103

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RA-CW No. 479 of 2019 in
CWP No. 4648 of 2019
Date of Decision: 29.11.2019

M/s. Ajay Hardware Industries Pvt. Ltd.,
551-554, Khandsa Road, Near Khandsa Village,
Gurgaon, Haryana

.....Petitioner

Versus

Union of India and others

.......Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Sourabh Goel, Sr. Standing Counsel, CBIC
for the **applicant**-respondent No. 1 / UOI.

****

JASWANT SINGH, J. (ORAL)

Present Review Application under Order XLVII Rule 1 of the Code of Civil Procedure has been filed by the **applicant-Union of India (respondent No. 1)**, seeking review of the final judgment and order dated 04.11.2019 **(Annexure A-1)** passed by this Court, whereby the afore-mentioned writ petition alongwith a bunch of connected petitions was allowed and the respondents were directed to permit the petitioner to file Form 'TRAN-1' by the extended date.

The primary thrust of the grounds **/** argument raised is that the judgment passed by the Hon'ble Gujarat High Court, upon which, reliance has been placed by this Court in its judgment dated 04.11.2019 **(A-1),** itself has been taken up in review, and while issuing notice, the execution **/** implementations of the directions have been stayed by the Gujarat High Court.

After hearing counsel for the applicant-UOI in detail, and perusing the record, we find no ground to review our judgment dated 04.11.2019 **(A-1)** for the reasons that:-

(i) there is an effort to re-agitate the matter, which is not within the laid down parameters of seeking a review;

(ii) this Court in para-9 of the judgment dated 04.11.2019 **(A-1)** has recorded its findings, which, for ready reference, read as under:-

> *" **9.** Having scrutinized record of the case(s) and heard arguments of both sides, we find that on the introduction of GST regime, Government granted opportunity to registered persons to carry forward unutilized credit of duties/taxes paid under different erstwhile taxing statues. GST is an electronic based tax regime and most of people of India are not well conversant with electronic mechanism. Most of us are not able to load simple forms electronically whereas there were a number of steps and columns in TRAN-1 forms thus possibility of mistake cannot be ruled out. Various reasons assigned by Petitioners seem to be plausible and we find ourselves in consonance with the argument of Petitioners that unutilized credit arising on account of duty/tax paid under erstwhile Acts is vested right which cannot be taken away on procedural or technical grounds. The Petitioners who were registered under Central Excise Act or VAT Act must be filing their returns and it is one of the requirements of Section 140 of CGST Act, 2017 to carry forward unutilized credit.* ***The Respondent authorities were having complete record of already registered persons and at***

> ***present they are free to verify fact and figures of any Petitioner thus inspite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.*** *"*

No doubt, the aforesaid findings are observed to be fortified by the view taken by the Hon'ble Gujarat High Court in the judgment, which is under review therein, however, we had also proceeded to rely on the similar view expressed by the Hon'ble Delhi High Court, as recorded in para-11 of our judgment dated 04.11.2019 **(A-1)**. Merely, because the implementation has been stayed in Review by the Hon'ble Gujarat High Court, in our considered opinion, is no ground to review our judgment, however, in our view, the appropriate remedy for the Revenue would be to approach the Hon'ble Supreme Court by filing an appeal.

Review Application is dismissed.

(JASWANT SINGH)
JUDGE

November 29, 2019 **(LALIT BATRA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*