IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.21108 OF 2002

Union of India rep. by the
Commissioner of Customs,
No.33, Rajaji Salai, Customs House,
Chennai - 600 001. .. Petitioner

Vs.

1. M/s.Ganapathy Smelters Limited,
8-B, Wellingdon Estate, 2nd Floor,
24, Commander-in-Chief Road,
Egmore, Chennai - 105.

2. The Registrar,
Office of the Settlement Commission,
Additional Bench, Customs & Central Excise,
Narmada Block, 2nd Floor, Customs House,
Rajaji Salai, Chennai - 600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 23.05.2001 in 4/2001-SC passed by the second respondent and to quash the same.

For Petitioner : Mr.P.Mahadevan

For Respondents: Mr. N.Inbarajan - R1

No appearance - R2

ORDER

This Writ Petition is filed by the Commissioner of Customs challenging an order of the Customs and Central Excise Settlement Commissioner dated 23.5.2001.

2. Heard Mr.P.Mahadevan, learned counsel for the Union of India, Customs Department and Mr.N.Inbarajan, learned counsel for the assessee.

3. The brief facts in issue are as follows :

The Assessee/1st Respondent herein imported 1500 MT of shredded scrap clearing the same without payment of duty on the strength of a value based Advance Licence bearing No.35435 dated 11.5.93. The exemption was subject to the fulfilment of export obligations. The petitioner, the Commissioner of Customs, was of the view that the export obligation remained unfulfilled and issued a show cause notice to the assessee calling upon it to show cause why liability not be fastened for duty of an amount of Rs.24,02,431/- along with interest at the rate of 24% per annum from the date of import up to the date of payment. Upon receipt of the show cause notice, the assessee filed an application before the Customs and Central Excise Settlement Commission (in short 'Settlement Commission') for settlement of the case.

4. The procedure for settlement of cases by the Customs and Central Excise Settlement Commission is set out in Chapter XIV A of the Customs Act (in short 'Act'), sections 127A to 127N thereof.

5. The Settlement Commission passed a final order dated 23.05.2001 in terms of section 127C(7) of the Act in the following terms:

> '1. The duty liability payable by the applicant is fixed at Rs.22,42,269/-. As the applicant has already paid the said amount though in instalments, the same is adjusted against the above duty liability.
>
> 2. No interest is required to be paid by the applicant under the provisions of Customs Act, 1962, in pursuance of the SCN which is settled in these proceedings.
>
> 3. The bond executed by the applicant before us in pursuance of the admission order shall be returned to him.
>
> 4. The respondent Commissioner shall give a certificate evidencing payment of the Customs Duty to the applicant for claiming the Modvat benefit, as admissible under law.'

6. Though the petitioner/Revenue has challenged the order of the Settlement Commission in full, Mr.P.Mahadevan, learned counsel appearing for the Revenue, would confine the challenge to the waiver of interest granted by the Settlement Commission. The main argument was to the effect that there was no provision in the Act for the waiver of interest.

7. This submission however does not take into effect the provisions of section 127H of the Act conferring power on the Settlement Commission to grant immunity from penalty and interest that reads as follows:

> 'Power of Settlement Commission to grant immunity from prosecution and penalty. - (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 127B

has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest under this Act, with respect to the case covered by the settlement :

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 127B.

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under such sub-section (7) of section 127C within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had been granted.

(3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars, material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.'

8. Mr.N.Inbarajan, learned counsel appearing for the assessee/1st respondent would also support the order of the Settlement Commission waiving interest pointing out that Notification in G.E.No.147C providing for the import of materials against a Value Based Licence did not provide for the levy of interest. The Declaration to be filed by an Importer is in the following terms:

“........

(b) makes a declaration before the Assistant

Collector of Customs binding himself to pay on demand an amount equal to the duty leviable but of the exemption, on the imported materials in respect of which the conditions specified in this notification have not been complied with:”

9. Thus, the scheme under which the import was carried out did not provide for the levy of interest and as such there was no error in the order of the Settlement Commission in waiving the same.

10. In response, Mr.P.Mahadevan would refer to the SCN dated 12.2.1999 pointing out that the same specifically proposed the levy of duty along with interest. The relevant portion of the SCN reads thus:

SHOW CAUSE NOTICE

Sub:- Duty Free Imports under Value Based Licence No.35486/1/01/10/1/95 dated 11.5.93 (DEEC No.76108 dt.11.5.93) issued by JDGFT, Chennai - recovery of customs duty - reg.

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Valued Based Advance Licence No.P/L/35486 dt. 11.5.93 along with DEEC No.76108 dt 11.5.95 was issued by JDGET, Madras. The said Licence was issued against an export obligation of 2000 MT of Steel Rods for a value of Rs.1,98,45,000/-

......

4. Whereas it appears that you have failed to discharge the export obligation subject to which duty free imports was permitted and whereas it appears that the materials have been disposed off in a manner other than what is specified in the notification and that conditions of the notifications have not been met, now therefore, you are required to show cause to the Commissioner of Customs, 33, Rajaji Salai, Custom House, Chennai - 600 001 as to why the duties of Customs amounting to Rs.24,02,431/-, along with duties of Customs amounting to Rs.24,02,431/-, along with interest @ 24%p.a. from the date of import upto date of payment, be not recovered from you.

11. Reference was also made by Mr.Mahadevan to sections 28 AA and 28AB of the Customs Act dealing with the levy of interest that, according to learned counsel would support the levy of interest notwithstanding the position that the Notification was silent in that regard.

12. I do not agree with Mr.P.Mahadevan for the reason that both the provisions aforesaid deal with a situation where the determination of duty has been effected in terms of section 28(2) of the Customs Act. In the present case, there

has been no determination of duty as the matter was at the stage of show cause notice when the assessee approached the Settlement Commission.

13. Additionally, section 28AB provides for the levy of interest in a situation where the initial failure of the Department to determine and levy duty is on account of collusion, wilful mis statement or suppressions of facts. This calls for a specific finding in the show cause notice, absent in the present case. As such the aforesaid provisions would not be attracted in the present case.

14. In the light of the above discussion and for specifically for the reason that section 127-H of the Act confers power on the Settlement Commission to waive penalty, fine or interest leviable, I find no merit in this writ petition.

15. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vrc/Sl

To

The Registrar,

Office of the Settlement Commission,
Additional Bench, Customs & Central Excise,
Narmada Block, 2nd Floor, Customs House,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.P.Mahaadevan, Advocate, S.R.No.1020
+1cc to Mr.N.Inbarasan, Advocate, S.R.No.923

W.P.No.21108 OF 2002

NRJK(CO)

GN(04/10/2017)