
(2010) 06 GAU CK 0032

In the Gauhati High Court

Case No : Misc. Case No. 479 of 2010 in Writ Petition (C) No. 591 of 2008

Dharampal Satyapal Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AB
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 215, 226
Evidence Act, 1872 — Section 154

Citation : (2010) 257 ELT 194 : (2010) 1 GLT 744

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.

1. By a common judgment and order, dated 6-1-2010, three writ petitions, namely, WP(C) No. 591/2008, 1048/2008 and 2814/2008, were allowed to the extent as were indicated in the said judgment and order. All these three writ petitions arose out of actions, which had been taken by the respondents/authorities concerned on their interpretation of certain notifications, which were issued, from time to time, by the Government of India, Ministry of "Finance, Department of Revenue, granting exemption from payment of excise duty and additional duty of excise to certain specified classes of goods, manufactured in the specified areas of the seven North-Eastern States, the writ petitioners" industrial units having been set up under two notifications bearing No. 32/99-C.E. and 33/99-C.E., both, dated 8-7-99, whereunder the Central Government, as indicated hereinbefore, had granted exemption.

2. The material facts, giving rise to this miscellaneous application, may, in a nutshell, be set out as under:

(i) By Notification No. 45/99-C.E., dated 31-12-1999, the Central Government amended its earlier said two Notifications, both dated 8-7-1999, and excluded all

tobacco related products, including pan ma-sala, from the purview of exemption from payment of excise duty, or additional duty of excise. By Notification, dated 17-1-2000, the Central Government restored the exemptions, but, later on, the exemptions, so granted, were, once again, withdrawn by the Central Government by Notifications, dated 22-1-2000 and 1-3-2001. Thereafter, the Parliament enacted Section 154 of the Evidence Act, 2003, stipulating therein that the Central Government has the power to amend the two Notifications, dated 8-7-1999, aforementioned with retrospective effect. What it signified was that the Central Government became empowered to recover the money, already refunded to the manufacturers, in terms of its schemes of exemption as had been embodied in its earlier two Notification Nos. 32/99-C.E. and 33/99-C.E., both dated 8-7-1999.

(ii) Though the exemptions, granted under the said two notifications, dated 8-7-2009, were, at some stages, as indicated above, withdrawn, the exemptions, which had been earlier withdrawn, were, once again, restored, in respect of certain excisable goods including pan masala, by Notification No. 69/2003-C.E., dated 25-8-2003, to the extent of 50% of the duty payable.

(iii) The above scheme of partial restoration, covered by Notification, dated 25-8-2003, stipulated thus:

(a) The scheme would be available only in respect of those units, which would manufacture specified goods, including pan masala;

(b) The manufacturing unit must be located in any of the seven North Eastern States, namely, the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland or Tripura;

(c) The scheme would be applicable to only those units, which had commenced commercial production on or after 24-12-1997, but not later than 28-2-2001;

(d) The unit should have had continued its manufacturing activities after 28-2-2001 and should have had availed the benefits under earlier Notification Nos. 32/99-C.E. and 33/99-C.E., both dated 8-7-1999;

(e) The sum of duty payable, but for the exemption, would have to be utilized by the manufacturer only for "investment" in "plant and machinery" in a manufacturing unit;

(f) The said "investment"s were to be made before expiry of a period of six months from the end of each quarter;

(g) The manufacturer was obliged to furnish, to a Committee, within one month of the expiry of the period of six months as described hereinbefore, details of the investments made by the manufacturer;

(h) The said Committee was to consist of the Chief Commissioner of Central Excise, Shillong, the Principal Secretary of the Department of Industry of the State in which the unit was located and the Principal Secretary of the

Department of Industry of the State in which the investment was made;

(i) The manufacturer was required to prove to the satisfaction of the Committee that the investment was made, in plant and machinery, in a manufacturing unit located in any of the seven States aforementioned; and,

(j) Finally, once the Committee (which came to be known as the Investment Appraisal Committee, in short, "the IAC) was satisfied that the "investment" was made in "plant and machinery", in a manufacturing unit in terms of the Notification, dated 25-8-2003, aforementioned, it was to issue a certificate to this effect to the manufacturer within a period of three weeks after the period of one month described above;

(k) The certificate, granted by the IAC, was to be produced by the manufacturer, within a period of two weeks from the date of issue of the certificate, to the jurisdictional Central Excise Officer;

(l) The "investment", made under this Notification, dated 25-8-2003, was required to be for a period of ten years from the date on which the "investment" was made.

