

(2009) 09 MAD CK 0128

In the Madras High Court

Case No : Review Application (MD) No's. 46 and 47 of 2008

ITC Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 30, 48
Customs Tariff Act, 1975 — Section 22(3)
Hazardous Wastes (Management and Handling) Amendment Rules, 2003 — Rule 15, 15(2)
Major Port Trusts Act, 1963 — Section 61, 62

Citation : (2010) 1 MLJ 1451

Hon'ble Judges : R. Subbiah, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Habibullah Badsha, S.C. for R. Raghavan, for the Appellant; V.J. Mathew, for R. 1 in Rev. A. 86/2008, M. Ravindran, Addl. Solicitor General of India Assisted by K. Ravichandra Babu, K. Srinivasan, for R.3 in Rev. A. 86/2008, A.W.D. Tilak, for R. 4 in Rev. A. 86/2008, Silambanan, S.C. for Silambanan Associates for R. 6 in Rev. A. No. 86/2008, R. Muthukumaraswamy, S.C. for G.R. Swaminathan, for R.7 in Rev. A. No. 86/2008 and R. Ramanlal, for R. 8 in Rev. A. No. 86/2008, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—In all these matters, the petitioners seek to review the common order passed by us on 21.11.2008 in Writ Appeal (MD) No. 721 of 2007, Writ Petition (MD) No. 5989 of 2008 and Writ Petition (MD) No. 5994 of 2008, while sitting at the Madurai Bench of this Court. Though all these matters are originally filed before the Madurai Bench of this Court, for the sake of convenience, they are ordered to be posted at the Principal Seat, before this Bench, which has passed the orders in the writ appeal and writ petitions. In this way, these matters are posted before us and since all the matters are

interconnected with each other, common arguments were advanced and are being disposed of by this common order.

2. For the sake of convenience and easy reference, the parties are referred to as per their ranking in Review Application (MD) No. 86 of 2008.

3. A brief background of the cases on hand is that the petitioner/ITC Limited has placed an order with the seventh respondent/Evergreen Specialities Inc. for supply of mixed waste papers single stream on 10.8.2005. The petitioner has filed two Bills of Entry bearing Nos. 371549, dated 13.9.2005 and 372089, dated 20.9.2005 through their agent M/s. Indev Shipping Services Limited/the third respondent for clearance of 40 numbers of containers, declaring the cargo as "waste paper". The goods on de-stuffing and on examination by the Customs on 22.9.2005, were found to be waste paper mixed with used plastic carry bags, pet bottles, used clothes, shoes and other household articles, used soft drink metal cans leaching out dirty liquid and emitting foul smell, thus falling within the definition of "municipal waste" under Chapter 38 Note 4 of the First Schedule to the Customs Tariff Act and hazardous waste having characteristics of eco-toxic and infectious substances to be dealt with under the provisions of the Hazardous Wastes (Management and Handling) Rules, 1989. Therefore, the Customs officials issued a show-cause notice dated 26.9.2005 to the importer/review petitioner and the petitioner has sent a letter dated 27.9.2005 stating that the subject import consigned to them do not contain wastepaper and is in contravention of their order conditions and therefore, they have rejected the material 100% and informed the supplier and by the reply letter dated 5.10.2005, the petitioner has requested permission for re-export of the entire cargo of 40 containers, which was accorded by the Commissioner of Customs, by the Note order dated 7.10.2005, ordering immediate re-export of subject cargo in 40 containers. Thereupon, the petitioner/appellant requested the first respondent/M/s. Norasia Container Lines Limited to allot forty numbers of 40 feet empty containers to stuff their cargo to be shipped from Tuticorin to Ajman and on such allotment of containers by the first respondent, the petitioner took the 40 containers to the warehouse and did the stuffing, loading and sealing of the containers in the presence of the Customs officials and handed over the sealed stuffed container for shipment and declaring the cargo as "mixed waste paper", the 40 containers were sent to Ajman. The customs authorities at Ajman, UAE, examining five containers out of 40, found that the said cargo was mis-declared in the Bill of Lading and accordingly directed the first respondent, through their agents in UAE, to re-export the containers back to shipment port in India or else to face necessary action.

