NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 21/01/2020

Judgment Delivered on : 11/02/2020

Review Petition 260 of 2019

{Arising out of judgment dated 20.11.2019 in Writ Petition (T) No. 80 of 2019 by the learned Division Bench}

1. M/s Mangal Commercial Pvt. Ltd, a Company incorporated under, the Companies Act, 1956 having its registered office at 205, 2nd Floor, Block 9, D.B. City Corporate Park Near Dainik Bhaskar, Press, Rajbandha, Maidan, Raipur, Chhattisgarh-492001, and Place of Business At 806 and 807, 8th Floor, Babylon Tower, VIP Chowk Raipur, Chhattisgarh Represented Through Its Director Shri Pankaj Agrawal S/o Shri Pramod Agrawal Aged About 40years

2. Shri Pankaj Agrawal, Director and Shareholder of M/s Mangal Commercial Pvt. Ltd. Aged About 40 Years, R/o Flat No. 107, Block-A, Wing- C, Sristhi Palazzo, St. Xaviers School Road, Near Akansha School , Avanti Vihar, Post Office and Police Station- Telibandha, Town and District Raipur Chhattisgarh, who is a citizen of India.

3. Smt. Suman Agrawal W/o Sri Pankaj Agrawal Aged About 36 Years Director and Shareholder of M/s Mangal Commercial Pvt. Ltd. Resident of Flat No. 107, Block -A, Wing- C, Sristhi Palazzo, St. Xaviers School Road, Near Akansha School, Avanti Vihar, Post Office and Police Station- Telibandha, Town and District Raipur Chhattisgarh, who is a citizen of India.

---- Petitioners

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, PO / P S- North Block , Parliament Street, New Delhi- 110001.

2. Central Board of Indirect Taxes and Customs (Formerly Known As Central Board of Excise And Customs), Govt of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001

3. The Commissioner, Central Board of Indirect Taxes And Customs (Formerly known as Central Board of Excise And Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi 110001

4. The Goods and Service Tax Council (GST Council), through the Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001.

5. Directorate General of Goods and Service Tax Intelligence, West Block -8, Wing -VI, R. K.Puram, New Delhi- 110066.

6. Senior Intelligence Officer, Directorate General of Goods and Service Tax Intelligence , Regional Unit, Jamshedpur, 2nd 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur , Jharkhand- 831001
7. Superintendent (Prev.) O/o The Principal Commissioner, Central Goods, And Service Tax And Central Excise Central GST Building Dhamtari, Road, Tikrapara, Raipur, Chhattisgarh

---- Respondents

Review Petition No. 258 of 2019

{Arising out of judgment dated 20.11.2019 in Writ Petition (T) No. 77 of 2019 by the learned Division Bench}

Sri Ravi Agarwal S/o Late Sri Om Prakash Gupta, aged about 38 years who is a citizen of India, Proprietor of M/s Yamuna Trading Corporation, a proprietorship firm of Hindu Undivided Family, having its Registered Office at 2nd Floor, Office No. 26. Saurya Arade, Samvat Sikhar, Rajbandha Maidan, Raipur, Chhattisgarh. 492001 and Resident of Flat No. 28/601, Ashoka Ratan, Vidhan Sabha Road, Post Office and Police Station Sankar Nagar, Town and District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Union of India Secretary, through the Secretary, Department of Revenue, Ministry Of Finance, Post Office / Police Station North Block, Parliament Street, New Delhi - 110001.
2. Central Board of Indirect Taxes and Customs, (Formerly known as Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi - 110001.
3. The Commissioner, Central Board of Indirect Taxes and Customs (Formerly known as Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi - 110001.
4. The Goods and Service Tax Council (GST Council), Through The Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi - 110001.
5. Directorate General of Goods and Service Tax Intelligence, West Block - 8, Wing - VI, R. K. Puram, New Delhi - 110066.
6. Senior Intelligence Officer Directorate General of Goods and Service Tax Intelligence, Regional Unit, Jamshedpur, 2nd / 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur, Jharkhand - 831001.

