



W.P.No.2601 of 2020 & batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.12.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.2601, 3650, 8382, 17588, 17614, 17622, 17630, 17702, 18084, 18938, 19214, 19670, 19792, 19841 & 20169 of 2020 and 164, 658, 696, 1424, 1899, 2018, 2314, 2319, 2745, 2922, 3122, 3127, 3397, 4415, 5536, 6729, 9758, 10351, 23818 & 23819 of 2021 and 21223 & 27091 of 2022 and Rev.Aplw.Nos.138 to 145 of 2022 and WMP.Nos.3020, 4299, 4300, 10070, 21800, 21803, 21841, 21843, 21851, 21853, 21858, 21860, 21959, 21960, 22469, 23501, 23502, 23503, 23801, 23805, 24546, 24308, 24459, 24461, 24508, 24912 & 24913 of 2020 and 223, 230, 719, 720, 755, 756, 1605, 1606, 2147, 2283, 2284, 2617, 2622, 3080, 3083, 3271, 3278, 3548, 3549, 3554, 3555, 3878, 3879, 5017, 5018, 6168, 6171, 7289, 10361, 10930 & 25083 of 2021 and 20207, 20209, 26305, 21989, 21992, 22002, 22001, 22009, 22010, 22012, 22013, 22019, 22015, 22017, 22022, 22021, 22018, 22025 & 22026 of 2022

W.P.No.2601 of 2020:

M/s.Polygems,
Rep. by its proprietor, Mr.Ranjit Kumar Chhalani,
No.27, Parthasarathy Naidu Street,
Pulianthope, Chennai – 600 012.

... Petitioner

Vs

The Assistant Commissioner (ST),
Purasawalkam Assessment Circle,
Chennai – 600 012.

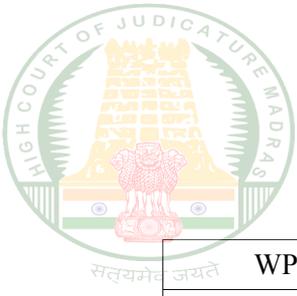
... Respondent



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in GSTIN 33AAFPR6486C1ZM/2017-18, quash the order dated 23.12.2019 passed therein.

WP.Nos.	For Petitioners	For Respondents
2601 of 2020	Mr.P.V.Sudhakar	Mr.Haja Nazrudeen, Additional Advocate General assisted by Mr.M.Venkateswaran, Special Government Pleader & Mr.C.Harsha Raj, Additional Government Pleader
3650 of 2020 2314 & 2319 of 2021	Mr.B.Raveendran	
8382 of 2020	Mr.P.Rajkumar	
17588, 18084, 19792 & 20169 of 2020	Mr.R.Kumar	
17614, 17622 & 17630 of 2020	Mr.K.Thyagarajan	
17702 of 2020, 164, 658, 2018, 2922, 3122, 3127, 3397, 4415 & 9758 of 2021,	Mr.Sujit Ghosh for Mr.Adithya Reddy	
18938 of 2020	Mr.Hari Radhakrishnan	
19214 of 2020, & 696 of 2021,	Mr.N.V.Balaji	
19670 of 2020 & 6729 of 2021	Mr.K.Jeyachandran	
19841 of 2020 & 1899 of 2021	Mr.T.Ramesh	
1424 of 2021	Mr.G.K.Prem Kumar for Mr.Joseph Prabhakar	
2745 of 2021	Mr.S.Rajasekar	
5536 of 2021	Mr.N.Murali	
10351 of 2021	Mr.K.Soundara Rajan	



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WP.Nos.	For Petitioners	For Respondents
23818 & 23819 of 2021	Mr.Jose Jacob	
21223 of 2022	Mr.S.Muthuvenkatraman	
27091 of 2022	Mr.R.Subramaniam	

