IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 139 OF 2014
IN
WRIT PETITION NO. 8772 OF 2011

Mahindra & Mahindra Limited ... Petitioner
Vs
1. Union of India & Ors. ... Respondent

WITH
REVIEW PETITION NO. 140 OF 2014
IN
WRIT PETITION NO. 4590 OF 2012

Mahindra & Mahindra Limited ... Petitioner
Vs
1. Union of India & Ors. ... Respondent

WITH
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO. 6 OF 2015
IN
CENTRAL EXCISE APPEAL NO. 45 OF 2013

Mahindra & Mahindra Limited ... Petitioner
Vs
Commissioner of Central Excise, Mumbai – V ... Respondent

WITH

REVIEW PETITION NO. 7 OF 2015
IN
CENTRAL EXCISE APPEAL NO. 46 OF 2013

Mahindra & Mahindra Limited ... Petitioner
Vs
Commissioner of Central Excise, Mumbai – V ... Respondent

Mr. V. Sridharan, senior counsel with Shri Prakash Shah I/b PDS Legal for the Petitioners.

Mr. Vijay Kantharia with Mr. Jitendra B. Mishra for the Respondents.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

FRIDAY, 24TH APRIL, 2015

ORAL ORDER : [Per S.C. Dharmadhikari, J.]

1. These review petitions seek a review of a judgment and order which has been pronounced on 9th September, 2014, in two Central Excise Appeals and three Writ Petitions which raise common questions of fact and law.

2. Mr. Sridharan, learned senior counsel appearing in support of these review petitions submits that the petitioners are not in any manner seeking a re-hearing of the appeals and the writ petitions in the garb of a review. They are intending to invite this Court's attention to a patent error and appearing on the face of the record that is leading

to an inconsistency in the conclusions recorded by this Court. Mr. Sridharan submits that the essential ground on which review is sought is that the respondent filed an appeal being Central Excise Appeal No.39 of 2013 before this Court. This Court, by order dated 25th June, 2014, dismissed the Central Excise Appeal No. 39 of 2013. This Court held that the Tribunal's order and view taken cannot be said to be perverse or vitiated by any error of law apparent on the face of the record. Thus, in the very proceedings and between same parties, the same order of the Appellate Tribunal has been upheld by this Court by relying upon the judgment of the Division Bench of this Court in the case of *Repro India Limited vs. Union of India reported in 2009 (235) ELT 614* and another judgment of this Court in the case of *Union of India vs. Sharp Menthol India Limited 2011 (270) ELT 212.* Thus, this Court held that the exempted goods (tractors) can be exported under Bond / Undertaking-1 in terms of Rule 19 of the Central Excise Rules, 2002 and that by virtue of Rule 6(6)(v) of the CENVAT Credit Rules, 2004, the provisions of Rule 6(1) and 6(3) are not applicable in respect of excisable goods cleared with payment of duty for export under bond. However, in the judgment / order under review, this Court has held that Rule 6(6)(v) will not assist the review petitioners. Thus, this Court has overlooked the judgment passed in these very proceedings.

3. Mr. Sridharan submits that for pointing out this inconsistency, nothing more except some paragraphs of the judgment under review and the judgment referred above have to be noted.

4. Mr. Sridharan submits that there is no distinction and in law inasmuch as the words employed in Rule 6(6)(v) may be “excisable goods” and not “exempt goods”, but section 2(d) of the Central Excise Act, 1944, which has not been referred would denote that all excisable goods are exempt. Therefore, exempt goods are not of a distinct category but very much covered by this definition of the term 'excisable goods' as appearing in section 2 clause (d) of the Central Excise Act, 1944. Thus, denial of benefit under Rule 6(6)(v) cannot be for the reason that the goods are excisable. Mr. Sridharan, therefore, submits that in a cognate matter and in which a conflicting view has been taken, then, this Court has not found any error or defect in the judgments of *M/s. Repro India Ltd.* and *M/s. Sharp Menthol*

India Ltd. These judgments having been followed in one case by the same Bench and between same parties, in another case they could not have been ignored or brushed aside. In any event, if this Court desires to differ therefrom, it should have referred the matter to a larger bench. For all these reasons he would submit that the judgment of this Court in *M/s. Repro India Ltd.* binds us. In the circumstances, that should have been followed and when that is followed in one matter between same parties, an identical course should have been adopted in the other case. In other words, when everything is identical and same, a patently conflicting view is capable of being corrected in review jurisdiction.

