

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2016

| Date of Reserving the Order | Date of Pronouncing the Order |
|-----------------------------|-------------------------------|
| 27.09.2016                  | 30.09.2016                    |

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.Nos.7108 & 7109 of 2008

M/s.Hi-design,  
Rep., by its Chief Finance Officer,  
Mr.S.Hemachandran,  
244/1 Odiampet Village,  
Villianur, Pondicherry - 605 110. ... Petitioner in both  
W.Ps.,

Vs

1.The Commissioner of Central Excise,  
23, Gubert Avenue,  
Beach Road,  
Pondicherry - 605 001.

2.The Customs & Central Excise Settlement  
Commission,  
Additional Bench, II Floor,  
Narmada Block, Customs House,  
60, Rajaji Salai,  
Chennai - 600 001. ... Respondents in  
W.P.No.7108/2008

1.The Joint Commissioner of Central Excise  
Gobart Avenue, Beach Road,  
Pondicherry 605 001.

2.The Commissioner of Central Excise,  
23, Gubert Avenue,  
Beach Road,  
Pondicherry - 605 001. ... Respondents in  
W.P.No.7109/2008

Prayer in W.P.No.7108 of 2008 :-This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records comprised in C.No.V/15/204-219 and 230/2007-ST, Final Order

No.20/2008, dated 28.02.2008, issued by the second respondent, quash the same in so far as that portion of the impugned order confirming the duty demands imposition of penalties and redemption fine and remand the matter to the said second respondent for disposal of the matter afresh in so far as that portion of the impugned order confirming the duty demands imposition of penalties and redemption fine in accordance with law.

Prayer in W.P.No.7109 of 2008 :-This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records comprised in the impugned show cause notice No.14 of 2007, dated 26.04.2007, on the file of the first respondent, quash the same.

For petitioner .. Mr.S.Muthu Venkataraman for  
Mr.R.Karthikeyan

For Respondents .. Mr.V.Sundareswaran  
Senior Panel counsel for RR1&2

COMMON ORDER

Heard Mr.S.Muthu Venkataraman, learned counsel appearing for Mr.R.Karthikeyan, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel counsel appearing for the respondents.

2. In these Writ Petitions, the petitioners have challenged the order passed by the Customs and Central Excise Settlement Commission, Additional Bench, Chennai (hereinafter referred to as the "Settlement Commission") in applications filed by the petitioner for settlement of their case arising out of a show cause notice, dated 06.03.2007, issued by the first respondent to the petitioner, who is one among the sixteen co-noticees.

3. The petitioner is a manufacturer of leather goods falling under Chapter 42 of the Central Excise Tariff. On receiving information that the petitioner is manufacturing goods and removing without payment of duty and availing SSI exemption and manipulating the records of the sister concern and job workers, conducted investigation and issued show cause notice demanding duty of Rs.5,16,08,561/-, on the ground that the petitioner has actually engaged in the manufacture of leather goods for export and home clearances for themselves and also for their sister trade units; they were clearing their goods manufactured by them to the Domestic Tariff Area without payment of Central Excise Duty either directly or to the warehouse from where the same were subsequently sold in domestic market in the

name of different trading entities; they camouflaged the entire transaction, as if the trading units, got the entire leather goods manufactured through independent job workers during the period from April 2001 to March 2006. On receipt of the show cause notice, the petitioner filed application before the Settlement Commission admitting additional duty of Rs.1,42,95,172/- as against the demand of Rs.5,16,08,561/- along with prayer for immunities.

4. The Settlement Commission heard the matter for admission on 24.01.2008, in which the counsel for the petitioner sought to place the factual matrix to justify the action, but agreed that M/s.Hides, which is one of the two units, does not have any machinery, manpower and money to function as an independent entity for the purpose of availing the benefit of SSI exemption and the clearances of M/s.Hides should be clubbed along with the petitioner/applicant.

5. The Revenue strongly opposed the admission of the application stating that except for stitching and pasting, all other activities have been done by the petitioner/applicant and when the applicant accepted the department's stand that the three job workers do not have any facility to stitch and paste and the final stitching has been done at the premises of the applicant, they have to discharge the duty liability. They also objected that there is no true and full disclosure and the applicant has indulged in manipulation/burning of documents which is a serious offence and submitted documents before the Settlement Commission to prove such contention. However, this allegation was rebutted by the counsel, who appeared for the applicant. After considering all the aspects, the Settlement Commission, by an elaborate order, has settled the case.

6. The learned counsel for the petitioner would submit that by approaching the Settlement Commission, the applicant has been pushed to a position worse off, than he would be, if he had contested the show cause notice. However, the learned counsel during the course of argument, restricted his contentions only to one aspect and therefore, this Court has to test the correctness of the order only on such aspect, as according to the learned counsel for the petitioner, the matter has to be remanded to the respondent for fresh consideration.