(iv) While the petitioners' units stood covered by the Notification, dated 25-8-2003, aforementioned and were eligible to receive benefit of exemption from payment of excise duty, or additional duty of excise, in terms of the Notifications, issued, in this regard, by the Central Government, another Notification, No. 8/2000/4-C.E., dated 21-1-2004, was issued by the Central Government, wherein a scheme, for complete exemption from payment of excise duty or additional duty of excise, was made available subject to compliance of certain new conditions by the manufacturers. The Notification, dated 21-1-2004, expanded the scope of exemption by making it clear that this exemption, to the extent of 100%, would be available not only to those manufacturers, who make their investment in "plant and machinery", in a manufacturing unit, located in any of the seven States of the North Eastern Region, but also to the one, who has a manufacturing unit, located in any of the said seven States, and who makes investment in "infrastructure" or "civil work" or "social projects" in any of these States. The procedure for receiving exemption, however, remained same as embodied under the earlier Notification, dated 25-8-2003.

(v) In effect, thus, with the coming into force of the Notification, dated 21-1-2004, not only the extent of "exemption", but also the scope of "investment" stood expanded inasmuch as a manufacturer became eligible to receive exemption from payment of excise duty, or additional duty of excise, if he could prove, to the satisfaction of the IAC, that the "investment" was made either in "plant and machinery" in a manufacturing unit, located in any of the States aforementioned, or that the "investment" was made, in "infrastructure" or "civil work", or a "social project", in any of the said States;

(vi) By, however, yet another Notification, dated 9-7-2004, a series of procedural

amendments were introduced to the Notification, dated 21-1-2004, aforementioned.

(vii) The subsequent Notification, dated 9-7-2004, stipulates:

(a) That the sum, equal to the excise duty that was payable, but for the exemption, would be deposited by the manufacturer, within 60 days from the end of the quarter, in an Escrow Account to be opened by the manufacturer in a bank authorized for excise duty collection;

(b) The Notification provides that operations, including withdrawals from, and closure of, the said Escrow Account, shall be made with the prior approval of the jurisdictional Commissioner of Central Excise, who has been given the onus of granting approval to such withdrawal on taking into account the "conditions", specified in the said Notification, dated 9-7-2004;

(c) The jurisdictional Commissioner is also enjoined to safeguard, while granting such approval as aforesaid, interest of revenue;

(d) The Notification, dated 9-7-2004, requires the manufacturer to invest the amount, deposited in the said Escrow Account, within two years from the date of its deposit and the amount, withdrawn from the Escrow Account, has to be utilized for the purposes specified within 60 days of its withdrawal;

(e) The manufacturer is also required to submit a quarterly statement, within sixty days of the end of the quarter, to the IAC, namely, Investment Appraisal Committee, consisting of the Chief Commissioner of Central Excise, Shillong, the Principal Secretary of the Department of Industry of the State concerned in which the unit is located and the Principal Secretary of the Department of Industry of the State in which the investment is made;

(f) The manufacturer is also required to furnish, within one month of the expiry of the said period of two years, all details of the "investment" made, to the IAC;

(g) If the IAC is satisfied that the "investment" has been made in accordance with the conditions embodied in the said Notification, dated 9-7-2004, it has to issue a certificate to the manufacturer within a period of one month from the date of receipt of the details (described hereinbefore) by the manufacturer.

(viii) Finally, Condition (EA) of the said Notification No. 28/2004-C.E., dated 9-7-2004, clarifies that if the manufacturer fails to make the deposit or invest the amount specified within the stipulated period and in accordance with the Notification, then, the duty, which is equivalent to the amount not deposited or invested, shall be "recoverable" from the manufacturer along with interest thereon at the rate specified u/s 11AB of the Central Excise Act, 1944 and, further, without prejudice to any action that may be taken under the provisions of the said Act, or under any law, for the time being, in force, by "forfeiture" of amount in the said Escrow Account.

