5 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

2024:PHHC:038045-DB
RA-CW-392-2023
IN CWP-2782-2023
Date of Decision: 15.03.2024

T.R.B. International Ludhiana …Petitioner

Vs.

Commissioner of Customs …Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Radhika Suri, Sr. Advocate with
Mr. Navin Bindal, Advocate for the review applicant.

Mr. Saurabh Goel, Sr. Standing Counsel for the respondents.

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SANJEEV PRAKASH SHARMA, J.(Oral)

Application has been filed by the review applicant-petitioner seeking review of order passed by this Court dated 20.10.2023, whereby the writ petition seeking prayer for restraining the respondent from adjudicating show cause notices both dated 28.01.2022 on account of limitation, was dismissed.

2. Learned Sr. Counsel appearing for the review applicant submits that non-consideration of a judgment cited before the Court is a sufficient ground to review of the order. She further submits that the judgment passed in the case of Gautam Spinners v. Commissioner of Customs (Import) New Delhi and another WP(C) No.122/2023, was cited before the Court, wherein, Delhi High Court has taken a view that the judgment passed in the case of M/s Canon India Private Ltd. vs. Commissioner of Customs 2021 SCC Online SC 2000, would have no application in cases where the show cause

notice has been issued by the appropriate authority and not by the Directorate General of Intelligence (DRI). In Canon's case (supra) the Hon'ble Supreme Court vide its judgment dated 09.03.2021, held that the DRI Officer is not the Proper Officer under the Customs Act, 1962, and, therefore, would not come within the definition of Proper Officer as mentioned in Section 28 (9B) of the Customs Act, 1962. Learned counsel submits that while deciding the present writ petition an error apparent on face of record occurred as this Court while dismissing the writ petition held that the extension was rightly granted keeping in view the letter dated 09.12.2022. The letter dated 09.12.2022, granting extension was passed on the basis of verdict of the Hon'ble Supreme Court in Canon's case (supra), whereas in terms of Gautam Spinners' case (supra), the said judgment would have no application and extension could not have been granted on the said basis as in the present case, the show cause notice was not issued by the DRI Officer. Learned counsel relies on (2007) 12 SCC 596, Honda Seil Power Products Ltd. vs. Commissioner of Income Tax, Delhi, in support of her submissions for reviewing the order.

Per contra, learned counsel appearing for the revenue submits that the ground for rejecting the writ petition is essentially for the reasons that the petitioner has deliberately not submitted his reply to the show cause notices issued on 28.01.2022 for ten months although he was supposed to file reply within 30 days. The petitioner had taken dates time and again and postponed the personal hearing also. He attended the first personal hearing on

01.02.2023 and he was made aware about the extension of one year of the case in terms of the order passed by the Chief Commissioner dated 15.12.2022. Learned counsel submits that the order passed on 09.12.2022 was only a letter sent by the Commissioner seeking extension and therein he has referred the case of Canon's (supra), whereas the Chief Commissioner while granting extension on 15.12.2022, has taken into consideration all the circumstances.

We have considered the submissions.

The scope of review is limited to the extent where this Court finds that some error on the face of record has been committed while passing the judgment. The same can also be exercised in cases where there is a jurisdictional error or where there is a non-consideration of a binding decision of the Hon'ble Supreme Court. The reference may be made to the judgment cited at bar in the case of Sanjay Kumar Aggarwal vs. State Tax Officer (1) and another, 2023 SCC OnLine SC 1406. In Sanjay Kumar Aggarwal's case (supra), the Hon'ble Supreme Court held as under:-

> *15. It is very pertinent to note that recently the Constitutional Bench in Beghar Foundation v. Justice K.S. Puttaswamy (Retired), held that even the change in law or subsequent decision/judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.*
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> *16. The gist of the afore-stated decisions is that:-*
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> *(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.*
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> *(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be 'reheard and corrected."

(v) A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which mere looking at the record should strike and it should not require any long drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

The judgment passed in Gautam Spinners' case (supra), although has not been referred to in order passed by this Court which the petitioner seeks review, but we find that in letter dated 09.12.2022, the judgment of the Hon'ble Supreme Court in Canon's case (supra) has been mentioned. A presumption, therefore, can be drawn that the Court while deciding the writ petition originally had taken into consideration the entire law as laid down by the Superior Court. Thus, based on a judgment passed by a Coordinate Bench of another High Court, it is not essential for this Court to view its own order as the judgments passed by Coordinate Benches of various High Courts may have relevance but are not necessary to be followed. A different view can always be taken by each and every High Court in relation with law while deciding the various writ petitions.

In view of the above, we do not devolve upon the question further and accordingly, the review application is dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MANISHA BATRA)
JUDGE

15.03.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No