THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. - 2024:AHC:22365

Court No. 1

Present:

The Hon'ble Justice Shekhar B. Saraf

SALES/TRADE TAX REVISION NO.150 OF 2023

THE COMMISSIONER, COMMERCIAL TAX U.P.

v.

M/S GODFREY PHILIPS INDIA LIMITED

For the Revisionist	**:**	**Ravi Shanker Pandey, Additional Chief Standing Counsel**
For the Respondent	**:**	**Navin Sinha, Senior Advocate assisted by Sri Raghav Nayar, Advocate**

Last heard on February 01, 2024
Judgement on February 12, 2024

1. This is a revision petition under Section 58 of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as the 'UPVAT Act, 2008') preferred by The Commissioner, Commercial Tax, U.P., Lucknow (hereinafter referred to as the 'Revisionist') against the impugned order dated January 25, 2023, passed by the Commercial Tax Tribunal. The Opposite Party in the instant revision application is M/S Godfrey Philips India Ltd.

FACTS

2. The factual matrix of the instant lis has been delineated below:

a. Opposite Party is in the business of manufacture and sale of cigarettes, tea leaves, pan masala, and other different items. For the Assessment Year 2012 – 13, as per the Revisionist, the Opposite Party had admitted a purchase turnover and stock transfer of goods to the tune of INR 3,21,65,65,914/- and sale turnover inside U.P. to the

extent of INR 1,99,27,81,937/- and admitted a tax liability of INR 62,53,93,015/-.

b. A survey was conducted by the S.I.B., Ghaziabad, on the production unit of the Opposite Party on February 2, 2012, and at the time of survey, 14,338 cartons containing 17,04,84,000 cigarettes were found whereas in the books of account stock of 14,818 cartons were found as recorded according to the Revisionist. Accordingly, a total sum of 480 cartons were found less on physical verification.

c. Since, the rate of tax on cigarette was enhanced to 50% from July 1, 2012, the assessing authority took the view that 480 cartons were sold on July 1, 2012, and July 2, 2012, and no sale invoices thereof were issued in order to escape the actual sales. On this ground, the account books were rejected and evaded turnover of cigarette was determined at INR 6,00,00,000/- beside evaded purchases of tobacco paper and packing material was determined at INR 2,55,00,000/-. The evaded sale of cigar was determined at INR 58,261 and an additional liability was created of INR 78,75,000/- + INR 75,00,000/ - = INR 1,53,75,000/- on sales, and a tax liability on purchases at INR 29,75,000/- and on sale of cigar at INR 29,131/-.

d. Aggrieved by the order dated December 3, 2015, passed by the assessing authority, the Opposite Party preferred first appeal before the Additional Commissioner, Grade – 2 (Appeal) -1st, Ghaziabad. The first appellate authority vide its order dated March 8, 2016, rejected the reconciliation figures submitted by the Opposite Party and upheld the order passed by the assessing authority. Being aggrieved by the order dated March 8, 2016, passed by the first appellate authority, the Opposite Party preferred second appeal before the Commercial Tax Tribunal, Bench – I, Ghaziabad. The second appellate authority vide its order dated January 25, 2023, accepted the contention of the Opposite Party that there was no difference in the stock of the cigarettes and the stock found was in accordance with the stock ledger. The second appellate authority further held that the

surveying authority had committed fault in counting the cartons. Accordingly, the second appeal filed by the Opposite Party was allowed and the account books were accepted by the second appellate authority.

e. The Revisionist filed the instant revision application under Section 58 of the UPVAT Act, 2008 against the impugned order dated January 25, 2023, passed by the second appellate authority.

CONTENTIONS OF THE REVISIONIST

3. Mr. Ravi Shankar Pandey, learned Additional Chief Standing Counsel appearing on behalf of the Revisionist has advanced the following submissions:

(i) The second appellate authority was not legally justified in accepting the contention of the Opposite Party that the surveying authority committed error in counting the stock which resulted in noting shortage of 480 cartons.

