REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6704 OF 2008
(Arising out of S.L.P. (C) No.10532/2008)

Sunitadevi Singhania Hospital Trust and Anr. ...Appellant

Versus

Union of India & Anr. ...Respondents

O R D E R

Leave granted.

Appellants are before us being aggrieved by and dis-satisfied with an order dated 18.1.2008 passed by a Division Bench of the High Court of judicature at Bombay dismissing the writ petition filed by the appellants herein on the ground that it was not a fit case to exercise the Court's extraordinary jurisdiction.

The basic fact of the matter is not in dispute.

Appellant No.1 which is a Charitable Tust runs a hospital on no profit basis. It imported certain equipments invoking the Notification 64/88-Cus. dated 1.3.1988 issued by the Government of India in terms whereof exemption from payment of custom duty was granted in respect thereof subject to an obligation that it would reserve 10% of the beds for patients from families having a income of less than Rs.500/- per month and provision for free treatment of at least 40% of the outdoor patients shall be made.

An investigation was carried out in the year 1999 as to whether the appellant No.1 had fulfilled all such conditions or not. The matter went before the Customs Excise and Service Tax Appellate Tribunal, West Regional Bench at

Mumbai. The appeal of the appellant before the Tribunal was heard along with the cases of M/s Miraj Medical Centre W. Hospital and M/s Balabhai Nanavati Hospital.

By reason of a judgment and order dated 19.1.2006, the Tribunal having held that the appellants before it had continuous obligation to fulfill the aforementioned conditions laid down under the said Notification dated 1.3.1988 and having not complied therewith the redemption fine and penalty imposed upon it by the Customs Authorities were justified.

Indisputably, appellant filed an application for rectification of mistake before the Tribunal in regard to the quantum of redemption fine and penalty. The said application was allowed.

An appeal was preferred against the order of the Tribunal before this Court.

It is stated before us by Shri S.Ganesh, learned senior counsel appearing on behalf of the appellants and we have no reason to disbelieve him that one of the contentions raised before this Court was that the Tribunal had not taken into consideration the fact involved in the matter and had the same been done it could have been

established that the appellant had in fact fulfilled all its obligations in terms of the said Notification. Several other points were also said to have been urged before the Tribunal.

This Court, presumably, on the premise that Judges' record is final and if an apparent error has been committed by the Tribunal in not taking into consideration the contentions raised before it by the appellants, permitted it to withdraw the appeal with liberty to file an appropriate application before the

Tribunal, stating:

" Learned counsel states that several other points had been argued before the Tribunal which have not been taken note of by it. Learned counsel states that an appropriate application shall be filed before the Tribunal and seeks permission of the Court to withdraw the appeal. The appeal is dismissed as withdrawn accordingly."

Pursuant thereto or in furtherance thereof the appellant No.1 filed an application before the Tribunal purported to be an application for rectification of mistake wherein, inter alia, the following grounds were raised:

" 8. While disposing of the appeals by a common order dated 19.1.2006, this Hon'ble Tribunal has only recorded the facts as applicable to one of the appellants, namely, the Miraj Medical Centre and has failed to appreciate the difference in facts and circumstances in the applicants case, inter-alia, as regards the following:

(a) The applicants had actually reserved 10% of the hospital beds for poor and indigent persons and had advertised on several occasions the facility of free treatment to such people without means;

(b) The applicants also satisfied the criteria for out patient treatment, both by giving free treatment at the hospital's OPD as also by organizing free treatment camps, and the free treatment camps have been judicially recognised as meeting the purpose of the notification, by the Hon'ble Madras High Court in Apollo Hospital's case, which was relied upon by the applicants in their memorandum of appeal;

(c) The equipment and records were completely destroyed in the riots of 2001, which were beyond the applicants' control;

(d) In any event, the applicants being a hospital run by a charitable trust, on a no profit basis, the applicants were eligible for the exemption under Notification No.64/88-Cus. under Entries 1 & 3 alternatively.

9. The factual position being distinct and different from the main matter heard by this Hon'ble Tribunal, the Hon'ble Tribunal ought to have appreciated the difference in the facts and ordered accordingly. The non-appreciation and/ or improper appreciation of facts has resulted in an error apparent on the face of the record in the Order dated 19.1.2006.

10. The Hon'ble Tribunal has failed to appreciate that if the obligations under Entry 2 in the table annexed to Notification 64/88 is a continuing obligation, the compliance with the obligation will also be in the nature of a continuing compliance i.e. it will have to be measured over the entire useful life of the equipment and not at any periodic rests. In the applicants' case, from the date of the import of the

equipment until the destruction of the said equipment in the riots as aforesaid, the applicants have satisfied both the in-patient reservation criterion and the out patient free treatment criterion. There was, therefore, no breach of the continuing obligation by the applicants."

We have been informed at the Bar that the Registry of Central Excise and Service Tax Appellate Tribunal does not entertain an application of this nature and, thus, the same was necessarily required to be labelled as application for rectification of mistake,although, in view of Prayer (a) made therein it was for all intent and purport an application for review and/or recall of the order passed by the Tribunal.

The Tribunal by an order dated 12.10.2007 dismissed the said application holding that the same was

barred by limitation on the premise that the Tribunal's final order was passed on 19.1.2006 and the application for rectification of mistake should have been filed within six months from the said date. It was, furthermore, opined that the Tribunal had no power to condone the delay by reason of the impugned judgment. As noticed hereinbefore, the High Court refused to interfere therewith.

