Suriya Cement Agency vs State Tax Officer,

Whether rejection of a Rectification Application filed by the assessee under Section 161 of the CGST/TNGST Act — without giving any reasons as to why no error is apparent on the face of record and without affording a personal hearing — is sustainable,

Date of Order: November 21, 2024
Case Law No: GIB-MHC-2024-15
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

An Assessment Order dated 20th December 2023 was passed against the Petitioner under Section 73 of the TNGST Act 2017. Within the stipulated time, the Petitioner filed a Rectification Application under Section 161 seeking rectification of errors apparent on the face of the record in the Assessment Order. The first Respondent, without assigning any reasons as to why the Assessment Order did not suffer from any apparent error and without giving any opportunity of hearing, rejected the Rectification Application vide order dated 02nd February 2024. The Rectification Order merely extracted tables of figures indicating the amounts the petitioner was liable to pay — without any reasoning or analysis. The Petitioner challenged both the Assessment Order and the Rectification Order before the High Court under Article 226 of the Constitution.

Relevant Facts & Rival Contentions

The Petitioner contended that the Rectification Application was rejected without hearing and without assigning reasons as to how the Assessment Order was free from apparent errors — a clear violation of the third proviso to Section 161. The Revenue, however, vehemently argued a narrow construction — that no reasons need to be given when rejecting a rectification application, as the authority only needs to check for apparent error and can reject without reasons if none exists. More importantly, the Revenue contended that the hearing requirement under the third proviso to Section 161 arises ONLY when the Assessing Officer initiates rectification suo motu and the resulting order is detrimental to the assessee — and NOT when the rectification application had been made at the instance of the assessee himself. The Revenue further argued that the petitioner had not even indicated any apparent error in his application, and therefore no interference was warranted.

Third Proviso to Section 161 — The Pivotal Statutory Text:

"Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification."

Revenue's Argument

Proviso applies only to suo motu rectification adverse to assessee — NOT to rejection of assessee-initiated application

Court's Ruling

Proviso applies to BOTH situations — even rejection of assessee-initiated application requires hearing and reasons

Court Observations (Verbatim)

"*A perusal of the order does not also indicate that there had been no error apparent on the record to reject the rectification. He had only extracted the tables indicating the figures which the petitioner is liable to pay. There is also no reasonings as to why there is no error apparent on the face of the record. For this reason, the impugned order dated 02.02.2024 is liable to be set aside.*"

— Para 8 (on the mechanical nature of the Rectification Order)

"*Even though, streneous efforts had been made by the learned Additional Government Pleader that no personal hearing need to be given when an application had been made at the instance of the assesse, I am not in agreementd with the learned Additional Government Pleader. The Provisio indicates that when an order is being made adverse to the assessee, then he should be given an opportunity of being heard when the rectification adversely affects any person. The principles of natural justice had been inbuilt by way of the 3rd Proviso to Section 161.*"

— Para 8 (rejecting Revenue's narrow construction of the third proviso)

"*If pursuant to a Rectification Application, if a rectification is made and if it adversely affects the assesse, Proviso 3 contemplates an opportunity of hearing to be given. However, when an Rectification Application is made at the instance of assessee and the rectification is being sought to be rejected without considering the reasons for rectification or by giving reasons as to why such rectification could not be entertained. It is also imperative that the assessee to be put on notice.*"

— Para 8 (expanding the scope of natural justice under Section 161 — the core ratio)

"*I am inclined to hold that the order of rectification passed by the first respondent dated 02.02.2024 is contrary to the provisions of Section 161 and in that aspect, the same alone is set aside and the Rectification Application filed by the petitioner shall be taken afresh by the first respondent and after giving an opportunity to the petitioner, the first respondent shall pass appropriate orders and* *in accordance with law.*"

— Para 9 (operative conclusion and direction)

Final Verdict

Writ Petition allowed. Rectification Order dated 02.02.2024 set aside as contrary to the provisions of Section 161 of the CGST/TNGST Act. Rectification Application to be taken afresh; first Respondent directed to grant opportunity of hearing to the Petitioner and then pass a reasoned order in accordance with law. All further remedies of the Petitioner preserved. No order as to costs.