5. In support of the above arguments Mr. Sridharan places reliance upon the following judgments :

(1) Union of India vs. Sharp Menthol India Ltd. 2011 (270) ELT 212 (Bom.)

(2) Repro India Ltd. vs. Union of India 2009 (235) ELT 614.

(3) Vee Kayan Industries Industries Vs. Collector of Central Excise, 1996 (83) ELT 262 (SC).

(4) Collector of Central Excise, New Delhi vs. Prakash Pipes and Industries Limited, 1997 (94) ELT 18 (SC).

(5) Shree Mahavir Metal Works vs. Union of India, 1998 (98) ELT 580 (SC).

(6) Wallace Flour Mills Company Limited vs. Collector of Central Excise, 1989 (44) ELT 598.

6. On the other hand, Mr. Kantharia appearing for the respondents submits that there is no substance in the review petition. He submits that a review cannot be equated with an appeal or a revision. In an appeal, the entire matter can be reconsidered. It is possible to re-appreciate and reappraise all findings and conclusions in an appeal. That is a very wide jurisdiction. In a revision application it is open for the court to find out as to whether the conclusions are perverse or they are vitiated by any error of law apparent on the face of the record. In such an exercise, the Court can peruse the entire record and not just the judgment under review. The scope of a review is very limited and it cannot be converted into either a full fledged appeal or a revision. Its ambit cannot be enlarged and by inviting the Court to go behind the

judgment under review. An elaborate exercise and which is permissible in the above jurisdictions cannot be undertaken. If these tests are applied, the review petitions deserve to be dismissed.

7. Mr. Kantharia submitted that this Court has in the judgment under review specifically referred to the Central Excise Act, 1944 and noted the difference between excisable and exempt goods. In that regard, he invites our attention to paragraph 62 of the judgment and order under review. Mr. Kantharia also invites our attention to the conclusions recorded and based on the wording of the Rule in question. He would submit that this Court has taken a view with which the petitioners do not agree. However, for correction of that view they would have to approach a higher court. In the garb of a review this Court cannot be called upon to revisit all the factual and legal conclusions. For these reasons he would submit that the review petition be dismissed.

8. For properly appreciating these contentions, first of all it is necessary to outline the ambit and scope of the powers conferred in

this Court and of review. The Hon'ble Supreme Court in a judgment rendered in the case of *Kamlesh Verma vs. Mayawti & Ors. (2013) 8 SCC 320* : *(AIR 2013 SC 3301)*, held as under :

> *"11. 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. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. This Court, in Parsion Devi & Ors. v. Sunitri Devi & Ors. (1997) 8 SCC 715, held as under :*
>
> > *"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1, CPC. In Thungabhadra Industries Ltd. vs. Govt. of A.P. (AIR 1964 SC 1372) this Court opined :*
> > *"What, however, we are now concerned with is whether the statement in the order of September, 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be" characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for parent error." (emphasis ours)*
> >
> > *8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury (AIR 1995 SC 455) while quoting with approval a passage from Aribam Tuleshwar Sharma v.*

> *Aribam Pishak Sharma (AIR 1979 SC 1047) this Court once again held that 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, CPC.*
>
> *9. 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 is disguise".*

…………

14. Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501 : (AIR 2006 SC 2686), held as under :

> *"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only*

in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of "second innings" which is impermissible and unwarranted and cannot be granted."

15. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of Principles :

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

(A) When the review will be maintainable :-

(i) Discovery of new and important material 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" has been interpreted in Chajju Ram, v. Neki, AIR 1922 PC 113 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius & Ors., *(1995) 1 SCR 520 : (AIR 1954 SC 526), 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 vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275 : (2013 AIR SCW 2905).*

(B) 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 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 re-heard 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."

9. It is in accordance with the above principles that we will have to decide these petitions.

10. We have carefully considered the rival contentions. We have also perused the review petition and the annexures thereto. The basis of the relief is the contradiction in the conclusion reached in Central Excise Appeal No.39 of 2013 and the judgment and order dated 9th September, 2014 (judgment under review) on point No.2 about applicability of Rule 6(6) of the CENVAT Credit Rules, 2004.

11. However, while dismissing the Central Excise Appeal No.39 of 2013, we held that there was a concession given that the judgment of this Court in *Repro India Limited vs. Union of India* (supra) is applicable and that covers the issue therein. This was noted in paragraph 6.2 of the order passed by the Tribunal and paragraph 8 thereof. Thus, the Tribunal's conclusion as rendered in its order dated 22nd June, 2012, was not interfered with.

12. We have explained that in our order dated 25th June, 2014, while

dismissing the revenue appeal being Central Excise Appeal No.39 of 2013. It was a conclusion based on the factual position that the exempted goods can be exported under a Bond / Undertaking-1 in terms of Rule 19 of the Central Excise Rule, 2002.

13. We have produced Rule 6 of the CENVAT Credit Rules, 2004, in paragraph 63, internal page 55 of the judgment under review. We have, on a reading of Rule 6, held that the cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or exempted services, except in the circumstances mentioned in sub-rule (2) of Rule 6. Then we have referred to sub-rule (3) of Rule 6 and which is containing a non-obstante clause and held that the manufacturer or provider of output service opting not to maintain separate accounts would have to follow either of the conditions as applicable to him and set out in Rule 6(3)(a)(b). Then we have referred to sub-rules (4) and (5). Thereafter in paragraph 64, we have referred to the concurrent findings against the assessee / petitioner before us. In paragraph 65, we have referred to Rule 6(2) and in paragraph 66 we concluded that since the excisable

goods removed without payment of duty were cleared for export under Bond in terms of the Central Excise Rules, 2002, that the conclusion based on *M/s. Repro India Limited* and rendered by the Tribunal was not interfered with. The same conclusion was relied upon in support of the writ petitions and the appeals of the assessee by the assessee's senior counsel Mr. Sridharan. That was relied upon in the main proceedings in which the judgment under review was rendered. However, the assessee's review petitions cannot be allowed by finding out any alleged contradictions or conflicting views in the judgment under review. That would require us to go behind our judgment under review. We would be required to once again consider the same arguments and the same contentions as have been noted in the main order. We have given our reasoning as to why the assessee – review petitioners cannot be permitted to take advantage of the Tribunal's conclusion reached in paragraph 8 of its order dated 22nd June, 2012 (see paragraph 71 of the judgment under review). We have also given our reasons further and to hold as to how reliance on Rule 6(6)(v) by the assessee- review petitioners before us was entirely misplaced.

14. Thereafter, while dealing with the judgment cited and particularly in the case of *Repro India Ltd.*, we have held in paragraph 75 that the conclusions therein rendered by a Division Bench of this Court was for the purpose of dealing with the essential controversy and whether in respect of exempted goods cleared for export and inputs in respect of which are dutiable, their clearance by giving Bond under Rule 19 of the CENVAT Credit Rules, 2002, is permissible. We have reached our own conclusions as to why the judgment in the case of *Repro India Ltd.* cannot be of any assistance to the assessees (See paragraph 75 of the judgment under review).

15. Thus, the Division Bench judgment in the case of *Repro India Ltd.* and which was relied upon in favour of the assessee for dealing with a distinct issue was held to be inapplicable by us and for which we have given our elaborate reasons. Our conclusion may be or may not be erroneous. However, we cannot reconsider or correct the same in the garb of a review. We are not deciding an appeal and, therefore, will not be in a position to refer to the record all over again.