Mr. S. Ganesh, learned senior counsel appearing on behalf of the appellants would contend that having regard to the peculiar facts and circumstances obtaining in the instant case, the Tribunal must be considered to have acted illegally and without jurisdiction in so far as it failed to take into consideration that all Tribunals had inherent power to recall their order.

Mr. Abhichandani, learned senior counsel appearing on behalf of the

respondents, on the other hand, supported the impugned judgment.

Indisputably, the Tribunal considered the appeals preferred by the appellants along with the appeals preferred by two others. It has been contended before us that Dr. Balabhai Nanavati Hospital had filed Customs Appeal Nos. 61 and 62 of 2006 thereagainst before the High Court which had been allowed by an order dated 11.1.2007.

From the Tribunal which is the final Court of fact, an assessee is entitled to obtain a judgment wherein all its contentions have been considered. If what has been contended

before us by the appellants, namely, it indeed had complied with all the conditions laid down in the Notification are correct and, thus, was not liable to pay any redemption fine or penalty, the Tribunal was bound to consider the said contention.

Apparently, learned Tribunal only considered the factual matrix involved in the case of M/s Miraj Medical Centre W. Hospital and not the factual aspect of the matter involving factual matrix. Appellants' case had purported to have been determined on the question of law without taking into consideration the question whether the law so laid down by the Tribunal is applicable to the fact of the appellants' case or not.

It is true that the period of limitation specified in terms of Sub-Section (2) of Section 129(B) of the Customs Act is required to be observed but the Tribunal failed to notice that it has inherent power of recalling its own order if sufficient cause is shown therefor. The principles of natural justice, which in a case of this nature, in our opinion, envisage that a mistake committed by the Tribunal in not noticing the facts involved in the appeal which would attract the ancillary and/or incidental power

of the Tribunal necessary to discharge its functions effectively for the purpose of doing justice between the parties, were required to be complied with.

While the judges' records are considered to be final, it is now a trite law that when certain questions are raised

before the Court of law or Tribunal but not considered by it, and when it is brought to its notice, it is the only appropriate authority to consider the question as to whether the said contentions are correct or not.

For the aforementioned purpose the provisions of limitation specified in Sub-section (2) of Section 129 B of

the Customs Act would not be attracted. We, however, do not mean to lay down a law that such an application can be filed at any time. If such an application is filed within a reasonable time and if the Court or Tribunal finds that the contention raised before it by the applicant is prima-facie correct, in order to do justice, which is being above law, nothing fetters the judges hands from considering the matter on merit.

We may notice that this Court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Ors. - 1980(Suppl) SCC 420, held that Industrial Tribunal has an inherent power to set aside an ex-parte award subject of course to the condition that the same has not been published in the Gazette.

Grindlays Bank Ltd.[supra] has been followed by this Court in Sangham Tape Co. v. Hans Raj [(2005)9 SCC 331], stating:

> **"8. The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award, but having regard to the provision contained in Section 17-A of the Act, an application**

therefor must be filed before the expiry of 30 days from the publication thereof. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication, and only up to that date, it has the power to entertain an application in connection with such dispute.

9. It is not in dispute that in the instant case, the High Court found as of fact that the application for setting aside the award was filed before the Labour Court after one month of the publication of the award.

10. In view of this Court's decision in Grindlays Bank such jurisdiction could be exercised by the Labour Court within a limited time frame, namely, within thirty days from the date of publication of the award. Once an award becomes enforceable in terms of Section 17-A of the Act, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside of an award passed by it. In other words, upon the expiry of 30 days from the date of publication of the award in the gazette, the same having become enforceable, the Labour Court would become functus officio".

Yet again in Rabindra Singh v. Financial Commissioner, Cooperation, Punjab & Ors. [2008(8)SCALE 242], this Court held:

"17. What matters for exercise of jurisdiction is the source of power and not the failure to mention the correct provisions of law. Even in the absence of any express provision having regard to the principles of natural justice in such a proceeding, the courts will have ample jurisdiction to set aside an ex parte decree, subject of course to the statutory interdict."

This Court, however, in a slightly different context in Jet Ply Wood (P) Ltd. and Anr. vs. Madhukar Nowlakha & Ors [(2006) 3 SCC 699] opined that even an order permitting withdrawal of a suit can be allowed to be recalled by a civil court in exercise of its inherent power.

It is only from that point of view this Court passed the aforementioned order dated 13.4.2007.

It may be true, as has been contended by Mr. Abhichandani, learned senior counsel that Section 14 of the Limitation Act, 1963 will have no application in view of the fact that provisions governing limitation are contained in the Customs Act. It is so for in a matter of this nature the Tribunal was required to consider the application filed by he appellant which was filed within a reasonable time. It should have also considered that the appellant had been bonafide pursuing its remedies before this Court.

We may place on record that for all intent and purport, this Court had granted liberty to the appellants to take recourse to the remedies suggested by its counsel as the word 'accordingly' has been used before the words 'the appeal is dismissed as withdrawn'.

The Tribunal did not consider the matter on merit. The Tribunal failed to take into consideration that, ipso-facto, in a case of this nature provisions of Section 129B of the Customs Act as such has no effect. Label of an

application is not decisive for consideration by the Tribunal as to whether a case has been made out to hear the application on merit, particularly, having regard to the grounds set out therein.

For the reasons aforementioned, we in exercise of our jurisdiction under Article 142 of the Constitution of India set aside the impugned judgment with a direction to the Tribunal to hear out the appellants afresh on merit on the said application.

The appeal is allowed. There shall,however, be no order as to costs.

.....J.
[S.B. SINHA]

.....J
[CYRIAC JOSEPH]

New Delhi,
November 17, 2008.