(ii) At the time of survey dated July 2, 2012, the counting of stock was conducted in the presence of Sri Pankaj Pataudi, Deputy General Manager (Accounts) who never objected that physical counting was done wrongly. The surveying authority on counting found 14,338 cartons of cigarettes instead of 14,818 cartons entered in the stock register. As such, a shortage of 480 cartons was found and the assessing authority rightly presumed that the same has been sold out of books as from July 1, 2012, the rate of tax was enhanced to 50%. The conclusion drawn by the assessing authority was based on a reasonable ground which has been completely ignored by the second appellate authority.

(iii) After survey dated July 2, 2012, the subsequent intimation by correspondence dated July 6, 2012, to the assessing authority was an attempt to cover the short comings found by the surveying authority. A reasonable explanation for tallying the shortage found at the time of survey dated July 2, 2012, was required to be furnished but the same

was no reconciled by the Opposite Party. Instead, the Opposite Party tried to give a roundabout explanation by mentioning that the stock of FSS Vally + FSS ND brand cigarette was 2,188 boxes but the same was counted as 2,376 boxes as the difference of 188 boxed was counted twice, Further, the stock of FSSPL Brand of cigarette was of 2,775 boxed which was counted as 2,402 boxes and by mistake 83 boxed were counted twice. Besides, there were 456 boxes of old cigarettes that were kept in the godown which was not recorded by the surveying authority. The second appellate authority accepted the said explanation furnished by the Opposite Party without applying its mind and reached a conclusion that the differences have been reconciled and no difference was found in the stock of cigarettes.

(iv) The second appellate authority further committed a factual mistake in observing that the goods are excisable commodity which is checked by the Excise Department from time to time and sales are regulated and controlled by the Superintendent/Inspector of Excise Department and therefore the evaded sale is not possible. The non-vigilance of excise authorities could not be ruled out in view of the fact that the stock verification was conducted by the S.I.B. Unit of the Commercial Department in the presence of a responsible person of the rank of Deputy General Manager (Accounts) and no discrepancy was pointed out at the time of conducting and recording the factual position in the survey note.

(v) The second appellate authority wrongly relied on the decisions given in M/s Sugar Mills -v- Union of India reported in 1989(2) ELT (J-172) and State of Kerala -v- M.M. Mathew reported in 1978 STC 348 in which a principle has been laid down that account books could not be rejected on suspicion, strange coincidences and grave doubts or on presumptions. It may be submitted that the account books have been rejected on a solid and valid ground as shortage of 480 cartons of

cigarette was found and no valid and reasonable explanation could be put forth by the dealer at the time of survey conducted.

CONTENTIONS OF THE OPPOSITE PARTY

4. Mr. Navin Sinha, learned Senior Advocate assisted by Mr. Raghav Nayar, learned counsel appearing on behalf of the Opposite Party has advanced the following submissions:

(i) For the purposes of undertaking the aforesaid manufacturing activities, the Opposite Party supplies various raw materials to M/s International Tobacco Company Limited (hereinafter referred to as 'INTCO'). INTCO manufactures cigarettes with the use of such raw material for and on behalf of the Opposite Party under job work arrangement. The title of finished goods vests with the Opposite Party always till such goods are sold by it in the course of trade. The Opposite Party from time to time sells / stock transfer such goods from the registered premises on their own account and duly account such sales / stock transfer in its books of accounts. Besides, INTCO also maintains various statutory records as required under the central excise provisions to account finished goods as manufactured by it for and on behalf of the Opposite Party. In particular, daily stock account is maintained by it to account production and removal of finished goods on daily basis. The disposal of finished stock from the registered premises is accounted in the books of the Opposite Party as sales / stock transfer and in statutory records maintained by INTCO as removals. In other words, entries in the Opposite Party's books of accounts towards sale / stock transfer of finished stock are mandatorily always supported by the corresponding entry in the records of INTCO.

(ii) M/s INTCO is the wholly owned subsidiary company of the Opposite Party, which manufactures cigarettes on behalf of the Opposite Party in the same premises i.e. 'Meerut Road, Ghaziabad'.

However, the records of the Opposite Party and INTCO are separately maintained.

(iii) The SIB authorities conducted the survey of the Opposite Party's business premises on July 2, 2012, at 4:30 p.m. and finished counting the stock of cigarettes available in the premises by 6:00 p.m. Meanwhile, the Opposite Party was also required by the SIB authorities to produce their books of accounts, and particularly the stock statement of finished goods as on the said date.

