IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MS. JUSTICE R.N.MANJULA

REV.APLW.No.31/2022

M/s.Ambadi Enterprises Limited
[Formerly Ambadi Trading Company Limited]
rep.by its Director Mr.M.M.Venkatachalam
NO.43, Moor Street, Parry House, 5th Floor
Chennai 600 001. .. Appellant

Verus

1.The Department of Revenue
Ministry of Finance
rep.by its Joint Secretary,
14, Hudco Vishala Building "B" Wing
6th Floor, Bhikaji Cama Place
New Delhi 110 066.

2.The Commissioner of Central Excise,
No.1, Foulks Compound, Anaimedu
Salem 636 001. .. Respondents

Prayer:- Original Side Appeal filed under Section 114 read with Order 47 Rule 1 of CPC to review the order dated 01.02.2021 passed in WA.No.1136/2020.

For Appellant : Mr.K.G.Jayasuriya for

Mr.S.Muthuvenkataraman

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)This review application is filed to set aside the judgment in WA.No.1136/2020 dated 01.02.2021.

(2)Brief facts that are necessary for the disposal of this review application are as follows:

(3)The review petitioner is the Exporter of cloth fabric. It is the contention of the petitioner that the petitioner was confined to financing the processing which was done with an expected limited margin. It is the further case of the petitioner that the processed fabric is bought from third party processors and exported. While engaged in such business, the petitioner availed Central Excise rebate of duty paid by the processor which was claimed on the basis of export. However, the officers of the respondent attached to Coimbatore office, visited the processor by name M/s.Erode Rana Textile Processors Limited on 06.09.2010 to verify the correctness as to whether they had accounted for the entire production properly in the statutory records. It is at that time, several documents were filed and statements were recorded. The review petitioner was one of the Companies which has paid processing charges. As a result of inspection and materials, the respondent found that the rebate originally sanctioned and disbursed to the petitioner was in excess of the amount which could be arrived at on the basis of records. Hence, a show cause notice was issued to the review petitioner, why the excess amount paid to the review petitioner should not be recovered along with equal amount towards penalty. Following the reply, the demand as per the show cause notice was confirmed. It is admitted that the processor namely, M/s.Erode Rana Textiles and Processors, has not challenged the proceedings and against the action initiated against the petitioner for recovery of the excess amount along with penalty.

(4)After giving an opportunity to the petitioner, an order dated 20.09.2006 was passed by the Original Authority confirming the proposal as per the show cause notice. The said order was challenged by the petitioner by filing an appeal before the Commissioner of Central Excise [Appeals], Salem. The said appeal was allowed by order dated 26.03.2007 and the matter was remanded to the Original Authority with a direction to supply the documents which are relied upon by the authority. In case the documents are voluminous, the Appellate Authority observed that the petitioner should be given opportunity to peruse the documents.

(5)Pursuant to the order of remand, the Original Authority namely, the Additional Commissioner of Central Excise, Salem, passed an order on 22.09.2008 once again confirming the demand raised in the show cause notice. The further appeal was dismissed on 28.05.2010. Challenging the said order, the petitioner filed a revision before the Central Government under Section 35EE and the said revision was also dismissed by order dated 30.04.2012. It is to be noted that the petitioner also challenged the original order of remand and the order of remand was also confirmed. As against the order dated 28.05.2010 dismissing the appeal preferred by the revision petitioner, the petitioner filed WP.No.15517/2012.

(6)The petitioner raised a ground in the writ petition that the order impugned is in violation of principles of natural justice as the documents which were relied upon by the Original Authority were not furnished to the petitioner. It was further contended that demand towards penalty has also been confirmed without considering that there was no proposal in the show cause notice to impose penalty under Section 11AC of the Act.

(7)Learned counsel also relied upon the judgment in the case of ***Adani Enterprises Vs. Union of India [2015 [324] ELT 461 [Mad]]*** wherein similar orders were quashed on the ground of violation of principles of natural justice. The writ petition was dismissed after elaborately considering all the submissions.

