



C.M.A.No.3000 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 10.03.2025

PRONOUNCED ON : 29.04.2025

CORAM:

**THE HON'BLE MRS.JUSTICE J.NISHA BANU
and
THE HON'BLE MRS.JUSTICE R.KALAIMATHI**

**Rev.Aplc.Nos.33,43,44,45,46,47,48,49,50,51,
52,53,54,55,56,57,58,59 & 60 of 2025**

1) The Commissioner of Customs,
Chennai II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai 600 001

2) The Additional Commissioner of Customs,
Group – I, Chennai II Commissionerate,
Customs House No.60, Rajaji Salai,
Chennai 600 001

3) The Assistant / Deputy Commissioner of Customs,
Group -1, Chennai II Commissionerate,
Customs House No.60, Rajaji Salai,
Chennai 600 001

... Petitioners in all
review applications

Vs.

M/s Isha Exim,
P-586, Block N, New Alipore,
Kolkata, West Bengal 700 053

...Respondent in all
review applications



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COMMON PRAYER: Review Applications filed under Order 47 Rules 1 & 2 read with Section 114 of C.P.C., to review the final judgment dated 06.12.2024 passed in W.A.Nos.1798, 1800, 1802, 1808, 1803, 1146, 1694, 1695, 1796, 2414, 2945, 2933, 2934, 2937, 2938, 2939, 2940, 2942 & 2944 of 2024.

For Review Petitioners : Mr.AR.L.Sundaresan
Addl. Solicitor General of India
For Mr.K.Umesh Rao,
Sr.Standing Counsel

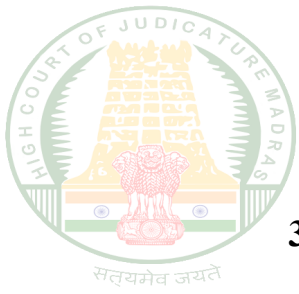
For Respondent : Mr.Vijay Narayanan,
Senior Counsel,
For Mr.B.Sathish Sundar

COMMON ORDER

(Common Order of this Court made by **J.NISHA BANU, J.,**)

Since the issue involved in all these review applications are one and the same, they are disposed of by this common order.

2. Heard Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing on behalf of Mr.K.Umesh Rao, learned standing counsel for the review petitioners and Mr.Vijay Narayanan, learned Senior Counsel appearing on behalf of For Mr.B.Sathish Sundar, learned counsel for the respondent.



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3. This Court, after hearing the arguments made on either side, vide its judgment dated 06.12.2024 upheld the findings of the Advance Ruling Authority made in its Ruling dated 31.03.2017. Initially, when the review petitioners preferred an appeal before the Customs Authority for Advance Rulings (AAR), New Delhi, that appeal stood rejected by the concerned Authority as 'not admissible' and as 'non maintainable'. Against the said order of rejection by the AAR, when the review petitioners filed writ petition, the same came to be dismissed, thereby again upholding the Advance Ruling dated 31.03.2017 and the classification of the goods imported / sought to be imported by the Importer/respondent herein is under Chapter 21 and not under Chapter 8 of the Customs Tariff Heading.

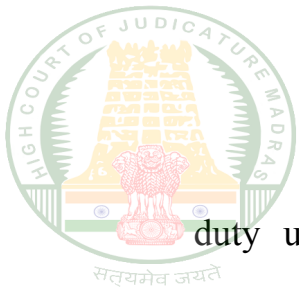
4. Learned Additional Solicitor General of India submitted that though the Advance Ruling obtained by the respondent / Importer was binding on them under Section 28J of the Customs Act, 1962, the goods imported by the Importer did not match with the said Advance Ruling dated 31.03.2017. It is pertinent to note that when a batch of writ petitions were filed by the respondent/Importer before this Court in W.P.Nos.30426, 26225 & 27828 of



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2022, the learned Single Judge has in detail discussed about the classification of the goods which would fall under Chapter 21 of the Customs Tariff Act, 1975 and further directed for taking samples from the consignment and get them tested within a period of six weeks from the date of the order. Even when such samples were drawn from the consignments imported by the Importer and tested at the Doctor's Analytical Laboratories Pvt.ltd. Navi Mumbai, dated 20.12.2022, the report was also in favour of the Importer classifying the goods under Chapter 21 of the Customs Tariff Act, 1975. When the key issues were elaborately dealt with in the judgment dated 06.12.2024 passed by this Court, the contentions raised by the learned Additional Solicitor General of India are merely rearguing the case, by way of filing this review petition.

