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R.A/19/2019 (oa 984/19)

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

R.A/350/19/2019
(OA/350/984/2019)

Date of Order: 04.09.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Kumar Saurav Das and 119 Ors.
Versus
CBIT & Custom, M/o Finance

For The Applicant(s): Mr. P. C. Das, counsel

For The Respondent(s): None

ORDER

(DISPOSED OF BY CIRCULATION)

Per: Dr. Nandita Chatterjee, Member (A):

This R.A has been filed on 27.08.2019 by the applicant seeking review of the order dated 19.07.2019, passed in O.A. 350/984/2019, in which the operative part of the order reads as follows:

"Accordingly, we would deem it fit to direct the concerned Respondent authority, viz. Respondent No.2 who is the Chairman, Central Board of Indirect Taxes & Customs, Ministry of Finance, Department of Revenue, and who is also the addressee of the said communication, to examine the contents of the representation, if received at his end, within a period of 12 weeks from the date of receipt of copy of this order. The competent Respondent authority shall decide in accordance with law and issue a reasoned and speaking order thereafter to the applicant concerned.

7. With regard to the other applicants, No. 2-121, we allow them to withdraw themselves from the present application and prefer comprehensive representations to the authorities seeking amelioration of their grievances within 4 weeks from the date of receipt of a copy of this order. In the event such representations are preferred, Respondent authorities shall examine the representations and dispose of the same with reasoned and speaking orders, and, in accordance with rules, within a period of 12 weeks from the date of receipt of a copy of such representations and communicate the result forthwith."

2. The main grounds for seeking review of the order is as follows:

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i) That, the Tribunal ought to have taken into consideration, the order dated 17.07.2019 passed by the Hon'ble Central Administrative Tribunal, Cuttack Bench which was referred to in the Tribunal's order in O.A 350/1003/2019 in Raju Charkaborty & Ors. -vs- Union of India & Ors.

(ii) Ld. counsel for the applicants had furnished copies of the order dated 25.07.2019 of the Hon'ble High Court of Judicature at Madras in WP Nos. 21847 and 21858 of 2019 to the Tribunal on 29.07.2019 so that the Tribunal would take note of such order dated 25.07.2019 in O.A /350/984/2019.

iii) The Tribunal did not take note of the order dated 22.07.219 passed by Hon'ble Principal Bench in O.A 100/2125/2019 (Manoj Kumar & Ors. -vs- Union of India & ors.) wherein an interim protection was granted to the applicants in the said O.A.

iv) That, the Tribunal, while disposing of a similar matter in OA/350/1003/2019 had, apart from directing that the respondents should consider the grievance of the applicant in a time bound manner, further directed that, till such time representations are disposed of, no coercive action should be taken against the applicant. The Tribunal, while disposing of O.A/350/984/19, did not accord any such direction to the respondents therein.

v) The M.A 350/530/2019 arising from OA/350/984/2019 was rejected without any hearing.

Accordingly, the petitioners in the Review Application would submit that:

- (a) There is an apparent error in the face of records in the order dated 19.07.2019.
- (b) Discovery of the new facts, namely, orders dated 25th July, 2019, in WP No. 21847 and 21858 of 2019 as well as that dated 22.7.2019 in O.A 100/2125/2019 of the Principal Bench call for a review of orders in O.A /350/984/2019.

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3. The scope of review of an order under order 47 Rule 1 CPC states as follows:

"Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the 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, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

Accordingly, a review is maintainable on the following grounds:

- i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge of the petitioner or could not be produced by him;*
- ii) *Mistake or error apparent on the face of the record;*
- iii) *Any other sufficient reason.*

Tribunal's power to review its own order on the above grounds has been well recognised as ruled by the Hon'ble Apex court in the case of *Gopal Singh vs. State Cadre Forest Officers' Assn, and Others, (2007) 9 SCC 369*.

The Hon'ble Apex Court in *Aribam Tuleswar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389=AIR 1979 SC 1047* has held that there are definite limits to the exercise of the power of review and, in particular, that *the power of review may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court"*

In *Parsion Devi & Ors vs Sumitri Devi & Ors (1997) 8 SCC 715*, the Hon'ble Court held that *"In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and*

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corrected. A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

In the *State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.*, reported in (2008) 8 SCC 612, the Hon'ble Apex Court had stated as follows:

"where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment."

Hence, the principle derived from the above judgments (supra) may be summed up as follows:-

- (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 CPG.
- (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 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.

4. In the context of the above principles, we now proceed to examine the applicant's claims for review of the order 19.07.2019 in O.A 350/984/2019.

(i) The applicants in the review application insist that the Tribunal should take into account the order dated 22.7.2019 of the CAT Principal Bench in O.A 100/2125/2019 as well as the order dated 25.7.2019 passed by Hon'ble Court of Judicature at Madras in W.P 21847/2017 and 21858/2019. This

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clearly violates the principal at (vi) as enunciated above that an order cannot be reviewed under Section 22(3)(f) on the basis of subsequent judgment of a coordinate bench or of a superior court. Accordingly, the order cannot be reviewed on the basis of the judgment of the CAT Principal Bench and the Hon'ble Court of Judicature at Madras given that these orders were issued subsequent to the order of the Tribunal dated 19.07.2019 in O.A 350/984/2019.

It is reiterated that the order in OA.350/984/2019 was authored on 19.07.2019 itself.

(ii) The Tribunal, while drafting its orders had referred to all the judicial decisions, particularly of the Hon'ble High Court of Andhra Pradesh that were included in the pleadings of the applicant in O.A 350/984/2019, in para 4 of the Tribunal's order. The decision of the CAT Cuttack Bench in 260/460/2019 were not brought forth in the pleadings before the Tribunal in OA /350/984/2019. It is noted here that the orders of the Cuttack bench in OA/260/460/2019 were passed on 17.7.2019 that by this Tribunal on 19.7.19 and in O.A 350/1003/2019 on 24.07.2019. Hence there was limited scope for the applicants to refer to an order dated 17.7.19 passed by a coordinate bench during hearing scheduled on 19.7.2019.

(iii) Regarding M.A No. /350/530/2019 arising out of OA/350/984/19, as there was only one representation on record, this Tribunal had directed the respondent authorities to dispose of the same in accordance with law. This is contained in para 6 of order dated 19.7.2019. Similar order could not be passed with regard to other 119 applicants as their representations were not on record. They, however, were accorded liberty to represent, as per para 7 of the order, and in the event of such representation was received, the

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authorities were directed to consider the same in a time bound manner, which could not have caused any prejudice to other 119 applicants.

(iv) In both O.A 350/984/2019 and 350/1003/2019, the Tribunal had directed the respondents to dispose of the representation of the applicants in accordance with law. In O.A 350/1003/2019, the Tribunal had further directed that till the decisions are communicated to the applicant, no coercive action shall be taken against him. In O.A 350/984/19, at the time of hearing, ld. counsel for the respondents had submitted that, as there is nothing on record which would substantiate withdrawal of promotion order dated 29.06.2017, the apprehension of the applicant at this stage is unfounded and without any basis.

Accordingly, the Tribunal did not deem it fit to issue any restraining order/interim relief to the applicants given the assurance of the respondents in OA 350/984/2019.

Given the apprehensions of the applicants, however, as voiced by vociferous and agitated submissions of their ld. counsel, we would deem it fit to consider an amendment to the order in OA 350/984/2019 in continuation of para 7 that, "no coercive action shall be taken by the respondent authorities till the disposal of the representations."

The review is partly allowed to the extent of the above directions and is disposed of accordingly. No order on costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)