

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition Nos.38547, 38593, 38594, 38595, 38597, 38598,
38600, 38601, 38602, 38605, 38609, 38610 and 38703 of 2017

DATED: 20-11-2017

Between:

The ICAFI University
Meghalaya
IV Floor, Sundari Complex
Circular Road, West Garo Hills
Tura – 794 001
Meghalaya ... Petitioner

And

The Principal Commissioner of Central Tax
Hyderabad GST Commissionerate,
Basheerbagh
Hyderabad ... Respondent

COUNSEL FOR THE PETITIONER: M/s. Lakshmi
Kumaran & Sridharan

COUNSEL FOR THE RESPONDENT: Mr. B. Narasimha Sarma,
Senior Standing Counsel
for Income Tax

THE COURT MADE THE FOLLOWING:

COMMON ORDER: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This batch of writ petitions is filed by the assessee, who is common in all the cases, assailing separate but identical orders dt.13.01.2017, rejecting the rectification of mistakes (ROM) applications filed by it with reference to the original assessment orders passed by the Central Excise Officer (CEO) concerned.

2. As a pure legal issue is involved in these cases, it is not necessary to refer to the facts in detail. It will suffice to note that the petitioner filed ROM applications with reference to different assessment orders passed by the CEO. The CEO, who passed the original assessment orders, appears to have been replaced by another CEO. The successor officer has dismissed the ROM applications on interpretation of Section 74 of the Finance Act, 1994 (for short, "the Act"). He has construed the said provision as to mean that the ROM applications could be entertained and decided only by the same CEO, who passed the original orders, and that as such officer was no longer available in the office, his successor, i.e. the Principal Commissioner, has no authority to entertain and pass orders on the ROM applications.

3. When the writ petitions came up before us, on 17.11.2017, we have adjourned the cases to enable Mr. B.

Narasimha Sarma, learned Senior Standing Counsel for the Central Excise, Customs and Service Tax, to seek instructions for making his submissions. Accordingly, today we have heard the learned counsel for both the parties.

4. Section 74 of the Act reads as under:

“74. Rectification of mistake

(1) With a view to rectifying any mistake apparent from the record, the Central Excise Officer who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.

(2) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the Central Excise Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the Central Excise Officer concerned-

(a) may make an amendment under sub-section (1) of his own motion; or

(b) shall make such amendment if any mistake is brought to his notice by the assessee or the Principal Commissioner of Central Excise or Commissioner of Central Excise or the Commissioner of Central Excise (Appeals).

(4) An amendment, which has the effect of enhancing the liability of the assessee or reducing a refund, shall not be made under this section unless the Central Excise Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(5) Where an amendment is made under this section, an order shall be passed in writing by the Central Excise Officer concerned.

(6) Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the liability of an assessee or increasing the refund, the Central Excise Officer shall make any refund which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the liability of the assessee or reducing the refund already made, the Central Excise Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.”

From the language of the provisions of Section 74 of the Act, it is clear that an application for rectification of any mistake apparent from the record lies to the CEO. There cannot be any dispute that the obvious intendment behind this provision is to get the mistakes apparent from the record rectified, instead of driving the party to avail further remedies, such as appeal. Under sub-section (1), the words, “the Central Excise Officer who passed any order” are used. If these words are literally construed, they may suggest that the individual who passed the order alone is competent to rectify the mistake. However, sub-section (3) would assume relevance in understanding the aforementioned words. In the said sub-section, the words “the Central Excise Officer concerned” are used. Though the golden rule of interpretation of a Statute is to interpret a provision on its plain language, the law is well-settled that where such construction yields absurd results or if it defeats the very purpose for which the provision is made, the Court has to adopt the method of purposive construction. (See *National Insurance Co. Ltd. v. Laxmi Narain Dhot*¹, *Badshah v. Urmila Badshah Godse*², and *Sarah Mathew v. Institute of Cardio Vascular Diseases*³).

¹ (2007) 3 SCC 700

² (2014) 1 SCC 188

³ (2014) 2 SCC 62

5. If we literally construe the words “Central Excise Officer who passed any order” it may lead to an anomalous situation. For example, if an officer who passed the order remains in office for two years, the limitation prescribed for filing ROM applications, the party concerned would have the benefit of getting the mistake rectified, whereas, in another case, if the officer retires or is transferred before an application is filed, the benefit of the provisions of Section 74 of the Act would not be available. Interpretation of a statutory provision shall not yield such an absurd result. In our opinion, the words “Central Excise Officer who passed any order” must be construed as the “jurisdictional Central Excise Officer” and not the “individual Central Excise Officer”. Our view derives support from the expression “Central Excise Officer concerned” under sub-section (3) of Section 74 of the Act.

6. One other reason which may have impelled the Legislature to use the words, “who passed any order” in sub-section (1) may be that the definition of “the Central Excise Officer” under Section 2(1)(b) of the Central Excise Act, 1944, as adopted by Section 65(121) of the Finance Act, 1994, takes within its sweep the whole range of functionaries starting from Assistant Commissioner of Central Excise to the Principal

Chief Commissioner of Central Excise. Evidently, to confer the power of rectification on the particular class of officers who passed the order, the words “Central Excise Officer who passed any Order” have been used in Section 74 of the Act. Any other construction would render Section 74 of the Act otiose.

7. In the above view of the matter, we are of the opinion that the respondent has committed a serious error in rejecting the applications as not maintainable. The impugned orders are accordingly set aside. The respondent is directed to entertain the ROM applications and pass orders on their own merits.

8. The writ petitions are accordingly allowed.

As a sequel to allowing the writ petitions, pending miscellaneous applications shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

T. AMARNATH GOUD, J

20-11-2017

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Note: LR Copies to be marked.

(B.O)

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