

GAHC010204252016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Review.Pet./78/2016

NUMALIGARH REFINERY LTD and 2 ORS
A PUBLIC SECTOR UNDERTAKING
REGISTERED UNDER SEC. 617 OF THE COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT 122A
G.S. ROAD
CHRISTIAN BASTI
GUWAHATI 781005
REPRESENTED BY ITS MANAGING DIRECTOR

2: THE SR. MANAGER

MATERIALS
COMMERCIAL DEPTT.
NUMALIGARH REFINERY LIMITED
P.O. NUMALIGARH
DIST. GOLAGHAT
ASSAM.

3: THE MANAGER

MATERIALS
COMMERCIAL DEPTT.
NUMALIGARH REFINERY LTD.
P.O. NUMALIGARH
DIST. GOLAGHAT
ASSAM.
VERSUS

MR IQUBAL SINGH and ANR
S/O LATE I. SINGH
R/O JPR ROAD
NEAR RICE MILL

JORHAT
ASSAM.

2:THE COMMISSIONER OF CENTRAL EXCISE

MORELLOW COMPOUND
M.G. ROAD
SHILLONG 793001 MEGHALAYA

B E F O R E
Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocates for the petitioners: Shri R.S. Mishra, Advocate

Advocates for respondents : Shri H. Sharma, Advocate.

Date of hearing : 20.06.2023

Date of judgment : 20.06.2023

1. The instant application has been filed for review of an order dated 12.05.2015 passed by this Court in WP(C)/3165/2010. By the aforesaid order, the learned Single Judge had allowed the writ petition interfering with the claim made by the Central Excise Department from the petitioner for an amount of Rs. 7,54,700/- (Rupees Seven Lakh Fifty Four Thousand Seven Hundred). It was also made clear in the order that if the excise duty leviable was already realized from the petitioner, the same was to be refunded by the respondent no. 1 (in the writ petition) within a period of one month. The respondent no. 1 is the Numaligarh Refinery Limited which is the applicant no. 1 in the present Review Petition.

2. I have heard Shri R.S. Mishra, learned counsel for the applicants. I have also heard Shri H. Sharma, learned counsel for the opposite party no. 1 (writ petitioner).

3. Shri Mishra, the learned counsel for the applicants has submitted that the excise duty was already deposited to the Central Excise Department and therefore, the direction to the applicants to refund the amount is liable to be reviewed. He also submits that the applicants were deprived of an adequate opportunity to defend their case before the learned Single Judge. He submits that the learned Single Judge could not be apprised of the fact that the amount was already deposited with the Central Excise Department and certain amount was also refunded. He accordingly submits that the present is a fit case for exercise of the powers of review by this Court.

4. On the other hand, Shri H. Sharma, learned counsel for the opposite party no. 1 raises a preliminary objection questioning the maintainability of the review petition. He submits that the application does not state under what provision of law the review petition has been filed. It is further submitted that the present application is for review of an order passed in a writ petition and the same is governed by the Rules regarding filing of review under the Gauhati High Court Rules. He submits that the present application does not contain any grounds for review nor does it contain a certificate by the concerned Advocate certifying that the grounds are good grounds of review.

5. Shri Sharma, the learned counsel has also drawn the attention of this Court to the affidavit accompanying the review petition which is executed by one Devashish Choudhury terming himself to be the applicant and without describing his position in the Numaligarh Refinery Limited.

6. Apart from the issue of maintainability, Shri Sharma, the learned counsel further

submits that the scope of a Review Court is absolutely limited and it is only under certain exceptional circumstances that a review application may be entertained. He submits that there is no error apparent on the face of the records in the order dated 12.05.2015 which could be demonstrated. He further submits that there is no discovery of new facts which were not within the knowledge of the applicants at the time of hearing of the case and the reasons shown are not at all sufficient.

