

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.08.2015

+ **W.P.(C) 7363/2014 & CM 17221/2014**

THE ADDITIONAL COMMISSIONER OF CUSTOMS ... Petitioner

versus

SHRI RAM NIWAS VERMA

... Respondent

Advocates who appeared in this case:

For the Petitioner	: Mr Satish Kumar
For the Respondent	: Mr Sanjeev Malhotra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is being filed by the Revenue seeking the quashing of the order dated 16.05.2014 passed by the Customs and Central Excise Settlement Commission, New Delhi (hereinafter referred to as 'the Settlement Commission') under Section 127C(5) of the Customs Act, 1962 (hereinafter referred to as the 'said Act').

2. The short point raised by the learned counsel for the petitioner/ Revenue is that the application filed by the respondent for settlement of its case could not have been entertained by the Settlement Commission because there was an express bar contained in the third proviso to Section 127B(1) of the said Act.

3. Before we examine that, it would be necessary to point out that the respondent had, as part of his baggage, brought into India 6452.600 gms of gold. He did so on 16.06.2013 while arriving at the Indira Gandhi International Airport, Delhi from Dubai by flight No. EK-514. While the respondent was trying to cross the green channel, a Customs Officer intercepted him and on being asked by the Customs Officer as to whether he carried any dutiable goods, the respondent replied in the negative and, on demand, produced the disembarkment card. In the disembarkment card, the column of dutiable goods was left blank. The baggage of the respondent as also his person was searched and, on examination, it was found that the respondent was carrying gold wrapped in brown tape which was tied to his waist by a black belt. The extent of gold that was found on his person was 6452.600 gms and the same was seized by the Customs Officer. Thereafter,

various proceedings took place and a show cause notice was issued etc. We are not concerned with the rest of the details.

4. The respondent made an application, purportedly under Section 127B of the said Act, on 12.11.2013. The Settlement Commission, after going through the various steps, passed the impugned order dated 16.05.2014 under Section 127C(5) of the said Act.

5. As point out above, the issue raised by the learned counsel for the petitioner/ Revenue is that the respondent could not have moved an application under Section 127B before the Settlement Commission and the Settlement Commission did not have jurisdiction to go into the matter at all. The learned counsel submitted that this was in view of the express bar contained in Section 127B(1) third proviso read with Section 123 of the said Act. Section 127B(1) to the extent relevant reads as under:-

“127B. Application for settlement of cases. - (1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, in respect of a case, relating to him make an application, before adjudication to the Settlement Commission to have the case settled, in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been

incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification, under-valuation or inapplicability of exemption notification or otherwise and such application shall be disposed of in the manner hereinafter provided :

Provided that no such application shall be made unless,—

(a) the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer;

(b) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(c) the applicant has paid the additional amount of customs duty accepted by him along with interest due under Section 28AA:

Provided further that no application shall be entertained by the Settlement Commission under this sub-Section in cases which are pending in the Appellate Tribunal or any court:

Provided also that no application under this sub-section shall be made in relation to goods to which Section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) has been committed:

Provided also that no application under this sub-Section shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975 (51 of 1975).

(1A) xxxx xxxx xxxx xxxx

7. On a plain reading of the third proviso to Section 127B(1) of the said Act, it is evident that no application for settlement can be made if it relates to goods to which Section 123 applies. Section 123 sub-section (2) specifically provides that the said Section applies to, *inter alia*, gold. It is, therefore, clear that when the two provisions are read together, no application under Section 127B(1) can be made in relation to gold. This case clearly pertains to gold. The respondent made an application, nevertheless, to the Settlement Commission which has entertained the same and has also rejected the plea raised by the Revenue that it did not have jurisdiction to entertain such an application. We agree with the submission made by the learned counsel for the Revenue that the Settlement Commission did not have the jurisdiction to entertain such an application as there was a complete bar provided in the third proviso to Section 127B(1) read with Section 123 of the said Act.

8. The learned counsel for the respondent sought to draw some support from a decision of this Court in the case of **Commissioner of Customs v. Ashok Kumar Jain: 2013 (292) ELT 32 (Del)** as also a subsequent decision of another Division Bench of this Court in **Komal Jain v. Union of India and Another: 2014 (304) ELT 675 (Del)**. In *Ashok Kumar Jain (supra)*,

the issue of Section 123 has not been considered at all. Insofar as the decision in ***Komal Jain*** (*supra*) is concerned, the Division Bench itself, in paragraph 21, observed that the issue with regard to the applicability of Section 123 of the Act by way of the third proviso to Section 127B was left open and it was for the Settlement Commission to examine the same, if such a point was raised, in accordance with law. In the present case, we find that the point with regard to the third proviso to Section 127B(1) read with Section 123 of the said Act had been specifically raised by the Revenue and the same has been considered by the Settlement Commission and has been rejected. We have already indicated above that the rejection by the Settlement Commission is not in accordance with law. A plain reading of the provisions clearly indicates that an application under Section 127B cannot be made in respect of, *inter alia*, gold, which is specifically an item to which Section 123 applies. We may point out that there is no question of examining the provisions of Section 123(1) as also its applicability because that is not the context of the third proviso to Section 127B(1). The said proviso only makes a reference to the goods to which Section 123 applies and not to Section 123 itself. We have already made it clear that the goods

to which Section 123 applies includes gold, as specifically indicated in Section 123 (2) of the said Act.

9. For all these reasons, the impugned order passed by the Settlement Commission is without jurisdiction. The same is set aside. The writ petition is allowed.

BADAR DURREZ AHMED, J

AUGUST 25, 2015
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SANJEEV SACHDEVA, J