5. Perusal of the memo filed by the respondent Importer transpires that in almost identical circumstances in the respondent's own case of import of the very same product through Mumbai Port, where the Customs Authorities in Mumbai did not release the goods, the petitioner has filed a Writ Petition No.10873 of 2022 seeking release of the goods on payment of appropriate



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duty under CTH 2106 9030. The High Court vide its order dated 04.10.2022, directed the respondents in the said Writ petition to get the samples from the consignments for testing at Doctor's Analytical Laboratories Pvt. Ltd, Mumbai, that identical reports as in the instant case were furnished and the Adjudicating Authority, namely, the Deputy Commissioner of Customs, Group I & IA, NS-1, JNCH, rejected the classification adopted by the respondent herein and re-classified the goods under CTH 0802. Aggrieved by the same the respondent herein filed Writ Petition No.10512 of 2023 and vide order dated 18.12.2023, the Hon'ble High Court of Bombay, passed the following order:-

“16. In the ruling pronounced by the AAR dated 31st March 2017, respondents have accepted in paragraph 7, the classification under Chapter Heading 21. The said paragraph 7 reads thus:-

'7. It is noticed that the comments in respect of said application were called for from Principal Commissioner of Customs, Chennai-II and Commissioner of Customs (Nhava Sheva-II). Commissioner of Customs, Chennai-II agreed with the applicant that the subject items are classifiable under Chapter Heading 21069030 as "Betelnut Product as Supari.'

Therefore, even on this count, the said respondents cannot



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contend otherwise.

17. Therefore, looked from any angle, the ruling dated 31st March 2017 passed by the AAR in the petitioner's own case is binding under Section 28 J(1) on the petitioner and the respondents as there being no change in law post the said decision and the said decision having been accepted by the respondents in the absence of any further challenge before the higher forum.

18. Now coming to the contention of the respondent on alternate remedy, the respondents have relied on various decisions, which in our view, are not applicable to the facts of the present petition. The decision relied upon by the respondents pertains to the challenge at the show cause notice stage where the jurisdiction was not under challenge. On the contrary, the decision relied upon by the respondents in case of Assistant Commissioner of State Tax & Ors. Vs. M/s. Commercial Steel Ltd.³ holds that an assessee can invoke writ jurisdiction if the action is in excess of jurisdiction. In the instant case, as observed by us, the respondents have passed the O-I-0 contrary to the provisions of Section 281 of the Act and, therefore, the same is without jurisdiction. In view of 3 2021 (52) GSTL 385 (SC) 13 .the above discussion that the impugned order



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is passed without jurisdiction, writ petition is maintainable.

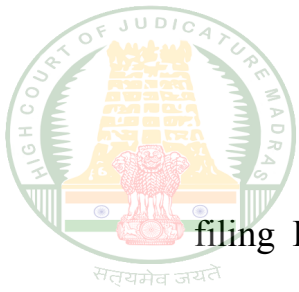
The petitioner hence ought not to be relegated to take recourse to an appellate remedy.

19. For the reasons stated above, the impugned 0-1-0 dated 11th November 2022 is hereby quashed and set aside. Rule is made absolute in terms of prayer clause (a). No costs.”

6. Further it can be seen that the review petitioner/ Department aggrieved over the above said order preferred an appeal before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s). 45591/2024 and vide order dated 08.11.2024, the Hon'ble Supreme Court dismissed the department's appeal by holding as under:

“3. We are not inclined to interfere with the impugned judgment passed by the High Court. Hence, the Special Leave Petition is dismissed.”

7. Moreover, it can also be seen that the arguments advanced by the Learned Additional Solicitor General of India by way of the written submissions filed before this Court, by citing the various judgments, were not argued before us while passing the judgment in the writ appeal. The scope of



filing Review petitions has been clearly dealt with in the case of *Sanjay*

Kumar Agarwal vs. State Tax Officer (1) and another reported in (2024) 2

SCC 362. The relevant paragraphs are extracted hereunder:-

“7. At the outset, it may be stated that the power to review its judgments has been conferred on the Supreme Court by [Article 137](#) of the Constitution of India. Of course, that power is subject to the provisions of any law made by the Parliament or the Rules made under [Article 145](#). Supreme Court in exercise of the powers conferred under [Article 145](#) of the Constitution of India has framed the Supreme Court Rules, 2013. The Order XLVII of Part IV thereof deals with the provisions of Review. Accordingly, in a Civil Proceeding, an application for review is entertained only on the grounds mentioned in [Order XLVII Rule 1 of the Code of Civil Procedure](#) and in a Criminal Proceeding on the ground of an error apparent on the face of record. However, it may be noted that neither [Order XLVII CPC](#) nor Order XLVII of Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Even a third party to the proceedings, if he considers himself to be an “aggrieved person,” may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect. 1 In view of the said legal position, the Review Petitioners who claimed to be the “aggrieved persons” by the impugned judgment dated 06.09.2022, were permitted to file Review Petitions and were heard by the Court.