4. Immediately thereafter, the first respondent informed the agents of the review petitioner and the third respondent in UAE and the importer/JDH International LLC, Dubai, UAE by their letter dated 21.2.2006 about the letter issued by the Customs and instructed them that if they do not take delivery of the cargo, the carrier would re-export the cargo back to the port of origin/loading/Tuticorin,

India, for which the petitioner and the third respondent and also the JDH International LLC, Dubai, UAE would be held responsible for all charges including ground rent, demurrage charges, survey charges etc.

5. For the letter dated 21.2.2006, addressed by the first respondent, the petitioner had sent a reply on 27.2.2006, denying the liability and further stating that they are not the shipper of the cargo and that the cargo was shipped to the consignee M/s. JDH International LLC in Ajman by Evergreen Specialities, USA and that the cargo was originally wrongly shipped to them by Evergreen Specialities, USA. Therefore, the first respondent herein has filed W.P. (MD) No. 768 of 2007 before this Court, praying to issue a Writ of Mandamus, directing the respondents 4,5 and 6 therein (viz. The Tuticorin Port Trust, the Commissioner of Customs and PSA Sical Terminal Limited respectively) to take steps to destuff the cargo from the containers belonging to him, which are lying in the customs yard, as provided u/s 61 and 62 of the Major Port Trust Act and Sections 30 and 48 of the Customs Act and release the empty containers to the writ petitioner, wherein the learned single Judge has issued certain directions to the respondents, including directing the present petitioner/ITC Limited to incinerate or re-export the cargo back to Evergreen Specialities Inc. USA or to any one else in any other country and if the material is held by the Central Pollution Control Board to be either non-hazardous or fit for disposal locally (though hazardous), the Commissioner of Customs may permit the disposal of the cargo locally, subject, however to the terms and conditions imposed by the Central Pollution Control Board and the incineration or re-export or local disposal shall be as recommended by the Pollution Control Board and it shall be at the cost of the ITC at the first instance.

6. It is seen from para No. 16 of the order passed by the learned single Judge, that the learned senior counsel appearing for the present petitioner/ITC Limited has submitted before the learned single Judge that he has no objection to the prayer of the writ petitioner therein being allowed to the limited extent of permitting the containers to be shifted to a private bonded warehouse and after such shifting a team of experts as suggested by the Central Pollution Control Board examining the samples of the cargo to arrive at a final conclusion and if the conclusion so arrived at is that the cargo contained hazardous waste, it could be disposed of in a manner as suggested by the team of experts and if the finding is otherwise, the material could be disposed of even by the Customs Authorities, as "abandoned material". Pursuant to the consent given by all the counsel in the matter, the learned single Judge has passed the order dated 21.9.2007.

7. Thereafter, pursuant to the directions of the learned single Judge, the Central Pollution Control Board examined the cargo on 7.11.2007 and submitted their report dated 16.11.2007, recommending as follows:

The containers opened exhibited a putrid odour typical of non-segregated municipal garbage/waste. Significant number of insects could be observed in the

containers which is indicative of organic municipal waste.

In view of the above observations and present conditions of the consignments, it would be appropriate to deal the above consignments in accordance with the provisions laid down under Rule 15 of Hazardous Waste (Management and Handling) Rules, 2003, in view of the illegal traffic.

In order to avoid such illegal traffic into the country or discourage such illegal imports into the country in future and keeping in view the protection of the environment as well as the public in India, that may likely to pose a threat to the environment, if such illegal consignments are handled or disposed of in the country.

The visited team members hereby strongly recommend that the Commissioner of Customs, Custom House, Tuticorin shall direct the second respondent (ITC Limited) to re-export all such consignment to the exporter (M/s. Evergreen Specialities Inc. USA) in accordance with the Rules 15(2) of Hazardous Waste (Management and Handling) Rules, 1989 and further amendments made in the year 2000 and 2003.

8. Thereupon, the Customs Department by the order dated 23.11.2007 has directed the ITC Limited to comply with the above recommendations in the report of Expert Panel and to re-export the 35 containers in accordance with Rule 15(2) of the Hazardous Waste (Management and Handling) Rules 1989 at the risk and costs of the ITC. But, in the meantime, challenging the order of the learned single Judge, the present petitioner/ITC Limited has preferred W.A. (MD) No. 721 of 2007.