7. The contention raised by the learned counsel for the petitioner stems out of the observations made by the Settlement Commission in paragraph 25 of the order, which reads as follows:-

The Bench asked the revenue representative as to what would be duty liability if it was assumed that the activities of the applicant did not amount to manufacture. He was asked to work out the

same, with and without the benefit of cum duty. He wanted time to work out the same and requested for grant of time till the morning of 21.02.2008, which was granted. The advocate has established his points and the revenue should put forth concrete evidence.

8. The learned counsel would submit that the Revenue had calculated the benefit of cum duty assuming that the activity of the applicant, did not amount to manufacture, but that calculation was submitted directly to the Commission and the Commission has not even dealt with the same and, therefore, prays for setting aside the order and remanding the matter to the Settlement Commission only for considering of such aspect.

9. From a reading of paragraph 25 of the impugned order, it is seen that the Settlement Commission has not rendered any finding, accepting the stand of the petitioner that activity done by it, does not amount to manufacture. In fact, it was on an assumption that assuming the activity is not manufacture, what would be the duty liability. Therefore, the direction issued to the Revenue by the Settlement Commission at best could be considered, as an information, the Commission wanted to know with regard to the impact of duty assuming that the activity done by the petitioner, did not amount to manufacture. On a reading of the order passed by the Settlement Commission, in its entirety, it is evidently clear that the Settlement Commission did not accept the case of the petitioner. Therefore, the petitioner cannot rest his case upon the observations made in paragraph 25 of the impugned order. Furthermore, when the Revenue responded to the direction of the Settlement Commission and the Assistant Commissioner of Central Excise, Puducherry, submitted a report dated 22.02.2008, the Department reiterated that the application does not merit admission, the applicant who was not an assessee, has not filed returns during the material period and the process of designing, cutting etc., would amount to manufacture and prayed that the entire amount demanded in the show cause notice may be ordered to be paid. However, as directed by the Settlement Commission, a revised worksheet was given, assuming the process was not a manufacture. Therefore, the Department was very firm in their stand in contending that the petitioner is not entitled for any indulgence.

10. It is not the case of the petitioner that it did not have an opportunity to put forth its submissions. It was represented by counsel; it made actual and legal submissions and the Settlement Commission has considered the matter elaborately

and recorded a finding that the applicants are attempting to hoodwink the legal provisions and therefore, while settling the case, directed the entire Central Excise duty to be paid, apart from imposing penalty of Rs.50,00,000/- on the applicant and giving an option of redemption of the seized goods on payment of redemption of fine of Rs.2,00,000/- with simple interest and settling the interest at 10% (simple interest), and granting immunity from prosecution to the applicant and co-applicants.

11. The Constitutional Bench of the Hon'ble Supreme Court in the case of Brij Lal & Ors., vs. Commissioner of Income Tax, (Civil Appeal Nos.516-527 of 2004, reported in (2011) 1 SCC 1 held that the order of Settlement Commission under Section 245D (4) of the Income Tax Act shall be final and conclusive. In UOI vs. Ind-Swift Laboratories Ltd., reported in 2011 (265) ELT 3 (SC), the Hon'ble Supreme Court held that an order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any statutory provisions of the Act.

12. So far the findings of the fact recorded by the Commission or questions of fact are concerned, the same is not opened for examination either by the High Court or by the Hon'ble Supreme Court. Challenge to the order of the Settlement Commission on those grounds was rejected by the Court in the case of Commissioner of Customs (Imports) vs. Rohan Anirudha Seolekar reported in 2013 (288) ELT 353I.

13. In Singhvi Reconditioners Pvt., Ltd., vs. UOI reported in 2010 (251) ELT 3 (SC), the Hon'ble Supreme Court pointed out that the assessee having opted to get their customs duty liability settled by the Settlement Commission cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not. This is what the petitioner precisely wants to do, accept the immunities granted to the petitioner, exercise the option of redemption and also willing to settle the penalty.

14. Therefore, there are no grounds made out by the petitioner to interfere with the impugned order passed by the Settlement Commission. Accordingly, Writ Petition in W.P.No.7108 of 2008, fails and it is dismissed. Consequently, the Writ Petition in W.P.No.7109 of 2008, filed against the show cause notices is also dismissed and the petitioners are directed to file their reply to the show cause notices, within four weeks from the date of receipt of a copy of this order and participate

in the adjudication proceedings after a date is fixed by the Adjudicating Authority for a personal hearing. No costs.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Commissioner of Central Excise,  
23, Gubert Avenue,  
Beach Road,  
Pondicherry - 605 001.
  - 2.The Customs & Central Excise Settlement  
Commission,  
Additional Bench, II Floor,  
Narmada Block, Customs House,  
60, Rajaji Salai,  
Chennai - 600 001.
  - 3.The Joint Commissioner of Central Excise  
Gobart Avenue, Beach Road,  
Pondicherry 605 001.
- +2 ccs to Mr.R.Karthikeyan Advocate sr 56562  
+2 ccs to Mr.V.Sundareswaran Advocate sr 56184

W.P.Nos.7108 & 7109 of 2008

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