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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 3074/2015**

AMIT SIROHI & ORS. ..... Petitioners
Through: Mr Pradeep Jain, Mr Tarun Chawla and Mr Shubhankar Jha, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE, NEW DELHI ..... Respondent
Through: : Mr Satish Aggarwala, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **26.04.2016**

1. The challenge in this petition is to Corrigendum/Addendum dated 12th August, 2014 issued by the Directorate of Revenue Intelligence (DRI) Delhi Zonal Unit to the Show Cause Notice (SCN) F No. 23/63/2010-DZU dated 20th December, 2013 issued to the Petitioner.

2. The facts are that a search was conducted in the residence/godown and office premises of the three Petitioners on 6th September, 2010 resulting in recovery of several records/documents, computers/hard discs, laptops and pen drives as well as rubber stamps. During the search 212, 20 and 86 pieces of old and used photocopier machines were recovered from the premises. Apart from that, 210 pieces of cartridges and 6580 kgs. of toner were recovered. Further, 41 pieces of old and used photocopier machines were also recovered. Investigations were commenced and statements were

recorded which showed that the Petitioners had been importing old and used photocopier machines by undervaluing the goods up to the extent of 50%. In the SCN issued to the Petitioners on 20th December, 2013, the plea of the DRI was that there has been extensive undervaluation of the imported photocopier machines by the Petitioners resulting in evasion of customs duty.

3. It is stated that in order to buy peace, the Petitioners opted to file applications for settlement of the its case before the Customs and Central Excise Settlement Commission (CCESC), Principal Bench, New Delhi on 7th April, 2014. The Petitioners received a letter dated 24th April, 2014 from the CCESC informing them that the CCESC had allowed their applications under Section 127-C(1) of the Customs Act, 1962 ('Act') and that "the case is allowed to be proceeded with subject to the conditions that the applicant satisfies all the requirements at the time of final hearing."

4. It is stated that while the matter was with the CCESC, the Petitioners received the impugned Corrigendum/Addendum dated 12th August, 2014 to the SCN dated 20th December, 2013 changing the classification of the import of photocopier machines thereby enhancing the duty demand. When a hearing took place before the CCESC on 5th December, 2014, the Petitioners informed the CCESC that they had challenged the said duty of demand in this writ petition to this Court. The Petitioners on 22nd January, 2015 addressed a letter to the CCESC requesting it to defer the hearings and keep the settlement in abeyance in exercise of its powers under the proviso to Section 127-C(6) of the Act for a further period of three months. By an

order dated 23rd January, 2015, the CCESC disposed of the applications but granted liberty to the Petitioners to apply afresh "after the decision of the High Court in the matter".

5. In response to the notice issued in the present petition, the DRI filed a counter affidavit on 5th May, 2015 where, *inter alia,* it stated that a wrong statement was made by the Petitioner before the CCESC when the matter was heard on 5th December, 2014 that the Petitioners had already agitated the correctness of the Corrigendum before this Court. According to the Respondents, a copy of the present petition was served on them only on 11th February, 2015 and therefore, no writ petition appears to have been filed by 5th December, 2014.

6. In light of the above averments in the counter affidavit, this Court on 2nd December, 2015 directed the Registry to place on record the digital file which was uploaded through electronic filing vide diary no.251539/2014 on 4th December, 2014 at 3:00 PM. The relevant scrutiny sheets etc. with regard to the present writ petition were also directed to be placed on the file. The above order was passed in light of the statement made by learned counsel for the Petitioners that the present writ petition had been filed on 4th December, 2014, i.e., one date prior to the hearing of the matter by the CCESC on 5th December, 2014.

7. At the subsequent hearing of the present petition on 8th December, 2015, the Court noted that the digital file as directed has been placed on record. It was also noted that the relevant scrutiny sheet was also on record. This

aspect need not be further examined since it is clear that on 5th December, 2014 when the Petitioners informed the CCESC that they had challenged the Corrigendum before this Court, the present petition was already pending.

8. The main submission of the Petitioners is that once the CESC decided to proceed with the applications filed before it, then, in terms of Section 127F(2) of the Act, the CCESC had exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs, as the case may be, in relation to the case.

9. Section 127F(2) reads as under:

> "(2) Where an application made under section 127B has been allowed to be proceeded with under section 127C, the Settlement Commission shall, until an order is passed under sub-section (5) of section 127C, have, subject to the provisions of sub-section (4) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs or Central Excise Officer, as the case may be, under this Act or in the Central Excise Act, 1944 (1 of 1944), as the case may be, in relation to the case."

10. DRI does not dispute that by its order dated 24th April, 2014 the CCESC decided to proceed with the applications filed by the Petitioners before it in exercise of its powers under Section 127-C(1) of the Act. The DRI also does not dispute that under Section 127-F(2) of the Act, once the CCESC had decided to proceed with the applications, the CCESC shall have "exclusive jurisdiction to exercise the powers and perform the functions of any officer of Customs or Central Excise Officer, in relation to the case."

11. The question that arises is whether in light of the above statutory power of the CCESC to exclusively exercise the jurisdiction of the officer of Customs, the impugned Corrigendum could have been issued on 12th August, 2014, i.e., on a date subsequent to the CCESC deciding to proceed with the applications filed before it.

12. The submission of Mr Satish Aggarwala, learned counsel for the Respondent, in response to the above query is that the order dated 24th April, 2014 passed by the CCESC deciding to proceed with the application under Section 127C of the Act was passed without hearing the DRI.

13. As far as this submission is concerned, the Court notices that there was sufficient opportunity for the DRI, if aggrieved by the order passed by the CCESC on 24th April, 2014,to have challenged that order in accordance with law. However, without adopting that course, it was not open to the DRI to have proceeded to issue a Corrigendum/Addendum to the SCN dated 20th December, 2013 since in terms of Section 127F(2) of the Act, the exclusive jurisdiction to deal with the matter vested with the CCESC.

14. In other words, the DRI had, on the date it issued the Corrigendum dated 12th August, 2014, no jurisdiction to issue Corrigendum/Addendum which made a very significant change to the SCN whereby the classification of the imported goods was changed and the duty demand correspondingly increased.

15. Consequently, the Court is of the view that the impugned

Corrigendum/Addendum dated 12th August, 2014 is plainly unsustainable in law as it contrary to Section 127F(2) of the Act.

16. It was then contended that the Petitioners ought to have agitated the validity of the Corrigendum/Addendum before the CCESC itself. This submission appears to be misconceived since no such Corrigendum/Addendum could have been issued in the first place when the CCESC was seized of the matter. The question of the CCESC deciding the validity of such Corrigendum does not arise in the facts and circumstances of the case.

17. Mr Satish Aggarwala then submitted that the DRI should be granted liberty to challenge the order dated 24th April, 2014 passed by the CCESC.

18. The Court does not wish to comment on the submission except by noting that it is over two years since the CCESC passed the above order. If the DRI decides to challenge the said order, such petition will be decided on its merits by the appropriate forum.

19. For the aforementioned reasons the Court quashes the Corrigendum/Addendum dated 12th August, 2014 to the SCN dated 20th December, 2013. The Petitioner is permitted to revive its application before the CCESC in terms of the order dated 23rd January 2015 passed by the CCESC in the matter.

20. The writ petition is allowed in the above terms but in the circumstances

with no order as to costs.

21. *Dasti.*

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 26, 2016
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