

Court No. - 19

Case :- CIVIL MISC REVIEW APPLICATION No. - 69 of 2024

Applicant :- M/S Rajshi Processors, Raebareli Having Office Thru. Its Partner Ashok Kumar Lakhotia

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of State Tax Govt. Lko. And 2 Others

Counsel for Applicant :- Anurag Mishra

Hon'ble Subhash Vidyarthi J.

1. Heard Shri Pranjal Shukla, learned counsel for the review petitioner.
2. By means of the instant review petition, the petitioner is seeking review of a judgment and order dated 14.05.2024 passed by this Court in Writ Tax No.128 of 2024.
3. The petitioner is engaged in manufacture and sale of Aluminum Casting & Machinery Parts. The petitioner had filed GSTR 3B for the months of May, 2019, August, 2019 and December, 2019. The Deputy Commissioner, Special Investigation Branch, Commercial Tax, Lucknow had conducted a survey of the place of business on 25.02.2020. The petitioner claimed to have received inward supplies worth Rs.16,39,200/- from M/s Ridhi Sidhi Enterprises, worth Rs. 17,25,160/- from M/s Siddhartha Trading Company and worth Rs. 29,78,025/- from M/s Satvik Enterprises and claimed Rs.2,95,056/-, Rs.2,63,160/- and Rs. 4,54,275/- respectively towards I.T.C. Claim for inward supplies received from the aforesaid firms. Special Investigation Branch, Agra conducted a survey of the aforesaid three firms whereupon it came to light that all the aforesaid three firms were non-existent and bogus firms and the petitioner had fraudulently claimed I.T.C. benefit of Rs.10,12,491/- without any actual supply of goods, on the basis of the fake invoice issued by the aforesaid three non-existence bogus firms. The Special Investigation Branch found that the petitioner had knowingly claimed excessive amount towards I.T.C. in his GSTR-2A also and had adjusted the

same in the tax payable by him. Thus, the petitioner claimed a total of Rs. 15,93,491/- I.T.C. in violation of the provisions of law.

4. The adjudicating authority issued a notice under Section 74 in reply to which the petitioner submitted his explanation alongwith the evidence, stating that it had received inward supplies from M/s Ridhi Sidhi Enterprises, M/s Siddhartha Trading Company and M/s Satvik Enterprises and in support of its claim of actual receipt of inward supplies, the petitioner had submitted invoices, copies of GR (goods receipts), e-way bill, ledger and bank statements of the firms, evidence of transaction of amounts through RTGS and evidence of physical receipts of goods. The inward supplies received by the petitioner were entered in the stock register.
5. The adjudicating authority did not accept the explanation of the petitioner because the Special Investigation Branch, Agra had found the aforesaid three firms, namely, M/s Ridhi Sidhi Enterprises, M/s Siddhartha Trading Company and M/s Satvik Enterprises to be nonexistent and bogus and that the tax invoices had been issued without any actual supply of goods upon which the petitioner had fraudulently taken benefit of I.T.C. The adjudicating authority declined the benefit of I.T.C. to the petitioner and imposed penalty on the petitioner and fixed the liability of interest also.
6. The appellate authority found that in his explanation submitted before the adjudicating authority, the petitioner had produced GR No. 213/dated 13.05.2019, 694/dated 21.08.2019, 695/dated 21.08.2019 and 1363/dated 15.12.2019 issued by M/s Goyal Goods Carry Corporation, Daresi No. 2, Agra as evidence for transport of goods from Agra to Raebareli. The adjudicating authority found that GR No. 213/dated 13.05.2019 and 1363/dated 15.12.2019 had been issued on a similar format, whereas GR No. 694/dated 21.08.2019 and 696/dated 21.08.2019 had been issued on a different format, whereas all of those have been issued by the same transport company and, which had no other branch. The GSTIN-

09AJBPG5336KIZ5 and phone number 6395078684 were mentioned on the transport bilty. GST is payable on transport services. When an enquiry was conducted on the basis of GSTIN number mentioned on the transport bilty, the GSTIN was found to be not valid as per the information available on the common portal. The phone number mentioned on the transport bilty, was found to be in use of some lady at Kasganj. From the aforesaid facts, it appears that the bilties had been attached with the explanation of the petitioner to somehow show the real inward supply by making adjustments. The adjudicating authority found that the alleged supplier firms were non-existent and the bilties had been produced merely to establish transactions with non-existing firms. No goods were transported from Agra to Raebareli and the transactions were paper transactions only.