(ix) Pursuant to the Notification, dated 21-1-2004, as amended by Notification,

dated 9-7-2004, the petitioners entered into tripartite escrow agreements, with their bankers and jurisdictional Commissioners, whereunder the petitioners' bankers were appointed as Escrow Agents. It is stipulated in the agreements that operations, including withdrawals from, and closure of, the said Escrow Accounts, are to be made with the prior approval of the jurisdictional Commissioner of Central Excise, Shillong. It has also been provided therein that if the balance amount, lying in the Escrow Account, is not re-invested in terms of the Notification No. 8/2004-C.E., dated 21-1-2004, as amended by Notification No. 28/2004-C.E., dated 9-7-2004, the Petitioner No. 1 shall bind itself to pay, on demand of the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, to the extent of duty, which is equal to the amount not re-invested along with interest thereon at the rate specified u/s 11AB of the Central Excise Act, 1944, from the amount lying in balance in the Escrow Account. The said Escrow Agreement, dated 21-6-2005, further provides that where the Petitioner No. 1 fails to make the deposit or does not invest the amount specified in condition (B) of the Notification No. 8/2004-C.E., dated 21-1-2004, as amended by Notification No. 28/2004-C.E., dated 9-7-2004, as detailed in condition (EA), the Commissioner, Central Excise, Shillong, shall have the right to forfeit the amount in the said Escrow Account and, in that event, the Escrow Agent shall release the amount to the jurisdictional Commissioner of Excise to the extent of "forfeiture" made.

3. On the ground that requisite investment certificates had not been produced by the petitioners, notices were issued to the petitioners' industrial units asking them to show-cause as to why on their failure to comply with the requirement of production of investment certificates within the specified period, diverse sums of money, mentioned in the said show-cause notices, which were equivalent to the exemption of the duty availed of by the petitioners, be not compelled to be paid back by the writ petitioners with such interest as had accrued thereon. The writ petitioners replied to the said show-cause notices.

4. Following the writ petitioners' replies to the said notices and without making any further communication with the writ petitioners, the authorities of the Excise Department got diverse sums of money transferred from the Escrow Accounts of the petitioners, maintained with their bankers, by way of recovery of those amounts, which were claimed under the said show-cause notices. This apart, directions were also issued to the petitioners' bankers by the authorities of the Central Excise freezing operation of the writ petitioners' Escrow Accounts. These actions of the respondents came to be challenged by way of a writ petition, which gave rise to WP(C) No. 591/2008.

5. To be more specific, it may be mentioned that by filing the writ petition, which gave rise to WP(C) No. 591/2008, the applicants herein, as writ petitioners, while impugning the actions and omissions of the Respondent No. 2, namely, Commissioner of Central Excise, Shillong, sought for, inter alia, issuance of appropriate writ(s) setting aside and quashing the respondent No. 2's action of

(i) appropriation of diverse sums of money, such as, amounts of Rs. 57,61,37,536/-, Rs. 28,55,14,172/- and Rs. 30,35,24,690/- from the Escrow Accounts of the writ petitioners, and (ii) freezing of the various Escrow Accounts of the petitioner. The petitioner also sought for directions to be issued to the respondent No. 2 to consider and decide various applications of the petitioners, pending with respondent No. 2, seeking withdrawal of funds for making various investments, including the writ petitioners' application for withdrawal of money for making investment on their proposed five-star hotel.

6. By judgment and order, dated 6-1-2010, this Court allowed, as already indicated above, the writ petition with the reliefs as indicated in the decision itself. The operative part of the order read as under:

(i) The impugned actions taken by respondent No. 2, namely, Commissioner of Central Excise, Shillong, in "forfeiting" the sums of Rs. 57,61,37,536/- (Rupees Fifty Seven Crore Sixty One Lac Thirty Seven Thousand Five Hundred Thirty Six only), Rs. 28, 55, 14, 172/- (Rupees Twenty Eight Crores Fifty Five Lakhs Fourteen Thousand One hundred and Seventy Two) and Rs. 30,35,24,690/- (Rupees Thirty Crores Thirty Five Lakhs Twenty Four Thousand Six Hundred and Ninety only) from the Escrow Accounts of the petitioners maintained by the respondent Nos. 3 and 4, namely, State Bank of India, New Guwahati Branch, Guwahati, and Branch Manager, State Bank of India, Main Bazaar Branch, Agartala, respectively, and the directions given, or requests made, by the Respondent No. 2 to transfer the said amounts of money from the Escrow Accounts of the petitioners maintained by the Respondent Nos. 3 and 4 towards payment of duty and the consequential actions, taken by the Respondent Nos. 3 and 4, in carrying out the directions so given, and/or the request so made, by the Respondent No. 2 are hereby set aside and quashed.