9. After filing of the above Writ Appeal, the petitioner/ITC Limited has filed W.P. (MD) No. 5989 of 2008 on 30.6.2008, challenging the above said report of the Central Pollution Control Board, dated 16.11.2007. The petitioner/ITC Limited has also filed W.P. (MD) No. 5994 of 2008 on the same day i.e. on 30.6.2008, challenging the order passed by the Customs Department dated 23.11.2007, thereby directing the ITC Limited to comply with the above recommendations of the Expert Panel of the Central Pollution Control Board and to re-export the 35 containers in accordance with Rule 15(2) of the Hazardous Waste (Management and Handling) Rules 1989 at the risk and costs of the ITC. Both these writ petitions, have been filed with a long delay of seven months, from the dates of the recommendations of the Central Pollution Control Board and the directions of the Customs officials, probably as an afterthought.

10. Since all the matters are interconnected with each other, they all were heard together and disposed of by us by the common order dated 21.11.2008. All these petitions have been filed to review the said common order passed by us.

11. It has been brought to our notice that as against the very same common order passed by us on 21.11.2008, the petitioner/ITC Limited has already filed Special Leave Petitions No. 2906 to 2908 of 2008 and they are pending before

the Honourable Supreme Court.

12. We are aware that mere filing and pendency of the SLP before the Honourable Apex Court, would not bar the High Court in reviewing its order or decision, if new or important matter or evidence, which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record. But, the position would be different if the Honourable Apex Court had considered the SLP on merits and had passed an order on the matters dealt with in the judgment of the High Court. For this, we draw support from the judgment of the Honourable Apex Court in Kapoor Chand and others Vs. Ganesh Dutt and others, . Since in the cases on hand, the Special Leave Petitions are pending before the Honourable Apex Court and no orders have been passed on merits in those Special Leave Petitions, we have no hesitation to hold that these review petitions are very well maintainable.

13. A strenuous argument has been advanced on the part of the review petitioner that this Court has exceeded not only the scope of the writ appeal but also the writ petitions and thrown the petitioner to a worse position, which is not permissible under law.

14. For this, the learned senior counsel appearing for the review petitioner would rely on the following judgments:

1. Chandigarh Administration Vs. Laxman Roller Flour Mills Pvt. Ltd.,
2. National Board of Examinations Vs. G. Anand Ramamurthy and Others,
3. Union of India (UOI) Vs. Lexus Exports Pvt. Ltd. and Another, and
4. Pradeep Kumar v. Union of India (UOI) and Ors. (2005) 12 SCC 219

15. In the first judgment cited above reported in Chandigarh Administration Vs. Laxman Roller Flour Mills Pvt. Ltd., , a plot was allotted to one M/s. Khushal Furnishing and Carpeting Company and the allottee was required to construct building on the said plot of land and obtain an occupation certificate within one year from the date of allotment. Subsequently, the allottee sought permission from the Chandigarh Administration for transfer of the said plot in favour of M/s. Laxman Roller Flour Mills Pvt. Ltd. The permission asked for was granted and a lease deed setting out all the terms and conditions was executed in favour of the respondent. On inspection, it was also found that constructions made by the respondent on the said plot of land was not in accordance with the original plan submitted with the Chandigarh Administration and therefore, the respondent/Laxman Roller Flour Mills was advised to submit a revised plan to be passed in accordance with the rules and also to complete the construction within the extended period of time and since the said company could not complete the construction within the stipulated period, the lease granted in its favour stood cancelled. Therefore, the said company filed a Writ Petition seeking for a Writ of

Mandamus directing the respondents therein to grant extension and permission to mortgage the plot in industrial area and restraining the respondents from dispossessing the petitioner. The High Court had issued a direction to the Chandigarh Administration to issue completion certificate. Even the learned Counsel for the respondent before the Apex Court, who was the writ petitioner before the High Court, has admitted that there is no allegation to the effect that Chandigarh Administration has illegally withheld the completion certificate. In such circumstances, the Honourable Apex Court has held that

It is settled law that unless the allegations are made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition. We are, therefore, satisfied that in the absence of pleading and prayer in the writ petition, the High Court fell in error in issuing directions to the appellant to issue completion certificate to the writ petitioner-respondent. In such circumstances, we set aside the order of the High Court to the extent it directs the Chandigarh Administration to issue completion certificate to the writ petitioner-respondent....