Rev. Petition Nos.	For Petitioners	For Respondents
138 of 2022	Mr.Haja Nazirudeen, Additional Advocate General assisted by Mr.M.Venkateswaran, Special Government Pleader & Mr.C.Harsha Raj, Additional Government Pleader	Mr.P.Rajkumar
139 of 2022		Mr.N.Murali
140 of 2022		Mr.T.Ramesh
141 of 2022		Mr.P.Rajkumar
142 of 2022		Ms.Radhika Chandrasekar
143 of 2022		Mr.R.Senniappan
144 of 2022		Mr.S.Rajesh
145 of 2022		Mr.Sujit Ghosh for Mr.Adithya Reddy

ORDER

The petitioners in this batch of writ petitions are dealers under the provisions of the Tamil Nadu Goods and Service Tax Act, 2017 (TNGST Act) and seek the quashing of orders reversing the transitioning of tax deducted at source (TDS) under Section 140(1) of the Act. I have had occasion to consider the identical question as aforesaid in an earlier batch of writ petitions, and vide order dated 26.02.2021 in W.P.No.2738 of 2020 and batch, decided the same in favour of the assesseees.



W.P.No.2601 of 2020 & batch

2. Revenue has filed eight applications seeking review of order dated 26.02.2021, (though the batch comprised 23 writ petitions) and I first take the review applications up for hearing. The submissions of Mr.Haja Nazirudeen, learned Additional Advocate General for Mr.M.Venkateswaran, learned Special Government Pleader for the review petitioners and Mr.Sujit Ghosh for Mr.Adithya Reddy, Mr.P.Rajkumar, Mr.N.Murali, Mr.T.Ramesh, Ms.Radhika Chandrasekar, Mr.R.Senniappan and Mr.S.Rajesh, learned counsel for the respondents have been heard.

3. The scope of interference under Order XLVII Rule 1 of Civil Procedure Code is limited to only those cases wherein an apparent error has been made out in the order sought to be reviewed. This error should assume the character of either a grave omission or a mis-appreciation in the actual position leading to the exposition of the law.

4. In *S.Madhusudhan Reddy Vs. V.Narayana Reddy and others*¹, three Judges of the Hon'ble Supreme Court considered the scope of review under the C.P.C. reiterating at paragraphs 16 & 17, the settled proposition that such prayer is liable to be considered strictly in conformity with the scope and ambit of Order XLVII Rule 1 of C.P.C.

¹ 2022 SCC Online SC 1034



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5. The principles for exercise of review jurisdiction as laid down in the

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case of *Kamlesh Verma Vs. Mayawati*², read thus -

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words "any other sufficient reason" has been interpreted in Chajju Ram v. Neki, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.,

20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*

² 2013 (8) SCC 320



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(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

(ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”*

6. In *Yashwant Sinha and Others Vs Central Bureau of Investigation*³, the Supreme Court considered an argument by the review petitioners to the effect that non-advertence to a particular provision of the Statute that was pertinent and relevant to the lis was a good ground to seek review.

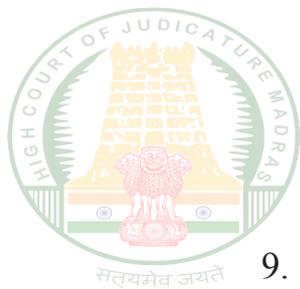
7. In that context, they refer to their earlier judgment in *Giridhari Lal Gupta Vs. D.H.Mehta*⁴, wherein, at paragraph No.15 of the SCC report, the Court noted the same argument but declined to accept it since at the time of original argument, their attention was not specifically drawn to the relevant statutory provision and the effect that it had upon the lis.

8. In *Shivdeo Singh and Others v. State of Punjab and Others*⁵, a Constitutional Bench of the Hon'ble Supreme Court, in considering an appeal on Special Leave from a decision of the Punjab High Court, noted that, that article did not specifically confer power upon the High Court to review its own order.

³ 2020 (2) SCC 338

⁴ AIR 1971 SC 2162

⁵ Appeal (civil) No.265 of 1958 dated 08.02.1961



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9. However, the Bench held that there was nothing therein to preclude a Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed.

