IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.50 of 2016

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1. Union Of India through the Chief Commissioner of Customs (Preventive), Patna Zone, 4th Floor, Central Revenue Building, Birchand Patel Path, Patna.
2. The Commissioner of Customs (Preventive), Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
3. The Additional Commissioner of Customs (Adjudication), Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
4. The Assistant Commissioner of Customs Preventive, Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
5. The Superintendent of Customs Preventive, Office of Commissioner Customs, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
6. The Superintendent of Customs (Adjudication), Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.

... ... Petitioner/s

Versus

1. M/s Overseas Enterprises, 2263, 1st Floor, Room No.11, Gali Raghunandan, Naya Bazar, Delhi 110063, through its partner Kalu Ram Kundlia.
2. Kalu Ram Kundlia, son of Shri Sumer Mal Kundlia, G-50, Kirti Nagar, New Delhi 110015

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.S.D. Sanjay, Addl.S.G.
Mr. Alok Kumar Agrawal, Sr.S.C., Customs
Mrs. Priya Gupta, Adv.
Mr. Mohit Agrawal, Adv.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

16 13-09-2019 Heard Sri S.D. Sanjay, learned Additional Solicitor General representing the Union of India assisted by Mr. Alok Kumar Agrawal, learned counsel for the Department of Customs.

The Union of India as moved this review application for reviewing and recalling the observations made and directions issued by this Court in paragraphs 82, 83, 84, 85 and 86 of the order dated 30.11.2015 passed in CWJC No.13382 of 2014.

This Court has been informed that earlier the petitioners had preferred a Letters Patent Appeal bearing no.80 of 2016 challenging the order under review but said Letters Patent Appeal was withdrawn with liberty to approach this Court with an appropriate application including review petition. The order dated 08.02.2016 passed in LPA No.80 of 2016 is available on the record.

For purpose of recall of the aforesaid paragraphs, learned A.S.G. has drawn the attention of this Court towards the observations made in paragraph 69 and 70 of the judgment and order under review. Paragraphs 69 and 70 are thus quoted hereunder for a ready reference:-

> "69. The matter in fact become still worse for the authorities of the Custom Department because they had consumed a period of more than one year in only getting the test report of the Laboratory with regard to edible quality of the betel nuts and despite a negative test report of betel nuts dated 16.4.2014,the seized betel nuts of the petitioners was released by the Custom Department only on 9.8.2014. In fact, there could be no logic or justification whatsoever in not releasing the seized goods of the petitioners at least after receiving this negative test report of the betel nuts from the C.F.L. on 24.04.2014,holding the same to be

> neither spurious nor contaminated nor even adulterated but that also was not done till the petitioners filed the writ application on 05.08.2014 and in fact till echo of first order of this Court passed on 06.08.2014 was heard by the officials of Custom Department directing the authorities of the Custom Department to explain as to why the goods of the petitioners were not released despite an order of provisional release dated 28.03.2013 and the final order of the adjudicating authority dropping the proceedings itself on 29.11.2013.
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> 70. In any event after 24.04.2014, when a negative test report of the cut betel nuts of CFL, Raxaul dated 16.4.2014was received by the department from C.F.L, Raxaul there was no valid reason whatsoever for not releasing the goods in question in favour of the petitioners. In this regard it must be kept in mind that in the appeal against the order of the adjudicating authority dated 29.11.2013was filed on or after 25.04.2014 and there was no stay granted by the appellate authority which could have enabled the authorities of the Custom Department to detain the release of the betel nuts in favour of the petitioners."

It is submitted that in paragraph 69 of the judgment, the learned Writ Court has recorded a finding taking a view that the test report of the betel nuts dated 16.04.2014 was a negative report. It is submitted that if the test report was taken to be a negative report and the betel nuts were released by the Department in favour of the petitioners on 09.08.2014 after obtaining the bank guarantee in terms of the order of the Department issued on 08.08.2014, there was no reason for the learned writ court to come to a conclusion that the petitioners have been put to a loss of at least Rs. 14,69,650/- on account of complete deterioration of quality of split betel nuts on account of deliberate laches on the part of the officials of the Customs. In order to appreciate the submissions of learned A.S.G., this Court would record the further observations and directions issued by the learned Writ Court in paragraphs 82, 83, 84, 85 and 86 as under:-

> "82. Thus, when this Court has found that the petitioners have been put to a loss of at least Rs.14,69,650/-on account of complete deterioration of quality of split betel nuts solely on account of deliberate laches on the part of the officials of the Custom Department it would direct respondent no.2 to pay a sum of Rs.14,69,650/-along with interest at the rate of 9% per annum for the period 28.3.2013, the date on which the order of provisional release of the seized article was passed by the competent authority to the order directing release of the seized articles dated 9.8.2014within a period of three months from today.
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> 83. It is, however, made clear that such amount, which has to be paid by way of compensation for the loss caused to the petitioners on account of delay of nearly 1½ years in release of the seized articles, shall be recovered from the erring officials and for the purposes of fixing individual responsibility on such erring officials this Court would direct the Chairman of Central Board of Excise and Customs Department of Revenue, New Delhi to get an enquiry conducted by an Officer not below in the

rank of Chief Commissioner of Customs who must not be posted and/or associated in any manner with Patna Zone of the Custom Department.

84. Upon completion of such enquiry and upon submission of enquiry report appropriate action under the orders of Chairman Central Board of Excise and Customs, New Delhi be taken against erring officials not only for recovery of the amount directed to be paid under this judgment to the petitioners but also for initiating and concluding disciplinary proceedings by the competent authority against the erring officials of Customs Department of Patna zone who are found to have caused delay in release of the seized articles of the petitioners in any part of period in between 28.3.2013 to 9.8.2014. This whole exercise must be completed within a period of six months from the date of receipt of this judgment by the Chairman of the Central Board of Excise and Customs, New Delhi, who having taken his action as directed above shall also submit his action taken report to the registry of this Court on or before 30thof June, 2016.