7. Shri Mishra, the learned counsel for the applicants has however referred to an order passed in a connected contempt petition being Con.Cas(C)/319/2016. This Court vide order dated 03.05.2023 had observed that the matter would be heard on merit by keeping the issue of maintainability open.

8. The rival submission made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

9. There is no dispute to the fact regarding the powers of a writ court to review its own orders. The Gauhati High Court Rules contains a specific Chapter on Review. Paragraph 1 of Chapter X lays down that the provisions of Chapter IV would be applicable to an application for review. Paragraph 2 lays down that every application for review should have the concise grounds and should contain a Certificate by an advocate of the Court similar, *mutatis mutandis*, to that prescribed in appeals. The requirement of filing an affidavit is also there with regard to discovery of fresh evidence.

10. A bare perusal of the present application however would show that none of the aforesaid requirements are fulfilled. Even if the fact that the provision of law under which the review has been preferred has not been mentioned is overlooked, the rest of the requirements cannot be said to be directory. Review being an exercise of

powers in exceptional circumstances, stating concisely the grounds of review and the Certificate by the concerned advocate are of immense importance in absence of which, a review petition *qua* an order passed by a writ court will not be maintainable.

11. This Court also finds force in the argument made by Shri Sharma, learned counsel for the opposite party (writ petitioner) that the affidavit accompanying the review petition is also defective and cannot be taken into consideration. This Court has noticed that the affidavit is executed by one Shri Debashish Choudhury without describing his position or connection with the Numaligarh Refinery Limited. Further, he states that he is the applicant in the review petition. Giving all benefits of doubt, even if his designation is accepted to be the General Manager as would appear from the rubber stamp, this Court has noticed that the General Manager is not an applicant in this petition.

12. Under the aforesaid facts and circumstances, the review petition is liable to be dismissed on the ground of maintainability itself.

13. However, since this Court vide order dated 03.05.2023 had observed that the petition would also be considered on merits, this Court also proposes to deal the petition on merits. The Review Petition contains certain averments which are apparently to assail the directions made by the learned Single Judge. It is an established principle of law that mere error in a judgment or order shall not be a ground for filing a review and the error has to be so glaring that it is apparent on the face of the records. A review cannot be a substitute for preferring of an appeal. Shri Mishra, the learned counsel has submitted that the applicants could not place its case before the learned Single Judge in a proper manner as the order was passed in their absence. However, the order dated 12.05.2015 makes a clear observation that in spite of names of the counsel for the respondents being reflected in the cause list, there

was no representation.

14. This Court has also noted that the writ petition was of the year 2010 which was disposed of in the year 2015, i.e., after 5 years and therefore, there was no occasion to further adjourn the case. In paragraph 14 of the application, averments have been made for condonation of delay of 72 days. Apart from the fact that no separate application for condonation of delay was filed, even the explanations given are trivial, perfunctory and would demonstrate utter negligence on the part of the applicant.

15. The Hon'ble Supreme Court in the case of ***State of M.P. vs. Bhailal Bhai*** reported in ***AIR 1964 SC 1006*** has laid down that though the law of limitation would not *per se* apply in a writ proceeding, the same will have the same application in spirit. The Constitutional Bench had held as follows:

“21...Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.”

16. There is no averment regarding discovery of new materials after passing of the order which were not within the knowledge of the applicants.

17. The Hon'ble Supreme Court in the recent case of ***S. Madhusudhan Reddy Vs V. Narayana Reddy & ors.*** reported in ***2022 SCC Online 1034*** had endorsed its earlier view in the case of ***Kamlesh Verma Vs. Mayawati & Ors.*** reported in,

(2013) 8 SCC 320 wherein, the following principles have been laid down:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within 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.*

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

18. Under those facts and circumstances, this Court is of the unhesitant opinion that apart from the finding that the review petition is not maintainable, even on merits, no case for review of the order dated 12.05.2015 has been made out and accordingly, the present application stands dismissed.

JUDGE

Comparing Assistant