BEFORE THE HIMACHAL PRADESH TAX TRIBUNAL,
DHARAMSHALA, CAMP AT SHIMLA

	Rectification Application No.	:	7/2018
	Date of Institution	:	18-06-2018
	Date of order	:	29-07-2022
With:			
	Rectification Application No.	:	8/2018
	Date of Institution	:	18-06-2018
	Date of order	:	29-07-2022
With:			
	Rectification Application No.	:	9/2018
	Date of Institution	:	18-06-2018
	Date of order	:	29-07-2022
AND:			
	Rectification Application No.	:	10/2018
	Date of Institution	:	18-06-2018
	Date of order	:	29-07-2022

In the matter of:

State of Himachal Pradesh & Ors.

.....Appellant

Vs

M/s Shree Krishna Steelage (P) Ltd.
Kalamb, District Sirmaur HP .

.....Respondent

Parties represented by:-

Shri Sandeep Mandyal, Sr Law Officer for the Appellant
Shri A.K Sachdeva, Advocate for the Respondent

Appeal under Section 47(1) of the Himachal Pradesh, Value Added Tax Act, 2005

Order

1. The present applications has been filed by State of Himachal Pradesh & ors under section 47(1) of the Himachal Pradesh Value Added Tax Act, 2005 (VAT Act) praying for rectification of the order dated 20-06-2017 passed in Appeal No.s 1, 2 & 3/2017 of this Tribunal, wherein the Tribunal had allowed appeals in favour of the assessee and the order passed by the Excise and Taxation Commissioner, Himachal Pradesh in Appeal No. 37/2014-15 was set aside.

2. The Brief facts are that in the main appeal which was decided by the Tribunal on 20.06.2017, the issue involved was that whether Stainless Steel scrap is non ferrous metal/alloy or a ferrous metal/alloy. The issue in question was whether tax should be charged as per the rate given in entry No. 9(b) of the HPTEGLA Act, 2010 if the stainless steel scrap is covered under the category on 'Non ferrous metal, alloy and scrap thereof' or whether tax will be charged as per the rate specified in entry No. 14 of the Schedule-II of the Entry Tax Act, 2010, if stainless steel is covered under the category of ferrous metal and alloy. ETO Flying Squad inspected the business premises on 19-09-2014, and noted that on the Stainless Steel Patta, etc. being imported, the appellant was paying Entry Tax @ 0.25% as per entry No.9(b) and 2% on mild steel scrap as per entry No. 14 of the Schedule-II of the Entry Tax Act, 2010. The Assessing Authority has held that Stainless Steel flat and Stainless Patti, brought into the local area should be taxed as per entry No. 14 of the Schedule-II of the of the HPTEGLA Act, 2010 @2%, since it was a ferrous metal. The appellant had contended before this Tribunal that Stainless Steel Flat and SS Patti and SS Circle, are not ferrous metal and hence the rate of tax should have been @0.25% for Alloys, as prescribed in the Schedule under entry No. 9(b) of Schedule-II.

3. Relying upon the judgment reported as Bansal Wire Industries Ltd. Vs. M/s U.P., the DETC (FS) (SZ), Parwanoo vide order dated 12.3.15, created an additional demand of Ra. 1.6 Crore for the period 2012-13, 2013-14, 2014-15 (upto August end for the year 2014-15). The First Appeal was filed against the assessment orders for aforesaid assessment years and the Ld. First Appellate Authority i.e. Excise and Taxation Commissioner, did not entertain the appeals on the failure of the appellant to deposit 25% of the additional demand created by the DETC Flying Squad South Zone as a pre-condition to hear his appeal. Aggrieved against order of Ld. First Appellate Authority, the respondent filed further appeal before this Tribunal. The Tribunal vide order 20-06-2017 observed that *'the distinction sought to be made between ferrous alloys and non ferrous alloys, is nowhere provided in the Act or Schedule. The schedules perhaps does require to be rationalized, as each item can technically fall under entry No. 9(a), 9(b) or 14 of the HP Entry Tax Act, 2010'*. The appeals of the respondent/assessee were accepted vide order dated 20.06.2017 with the observations as under :-

> *"16. In view of.....The appeals are therefore, accepted, and order of Ld. DETC dated 12-03-2015 is set aside, alongwith M/s Amba Industrial Corporation, Trilokpur Road, Kalamb, District Sirmour Vs. ETC HP, M/s Jaiswal Metals Pvt. Ltd, Trilokpur Road, Kalamb Vs. ETC HP, and M/s Vashisht Alloys, Trilokpur Road, Kalamb, District Sirmour Vs. ETC HP, respectively are also disposed off*

along with above appeals as the issues raised in these appeals are similar".

