

Before : *Amarjeet Chaudhary, J.*

M/S JAINSON HOSIERY INDUSTRIES (REGD.) BRAHAMPURI,
LUDHIANA,—*Petitioner.*

versus

ASSESSING AUTHORITY, LUDHIANA AND OTHERS,
Respondents.

Civil Writ Petition No. 4499 of 1988.

14th February, 1991.

Punjab General Sales-tax Act, 1988—S. 21-A—Central Sales-tax Act, 1956—S. 9(2)—Rectification—Tribunal directing that tax to be levied on the dealer in accordance with law applicable to readymade garments—Successor-tribunal, thereafter, on application for rectification moved by State holding that goods manufactured by assessee dealer being readymade hosiery were excluded from concessional rate of Sales Tax—Successor-tribunal taking a different view amounts to change of opinion—No mistake apparent from record—Rectification order liable to be set aside.

Held, that under S. 21-A of the Punjab General Sales-tax Act, 1988 a mistake apparent from record can be rectified within the stipulated period. The mistake should be clear from record without elaborate arguments. No apparent mistake from the record has been pointed out, and only the Presiding Officer has substituted his own views on the views of his predecessors which are not covered by the expression mistake apparent from record.

(Para 3)

Held, that the condition precedent for assuming jurisdiction has not been satisfied under S. 21 of the Act. At best it is a case of change of opinion. In view of foregoing reasons, the impugned orders of rectification of Presiding Officer of the Tribunal is quashed.

(Para 4)

Petition under Articles 226/227 of the Constitution of India, praying that, as under:—

(i) *that the records of the case may kindly be called for:*

(ii) *that after a perusal of the record and hearing upon the counsel for the parties, this Hon'ble Court may be pleased to grant the following reliefs:—*

(a) *issue an appropriate writ or order quashing the orders Annexures P-1, P-2 and P-5 passed by the respondents*

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for the years 1971 to 1980-81 under the Central Sales-tax Act and for the years 1976 to 1980-81 under the Punjab General Sales Tax Act, by maintaining the order of the then Presiding Officer of the Tribunal dated 28th April, 1987 (Annexure P-3);

- (b) direct the respondents to refund the excess amount recovered which should have been charged at 1 per cent or 2 per cent during the relevant years instead of 3 per cent or 4 per cent.
- (iii) that any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued;
- (iv) that any other relief to which the petitioner may be found entitled in the facts and circumstances of the case may kindly be granted;
- (v) that the requirement of filing the certified copies of annexures may kindly be dispensed with;
- (vi) that the requirement of serving advance notices of this petition on the respondents herein may kindly be dispensed with;
- (vii) that the costs of this petition may kindly be awarded in favour of the petitioner and against the respondents herein.

Mr. V. Ramswaroop, Advocate with Mr. Anil Sharma, Advocate, for the Petitioner.

JUDGMENT

Amarjeet Chaudhary, J.

(1) The petitioner is a partnership firm and has filed this writ petition through their partners for quashing P-1, P-2 and P-5 orders dated 25th March, 1981, 12th January, 1983 and 15th February, 1988 respectively.

(2) The relevant facts of the case are that the petitioner is a dealer registered under the Punjab General Sales Tax Act. The Assessing Authorities, Ludhiana,—vide its orders dated 24th March, 1981 framed the original assessments for the year 1971-72, 1972-73, 1973-74, 1974-75, 1975-76, 1976-77, 1977-78, 1978-79 1979-80 and

1980-81 under the Central Act and for the years 1976-77, 1977-78, 1978-79, 1979-80 and 1980-81 under the State Act respectively. Against these orders, the petitioner filed fifteen appeals before the Deputy Excise and Taxation Commissioner, who,—*vide* his order dated 12th January, 1983 upheld the findings of the Assessing Authorities and dismissed the appeals of the petitioner. Against this order, the petitioner dealer filed the appeal before the Sales Tax Tribunal, Punjab, who,—*vide* his order dated 28th April, 1987 accepted the appeal and set aside the order of the Deputy Excise and Taxation Commissioner dated 12th January, 1983 and directed that the tax may be levied on the petitioner-dealer in accordance with the law applicable on readymade garments. The Presiding Officer, Sales Tax Tribunal, Punjab,—*vide* his order dated 15th February, 1988 rectified the application filed by the State of Punjab, under section 21-A of the Punjab General Sales Tax Act, 1988 read with Section 9(2) of the Central Sales Tax Act, 1956, rectifying the orders of his predecessor Annexure P-3, dated 28th April, 1987 held that the goods being manufactured by the assessee dealer being readymade hosiery were excluded from the concessional rate of Sales Tax as available under item (10) and item (18) of the Government notification and as such petitioner shall not be entitled to concessional rate of tax under the notifications. The petitioner's grievance in the writ petition is that the Presiding Officer Sales Tax Tribunal Punjab has exceeded his jurisdiction in the above said material whatsoever to rectify his predecessor's orders dated 24th August, 1987.

(3) I am of the considered view that under section 21-A of the Act, a mistake apparent from record can be rectified within the stipulated period. The mistake should be clear from record without elaborate arguments. No apparent mistake from the record has been pointed out, and only the Presiding Officer has substituted his own views on the views of his predecessors which are not covered by the expression mistake apparent from record.

(4) I am of the view that the condition precedent for assuming jurisdiction has not been satisfied under Section 21 of the Act. At best it is a case of change of opinion. In view of foregoing reasons the impugned orders of rectification of Presiding Officer of the Tribunal is quashed. Parties to bear their own costs.

R.N.R.