16. In the second judgment cited above reported in *National Board of Examinations Vs. G. Anand Ramamurthy and Others*, , the High Court has directed the National Board of Examinations to permit the candidates to sit for super speciality examinations of the Medical course, as against the policy decision of the Board, further interfering in educational/academic matters, wherein the Honourable Apex Court has held that "direction by High Court to petitioner institution to hold examinations against its policy leading to perversity and promotion of illegality, was not justified and that grant of relief which was not sought for in the writ petition is also not justified."

17. In the third judgment cited above reported in *Union of India (UOI) Vs. Lexus Exports Pvt. Ltd. and Another*, , in a matter of seizure and confiscation of goods to be exported, the proceedings of which are proceedings in rem, the High Court directed release of the goods and allowed the exporters to export such goods during pendency of the statutory adjudication. In those circumstances, the Honourable Apex Court has held that "until culmination of adjudication, exporter do not acquire any right to get release of the seized goods on the basis of any future title they expect to acquire by payment of fine and mere fact that it would earn foreign exchange for the country is not a valid ground for release of the goods and that sanctity of legal proceedings cannot be whittled down on ground of such expediency."

18. In the fourth judgment cited above reported in (2005) 12 SCC 219, when a workman has challenged the punishment of reduction in pay and denial of increments before the High Court under Article 226, the High Court has directed that maximum penalty of dismissal from service ought to have been imposed on the workman. In such circumstances, the Honourable Apex Court has held:

Irrespective of the crime/offence with which the appellant may have been

charged, it was not open to the High Court to have issued such a direction. The scope of judicial review did not allow the High Court to have interfered with the punishment imposed by the disciplinary authorities on the appellant. Besides, a writ petitioner cannot be put in a worse position by coming to court. The directions of the High Court are not sustainable and must be set aside. We are told by the learned Counsel for the appellant that the respondent authority pursuant to the directions issued by the High Court initiated proceedings against the appellant for the purpose of imposing the penalty of dismissal from service. We have held that the direction of the High Court was wholly outside its jurisdiction. The appeals are thus allowed and the High Court's directions are set aside. The disciplinary enquiry initiated on the basis of the High Court's order is consequently also quashed....

19. But, the same is not the situation on hand. In the W.P. (MD) No. 768 of 2007 filed by Norasia Container Lines Limited, before the learned single Judge, they have prayed for a Writ of Mandamus, directing the respondents 4 to 6 therein i.e. Tuticorin Port Trust, Customs officials and the PSA Sical Terminal Limited respectively, to take steps to destuff the cargo from the writ petitioner's 35 x 40" FCL containers, which were lying in the Tuticorin Customs container yard, as provided under Sections 61 and 62 of the Major Port Trust Act and Sections 30 and 48 of the Customs Act and release the empty containers. As has already been pointed out supra, the learned senior counsel for the present review petitioner has submitted before the learned single Judge that he has no objection to the prayer of the writ petitioner therein being allowed to the limited extent of permitting the containers to be shifted to a private bonded warehouse and after such shifting, a team of experts, as suggested by the Central Pollution Control Board, examining the samples of the cargo to arrive at a final conclusion and if the conclusion so arrived at is that the cargo contained hazardous waste, it could be disposed of in a manner as suggested by the team of experts and if the finding is otherwise, the material could be disposed of even by the Customs Authorities, as "abandoned material". Pursuant to the consent given by all the counsel in the matter, the learned single Judge has passed the order dated 21.9.2007 and pursuant to the said directions of the learned single Judge, the Pollution Control Board has submitted its report and the Customs officials have passed the orders.

20. Though the said directions have their genesis in the admission made on the part of the learned senior counsel for the review petitioner, before the learned single Judge, instead of complying with the said directions, the review petitioner has resorted to filing the W.P. (MD) Nos. 5989 and 5994 of 2008 and this aspect has been dealt with by us in Para No. 20 of the impugned common order dated 21.11.2008 and for the sake of convenience and better appreciation, we extract the same hereunder:

20. When, admittedly, the appellant himself has consented to pass such an order of appointment a team of experts and even to dispose of the cargo in the

manner suggested by the team of experts, after the recommendations of the Expert Body, the appellant cannot now take a "U" turn and contend otherwise, as if he has not consented for such an order to be passed by the learned single Judge. On this sole ground, the writ appeal and the writ petitions filed by the appellant are liable to be dismissed as not maintainable.