While disposing off the appeals of the respondent/assessee (Appeal No. 1, 2 & 3/2017), this Tribunal passed a well reasoned speaking order. Now the applicants/State has filed rectification application under Section 47(1) of HPVAT, 2005 seeking rectification of the order dated 20.06.2017 passed by this Tribunal.

4. Aggrieved by the order of the Tribunal, the main ground taken in the present Application by the State is that the Tribunal while passing the order dated 20.06.2017 passed in Appeal No 1, 2 & 3/2017, has failed to distinguished the distinction between "ferrous metal" and "non-ferrous metal". The scrap contains iron and hence the stainless steel scrap is ferrous metal and non-ferrous metal therefore, it must be taxed @ 2% rather than 0.25% accrued under the HPTEGLA, 2010. The State is pleading that the wrong distinction of ferrous metal and non-ferrous metal is an error apparent from the record which needs to be rectified and thus has filed the present Application on grounds that can be summarized as under:-

(i) ***While passing order dated 20.06.2017 passed in Appeal No.'s 7/2016, 8/2016, 9/2016, 1/2017, 2/2017 & 3/2017, "Tribunal has miserably failed to appreciate the provisions of the Entry Tax Act and arrived at the wrong conclusion which is absolutely contrary to the provision of the stature.***

(ii) ***Order of the Tribunal runs contrary to the provisions of the Entry Tax Act, 2017 and the same requires rectification under Section 47(1) of HP VAT Act, 2005.***

(iii) ***While submitting on merits it is pleaded that the Ld. Tribunal in its order manly focused on iron and steel only and not on ferrous and non- ferrous metal and their alloys. Stainless steel and its scrap both were indisputably ferrous in nature and thus should be taxed @ 2% as per entry no. 14 of schedule-II mobile, since it is not so ordered by the Tribunal, the Order dated 20.06.2017 requires to be rectified.***

(iv) ***That in the presence of a specific entry i.e. entry no. 14 covering the product/goods imported by the respondent firm, that product cannot be classified falling under entry no. 9 (b). A commodity cannot be classified under entry no. 9(b), in the presence of specific entry, even if such specific entry requires the product to be understood in the technical sense. An entry no. 9(b) can be taken refuge of only in the absence of a specific entry that is to say specific entry will always prevail over general entry.***

(v) ***Reliance is placed on judgment of Honda Siel Power Products Ltd. Vs. Commissioner of Income Tax (2008) 12 VST 500 (SC).***

5. Sh. Sandeep Mandyal, Sr. Law Officer, for the State contended that the rectification appeal may be accepted and impugned order dated 20-06-2017 of the Tribunal be quashed. He submitted that the dealer fell under the ambit of local area as it was well defined, hence the appellant could not be exempted from the payment of entry tax. The appellant has been paying less tax on the pretext that the stainless steel scrap fell under the entry no. 9(b), which was wrong as the same was covered under the entry No. 14 of Schedule-II of HPTEGLA. Hence the correct and legal order of the DETC-Cum-Assessing Authority Flying Squad, South Zone, Parwanoo and ETC-Cum-Appellate Authority respectively deserve to be upheld.