16. While dismissing the assessee's appeals and writ petitions, we have given our reasons and it is during the course of recording them that we referred to the contentions of the petitioners herein. We referred to all the judgments cited by them. We have, independent of those judgments, held that the petitioners' writ petitions and appeals cannot be allowed. While pointing out as to how the reliance placed on the Division Bench judgment in the case of *Union of India vs. Sharp Menthol India Ltd.* (supra) is misplaced that from paragraphs 78 onwards in the judgment under review we came to the conclusion that in *Sharp Menthol India Ltd.* Rule 6(6)(v) has been referred but while referring it the Division Bench omitted some crucial words from its consideration. We have held that, with respect, the words in Rule 6(6) and relevant for our purpose are 'excisable goods' and not 'exempt goods'. The Rules have been correctly referred in *M/s. Repro India Ltd.* as is clear from paragraph 9 thereof.

17. However, in the case of *M/s. Sharp Menthol India Ltd.* this sub-rule has been held to be referring to “exempted goods”. That is why we have given somewhat detailed attention to the conclusions reached

in *M/s. Sharp Mehthol India Ltd.* in paragraphs 80 to 83 of the judgment under review. That was to caution everybody concerned about its applicability.

18. However, independent of all this, in paragraph 84 we have concluded that all matters arose firstly before the amendment to the Central Excise Act, 1944 by which section (1A) was inserted in section 5A of the same. We have also reached the conclusion that cenvat credit cannot be availed of in case of such inputs or input services which are in relation to exempted goods and exempted services. Therefore, what is excisable and dutiable and what is exempted has been noted by us. If is for that reason as well we have denied relief to the review petitioners.

19. We may be right in our aforesaid conclusions or wrong, but we can only be corrected by a higher court. Mr. Kantharia is, therefore, right in submitting that old contentions and arguments would not be enough for us to reopen a concluded matter. His reliance placed on *Kamlesh Verma vs. Mayawti & Ors.* (supra) is apposite.

20. If the case was as clear as Mr. Sridharan appearing for the review petitioners points out, then, he was not required to make any alternate arguments in support of this review petition and place reliance on section 2(d) of the Central Excise Act, 1944. His argument runs thus : that section 2(d) of the Central Excise Act, 1944 defines excisable goods and that would encompass those goods which enjoy an exemption in terms of the powers of exemption vesting in the Central Government. In that regard, he invites our attention to paragraph 9 of the judgment in the case of *Repro India Ltd*. (supra) and the judgments of the Hon'ble Supreme Court in the case of *Vee Kayan Industries vs. Collector of Central Excise, 1996 (83) ELT 262*. Our attention is also invited to the judgment of the Hon'ble Supreme Court in the case of *Wallace Four Mills Company Ltd. vs. Collector of Central Excise, 1989 (44) ELT 598*, holding that excisable goods do not become non excisable goods merely by reason of an exemption from payment of excise duty given under a Notification. Then, reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of *Collector of Central Excise vs. Prakash Pipes and*

Industries Ltd., 1997 (94) ELT 18 and the judgment of the Hon'ble Supreme Court in the case of *Shree Mahavir Metal Works vs. Union of India, 1998 (98) ELT 580*. The attempt, therefore, is to urge that irrespective of the wording of Rule 6(6)(v) it will have to be construed together with section 2(d) of the Central Excise Act, 1944 or in the backdrop thereof. So read and construed, we can reach the same conclusion as is reached by the Tribunal in the present case and in favour of the assessee in paragraph 8 of the order which was under challenge by the Revenue in Central Excise Appeal No.39 of 2013. This is thus a fresh argument and which we cannot entertain in our limited jurisdiction.

21. In the light of the above discussion and our conclusion, each of these review petitions fail. They are dismissed, but without any order as to costs.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI , J.***