IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19405 of 2012 (O&M)
Date of decision: 29.8.2016

M/s Bishop Impex

.....Petitioner

vs.

Union of India and others

....Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Jagmohan Bansal, Advocate, for the petitioner.

Mr. Amit Goyal, Advocate, for respondents No.2 & 3.

Mr. R.K. Handa, Advocate, for respondents No.1 & 4.

Rajesh Bindal, J.

The petitioner has filed the present petition challenging the order dated 14.5.2012 passed by the Customs and Central Excise Settlement Commission (for short, 'the Commission') in Settlement Applications No. S.A. (C) Nos.2867/2012 & 2871/2012 dated 5.3.2012.

Learned counsel for the petitioner submitted that the petitioner imported polyester knitted fabric declaring its value at ₹ 12,06,944/-, however, the department found the same to be bonded and woven fabric and assessed the value thereof at ₹ 72,97,160/-. Show cause notice was issued to the petitioner for determination of value of goods imported and duty payable on that. Show cause notice for levy of penalty was also issued. The petitioner approached the Commission. Finally vide order dated 14.5.2012, the Commission assessed customs duty at ₹ 39,00,327/-. Redemption fine of

₹ 3,00,000/- was levied in case the petitioner wanted to get the confiscation of goods revoked. Personal penalty was also levied.

The contention raised by learned counsel for the petitioner was that on the goods imported by the petitioner Additional Customs Duty/Countervailing Duty (for short, 'CVD') was not leviable as the goods were not liable to levy of excise duty but still the Commission upheld even that part of duty. The order to that extent is beyond the provisions of law, hence, is liable to be set aside. In support of the plea that CVD is not leviable on the goods imported by the petitioner, reliance was placed upon the judgments of Hon'ble the Supreme Court in SRF Ltd. vs. Commissioner of Customs, Chennai, 2015 (318) ELT 607 and Commissioner of Cus. (Prv.), Amritsar vs. Malwa Industries Ltd., 2009 (235) ELT 214.

He further submitted that the confession of learned counsel for the petitioner recorded by the Commission regarding payment of CVD was totally wrong. Immediately, an application was filed for recalling that part of the order, however, the same has not been decided. While relying upon the judgment of Hon'ble the Supreme Court in Union of India vs. Ind-Swift Laboratories Ltd., 2011 (265) ELT 3, it was submitted that if the order passed by the Commission is contrary to the provisions of the Central Excise Act, 1944 (for short, 'the Act'), it can be interfered with. As in the case in hand, levy of CVD was upheld by the Commission, the order to that extent is against the provisions of the Act and is liable to be set aside.

On the other hand, learned counsel for the respondents submitted that the counsel for the petitioner, who appeared before the Commission, conceded for levy of CVD and it was in the light of that fact that the petitioner was granted substantial concession in levy of redemption fine and the penalty, hence, the order does not call for any interference. He further submitted that at the relevant time the issue as to whether CVD was leviable on the goods imported by the petitioner was not finally settled. This was the reason that the counsel for the petitioner conceded for levy of that duty. The issue was settled only in SRF Ltd.'s case (supra) in the year 2015. While referring the judgment of Hon'ble the Supreme Court in Sanghvi Reconditioners Pvt. Ltd. vs. Union of India, 2010 (251) ELT 3, it was submitted that the order passed by the Commission cannot be dissected. He further submitted that even after the earlier judgment of Hon'ble the Supreme Court as relied by counsel for the petitioner, larger Bench of Tribunal had taken a view that CVD was leviable.

Heard learned counsel for the parties and perused the paper book.

The facts of the case as such are not in dispute, namely, import of flock/bonded fabric valued at ₹ 72,97,160/- but declaration thereof by the petitioner as polyester knitted fabric having value of ₹ 12,06,944/-. After show cause notice was issued to the petitioner for confiscation of goods and levy of duty and penalty, the petitioner had taken the matter to the Commission. The Commission upheld levy of CVD on the goods imported which according to the petitioner is not leviable, in view of the latest judgment of Hon'ble the Supreme Court in SRF Ltd.'s case (supra). The proposition of law to that extent is not disputed by counsel for the respondents. However, the issue sought to be argued is that counsel for the petitioner had made a confession to that extent before the Commission. Suffice to say that immediately after the order was passed by the Commission, the petitioner had filed an application seeking modification of the order to the extent the confession was recorded. However, the same was not decided.