21. Though such an observation was recorded by us, to give a quietus to the entire issue, we have discussed the matter in detail on merits. The matters on hand have exhibited the audacity of the review petitioner in going back their own promise and not complying with the directions, accordingly issued by the Customs officials, which we have discussed threadbare in our common order dated 21.11.2008. Therefore, in view of this factual matrix of the cases on hand, the above judgments of the Honourable Apex Court have no application to the facts on hand, since every case has to be judged on its own facts and circumstances.

22. Regarding the ambit and purpose of the Review, since all these review petitions are filed under Order 47 Rule 1 of CPC, we feel it apt to extract the same hereunder:

1. 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 to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an Appeal by some other party except where the ground of such Appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

From the above, it is clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason.

23. At this juncture, we feel it apt to quote a Three Judge Bench judgment of the Honourable Apex Court in *S. Bagirathi Ammal v. Palani Roman Catholic Mission* 2007 (5) CTC 881, wherein after extracting the above provision of law, the Honourable Apex Court has held:

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 appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled re-hearing 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 at right by reviewing the order.

24. The learned senior counsel for the review petitioner would also press into service a judgment of the Honourable Apex Court in *State of West Bengal and Ors. v. Kamal Sengupta and Anr.* (2008) 8 SCC 612, wherein it has been held:

Since the Tribunal's power to review its order/decision is akin to that of the civil court, statutorily enumerated and judicially recognised limitations on the civil Court's power to review its judgment/decision would also apply to the Tribunal's power u/s 22(3)(f) of the Act. A Tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 are available. This would necessarily mean that a Tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision.

25. Keeping in mind the above propositions and the further settled legal position that review cannot be the appeal under disguise, now we shall see whether there are any errors apparent on the face of our order or that is there any new or important matter or evidence which the review petitioner could not produce at the time of initial decision despite exercise of due diligence or the same was not within his knowledge or that the order passed by us suffers from any mistake or error apparent on the face of the record.

26. It has been argued on the part of the review petitioner that they are not the exporters of the cargo and that the cargo was shipped to the consignee M/s. JDH International LLC in Ajman by Evergreen Specialities, USA and that the cargo was originally wrongly shipped to them by Evergreen Specialities, USA. In the

counter affidavit filed by the Evergreen Specialities in the Writ Appeal, they have stated that the first respondent/Norasia Container Lines Limited brought the goods back to Tuticorin from Ajman, without contacting M/s. Tidewater Fibre Corporation, though they have informed the Norasia Container Lines Limited that the said M/s. Tidewater Fibre Corporation was the original packer and shipper of the cargo from USA, who have admitted their error. For this it is to be mentioned that all the containers were engaged by the review petitioner/ITC from the Norasia Container Lines Limited, further mentioning themselves (ITC) as the exporter of the cargo and it seems there is no contract entered into by Norasia Container Lines Limited either with the 7th respondent Evergreen Specialities or with the above said M/s. Tidewater Fibre Corporation. Therefore, it is but natural that on being rejected at the destination, the Norasia Container Lines Limited has to necessarily brought back the goods to the exporter/the ITC. Further more, during the course of arguments in the Writ Appeal and the writ petitions, the specific stand taken by Evergreen Specialities, USA was that the cargo was sent to Ajman by the review petitioner/ITC without their knowledge and at no point of time, they were informed by the ITC that the cargo was sent to UAE. This aspect we have dealt with in Para No. 30 of our common order dated 21.11.2008.

27. During the course of pendency of these proceedings, the 7th respondent Evergreen Specialties Inc. has filed an affidavit submitting they are making arrangements to take back the cargo and for the purpose of re-shipment, their company has engaged M/s. Indev Shipping Services (Tuticorin) Private Limited as their Agent at Tuticorin to complete the process of re-export and the said M/s. Indev Shipping Services (Tuticorin) Private Limited also had discussions with certain container companies for the re-shipment and the discussion with those parties are going on and therefore, requested to permit them to re-ship the cargo to USA at their expense. When these matters were reserved for orders, the review petitioner has filed a memo. on 9.6.2009, the contents in Para Nos. 3 and 4 therein are extracted hereunder:

3. Since the seventh respondent Evergreen Specialities Inc. is willing to take back the consignments, in order to clear the impasse and to send the consignments back to the seventh Respondent Evergreen Specialities Inc., and without prejudice to the rights and contentions in this matter the Review Petitioner has discussed the matter with the seventh respondent Evergreen Specialities Inc. and has offered to re-export the same back to the seventh respondent and the seventh respondent has agreed to the same.

