**A.F.R.**
Neutral Citation No. - 2024:AHC:13269

**Court No. - 1**

**Case: -** SALES/TRADE TAX REVISION NO.- 36 of 2021
**Revisionist: -** The Commissioner, Commercial Tax U.P. Lucknow
**Opposite Party: -** S/S. D.I.C. India Ltd.
**Counsel for the Revisionist: -** Atul Gupta

With

**Case: -** SALES/TRADE TAX REVISION NO.- 54 of 2021
**Revisionist: -** The Commissioner, Commercial Tax U.P. Lucknow
**Opposite Party: -** S/S. D.I.C. India Ltd.
**Counsel for the Revisionist: -** Atul Gupta

**Hon'ble Shekhar B. Saraf, J.**

(Judgment dictated in Open Court)

1. Heard Sri Bipin Kumar Pandey, learned Additional Chief Standing Counsel for the revisionist and Sri Atul Gupta, learned counsel for the respondent/assessee.

2. Present revisions are in relation to the assessment years 2011-12 and 2012-13 against the order dated November 27, 2019 passed by the Tribunal.

3. Both the revisions were admitted by this Court on the following question of law:

> *"Whether the cello used by the assessee were capital goods or merely usable containers used for sale of the ink manufactured by the assessee ?"*

4. Sri Bipin Kumar Pandey, learned Additional Chief Standing Counsel appearing on behalf of the revisionist has taken the Court through the entire order passed by the Tribunal. He submitted that the definition of "capital goods" as per Section 2(f) of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as "the Act".) means any plant and machinery as also apparatus, tool and appliances used for "manufacture or processing of any goods". He has submitted that even though storage tank is included in the said definition in clause (iii) of Section 2(f) of the Act, however the Cello in question is not a fixed part of the plant and machinery and is an apparatus used for supply of the ink, that is already manufactured, to the customers.

Once a customer uses the said ink, the Cello is returned to the factory and is once again attached to the plant that fills the cello again. He has further submitted that one would see that certain goods have been excluded specifically from the definition in Section 2(f) of the Act such as vehicles used for transporting the goods or passengers or both. It is his submission that the Cello is an apparatus used only for transporting and cannot be treated as a part of plant and machinery.

5. Per contra, Sri Atul Gupta, learned counsel appearing on behalf of the assessee/respondent has submitted that the Tribunal has come to a particular fact finding that the Cello is an intricate part of the manufacturing process which is attached to the machinery wherein the manufactured ink is directly stored. He has further submitted that the Cello being moveable in nature will not prevent it for being treated as capital goods. Reliance is placed on ***Commissioner of Commercial Tax, Lucknow v. Ambuja Cement Limited****, reported in* **2018 (8) GSTL 161 (All)** is relied upon by him. He has further relied upon a judgment of the Supreme Court in ***J.K. Cotton SPG & WVG Mills Co. Ltd. v. Sales Tax Officer, Kanpur*** reported in **1997 (91) E.L.Y. 34 (S.C.)** to emphasise that if a particular apparatus is an integral part relating to manufacture of goods without which that process or activity of manufacture would not be possible, it should be treated as an apparatus that is "in connection with" manufacture, or "in relation to" manufacture.

**Analysis and Conclusion**

6. Before delving into the controversy in the instant case, I feel it is important to extract Section 2(f) of the Act herein:

> *"**2. Definitions***
>
> *In this Act, unless there is anything repugnant in the subject or context;*
>
> *(a) ...*
>
> *(b) ...*
>
> *(c) ...*
>
> *(d) ...*
>
> *(e) ...*

*(f)* ***"capital goods"*** *means any plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation used for manufacture or processing of any goods for sale by the dealer and includes:-*

*(i) components, spare parts and accessories of such plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation;*

*(ii) moulds and dies;*

*(iii) storage tank;*

*(iv) pollution control equipment;*

*(v) refractory and refractory materials;*

*(vi) tubes and pipes and fittings thereof,*

*(vii) lab equipments, instruments and accessories,*

*(viii) machinery, loader, equipment for lifting or moving goods within factory premises, or*

*(ix) generator and boiler used in manufacture of goods for sale by him but for the purpose of section 13, does not include:-*

*(i) air-conditioning units or air conditioners, refrigerators, air coolers, fans, and air circulators if not connected with manufacturing process;*

*(ii) an automobile including commercial vehicles, and two or three wheelers, and parts, components and accessories for repair and maintenance thereof;*

*(iii) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees.*

*(iv) vehicle used for transporting goods or passengers or both; and*
*(v) capital goods used in the execution of a works contract"*