(iv) The Opposite Party produced the required stock statement giving details of finished stock as on the said date as per their books of accounts. As per the stock statement produced by the Opposite Party, the stock of finished cigarettes was 14,818 cartons categorized into different brands of cigarettes.

(v) The SIB authorities thereafter proceeded to count the stock of finished goods in haphazard manner and without being accompanied by the concerned personnel of the Opposite Party. On completing the counting process, the SIB authorities prepared brand-wise statement of stock allegedly found available in their premises during the survey showing total stock as 14,323 cartons.

(vi) Since there was difference between the stock of finished stock as per inventory taken by the SIB authorities and stock as per books of accounts, the Opposite Party immediately pointed out the reasons of such difference and requested the authorities to re-count the stock. However, the SIB authorities, being highly adamant and non-cooperative, refused to consider the errors pointed out by the Opposite Party. At the same time, the Opposite Party was asked to report such errors, if any, to their office within 24 hours i.e. within July 3, 2012.

(vii) In line with the understanding reached with the SIB authorities, the Opposite Party submitted detailed representation to the Assistant Commissioner (SIB), Ghaziabad vide its letter dated July 3, 2012, detailing the brand-wise stock of cigarettes available in its factory duly highlighting the cases of disagreement and reasons of such

disagreement. The Opposite Party specifically requested the SIB authorities vide the said letter to re-verify the stock in its premises. The Opposite Party further submitted on its own motion, a detailed representation vide letter dated July 2, 2012, to the jurisdictional Deputy Commissioner giving details of the deficiencies found by them in the survey diary dated July 2, 2012. The Opposite Party subsequently received notice from the Deputy Commissioner (SIB), Commercial Tax vide their letter no. 68 dated July 18, 2012, requiring the Opposite Party to produce relevant records in connection with the survey conducted by them on July 2, 2012. Based on the aforesaid notice, the Opposite Party submitted detailed representation along with relevant records vide its letter dated August 3, 2012.

(viii) The Opposite Party further received a notice dated January 1, 2013, from the jurisdictional Deputy Commissioner requiring the Opposite Party to reply in respect of various deficiencies allegedly noticed by the SIB authorities during their survey conducted on July 2, 2012. In particular, the Opposite Party was asked to explain as to the reasons for shortage found during such survey in finished stock to the tune of 480 cartons. In response thereto, the Opposite Party submitted its submissions, vide its letter dated January 28, 2013, explaining the correct factual position. However, the Deputy Commissioner, Commercial Tax directed the Assistant Commissioner to conduct the re-verification. However, the authorities neither conducted re-verification of finished stock as requested by the Opposite Party, nor did they consider or discuss any of the evidence furnished by the Opposite Party to rebut the veracity of survey diary dated July 2, 2012, and accordingly passed the assessment order dated December 3, 2015. The Assessing Authority assessed the evaded purchase of INR 2,55,00,000/- and Tax at INR 29,75,000/- and evaded sales of INR 6,00,00,000/- and tax thereon at INR 1,53,75,000/- only on the basis of presumption and assumption which is wrong and illegal.

(ix) The goods manufactured by the Opposite Party are excisable goods and there is strict control of excise department. The excise authorities have deputed a Superintendent, Central Excise, Ghaziabad within the factory premises to physically supervise the clearances of the goods manufactured. No goods can be removed without payment of excise duty. When the removal of goods is not possible without paying the excise duty, there is no question of removal of goods out of the books of accounts. This view has been held in numerous cases by different courts. The Assessing Authority has not pointed out any defect in books of accounts. In the absence of specific defect in the books of accounts and any suppression, there was no justification for rejection of the disclosed turnover in monthly return.

(x) There was no sale affected from any location of the Opposite Party on July 1, 2012, and July 2, 2012. The reason behind this was that the Opposite Party was in the process of implementing an integrated system for production & dispatches in place of the existing system of production & dispatches and accordingly an intimation to that effect was given to the Deputy Commissioner, Commercial Tax, Ghaziabad vide letter dated June 26, 2012, and thereafter vide letter dated July 2, 2012.

