

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Review Application No. 180/00021/2019 in
Original Application No. 180/00068/2015
&
Miscellaneous Application No. 180/00454/2019 in
Review Application No. 180/00021/2019 in
Original Application No. 180/00068/2015

Thursday, this the 30th day of May, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. Union of India, represented by its Secretary,
 Department of Personnel & Training, North Block,
 New Delhi – 110 001.
2. Chairman, Central Board of Excise & Customs,
 North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise Customs & Service Tax,
 Vadodara Zone, Central Revenue Buildings, Race Course Circle,
 Vadodara – 390 007, Gujarat State.
4. Commissioner of Central Excise Customs & Service Tax,
 Vadodara-1, Central Revenue Building,
 Race Course Circle, Vadodara – 390007, Gujarat State.
5. Pay and Accounts Officer, Central Excise,
 Central Revenue Buildings, Race Course Circle,
 Vadodara – 390 007, Gujarat State. **Review Applicants**

(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

V e r s u s

K. Ravi, Superintendent of Central Excise (Retd.),
 4 C-Soorya Enclave, Opp, Kendriya Vidyalaya,
 Kandavanthra, Cochin – 682 020. **Respondent**

O R D E R (By circulation)

Per: Ashish Kalia, Judicial Member -

This review application has been filed by the respondents in OA No.

180/68/2015 which was allowed by this Tribunal vide Annexure RA1 order dated 15.11.2018.

2. An MA No. 180/454/2019 was filed for condonation of 126 days in filing the review application stating administrative reasons have caused the delay in filing the RA.

3. It is well settled position by the Apex Court decision in ***K. Ajit Babu & Ors. v. Union of India & Ors.*** - (1997) 6 SCC 473 that the delay in filing review application cannot be condoned. The Apex Court in that case observed:

“.....The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of these Code of Civil Procedure. Although strictly speaking the Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given can not monitor the case for all times to come. Public policy demands that there should be no law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the code of Civil Procedure if filed within the period of limitation.”

Therefore, the review application is *in praesenti* is not maintainable on account of delay occurred in filing the same.

4. Moreover it is settled law in ***State of West Bengal & Ors. v. Kamal Sengupta & Anr.*** - 2008 (2) SCC 735 that review under Section 22(3)(f) of the Administrative Tribunals Act, 1985 is possible only on following

circumstances:

- “(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression 'any other sufficient reason' appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.
- (vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- (viii) Mere discovery of a new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

5. Here the review applicants' case is a rehearing of the matter as if it is an appeal without pointing out any error apparent on the face of the record or any other circumstances that would warrant a review under Order 47 Rule 1 CPC.

6. Therefore, it goes without saying that the Review Application is not entertainable. The RA as well as MA No. 180/454/2019 are dismissed.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

**Review Application No. 180/00021/2019 in
Original Application No. 180/00068/2015**

REVIEW APPLICANTS' ANNEXURES

Annexure RA-1 – True copy of Tribunal's order dated 15.11.2018 in OA 180/00068/2015.

Annexure RA-2 – True copy of Board's letter F. No. A-23011/25/2015-Ad.II A dated 20.6.2016.

Annexure RA-3 – True copy of common order of Hon'ble Tribunal dated 6.4.2017 in OAs No. 5/2016, 89/2016, 91/2016, 176/2016, 262/2016, 488/2016, 651/2016, 725/2016.

Annexure RA-4 – True copy of DoPT OM dated 19.5.2009 related with MACP

Annexure RA-5 – True copy of the FAQ

Annexure RA-6 – True copy of Madras High Court judgment dated 8.12.2014.

Annexure RA-7 – True copy of common order of Hon'ble Tribunal dated 19.6.2018 in OA 123/2017, 404/2017, 983/2016 and 405/2017

Annexure RA-8 – True copy of DoPT's communication dated 21.7.2010.

Annexure RA-9 – True copy of order of Hon'ble CAT, Ahmedabad Bench in OA No. 1/2013 dated 20.9.2013.

Annexure RA-10 – True copy of notification dated 29.8.2008 published in Gazette of India.

Annexure RA-11 – True copy of DoPT & OM dated 20.1.2016.

Annexure RA-12 – True copy of DoPT & OM No. 22034/04/2013-Estt.(D) dated 1.3.2016.

Annexure RA-13 – True copy of DoPT & OM No. 22034/04/2013-Estt.(D) dated 17.5.2016.

RESPONDENT'S ANNEXURES

Nil

-X-X-X-X-X-X-X-X-