IN THE SUPREME COURT OF INDIA
CASE NO.: Appeal (civil) 5607 of 2007

PETITIONER:
M/s. Deva Metal Powders Pvt. Ltd

RESPONDENT:
Commissioner, Trade Tax, U.P.

DATE OF JUDGMENT: 04/12/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

J U D G M E N T

CIVIL APPEAL NO. 5607 OF 2007
(Arising out of SLP (C) No.9396 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court allowing the Trade Tax Revision Case Nos. 1055 and 1070 of 1998 filed by the respondent. The two revisions were filed under Section 11 of the Uttar Pradesh Sales Tax Act, 1948 (in short the 'Act) and the Central Trade Tax Act, 1956 (in short the 'Central Act').

3. Factual background in a nutshell is as follows:

Appellant hereinafter also referred to as the Assessee was dealing with Aluminium powder. In the original assessment order passed under Section 7(3) of the Act and Section 9 of the Central Act, Aluminium Powder was treated as metal and accordingly held liable to tax at the rate of 2.2%. Assessing officer initiated proceedings under Section 22 of the Act on the ground that this Court had in Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh and Another [1981(3) SCC 578] considered the entry "All kinds of minerals, ores, metals and alloys including sheets and circles" and held that under this entry only the primary metal is covered. It was also held that sheets and circle of Aluminium would not be covered under the entry "Metal" Assessing officer accordingly rectified the assessment orders under Section 22 and levied tax treating the Aluminium powder as an unclassified item. The First appellate authority in the appeals filed by the assessee held that Section 22 of the Act had no application and the assessments were set aside. The present respondent filed appeals before the Sales Tax Tribunal, Varanasi Bench (in short the 'Tribunal') which were also dismissed. In the revision petitions filed, as noted above, the High Court held that action under Section 22 of the Act is clearly sustainable. It referred to a decision of this Court in **M/s. Karam Chand Thapar & Bros. (Coal Sales) Ltd. v. State of Uttar Pradesh & Anr**.

[(1976) 4 SCC 257] and held that a decision of this Court can be a ground for rectification of error in terms of Section 22 of the Act. The High Court did not accept the stand of the appellant that Aluminium powder in the powder form remains Aluminium in its primary form and in any case this is a debatable issue and, therefore, Section 22 of the Act does not apply.

4. Learned counsel for the appellant submitted that this is a case where Section 22 of the Act had no application. The said provision is only applicable to a case where the error is apparent on the face of the record; Where the issue can not be decided in a undisputable manner, Section 22 has no application; and where a matter is disputable there can be no order under Section 22 of the Act.

5. Learned counsel for the respondent on the other hand submitted that in view of this Court's decision in **Hindustan Aluminium Corporation's** case (supra) there is no scope for taking a different view and, therefore, Section 22 clearly had application.

6. Section 22 of the Act reads as follows:

"**Rectification of Mistakes**:

(1) Any officer or authority, or the Tribunal or the High Court may, on it's own motion or on the application of the dealer or any other interested person rectify any mistake in any order passed by him or it under this Act apparent on the record within three years from the date of the order sought to
be rectified:

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period.

Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

2. Where such rectification has the effect of enhancing the assessment, the assessing authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and there from all the provisions of the Act and rules framed there under shall apply as if such notice had been served in the first instance."

(Underlined for emphasis)

7. The Deputy Commissioner (Appeal) held that Section 22 of the Act did not contemplate rectification of debatable issues and therefore, this was not a case where Section 22 of the Act applies. Similar was the view taken by the Tribunal. It has been submitted by the appellant that the Notification considered in **Hindustan Aluminium Corporation's** case (supra) was dated 30.5.1975. Subsequently, there has been an amendment by Notification dated

7.9.1981 by which "scrap" has also been included in the entry. It is, therefore, submitted that the ratio in **Hindustan Aluminium Corporation's** case (supra) applied as scrap has always been produced as a result of processing of the original metal.

8. This Court in **M/s. Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur**, [AIR 1964 SC 1372] held as follows:

"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. Where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

9. An error apparent on the face of the record for acquiring jurisdiction to effect rectification must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of **Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale** [AIR 1960 SC 137] need to be noted:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

10. A bare look at Section 22 of the Act makes it clear that a mistake apparent from the record is rectifiable. In order to attract the application of Section 22, the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. "Mistake" means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception. "Apparent" means visible; capable of being seen, obvious; plain. It means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming." A mistake which can be rectified under Section 22 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration. In our view rectification of an order does not mean obliteration of the order originally passed and its substitution by a new order. What the Revenue intends to do in the present case is precisely the substitution of the order which according to us is not permissible under the provisions of Section 22 and,

therefore, the High Court was not justified in holding that there was mistake apparent on the face of the record. In order to bring an application under Section 22, the mistake must be "apparent" from the record. Section 22 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error. It is, no doubt, true that a mistake capable of being rectified under Section 22 is not confined to clerical or arithmetical mistake. On the other hand, it does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. As observed by this Court in **Master Construction Co. (P) Ltd. v. State of Orissa** [1966] 17 STC 360, an error which is apparent from record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law.

11. "Mistake" is an ordinary word but in taxation laws, it has a special significance. It is not an arithmetical error which, after a judicious probe into the record from which it is supposed to emanate is discerned. The word "mistake" is inherently indefinite in scope, as to what may be a mistake for one may not be one for another. It is mostly subjective and the dividing line in border areas is thin and indiscernible. It is something which a duly and judiciously instructed mind can find out from the record. In order to attract the power to rectify under Section 22, it is not sufficient if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and it is incapable of argument or debate. It, therefore, follows that a decision on a debatable point of law or fact or failure to apply the law to a set of facts which remains to be investigated cannot be corrected by way of rectifications.

12. In the **Hindustan Aluminium Corporation's** case (supra) the dispute did not relate to Aluminium Powder. What the assessing officer and the High Court did was to inferentially apply the ratio of the said decision to Aluminium powder. The ratio in **Karam Chand's** case (supra) has, therefore, no application.

13. Above being the position, the High Court's order is clearly unsustainable and is set aside. We make it clear that we have not expressed any opinion on the issue as to whether Aluminium powder can be regarded "metal in primary form" for the purpose of payment of tax. There is no need to adjudicate that aspect in view of the fact that the rectification done in purported exercise of Section 22 of the Act is clearly impermissible.

14. The appeal is allowed without any order as to costs.