IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 511 OF 2017

1. Vijay Engineering Enterprise Pvt. Ltd. & Anr... Petitioners
Vs
1. The Union of India & Ors. ... Respondents

Mr. Prakash Shah with Mr. Jas Sanghavi i/b PDS Legal for the Petitioners.

Mr. M. Dwivedi for the Respondents.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

MONDAY, 23RD JANUARY, 2017

P.C. :

1 The Settlement Commission has dismissed an application, being SA (ST) 100-101 of 2016 and filed by the present petitioners. That order of dismissal of the Settlement Application dated 18th November, 2016, is challenged in this writ petition.

2 Inviting our attention to section 32-F(5) of the Central Excise Act, 1944. Mr. Prakash Shah appearing for the petitioners would submit that having reached that stage, it was

not permissible for the Settlement Commission to have dismissed the Settlement Application without adjudication. He invites our attention to paragraphs 4 an 5 of the impugned order and the ultimate conclusion to submit that once the Settlement Application was allowed to be proceeded with, a report called for, then, the instant application could not have been dismissed as not maintainable. The dismissal is only because the petitioners-applicants before the Settlement Commission objected to a small portion of the demand of Rs.56,66,733/- out of the sum of Rs.3,99,72,817/-. Even during the personal hearing and after having granted three months time, the said sum was not brought in with applicable interest. The complaint is that the Settlement Commission having gone that further could not have passed the impugned order for, according to the petitioner, this amount of Rs.56,66,733/- constitutes service tax demand and it could not have been raised. Thus, it was contested by the petitioners-applicants. The service tax was wrongly demanded under cargo handling service on the turnover and a notification enabling computation of that liability does not envisage such a sum and that is why that was disputed.

3 Mr. Dwivedi appearing for the respondents would submit that the Settlement Application covered even this demand. The applicant-petitioner by their application despite objecting to this demand to the extent of the alleged small sum, agreed that even that has to be deposited with interest. They sought time to deposit the same which was granted by the Commission. Having found that the demand was not satisfied in the manner envisaged by law, the Commission was justified in dismissing the application.

4 Having heard both sides, we find that the complaint of Mr. Shah appearing for the petitioners is justified. It is common ground that the total sum demanded in the show cause notice is Rs.3,99,72,817/-. The petitioners-applicants deposited a sum of Rs.1,74,07,267/- towards service tax and Rs.30,88,578/- towards interest. The petitioners contested the proceedings by pointing out that the service tax of Rs.56,66,733/- demanded under cargo handling service has to be dropped. As far as the petitioners are concerned, the Revenue submitted a report on 17th May, 2016. It reiterated the demand, but pointed out that the petitioners-applicants had admitted their service tax liability of

Rs.3,43,06,084/- and interest of Rs.30,88,578/- and requested dropping the demand of Rs.56,66,733/-. Though they claimed that they had paid the amount along with interest and voluntarily, it was paid, according to the Commission, only after investigations were initiated by the Director General. Thus, the Commission found that the petitioners-applicants had intentionally and deliberately not paid the service tax. Thereby, they rendered themselves liable for consequential penal action and deserve to be penalised upto the maximum extent.

5 Further, from the interest calculation by the petitioners-applicants it was observed that the same was not properly done and there was balance unpaid liability of Rs.1,26,80,065/- towards interest. The Tribunal on such reasoning proceeded and held as above, but what we find is that it is supposed to have made an order not to proceed with the matter and which is traceable to section 32-F(1) of the Act. However, it is conceded that such an order stated to have been made on 28th March, 2016, has never been served on the petitioners-applicants. Though the Revenue submitted a report and its representative reiterated the demand, what they eventually

found is that the entire sum as demanded, namely, Rs.3,99,72,817/- has been deposited. The objection was only towards a small portion thereof. Even that sum was allowed to be brought later on, but has not been deposited. On such a factual controversy and when the Tribunal proceeded much beyond section 32-F(1) and admittedly passed the impugned order by invoking section 32-F(5) of the Central Excise Act, 1944, then, its conclusions cannot be sustained. They are clearly contravening the law.

6 We do not decide any larger issue or wider question simply because Mr. Shah, on instructions, states that the petitioners may be granted a final opportunity of three months time to deposit the sum of Rs.56,66,733/- with interest applicable and if that sum is brought and deposited, the petitioners' application be revived for disposal in accordance with law. In the event the petitioners do not abide by this statement, then, they will face all legal consequences, including that the impugned order stands and nothing further would be required to be done by the Settlement Commission.

7 After having noted this request of Mr. Shah and made on instructions, we allow the petitioners three months' time to bring in the above sum, the applicable interest and if that amount is deposited, the proof produced the Settlement Commission shall ignore all its earlier findings and observations in the impugned order and proceed to decide the matter strictly in accordance with law. It will then proceed on the footing that the application for settlement was rightly admitted and requires further adjudication. Needless to clarify that in the event the petitioners do not comply with the statement made today, all consequences thereafter will follow and then the impugned order remains untouched. It would then not be interfered with.

8 The writ petition is disposed of in these terms. There shall be no order as to costs.

9 In the light of the time granted to the petitioners, the adjudicating authority shall not proceed with the adjudication proceedings for a period of three months.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***