no such plea was taken by the applicant in grounds of appeal. Had it been so, he must have raised this issue in his earlier two rectification applications. Raising of new issue in rectification application does not come under the scope of rectification. The second issue of disallowance of RD sales stand already adjudicated by the Tribunal while deciding their appeal/rectification application. The applicant has failed to point out any mistake of fact or law arising from the order of the Tribunal. Application is dismissed being without merit.”

Having heard learned counsel for the parties, we are of the considered view that the scope of rectification of an earlier order by moving appropriate application under Section 21(a) of the Act could not be extended to an issue which has been raised for the first time through rectification application. The language of Section 21(a) of the Act clearly postulates that the authority may rectify any mistake apparent from the record. Therefore, the order of the Tribunal rejecting the newly set up plea by the assessee-appellant that the assessment was not within the period of limitation as provided by Section 11(4) of the Act does not suffer from any legal

infirmity. In that regard reliance may be placed on the judgements of Hon'ble the Supreme Court in the cases of T.S.Balaram v. Vokart Bros. (1971)2 SCC 526 and State of Karnataka and another v. K.K.Mohandas and others (2007)6 SCC 484.

Even otherwise we are of the considered view that the question of limitation at best is a mixed question of law and fact. Such a question cannot be permitted to be raised for the first time before the High Court. In that regard reliance may be placed on the judgements of Hon'ble the Supreme Court in the cases of Ittyavira Mathai v. Varkey Varkey AIR 1964 SC 907; Gurbachan Sing Gill v. J.S. Bagga (2005) 13 SCC 381; Shree Ram Mills Ltd v. Utility Premises (P) Ltd. (2007) 4 SCC 599 and M.P.Electricity Board v.Vijaya Timber Co. (1997) 1 SCC 68.

When the principles discernible from the afore-mentioned judgements are applied to the facts of the present case it becomes evident that period of limitation of five years is provided by Section 11 (4) of the Act. The aforesaid question has not been raised before any authority nor before the Tribunal. The order in appeal was passed on 9.9.2005 ( A.4). The assessee-appellant thereafter filed two rectification applications being Misc. (Rect.)No.108 of 2005-06 and Misc. (Rect.) No. 62 of 2006-07 which were dismissed on 21.3.2006 and 15.5.2007. It appears that for the first time the question regarding limitation was raised by filing another rectification application being Misc. (Rect.)No.12 of 2007-08 and the Tribunal has rightly rejected the application by holding that the raising of such an issue in the rectification application was not covered within the scope of Section 21(a) of the Act. It is also well settled that question of limitation is not a pure question of law but is a mixed question of fact and law. Hence, there is

no merit in the appeal and the same does not deserve admission.

As a sequel to the aforesaid discussion, this appeal appeal fails  
and the same is dismissed.

(M.M.Kumar)  
Judge

10.3.2009

(Augustine George Masih)  
Judge

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