IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.07.2015

CORAM

THE HONOURABLE **MR. JUSTICE R.SUDHAKAR**
AND
THE HONOURABLE **Ms. JUSTICE K.B.K.VASUKI**

Review Application No.42 of 2015

M/s.Dunlop India Limited
No.512, MTH Road, Ambattur
Chennai - 600 053.
rep. by its Authorized Signatory
Mr.Chander Kothari

.. Petitioner

- Vs -

1. The Customs, Excise & Service
Tax Appellate Tribunal
Haddows Road,
Shastri Bhavan Annexe
1st Floor, Chennai 600 006.
by its Assistant Registrar

2. The Commissioner of Central Excise
Chennai II Commissionerate
No.,693, Anna Salai, Nandanam,
Chennai - 600 035.

.. Respondents

PETITION filed under Order 47 Rule (1) read with Section 114 of the Code of Civil Procedure to review the order dated 26.2.2015 made in C.M.A.No.188 of 2015 on the file of this Court.

For Petitioner : Mr.N.Viswanathan
For Respondents : Mr.A.P.Srinivas
Standing Counsel - R2

JUDGMENT

(DELIVERED BY *R.SUDHAKAR, J.*)

This Review Application is filed to review the judgment dated 26.2.2015 made in C.M.A.No.188 of 2015 on the file of this Court.

2. We are not inclined to entertain this Review Application as the Review Petitioner appears to prolong the lis from the stage of interlocutory application, namely, seeking waiver of pre-deposit. At the first instance, he suffered an order of adjudication for a sum of Rs.12,47,693/- being differential duty and penalty of Rs.16,26,556/-. Against which an appeal was filed by the petitioner before the Commissioner (Appeals), who by order dated 20.12.2012 ordered pre-deposit of Rs.16,26,556/-. Since the said order was not complied, the appeal was dismissed. In the meantime, there was another demand for a sum of Rs.1,41,807/- being the differential duty and penalty of Rs.20,000/-, which was ultimately set aside by the Commissioner (Appeals) on appeal at the instance of the petitioner. We are not concerned with the second order of the Commissioner (Appeals) dated 08.05.2013. As against the dismissal of the appeal by the Commissioner (Appeals) by order dated 20.3.2013, the petitioner

preferred an appeal before the Tribunal and the Tribunal, taking note of the financial hardship pleaded by the petitioner, passed an order dated 22.9.2014 in the Miscellaneous Petition ordering waiver of pre-deposit of Rs.7.00 lakhs. Thereafter, the petitioner once again preferred a petition before the Tribunal seeking modification of the order dated 22.9.2014. The Tribunal by considering the submissions made passed an order dated 24.11.2014 in Miscellaneous Order No.41997 of 2014. We have extracted the said order of the Tribunal in C.M.A.No.188 of 2015. For better clarity, we extract the same as such:

> *"4. We find that the Tribunal at the time of hearing the stay petition, the applicant submitted that they availed the credit on the basis of original documents which were lost in floods. Prima facie, the Tribunal observed that there is no material placed that they have availed the credit on the basis of original documents. We find that the applicant failed to produce the original documents to the audit party for verification of the documents, which was not disputed by the learned counsel. So, we do not find any merit in the modification application.*
>
> *5. However, after considering the submission of both sides, we extend the period of compliance by further four weeks. The applicant is directed to report compliance*

on 29.12.2014. Miscellaneous application is disposed of."

3. The submissions made by the learned counsel appearing for the petitioner at that point of time was recorded in paragraph 9 of the judgment dated 26.2.2015 and we set out as such for better clarity:

> *"9. Learned counsel appearing for the appellant submitted that the assessee is suffering from financial hardship on account of long layoff and continued lockout. He further submitted that the company was under winding up and the proceedings are pending before the Supreme Court."*

4. It is relevant to point out that the reasons to dismiss the appeal has been recorded by this Court in paragraph 11 of the judgment, which we set out hereunder:

> *"11. It is seen from the order of the Tribunal that even though the assessee pleaded financial hardship before the Tribunal, the assessee did not produce any documents to prove the same. Before us also, learned counsel appearing for the appellant pleaded financial hardship but no details or documents have been furnished in support of such a plea. We find no good reason to accept such a mere statement of financial hardship as a cause to modify the order of pre-deposit. The order of the Tribunal seems to be justified in the facts and*

circumstances of the case. In the absence of any materials placed before this Court, we see no reason to interfere with the order passed by the Tribunal. "

5. In the above paragraph, this Court has clearly held that the assessee did not produce any document to support the plea of financial hardship or that the winding up proceedings are pending before the Supreme Court. Paragraph 11 makes it very clear that we do not find any reason to entertain the plea on a mere oral statement.

6. This Review Petition is now filed on the ground that subsequently some documents have been received and there is a prima facie case in favour of the petitioner.

7. The power of review has been enunciated by the Supreme Court in a catena of decisions. In *Inderchand Jain v. Motilal, (2009) 14 SCC 663*, the Supreme Court has held as under:

"9. *The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made.* An application for review

> would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.
>
> 10. It *is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order*."
>
> (emphasis supplied)

8. The ground now pleaded by the petitioner is that some documents have been received to substantiate the plea of undue financial hardship. Even though the same was averred in the affidavit filed in support of the civil miscellaneous appeal, no evidence was produced to that effect when the appeal was taken up for hearing. All the issues now raised were highlighted by the review petitioner and that has been recorded in paragraph 11 of the judgment passed in the appeal. There is no mistake or error apparent on the face of the record as pointed out by the review petitioner to seek review of the judgment dated 26.2.2015. The order of the Supreme Court now relied upon by the review petitioner is dated 12.6.2013 and the

judgment sought to be reviewed is dated 26.2.2015. Therefore, it cannot be pleaded that there is a new or important matter which was discovered for filing review petition and the same could not be produced by the petitioner even after exercising due diligence. The documents available with the review petitioner were not produced despite making a oral plea. Hence, no ground is made out to review the judgment dated 26.2.2015.

9. In the result, , this Review Application stands dismissed. No costs.

Index : Yes/No (R.S.J.) (K.B.K.V.,J.)
Internet : Yes 03.07.2015
sl/sasi

To

The Assistant Registrar
Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench, 1st Floor, Shastri Bhavan Annexe
26, Haddows Road, Chennai 600 006.

R.SUDHAKAR,J.
AND
K.B.K.VASUKI,J.
(sl/sasi)

Rev.Appl.No.42 of 2015

3.7.2015