7. The finding of the Tribunal in the instant case is also extracted below:-

*"...करदाता द्वारा संगत वर्ष में रू0 7522903.00 के खरीदे गये सीलो वे गुड्स है जो प्रिन्टिंग इंक निर्माण प्रकिया का एक अभिन्न अंग है जो एक पार्ट्स के रूप में मशीन में स्वत: फिट हो जाता है और निर्मित हो रही इंक इसमें एकत्र होती है इसके फिल हो जाने पर यह स्वत: अलग हो जाता है और इसके स्थान पर अगला दूसरा सीलो स्वत: फिट हो जाता है यह प्रक्रिया इंक निर्माण के दौरान निरंतर आटोमोटिक होती रहती है। इंक फिल्ड सीलो क्रेता के प्रिन्टिग प्लांट में एक पार्ट के रूप में फिट हो जाती है। इंक कन्ज्यूम होने के उपरान्त एन्टी सीलो वापस करदाता के व्यापार स्थल पर पुन: फिलिंग हेतु आ जाता है और प्लान्ट एण्ड मशीनरी के एक भाग के रूप में पुन: प्रयोग होता है। कर निर्धारण अधिकारी द्वारा उक्त वस्तु को केवल प्रिन्टिगं इंक को लाने ले जाने का साधन मानते हुए*

> *जो मत आर आई टी सी करने हेतु लिया गया है वह उचित नहीं है क्योंकि वैट अधिनियम के अन्तर्गत जो कैपिटल गुड्स की परिभाषा दी गई है उस में पूजीगत माल का तात्पर्य व्यवहारी द्वारा विक्रय के लिए किसी माल के विनिर्माण यह प्रसंस्करण में प्रयुक्त किसी संयत्र मशीन, मशीनरी, उपस्करों, यंत्रों, औजारों, साधनो, विद्युत व्यवस्थापन जिसमें भण्डारण टंकी सम्मिलित है से है। बिवादित वस्तु सीलो निर्विवादित रूप से इंक के विनिर्माण में बतौर पार्ट आफ प्लांट एडं मशीनरी प्रयोग में लायी जाती है जो यथा परिभाषित पूजीगत माल है।..."*

8. It is well settled that the Tribunal is the last fact finding body and that this Court in revision would not go into an enquiry with regard to the factual aspects that have been decided by the Tribunal. In exercise of revisional jurisdiction, the High Court has a limited mandate. The scope of revisional jurisdictional, is primarily focused on questions of law, jurisdictional errors, or procedural irregularities. The High Court in a revision petition must refrain from engaging in a de novo inquiry into factual matters already adjudicated upon by the Tribunal, unless compelling grounds warranting such intervention are made.

9. The limited revisional jurisdiction under the Act is confined to only the questions of law, and not the questions of fact. Section 58 of the Act has been extracted below:

> ***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."*

10. This Court is not allowed in a revision petition to reappreciate and/or re-examine and analyse evidence and findings of the Tribunal.

11. A Constitution Bench of the Supreme Court in ***Hindustan Petroleum Corporation Limtied v. Dilbahar Singh***, reported in **(2014) 9 SCC 78**, expounded on the scope of revisional jurisdiction. Relevant paragraphs have been extracted below:

> *"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] .”*

12. There is a presumption of finality attached to judgments and orders passed by Appellate Authorities and the High Courts should not lightly disturb such judgments unless there are compelling reasons to do so. Revisional jurisdiction is not intended to be a mechanism for relitigating cases or reopening settled matters. High Courts cannot ordinarily interfere with factual findings arrived at by lower courts or tribunals unless such findings are perverse, based on no evidence, or suffer from a manifest error of law. Revisional jurisdiction does not empower High Courts to revaluate factual evidence or substitute their own findings for those of the lower courts or tribunals. Revisional jurisdiction is aimed at correcting jurisdictional errors and excesses of law.

13. Upon a plain reading of what has been written by the Tribunal, it appears that Cello is an apparatus that is fitted to the plant and machinery where the final product is stored, and once the Cello is filled up, the same is removed from the plant and machinery and it is replaced with another Cello. The fact that the Cello is directly sent to the customers for consumption would not take away from the fact that it is used as a storage device for the manufactured ink. Mere fact that the Cello is a moveable apparatus that is sent to the customers, would not take away from the fact that it is only a storage tank in the factory. This by itself makes it an essential part of the

manufacturing process and would qualify it under Section 2(f)(iii) of the Act.

14. In light of the aforesaid findings, I find no justification to intervene in the decision made by the Tribunal. As a result, both the revisions are, accordingly, dismissed.

**Date :** 24.01.2024
Kuldeep

(Shekhar B. Saraf, J.)