---- Respondents

<u>Review Petition No. 31 of 2020</u>

{Arising out of judgment dated 20.11.2019 in Writ Petition (T) No. 78 of 2019 by the learned Division Bench}

Sri Pankaj Agarwal S/o Sri Pramod Agarwal Aged About 40 Years who is a citizen of India, Sole Proprietor of M/s SKP & Sons, Having Its Registered Office At Sidara Complex, Shop No. 10, Behind Axis Bank, Sipat Road, Vasant Vihar, Bilaspur, Chhattisgarh- 495006 and R/o Flat No. 107, Block -A, Wing- C, Sristhi Palazzo, St. Xaviers School Road, Near Akansha School, Avanti Vihar, Post Office and Police Station- Telibandha , Town and District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Union of India Through The Secretary, Department of Revenue, Ministry of Finance, PO / PS- North Block, Parliament Street, New Delhi- 110001.
2. Central Board of Indirect Taxes and Customs (Formerly known as Central Board of Excise and Customs), Govt of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001.
3. The Commissioner Central Board of Indirect Taxes and Customs (Formerly known as Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi 110001.
4. The Goods and Service Tax Council (GST Council) Through the Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001
5. Directorate General of Goods and Service Tax Intelligence West Block -8, Wing -VI, RK Puram, New Delhi- 110066.
6. Senior Intelligence Officer, Directorate General of Goods and Service Tax Intelligence, Regional Unit, Jamshedpur, 2nd / 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur, Jharkhand- 831001.

---- Respondents

<u>Review Petition No. 30 of 2020</u>

{Arising out of judgment dated 20.11.2019 in Writ Petition (T) No. 79 of 2019 by the learned Division Bench}

Sri Ravi Agarwal S/o Late Shri Om Prakash Gupta aged About 38 years who is a citizen of India, Sole Proprietor of M/s Ganga Metals, having its Registered Office at 2nd Floor, Office No. 26. Saurya Arade, Samvat Sikhar, Rajbandha Maidan, Raipur, Chhattisgarh. 492001 and Resident of Flat No. 28/601, Ashoka Ratan, Vidhan Sabha Road, Post Office And Police Station Sankar Nagar, Town and District- Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Union of India Secretary, Through the Secretary, Department of Revenue, Ministry of Finance, Post Office / Police Station North Block, Parliament Street, New Delhi - 110001.
2. Central Board of Indirect Taxes and Customs (Formerly known as Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001
3. The Commissioner Central Board of Indirect Taxes and Customs (Formerly known as Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi - 110001.
4. The Goods and Service Tax Council (GST Council), through The Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi - 110001.
5. Directorate General of Goods and Service Tax Intelligence West Block - 8, Wing - VI, R. K. Puram, New Delhi - 110066.
6. Senior Intelligence Officer Directorate General of Goods And Service Tax Intelligence, Regional Unit, Jamshedpur, 2nd / 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur, Jharkhand - 831001.

---- Respondents

Review Petition No. 32 of 2020

{Arising out of judgment dated 20.11.2019 in Writ Petition (T) No. 81 of 2019 by the learned Division Bench}

1. M/s Salasar Tradeco Pvt. Ltd. A Company Incorporated Under, The Companies Act, 1956 Having Its Registered Office At Salasar House, Behind Saran Cycle Industries Seepat Road, Surya Vihar, Bilaspur, Chhattisgarh -492001, And Place Of Business at 806 And 807, 8th Floor, Babylon Tower, VIP Chowk Raipur, Chhattisgarh Represented through its Director Shri Pradeep Agrawal S/o Shri Pramod Agrawal Aged About 42 years
2. Sri Pradeep Agrawal Aged About 42 Years Director and Sharehloder of M/s Salasar Tradeco Pvt. Ltd. R/o Salasar House, Behind Saran Cycle Industries Seepat Road, Post Office and Police Station Lingiyadih, Town and District Bilaspur Chhattisgarh who is a citizen of India.
3. Sri Pramod Agarwal Aged About 62 Years Director and Sharesholder of M/s Salasar Tradeco Pvt Ltd. R/o Salasar House, Behind Saran Cycle Industries Seepat Road, Post Office And Police Station Lingiyadih, Town and District Bilaspur Chhattisgarh. who is a citizen of India.

---- Petitioners

Versus

1. Union of India Through The Secretary, Department of Revenue, Ministry of Finance, PO / P S- North Block , Parliament Street, New Delhi- 110001.
2. Central Board of Indirect Taxes and Customs (Formerly known as Central Board of Excise And Customs), Govt of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001.
3. The Commissioner, Central Board of Indirect Taxes and Customs (Formerly Known As Central Board of Excise and Customs), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi 110001.
4. The Goods and Service Tax Council (GST Council) Through the Ld. Secretary, Office of the GST Council Secretariat, 5th Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001.
5. Directorate General of Goods and Service Tax Intelligence West Block -8, Wing -VI, R. K.Puram, New Delhi- 110066.
6. Senior Intelligence Officer, Directorate General of Goods And Service Tax Intelligence, Regional Unit, Jamshedpur, 2nd / 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakhchi, Jamshedpur , Jharkhand- 831001.