The scope of interference by the court in an order passed by the Commission is well defined. In Ind-Swift Laboratories Ltd.'s case (supra), Hon'ble the Supeme Court opined that any order passed by the Commission can be interfered with, if it is found to be contrary to the provisions of the Act. In The Union of India and others v. Asahi India Safety Glass Ltd., 2015 (7) Scale 39, Hon'ble the Supreme Court while relying upon its earlier judgment in Ind-Swift Laboratories Ltd.'s case (supra) upheld the judgment of High Court, whereby the matter was remitted back to the Commission finding the same to be against the provisions of law. Relevant paras thereof are extracted below:-

> "11. On that basis the High Court has concluded that the ***Commission*** committed an error by applying wrong principle in law, by treating even the float glass used for manufacture, that is, after the manufacturing process had commenced, to be a wasted input and came to an erroneous conclusion that the modvat could not be claimed in respect of that part of a particular float glass sheet. In forming this opinion the High Court relied upon the judgment of this Court in the case of ***Collector of Central Excise v. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 S.C.*** wherein this Court held as to when the manufacturing process starts. Final portion from the said judgment which is quoted by the High Court, is reproduced for proper understanding of the matter:
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> > "Manufacture thus involves series of processes. Process in manufacture or in relation to manufacture

implies not ***only*** the production but the various stages through which the raw material in subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to, manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected ***with*** the ultimate production of goods that but for that process manufacture or processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture."

12. The High Court has also relied upon two other judgments of this Court, viz, ***J.K. Cotton Mills v. S.T. Officer [1965 (1) SCR 900]*** and ***Standard Fireworks Industries v. Collector 1987 (28) E.L.T. 56 (S.C.)*** lying down the same proposition as noted in the case of Rajasthan State Chemical Works (Supra).

13. In the process, the High Court has also interpreted Rule 57D and Rule 57A (4) of the Rules. It would be pertinent to mention here that the aforesaid legal position, as stated by the High Court, could not be dislodged by the learned senior counsel for the appellant.

14. From the aforesaid it becomes clear that the High Court has not interfered with the facts which were recorded by the Settlement Commission. On the contrary, the facts noted above remained undisputed. On those facts the High Court has simply stated the correct legal position where the Settlement

Commission had gone wrong in law. Thus, the High Court has simply applied the correct principle of law on the admitted facts. This, according to us, was well within the powers of the High Court while exercising its jurisdiction under Art. 226 of the Constitution. Such remand of High Court has been held permissible in ***Jyotendrasinghji v. S.I. Tripathi and Others (201 ITR 611)*** which was also concerning the powers of the Settlement Commission, albeit under Section 245(D)(4) of the Income Tax Act. The principle of law remains the same and can be applied in case of orders passed by the Settlement Commission under the Central Excise Act as well."

Once it is found that CVD was not leviable on the goods imported by the petitioner, levy thereof by the Commission would certainly be contrary to the provisions of the Act, hence, the order to that extent cannot be legally sustained.

However, we do not find it appropriate to set aside the order of the Commission only to that extent. The position of law at that time when the Commission passed the order being fluid, there being no direct judgment in favour of the petitioner, the counsel appearing before the Commission may have taken the stand at that time. The Commission may have passed the order seeing the totality of the case. Once we find that the part of the order is not as per the Act in view of the judgment of Hon'ble the Supreme Court regarding levy of CVD, we deem it appropriate to set aside the order passed by the Commission in totality and remit the matter back for fresh consideration.

The parties are directed to appear before the Commission on October 24, 2016.

The petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

29.8.2016
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No