7. While advancing submissions in support of the Writ Petition filed by the petitioner challenging the order passed by the assessing authority and the appellate authority, the learned counsel for the petitioner had submitted that the petitioner had actually received inward supplies, which was established from the records produced before the adjudicating authority. The supplier firms were having valid GSTIN 4 registration when the petitioner had received the supplies. Merely because GSTIN registration of the firm was cancelled subsequently at their own requests, the petitioner cannot be penalized for the same. As per Section 16 of the GST Act, 2017, the petitioner was merely required to be in possession of a tax invoice or debit note issued by the supplier, receipt of goods and actual payment of tax to the Government. As per learned counsel for the petitioner the requirements of Section 16 of the GST Act, 2017 and Rule 36 of GST Rules 2017 had been fulfilled by the petitioner by furnishing the aforesaid requisite documents.
8. While deciding the Writ Petition, this Court had held that Section 16 (2) (b) of the GST Act provides that no registered person shall be

entitled to the credit of any input tax in respect of any supply of goods unless he has received the goods. "Received the goods" means the person claiming input tax credit must have actually received the goods. Where a person merely produces documents mentioned in Rule 36 regarding receipt of goods without actual receipt of any goods and it is established that the transaction of goods was merely paper transactions, the person will not be entitled to get the benefit of input tax credit in view of the provision contained in Section 16(2)(b) of the GST Act, 2017. The petitioner had fulfilled the documentary requirements and the input tax credit was granted to him. Subsequently, in an enquiry conducted by the Special Investigation Branch, it came to light that the firms from which the petitioner claimed to have received inward supplies, were non-existent and bogus. Neither the firms were found on the addresses, claimed by them, nor could any godown or other premises of those firms be found and it appeared that the firms were existing on paper only. The non-existent firms could not have made any actual supplies. Merely because the firm was registered on the date of transaction, it cannot be said that the department was bound to give I.T.C. benefit to the petitioner, even though it has been revealed later on the firm was non-existent and it could not have made any actual supplies.

9. This Court further held that the findings of Special Investigation Branch revealed that the petitioner had committed a fraud against the department and the public exchequer by claiming inward supplies from non-existent firms to take advantage of I.T.C. It is settled law that fraud vitiates even the most solemn proceedings and the mere fact that the I.T.C. benefit had earlier been granted to the petitioner merely because the firms were registered, would not create any estoppel against the authorities taking appropriate action for claiming refund of the benefit wrongly availed by the petitioner on the ground of receiving inward supplies from non-existent firms. This Court found that the appellate authority had passed the

impugned order after taking into consideration the facts and circumstances of the case and the material available on record.

10. The petitioner is seeking review of the order passed by this Court on the ground that this Court's order suffers from errors apparent on the face of the record as discrepancies in the judgment are prevalent and the judgment dated 14.05.2024 does not deal with the material presented by the petitioner on record. It has further been stated in the grounds of the review petition that "*this Court has blindly believed the stand of the revenue that the seller/supplier firm were non-existent and bogus firms, which is a grave mistake and an omission committed by the respondent at the time of hearing and while passing the order as no survey has been conducted by the department on the place of business of the supplier firms, whether it was before cancellation or after cancellation.*"
11. It has also been contended in the review petition that Order 47 Rule 1 C.P.C. provides for filing of an application for review of a judgment on the basis of discovery of important matter or evidence, which after exercise of due diligence, was not within the knowledge of the petitioner. The petitioner has filed e-stamp affidavit of the transporter to prove bona fide transaction and the movement of goods.
12. It would be appropriate to have a look at the provision contained in Order XLVII, Rule 1 (1) C.P.C. before proceeding any further: -

Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account

of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

* * *

13. The learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in case of **S. Madhusudhan Reddy Vs. V. Narayan Reddy and Others**: 2022 SCC OnLine SC 1034, which was an appeal filed against an order passed by the High Court allowing a review application. While allowing the appeal and setting aside the order passed by the High Court in review, the Hon'ble Supreme Court held that the review petition was nothing short of an abuse of process of the Court and the same ought to have been rejected by the High Court as not maintainable, without having gone into the merits of the matter.
14. The following passage from the judgment in case of **S. Madhusudhan Reddy (Supra)** discusses the law regarding the scope of review:-

“18. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

19. In Col. Avatar Singh Sekhon v. Union of India 1980 Supp SCC 562, this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra

Kante v. Sheikh Habib (1975) 1 SCC 674, this Court observed:

‘A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.’

(emphasis in original)

20. *In Parsion Devi v. Sumitri Devi (1997) 8 SCC 715, stating that an error that is not self-evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held as under:*

“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. (1964) 5 SCR 174 this Court opined:

‘11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.’

Again, in Meera Bhanja v. Nirmala Kumari Choudhury (1995) 1 SCC 170, while quoting with approval a passage from Aribam Tuleswar Sharma v. Aribam Pishak Sharma (1970) 4 SCC 389, this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

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

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 this 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'".