(xi) The Assessing Authority has wrongly determined the turnover on estimated basis on the ground of survey dated July 2, 2012. There is no difference in the stock of cigarettes on July 2, 2012. The stock of cigarette was taken by the surveying authority for 14,323 cartons and further affirmed by the Assessing Authority to 14,338 cartons in provisional order. The stock of cigarettes is accounted for in the regular books of accounts.

(xii) The error that occurred while counting the stocks was pointed out to the authorities at the time of the survey itself and in response thereto, the Opposite Party was told to report such error within 24 hours to the SIB authorities. Accordingly, the correct status was duly reported to AC (SIB) vide letter dated July 3, 2012, within 24 hours of

the said survey with specific request for re-verification of stocks. Further the said status was also intimated to the Assessing Authority vide letter dated July 6, 2012. However, none of the authorities felt necessary to re-verify the stock of finished goods in the premises of the Opposite Party. The stock status furnished by the Opposite Party to the SIB authorities during their visit in its premises on July 2, 2012, is duly reconciled with the corresponding stock status as per the Daily Stock Account being maintained by M/s INTCO in terms of Central Excise Rules, 2002.

(xiii) In terms of the Rule 10 of the Central Excise Rules, 2002, the manufacturer is statutorily required to maintain daily stock account on daily basis containing details of finished goods such as (a) Opening Balance, (b) Manufactured during the day, (c) Removed on payment of duty or otherwise, and (d) Closing balance. Under the central excise law, any difference in actual stock vis a vis stock as per Daily Stock Account can be considered as clandestinely removed by the manufacturer without payment of duty and has serious consequences. Significantly, there is absolutely no allegation from the excise authorities as to the alleged difference in actual stock vis a vis stock as per Daily Stock Account, which undisputedly proves that the stock counted by the SBI authorities during their visit on July 2, 2012, was improper and therefore cannot be relied upon for the present purpose.

(xiv) It is pertinent to mention here that the stock of finished goods is controlled by the Opposite Party by assigning consecutive serial nos. to each carton. The Opposite Party, as a matter of its practice, religiously mentions such assigned number on the removal documents such as excise gate pass and stock transfer challan to have complete account of the quantity manufactured and quantity removed/cleared.

(xv) The Opposite Party has not made any dispatches / sales during the period June 29, 2012, to July 2, 2012, due to implementation of ERP system change over. This position is not only evident from the books of accounts / sale documents of the Opposite Party but is also

supported from the fact that it had duly intimated the central excise authorities as well as VAT authorities about the discontinuation of removal / sales during such period. Considering the position that central excise authorities remain stationed within the premises of the Opposite Party on 24x7 basis and all removals of finished goods are affected only after written authorisation by such authorities, the allegation made in the impugned order that the Opposite Party has sold the short found stocks during the period July 1, 2012 to July 2, 2012 without accounting in their books is unfounded and cannot be accepted under any circumstances. The Central Excise personnel are deputed at the Opposite Party's premises to check the excisable goods before the removal from the Opposite Party's factory as per Rule 6 and Rule 11 of the Central Excise Rules.

(xvi) The First Appellate Authority allowed the benefit of non-sellable 456 boxes lying at other location not marked with the mandatory requirement of the "specified health warning" on the retail packages containing tobacco products. The first appellate authority however erred in holding the difference of stock as 581 boxes which was never alleged either by the SIB authorities or the assessing authority.

(xvii) The enhancement in the disclosed turnover of sale & purchase for INR 8,55,00,000/- is made by the Assessing Authority on the sole ground of survey dated July 2, 2012. The stock of cigarettes as per records was 14,818 cartons but was wrongly noted by the surveying officer in diary as 14,323 cartons and further ascertained by the Assessing Authority to 14,338 cartons vide the impugned order.

(xviii) No allegation of clandestine removal can be made solely on the ground of assumptions. To establish a case of clandestine clearance, it is necessary for the department to come up with substantial evidence which could satisfy that the activity of clandestine clearance has taken place. Mere reliance upon

assumptions and conjecture is not enough for the establishment of case of clandestine clearance.

(xix) The Commercial Tax Tribunal, Ghaziabad has given detailed findings both factual as well as legal in the impugned order dated January 25, 2023.

