IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19210 of 2006
and
M.P.No.2 of 2006

1. M/s. Shri Vaikunth Paper and Boards P.ltd.,
by its Managing Director, Ramakrishnan,
SF.no.225 E, Thatahpalli Village,
Sathyamangalam Taluk, Erode District.

2 J.Kingsley,
Executive Director,
Shri Vaikuntha Paper & Boards Pvt Ltd.,
R.R.Layout Teachers Colony,
Mettupalayam-641 301.

3 P.Chinnathambi
S/o Palaniappa Gowder,
207, Karachi Korai,
Bhavanisagar Post, Sathyamangalam -638 451.

4 R.Balasubramaniam,
Officer in charge-cum-stores clerk,
Shri Vaikunth Paper and Boards Pvt. Ltd.,
SF.no.225 E, Thatahpalli village,
Sathyamangalam Taluk. ..Petitioners

Vs.

1. The Customs and Central Excise
Settlement Commission,
Narmada Block, Custom House,
33, Rajaji Salai, Chennai.

2. The Joint Commissioner of
Central Excise,
No.1, Foulks compound,
Anai road, Salem-636 001. ..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent in Order No.31/2006(CEX) dated 26.5.2006 and quash the same as arbitrary, not sustainable in law and further direct the 1st respondent to proceed with the applications filed for settlement on merits and in accordance with the law.

For Petitioners : Mr.M.A.Mudimannan for Mr.K.Jayachandran

For Respondents : Ms. Hema Muralikrishnan, Senior Panel Counsel.

O R D E R

Heard Mr. M.A.Mudimannan for Mr.K.Jayachandran, learned counsel for the petitioners and Ms.Hema Muralikrishnan, learned Senior Panel Counsel appearing for the respondents.

2. The petitioners have challenged the order passed by the Customs and Central Excise Settlement Commission, dated 26.05.2006, by which, the Settlement Commission rejected the petitioners application under section 32 F of the Central Excise Act, 1944. The petitioners approached the Settlement Commission on receipt of show cause notice dated 08.03.2004 demanding duty of Rs.18,99,166/-. The Revenue had stated that the cum-duty benefit if given, would bring down the duty liability to Rs.16,69,953/-.

3. However, it appears that the petitioners did not avail the opportunity before the Commission and therefore, the Commission opined that the petitioner is adopting dilatory tactics and rejected the petition.

4. The learned counsel appearing for the petitioners would submit that the out of the duty liability, the petitioners have already paid Rs.10,00,000/- and whatever the remaining liability, as represented by the Revenue before the Commission will be cleared and the petitioners may be permitted to go before the Commission for seeking immunity from prosecution and other reliefs.

5. Considering the fact that the writ petition is pending from the year 2006 onwards and there is an order of interim stay, this Court is inclined to remand the matter back to Settlement Commission for fresh consideration based on the stand taken by the petitioners that they are willing to pay the remaining duty liability as demanded by the department as mentioned to the settlement commission during the course of hearing. For such reason alone, this Court is inclined to set aside the impugned order and remand the matter to the Settlement Commission for fresh consideration, who shall assess the conduct of the petitioner and proceed in accordance with law.

6. In the result, the impugned order is set aside and the writ petition is allowed. No Costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Customs and Central Excise
   Settlement Commission,
   Narmada Block, Custom House,
   33, Rajaji Salai, Chennai.

2 The Joint Commissioner of
   Central Excise,
   No.1, Foulks compound,
   Anai road, Salem-636 001.

+1cc to Mr.K.Jayachandran,Advocate sr.54760

+1cc to M/s.Hema Muralikrishnan,Advocate sr.54926

W.P.No.19210 of 2006

nm(co)
ss(28/8/2017)