---- Respondents

For Review Petitioners	:	Shri Kartik Kurmy, Shri Dharmesh Shrivastava and Shri Rajesh Sharma, Advocates for the Appellant.
For Respondent/Union of India	:	Shri B. Gopa Kumar, Assistant Solicitor General
For Respondent-Central Board of Indirect Taxes and Customs	:	Shri Maneesh Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. The Writ Petitioners are again before this Court, contending that there are some inadvertent errors in the common judgment dated 20.11.2019 passed by this Court in Writ Petition (T) No. 77 of 2019 and connected cases, which necessitates review.

2. The contention of the Petitioners is that though the matter was heard exhaustively on different dates, some of the issues and vital submissions made in this regard were inadvertently lost sight of while passing this judgment. The specific case is that despite raising 'three fold' challenge, as to the sustainability of Annexure P/2 Gazette Notification dated 01.07.2017 for not having been issued by the Central Government, but the Central Board of Indirect Taxes and Customs; the Annexure P/1 Circular dated 05.07.2017 in appointing the 'Proper Officers' without any notification in the gazette as envisaged under Section 167 read with Section 168 of the Central Goods and Services Tax Act, 2017 (*hereinafter referred to as 'the CGST Act*') and also as to the plurality of (several) Proper Officers appointed all throughout the territory of India, in violation of the scheme of the statute and also the Constitution of India, this Court has unfortunately omitted to consider the challenge in respect of 'Annexure P/1 Circular' dated 05.07.2017 and the 'plurality of Proper Officers' which requires interference and hence, the prayer to have the writ petitions heard afresh.

3. Heard Shri Kartik Kurmy, the learned counsel appearing for the Review Petitioners, Shri B. Gopa Kumar, the learned Assistant Solicitor General for the Union of India and Shri Maneesh Sharma, the learned Standing Counsel representing the Central Board of Indirect Taxes & Customs, at length.

4. The learned counsel for the Review Petitioner points out that the case of the writ petitioners has been correctly noted by this Court as observed in paragraph 2 and 15 of the judgment. But coming to the subsequent portion of the judgment, there is a mistake in respect of the observations in paragraphs 12 and 20 leading to dismissal of the writ petitions, which is not correct as per the materials brought on record. The learned counsel submits that the challenge raised by the writ petitioner

against Annexure P/1 Circular was an independent challenge and it was not an off-shoot of the challenge against Annexure P/2 Notification dated 01.07.2017. By virtue of the corrigendum Notification dated 29.07.2019 issued by the Central Government, the mistake appearing in Annexure P/2 Notification as if it were issued by the Board has been corrected as having issued by the Central Government; answering the said question against the Writ/Review Petitioners. But still, the challenge against Annexure P/1 Circular was an independent one and hence the learned counsel reiterated the submissions as pleaded in the Writ Petitions/Review Petitions and also as pointed out earlier.

5. The contention of the Review Petitioners is that appointment of Proper Officers could have been effected only by way of notification i.e. notification in the official gazette and admittedly since Annexure P/1 Circular is not a gazette notification, which is a mandatory requirement in view of Section 167 read with Section 168 of the CGST Act, it is liable to be set aside. Similarly, it is pointed out that the statute does not contemplate appointment of several persons as Proper Officers defined under Section 2(91) of the CGST Act and the scheme of the Act is only that there be 'one assessee', 'one subject matter' and 'one Proper Officer'. This is stated as discernible from the course of action to be pursued as mentioned under Section 6(2)(b) of the CGST Act as well, which prohibits the proper officer under the CGST Act to conduct parallel proceedings, if proceedings have already been initiated by a Proper Officer under the State GST Act or under the UT GST Act appointed u/s 6(1) of the CGST Act. Because of appointment of Proper Officers throughout the country, the Petitioners are made to appear and answer before all such authorities at different places, which in fact amounts to harassment and it adversely affects the rights and interest in pursuing the business, more so when the statute requires registration only at

a place of supply i.e. in the State of Chhattisgarh where registration has been obtained. It is in the said circumstance, that the proceedings issued by the officer designated as 'Proper Officers' in the State of Jharkhand were sought to be challenged by filing writ petitions. While passing the common judgment, after answering the question with regard to the challenge against Annexure P/2 Notification dated 01.07.2017 against the writ petitioners, it is stated that this Court did not decide the issue with regard to the challenge in respect of the Annexure P/1 Circular dated 05.07.2017 and the contention with regard to the multiple Proper Officers appointed by the Respondents all throughout the country. It is pointed out that, though the Respondents can appoint several Central Tax Officers, they cannot appoint so many Proper Officers, that too without any Gazette notification in terms of Section 167 read with section 168 of the CGST Act. The learned counsel submits that the grievance of the Review Petitioners is not in respect of appointment of Central Tax Officers vide Annexure P/2, but they are assuming the power as Proper Officers, that too, throughout the India, which is quite unconstitutional.