(ii) The impugned actions of the respondent No. 2, namely, Commissioner of Central Excise, Shillong, in freezing the Escrow Account Nos. 10566984064 and 10566984086 of the petitioner No. 1, Escrow Account No. 10815025848 of the petitioner No. 2 and Escrow Account No. 10815028838 of the petitioner No. 3 maintained by the respondent Nos. 3 and 4 and/or prohibiting the petitioners from operating their respective accounts aforementioned and/or directing the respondent Nos. 3 and 4 not to let the petitioners operate their respective accounts aforementioned are hereby set aside and quashed and, in consequence thereof, it is further directed that while computing the period of investment of two years from the date of deposit under the Notification, dated 21-1-2004, read with the Notification, dated 9-7-2004, the period, during which the said accounts remained frozen and inoperative, shall be excluded.

(iii) The respondent No. 2 is hereby directed to consider, and decide, in the light of the discussions held above within a period of one month from today all the applications made by the petitioners, seeking withdrawal of money from their respective Escrow Accounts for the purpose of making investments on their various projects, including the project of five star hotel.

(emphasis supplied)

7. By filing this application, the applicants, who were petitioners in WP(C) No. 591/2008, contend that although more than a month has elapsed since the writ petition was disposed of, there has been no development as far as the implementation of the directions given by the Court are concerned. Assigning the reason for non-implementation of the order, the applicants submit that pursuant to the bifurcation and jurisdiction of the Commissioner of Central Excise, Shillong (while the writ petition was still under consideration by this Court), the applicants have approached the Chief Commissioner of Central Excise and respective jurisdictional Commissioners of Central Excise, at Shillong and Guwahati, requesting them to implement the directions given by this Court.

8. According to applicants, the implementation of the directions given by this Court, in the said writ petition, need some clarification so that the order may be implemented in letter as well as spirit.

9. The applicants have sought for clarification as under:

(i) That while computing the period of investment under the notification, the time period from 31-7-2007, till the time appropriated amount is credited in the Escrow Account of the applicant be excluded.

(ii) The applicants be permitted to file fresh withdrawal application for making investments under the notification of the amounts to be made available to them pursuant to the judgment and order, dated 6-1-2010, of this Court.

(iii) The interim order dated 30-9-2008 allowing the applicants to proceed with construction of the said hotel be made final and absolute and the applicants be allowed to withdraw the amount already spent on the hotel project out of its own fund during the pendency of the writ petition from the Escrow Funds.

10. Resisting the above application, respondents have filed their objection, wherein they have contended, inter alia, that when a writ proceeding is terminated by final disposal thereof, the writ proceeding cannot be re-opened by means of a miscellaneous application. Reference, in this regard, is made by the respondents to the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, . In their objection, the respondents concede that in its subsequent decision, in K.A. Ansari and Another Vs. Indian Airlines Ltd., the Supreme Court, referring to its earlier decision, in Brahma Datta Sharma (supra), has, indeed, held that there is no prohibition for a party to apply for clarification of an order if the order is ambiguous. The respondents, however, contend that the prayers, contained in the present miscellaneous application, have the potential to obtain further order/directions of this Court on issues, which stood concluded by judgment and order, dated 6-1-2010, aforementioned inasmuch as this Court might possibly have not consciously granted the reliefs, which the applicants are, now, seeking to obtain with the help of the present misc. application. In such circumstances, according to the respondents, the misc. application would, if

allowed, have the effect of passing further directions, which had not been given in the decision of this Court, while disposing of the said writ petition, and such directions would be contrary to the law laid down in *Brahma Datta Sharma* (supra) read with *K.A. Ansari* (supra).

