IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.29489 of 2016
and
W.M.P.No.25525 of 2016

M/s.Danavarshini Exports Pvt. Ltd.,
Represented by its Director
Mr.Ramachandran,
No.3, Kula Thottam, Kangeyam Road,
Tirupur - 641 604. ..Petitioner

/vs/

1.Customs & Central Excise Settlement Commission,
II Floor, Narmada Block, Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs,
Customs Chennai - II Commissionerate,
Customs House, Chennai - 600 001.

3.The Additional Director General,
Directorate of Revenue Intelligence,
Chennai Zonal Unit, NO.27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus, to call for the records in file bearing No.F.No.S.A.Cus 62-65/2015-SC comprising of Final Order 11/2016 Cus dated 29.02.2016 on the file of the first respondent and quash the same, consequently direct the first respondent to admit the application filed by the petitioner under Section 127C (1) of the Customs Act, 1962 and pass orders in accordance with law after granting opportunity of hearing to the petitioner.

For Petitioner : Mr.S.Muthuvenkataraman

For Respondents: Mr.G.M.Syed Nurullah Sheriff
Senior Panel Counsel (For R1 and R2)
Mr.V.Sundareswaran
Senior Panel Counsel(For R3)

O R D E R

Heard Mr.S.Muthuvenkataraman, learned counsel appearing for the petitioner and Mr.G.M.Syed Nurullah Sheriff learned Senior Panel Counsel appearing for the respondents 1 and 2 and Mr.V.Sundareswaran, learned Senior Panel Counsel appearing for the 3rd respondent.

2.The order impugned in this writ petition is an order passed by the Customs and Central Excise Settlement Commission (hereinafter referred to as "the Settlement Commission"). The petitioner who were the importers had imported eight consignments of garment accessories on Nil rate of duty and sold the same in the domestic market by availing the benefit of Customs Notification 21/2002-Cus dated 01.03.2002. On intelligence, it is came to the notice of the third respondent that the garment accessories were diverted by the petitioner and sold in the domestic market. Therefore, a show cause notice was issued by the third respondent dated 31.03.2015. The sum and substance of the allegation against the petitioner is that they sold the imported goods in the domestic market and violated the "actual user" condition of the said Notification. Due to mis-use and wrong availment, the total duty evaded on the goods under the eight bills of entry was computed at Rs.23,19,372/-. It appears that the petitioner co-operated with the DRI during the course of investigation and admitted the mis-use and wrong availment of Notification benefits as well as the amount quantified as import duty and interest much prior to the issuances of the show cause notice.

3.On receipt of the show cause notice, the petitioner approached the Settlement Commission to settle their case stating that it is not a case of smuggling but only a case of wrong availment of the benefit of exemption Notification which was admitted even prior to the show cause notice, the petitioner requested the Settlement Commission to settle their case in terms of the admitted duty liability as spelt out in the application. With regard to the admissibility of the application, the DRI's contention was that when goods specified under Section 123 of the Customs Act, 1962 are involved, the

Settlement Commission should interfere in the matter. The DRI placed reliance on the decision of the High Court of Delhi in WP (C)No.7363 of 2014 dated 25.08.2015 in the case of (Additional Commissioner of Customs vs. Ram Nivas Verma) The petitioner in fact admitted the charge in the show cause notice and submitted before the Settlement Commission leaving it to the discretion of the Settlement Commission to pass appropriate orders on the immunities claimed. However, the Settlement Commission appears to have been fully guided by a decision of the High Court of Delhi. In the said case, it was observed that on a plain reading of the third proviso of Section 127B(1) of the Customs Act, it is evident that no application for settlement can be made if it relates to the goods to which Section 123 applies. Thus the Commission held that the matter has to be sent to the adjudicating authority for consideration in accordance with the provisions of the Customs Act.

4.At the time of entertaining this writ petition the Court was prima facie satisfied that the impugned order calls for interference and by order dated 24.08.2016 granted a stay of paragraph 7.1 of the impugned order.

5.During the course of hearing, the learned counsel for the third respondent produced a note containing the gist of the communication from the Additional Director, DRI to the Commissioner of Customs, Legal-SEA, wherein the DRI has taken a stand that the petitioner's case relates to mis-use of import certificates issued by AEPC, Tirupur and the wrong availment of the Notification 21/2002; the bar provided under Section 127B for the admission of the petition before the Settlement Commission is relating to the goods specified under Section 123 of the Customs Act, 1962 and even though the Zip fasteners, a specified item under Section 123 was also one of the items imported by the petitioner, the bar does not come to place in this case as the Zip fasteners were not seized by DRI and they were also not smuggled into India.

6.In fact, the above stand taken by the DRI before this Court was exactly the stand expressed by the Court when the matter was being heard. Admittedly, there is no allegation of smuggling though one of the items which was imported by the petitioner under the classification of garment accessories in eight consignments was Zip fasteners. As admitted, the goods were not seized by the DRI nor there is any allegation against the petitioner that they smuggled those goods. The allegation itself is with regard to wrong availment of benefit of the exemption Notification. That apart, the eight consignments have all been together classified as garment accessories said to have contained various items. Thus it would be virtually impossible for the assessing group to separate various items and to cull out only Zip fasteners and treat them under a separate category as it is the goods mentioned under Section 123 of the Customs Act, 1962.

7.As submitted by the DRI, the petitioner had admitted the entire allegation much prior to the issuance of the show cause notice and in fact, that was precisely the stand taken before the Settlement Commission. Thus, for the above reason and taking note of the pragmatic stand taken by the petitioner, this Court is of the considered view that the matter requires to be considered so as to bring about a finality to the entire litigation.

8.In the light of the above, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the Settlement Commission for fresh consideration by considering the conduct of the petitioner to proceed to settle the case by exercising the discretion and pass appropriate orders on the immunities claimed by the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.Customs & Central Excise Settlement Commission,
II Floor, Narmada Block, Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs,
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3.The Additional Director General,
Directorate of Revenue Intelligence,
Chennai Zonal Unit, NO.27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

+1cc to M/s.G.M.Syed Murullah Sheriff, Advocate SR.No.66002

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SDR 28.12.2016