

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ Crl. M.C. No. 3325-26/2006
% Date of Decision: 14th January, 2008

Amarjit Singh & Anr. Petitioners
! Through Mr. K.T.S. Tulsi, Sr. Advocate with Mr. R.K. Handoo,
Advocate

versus

\$ Sh. Vinod Kumar Sharma & Anr. Respondents
^ Through Mr. Satish Aggarwal, Advocate for respondent no. 1.

CORAM:

- * HON'BLE MR. JUSTICE P.K.BHASIN
1. Whether Reporters of local papers may be allowed to see the Judgment?(No)
 2. To be referred to the Reporter or not?(No)
 3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 the two petitioners seek quashing of a criminal complaint under Sections 132 and 135(1)(a) of the Customs Act, 1962 (hereinafter referred to as the 'Act') pending against them in the Court of Addl. Chief Metropolitan Magistrate, New Delhi.

2. Relevant facts necessary for the disposal of the case are that on receiving information that the petitioners were importing electronic goods from Hong Kong

at grossly undervalued prices and had been submitting invoices showing lower price to Indian Customs authorities at the time of import the Directorate of Revenue Intelligence('DRI' in short) investigated the matter. After investigation notices were given by the Additional Director General, DRI, New Delhi to the petitioners demanding customs duty amounting to Rs.25,69,151/- from petitioner no. 1 Amar Jit Singh, who was carrying on the business of electronic goods in the name of M/s Singh Electronics in Old Lajpat Rai Market, Delhi and Rs. 12,20,010/- from petitioner no. 2 Inder Pal Singh, who was also doing the same business in the name of M/s Samrat Enterprises in Old Lajpat Rai Market, Delhi, in view of their having grossly undervalued the electronics goods imported by them. On their failure to pay the said customs duty, which the petitioners had allegedly evaded, a criminal complaint for the offences under Sections 132 and 135(1)(a) of the Act, (being Crl. Complaint No.27/1) was instituted by the DRI on 02.04.2003 against the two petitioners herein and the Additional Chief Metropolitan Magistrate, New Delhi on the same day took cognizance and summoned the petitioners. On 07/04/2003 the petitioners moved separate applications for settlement before the Customs & Central Excise Settlement Commission, Additional Bench at Mumbai(to be referred as 'the Settlement Commission' hereinafter) as provided under Section 127 of the Act. During the proceedings before the Settlement Commission the petitioners agreed to pay the entire demanded amount of Customs Duty and paid it also. The Settlement Commission

vide its final order dated 19.07.2004 then granted immunity to the petitioners from the penalty and fine which could also be imposed upon them under the Act but did not give the benefit of immunity from their prosecution since the criminal complaint for their prosecution had already been filed in Court by the DRI before their approaching the Settlement Commission.

3. The petitioners have now invoked the jurisdiction of this Court under Section 482 Cr.P.C. for quashing the criminal complaint pending against them in the Court of Additional Chief Metropolitan Magistrate, New Delhi. Mr. K.T.S.Tulsi, learned senior counsel for the petitioners while arguing in support of this petition did not dispute that as far as the Settlement Commission's order in not giving the benefit of immunity from prosecution to the petitioners is concerned there was nothing wrong in that order in view of the provisions of Section 127-H of the Act whereunder it is clearly provided that no immunity from prosecution shall be granted by the Settlement Commission where the proceedings for the prosecution of the applicant approaching the Settlement Commission for settlement had already been initiated before filing of the application for settlement. Mr. Tulsi, however, placing strong reliance upon a judgement of Hon'ble Supreme Court in ***"Hira Lal Hari Lal Bhagwati v. CBI, New Delhi", 2003 (5) SCC 257***, submitted that the petitioners are still entitled to get the complaint against them quashed because of their having paid the entire amount of Customs Duty claimed by the Customs Department. The submission was that since Legislature itself has made a

provision in the Act that on payment of the duty as per the decision of the Settlement commission the offender can be granted immunity from criminal prosecution it becomes clear that recovery of the Government's dues is the main concern of the Department and not the prosecution of the offender and if such be the position then the continuation of the complaint case against the petitioners in the present case despite their having met the entire demand of the Customs Department would really amount to abuse of judicial process and further that the relief of immunity from their prosecution should not be denied to them which in fact they would have got in routine from the Settlement Commission but for the technical obstacle which came in their way in getting that relief also besides immunity from penalty and fine, namely, their approaching the Settlement Commission five days after the filing of the criminal complaint in Court by the DRI about which they actually had no knowledge on 07/04/2003 when they had filed the applications for settlement before the Settlement Commission. Mr. Tulsi contended that that technical obstacle which was before the Settlement Commission should not deter this Court in exercising the powers it has under Section 482 Cr.P.C. for doing justice to the petitioners and denial of that relief to the petitioners would be against the spirit and the legislative intent behind the provision of settlement of disputes regarding customs duty by approaching the Settlement Commission. Learned counsel drew my attention to that part of the judgment of the Supreme Court in *Hira Lal's case*(supra) where it was observed

that “It is a well established principle of law that the matter which has been adjudicated and settled need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable.” That was a case where criminal case for some offences under the Indian Penal Code was instituted even after the matter regarding evasion of customs duty had been settled under the Kar Vivad Samadhan Scheme and the offender had been granted immunity from prosecution under the Act. In that fact situation the Supreme Court had made the afore-quoted observations and quashed the FIR in respect of the offences under IPC because of the settlement of the matter between the Department and the duty evader despite the fact that under the aforesaid Scheme availed of by the duty evader immunity from prosecution under the Act only could be granted and which only had been given by the competent authority.

