**(2018) 02 TP CK 0004**

**In the Tripura High Court**

**Case No :** 01 of 2018

M/S Dharampal Satyapal Ltd. APPELLANT

Vs

The Union of India RESPONDENT

**Date of Decision :** 21-02-2018

**Acts Referred:**

<a href=3642>Central Excise Act, 1944</a>, <a href=3642-35-B>Section 35-B</a>, <a href=3642-35-F>Section 35-F</a>

**Citation :** (2018) 02 TP CK 0004

**Hon'ble Judges :** T. Vaiphei, S. Talapatra

**Bench :** Division Bench

**Advocate :** Dr. A.K. Saraf, A. Gayal, K. Roy, B. Dubey, P. Datta, T. Debbarma

**Final Decision :** Dismissed

## Judgement

1. In these three review petitions, we are called upon to review our common judgment dated 13-12-2017 passed by us in WP(C) No. 350 of

2016, WP(C) No. 360 of 2016 and WP(C) No. 361 of 2016 holding that the writ petitions were not maintainable due to the existence of an

alternative appellate remedy provided for by law.

2. We heard both Dr. A.K. Saraf, the learned senior counsel for the review petitioners, and Mr. P. Datta, the learned counsel for the Revenue, at

some length. We have duly noted the submission of the learned counsel for the Revenue that the review petitions are devoid of merit as there is no

error committed by this Court which can be said to be apparent on the face of record, and the petitions are merely a ruse to by-pass the appellate

authority constituted by law. It is argued by Dr. A.K. Saraf, the learned senior counsel for the petitioners, that this Court, while dismissing the writ

petitions on the ground of their non-maintainability, ought to have issued direction to the CESTAT that if an appeal was filed under Section 35-B of

the Central Excise Act, 1944, the Tribunal should decide the appeal on merit without going into the question of limitation. No statutory provision is

pointed out to us by the learned senior counsel obliging us to issue such direction. On the contrary, should there be any delay, it is for the appellate

authority to condone the delay in presenting the appeal in time in accordance with law, if and when an application to that effect is filed by the

petitioners; this Court cannot usurp the jurisdiction conferred upon the appellate forum by Parliament. The learned senior counsel also contends

that this Court ought to have directed the CESTAT to admit the appeal without insisting on pre-deposit for entertaining the appeal inasmuch as the

original order dated 31-5-2012 passed by the respondent No. 2 was challenged by the applicant before the CESTAT and when the CESTAT

passed an order insisting on pre-deposit of 10% of the disputed amount for entertaining the appeal, the applicant approached this Court, which

thereafter directed the CESTAT to consider the appeal without insisting on pre-deposit. In our considered view, this cannot also be a ground for

review as we cannot pass any direction contrary to Section 35-F of the Central Excise Act; to do so would amount to violation of a statutory

provision, which is impermissible. Section 35-F of the Central Excise Act is in the following terms:

[35-F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.-The Tribunal or the Commissioner

(Appeals), as the case may be, shall not entertain any appeal-

(i) under sub-section (1) of Section 35, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or

duty and penalty are in dispute, or Review Petition Nos.01/2018, 02/2018, 03/2018 Page 4 of 6 penalty, where such penalty is in

dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the 2[Principal

Commissioner of Central Excise or Commissioner of Central Excise];

(ii) against the decision or order referred to in clause (a) of sub-section (1) of Section 35-B, unless the appellant has deposited seven

and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 35-B, unless the appellant has deposited ten

per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance

of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed Rupees Ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate

authority prior to the commencement of the Finance (No. 2) Act, 2014. Explanation.-For the purposes of this section ""duty

demanded"" shall include,-

(i) amount determined under Section 11-D;

(ii) amount of erroneous CENVAT credit taken;

(iii) amount payable under Rule 6 of the CENVAT Credit Rules, 2001 or the CENVAT Credit Rules, 2002 or the CENVAT Credit

Rules, 2004.]

(Italics supplied)

3. The other contention of the learned senior counsel that since the writ petitions were dismissed on the ground of availability of alternative remedy,

this Court ought to have directed continuance of the interim order till the appeal was considered by CESTAT, is noted only to be summarily

rejected for the simple reason that once the appeal has been dismissed, no interim order could be passed by this Court, after all, interim order can

be operative only during the continuance of the main case. The law is now well-settled that no interim order can survived independently of the main

case; once the main case is dismissed, the interim order should also die a natural death. It is for the appellate forum to grant interim order is filed as

warranted by the facts and circumstances of the case if and when an appeal is filed thereat.

4. That apart, review petition can be entertained only if there is discovery of new and important matter or evidence which, after the exercise of due

diligence, was not within the knowledge of the petitioner or could not produced by it at the time when the judgment was passed, or on account of

some mistake or error apparent on the face of the record, or for any other sufficient reason. The case of the petitioners is not about discovery of

new and important evidence. It is accepted by all jurists that an error apparent on the face of the record cannot be defined scientifically, precisely

or exhaustively, and it should be determined considering the facts of each individual case. However, no error can be said to be an error apparent

on the face of the record if it is not self-evident and requires an examination or argument to establish it. Without being exhaustive, the following

have been held to be errors apparent on the face of record: pronouncement of judgment without taking into consideration the fact that the law was

amended retrospectively; or without considering statutory provisions; or on the ground of omission to try a material issue in the case or where the

judgment is pronounced without notice to the parties; or where the want of jurisdiction is apparent on the face of the record, or taking a view

contrary Review Petition Nos.01/2018, 02/2018, 03/2018 Page 6 of 6 to the law laid down by the Apex Court. None of the grounds urged by

the learned senior counsel for the petitioners comes within the errors specified in the foregoing for entertaining review petitions. We have carefully

gone through the order dated 11-5-2015 passed by the Apex Court in Civil Appeal No(s). 2357-2361/2005, Commissioner of Central Excise v.

M/S Raj Petroleum Products & ors. and Commissioner of Income Tax and others v. Chhabil Dass Agarwal, (2014) 1 SCC 603, which were

cited by the learned senior counsel to fortify his submissions, but for the reasons stated earlier, we are unable to see their relevance to the instant

cases.

5. For the afore-mentioned reasons, there is no merit in these review petitions, which are, accordingly, dismissed. The parties are, however,

directed to bear their respective costs.

 