11. The respondents also contend that an impression is sought to be given by the applicants that the directions, given by this Court, while disposing of the said writ petition, have not been implemented due to some vagueness, which are, now, sought to get clarified by making the present application, whereas such clarifications, if required, could have been sought for by the respondents themselves. The respondents further contend that they have already filed a writ appeal against the judgment and order, dated 6-1-2010, though the same has not yet been listed.

12. I have heard Mr. A. Roy, learned Counsel, for the applicants, and Mr. K.N. Choudhury, learned Senior counsel, appearing on behalf of the respondent Nos. 1 and 2. I have also heard Mr. K.K. Dey, learned Counsel, for the Respondent Nos. 3 and 4.

13. While considering this application, it needs to be borne in mind that though the respondents resisted the writ petition, this Court, by its judgment and order, dated 6-1-2010, as indicated above, allowed the writ petition by setting aside the respondents' impugned actions of getting transferred diverse sums of money from the Escrow Accounts of the writ petitioners towards recovery of alleged dues of excise duty and additional duty of excise. This Court also set aside the respondents' actions of freezing the writ petitioners' Escrow Accounts.

14. However, as the scheme of exemption envisaged that in order to make a manufacturer entitled to claim exemption from payment of excise duty and/or additional duty of excise, the manufacturer was required to make investment by withdrawing money lying in his Escrow Accounts, but for the purpose of withdrawing his money from the Escrow Accounts to make investment, he was to make an application, for withdrawal of money from his Escrow Account, to the jurisdictional Commissioner and it was only on being so permitted, by the jurisdictional Commissioner, that the manufacturer could have made investment and such investment was to be examined by an Investment Appraisal Committee (in short, "the IAC) and, if allowed by the IAC, then and then only the manufacturer was to receive exemption of such amounts as may have been specified by the IAC as investment made by the manufacturer, this Court took the view, for reasons assigned, that various time-frames for taking all these actions, which the scheme envisaged, such as, making of application for withdrawal, making of investment and certification of investment by the IAC, were directory in nature and, accordingly, ordered the respondents to consider, within a period of one month from the date of delivery of the judgment, all the applications, which had been made by the writ petitioners, seeking withdrawal of money from their Escrow Accounts for the purpose of making investments on their various projects including the project of a five-star hotel.

15. As the petitioners had not been able to make investments due to the fact that their Escrow Accounts had remained frozen and the withdrawal applications had not been disposed of, and/or were incorrectly disposed of, the Court further directed that while considering the applications for withdrawal, the periods, during which the Escrow Accounts, in question, had remained frozen, shall be excluded so that the withdrawal applications do not lapse and the investments, sought to be made, were not denied due to the illegal and arbitrary actions of the respondents.

16. However, it appears, now, that while this Court did direct that the periods, during which the Escrow Accounts remained frozen, be excluded for the purpose of consideration of withdrawal applications, for the purpose of making investment and for the purpose of certification of the investment by the IAC, the Court did not pass any specific direction that the periods, during which the money having been transferred on the direction of the respondents from the petitioners' Escrow Accounts towards alleged recoverable dues of excise duty or additional duty of excise, be also kept excluded.

17. In the circumstances, indicated above, the writ petitioners, with the help of the present miscellaneous application, have, now, sought for a clarification to be issued that not only the periods, during which the Escrow Accounts had remained frozen, but also during the periods, when diverse sums of money were lying transferred by the orders of the respondents/authorities concerned from the writ petitioners' Escrow Accounts towards recovery of the petitioners' alleged duties of excise duty or additional duty of excise and remained, thus, unutilized, shall be excluded for the purpose of considering the withdrawal applications and also for the purpose of making investments. By this miscellaneous application, the writ petitioners, as applicants, have also sought for, besides the reliefs as indicated hereinbefore, certain directions to be issued, by way of clarification, such as, the direction that the applicants be allowed to file fresh withdrawal applications for making investments of the amounts, which would be made available to them by the respondents, pursuant to the judgment and order, dated 6-1-2010, and to make absolute the interim order, which was passed, on 3-9-2008, allowing the applicants to proceed with the construction of the five-star hotel.