(8)In the present case, the claim for rebate was made by the petitioner and the petitioner received the amount for the period from December 1998 to March 2000. After the disbursement of the rebate which was calculated on the basis of export particulars, the respondent subsequently, verified the correctness of records to justify their claim towards rebate. When it was found on the basis of documents that the amount towards rebate was claimed in excess by false records, the person who has submitted the original records to prove the actual export did not challenge the proceedings at any stage. The only contention raised by the petitioner that the impugned proceedings was in violation of principles of natural justice was negatived by all the authorities on the ground that the materials required by the petitioner are not relevant after furnishing a few documents which according to them, are relevant.

(9)The learned Single Judge and this Court in the writ appeal came to the conclusion that the decision of the statutory authorities justifying the demand by confirming the proposal as per the show cause notice, is proper and that the orders impugned in the writ petition is after giving sufficient opportunity to the petitioner. The authorities have also recorded that all the relevant documents were furnished to the petitioner and other documents demanded by the petitioner are not relevant. Even after remand, the Original Authority has rendered specific findings that the documents which are placed by the revenue, are the documents which are relevant and all other documents which are requested to be supplied to the petitioner, are held to be irrelevant. The demand was on the basis of actual export by the concerned processors who never opposed such assessment. The petitioner who received the amount on the basis of the records produced by the processors, cannot complain that he was not given sufficient opportunity when the petitioner was given opportunity to peruse records and was given relevant documents. The statutory authorities as well as the learned Single Judge and this Court in writ appeal, have uniformly held that the order impugned is not vitiated for violation of principles of natural justice. It is specifically held that some of the documents though were not supplied to the petitioner, those documents are not relevant and therefore, no prejudice is caused to the petitioner.

(10)In paragraph No.11, this Court has held as follows:-

> *"11.Considering the factual finding which has been rendered by the hierarchy of authorities as well as the learned writ Court, we find that absolutely no substance in the argument advanced before us on behalf of the appellant. The facts and circumstances clearlly show that there has been no violation of principles of natural justice and the appellant has been harping upon certain documents which are of no impact on their case and in fact, the founder, namely, M/s.ERTP themselves have accepted the suppression and have not challenged the action initiated by*

the Department against them. Thus, we find that there is absolutely no ground to interfere with the order passed by the learned Single Bench."

(11)Again the only other contention that there was no proposal for levy of penalty under Section 11AC was also considered by the Division Bench after holding that the said contention is factually incorrect since the levy of penalty is specifically mentioned in the show cause notice as well as in the order in original. Further, this Court also held that the petitioner did not raise this contention in the year 2006 when proceedings were originally initiated against him and therefore, the contention raised in the writ appeal cannot be countenanced.

(12)Despite the specific factual findings by this Court in the writ appeal, the petitioner filed the review application challenging the correctness of the findings not on the ground "error apparent" but on the ground that the decision is erroneous. Even though the judgment in the case of ***Adani Enterprises case [cited supra]***, is relied upon by the petitioner, it is seen that the facts in that case is slightly different where there is a finding regarding violation of principles of natural justice. Since this Court has specifically given a finding that the failure to furnish certain documents will not vitiate the proceedings as such documents will have no impact on the case of the petitioner, this Court finds no valid ground is raised referring to any document which will have an impact on the findings of the authority.

(13)The scope of review under Order 47 Rule 1 of CPC has been considered in a plethora of judgments and it has been consistently held that the power of review cannot be compared with the appellate power which only enable the superior Court to correct. It is well settled that a review cannot be entertained to rehear the proceedings. Therefore, it has been consistently held that a review cannot be treated as an appeal in disguise.

(14)A judgment can be reviewed only if there is a mistake or an error apparent on the face of records. An error apparent must be one which is manifest on the face of record. If an error alleged has to be detected by a process of reasoning, a review application cannot be entertained. The Courts have always drawn a distinction between cases where error is apparent and an erroneous decision. In a review application it is not open to Court to reappreciate the evidence and reach a different conclusion even if a different conclusion is possible. From the scope of review as reiterated in several judgments, this Court finds no merit in this review application.

(15)In the result, the review application stands **dismissed.** No costs.

[SSSRJ] [RNMJ]

26.09.2024

AP
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To

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