6. Shri B. Gopa Kumar, the learned Assistant Solicitor General submits that the review petitions are neither maintainable in law nor in facts. The grounds raised by the Review Petitioners are only suggestive for a re-hearing, which is not possible while exercising the power of review. It is stated that there is no error apparent on the face of record which warrants interference. The legal and factual aspects have been meticulously answered by the Respondents in their reply filed in answer to the contents of the writ petition and was argued accordingly. It was clearly pointed out that notification in the Gazette was only required for the purpose of "delegation" and not for appointment of Proper Officers as discernible from Section 167 of the CGST Act. Section 167 sought to be relied on by the Petitioners only provides that, if the power is to be delegated to anybody from outside i.e. who

is having no power to act under the CGST Act, it has to be given only by way of notification, subject to conditions, if any. Hence, Section 167 of the CGST Act is not at all attracted with regard to the appointment of Proper Officers. Annexure P/1 Circular is only an assignment of the functions and not a delegation of power to somebody who is not an authority or officer who can exercise the power/authority under the CGST Act and hence within the scope of Section 168 of the CGST Act as well.

7. Shri Maneesh Sharma, the learned counsel appearing for the Respondent-Central Board of Indirect Taxes and Customs, made similar submissions as already advanced when the writ petitions were heard (as pleaded in the return filed) and submits that only if an outside person is appointed as a Proper Officer, then alone will a notification become necessary for delegation of the power in terms of Section 167 of the CGST Act. Proper Officers can be identified from the Central Tax Officers and as such, assigning of the functions of Proper Officers as per Annexure P/1 Circular to act as Proper Officer to those who are already designated as 'Central Tax Officers' as per proper notification published in the Gazette vide Annexure P/2 dated 01.07.2017, read with the Corrigendum notification dated 29.07.2019, clearly satisfy the legal requirements The necessity to appoint, identify and engage Proper Officers in different parts of the country is asserted by both the learned Assistant Solicitor General and the learned counsel for the Board; referring to the pleadings already brought on record and considered by this Court when the writ petitioners were heard and disposed of. Issuance of fake bills showing tax details and subsequently claiming the tax benefit leading to loss of crores of rupees to the Department, because of the deeds and misdeeds pursued by the Petitioners are referred to, adding that the scope of Section 6(2)(b) of the CGST Act is only with regard to the assessment and not with regard to the steps to be pursued by

the Proper Officers in different locations, wherever the mischief is committed or perpetuated.

8. There is no dispute with regard to the nature of challenge raised by the Review Petitioners with reference to Annexure P/1 Circular dated 05.07.2017, Annexure P/2 Notification dated 01.07.2017 and the plurality of appointment of Proper Officers throughout the territory of the country. The primary contention was with reference to the competency/authority of the Board to have issued Annexure P/2 Notification as per the relevant provisions of the CGST Act, since such power is exclusively vested with the Central Government. Insofar as there was no notification by the Central Government, Annexure P/2 Notification was stated as bad in all respects.

9. As noted in paragraph 4 of the judgment, the matter was heard on different dates including on 16.10.2019. After the hearing held on 16.10.2019, they were taken up reserving judgment. In the course of working up the position, this Court came across a 'Corrigendum Notification dated 29.07.2019' published in the official Gazette (as noted in paragraph 21 of the judgment) whereby the mistake occurred in Annexure P/2 Notification dated 01.07.2017 (to the effect that the said Notification was issued by the Board) was corrected as issued 'by the Government'. As noted in paragraph 22 of the judgment, since the Corrigendum Notification dated 29.07.2019 was definitely to cut the roots of the case filed by the Petitioners, this Court found it appropriate to cause the matter to be listed for consideration again. It was accordingly, that the cases were listed on 22.10.2019 and the parties were heard again, as specifically noted in paragraph 22 of the judgment. Further opportunity was given to both the sides to verify the position and to address the Court on merits and to make appropriate submissions after calling for the remarks/explanations from both the sides, listing the cases on 06.11.2019. On that day, the learned counsel for the Writ Petitioners expressed sincere