[emphasis in original]

15. The review petition refers to a decision of the Hon'ble Supreme Court in the case of **Sarla Mudgal, President, Kalyani and others versus Union of India and others**, but neither its citation or case number and date of decision have been given in the petition, nor has its copy been provided to the Court and, therefore, this Court cannot go through the aforesaid judgment. However, the following passage of the aforesaid judgment has been quoted in the petition: -

"Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence."

16. The review petition refers to a decision of the Hon'ble Supreme Court in the case of **Hari Vishnu Kamath v. Syed Ahmad Ishaque** 1954 SCC OnLine SC 8, wherein

"...is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated."

17. The aforesaid observations were made by the Hon'ble Supreme Court while discussing the scope of a Writ of Certiorari, as paragraph 28 of the judgment, from where the aforesaid passage has been extracted, begins with the words – "**8. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it**" Although the judgment in **Hari Vishnu Kamath** (Supra) is not relevant for deciding a review petition, it

supports the approach adopted this Court while deciding the writ Petition which was filed seeking issuance of a Writ of Certiorari.

18. In **S. Bagirathi Ammal v. Palani Roman Catholic Mission** (2009) 10 SCC 464, the Hon'ble Supreme Court held that: -

*“12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. **If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order....”***

19. When we examine the aforesaid grounds taken in the memo of the review petition in light of the law laid down by the Hon'ble Supreme Court in **S. Madhusudhan Reddy** (Supra) relied on by the learned counsel for the petitioner himself, it appears that the order dated 14.05.2024 sought to be reviewed takes into consideration all the submissions made by the learned counsel for the petitioner. Even while advancing submissions in support of review application, learned counsel for the petitioner could not point out any specific material which was placed before the Court while arguing the writ petition and which has not been taken into consideration by this Court while passing the order dated 14.05.2024. Therefore, the ground that this Court did not deal with the material presented by the petitioner on record, is without any substance.
20. So far as the allegation levelled in the review petition that this Court has blindly believed the stand of the revenue that the supplier/firm was non-existent and bogus, the Court had considered the material that was available before it while passing the order sought to be reviewed. The Officers of Special Investigating Branch had

conducted a survey of premises of the suppliers from whom the petitioner claims to have received inward supplies and they found that the three firms from which the petitioner claims to have received supplies, namely M/s Ridhi Sidhi Enterprises, M/s Siddharth Trading Company and M/s Satvik Enterprises, were non-existent and bogus and the invoices had been issued without any actual supply of goods, upon which the petitioner had fraudulently taken benefit of Input Tax Credit. The Appellate Authority found that the petitioner had produced 04 goods receipts issued by Goyal Goods Carry Corporation, which were on different formats and the GSTIN mentioned on the receipts was found to be not valid, as per the information available on the common portal. The mobile number printed on the goods receipts was found to be in use of some lady living at Kasganj and it was not of any transport Company. No material was placed by the petitioner to rebut the aforesaid factual findings based on the survey of the premises of the supplier firms made by officials of Special Investigating Branch. While examining the validity of the aforesaid findings, this Court found that the findings were based on sufficient material and did not require any interference in exercise of writ jurisdiction of this Court. In these circumstances, the allegation leveled in the review petition that this Court has blindly believed the stand of the revenue, is also without any substance.

21. Although a litigant is well within its right to challenge the validity of any order in accordance with the law and in case the order suffers from an error which is apparent on the face of the record, the litigant would be well within its right to say so, but while assailing the orders passed by the Constitutional Court, the learned Advocates are expected to act with some sense of responsibility and to ensure the dignity of the Court even while contending that the order passed by the Court suffers from a patent error. The allegation that “*this Court has blindly believed the stand of the revenue that the seller/supplier firm were non-existent and bogus firms*” besides being incorrect, is

disrespectful towards the Court. This Court deprecates the disrespectful manner of drafting of this review application.

22. The petitioner has annexed a copy of an affidavit of one Vishal Goyal stating that he had taken goods from M/s Ridhi Sidhi, Siddharth Trading and Satwik Trading Company and had delivered the same to the petitioner during 2019-2020 and that his Transport Company is active. The mobile number and the GST number mentioned on the receipts were wrong and the transporter does not have GST registration. The copy of the affidavit does not bear any stamp of Notary. The material which the petitioner now produced before this Court, could have very well be brought by him before the Appellate Authority by exercise of due diligence, but he did not do so. Moreover, it supports the findings of the appellate authority that the GST number and the mobile number mentioned on the transporter's receipt were fake. Therefore, the copy of the affidavit of Vishal Goyal filed by the petitioner along with the review application does not provide any good ground for review of the earlier order.
23. In view of the foregoing discussion, the review petition is **dismissed**.

(Subhash Vidyarthi J.)

Order Date :- 24.05.2024

-Amit K-