

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.339 of 1994
Date of decision: 13.01.2015**

Assistant Collector, Customs and Central Excise Division

....Petitioner

Versus

M/s New India Dyeing and Finishing Mills and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN.

Present: Mr. D.D. Sharma, Advocate
for the petitioner.

None for the respondents.

JITENDRA CHAUHAN J. (Oral)

1. As per the office report, summons issued to the respondents received back unserved with the report that the Mill has been locked for the last ten years and that respondents No.2 and 3, are not residing at the given address and left without address.

2. Learned counsel for the petitioner submits that it is a case of the year 1994, in which original record has been burnt. In

the complaint under Section 9 and 9AA of the Central Excise and Salt Act, 1944, the learned Chief Judicial Magistrate, Amrtisar, has passed the following order on 24.04.1992 :-

“In view of what has been discussed and observed above, I conclude that criminal proceedings in this complaint against the accused cannot continue and, therefore, the same are dropped with the result that they are discharged. It is, however, made clear that in case on the conclusion of the adjudication proceedings under the Act, it is found by the Collector, central Excise, Chandigarh, that the accused No.1 of which accused No.2 and 3 are partners had evaded Central Excise Duty on the goods found short and/or on processed man made fabrics which are alleged to have been removed clandestinely on private bills/records and that order achieves finality, the revenue would be entitled to file fresh complaint against the accused on the same facts and ground in accordance with law and this judgment will not stand in their way to that extent.”

Against this order dated 24.04.1992, the department went in revision, in which following order was passed by the learned Sessions Judge, Amritsar on 19.02.1994:-

“For the reasons recorded above, this revision petition is accepted and the order dated 24.04.92, passed by the Court below set aside. Trial Court record be returned and the appeal file be consigned”.

4. The Department filed this revision before this Court

assailing the judgment of both the Courts below, which was admitted in the year 1994. Later on, the record of the revision was burnt in the fire. The record of this case was reconstructed and list before this Court for trial adjudication.

5. Learned counsel for the petitioner contends that as the impugned order dated 24.04.1992, is in favour of the department giving liberty to file fresh complaint, so at this stage, he has not grieve against the order of Sessions Judge, Amritsar and could not possibly assail it on any ground, at this stage.

6. This Court has gone through the impugned judgment of the First Revisional Court and finds no infirmity in the same. This is the second revision filed by the Department in this Court, which is not maintainable.

Section 399(3) of the Criminal Procedure Code, reads as under:-

1. XXXX
2. XXXX
3. *Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court."*

Keeping in view the above provisions and the judgment dated 24.04.1992, passed by the Chief Judicial Magistrate, no second revision is maintainable in this Court, which is dismissed as not maintainable.

This revision petition is dismissed as not maintainable.

(JITENDRA CHAUHAN)
JUDGE

13.01.2015
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