18. The respondents, as already indicated above, have resisted the application by contending that this application is not sustainable, because this application seeks further order or direction from this Court on issues, which already stand concluded inasmuch as this Court might possibly have not consciously granted the reliefs, which the applicants are, now, seeking and if the application is allowed, it would amount to issuing further directions, which would be impermissible in law. There is substance in the submissions of Mr. Choudhury to the extent that no such clarification can be issued by this Court, which would have the effect of giving such reliefs, which the petitioners were, otherwise, not entitled to and/or have not been consciously granted by the judgment and order,

dated 6-1-2010.

19. Considering, however, the fact that the withdrawal applications, which the respondents are directed to examine and dispose of within the specified time-frames, cannot be effectively considered if the periods, during which the money having been transferred from the petitioners' Escrow Accounts remained illegally unutilized with the respondents, it is necessary to clarify, and it is hereby clarified, that not only the periods, during which the Escrow Accounts, in question, remained frozen, but also during the periods, when diverse sums of money, having been transferred from the petitioners' Escrow Accounts towards recovery of the alleged dues of the petitioners, remained unutilized by the petitioners, be kept excluded, while considering their applications for withdrawal so that the withdrawal applications do not lapse by the ex Jack illegal actions of the respondents and not for any default on the part of the writ petitioners-applicants.

20. Coupled with the above, one cannot avoid noticing that it was in order to enable the petitioners receive the fruits of the reliefs, which had been granted, that this Court had directed that while computing the period of investment of two years from the date of deposit under the Notification, dated 21-1-2004, read with the Notification, dated 9-7-2004, the periods, during which the said accounts remained frozen and inoperative, shall be excluded.

21. The Court, while so directing exclusion of the periods, during which the Escrow Accounts remained frozen, did not, however, direct that the periods, during which the amounts stood appropriated by way of forfeiture to the Government's account towards payment of alleged excise duty or additional duty of excise, be also excluded. The question, therefore, is : whether the omission to direct the exclusion of the periods, during which the amounts remained forfeited, had been consciously denied to, or not granted to, the applicants by this Court as had, otherwise, been done in respect of the periods during which the Escrow Accounts remained frozen.

22. I may pause here to point out that in the face of the findings of a Court, when a person is, otherwise, entitled to a relief and the relief is not granted to him and when such a person comes to the Court seeking clarification if the Court did not mean to grant him the relief, which he was, otherwise, entitled to receive, it must be shown, and the Court must be capable of holding, that the relief, though entitled to be received by the person concerned, had been consciously denied to him; or else, the Court would be obliged to give relief, which the Court had, unmindfully or unconsciously, omitted to give provided that the Court has the power to review its own orders/directions and correct errors. In a case of this nature, it would remain the obligation of the Court to ensure that the reliefs, which it had unmindfully or unconsciously not made available to the person approaching the Court, be made available to him if the law gives the Court the power to review. Here lies the determination of the scope and ambit of the plenary power of the High Court to review its own order.

23. Though, in the case of Brahma Dutta Sharma (supra), the Supreme Court had held that a decision, whereby a writ petition is disposed of, cannot be re-opened by making a miscellaneous application, the Supreme Court, in its latter decision, in K.A. Ansari (supra), has held that it is within the power of the Court to always clarify its own order. What the decision, in K.A. Ansari (supra), reflects is that an order, made in a writ petition, must give the relief, which the person approaching the Court was entitled to, and if, in order to make the relief available, the Court finds that a clarification is necessary to make as to what it had decided or ordered, it would remain within the powers of the Court to so clarify its own order. It may be noted that the power, which vests in a Court, casts really an obligation on the Court to exercise such power, when the facts of a given case so warrant.

24. Before proceeding further, it also needs to be noted that though, ordinarily, a petition is considered and decided on the basis of the label, which it carries, the fact remains that the label of the petition is not decisive of the power of the Court in the sense that a petition, even if refers to a legal provision erroneously, cannot be rejected if the facts, disclosed in the petition, require the Court to exercise its power, which the Court, otherwise, has. In such cases, as indicated hereinbefore, the Court must exercise its power, for, the Court exists not for counting errors as regards the management of a case by a person, but for doing substantive justice. It is, therefore, the duty of the Court to exercise its power to give a relief, which the contents of a petition may make a petitioner entitled to receive, irrespective of the fact as to whether the petitioner has asked for relief or not or whether the petition refers to, and relies upon, a correct provision of law, in this regard, or not. Considered in this light, it becomes transparent that if the present application entitles the applicants to receive a relief, this Court is bound to make available to the applicants the relief, which they are entitled to, irrespective of the fact as to whether the form in which the present application has been made and/or the nature of reliefs, which it has sought for, or the principle of law, which it has relied upon, is correct or not.

