

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.38054 of 2016 &
WMP.Nos.32614 & 32615 of 2016

M/s.Standard Shoe Sole & Mould
(India) Ltd., rep.by its Director
Kausik Mukherjee

... Petitioner

Vs

1. The Customs, Central Excise and
Service Tax Settlement Commission,
Additional Bench, Chennai-1.
2. The Commissioner of Central Excise,
Puducherry.

... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned order No.25/2016-Cus. dated 25.5.2016 passed by the 1st respondent and quash that portion of the order No.25/2016-Cus, which includes the duty on the raw materials as illegal, arbitrary, beyond the scope of the prayer in the application filed by the petitioner for settlement and violative of principles of natural justice.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.A.P.Srinivas,
Senior Panel Counsel

ORDER

Mr.A.P.Srinivas, learned Senior Panel Counsel accepts notice for the respondents. Heard both.

2. The petitioner was earlier known as M/s.Chemcrown India Limited and it was a 100% export oriented unit located at Puducherry. In this writ petition, the petitioner challenges an order passed by the Customs, Central Excise and Service Tax Settlement Commission, Additional Bench, Chennai-1 - the first respondent herein (hereinafter called the Settlement Commission)

dated 25.5.2016 passed on an application filed by the petitioner for settlement of their case after a show cause notice dated 22.9.1997 was issued to the petitioner demanding duty to the tune of Rs.3,28,27,082/- under Section 72(1)(d) of the Customs Act, 1962 (hereinafter called the Act) and proposing to levy penalty under Section 112 of the Act.

3. The petitioner filed an application before the Settlement Commission on 31.8.2005 and by then, their name stood changed as M/s.Standard Shoe Sole & Mould (India) Limited. In the work sheet appended to the application in Annexure XII with regard to the duty demanded on raw material, the petitioner did not admit any duty liability. But, with regard to levy pertaining to duty liability on capital goods, the petitioner admitted a sum of Rs.25,29,277/-, after which, the petitioner filed a written submission on 2.3.2006, enclosing a revised work sheet with regard to duty demanded on the capital goods. However, even in the revised work sheet appended to the written submissions dated 2.3.2006, the petitioner did not accept any duty liability on raw materials. But, in so far as the duty demanded on capital goods is concerned, though initially the petitioner admitted the duty liability at Rs.25,29,277/-, they reduced the same to Rs.10,17,283/-. The reason being that the petitioner relied on the Board's circulars dated 5.6.1992, 21.4.1998 and 26.6.1998 and submitted that these circulars permit depreciation upto 90% on straight line method. Thus, this was the justification for the petitioner to file a revised work sheet, only with regard to duty demanded on capital goods.

4. The record of proceedings shows that by order dated 22.9.2006, there was an interim direction granted by the first respondent calling upon the petitioner to pay a sum of Rs.10,17,283/- within a time frame, which the petitioner was unable to comply with. Therefore, the petitioner filed an application for modification, which was disposed of by order dated 27.11.2006, by granting 10 days' time to effect payment and subsequently approached this Court by filing W.P.No.46471 of 2006, in which, a conditional order was granted on 30.11.2006 and ultimately, it appears that the amount was paid in instalments.

5. The Settlement Commission heard the application finally on 5.4.2016 and passed the impugned final order dated 25.5.2016 settling the petitioner's case by arriving at the customs duty payable at Rs.46,52,571/- and after giving credit to Rs.10,27,099/- for the capital goods on the depreciated value, the petitioner was directed to remit the remaining amount with regard to the raw material. That apart, immunity from payment of interest under Section 127H of the Act was granted and an amount of Rs.50,000/- alone was imposed as penalty. The petitioner was

also granted immunity from prosecution under the Act. The petitioner is not aggrieved by the order passed by the Settlement Commission in its entirety, but only with regard to the duty demanded in respect of the raw material.

6. The petitioner's case is that even at the first instance, when they filed an application before the Settlement Commission, no additional duty liability was accepted on the raw material nor while filing a revised work sheet on 2.3.2006. Therefore, this being not an issue before the Settlement Commission, the petitioner could not have been made liable to pay duty on the raw material, on which, they have not admitted any duty liability before the Commission.

7. It is the further case of the petitioner that they are entitled for abatement of duty in terms of Section 22 of the Act, since the goods are damaged, deteriorated and unfit for use in the production activity. In terms of Section 127F(1) of the Act, in addition to the powers conferred on the Settlement Commission, it shall have all the powers vested in an Officer of Customs under the Act or the Rules made thereunder. Therefore, the Settlement Commission failed to exercise the power conferred on it in terms of Section 127F(1) of the Act and extend the benefit of abatement of duty on damaged goods and this was the very reason for the petitioner not admitting any additional liability on the demand for duty on raw material.

