SUPREME COURT OF INDIA

S.N.S.(Minerals) Limited & Anr.

Vs.

Union of India & Ors.

C.A.No.804 of 2005

(Arijit Pasayat and Tarun Chatterjee,JJ.,)

27.02.2007

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court dismissing the Review Petition filed by the appellants. This is in essence the second journey of the appellants in respect of a Writ Petition (W.P.No.522/90) filed before the High Court. The said Writ Petition was disposed of by order dated 3.3.1994. The same was filed for quashing the proceedings initiated by respondent No.3 i.e. Superintendent (Preventive) Central Excise, Indore. During the pendency of the petition, orders were passed quantifying the liability of appellant No.1 for imposition of penalty. These orders were challenged in the writ petition by amending the same. The High Court quashed the orders so far as they related to imposition of penalty. Questioning the correctness of the order an appeal was filed before this Court which was disposed of by order dated 16.4.2002. Basically, two stands were taken in the appeal. This Court did not interfere with the order of the High Court on the aspect of manufacture. The residual argument was that since the High Court had quashed the penalty imposed by the Collector, Central Excise by taking a view that the appellants were under a bona fide belief that they were not liable to pay excise duty on limestone chips, the High Court ought to have struck down the demand of duty based on Section 11A of the Central Excise Act, 1944 (in short the 'Act'). This Court dealt with that aspect of the challenge in the following words:

> "The next argument is that the High Court quashed the penalty imposed by the Collector, Central Excise, upon the appellants taking the view the appellants were under a bona fide belief that they were not liable to pay excise duty on limestone chips. It is submitted that the High Court should, therefore, have also struck down the demand of duty based on Section 11A. We have gone through the judgment of the High Court. We find that no such argument is recorded by the High Court or answered . If it was the contention of the appellants that the High Court had not answered an argument that had been advanced before it, they should have approached

the High Court in review. As it is, we are of the view that only the arguments recorded by the High Court and answered require our consideration.

The appeal is dismissed with costs."

2. A review petition was filed before the High Court, inter alia, taking the stand that this Court had permitted filing of a review. The same was filed purportedly on the basis of the observations made by this Court to the effect that it was the contention of the appellants that the High Court had not answered an argument that had been advanced before it and if that was the contention of the appellants they should have approached the High Court in review. The High Court noted that there was no ground taken in the writ petition. Learned counsel appearing for the appellants before the High Court conceded that no such ground was taken in the earlier S.L.P.

3. The High Court was of the view that an application for review was to be entertained only if such ground was raised in the writ petition before the Court and the Court had omitted to consider the same. From the records it was noted that no such ground was raised. The High Court was, therefore, of the view that no ground for review of the judgment existed and dismissed the same.

4. Learned counsel for the appellants submitted that though in the original writ petition such a stand was not taken but in the amended writ petition such a stand was taken and, therefore the High Court was not justified in its view.

5. Per contra, learned counsel for the respondents submitted that though there was no specific plea in this regard and some vague assertions had been made, the point was not urged for consideration before the High Court. Therefore, the review has been rightly dismissed considering the limited nature of the review.

6. We find that after the amendment, para 10(G) of writ petition shows some vague reference to the question of limitation. In fact reference is made therein to paragraph 7. The High Court has categorically stated that no such stand was taken and in the counter affidavit filed by the respondents before this Court it has been categorically stated that no such argument was advanced.

7. The High Court's findings are in the following terms:

"Learned senior counsel for the applicants submits that since in the facts and circumstances of the present case extended period of five years under Section 11A could not have been invoked by the respondent authorities, the order deserves to be reviewed. Keeping in view the observation of the Hon'ble Supreme Court, the counsel was asked to point out from the record whether such a contention had been raised before the High Court in the writ petition and any such ground was taken in the S.L.P. before the Apex Court. Learned counsel frankly conceded that such a ground was not

taken in the S.L.P. So far as the entitlement of the applicants for review is concerned, the petitioner can claim the same only if the petitioner had raised such a ground in the writ petition before the Court and Court had omitted to consider the same. From the record, it does not appear that any such ground was raised in the original writ petition."

8. The scope for review has been considered by this Court in several cases. In a recent case in *Haridas Das v. Usha Rani Banik (Smt.) and Ors*[1]. it was held as follows:

"13. In order to appreciate the scope of a review, Section 114 of the Code Of Civil Procedure, 1908 has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order XLVII of the Code Of Civil Procedure, 1908 and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This Court in *M/s. Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur*[2], held as follows:

"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. Where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

9. Even if it is accepted as contended that the plea was taken regarding limitation, the same was really not specifically taken. There was no reference to Section 11-A of the Act.

10. Learned counsel for the appellants contended that there was no necessity referring to that

provision as indirectly that plea had been taken. Though the contention was not very happily worded it is stated that this Court in several cases has held that if there is a bona fide doubt the extended period of limitation available under Section 11A of the Act does not apply. There is no quarrel with this proposition. But the question is whether such a plea was in fact urged. From a reading of the order of the High Court and the counter affidavit filed before this Court in which it has been specifically urged at paragraphs 9 and 10 that no such argument was advanced, we do not consider this to be a fit case where any interference is called for, considering the limited scope of review.

11. The appeal is accordingly dismissed with no order as to costs.

[1]*AIR 2006 SC 1634*
[2]*(1964) SCR 5 0174*