IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.46471 of 2006

and M.P.No.1 of 2006

M/s.Standard Shoe Sole & Mould India Ltd.,
Formerly known as Chemcrown India Ltd.,
No.19/1 & 4/4, Mylam Pondicherry Road,
Sedarpet, Pondicherry,
Rep. By its Authorised Signatory
Mr.Manoj Kumar Bhaiya

... Petitioner

-Versus-

1.The Customs and Central Excise
Settlement Commission,
2nd Fllor, Narmada Block,
Custom House, 33, Rajaji Salai,
Chennai 600 001.

2.The Commissioner of Central Excise,
Pondicherry.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent Commission to grant 11 monthly installments to pay the balance amount of Rs.8,47,283/-

For Petitioner : Mr.K.Ramachandran

For Respondents : Mr.A.P.Srinivas

ORDER

Seeking to issue a writ of mandamus directing the 1st respondent Commission to grant time to the petitioner settle the balance due of Rs.8,47,283/- in 11 monthly installments.

2. The case of the petitioner in brief is that it is a 100% Export Oriented Unit duly approved by the competent authority for manufacturing and exporting thermo plastic shoes and polyurethane shoe's soles. Itt has been registered by the Assistant Commissioner of Central Excise, Pondicherry Division, as a private bonded warehouse. During its regular course of business, the company imported machinery , spare parts and rawmaterials for a value of Rs.6,28,12,691/-.

3. According to the petitioner, on account of supply of old and used machinery and supply of sub-standard quality raw materials, the petitioner could not achieve its production target and fulfil the export obligation. Under the above circumstances, the petitioner had to sue against its supplier claiming compensation for the loss suffered and at the instance of the petitioner an arbitrator came to be appointed in arbitration proceedings by the Supreme Court and ultimately, an award came to be passed in favour of the petitioner. The matter is now pending with a Court in Germany for execution of arbitral award.

4. In the mean time, the petitioner company has been declared as sick unit under the Sick Industrial Companies (Special Provisions) Act, 1985 as per BIFR's Order No.53/96 and an order of winding up the company was also passed which was subsequently confirmed by the Appellate Authority by order dated 05.02.2002 in Appeal No.108 of 1999 & 126 of 1999/

5. Thereafter, the Deputy Commissioner of Central Excise issued a show cause notice bearing OC NO.3708 dated 30.09.1997 demanding duty and penalty on the imported machinery and materials. Challenging the notice, the petitioner filed an application before the 1st respondent Commission and the 1st respondent in turn, passed an order on 22.09.2006 directing the petitioner to pay the admitted liability amount of Rs.10,17,283/- within 30 days from the date of receipt of the copy of the order.

6. The grievance of the petitioner is that as it has been declared as sick unit, it could not deposit the amount as directed by the 1st respondent and as such, an application came to be filed seeking time to deposit the dues in installments. According to the petitioner, though the settlement commission has fixed a date for personal hearing, it directed the petitioner to deposit the balance. In the mean time, anticipating that the commission may not entertain the application, the petitioner has come forward with this writ petition.

7. Heard both sides and also perused the available records carefully.

8. It is seen from the records that at the time of admission of the writ petition, this court, by order dated 30.11.2006 in M.P.No.1 of 2006, while granting an order of stay imposed a condition upon the petitioner to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) out of dues payable by the company and the said amount was accordingly paid by the petitioner.

9. The learned counsel for the petitioner submitted that subsequently the entire balance amount has been paid by the petitioner and as of now there is no due. He would, however, pray this court that the petitioner may be permitted to approach the Settlement Commission for appropriate relief.

10. In the result, the writ petition is disposed of recording the submission made by the learned counsel for the petitioner and the petitioner is at liberty to approach the Settlement Commission for appropriate relief.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk
To
1.The Customs and Central Excise Settlement Commission,
2nd Fllor, Narmada Block, Custom House, 33, Rajaji Salai,
Chennai 600 001.

2.The Commissioner of Central Excise, Pondicherry.

+1 cc to Mr.Ramachandran Advocate sr.45932
+1 cc to Mr.AP.Srinivas Advocate sr.45864

W.P.No.46471 of 2006

aa11/09/2015