85. With the aforementioned observations and directions, this writ application is allowed with a cost of Rs. 25,000/- quantified by this Court for coercing and compelling the petitioners to file this writ petition for release of their seized betel nuts to be paid by the Respondents to the petitioners within a period of three months from today.

86. It is, however, made clear that irrespective of initiation and conclusion of the aforesaid proceedings against the erring officials of Customs department of Patna zone by the Chairman of

> Central Board of Excise and Customs, the payment of the amount of Rs.14,69,650/-along with interest at the rate of 9% per annum from 28.3.2013 to 9.8.2014 must be made to the petitioners within a period of three months from today, failing which the amount of interest on the amount of Rs. 14,69,650/-shall stand enhanced from 9% per annum to 18% per annum from 28.3.2013 till the date of its actual payment."

It is his submission that the observation of the learned Writ Court that betel nuts test report was negative and at the same time the observation that the quality of betel nuts had completely deteriorated due to laches on the part of the officials of the custom department cannot go together, inasmuch as if the test report is taken to be negative, it would mean that the quality of the betel nuts had not deteriorated and those were fit for consumption. Learned A.S.G. has, however, hasten to add that in fact both the test reports in respect of the seized betel nuts were showing fungal growth and that those were of sub-standard quality but the learned Writ Court has taken the second report as a negative report which is nothing but an error of the record.

Be that as it may, it is his contention that even on its own logic that the second test report was a negative report, the further view taken by the learned Writ Court that because of the reasons attributable to the officials of the Customs department, the petitioner has been made to suffer a loss of Rs. 14,69,650/- which is in fact the value of the betel nuts has no basis to stand. The reasons being unfounded, it is his submission that the findings in paragraph 82 and the further observations and directions issued by the learned Writ Court are fit to be recalled.

Learned A.S.G. has for purpose of review and recall of the order relied upon two judgments first one is that of the case of **Musammat Jamna Kaur Vs. Lal Bahadur and Ors.** reported in (1949) 11 FCR 662 and another one is in the case of **Municipal Corporation of Greater Mumbai vs. Pratibha Industries & Ors.** reported in **(2019) 3 SC 203.** It is submitted that in the latest judgment of the Hon'ble Apex Court has held that the High Court being a constitutional Court of Record and a superior Court has always inherent power to recall its own order.

No one has appeared on behalf of the writ petitioner-O.P. No.1 and 2 to oppose this application. Even on the last date of hearing on 06.09.2019 the writ petitioner had remained unrepresented.

The opposite party nos. 1 and 2 have entered appearance in this case by filing Vakalatnama as it appears from the office note dated 21.06.2016, they had been granted time to file counter affidavit but till date no counter affidavit has been filed.

On the basis of the materials available on the record, when this Court considers the submissions of learned A.S.G., it is found that those are required to be accepted and the order under review to the extent it has been sought to be recalled are fit to be recalled. In the case of **Musammat Jamna Kuar** (supra) the Hon'ble Federal Court had occasion to record that whether it is the mistake of the counsel or the discrepancy has occurred due to mistake on the part of the court would not effect the jurisdiction of the court to review the order and incorrect fact is required to be corrected. Relevant paragraph in the case of **Musammat Jamna Kuar** (supra) is reproduced hereunder for a ready reference:-

> "There can be no doubt that this appeal must be allowed. The mistake as to the items of property regarding which Mst. Jamna Kuar had laid claim is apparent on the face of the record.The trial Judge had clearly stated in his judgment that Jamna Kuar's claim related to properties 3 to 37 of the Gazette notification. In paragraph 15 of her amended objection petition she had laid claims to all the properties left by Kunj Behari. On the 29th April, 1942, it was admitted by the pleader of the applicants that all these properties related to the estate of Kunj Behari and that so far as the debtors were concerned, they were owners of only two properties mentioned in the Gazette notification. In this situation it would have been appropriate if the High Court had

> corrected this error on the review petition and saved the appellant the trouble and expense of an appeal to the Privy Council or to this Court. Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an over-sight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial Court's decision indicates the error apart from anything else."

In the case of **Pratibha Industries** (supra) in paragraph 10 of the judgment, the Hon'ble Supreme Court held that the High Court being a constitutional court of record has inherent power to recall its order. Paragraph '10' is quoted hereunder for a ready reference:-

> "10. Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:
>
> **"215. High Courts to be courts of record.—**
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> Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."
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> It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been

recognised in several of our judgments."

It appears from the aforesaid paragraphs of which recall has been prayed for that the learned Writ Court proceeded to record a finding that the petitioner had suffered loss of Rs. 14,96,650/- but that has no basis to stand. In view of own findings of the Court recorded in paragraph 69 and 70 whereunder the Court has recorded that the second test report was negative and once that was there, the respondent department should have released the betel nuts. In fact the betel nuts had been released only three months thereafter when the petitioner submitted the bank guarantee in terms of the order of the Department issued on 08.08.2014.

There is no finding of the learned Writ Court that after the second test report was received and before the betel nuts were released, those got damaged or developed fungal growth or insects during this period of four months. In fact there are materials available on the record in form of two reports that the betel nuts were having fungal growth and those were of sub-standard quality. Learned A.S.G. has informed this Court that betel nuts were released only when the petitioner gave an undertaking that those will be used for manufacture of mosquito repellent. This Court is, therefore, satisfied that an error apparent on the face of the record has crept in the judgment of the learned writ court. Paragraphs no. 82 to 86 of the judgment under review are, therefore, recalled.

This review petition is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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