

HIGH COURT OF MEGHALAYA
AT SHILLONG

Review Petition No.3/2024

Date of Order: 19.03.2024

The Commissioner of Central Goods & Service Tax (formerly
Commissioner of Central Excise & Service Tax, Crescens Building,
Mahatma Gandhi Road, Shillong-793001. Applicant

Vs.

M/s Manaksia Ltd., Survey No.39, Village Chadrani, Taluka Anjar,
Kutch, Gujarat. Respondent

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Applicant : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv

For the Respondent : Mr. D. Sahu, Adv with
Ms. M. Gogoi, Adv

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes

ORDER

(Made by Hon'ble Chief Justice)

The present review petition has been filed against the order dated 23.09.2021. Aggrieved by the order of this Court dated 23.09.2021 passed in Central Ex.Ap.No.3 of 2020, the petitioner namely, the Commissioner of Central Goods & Service Tax has approached the Apex Court and the Apex Court by an order dated 04.09.2023 disposed

of the Special Leave Petition (Civil) Diary No(s).30097/2023 which reads as follows:

“Learned panel advocate appearing for the petitioner submitted that having regard to a three judge bench decision of this Court passed in the year 2019 [*Steel Authority of India Ltd. vs. CCE, Raipur* reported in (2019) 6 SCC 693] permission may be granted to the petitioner to file a review petition(s) before the High Court as the aforesaid three judge bench judgment is contrary to the relied upon judgment in 2021 SCC online Meghalaya 154 of the High Court.

In view of the aforesaid submission, these special leave petitions are disposed reserving liberty to the petitioner herein to file a review petition(s) before the High Court, if so advised.

In view of the aforesaid order, application for seeking condonation of delay would not survive for consideration and stands disposed of.

Pending application(s), if any, shall stand disposed of.”

2. According to the petitioner, when the Apex Court has granted permission to approach this Court and the review is maintainable and that this Court is empowered to decide the issue and correct the error. Learned counsel appearing for the respondent drew the attention of this Court and contended that there was a provision for an appeal under Section 35G which was repealed by the National Tax Tribunal Act, 2005 which exists prior to 2003 and that in terms of Section 35L of the Central Excise Act, 1944, an appeal shall lie only to the Supreme Court and the review is not maintainable. Learned counsel for the respondent submitted that the question of Order 47 Rule 1 of CPC will not be applicable to the case, more so, when there is a specific provision contemplated under the Act for filing an appeal to the Supreme Court.

Even assuming that Order 47 Rule 1 is applicable, still the review is not maintainable as there is no error apparent on the face of the record for this Court to interfere. Learned counsel further submitted that the Supreme Court had not directed this Court to entertain the review but has permitted the petitioner herein to approach the Court by way of review and only if the review is maintainable, this Court can entertain and pass appropriate order.

3. In view of the submissions made by the parties, we are of the view that in the light of Section 35L of the Central Excise Act of 1944, the petitioner statutory right is only before the Supreme Court. Even assuming for the sake of argument that Order 47 Rule 1 is applicable, the review is not maintainable in the light of the judgment passed by this Court dated 15.03.2024 in Review Petition No.1 of 2024 and the same is extracted below:-

“4. It is now fairly well settled by a series of decisions of the Hon’ble Court as also the Hon’ble Supreme Court that the scope of review is very minimal and it is circumscribed by the provisions of the statute. It would be relevant to refer to few Judgments to understand and appreciate the scope of review jurisdiction to find out if the petitioner has made out a case for reviewing the order. The Hon’ble Division Bench of the High Court of Madras in the case of *The Special Officer, Kallal Co-operative Primary Agricultural and Rural Development Bank Ltd., Karaikudi, Sivagangai District Vs. R.M.Rajarithnam and Others [Review Application (MD). No.82 of 2013] decided on 04.02.2015*, held as follows:

“10... It is well settled that the scope of review is very limited. The review applicant cannot re-argue and he is not entitled for re-hearing on merits.”

