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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 11005/2016 & CM No. 43078/2016</u>**

BENGAL POLYSACKS THROUGH: ITS PARTNER ..... Petitioner
Through: Ms. Vidhushi Shubham and Ms. Reena Rawat, Advocates.

Versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) ..... Respondent
Through: Mr. Sanjeev Narula, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

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

% 21.11.2016

<u>CM No.43078/2016 (for exemption)</u>

1. Allowed, subject to all just exceptions.

2. The application stands disposed off.

<u>W.P.(C) 11005/2016</u>

3. Issue notice.

4. Mr. Sanjeev Narula, Senior Standing Counsel accepts notice on behalf of the respondent.

5. The writ petitioner's grievance is that despite the final order of the Settlement Commission, dated 30.04.2014, finally deciding the Show Cause Notice No.30/2013 dated 24.05.2013 and the matters covered therein, the respondents have not so far taken any action towards refund of the excess

amounts lying and deposited with them and also not discharging the bank guarantees issued in their favour during the pendency of the proceedings. This Court has considered the Settlement Commission's order, which finally held, *inter alia*, as follows:-

> *"12. The Bench has carefully considered the record and the submissions made by the Ld representatives of all the applicant and Revenue at the time of hearing. The Bench that the applicants have mis-declared the goods with the intention of evading customs duty as well as attempting to import counterfeit goods. They are therefore liable to penalty and the offending goods liable to fine. The Bench observes that the applicant has made full and true disclosure of their duty liability and has cooperated with the investigation and in the proceedings before the Commission. The Bench also takes into account the role of the co-applicant no 4 in the whole matter. In view of the facts and circumstances of the case, the Bench hereby settles the case on the following terms and conditions:*
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> ***Duty:*** *The Customs Duty In this case is settled at Rs.25,69,617/-(17,63,207+6,54,022+ 1,52,388) i.e. Rupees twenty five lakh, sixty nine thousand six hundred and seventeen only. An amount of Rs.25,69,617/- deposited by the applicant is ordered to be appropriated towards the settled amount of duty. Nothing further remains to be paid on this Count.*
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> ***Interest:*** *An amount of Rs 1,81,657/- (Rs 1,50,944 + Rs 30,713) has been deposited towards interest liability which is ordered to be appropriated. The Revenue is however, given liberty to check the correctness of the amount of interest and, in case there is any short fall, to re-calculate the interest on the settled duty amount within 15 days of the receipt of this order and inform the same to the applicant who shall pay the balance amount forthwith in the next 15 days from the*

date of receipt of such communication from Revenue under intimation to the Revenue and the Commission.

Penalty: *Taking into account the facts and circumstances of the case, the Bench imposes a penalty of Rs.50,000/- (Rupees fifty thousand only) on the applicant firm under the provisions invoked in the SCN. The Bench also imposes a penalty of Rs 1,00,000/- (Rupees one lakh only) on the co-applicant no 4. The Bench grants immunity from penalty above the specified amounts. The Bench also grants immunity from penalty to the other co-applicants.*

Fine: *The Bench imposes a fine of Rs.50,000/ - (Rupees fifty thousand only) on the seized goods provisionally released, in lieu of confiscation under the provisions invoked in the SCN. For the past imports, since the goods are not available for confiscation, the Bench refrains from imposing any fine. The applicants have made a deposit of Rs 25,00,000/- to the Revenue. All duties, fines and penalty due from the applicants is allowed to be adjusted against this deposit. Any shortfall in payment of dues as mentioned in this order will be made good by the applicants. Balance amount, if any, may be returned to the applicants within 15 days of the settlement of all dues. Upon payment of all dues, the bank guarantee executed for provisional release of the goods may be returned.*

Prosecution: *The Bench grants immunity to all the applicants and the co-applicants from prosecution under the Act and Rules framed there under as applicable in so far as this case is concerned."*

6. In view of the finality of the Settlement Commission's order, which cannot be appealed against, the respondents are hereby directed to take appropriate consequential action and pass orders to refund the excess

amounts paid (i.e. differential between the payment or deposit made at the time of filing of the settlement application and the duty liability, as finally determined by the Commission in its order of 30.04.2014) as well as pass a separate order discharging the bank guarantees issued in favour of the Commissioner of Customs. These directions shall be complied with by the respondents within three weeks.

7. The writ petition is allowed in the above terms.

8. A copy of this order be given *dasti* to the learned counsel for the parties.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

NOVEMBER 21, 2016
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