Mr. Tulsi had also argued, though half heartedly, that the complaint against the petitioners was in any case not maintainable before a Delhi Court since the offences complained of were committed within the jurisdiction of Mumbai Courts.

4. Mr. Satish Aggarwala, learned counsel for the respondent, on the other hand, submitted that since as per the provisions of the Act the Settlement Commission could not grant immunity from prosecution where the proceedings for prosecution for any such offence had been instituted before the date of receipt of the application under section 127-B this petition deserves to be dismissed and complaint against the petitioners should not be quashed by this Court just because

the petitioners had paid the customs duty as per the decision of the Settlement Commission. The submission was that the petitioners could always withdraw their applications for settlement after they had come to know that their prosecution had already been launched before their filing applications for settlement before the Settlement Commission instead of paying the demanded amount of customs duty and having not done that they cannot be permitted now to say that they have been a victim of a technical bar under Section 127-H of the Act whereunder it is provided that no immunity from prosecution can be given by the Commission if prosecution of the duty evader had already been launched before the filing of the application for settlement before the Settlement Commission.

5. I have thoughtfully considered the submissions made by learned counsel for the parties.

6. There is no doubt that the provision for settlements introduced in statutes like the one in Customs Act regarding filing of applications by evaders of customs duty etc. before the Settlement Commission for settlement of the disputes regarding the amount of evaded duty are meant for ensuring that proceedings before the criminal courts are avoided and the Government is also not put to financial loss. This was so observed by the Supreme Court in “**Commissioner of Income Tax, Jalpaiguri vs Om Parkash Mittal**”, 2005 (II) SCC 51. However, as noticed already and which position was not disputed even by the learned senior counsel for the petitioners, the remedy of seeking immunity from prosecution from the Settlement

Commission is available only before the initiation of prosecution proceedings by the Customs Department. So, in the present case the petitioners having not availed of the remedy of seeking immunity from prosecution from the Settlement Commission before the initiation of criminal proceedings against them they have rightly not felt aggrieved by the decision of the Settlement Commission in not giving them the immunity from prosecution since it had no such power and, in fact, there is a specific bar against the grant of this benefit by the Settlement Commission after the initiation of prosecution of the duty evader. However, the legislature has also made a provision for the offenders to seek relief of immunity from prosecution even after initiation of the prosecution by framing Customs(Compounding of Offences) Rules, 2005. These Rules were framed by the Central Government in exercise of the powers conferred upon it under Section 156(2)(h) and Section 137(3) of the Act. Rule 3 of these Rules provides that an application for compounding of the offences under the Act can be made either before or after institution of prosecution to the compounding authority which is the Chief Commissioner of Customs having jurisdiction over the place where the offence under the Act was allegedly committed. The compounding authority under these Rules has been given the powers to allow compounding of the offences under the Act as specified under Rule 5 which include even the offences under Sections 132 and 135(1)(a) of the Act for which offences the present petitioners are being prosecuted. The compounding can, however, be allowed by the

compounding authority on payment of compounding fee which has also been prescribed under Rule 5 of the aforesaid Rules of 2005. The compounding amount varies in respect of different offences.

7. The petitioners, thus, could have approached the compounding authority also for compounding of the offences for which they were being prosecuted even after they had approached the Settlement Commission from which they had got the relief of immunity from penalty and fine. The petitioners, however, did not avail of this remedy available to them under the aforesaid Rules of 2005 and, therefore, in my view, the present petition under Section 482 Cr.P.C. will have to be dismissed because of the failure of the petitioners to avail of the statutory remedy available to them under the Act for seeking compounding of the offences for which they are being prosecuted.

8. As far as the plea of the petitioners that the Court at Delhi had no territorial jurisdiction to entertain the complaint against the petitioners is concerned the same, in my view, can be very well urged before the trial Court where the complaint is pending trial since the plea of the Department is that final destination of the goods imported by the petitioners at undervalued prices was Delhi. In view of these rival factual stands from both the sides this question cannot be determined in the present petition under Section 482 Cr.P.C. So, on this ground also the petitioners cannot succeed in this petition.

9. No other point was urged.

10. This petition is accordingly dismissed. It would, however, still be open to the petitioners to approach the Compounding Authority under the Compounding Rules of 2005 for compounding of the offences for which they are being prosecuted.

January 14, 2008
sh

P.K.BHASIN,J