NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 25 of 2019

- M/s Chhattisgarh State Industrial Development Corporation Ltd. Commercial Comlex, Jeevan Beema Marg, Pandari, Raipur, Chhattisgarh..........(Pet./Res. In Tax Case No. 138/2016).

---- Petitioner

Versus

- Commissioner, Central Excise, Customs And Service Tax, Raipur, Chhattisgarh..........(Res/App. In Tax Case No. 138/2016).

---- Respondent

Application for review of the Order dated 09.08.2018

passed in

TAXC No.138/2016

By Circular

in Chamber

Hon'ble Justice Shri Prashant Kumar Mishra &

Hon'ble Justice Shri Ram Prasanna Sharma

11/03/2019

1. **I.A. No.1**

   This is an application for condonation of delay in filing review petition.

2. For the reasons mentioned in the application, the same is

allowed and the delay in filing the review petition is condoned.

3. The matter is taken up for consideration in the chamber under provisions of sub-rule (2) of Rule 90 under Chapter VI of the High Court of Chhattisgarh Rules, 2007.

4. The Review-petitioner (in short the petitioner), who is the respondent in TAXC No.138 of 2016, seeks review order dated 09.08.2018 on the ground that the C.B.E. & C. circular No.89/7/2006 dated 18.12.2006 clarifies that the activities performed by the corporation may determine, regard sovereign/public authority under the provisions of law are in nature of statutory obligations which does not come under the taxable service and therefore, no service tax is leviable on such activity.

5. On going through the record, it is evident that the order passed by this Court in TAXC No.138/2016 after appreciating all the facts and circumstances of the case in its true perspective and also by placing reliance upon various decisions rendered by the Supreme Court in several cases.

6. On consideration of the above-stated grounds, which are in the nature of taking liberty to re-argue the case are unsustainable in the eyes of law. The petitioner cannot be

allowed to commit a volte-face and take up new pleas in review petition.

7. There is no other ground pointed out by the petitioner showing any manifest error on the record and has not further brought into the notice, any new facts, which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. Even in exercise of review jurisdiction by the High Court under Article 226 of the constitution, the petitioner has not produced any ground for review.

8. It appears that the petitioner by presentation of this review petition seeks an opportunity to argue the entire case afresh on merits under the garb of the review petition, which is not permissible and tenable in law.

9. It is well settled principle of law that under the garb of review petition, the petitioner should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is not sustainable in law. (See: Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary, AIR 1995 SC 455. Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650, Ajit Kumar

Rath v. State of Orissa and others, AIR 2000 SC 85, Government of T.N. & Others v. M. Ananchu Asari and others, (2005) 2 SCC 332, and Kerla State Electricity Board v. Hitech Electrothemicsm & Hydropower Ltd. And others, (2005) 6 SCC 651.

10. As a sequel, the review petition, *sans substratum* is liable to be and is hereby dismissed.

Sd/-	Sd/-
Prashant Kumar Mishra	Ram Prasanna Sharma
Judge	Judge

Ankit