8. Before advertent to the contentions raised by the learned counsels for the parties, let us regurgitate the well settled law on the scope of 1 (2019) 18 SCC 586, [Union of India vs. Nareshkumar Badrikumar Jagad & Others](#) review as contemplated in Order XLVII of the Supreme Court Rules read with [Order XLVII of CPC](#).

9. In the words of Krishna Iyer J., (as His Lordship then was) “a plea of review, unless the first judicial view is manifestly distorted, is like asking for the Moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and



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reversal of result..... A review in the Counsel's mentation cannot repair the verdict once given. So, the law laid down must rest in peace."

10. It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that 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.

11. In [Parsion Devi and Others vs. Sumitri Devi and Others](#) 4, this Court made very pivotal observations: -

"9. Under [Order 47 Rule 1 CPC](#) a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be 2 (1980) 2 SCC 167, M/s. [Northern India Caterers \(India\) Ltd. vs. Lt. Governor of Delhi](#) 3 AIR 1965 SC 845, [Sajjan Singh and Ors. vs. State of Rajasthan and Ors.](#) 4 (1997) 8 SCC 715 said to be an error apparent on the face of the record justifying the court to exercise its power of review under [Order 47 Rule 1 CPC](#). In exercise of the jurisdiction under [Order 47 Rule 1 CPC](#) it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise.

14. In R.P. (C) Nos. 1273-1274 of 2021 in Civil Appeal Nos. 8345- 8346 of 2018 ([Arun Dev Upadhyaya vs. Integrated Sales Service Limited & Another](#)), this Court reiterated the law and held that: -

"15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be 5 (2020) 2 SCC 677 6 (2021) 13 SCC 1 strictly confined to the scope and ambit of [Order XLVII Rule 1 CPC](#). 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."



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16. The gist of the afore-stated decisions is that: -

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(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 reargue 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.”

8. This Court also perused the recent judgment, dated 04.03.2025 passed by the Hon'ble The Chief Justice in W.A.Nos.3647 and 3648 of 2024 in an identical case as that of the respondent/Importer, whereby the appeals filed by the review petitioners in reclassifying the 'arecanuts' under Chapter 8 came to be dismissed, thereby upholding the parameters fixed by the



Authority for Advance Rulings by stating that a Co-ordinate Bench of this Court, declined to interfere with the Ruling of the Authority of Advance Ruling, thereby it attained finality. The relevant paragraph is extracted hereunder:-

“15. Therefore, as per the parameters fixed by the Authority for Advance Rulings, if the moisture content is between 10% and 15%, the same would be considered as a raw areca nut and anything below the said category would be considered as roasted arecanut. The said finding has attained finality. All the laboratory reports also state that the moisture content of the areca nuts is below 10%. Therefore, we find no reason to interfere with the impugned order.

16. Appeals are dismissed. There shall be no order as to costs. Consequently, interim applications also stand dismissed. The department shall permit clearance of the goods within a week of this judgment being uploaded.”

9. In view of the above, this Court is of the considered opinion that the grounds of the writ appeal are sought to be re-argued in these review applications. There is no error apparent on the face of the impugned judgment. The scope of review being very limited, we are not inclined to delve into the grounds of review which were already dealt with by us in the impugned judgment. If such practice is adopted, then it will amount to rehearing the appeal itself. Having failed before the Adjudicating Authority and before the First Bench of this Court, the review applicants are still harping on the same argument, which was negatived consistently. Further, considering the fact that the detained goods are perishable in nature, we



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direct the review applicants to comply with the direction issued in the impugned judgment forthwith.

10. Accordingly, the Review Applications stand dismissed.

(J.N.B., J.) & (R.K.M., J.)

29.04.2025

Index : Yes / No

Neutral Citation : Yes / No Speaking Order : Yes / No
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Note: Issue Order Copy forthwith

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Chennai II Commissionerate,
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- 2) The Additional Commissioner of Customs,
Group – I, Chennai II Commissionerate,
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