25. It is also trite that an order or decision of a Court can cause prejudice to none. Hence, when there is an error apparent on the face of the record, it becomes the duty of the Court, particularly, when it is the Court of plenary jurisdiction, such as, a writ Court, which is the Court of records, to correct its error, rectify its record and give relief, which the person approaching the Court, is, in the facts of a given case, entitled to receive. In fact, there is no dispute that if there is a mistake apparent on the face of the record and such a mistake is brought to the notice of the High Court, it becomes the obligation of the High Court to correct the mistake.

26. It is well settled that a Court or Tribunal or adjudicating authority becomes *functus officio* (ceases to have control over the matter) once a judgment is pronounced or the order is made. Such judgment and order, when becomes final, cannot be altered, changed, varied or modified unless the statute, whereunder

the Court, Tribunal or the adjudicating authority functions, so permit. There can also be no doubt that the power of review is not an inherent power. The right to seek review of an order is neither natural nor fundamental right of an aggrieved party. Such power must be conferred by law. If there is no power of review, the order cannot be reviewed. However, a Court, having plenary power, is not affected by any statutory restrictions in reviewing its own order. In *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, the Supreme Court, while dealing with the provisions of Saurashtra Land Reforms Act, 1951, and referring to Order 47 Rule 1 of the CPC, held that there is no inherent power of review with the adjudicating authority if it is not conferred by law. The observations read, "It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to (our) notice from which it could be gathered that the Government had power to review its own order, it is obvious that its delegate could not have reviewed its order." The position of law, so laid down in *Patel Narshi Thakershi (supra)*, has been reiterated by the Supreme Court in other later cases.

27. It is necessary to bear in mind, as pointed out in *Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd.*, that it is very difficult to define an error apparent on the face of the record precisely, scientifically and with certainty.

28. Referring to its earlier decisions in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, , and *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , the Supreme Court, in *Saurashtra Kutch Stock Exchange (supra)*, concluded that a patent, manifest and self-evident error, which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and in order to ascertain whether an error is error apparent on the face of the record or not if one has to travel beyond the record to see whether the judgment is correct or not, such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. If the view accepted by the court in the original judgment is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record.

29. In *A.R. Antulay Vs. R.S. Nayak and Another*, the Supreme Court has, recognizing the principle of "*actus curiae neminem gravabit*" (an act of the court shall prejudice no man), has held that this maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. Observed the Supreme Court, in *A.R. Antulay (supra)*: "The basic fundamentals of the administration of justice are simple. No man should suffer, because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. *Ex debito justitiae*, we must do justice to him. If a man has been

wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."

30. Accepting existence of the High Court's power to review its own decision and direction as a Court of plenary jurisdiction, the Supreme Court held in, *Shivdeo Singh v. State of Punjab* AIR 1963 SC 1909, that it has been long recognized that there is nothing in Article 226 of the Constitution precluding a High Court from exercising the power of review, which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct the grave and palpable errors committed by it.

31. Thus, in the case of an error apparent on the face of the record, the High Court does have the power to review its own order. In *Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and Others*, the Supreme Court has held that the law is well settled that the power of review of its own order by the High Court inheres in every court of plenary jurisdiction to prevent miscarriage of justice and that the High Court's power of review extends to prevent miscarriage of justice. The Court observed, "...The courts should not hesitate to review their own earlier order, when there exists an error on the face of the record and the interest of justice so demands in appropriate cases."

32. The Supreme Court, in *M.M. Thomas Vs. State of Kerala and Another*, held thus:

14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers, to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is, undoubtedly, a superior court, which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In *Naresh Shridhar Mirajkar v. State of Maharashtra*, a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record.

