HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 402 of 2017

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).
2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh
3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited, D1 Licensee, Khapri, Kumhari, District Durg, Chhattisgarh.

---- Respondent

WPC No. 403 of 2017

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---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited, D1 Licensee, Khapri, Kumhari, District- Durg, Chhattisgarh.

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WPC No. 404 of 2017

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---- Petitioners

Versus

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<u>WPC No. 405 of 2017</u>

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

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2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited D1, Licensee, Khapri, Kumhari, District Durg, Chhattisgarh

---- Respondent

<u>WPC No. 406 of 2017</u>

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited, D1 Licensee, Khapri, Kumhari, District- Durg, Chhattisgarh

---- Respondent

WPC No. 407 of 2017

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited D1, Licensee, Khapri, Kumhari, District- Durg, Chhattisgarh, Chhattisgarh

---- Respondent

WPC No. 408 of 2017

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited, D1 Licensee, Khapri, Kumhari, District- Durg, Chhattisgarh, Chhattisgarh

---- Respondent

WPC No. 409 of 2017

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited, D1 Licensee, Khapri, Kumhari, District- Durg, Chhattisgarh

---- Respondent

WPC No. 414 of 2017

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s. Chhattisgarh Distilleries Limited, D1 Licensee, Khapri, Kumhari, District- Durg, Chhattisgarh, Chhattisgarh

---- Respondent

WPC No. 2832 of 2016

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s Chhattisgarh Distilleries Limited, D 1 Licensee, Khapri, Kumhari, Distirct Durg Chhattisgarh, Chhattisgarh

---- Respondent

WP (227) No. 637 of 2016

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mahanadi Bhawan, Capital Complex, New Raipur Chhattisgarh.

   (Petitioner No. 1 was not a party before the learned Revenue Board, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Commissioner, Department Of Excise, Chhattisgarh, Raipur, Chhattisgarh

3. The Collector, District Janjgir Champa, Chhattisgarh

---- Petitioners

Versus

M/s Chhattisgarh Distilleries Limited, D1 Licensee, Khapri, Kumhari, District – Durg, Chhattisgarh

---- Respondent

For Petitioners	:	Mr. Alok Bakshi, Addl. A.G. with Mr. Soumya Rai & Avinash Singh, Panel Lawyer
For Respondent	:	Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17.09.2019

Heard.

1. All the petitions are being heard together being common question of law is involved.

2. The Board of Revenue in exercise of power of review under Rule 7 of the Appeal, Revision & Review Rules, which is framed under Section 62(g) of the Chhattisgarh Excise Act, 1915 has passed the order on 30.03.2016.

3. The facts of the case are that the issue enumerated with the show cause notice issued to the respondent by the Collector under Rule 10(A) of the Chhattisgarh Country Spirit Rules, 1995 and a duty was sought to be recovered. The reply was filed by the respondent on 26.02.2008. The reply having been filed, the same was considered and the Collector, Janjgir-Champa by order dated 05.09.2011 (Annexure P-4) had ordered for recovery of different amount from the respondent by way of penalty for the transit wastage beyond the permissible limit as per sub-rule 3 of Rule 10(A)

of the Chhattisgarh Country Spirit Rules, 1995. The same was subject of appeal by the respondent before the Excise Commissioner under Rule 62(2)(c) of Chhattisgarh Abkari Adhiniyam, 1915 and Appeal, Revision & Review Rules. The Commissioner, Excise, by order dated 06.03.2012 affirmed the order of the Collector whereby the penalty was imposed. Against that order, appeal was preferred by the respondent before the Board of Revenue. The Board of Revenue by order dated 19.03.2013 dismissed the appeal preferred by the respondent whereby the original order passed by the Collector was maintained. Subsequently, review was filed by the respondent before the Board of Revenue. The Board of Revenue by the order dated 30.03.2016 (Annexure P-1) had set aside the entire order passed by the Board of Revenue including that of the Collector and Commissioner and against such order, the instant petition has been filed.

4. Learned counsel for the petitioner would submit that the order under review of like nature order cannot be passed, as it has the effect to set aside of the original order in entirety. It is submitted that review can be made only on the specified ground and the Board of Revenue exceeded its jurisdiction to allow the review; thereby committed the mistake. It is further submitted that the order of review touches upon the merits of this case, which could not have been done and maximum limit would confine the initial order of the Revenue Board alone that for when any ground available for review exists.

5. Per contra, learned counsel for the respondent opposes the argument and submits that the order is well merited, which do not call for any interference.

6. Perused the judgment, records and orders of the Court. Primary order which is passed under review dated 30.03.2016 is examined. The order shows that while exercising the power of review, the Board of Revenue has touched upon the merits of the case. Review petition can be allowed only on the limited grounds which are existing in the Code of Civil Procedure. There

is nothing on record that certain evidence after the due diligence was not within the knowledge of the petitioners or could not be produced before the authority or some action of any mistake or error apparent on the face of record exists, which requires the power review to be exercised; instead the order impugned would show that it went upon to go into merits of this case and no whisper of the ground which warrants the review to be considered.

7. Further like nature of the ratio was considered in case of ***Banarsi Dass Bhanot v. Devi Shankar & Others*** reported in ***1966 MPLJ 1092*** wherein the ratio has been laid down that without hearing the parties on merits, while adjudicating the review petition, the Court cannot go into merits of case. Therefore, in the case in hand, the power of review can only be confined to order dated 19.03.2013. Thereby, the original order passed by the Collector on merits could not have been set aside. The ratio of the judgment in the aforesaid case supra, the relevant para 8 is reproduced herein.

> "8. The impugned order also suffers from another infirmity, namely, that it was passed without hearing the parties on merits. The various stages through which an application for review passes are now well-known. The several stages of procedure in a review petition were pointed out by Jenkis C.J. in Vadilal v. Fulchand, 30 ILR (Bom) 56 and also by Drake-Brockman, J.C. in Bhawani Prasad v. Laxmibai, 1919 AIR (Nag) 78. If a review petition is not rejected summarily at the first hearing, then the Court grants a rule calling on the other side to show cause why the review should not be granted. The rule may then be discharged or made absolute after hearing the parties. If it is made absolute, the case is re heard on merits. A decision under review is not and cannot be set aside or modified unless and until the rule is made absolute and the parties are heard on the merits of the case. This procedure was not followed by the Government in allowing Devi Shankar's review petition. As is abundantly clear from the impugned order, the earlier order of the Government granting the

quarry-lease to the petitioner was set aside without hearing the parties on merits."

8. Further Hon'ble the Apex Court in ***State of West Bengal and others Vs. Kamal Sengupta and another (2008) 8 SCC 612*** held in para 22 that mistake or error apparent signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC.

9. Consequently, the order impugned dated 30.03.2016 suffers with infirmity and is liable to be set aside. Accordingly, the same is set aside. The Board of Revenue is directed to hear the parties afresh on the application for review. The parties shall appear before the Board of Revenue on 22nd October, 2019.

10. In view of the above, all the petitions are allowed to the above extent.

Sd/-
Goutam Bhaduri
Judge

ashok