THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.01.2015

\+ **W.P.(C) 8991/2014**

THE ADDITIONAL COMMISSIONER OF CUSTOMS ... Petitioner

versus

SHRI VINEY JAIN ... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Satish Kumar
For the Respondent : Mr R. S. Sharma

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)
CM 20542/2014

Allowed subject to all just exceptions.

WP(C) 8991/2014 & CM 20541/2014

1. This writ petition is directed against the order dated 05.05.2014 passed by the Customs and Central Excise Settlement Commission, New Delhi on the application filed by the respondent under Section 127 B of the Customs Act, 1962.

2. The main point urged by Mr Satish Kumar, the learned counsel appearing on behalf of the Additional Commissioner of Customs, is that the

Settlement Commission did not have the jurisdiction to entertain the application filed by the respondent inasmuch as the respondent did not comply with the conditions stipulated in the first proviso to Section 127B of the said Act. Section 127B, to the extent relevant, is reproduced herein below:-

> "**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) <u>the applicant has filed a bill of entry, or a shipping bill, in respect of import or export of such goods, as the case may be, and in relation to such bill of entry or shipping bill, a show cause notice has been issued to him by the proper officer</u>;
>
> (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 28AB:

xxxx xxxx xxxx xxxx”

(underlining added)

3. The facts of the case are that the respondent had arrived at IGI Airport from Hongkong by flight No.CX-695 on 10.02.2013. It is stated that while he was trying to cross the green channel near the exit gate of the arrival hall, a custom officer intercepted him and searched the checked in baggage and found that it contained 738 pieces of offset printing heads. As the respondent could not produce any documentary evidence for having legal possession of the said goods in a commercial quantity in order to lawfully import the same, the said goods were seized by the custom officers under the provisions of the said Act on the reasonable belief that the same were smuggled into India and were liable to confiscation. The customs portion of the disembarkation slip was also recovered. An investigation was carried out and, thereafter, a show cause notice was issued to the respondent on 06.08.2013. During the pendency of the show cause proceedings, the respondent moved the application under Section 127B of the Customs Act for settlement of the case on 18.09.2013.

4. The revenue report on the settlement application was received through a letter dated 05.11.2013 by the Settlement Commission. The revenue had objected to the settlement of the dispute on the ground that the respondent had not filed any bill of entry as required under Section 127B of the said Act and that the filing of a disembarkation slip cannot be equated with the filing of bill of entry. It was also submitted on behalf of the revenue that it was a case of smuggling and, therefore, there was no question of any disclosure of duty liability as the same had not been disclosed before the proper officer. Consequently, the revenue requested the Settlement Commission to reject the said settlement application.

5. However, the Settlement Commission did not accede to the request made by the revenue and passed the impugned order of settlement. We need not go into the merits of the impugned order or the contents thereof. It is sufficient to note that the objection that was taken by the revenue was that the case of the kind which presents itself in the current writ petition was not one which could be considered as a 'case' for settlement by the Settlement Commission under the provisions of the said Act and in particular, Section 127B thereof. The very same contention which had

been raised by the revenue in its report to the Settlement Commission is sought to be raised before us by Mr Satish Kumar, who appears on behalf of the petitioner. It is his case that since no bill of entry was filed in respect of the goods which were brought in, the settlement application could not have been made in terms of the first proviso to Section 127B(1) of the said Act.

6. The learned counsel appearing on behalf of the revenue submitted that the issue sought to be raised by Mr Satish Kumar is entirely covered by the decision of a Division Bench of this Court in the case of ***Commissioner of Customs v. Ashok Kumar Jain***: ***2013 (292) ELT 32 (Delhi)***, where a similar plea had been raised. In the said decision, the contention of the revenue was recorded as under:-

> "2. The Revenue contended that the Commission failed to appreciate that the applicant's case was not one under Section 127(A) as he did not file any bill of entry or shipping bill under Section 127(C). It was also not a case of short levy on account of mis-declaration or undervaluation or inapplicability of exemption notification. In these circumstances, the Commission lacked jurisdiction to even entertain or proceed further with the matter. It was contended by the Counsel that the applicant's case squarely fell within the head of "baggage" where he had given a declaration under Section 77 of the Act, mandatory to all passengers arriving in India. The declaration had several columns and one of which belong to value of goods brought in as a baggage comes within the purview of Section 77. This was

> entirely different from the bill of entry or shipping bill which alone attracted the provisions of Section 127 (B) in order to confer jurisdiction with the Settlement Commission. It was emphasized that the goods in this case were not even entered in the disembarkation card filed by the applicant."

7. It may be pointed out that in ***Ashok Kumar Jain*** *(supra)*, the passenger had brought the goods with him and he was required to fill in the disembarkation card which he did and, in it, he declared the value of the goods imported as "baggage". In the present case, the respondent had also filled the disembarkation card, but he had left the description and value of the goods as blank. So, the two cases, that is, the case in the present writ petition and the one in ***Ashok Kumar Jain*** *(supra)* are quite similar and the issue raised is identical. The Division Bench in the case of ***Ashok Kumar Jain*** *(supra)* considered the provisions of the Customs Act, including Section 77 which dealt with the declaration of baggage by the owner and Section 127B to which we have already alluded above.

8. After considering the said provisions, the Division Bench arrived at the following conclusion:-

> "11. For the foregoing reasons, this Court is of the opinion that on a careful reading of Section 127(A) and 127(B) the Revenue's contention that since the applicant had not filed bill of entry or that the case was one relating to baggage and therefore did not involve short levy or non-levy is without

> force. The provisions that confer jurisdiction on the Settlement Commission cannot, in the opinion of the Court, be construed as narrowly as it sought to be urged by the Revenue. If parliamentary intention is to exclude adjudication by Customs Authorities in respect of baggage claim, from the purview of the Commission's jurisdiction, surely such intention would have been more clearly manifested like in the case of 3 proviso of Section 127 (B)(i)."

9. It is obvious from the above that the plea raised by the petitioner is entirely covered against the petitioner by the decision of the Division Bench in ***Ashok Kumar Jain*** *(supra).* Consequently, we hold that the Settlement Commission had the jurisdiction to settle the case. As a result, the writ petition has no merit. The same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

JANUARY 06, 2015 **SANJEEV SACHDEVA, J**
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