*** ** 17. If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of the record.

33. From what have been observed and laid down, in *MM. Thomas (supra)*, what becomes more than abundantly clear is that the proceedings of the High Court, as a court of record, as envisaged in Article 215 of the Constitution, remain enrolled in a perpetual memorial and testimony and it has a duty to itself to

keep, as a court of record, all its records correctly and in accordance with law. Hence, if any error, apparent on the face of the record, is noticed by the High Court in respect of any orders passed by it, the High Court has not only the power, but a duty to correct the error and, in this regard, the High Court's power being plenary, this plenary power of the High Court would include the power of review of errors apparent on the face of the record. What further follows, as a corollary, is that even if the present petitioners-applicants have not specifically sought for review and correction of the errors embedded in the judgment and order, dated 6-1-2010, aforementioned passed by this Court and even though they have sought for only clarification of the directions given by this Court, the fact remains that when the facts, placed before this Court, in this application by the petitioners-applicants, show errors apparent on the face of the record in the sense that this Court has, inadvertently and unmindfully, not made available to the petitioners-applicants complete reliefs, which they were, otherwise, entitled to, all such reliefs be made available to them, because, by correcting the errors apparent on the face of the record, this Court would be doing no favour to the petitioners-applicants; rather, the High Court, by correcting the errors, would be discharging its duty to keep its record, as a court of plenary jurisdiction, free from errors.

34. In the backdrop of the position of law, as discussed above, indicating that the High Court does not only have the power, but also owes a duty to ensure that every error, apparent on the face of the record, when comes to its notice, be corrected, when I revert to the facts of the present case, I find that it is not only within the powers of this Court, but it is also this Court's obligation to direct that the periods, during which the money lying in the applicants' Escrow Accounts stood forfeited, be excluded, while considering the petitioners-applicants' applications for withdrawal as has already been directed in respect of the periods, during which the Escrow Accounts stood frozen.

35. By making this application, the applicant has also sought for allowing them to file fresh withdrawal applications for making, under the notification, investments of the amounts, which would be made available to them pursuant to the judgment and order, dated 6-1-2010, aforementioned. In this regard, it needs to be noted that as a result of freezing of the accounts as well as in consequence of the act of forfeiture of diverse sums of money lying in the Escrow Accounts of the petitioners-applicants, the petitioners-applicants could not make withdrawal applications for making investments. As the Respondents' action of freezing the money lying in the petitioner-applicants' Escrow Accounts as well as the respondents' action in appropriating the amounts, lying in the petitioner-applicants' Escrow Accounts, by way of forfeiture, have already been held to be illegal and have been set aside, it logically follows that the petitioners-applicants were estopped from making their withdrawal applications, because of the said illegal acts of the respondents. In such circumstances, if the fruits of the orders are to be made available to the petitioners-applicants, it must, as a corollary, follow that the petitioners-applicants be allowed to make their withdrawal

applications for making, under the notification, investments of the amounts, which would be made available to them pursuant to this Court's judgment and order, dated 6-1-2010. It is, therefore, directed that for the purpose of making the withdrawal applications, the periods, during which the Escrow Accounts had remained frozen as well as the periods, during which diverse sums of money had stood appropriated by forfeiture of the amounts, shall be kept excluded.

36. Coming to the question of the hotel project, it needs to be noted that by way of an interim order, dated 30-9-2008, the Court had allowed the petitioners-applicants to proceed with the construction of the hotel subject to the outcome of the writ petition and since this Court has already held that the petitioners-applicants' hotel project stood approved, on principle, by the IAC, and when the petitioners' hotel project satisfies the conditions of investment on infrastructure, it becomes clear that the respondents are, now, required to pass appropriate order(s), in this regard, so as to enable the petitioners-applicants receive the benefit of the findings of this Court and the directions given in this regard.

37. The directions, contained above, it may be noted, having not been consciously denied, though the petitioners-applicants were entitled to, ought to have been given and it is this error, which was apparent on the face of the record and which has, now, been corrected. Such directions, one must reiterate, shall be made available to the petitioners-applicants so that they can enjoy the fruits of the directions already passed, in their favour, in their writ petitions.

38. With the above observations and directions, this Miscellaneous application shall stand disposed of.

39. No order as to costs.