(xx) It is finally submitted that no question of law arises in the present revision as the Revisionist itself has acknowledged the anomalies regarding the counting of the cartons and cigarettes thereby proving that physical verification was not properly conducted.

ANALYSIS AND CONCLUSION

5. I have heard the learned counsel appearing on behalf of the parties and perused the material on record.

6. It is settled principle of law that the Tribunal is the primary body responsible for fact-finding, and when this Court exercises its revisionary authority, it does not re-examine facts already adjudicated upon by the Tribunal. The revisional jurisdiction exercised by High Courts is limited, focusing primarily on jurisdictional errors, perversity and procedural irregularities. In a revision petition, the High Court should abstain from undertaking a fresh enquiry into factual matters already adjudicated by the tribunal, unless compelling reasons necessitate an intervention of such a nature by the High Court.

7. Section 58 of the UPVAT Act, 2008 has been extracted below which delineates the revisional jurisdiction of the High Court:

> *"**58. Revision by High Court in special cases.**—(1) Any person aggrieved by an order made under sub-section (7) or sub-section (8) of Section 57, other than an order under sub-section (4) of that section summarily disposing of the appeal, may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.*
>
> *(2) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.*

(3) Where an application under this section is pending, the High Court may, on an application in this behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due under the order sought to be revised:

Provided that no order for stay or recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(4) The High Court shall, after hearing the parties to revision, decide the question, of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

(5) All applications for revision of orders passed under Section 57 in appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court, while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining applications, it may recall such earlier decision and may thereafter proceed to hear and decide all the applications together.

(6) The provisions of Section 5 of the Limitation Act, 1963, shall mutatis mutandis, apply to every application, for revision under this section.

Explanation.—For the purpose of this section, the expression "any person" includes the Commissioner and the State Government."

8. In **Hindustan Petroleum Corporation Limited v. Dilbahar Singh** reported in **(2014) 9 SCC 78**, a Constitution Bench of the Hon'ble Supreme Court of India elucidated the ambit of revisional jurisdiction as follows:

"31. We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works [Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259] that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional

power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246] that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.

32. Insofar as the three-Judge Bench decision of this Court in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] is concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all the revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centres round the following observation in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] , "... that jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also…." It is suggested that by observing so, the three-Judge Bench in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] has enabled the High Court to interfere with the findings of fact by reappreciating the evidence. We do not think that the three-Judge Bench has gone to that extent in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] . The observation in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] that as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law". This is expressly stated in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] . Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal

> *evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in agreement with the finding of fact recorded by the court/authority below. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not the second court of first appeal. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not cross the limits of Revisional Court as explained in Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246] ."*

9. In **Vinod Kumar Tiwari v. State of U.P. and others** reported in **MANU/UP/0455/2015**, this Court outlined the difference between "appeal" and "revision" and marked the boundaries within which revisional jurisdiction is to be exercised. Relevant paragraphs have been extracted below:

> *"11. In the case of State of Kerala v. K.M. Charia Abdullah & Co., MANU/SC/0265/1964 : (1965) 1 SCR 601 : AIR 1965 SC 1585, the Court expressed the view that when the Legislature confers a right to appeal in one case and a discretionary remedy of revision in another, it may be deemed to have created two jurisdictions different in scope and content.*
>
> *"Appeal" and "revision" are expressions of common usage in Indian statute and the distinction between "appellate jurisdiction" and revisional jurisdiction is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States. Ordinarily,*

again, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising Tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well defined principles of justice. Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice versa. These are general observations. The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute. (Vide Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, MANU/SC/0480/1980 : (1980) 4 SCC 259).

12. According to the dictionary meaning "appeal" is the judicial examination of the decision by a higher Court of the decision of an inferior Court. Simply stated, appeal is a proceeding by which the defeated authority approach the higher authority or Court to have the decision of a lower authority or Court reversed. The appeal is thus a removal of a cause from an inferior Court/authority to a superior Court/authority for the purpose of testing the soundness of the decision of the inferior Court. The appeal is a continuation of a proceeding.

13. The revisional authority, may at any time, on its own motion or on the application of any aggrieved person, call for and examine the records relating to the appeal for the purpose of satisfying itself as to the legality or propriety of such order or to the regularity of such procedure and may pass order in respect thereto as it may deem fit.

