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Judgment No.: 068
Dt.: 12-02-2024



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Judgment Deals With

Section/Rule	Section 161
Authority	Calcutta High Court
Case Name	Sajal Kumar Das VS State of West Bengal & Ors.
Dated	09 th January, 2024

Brief Facts:

The taxpayer's registration was cancelled by the authority by order dated 10th January, 2022. As against the said order, an appeal was preferred and the same was allowed by order dated 9th November, 2022. After about 2 and ½ months, an application was filed by the authority viz. the Assistant Commissioner of Revenue, under Section 161 of the W.B.G.S.T. Act to rectify the order passed in the appeal petition dated 9th November, 2022. The said application has been allowed by the appellate authority by order dated 23rd August, 2023, which is impugned in the writ petition

Findings & Decision of the Court:

The legal issue which requires consideration is as regards the scope of Section 161 of the Act. Section 161 of the Act states that without prejudice to the provisions of Section 160, and notwithstanding anything contained in any other provisions of the Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error **which is apparent on the face of record** in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under the Act or by the affected person within 3 months from the date of issue of such decision or order or notice or certificate or any other document.

It is a settled legal position that the review court has only limited jurisdiction by definite limits fixed by the language used in Order 47 Rule 1 of the Code of Civil Procedure. It is also equally well-settled that a Court or an authority exercising power of review has to do so by **pointing out an error, which is apparent on the face of the record**, which cannot be by way of a long-drawn reasoning, which would tantamount to rewriting the earlier decision. Equally well-settled is the legal principle that a review is not an appeal in disguise. Bearing the above legal principles in mind, the mistake is committed by the appellate authority in not considering the scope of his power of Section 161 and the authority erroneously proceeded to rewrite its decision by recalling the earlier conclusion and ultimately holding against the assessee that the order of cancellation of license should not be revoked.

That apart, if the power of rectification as mentioned in Section 161 is to be construed as a power to review an earlier decision, then the statute mandates that the authority should be able to point out the error, which is apparent on the face of the record in a decision taken by him on 09th November, 2022. Unfortunately, the order passed by the appellate authority dated 23rd August, 2023 does not point out any error, which is apparent on the face of the record.

Thus, the order suffers from illegality inasmuch as the appellate authority has rewritten its earlier order, which is impermissible in exercise of its powers under Section 161 of the Act. Therefore, the order passed by the appellate authority dated 23rd August, 2023 was quashed and the order passed by the appellate authority dated 9th November, 2022 stands restored. The Department was directed to restore the appellant's registration.

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