6. The Ld Counsel for the respondent, Sh. A.K. Sachdeva stated that the Applications filed by the Department purportedly under Section 12 of the Himachal Pradesh Tax on Entry of Goods into Local Areas Act, 2010 read with Section 47 of the Himachal Pradesh Value Added tax Act, 2005 seeking rectification of the Orders dated 20.06.2017 passed by the Hon'ble Tribunal is misconceived. The decision sought to be rectified is a well-considered one, being based upon appreciation of facts, true interpretation of the entries, and the judicial decisions having bearing on the issue. It has been averred that the scope of rectification under Section 47 of the Himachal Pradesh Value Added Tax Act, 2005 is limited to "mistake apparent from the record" as is quite evident from the plain language used by the lawmakers. Interpreting the expression 'mistake or error apparent'. The Supreme Court in State of West Bengal and Others v. Kamal Sen Gupta and Another (2008) 8 SCC 612 held, "The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law.

In Lily Thomas v. Union of India (2000) 6 SC 224, Hon'ble the Supreme Court observed and held that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise." In Deva Metal Powders Pvt Ltd v. Commissioner, Trade Tax, Uttar Pradesh (2007) 10 VST 751 (SC) the Supreme Court held, "There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as

vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

7. **I have heard the** learned Government counsel and the learned counsel for the respondent.

   The short point that arises for consideration is whether it is a fit case for rectification under Section 47 of the HP VAT Act or not?

   Section 47 of the Himachal Pradesh Value-Added Tax Act, 2005, allows rectification of mistake, as stated below:

   "The Tribunal or Commissioner or the officer on whom powers of the commissioner for the purposes of sub-section (1) of section 46 have been conferred by the State Government may at any time within one year from the date of any order passed by him on an application made to him or of his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such."

8. The controversy is a narrow one. There is not much dispute about the facts. In any event, this Tribunal has to, in its reference jurisdiction consider the questions of law referred to it on the basis of facts found by the Tribunal order dated 20.06.2017.

9. A reading of provisions under Section 47 of HP Vat Act makes it clear that this provision can be invoked to rectify any mistake apparent from record. It is well settled law that a mistake apparent on record must be patently glaring and not to be discovered by further investigation or by an enquiry or considering the arguments or proof of a debatable issue. The scope of rectification is limited. The same cannot be enlarged to re-examine the concluded issues on which there may be permissible different opinions. The Authority becomes functus officio on concluding the proceedings and the same cannot be re- opened to revisit the concluded issues in the guise of rectification.

10. It is thus evident that there is no mistake apparent in this Tribunal order dated 20-06-2017 nor is there any documentary evidence or point of submission missed by inadvertence/oversight by this Tribunal in the appeal records; there is no ground to rectify the mistake as per Sub- section(1) of Section 47 of the HP VAT Act. Further, the impugned order dated 20-06-2017 cannot be held to be a non-speaking order as it is a very detailed order which has examined various Laws/ Judgment while passing its orders. The rectification of an order does not mean obliteration of the order originally passed and its substitution by a new order. For the aforesaid reasons, **the appeal does not merit consideration and is dismissed.** The rectification applications State of HP Vs. M/s Amba Industrial Corporation, Trilokpur Road, Kalamb, State of HP Vs. M/s Jaiswal Metals Pvt. Ltd., Trilokpur Road, Kalamb and State of HP Vs. M/s Vashisht Alloys, Trilokpur Road, Kalamb, respectively are also disposed off and dismissed along with above appeal as the issues raised in these appeals are similar.

10. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.

(Akshay Sood)
Chairman,
HP Tax Tribunal,
Camp at Shimla

Endst. No HPTT/CS/2022- 182 to 189 **Dated** 29/07/2022

Copy to:-

1. The Commissioner State Taxes & Excise, Hjmachal Pradesh, Shimla-09.
2. The Deputy Excise and Taxation Commissioner, FS, SZ, Parwanoo.
3. M/s Shree Krishna Steelage Pvt. Ltd., Kalamb, District Sirmaur.
4. M/s Amba Industrial Corporation, Trilokpur Road, Kalamb, Distt. Sirmaur.
5. M/s Jaiswal Metals Pvt. Ltd., Trilokpur Road, Kalamb, Sirmaur.
6. M/s Vashisht Alloys, Trilokpur Road, Kalamb, Distt. Sirmaur.
7. Shri A.K Sachdeva, Advocate for the respondent.
8. The Sandeep Mandyal, Sr. Law officer (HQ).

Reader
HP Tax Tribunal
Camp at Shimla