IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM

THE HON'BLE Mr.JUSTICE M.DHANDAPANI

W.P.Nos.9171 to 9173 of 2004
and
WPMP.No.10707 of 2004

W.P.No.9171 of 2004

Loon Karan Kawad ... Petitioner

Vs

1. The Customs and Excise Settlement Commission
   Additional Bench
   Through its Registrar
   Narmada Block
   Customs House, Chennai.

2. Additional Director General
   Directorate of Revenue Intelligence
   Zonal Unit, Chennai.

3. Commissioner of Customs
   Sea Port, Chennai ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the first respondent made in its order number 53/2003-Cus dated 25/11/2003 (C.Number VIII/10/80/2003-SC) and to quash the same and further direct the first respondent to entertain the application of the petitioner for settlement of his case in terms of Section 127 B of the Customs Act, 1962.

W.P.No.9172 of 2004

Loon Karan Kawad ... Petitioner

Vs

1. Additional Director General
   Directorate of Revenue Intelligence
   Zonal Unit, Chennai.

2. Commissioner of Customs
   Sea Port, Chennai

3. The Director General of Foreign Trade
   Udyog Bhavan, New Delhi.

4. The Joint Director General of Foreign Trade,
   01, Whites Road, Chennai 14

5. The Customs Excise Settlement Commission
   represented by its Registrar,
   Customs House,
   Chennai-600 001 ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus directing the third respondent to issue appropriate orders extending the period of utilization of the licences mentioned herein by equivalent period during which he was prevented from using the licenses in the circumstances stated above.

W.P.No.9173 of 2004

Loon Karan Kawad ... Petitioner

Vs

1. Additional Director General
   Directorate of Revenue Intelligence
   Zonal Unit, Chennai.

2. Commissioner of Customs
   Sea Port, Chennai ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus directing the first respondent to return the licenses bearing numbers

a) 0410014794 dated 24/05/2001
b) 0410016679 dated 03/08/2001
c) 0410013910 dated 02/04/2001
d) 0410019713 dated 08/01/2002
e) 0410021891 dated 08/01/2002
f) 0410014802 dated 24/05/2001
g) 0410014803 dated 24/05/2001
h) 0410017633 dated 04/09/2001

along with 5 licenses as evidenced by the petitioner's statement dated 15/04/2002.

For Petitioner : Mr.B.Sathish Sundar
(in all W.P.'s)

For Respondents : Mr.GM.Syed Nurullah Sheriff
(in all W.P.'s)

C O M M O N   O R D E R

Though the issue involved in all these Writ Petitions are one and the same, they were taken up together and disposed of by a Common Order.

2. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

Brief Facts:

The petitioner herein the broker of DFRC licence. The petitioner is dealing with the transferable licenses for import of goods. The petitioner in the course of his business arranged for import of licenses to M/s.Langro Chemie India Pvt Ltd under the DFRC scheme for import of leather chemicals. The respondent issued Show Cause notice against the petitioner, M/s.Langro Chemie India P. Ltd and M/s.KMK Shipping and Clearing Pvt. Ltd. , on 12.09.2002. The relevant portion of the show cause notice reads as follows:

> "14. Therefore, M/s.LCIPL are hereby required to show cause to the Commissioner of Customs, Sea Port, Custom House, Rajaji Salai, Chennai-1, within 30 days of receipt of this notice as to why:
>
> (i) the duty exemption claimed under the said eight DFRC licences for the said import should not be denied.
>
> (ii) the total assessable value of Rs.45,09,604/- declared should not be rejected and refixed at Rs.50,89,774/- under Rule 8 of the Customs Valuation Rules, 1988;
>
> (iii)an amount of Rs.19,65,660/- should not be demaned under Section 28(1) of the Customs Act, 1962 towards the differential duty amount as detailed in Annexure-1.
>
> (iv) the amount of Rs.25,62,898/- already paid towards the entire duty amount by M/s.LCIPL should not be confirmed and adjusted against the duty and other liabilities;
>
> (v) the seized imported goods (subsequently released provisionally) valued at Rs.1.10 crore (Market Value) for which the above said exemption is availed illegally should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962; and
>
> (vi)Penalty under Section 112(a)

> of the Customs Act, 1962 should not be imposed on them;"
>
> 15.Further, Shri Loon Karan Kawad, the licence broker and M/s.KMK shipping and clearing Pvt. Ltd, the CHA are hereby required to show cause to the Commissioner of Customs, Sea port, Custom House, Rajaji Salai, Chennai-1 within 30 days of receipt of this notice as to why a penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on each of them.

b. On receipt of the Show Cause Notice, the petitioner presented the application before the Settlement Commission on 08.09.2003, wherein the Settlement Commission, by an order dated 25.11.2003 rejected the application filed by the petitioner and stated that the petitioner is not allowed to be proceeded within terms of sub section (1) of Section 127C of the Customs Act, 1962, for non compliance with the conditions of sub Section (1) of Section 127B,ibid. The same is under challenge in these Writ Petitions.