8. I have elaborately heard the learned Senior Panel Counsel appearing for the respondents on the above submissions.

9. From the record of the proceedings, it is seen that at no point of time, the Department conceded that there is no liability towards duty on raw material. In fact, it is the petitioner, which did not admit any liability. But, the show cause notice, which led to the filing of the application before the Settlement Commission, had quantified duty on raw material. Therefore, it has to be seen as to how the Settlement Commission dealt with the matter.

10. The Settlement Commission took note of the submissions of the Commissioner at the time of personal hearing wherein it was contended that the petitioner had not informed the stoppage of production to the Department as well as the availability of stock of materials at the time of stoppage of production. It was further contended that though the petitioner did not provide any satisfactory account of the goods imported, used, balance quantity available, etc., when the Divisional Preventive Group verified the stock of raw materials, they found shortage of imported raw materials in the bonded warehouse and that the petitioner accepted the shortage and paid Rs.8,21,955/-.

11. It was further contended that the petitioner's sister concern situated in the adjacent premises was manufacturing identical goods, that the capital goods and raw materials removed were kept in the same area and that the chances of diversion of raw materials to DTA cannot be ruled out. It was also contended that though the petitioner knew that raw materials lost their shelf life period, they deliberately failed to inform the Department for disposing the materials. The Department further contended that the petitioner should be made liable to pay duty and penalty as demanded in the show cause notice.

12. The Settlement Commission, after considering the case, recorded its finding in paragraph 16.5 of the impugned order, which is to the following effect :

"The applicant initially approached the Settlement Commission on 31.8.2005 against the show cause notice, admitting a duty liability of Rs.25,29,277/- on the capital goods. In doing so, the applicant claimed 70% depreciation on the value of capital goods. The applicant did not admit any liability on the raw materials on the ground that they were not fit for consumption and merit to be destroyed and the duty remitted. The case was first heard by the Commission on 9.11.2005 and certain directions were issued to the Department on the applicant's claim. Some correspondence took place and the case was heard by the Commission on 12.1.2006 and 21.2.2006."

13. That apart, the submissions made on either side with regard to the duty demanded on raw material was considered in detail and the Settlement Commission, in paragraph 16.8, recorded a finding that remission of duty will arise only in cases where the goods have been lost or destroyed at the time before clearance, that in the instant case, the goods were never lost nor destroyed and that the petitioner failed to inform the Department about the stoppage of production at any point of time, apart from the fact that the petitioner admitted the shortage of the goods, when the officials of the Department inspected their bonded warehouse. Thus, the Settlement Commission rendered a finding that it is not a case of destruction and for remission of duty as provided under the Act.

14. After considering the submissions on either side and perusing the findings recorded by the Settlement Commission,

this Court is of the view that the Settlement Commission has given cogent reasons as to why the case has to be settled on the terms contained in the impugned order. This Court, exercising jurisdiction under Article 226 of The Constitution of India, will not examine the correctness of the impugned order as if acting as an Appellate Authority over the order of the Settlement Commission.

16. That apart, there is no allegation made by the petitioner as to the violation of the principles of natural justice, as the petitioner had been afforded full and effective opportunity. As the reasons given by the Settlement Commission are cogent and proper and the petitioner cannot be permitted to accept a portion of the order i.e. with regard to settlement in respect of the claim for duty on capital goods, immunity from payment of interest, restricting payment of penalty to the extent of Rs.50,000/- alone and immunity from prosecution under the Act and state that they are entitled to challenge only the portion of the order with regard to the duty demanded on raw material. This piecemeal challenge to the order of the Settlement Commission on the grounds raised by the petitioner is not tenable.

17. So far as the findings of fact recorded by the Commission or questions of fact are concerned, the same is not open 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 Soelekar [reported in (2013) 288 ELT 253].

18. In Singhvi Reconditioners Pvt. Ltd. Vs. UOI [reported in (2010) 251 ELT 3], 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. That is what the petitioner precisely wants to do.

19. With regard to the power of the Settlement Commission to be exercised under Section 127F(1) of the Act, the Settlement Commission has gone through the case and exercised its discretion. That apart, the conduct of the petitioner with regard to the raw materials, which were kept in the bonded warehouse, is to be noted and the petitioner had also admitted the shortage. Therefore, the argument of the learned counsel for the petitioner that the Settlement Commission should have exercised their power as an Assessing Officer does not merit acceptance.

20. For all the above reasons, the petitioner has not made out a case for interference. Accordingly, the writ petition is dismissed. No costs. Consequently, the above MPs are also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Customs,
Central Excise and Service Tax Settlement Commission,
Additional Bench,
II Floor, Narmada Block,
Customs House, No.60, Rajaji Salai,
Chennai-1.

2.The Commissioner of Central Excise,
Puducherry.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.62598

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.62685

W.P.No.38054 of 2016

&

WMP.Nos.32614 & 32615 of 2016

SV(CO)
CA(14/12/2016)

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