10. In *Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh*⁶, cited and applied in most of the judgments cited by the parties relating to Order XLVII Rule 1, the question that arose for consideration was whether the statement in the order of the Court passed in September 1959 that no substantial question of law was involved, constituted an error apparent on the face of record.

11. In that context, the Bench held that the fact that on an earlier occasion, the Court had held on an identical set of facts that a substantial question of law arose, would not per se lead to the conclusion that statement might itself be erroneous. Similarly, even at the statement was wrong, it would not follow that it was an error apparent on the face of the record for, to quote the Bench, *'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 characterised as vitiated by error apparent. A review is by no means an appeal*

⁶ 1964 AIR 1372



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in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error'.

12. In *Sow Chandra Kanta and Another v. Sheik Habib*⁷, the Hon'ble Supreme Court rejected a review petition on the ground that all the points that were argued in review had been urged even at the earlier stage when special leave was rejected, as a result, that the review proceeding virtually amounted to a rehearing. The following extract is relevant:

'Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to re-hearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. 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. A mere repetition, through different counsel, of old and over-ruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the court which decided nor awareness of the precious public time lost what with a huge back-log of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with

⁷ 1975 SCC (4) 457



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the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.'

13. In *Northern India Caterers (India) Ltd. v. L.T.Governor of Delhi*⁸, three judges of the Hon'ble Supreme Court while rejecting the review stated thus:

'It is 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. Sajjan Singh v. State of Rajasthan. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment. G. L. Gupta v. D. N. Mehta. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. O. N. Mahindroo v. Distt. Judge Delhi & Anr. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in 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 the record. (Order XL rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will

8 45 STC 212



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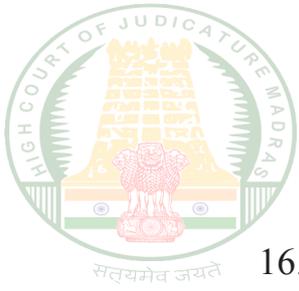
not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.'

14. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and Others*⁹, the judgment of the Constitutional Bench in Civil Appeal No.2284 of 1969 dated 25.01.1979 has been referred to, and reiterated by the Hon'ble Supreme Court in the following terms:

'But, there are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.'

15. The grounds raised in the review applications do even make the slightest pretence of pleading any acceptable ground for review. The sole argument raised and argued relates to the effect and applicability of the proviso to Section 140(1) of the Act, that has been raised and considered even at the time of original hearing.

⁹ Civil Appeal No.2284 of 1969 dated 25.01.1979



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16. The only ground re-argued is that transition is unavailable where credit is not admissible as ITC under this Act as per the proviso to Section 140(1)(i).

This very argument has been considered by this Court in paragraph 4 & 5 of order dated 26.02.2021 wherein the provisions of Section 140 along with the proviso have been extracted.

17. That apart, reference has been made to the decision of the Telangana High Court in the case of *Magma Fincorp Limited Vs State of Telangana*¹⁰ that dealt specifically on the interplay between Section 141 and the applicable provisions in the Telangana Goods and Service Tax Act, 2017 that are in para-materia with the relevant provisions under the Tamil Nadu GST Act.

18. In the present case, it is quite evident that the attempt of the State is to re-agitate the same issue as was raised and considered in the original round of litigation. If at all the Department believes that the conclusion arrived at earlier was contrary to the legal position, then review is not the appropriate remedy. In light of the discussion as above, and bearing in mind the principles delineated for review of an order, I find no merit in the applications for review and dismiss the same.

¹⁰ 26 GSTL 7



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19. In light of my decision as above, the Writ petitions are allowed reiterating my conclusion in order dated 26.02.2021 in W.P.No.2738 of 2020 and batch, which order is taken to be passed in these writ petitions as well. No costs. Connected miscellaneous petitions are closed.

kbs

02.12.2022

Index : Yes
Speaking Order

To

The Assistant Commissioner (ST),
Purasawalkam Assessment Circle,
Chennai – 600 012.



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Dr.ANITA SUMANTH, J.

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