4. Accordingly, the Review Petitioner has placed an order dated 29.5.2009 on M/s. Uniworld Logistics Pvt. Limited, Mumbai for providing 35 containers so as to take them to the seventh respondent Evergreen Specialities Inc. in U.S.A. The Review Petitioner has also filed a letter dated 29.5.2009 to this effect with the Customs Department. By its letter dated 5.6.2009, the Customs Department has requested the Review Petitioner to inform all concerned parties well in advance about the positioning of the containers and offered to assist in the re-export as

per the directions of this Hon'ble Court. The Review Petitioner is making sincere efforts to position the containers for re-stuffing by 12.6.2009 and the Customs Department would be informed accordingly. The Liner has confirmed that by end June these containers would be shipped out. This will be subject to the de-stuffing and re-stuffing process being completed by then. This activity is being done without prejudice to the rights and contentions of the Review Petitioner.

28. Though, now, after the delivery of our common order dated 21.11.2008 and filing of the Special Leave Petitions before the Honourable Supreme Court and these review petitions before this Court by the review petitioner/ITC, the seventh respondent has changed its stance and the review petitioner has also re-exported the cargo, we have no hesitation to hold that all these things happened or done by the 7th respondent and the review petitioner only to get over the observations made by us in our common order dated 21.11.2008. In our common order dated 21.11.2008, we have pointed out as to how the developed nations are trying to dump their municipal waste in the developing countries. In the counter affidavit filed by the 7th respondent herein in the Writ Appeal, they themselves have agreed that even if the containers are directed to be re-exported, they cannot be sent to any country. They have further submitted that if the goods are to be re-exported, they will have to be segregated in the private bonded ware-house and plastic waste alone will have to be re-exported and instead of sending the goods to Bangladesh, it may be more prudent and viable to dispose off the plastic waste to M/s. Harbour Petrochem Industries Private Limited, who are operating in the Tuticorin Port Zone and identified by the 7th respondent, to sort out the plastic waste, process it and re-export the processed plastic goods and no prejudice whatsoever will be caused either to the Pollution Control Board or to the Customs Department, if the waste is allowed to be segregated at Tuticorin itself and plastic waste is supplied to Harbour Petrochem Industries Private Limited.

29. Had this business tactic and cunning intention of the 7th respondent to segregate and dispose the municipal waste at the Tuticorin Port and disposing off the plastic waste alone to their identified firm, was permitted by this Court, it would have posed a dangerous threat of pollution to our land and water. When the review petitioner and the 7th respondent have taken steps to send back the cargo to USA only pursuant to the directions of this Court, it cannot be said that some "new material" has been made available before this Court to review our judgment.

30. All the so-called new materials placed before us by the review petitioner are the communications emanated to and from the 7th respondent in de-stuffing the contents and re-exporting and other communications to the Customs officials by the review petitioner, which, as has already been pointed out by us supra, have been done in compliance of the directions issued by us in the common order dated 21.11.2008, and to get over the observations made by us in the said order.

31. Nothing material has been placed before us to arrive at the conclusion that

we have committed errors apparent on the face of the record or any material which were in vogue before the passing of the impugned order by us and could not be placed before us by the review petitioner, in spite of due diligence, have been brought before us so as to review the well considered order passed by us on 21.11.2008.

32. On a thorough perusal of the entire materials placed on record, we have no hesitation to hold that the review petitioner has brought in all the appeal grounds, as if they are the grounds for reviewing our order, which is not permissible in view of the well settled legal position that review cannot be appeal in disguise.

33. For all the above reasons, we see no reason to entertain these review petitions. Accordingly, all these review petitions are dismissed. No costs.

34. We must also place on record that the Registry of this Court has brought to our notice the order dated 4.9.2009 passed by the Honourable Apex Court, in Special Leave Petitions No. 2906 to 2908 of 2009, wherein the Honourable Apex Court has observed as follows:

We are informed that the Review Petition instituted by ITC (petitioner herein) was fully argued as far back as 26th April, 2009 but till date the matter is still under the category of "CAV". We request the High Court to dispose of the matter as expeditiously as possible and preferably within four weeks from today.

Stand over for six weeks.

The Registry of this Court will communicate this order to the Registry of the Madras High Court.

Therefore, the Registry is directed to submit a report to the Honourable Apex Court regarding the disposal of these matters.