5. In another decision of the Division Bench of the High Court of Madras in the case of ***Dhanalakshmi Vs. M.Shajahan and others*** reported in ***AIR 2004 Madras 512***, it was opined that the power of review is not an appeal in disguise. The relevant paragraphs of the said order are extracted below:

“11. From the above judgments, it is seen that the law is well settled inasmuch as the power of review is available only when there is an error apparent on the face of the record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 C.P.C. may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised as is not permissible for an erroneous decision to be "reheard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strike one on mere looking at record and would not require any long drawn process of reasoning on points, where there may conceivably be two opinions.”

6. Furthermore, in ***R.Mohala Vs. M.Siva and others*** in ***Review Petition No.61 of 2018 and WMP.No.10818 and 10819 of 2018*** decided on ***25.04.2018***, one of us (SVNJ) sitting at the High Court of Madras elaborately discussed the scope of review and in Paragraph Nos.7 and 8, held as follows:

“7.The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review

petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

8. It is settled law that even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order under review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.”

7. The Hon'ble Supreme Court in the case of ***Meera Bhanja Vs. Nirmala Kumari Choudhury*** reported in ***(1995) 1 SCC 170***, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as follows:

“The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226.”

8. In the case in ***Parsion Devi Vs. Sumitri Devi***, reported in ***1997 (8) SCC 715***, the Hon'ble Apex Court held as follows:

“Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error

apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

9. From a reading of the above referred Judgments, it can be fairly discerned that:

1. Review is not an appeal in disguise.

2. The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C.

3. A wrong exposition of the law or a wrong application of the law and failure to apply the correct law cannot be a ground for review.

4. The power to review is a restricted power given through a Court to go through the Judgment only to correct it or improve it, on the basis of some material which ought to have been considered, escaped consideration or failed to be placed before it for any other reason, but not to substitute a fresh or a second Judgment.

5. The power of review cannot be invoked to correct the erroneous Judgment and the finality attached to a Judgment cannot be disturbed.

6. Only errors which are apparent on the face of the record in the sense that errors which strike on mere looking at record can only be corrected and not those that require long drawn process of reasoning on point.

10. The above are some of the basic principles on which the power to review rests. The said principles are not exhaustive but only illustrative.

11. To review a Judgment / Order, the Applicants need to satisfy three basic requirements of Order 47 Rule 1 of C.P.C., which are as under:

(i) From discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge (or) could not be produced by him at the time when the decree was passed (or) order made;

(ii) There is some mistake (or) error apparent on the face of the record in the judgment under review; and

(iii) or any other sufficient reasons.”

12. In the present case, the core grounds raised on which the review petition rests, in our considered opinion are beyond the scope of the provisions of Order 47 Rule 1 CPC and the law laid down by the Hon’ble Supreme Court and the Hon’ble High Court. The Review Applicant in the guise of the Review Petition wants this Bench to rewrite its Judgment, which is not possible under review jurisdiction. As already stated above review is not an appeal in disguise and there is no error apparent on the face of the record. Therefore, the Division Bench rightly confirmed the order of the learned Single Judge, which does not warrant any review.

13. The Hon’ble Supreme Court in a recent decision reported in ***2023 SCC Online SC 1406 Review Petition(Civil)No.1620 of 2023 in Civil Appeal No.1661 of 2020 (Sanjay Kumar Agarwal Vs. State Tax Officer and another)*** in paragraph No.16 has laid down the law relating to the entertainment of review application which is extracted as follows:

“16. The gist of the afore-stated decisions is that:-

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47, Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”

(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

(vi) Under the guise of review, the petitioner cannot be permitted to reargue and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision / judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.”

14. For all the above reasons, we find no merits in the Review Petition and the same deserves to be dismissed.”

4. Review Petition is dismissed as above.

(H.S. Thangkhiew)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
19.03.2024
“*Lam* DR-PS”