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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 16.10.2015

\+ **W.P.(C) 9783/2015 & CM No.23515/2015 (stay)**

DIRECTORATE OF REVENUE INTELLIGENCE & ANR.

.... Petitioners

versus

M.I. ENTERPRISES & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Satish Aggarwala, Advocate for petitioners.
For the Respondents : Mr Piyush Kumar, Advocate.

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 directed against the final order No.F-2446-48/CUS/15-SC (PB) issued by the Customs and Central Excise Settlement Commission, New Delhi on 30.06.2015 whereby the applications for settlement being Nos.4620/2015 & 4622/2015 have been disposed of. The issue relates to the import of Christmas Lights, LED Bulbs, Decoration Lamps, etc. The allegations against the respondents were that they had made this importation contrary to the provisions of

Customs Act, 1962 as also the Foreign Trade Development & Regulation Act, 1992. It is also the case that there was misuse of the IE Code. A common show cause notice dated 09.01.2015 was issued by the Additional Director of Revenue Intelligence, Delhi Zonal Unit, Lodhi Road, New Delhi.

2. At that stage, the respondents moved the aforesaid applications for settlement before the Settlement Commission. The settlement applications were allowed to be proceeded with and, ultimately, resulted in the impugned final order. The Settlement Commission observed and held as under:-

> "15. In the instant case also, mis-use of IE code is a charge in the SCN along with undervaluation. As such, the above observations of the Delhi High Court in the Commissioner of Central Excise & Customs Delhi-IV Vs. Achiever International is squarely applicable. The imported goods despite being prohibited goods under section 2(33) can be released on the basis of redemption fine in terms of Section 125 of the Customs Act. The duty liability which arises on the application of Section 125, has been accepted and discharged by the applicant. This computation of quantum of duty has not been disputed by the Revenue. The Bench observes that the applicant has made true and full disclosure of *their* duty liability and cooperated in the proceedings before the Commission. They have *also* deposited entire amount of duty demanded in the SCN.

16. So far as role of co-applicant 1 and 2 is concerned, it is clear from the investigations that the imported goods belonged to them and that they used the IE code of the applicant to import goods contrary to the provisions of the Act. The act of undervaluing the goods has also been accepted by them. Undervaluation is a conscious exercise and their culpability is thereby established. In fine, the co- applicants are found to be the main perpetrator of the offence under the Customs Act.

17. In view of the above and the facts and circumstances of the case, the Bench hereby settles the case under section 127C (5) of the Act on the following terms and conditions:

Assessable Value: The assessable value of the imported goods is re-determined as Rs.59,33,372/- in terms of Section 14 of the Act read with Rule 9 of the Custom Valuation Rules.

Customs Duty: The Customs Duty in this case is settled at Rs.17,06,406/- (Rupees seventeen lakh six thousand four hundred six only) against the applicant. An amount of Rs.17,06,406/- deposited by the applicant is ordered to be appropriated towards the settled amount of duty. Nothing further remains to be paid on this Count.

Fine: A fine of Rs. 5,00,000/-(Rupees five lakh only) is imposed in lieu of confiscation of the seized goods.

Penalty: Taking into account the facts and circumstance of the case, the Bench imposes a penalty of Rs. 50,000/- on the applicant and Rs

1,00,000/- (Rupees one lakh only) each on the co-applicant 1 and 2, under the provisions invoked in the SCN and grants him immunity from penalty in excess of the above amount.

Upon payment of these amounts, the seized goods shall be returned to the applicant within 15 days.

Prosecution: The Bench grants immunity to the applicant from prosecution under the Act and Rules framed there under as applicable in so far as this case is concerned.

18. The above immunities to the applicant is granted under Section 127H(I) of the Act. Their attention is also drawn to the provisions of sub-section (2) and (3) of Section 127H ibid.

19. This order shall be void and immunities withdrawn if the Bench finds, at any time, that the applicants had concealed any particular, material to the settlement or had given false evidence or had obtained this order by fraud or mis-representation of facts.

20. A copy of this order is given to the applicant herein and to the jurisdictional Commissioner for their use in the implementation of the order. No one should use this order in any other manner or for any other purpose without the written permission of the Commission."

3. Mr Satish Aggarwala appearing for the petitioner/Directorate of Revenue Intelligence contends that the Settlement Commission has taken a very lenient view in imposing the fines and penalties. According to him, in a case of this nature, the fines should have been much higher as

also the penalty amount. We have also heard the learned counsel for the respondents.

4. It is well settled that the proceedings before the Settlement Commission are not adjudicatory but are by way of settlement. This Court does not sit in appeal over the settlement orders passed by the Settlement Commission. It is, therefore, not open to a party to make a grievance with regard to an adjudicatory process when the same is foreign to the proceedings before the Settlement Commission. We do not agree with the learned counsel for the petitioner that any interference with the impugned order is called for.

5. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

OCTOBER 16, 2015 **SANJEEV SACHDEVA, J**
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