3. The learned counsel for the petitioner submitted that the same issue was covered by the decision of the Hon'ble Supreme Court in Union of India Versus Onkar S.Kanwar reported in 2002 (145)E.L.T. 266 (S.C.). The relevant paragraph reads as under:

> "We have heard the parties. In our view, a reading of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Orders shows that where a declaration had been made in respect of a tax arrear and where in respect of the same matter a show cause notice had also been issued to any other person, then the settlement in favour of the declarant has to be deemed to be full and final in respect of other persons on whom show cause notices had been issued. It is settled law that when an appeal is pending there is no finality to the proceedings. The proceedings are then deemed to be continuing. Undoubtedly, at one place the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order seems does state that the show cause notice has been should be pending adjudication. However, the same order also talks of the show cause notice being in respect of same matter on which the show cause notice

has to be read as a whole. If read as a whole, it is clear that a settlement by the main declarant is to operate as full and final settlement in respect of all other persons on whom sho cause notice was issued in respect of the same matter....”

4.The same issue was discussed by this Court in A.M.Ahamed & Co., Versus Commissioner of Customs (Imports), Chennai reported in 2014 (309) E.L.T. 433. The relevant portion reads as under:

26.The second contention of the petitioner is that the importer got the dispute settled in terms of Section 127B of the Customs Act, 1962 with the Settlement Commission. Paragraph 6.2 of the order of the Settlement Commission, relied upon by the petitioner in his affidavit as follows:-

“The bench observes that the applicant has made a true and full disclosure of all the facts relating to the imported goods. Besides, he has also submitted details of post-importation services/repairs undertaken by him and expenditure incurred on servicing, supply of spare parts, incidental charges, etc., which were not included in the original import value of the goods. The remittances were also made by him including service charges from India to Singapore through banking channels. His remittance transactions are thus licit transactions.”

Therefore, it is contended that when the importer has now got a clean chit from the settlement commission, the petitioner who is only a broker, cannot be penalised.

27. In Paragraphs 25 and 26 of the impugned order, the first respondent has dealt with this aspect. The first respondent has rejected this contention on the ground that the settlement commission settled the case upon confirmation of additional amount of customs duty, interest and nominal fine and penalty

based upon the true and the full disclosure. Therefore, the first respondent has concluded that the importer was guilty of undervaluation and that consequently, the petitioner cannot escape liability.

28. But, what the first respondent has failed to take note of, is the fact that the revocation of license now ordered by the first respondent, throws the petitioner out of business once and for all and deprives them of their very livelihood. Once the importer has escaped with a nominal fine on the ground that a true and full disclosure had been made, it would be unfair to impose the extreme penalty upon the petitioner. Therefore, the petitioner is entitled to succeed on both grounds. Hence, the writ petition is allowed and the impugned order is set aside. No costs. Consequently the M.P. Is closed."

5. It is an admitted case that the authority under the Customs Act issued Show Cause Notice to the importer as well this licence broker. However,the importers went before the settlement Commission to settle the issue. But, the licence brokers were denied the opportunity before the authority, which is not sustainable in view of the Judgment of the Hon'ble Supreme Court and this Court.

6. Considering the above legal decisions laid down by the Hon'ble Supreme Court as well as this Court, this Court is not convinced with the order passed by the first respondent, not in purview with Section 127(B) of the Customs Act. Hence, the impugned order, dated 25.11.2003 passed by the first respondent is set aside to the limited extent with a direction to the first respondent to entertain the application submitted by the petitioner on par with other importers who have got the benefit of settlement Commission, without being influenced by any of the observation made by this Court.

7. In the result, these writ petitions are partly allowed with the above observations.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Customs and Excise Settlement Commission
   Additional Bench
   Through its Registrar
   Narmada Block
   Customs House, Chennai.

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   01, Whites Road, Chennai 14.

+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.52313
+1cc to Mr.GM.Syed Nurullah Sheriff, Advocate, S.R.No.52224

W.P.Nos.9171 to 9173 of 2004
and
W.P.M.P.No.10707 of 2004

GJ II(CO)
CA(06/09/2017)