regrets as to the serious lapses in not bringing the Corrigendum Notification issued on 29.07.2019 to the notice of this Court. So was done by the learned Assistant Solicitor General and also by the Standing Counsel for the Respondent-Board. It was based on the apology tendered and the regret expressed from both the sides, as to the omission in pointing out the correct factual position when the matter was heard on the previous occasion, that the arguments were concluded. No other arguments were advanced by the Review Petitioners when the case was listed and heard on 22.10.2019 or on the subsequent date *i.e.* 06.11.2019 with reference to the challenge raised against Annexure P/1 Circular or as to the appointment of multiple/plurality of officers. It was taking stock of the pleadings and proceedings and the relevant provisions of law, that the matter was finalised by this Court in the manner as discernible from paragraphs 24 and 25 of the judgment, after repelling the challenges made by the Writ Petitioners. It has been specifically observed in the 'penultimate sentence of paragraph 24' that the version of the Respondents **on all the points raised** including as to the necessity to appoint Proper Officers conferring power **throughout the territory of India** for the specific purposes made out, stands upheld. In the last sentence of the very same paragraph, this Court further made it clear that the contention/challenge raised by the Writ Petitioners, to the contrary, stands repelled. Thus, it is explicitly clear that the contention raised by the Respondents that Section 167 of the CGST Act was not attracted to the case in hand and hence, no Gazette notification was necessary insofar as Annexure P/1 Circular was issued; came to be upheld. Similarly, the contention of the Petitioners, to the contrary, having been repelled, it is not correct or proper for the Review Petitioners to contend that there is some omission on the part of this Court in considering the challenge raised against Annexure P/1 Circular dated 05.07.2017. The contention raised by the Respondents as to the circumstances under which the appointment of Proper

Officers in different parts of the country is necessitated; the contention that the scope and applicability of Section 6 of the CGST Act is more with reference to 'assessment', which is not the purpose of appointing Proper Officers in different parts of the country conferring power to detect mischief/foul-play (wherever that is committed by unscrupulous assessees) and the specific contention that if at all there is initiation of simultaneous proceedings by two different officers in respect of the same cause of action, it will always be open for the assessee to bring it to the notice of the officer who has taken parallel action to avoid parallel proceedings, have been upheld. Since this Court has upheld that above contentions of the Respondents, repelling the contentions raised by the Writ Petitioners to the contrary, as mentioned in paragraph 24 of the judgment, there is no error apparent on the face of record, to invoke the power of review.

10. The Review Petitioners have never pleaded in the review petitions that they had made any further contentions with reference to the initial challenge raised against Annexure P/1 Circular or as to the plurality of the Proper Officers appointed throughout the country when the cases were listed and heard by this Court either on 22.10.2019 or on 06.11.2019. In fact, they were only seeking for apology of the Court, expressing regrets for not brining the correct position (with reference to the Corrigendum Notification dated 29.07.2019) to the notice of this Court and to drop further action, if any.

11. It is quite evident that the attempt of the Review Petitioners is only to have a "re-hearing" of the matter, which is not permissible in exercise of the power of review. The 'review power' can be invoked only when there is any 'error apparent on the face of record' and it is not a substitute for appeal as made clear by the Apex Court in ***Meera Bhanja v. Nirmala Kumari Choudhury;*** {AIR 1995 SC 455}. The remedy of the Review Petitioner, if aggrieved, is something else. We also find support from the rulings rendered

by the Apex Court in ***Lily Thomas v. Union of India****;* {AIR 2000 SC 1650}, ***Ajit Kumar Rath v. State Of Orissa***; {AIR 2000 SC 85}, ***Government of T.N. & Others v. Ananchu Asari & Others****;* {(2005) 2 SCC 332}.

12. As noted already, because of non-bringing of the 'Corrigendum Notification' dated 29.07.2019 to the notice of this Court and in making incorrect submissions, much of the Court's time has already been wasted by the Petitioners, which could have been utilised for other fruitful purposes. Now, the Review Petitioners virtually want to have a 're-hearing'. Such course and conduct of the Review Petitioners cannot but be deprecated. No interference is possible and in the said circumstance, the review petitions are dismissed. We reluctantly refrain from imposing any cost upon the Review Petitioners.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE

Amit