14. In order to embark upon an enquiry to find out the ambit and scope of the revisional power under Rule 23, extent, scope, ambit and meaning of the terms "legality or propriety" and "regularity, correctness, legality or propriety" will have to be determined.

15. A Constitution Bench in ***Hindustan Petroleum Corporation Limited v. Dilbahar Singh*** *reported in* ***MANU/SC/0738/2014 : (2014) 9 SCC 78****, was called upon to answer a reference regarding the scope and ambit of the revisional powers of the High Court under various Rent Control Acts. The Supreme Court had the occasion to determine the extent, scope and ambit of the meaning of the terms "legality or propriety" and "regularity, correctness, legality or propriety". The Court held as follows:*

"29.1. The ordinary meaning of the word "legality" is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal.

29.2. The term "propriety" means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition conformity with requirement; rules or principle, Tightness, correctness, justness, accuracy.

29.3. The terms "correctness" and "propriety" ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, "correctness" is compounded of "legality" and "propriety" and that which is legal and proper is "correct".

29.4. The expression "regularity" with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play."

16. The Court while explaining the expressions "appeal" and "revision" employed in a statute/rule, observed that the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed in that expression "appeal". The use of two expressions "appeal" and "revision" is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial Court or the subordinate tribunal which is never the case. The revisional power is not wide enough to make it a second Court/authority of second appeal. Under the garb of revisional jurisdiction, the revisional authority is not conferred a status of second authority of appeal and the authority cannot enlarge the scope of revisional jurisdiction to that extent.

17. In dealing with the finding of fact, the examination of findings of fact by the revisional authority is limited to satisfy itself to the legality and propriety of such order. Whether or not a finding of fact recorded by the subordinate authority is legal or proper, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality by misreading of evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such finding has resulted in gross miscarriage of justice. But the revisional power is not as wide as that of the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the revisional authority by reappreciating evidence because the revisional authority is not in

> *agreement with the finding of fact recorded by the authority below. Revisional authority cannot reverse the finding of fact merely because on reappreciation of the evidence it has a different view on the findings of fact."*

10. What becomes apparent from a reading of the aforesaid judgment is that legislature's conferment of the right to "appeal" in one instance and the discretionary remedy of "revision" in another. This implies the creation of two distinction jurisdictions, differing in scope and content. While "appeal" typically entails a comprehensive review encompassing both law and fact initiated by an aggrieved party, "revision" is akin to a power of superintendence, sometimes invoked even without the party's initiative. The extent of revisional jurisdiction is circumscribed by the statue conferring such authority, generally aimed to ensuring conformity to legal principles and procedural propriety. Appeal can be seen as a judicial examination seeking the reversal of a lower authority's decision by the superior court. Meanwhile, revision empowers the superior court to scrutinize the records of an appeal to assess its legality, propriety, or regularity of procedure, and to issue orders accordingly. In essence, the legislative framework underpinning the concepts of "appeal" and "revision" reflects a deliberate intent to establish distinct avenues of recourse, each serving a unique purpose within the judicial landscape. Revisional jurisdiction underscores the imperative for the superior court to ensure judicious exercise of power by the lower court.

11. Relying on the Constitution Bench judgment in **Hindustan Petroleum Corporation (supra)**, the Hon'ble Supreme Court in **Mohd. Inam v. Sanjay Kumar Singhal and others** reported in **MANU/SC/0497/2020**, reiterated the scope of revisional powers to be exercised by the High Court:

> *"....It can thus be seen, that the Constitution Bench has settled the position, that the revisional power does not entitle the High Court to interfere with the finding of the fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence is confined to find out as to whether the finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law.*

> *It has been held, that a finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, in such a case, it is open to correction because it is not treated as a finding according to law.*
>
> *25. No doubt, that the observations in the aforesaid cases deal with the revisional powers to be exercised by the High Court under the special statute. This Court has observed, that in examining the legality and the propriety of the order under challenge in revision, what is required to be seen by the High Court, is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It has been held, that if such a finding is allowed to stand, it would be gross miscarriage of justice and is open to correction because it is not to be treated as a finding according to law."*

