IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4808 OF 2015

1. M/s DDN SFA Limited, a Public limited Company incorporated under the provisions of the companies Act, 1956, having its office at Opp. Petrol Pump, Shivaji Chowk, Murud, Latur- 413 510 through its Director Shri Vijay S/o Shri Prakash Nade, Age 38 years, Occu: Business, r/o At post : Murud Tal. & Dist. Latur – 413 510.

2. Vijay S/o Shri Prakash Nade, Age, 38 years, Occu: Business, r/o at Post: Murud, Tal & Dist. Latur-413 510. ...PETITIONERS

versus

1. The Union of India, through its Secretary, Ministry of Finance, Department of Revenue, North block, New Delhi -110 001.

2. The Customs & Central Excise Settlement Commission Additional Bench, 6th floor, Plot No. C-24, Utpad Shulk Bhavan, Bandra – Kurla Complex, Bandra (East), Mumbai -400 051.

3. The Commissioner of Customs, Central Excise & Service Tax, Aurangabad Town Centre, N-5 CIDCO, Aurangabad – 431 030. ...RESPONDENTS

.....

Mr. Abhay Kolte, Advocate for petitioners
Mr. A.G. Talhar, advocate for respondent No. 1
Mr. D.S. Ladda, Advocate for respondents No. 2 and 3

.....

CORAM : S. V. GANGAPURWALA AND K.K. SONAWANE, JJ.

DATED : 7th JULY, 2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioners assail order dated 16-02-2015 passed by respondent No. 2 thereby negativing application filed by petitioners. The Settlement Commissioner passed order invoking its power under section 32-F(5) of the Central Excise Act, 1944 (for short "Excise Act").

3. Show cause notice came to be issued to the petitioners alleging that the petitioners had cleared the finished goods from the factory with cover of statutory invoice and without payment of duty so also that the petitioners had failed to maintain proper accounts of finished goods manufactured and cleared from its factory premises thereby proposing demand of central excise duty of Rs. 1,28,01,529/- (Rupees One Crores Twenty Eight Lakhs One Thousand Five Hundred Twenty Nine). The jaggery is seized from warehouse. The petitioners had filed settlement application under section 32-E of the Excise Act. Pursuant thereto, impugned order is passed.

4. Mr. Kolte, learned counsel for petitioners submits that hearing was conducted on 02-12-2014 and further 10 (ten) days time was given to the parties to make the submissions. Subsequent to the hearing being conducted, respondents filed additional documents with

its letters dated 08-12-2014, 13-12-2014, 27-01-2015 and 05-02-2015 and made submissions thereafter also. The petitioners were not put notice about said letters being filed. The petitioners on 05-11-2014 had specifically filed application and thereby demanded the documents along with prescribed fees of Rs. 100/- with further clarification that if documents are more and additional charges are required, the petitioners are ready to pay additional fees. However, the same are never supplied nor said application was decided by the Settlement Commissioner and thereafter impugned order is passed. The impugned order is not in consonance with principles of natural justice. The learned counsel for the petitioner relies on the decision of Division Bench of this court in the case of ***Dream Yachts Pvt. Ltd. And ors. Vs. Union of India and others*** reported in ***2015-TIOL-1175-HC-MUM-CUS.***

5. Mr. Ladda, learned Assistant Solicitor General for the respondents – authorities submits that the petitioners have candidly removed the goods from the factory, they were liable to pay duty. After submissions of subsequent documents, in fact, the amount of duty was reduced from Rs. 1, 28,00, 511/- to Rs. 1,20,00,000/-. In fact, the petitioners are benefited. Learned counsel for respondents relies on the Section 32-J of the Excise Act to contend that petitioners are not entitled for copies of the reports. Such an order of the Settlement Commissioner is not amenable to the writ jurisdiction. Learned counsel relies on the decision of Supreme Court in the case ***Union of India (UOI) and others Vs. Ind-Swift Laboratories Ltd.*** reported in ***(2011) 2 JT 352.***

6. We have considered the submissions canvassed by learned counsel for respective parties. Learned counsel for respective parties are at *ad-idem* that petitioners have paid duty as demanded in the show cause notice i.e. more than amount which has been settled by the Settlement Commissioner.

7. It is also not disputed fact that Settlement Commissioner had conducted enquiry on 02-12-2014 and, thereafter, granted ten days more time to make further submissions, if any. Perusal of impugned order, it is manifest that revenue subsequently relied on letters dated 08-12-2014, 13-12-2014, 27-01-2015 and 05-02-2015. These letters were much subsequent to the date of hearing conducted by Settlement Commissioner. The copies of said letters/documents were also never provided to the petitioners. The petitioners had filed specific application seeking documents. Provisions of Section 32-J of the Excise Act clearly entitles the applicant to provide certified copies of any such report or part thereof.

8. Considering the aforesaid, the said letters appear to have been read while passing the impugned order without giving copies of the same to the petitioners and also without bringing it to the knowledge of petitioners. Such an order is certainly not in consonance with the cardinal principles of natural justice, also considering the fact that petitioners have paid duty as demanded, we are inclined to exercise our discretion.

9. The impugned order is quashed and set aside. The Settlement Commissioner shall decide said proceedings afresh after giving opportunity to the petitioners to put forth their case so also furnish certified copies of the relevant letters/documents to the petitioners. The parties shall appear before the Settlement Commissioner on 1st August, 2016.

10. Writ petition is disposed of with aforesaid observations. Rule is made partly absolute accordingly. No costs.

Sd/- Sd/-

[K. K. SONAWANE, J.] **[S. V. GANGAPURWALA, J.]**

MTK