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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P.(C) 13848/2006**

UNION OF INDIA ..... Petitioner
Through: Mr. Satish Agarwala, Advocate.

versus

ANIL CHANANA ..... Respondent
Through: Mr.V. Lakshmi Kumaran, Mr. Abhinav Jaganathan, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **03.05.2016**

1. The challenge by Union of India ('UOI') in this petition is to the orders dated 27th April 2006 and 12th July 2006 passed by the Customs and Central Excise Settlement Commission ('CCESC'), Principal Bench.

2. By the second impugned order dated 12th July 2006, the application made by the Respondent was disposed of by settling the duty liability at Rs.49,07,565 and directing release of the confiscated goods i.e. two diamond earrings on payment of redemption fine of Rs.12 lakhs and granting of full immunity from interest and penalty.

3. The brief facts are that the Respondent arrived from London at IGI Airport, New Delhi on 11th August 2004. After he walked through the green channel, he was intercepted by the officers of Directorate of Revenue Intelligence ('DRI'). He was found carrying two pairs of diamond earrings

valued at UK Pound Sterling 140,847.14. This led to the arrest of the Respondent and his subsequent release on bail upon payment of Rs. 47,72,521 towards the customs duty.

4. As regards the prosecution of the Respondent under Section 132 and 135 (1) (a) of the Customs Act, 1962 ('Act'), the Respondent initially filed an application for compounding the offences which was accepted by the Chief Commissioner, Customs by order dated 25th May 2006. Simultaneously, the Respondent applied to the CCESC for settlement of the case under Section 127B of the Act by filing an application on 18th January 2006.

5. The order dated 25th May 2006 of the Chief Commissioner of Customs compounding the offences under Sections 132 and 135(1) (a) of the Act was challenged initially by the Union of India in W.P.(C) No. 12912 of 2006 in this Court. By order dated 17th October 2006 a Division Bench of this Court dismissed the said writ petition. Against that order, the Union of India filed Civil Appeal No. 683 of 2008 which came to be allowed by the Supreme Court by order dated 25th January 2008. The order dated 25th May 2006 of the Chief Commissioner of Customs and the order dated 17th October 2006 of the Division Bench of the Court in W.P.(C) No. 12912 of 2006 were set aside. *Inter alia*, the Supreme Court came to the conclusion that the disclosure made by the Respondent for the purposes of compounding of offences was not a full and true disclosure of all the relevant facts and therefore the application for compounding of the offences was liable to be rejected. The Court observed that "neither Anil has fulfilled his obligations nor has the Compounding Authority discharged its statutory duty of making

proper enquiries."

6. Turning to the application made by the Respondent before CCESC, it is seen that it was submitted in Form SC[C]-1, in which the Respondent had disclosed the total amount of the duty involved and the additional amount of duty accepted by the Respondent as payable. The application had a verification at the bottom where the Respondent stated that the contents of this application "are true to the best of my knowledge and belief and no information relevant to the facts of the case has been suppressed". Further the annexures of the documents accompanying the application were stated to be true copies of the originals and the tables showing the financial transactions were stated to be correct and duly attested. The application had two annexures. Annexure-1 gave the details regarding calculation of the duty payable on the goods covered in the Bill of Entry. Para 4 of Annexure-1 was: "Full and true disclosure of the facts regarding the issues to be settled, including the terms of settlement sought for by the applicant". Here the Respondent stated: "Please refer to Annexure-2".

7. Annexure-2 to the settlement application was titled "Full and true disclosure of the facts regarding the issues to be settled and the terms of settlement sought for by the Applicant". In this Annexure-2, in nine paragraphs, the Respondent set out the facts and circumstances, which according to the Respondent, explain his bringing the two earrings by flight from London to New Delhi on 11th August 2004.

8. There were two orders passed by CCESC. The first impugned order is

dated 27th April 2006 which is the 'Admission Order' under Section 127C of the Act. In this order, the CCESC negatived the objections raised by the DRI to the maintainability of the application. It is seen that at that stage when the objections were filed, i.e. on 18/19th April 2006, the Chief Commissioner of Customs had not yet compounded the offences. This was much prior to the Supreme Court dealing with the appeal filed by the Union of India the order of the Chief Commissioner of Customs.

9. By a final order dated 12th July 2006, the CCESC accepted the application after noticing that the Respondent had made a "full and true disclosure and even admitted the enhanced amount of duty amounting to Rs. 49,07,565 and deposited the same". In coming to the above conclusion, the CCESC considered what was disclosed in Annexure-2 of the application and proceeded to settle the case under Section 127 C(7) of the Act in terms which have already been noticed hereinbefore.

10. What is significant is that even at this stage i.e. 12th July 2006, the CCESC did not have the benefit of the order of the Supreme Court which was passed on 25th January 2008. The submission of Mr. Satish Agarwala, learned counsel for the Petitioner is that Annexure-2 to the application filed by the Respondent before CCESC is no different from the statement made by him at the time of compounding of the offences. He points out that this very statement was disbelieved by the Supreme Court as is evident from the order dated 25th January 2008 in Civil Appeal No.683 of 2008 and therefore the impugned order of the CCESC dated 27th April 2006 cannot be sustained in law. He states that consequent upon the aforementioned judgment dated

25th January 2008 of the Supreme Court, the prosecution of the Respondent under Sections 132 and 135(1) (a) of the Act is under progress.

11. Mr. V. Lakshmi Kumaran, learned counsel for the Respondent on the other hand submitted that in terms of Section 127B of the Act, what the Respondent was required to do was to make an application in such form and in such manner as may be specified by rules, and "containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer........." He submits that inasmuch as the Respondent had made a full and true disclosure of the duty liability, the requirement of Section 127B of the Act stood satisfied and therefore there was no ground to interfere with the impugned final order dated 12th July 2006 passed by the CCESC. He further submitted that, notwithstanding the judgment dated 25th January 2008 of the Supreme Court, he would be able to demonstrate that the disclosure made by the Respondent in Annexure-2 of the application before the CCESC constituted a full and true disclosure of the relevant facts.

12. The CCESC which passed the admission order dated 27th April 2006 and the final order dated 12th July 2006 did not have the benefit of the judgment of the Supreme Court delivered on 25th January 2008. The statement made by the Petitioner in Annexure-2 contains the details which have been adverted to by the Supreme Court in the said judgment while dealing with the disclosure made by the Respondent before the Chief Commissioner of Customs at the time of seeking compounding of the offences. The Court is of the view that the Settlement Commission should reconsider the application of the Respondent after taking into account the

judgment of the Supreme Court dated 25th January 2008 and after giving opportunity to the Respondent to demonstrate that notwithstanding the said judgment, the statement made in Annexure-2 to the application made before the CCESC should be accepted as a full and true disclosure of all the relevant facts.

13. Consequently, the Court set aside the orders dated 27th April 2006 and 12th July 2006 and remands the application of the Respondent to the CCESC for a fresh consideration.

14. The Respondent's application shall be listed before the CCESC on 1st June 2016 on which date the representatives of both the Respondent as well as the DRI shall remain present. It will be open to the Respondent to raise an objection as regards the participation of the DRI in the proceedings before the CCESC. Such objection will also be dealt with by the CCESC in accordance with law.

15. The petition is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 03, 2016
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