12. The principles governing the exercise of revisional jurisdiction under the UPVAT Act, 2008 are imbued with a presumption of finality attached to judgments and orders pronounced by the appellate authorities. High Courts, in their capacity as revisional bodies, are entrusted with the solemn duty of upholding the sanctity of such judgments and orders, and such, should not lightly disturb them unless compelling reasons of paramount significance necessitate such intervention. It is imperative to underscore that revisional jurisdiction is not designed as a mechanism for the indiscriminate prelitigation of cases or the unwarranted reopening of matters that have been adjudicated and settled through due process. High Courts, in the exercise of their revisional jurisdiction are circumscribed by certain fundamental principles that underscore the sanctity of factual findings arrived at by lower courts or tribunals. Ordinarily, High Courts are precluded from intervening in factual findings unless such findings exhibit characteristics of perversity, are predicated on no evidence whatsoever, or evince a palpable and egregious error of law. The cardinal principle underlying revisional jurisdiction mandates that High Courts refrain from engaging in the revaluation of factual evidence or arrogating to themselves the authority to

substitute their own findings for those meticulously arrived at by the lower courts or tribunals.

13. Revisional jurisdiction, as envisaged under the UPVAT Act, 2008, is meticulously tailored to address jurisdictional errors and excesses of law that may have permeated the adjudicative process at lower echelons of the judicial hierarchy. It is incumbent upon High Courts, when exercising revisional jurisdiction, to vigilantly scrutinize the legal landscape and ascertain whether the impugned judgment or order suffers from any infirmities of jurisdictional import or egregious deviations from the normative contours of legal propriety. The legislative intent underpinning the conferment of revisional jurisdiction upon High Courts is imbued with a profound commitment to the principles of judicial economy, finality, and legal certainty. Revisional jurisdiction is not conceived as a vehicle for the protracted re-examination of factual matrices, or the interminable redressal of grievances already exhaustively adjudicated upon by the lower courts or tribunals. Rather, it constitutes an instrumental mechanism for rectifying egregious legal errors or jurisdictional excesses that may have vitiated the adjudicative process, thereby ensuring the equitable and efficacious administrative of justice.

14. In delving into the factual matrix of the instant case, it becomes manifestly clear that no overarching element of perversity or patent illegality is present in the impugned order dated January 25, 2023, which would call upon this court to exercise its revisional powers. The second appellate authority, in its adjudicatory capacity, has considered the factual aspects of the case in detail and in absence of any infirmity, in my view, the impugned order does not warrant any interference.

15. The Revisionist in the instant case, has tried to invite this court to reassess the factual matrix, as adjudicated upon by the second appellate authority. Such an exercise, in absence of any perversity in the factual adjudication by the second appellate authority runs counter to the settled principles governing the exercise of revisional jurisdiction. The second appellate authority, in my opinion, has cogently addressed the nuances of

this case and rendered a reasoned decision, devoid of any palpable error of infirmity. In the absence of any glaring defect or legal transgression warranting revision, I am not inclined to interfere with the impugned order dated January 25, 2023, passed by the second appellate authority.

16. The Revisionist in the instant case argued that the shortage of 480 cartons was conclusively established by the surveying authority and as such, the second appellate authority erred in interfering with the order of the assessing authority. However, upon careful consideration, it becomes apparent that the Revisionist's stance amounts to a reiteration of arguments previously advanced before the respective appellate authorities on the merits of the case, a course of action impermissible under the exercise of revisional jurisdiction. The second appellate authority, in its reasoned order, has addressed all contentions advanced by the Revisionist and arrived at a decision based on comprehensive assessment of the evidence advanced. Accordingly, the Revisionist's plea for intervention in the instant matter cannot be countenanced, and the impugned order must be upheld in its entirety.

17. In light of the aforesaid discussion, it is evident that the impugned order dated January 25, 2023, does not warrant any intervention. Accordingly, the instant revision is dismissed. Consequential relief to follow.

18. Urgent photostat-certified copies of this order, if applied for, should be readily made available to the parties upon compliance with requisite formalities.

Date: 12.02.2024
Kuldeep

(Shekhar B. Saraf, J.)