IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8678 OF 2014

Mr. Vinod Kumar Mathur. ...Petitioner.
vs.
Union of India and ors. ...Respondents.

WITH
WRIT PETITION NO.8679 OF 2014

J.K. Tyre abd Industries Ltd. ...Petitioner.
vs.
Union of India and ors. ...Respondents.

WITH
WRIT PETITION NO.8680 OF 2014

Swarnjit Singh., ..Petitioner.
vs.
Union of India and ors. ..Respondents.

Mr. V. Sridharan, Sr. Counsel with Mr. Jas Sanghavi and Ms. N. Hakani i/by PDS Legal for the Petitioners.
Mr. S.P. Bharati for the Respondents.

CORAM : S.C. DHARMADHIKARI
AND
S.P. DESHMUKH, JJ.
DATE : 09 MARCH, 2015

PC:

These writ petitions challenge an order passed on 22 November 2013 by respondent No.2 Settlement Commission. The order is challenged only to the extent that the petitioner company and its employees are required to pay penalty quantified at Rs.1,25,000/- and Rs.10,000/-

2) We enquired from the learned counsel for the petitioners as to why after obtaining complete relief and in relation to duty liability does the petitioner company and its employees deem it necessary to challenge the penalty imposed. Mr. Sridharan learned Senior Counsel submitted that imposing of penalty has other legal consequences. Tomorrow, the petitioners may not be permitted to approach the Settlement Commission and in any other case. Therefore, imposition of penalty will prejudice them.

3) The second argument was that when the Settlement Commission has passed an order not directing payment of additional customs duty over and above that paid by the company so also does not require the company to pay any interest, then, justification for imposing penalty should have been reasoned out meaning thereby cogent and satisfactory reasons should have been assigned for imposition of penalties. The penalties are imposed with one line reasoning that the offences

committed by the petitioner company and the employees are grave in nature. Mr. Sridharan submits in that regard the issue pertains to classification and was an arguable one. It is not as if the petitioner can be termed as guilty of suppression, mis-classification or mis declaration of facts. There was a dispute and which was genuine. The Bench has assigned reasons in Para 8.4 that there is a letter dated 14 January 2009 on record from the overseas supplier of the petitioner company informing that source of elemental sulphur contained in the imported product insoluble sulpher crystex HB OT 20, was obtained from refining of crude oil. Mr. Sridharan submits that this letter firstly could not have been relied upon and to arrive at any conclusion, much less with regard to penalty. Secondly, this letter has to be read as a whole and not in part. A complete reading of this letter would denote as to how the department itself classified the product under CTH 25030090. In the circumstances and when this was a case of revenue neutral, there was no justification for imposition of penalty.

4) Lastly, Mr. Sridharan submits that this is a case of non payment of additional duty of Customs over and above that specified in the tariff and in terms of Section 3(1) of the Customs Tariff Act, 1975. However, the Commission has overlooked the

statutory scheme which indicates as to how the provisions of Customs Act, 1962 and the rules and regulations made thereunder have a limited applicability. Therefore, in matters covered under Customs Tariff Act, 1975 by virtue of sub section 5 of section 3 thereof the provisions enacting imposition of penalty under the Customs Act 1962 have not been incorporated or brought within the purview of the Customs Tariff Act 1975. These submissions should have been dealt with according to Mr. Sridharan.

5) Mr. Bharati appearing for the respondents supported the impugned order and submitted that the Commission has perused the entire record of the proceedings. It has arrived at the conclusion that the case relates to imported product Insoluble sulpher crystex HB OT 20. The classification has not been disputed and the duty demand has been accepted. If there is unconditional acceptance of the duty demand, then, it is not open for the petitioners to argue now to the contrary. He therefore, submits that the aforesaid writ petitions be dismissed.

6) After having heard both sides and perusing the petition and all annexures thereto we find that there were allegations as

set out in the show cause notice. The issue was of mis-classification arising due to alleged suppression of facts regarding source of the insoluble sulphur crystex HB OT 20 by the petitioners. Foundation of imposition of penalty appears to be letter dated 14 January 2009. The letter was stated to have been suppressed so as to contest the departmental case on classification. We find that this letter and the jurisdictional Commissioner's report have been noted, but without adverting to the stand of the petitioners that the goods were correctly described as Insoluble sulphur crystex HB OT 20. When there was dispute raised by the Chennai Customs House and the stand of the petitioner that this classification under tariff item 2503 0090 was disputed for the first time and therefore, this clarification from the foreign supplier was obtained. However, the petitioner's officer Mr. Vinod Kumar Mathur had in his statement dated 11 October 2011 stated that the classification was accepted by the Nhava Sheva Customs and even if the duty is paid under Tariff Act, 1975 the same is available as cenvat credit to them. Therefore, they have not made any saving and it was revenue neutral. All this was required to be gone into together with other submissions which have been canvassed with regard to waiver of imposition of penalty in the case of present nature. We do not find that beyond making a reference to the material before it the Commission rendered any independent finding on the point of penalty. The stand has to be noted and of both sides. It should have been noted that requisite details were the letter dated 14 January 2009 and if the said letter issued from overseas supplier was required so as to term the dispute as not genuine or bonafide, that aspect has not been at all considered by the Commission. The Commission must render a finding when it is pointed out that the petitioners are liable to penal action as proposed in the show cause notice. The Commission ought to be aware of the ramifications of imposing penalty. In such circumstances, when the Commission has failed to apply its mind to this important aspect of the matter that we are constrained to set aside the order passed by the Commission to this limited extent. Ordinarily, this Court would not have interfered in writ jurisdiction with the findings and conclusions of the Settlement Commission. That is the forum created by a statute and to deal with cases where voluntary disclosures are made and attempts made to settle the dispute amicably or with the assistance of the Commission. Therefore, a finding of fact would not have been interfered by us and equally the views in that behalf. However, when we find that the Commission has failed to perform its duty completely and in terms of the legal provisions by not rendering detailed findings or assigning cogent and complete reasons that then it is our bounden duty to interfere in our extra ordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

7) As the result of the above discussion, these writ petitions succeed. The Commission's order to the extent it imposes penalties on the petitioner in each of these petitions is set aside. The matters are sent back to the Commission to examine whether it can impose penalties on the parties in the present matters and if it can in law whether there are circumstances justifying such imposition. The Commission shall re-examine this aspect and uninfluenced by its earlier order and conclusions it must render a fresh finding after hearing both sides. We clarify that we have not expressed any opinion on the rival contentions of the parties including on the jurisdiction authority so also power of the Commission to impose penalty in the present matters. All contentions there must be examined, uninfluenced by the observations in our order. In view of the above directions, writ petitions are disposed of.

(S.P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**