IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4086 of 2008 & M.P.Nos.1 & 2 of 2008

Shri.Ghishulal R.Jain, Proprietor,
M/s.National Glass Emporium,
Old No.72 & 86, New No.3 & 33,
Nyniappa Naicken Street,
Chennai-600 003. ... Petitioner

Vs.

1.Customs & Central Excise Settlement
Commissioner, Additional Bench,
II Floor, Narmada Block, Custom House,
No.60, Rajaji Salai, Chennai-600 001.

2.Commissioner of Customs
(Seaport-Import), Custom House,
No.60, Rajaji Salai, Chennai-600 001.

3.Additional Director General,
Directorate of Revenue Intelligence,
Ministry of Finance (Dept. of Revenue),
Zonal Unit, No.25, Gopalakrishna
(Iyer) Road, T.Nagar, Chennai-600 017.
... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent culminating in the Order No.2/2008-Cus dated 11.01.2008 issued from File C.No.VIII/10/148/2007 SC and quash the same in so far as it relates to determination of duty and penalty, direct the first respondent for settlement of the amount after taking into account the detailed calculations already furnished along with the application and grant immunity from imposition of penalty.

For Petitioner : Mr.S.Murugappan

For Respondents: Mr.A.P.Srinivas,
Senior Standing Counsel

O R D E R

Heard Mr.S.Murugappan, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents.

2.The petitioner, a proprietaryship concern, is engaged in the import of glassware and enamelware and have been issued Import Export Code during the year 2006. The petitioner had been importing glassware from Singapore and Indonesia to various other countries. The intelligence report obtained by the DRI alleged that the petitioner has been undervaluing their imported goods. Consequent upon which, a search was conducted in the place of business of the petitioner as well as the residential place of the proprietor. Ultimately, it has resulted in issuance of show cause dated 01.03.2007, demanding differential duty of Rs.89,45,851/-. The petitioner filed an application before the Settlement Commission under Section 127B of the Customs Act, 1962, (hereinafter referred as “the Act”) which was entertained on 31.05.2007. The petitioner admitted a duty amount of Rs.79,76,642.19/- and with regard to the remaining, contended that there was a calculation error. This contention has been noted by the Settlement Commission in paragraph 6 of the impugned order. After the matter was heard, the Commission has admitted the settlement case and settled the matter by directing the petitioner to pay the entire duty of Rs.89,45,851/-, as demanded in the show cause notice. After taking note of the admitted amount, which was remitted by the petitioner viz., Rs.79,76,642/-, the petitioner was granted fifteen days time to pay the remaining amount of Rs.9,69,209/-. The correctness of the order is tested in this writ petition.

3.On perusal of the impugned order, I find that there was a fax message received by the Additional Director General of DRI, Chennai, dated 07.01.2008, mentioning that Annexures given along with the petitioner’s application are not supported by documentary evidence. It appears that this fax message was received by Settlement Commission much after the case was heard and the petitioner did not have an opportunity to elaborate his stand before the Commission. The impugned order observed that the petitioner has been indulging in deliberate undervaluation to mislead the Department by way of concealing the facts with loss to the Government. In such case, the Commission have passed an order.

4.The conclusion arrived at by the Commission could be negatived for more than one reason. Firstly, the Commission did not undertake any exercise to find out as to whether the plea raised by the petitioner that there was calculation error is correct or not. In fact, sub-section 5 of Section 127 of the Act, empowers the Commission to do so. The Commission did not do such exercise, nor it called for any report from the Jurisdictional Commissionerate. The second reason is that if the Commission was of the opinion that for some reason the application cannot be entertained on account of non-cooperation by the assessee etc., the case should have been sent back to the appropriate officer under Section 127I of the Act. This was also not done by the Commissioner, rather he admitted the case. Thus, the reasons assigned in the impugned order are completely flawed and the matter requires to be re-examined afresh.

5.Thus, for the above reasons, the writ petition is allowed, the impugned order is quashed and the matter is remanded to the respondent for fresh consideration, who shall examine the correctness of the stand taken by the respondent, as to whether there has been calculation error, afford an opportunity of personal hearing to the authorized representative of the petitioner and pass fresh orders on merits and in accordance with law. It is made clear that all issues are left open to be agitated before the respondent including levy of penalty. No costs. Consequently, connected miscellaneous petitions are closed.

abr

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Customs & Central Excise Settlement
Commissioner, Additional Bench,
II Floor, Narmada Block, Custom House,
No.60, Rajaji Salai, Chennai-600 001.

2.The Commissioner of Customs
(Seaport-Import), Custom House,
No.60, Rajaji Salai, Chennai-600 001.

3.The Additional Director General,
Directorate of Revenue Intelligence,
Ministry of Finance (Dept. of Revenue),
Zonal Unit, No.25, Gopalakrishna
(Iyer) Road, T.Nagar, Chennai-600 017.

+1cc to M/s.S.Murugappan, Advocate SR.No.88035
+1cc to Mr.A.P.Srinivas, Advocate SR.No.88062

sm:8.1.2018