IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9187 OF 2014

1. Shri Anjani Tradeexim Pvt. Ltd. & Anr. ... Petitioners

Vs

1. The Union of India & Anr. ... Respondents

Mr. Prakash Shah i/b Yogesh Rohira for the Petitioners.

Mr. S.P. Bharati for the Respondents.

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

MONDAY, 20TH JULY, 2015

P.C. :

1. The petitioners have filed an undertaking as recorded in the earlier order of 15th July, 2015.

2. The petitioners are ready and willing to have the matter settled in terms of the statement made earlier and the amounts which are to be paid in furtherance thereof.

3. On the earlier occasion, Mr. Bharati sought time to take instructions on behalf of the Revenue officials.

4. When the matter was placed today for passing final orders, we are informed that the petitioners have filed an undertaking on 16th July, 2015 and which reads as under :

> *" I, Sanjay Arora of Indian Inhabitant having my office at 7/108A Swaroop Nagar, Kanpur – 208 002, presently in Mumbai, do hereby solemnly affirm and state as follows :*
>
> *1. I am the Petitioner No.2 and Director of the Petitioner No.1 – Company abovenamed and as such conversant with the facts of the case and able to depose to the same.*
>
> *2. I say that with a view to put an end to the litigation and in true spirit of settlement, the Petitioners are ready and willing to give up their contention and undertake to this Hon'ble Court to pay differential duty of Rs.54,92,167/-, demanded in respect of 42 past consignments imported during December, 2009 to January, 2011, which amount disputed/not admitted before the Settlement Commission, along with interest at such rate as may be directed by this Hon'ble Court within a period of four weeks.*
>
> *3. I submit that, subject to the payment of the aforesaid amount by the Petitioners within the stipulated time of four weeks, this Hon'ble Court be pleased to grant the Petitioners immunities from*

> *prosecution and penalty under the provisions of the Customs Act, 1962."*

5. However, Mr. Bharati submits that the Revenue officials have instructed him to make a statement that the Revenue is not agreeable to the matter being settled or the amount being accepted in full and final settlement of all claims of the Revenue. Mr. Bharati on further instructions states that the Revenue would have no objection if the impugned order is quashed and set aside and the matter goes back to the Settlement Commission. In other words, the application before the Settlement Commission being revived for disposal in accordance with law.

6. After noting the rival contentions we are of the opinion that though the petitioners' undertaking was recorded on the earlier occasion and a written undertaking in the above terms has been filed, it will not be proper to bind the petitioners in terms of this undertaking any longer and once the Revenue has not agreed to the proposal. We, therefore, clarify that making statements before this Court and filing undertakings shall not preclude the petitioners from raising all

contentions in support of their stand before this Court as well as the Settlement Commission. The Settlement Commission shall not be influenced by the order passed on the earlier occasion and the undertaking filed on 16th July, 2015. We keep open all contentions of both sides and for being urged before the Commission at an appropriate stage. In the light of the consent given by the Revenue, we quash and set aside the impugned order dated 20th May, 2014, and restore the application for settlement filed by the petitioner for *de novo* adjudication and in accordance with law.

7. The Writ Petition is allowed accordingly. No order as to costs.

G.S. KULKARNI, J. ***S.C. DHARMADHIKARI , J.***