

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4922 OF 2015

M/s.Fairy Footwear.

... Petitioner.

Vs.

1.Union of India & Ors.

... Respondents

Mr.Sujay Kantawala with Mr.Brijesh Pathak, for the Petitioner.

Mr.Pradeep S. Jetly, for the Respondents.

**CORAM : S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.**

DATE : 3rd August, 2015.

PC. :

1. We have heard Mr.Kantawala, learned counsel appearing in support of this petition who challenges the order passed by the Settlement Commission on the settlement application preferred by the petitioner-applicant.

2. The grievance of the petitioner is that the Settlement Commission was adjudicating the application filed on 7th May,2014. The final hearing of this application concluded on 8th January,2015. After the conclusion of such final hearing, the Settlement Commission, and prior to passing of the impugned order dated 18th February,2015, took on record the submissions from the Revenue in regard to the worksheet. The Commission has heavily relied on this worksheet and comments of the Revenue on the same. The worksheet was not specifically rejected by the department and the comments of the revenue thereon after having been noted, the Commission proceeded and held that though the worksheet is supplied the actual value of the past consignments have been stated and reflected therein only from the memory of the applicant-petitioner and it is not supported by any documentary evidence. The undervaluation in respect of the seized consignments where actual invoices are available is more than six times of the declared value. Thus, Mr.Kantawala submitted that this is not a Report but a written note or submission and to enable the Commission to pass the final order coupled with the comments on the worksheet which have been entertained and after the conclusion of hearing. This records a

specific stand of the revenue. Further, the Revenue contends that the valuation done by it, is not very high in comparison with the value available for similarly seized goods. In that regard our attention is invited to paragraphs 13 and 14 of the Show Cause Notice and it is urged that the Revenue could not obtain any material so as to determine the value for similarly seized goods. Thus, it does not have any material for comparative analysis. Mr.Kantawala submits that if the petitioner was cooperating and the Settlement Commission was inclined to conclude the proceedings expeditiously, then, interest of justice and fairness required that the Commission to give an opportunity to the petitioner to offer his comments on the notes submitted by the Revenue. There was no need to foist a liability towards differential custom duties and penalty based on such note.

3. On the other hand, Mr.Jetly, learned Counsel appearing on behalf of the Revenue submits that the Settlement Commission has been very fair, reasonable and patient with the petitioner. The petitioner is accepting the adjudication by the Commission in so far as the amount of interest and fine. The petitioner has also derived

benefit from this order in the form of immunity from payment of fine in excess of Rs.2,00,000/-. In the circumstances, the Writ Petition should not be entertained and on disputed question of fact. Further, it is submitted that the petitioner cannot now set the clock back and without demonstrating any prejudice on account of alleged breach of principles of natural justice by the Commission.

4. After hearing both sides and perusing the Writ Petition, we find that the Revenue as also the Commission was keen on maintaining the Show Cause Notice and with some variations. However, the Commission observed that though the bill books contained details of locally procured material, most of the prices related to the imported footwear having Aerosoft brand and that too from foreign supplier. The Commission relied upon the statement recorded under Section 108 of the Customs Act, 1962 wherein the petitioner had agreed to submit original invoices, but the original invoices were not submitted. The differential duty was, thus, worked out without any documents. The petitioner's worksheet was rejected for want of supporting documents and the Commission relied upon paragraph 14 of the Show Cause Notice.

5. We are of the opinion that the Revenue was keen on supporting the allegation and based on which the show cause notice came to be issued. Whereas the applicant-petitioner before us was not ready and willing to accept the same. If there was no settlement possible, then, the Commission should have relegated the petitioner to adjudication. The petitioner made the choice and if it does not want any settlement by application of mind by an independent commission to all the facets of the matter, then, there is no obligation on the Commission to assist him. We are of the opinion that there is some substance in the contention of Mr.Jetly. However, if the matter cannot be resolved eventually with the assistance of the record available with the Petitioner and the Department and based on which the show cause notice was issued, then, the best course was to relegate the matter to the Adjudicating Authority so as to adjudicate the show cause notice in accordance with law.

6. We have clarified to Mr.Kantawala that the petitioner cannot derive any advantage or benefit from the Commission's Order. Mr.Kantawala, on instructions, states that the petitioner is

agreeable to such a course. Further, the petitioner is also agreeable to the Revenue retaining a sum of Rs.17,61,172/- towards duty but without prejudice to the rights and contentions of both sides.

7. In the circumstances, we set aside not only the order passed by the Settlement Commission, but we also declare that the Settlement proceedings initiated by the Commission are of no legal effect from inception. Let the show cause notice be adjudicated in accordance with law by the Revenue. However, the adjudication will proceed on the clear understanding between the parties and noted above. All contentions of the petitioner in so far as the allegations in show cause notice, however, are kept open. We clarify that we have not endorsed any of the findings in the Settlement Commission's order either.

8. The petition is allowed in the above terms.

(G.S.KULKARNI, J.)

(S.C. DHARMADHIKARI, J.)