IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7109 OF 2018

Prasad Anil Kulkarni .... Petitioner
Vs.
Union of India & Others .... Respondents

Dr. Sujay Kantawala with Mr. Brijesh Pathak &
Mr. Kartik Vig for the Petitioner.
Mr. Pradeep S. Jetly for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JULY 30, 2018

P.C:

1. This writ petition under Article 226 of the Constitution of India challenges the order passed by the Settlement Commission (respondent No.3 to the petition) dated 13-6-2018. A copy of this order is annexed as Exhibit "G" to the petition and the Settlement Commission opines that there is a reference made by the petitioner/applicant to a Notice dated 4-5-2018. However, that cannot be termed as a Show Cause

Notice so as to satisfy the requirement of Section 127B, sub-section (1) proviso (a) thereto {the Customs Act, 1962}. The conclusion of the Settlement Commission is that, the petitioner/applicant has failed to satisfy it that he has complied with the requirement of proviso (a) by producing a Show Cause Notice or referring to it at least in his application. Once such a Show Cause Notice has not been issued to the petitioner/applicant, then, he is not entitled to invoke the jurisdiction of the Commission is thus the view taken.

2. This view finds, according to the Revenue, support from a series of Judgments and Orders, including of the Hon'ble Supreme Court and this Court.

3. Both sides argued extensively and the matter was placed today for passing orders. Today, when we were about to pass the order, we noticed that the Customs Act, 1962 has been extensively amended by the Finance Act No.13 of 2018, brought into effect on 29-3-2018. There are two very important amendments and brought to two Sections, namely, Section 110

of the Customs Act, 1962, by insertion of two provisos below sub-section (2). The provisos read as under:-

> *"Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:*
>
> *Provided further that where any order for provisional release of the seized goods has been passed under Section 110A, the specified period of six months shall not apply."*

At the same time, Section 124 of the said Act has also been amended and that amendment is to be found by insertion of second proviso below Clause (c) to the same. The first proviso is referable to Clauses (a) and (b) and the third proviso therefore seeks to provide for a non-obstante clause and that enables the proper officer to issue a supplementary notice under such circumstances and in such manner as may be prescribed.

4. We thought that these two amendments would have far reaching effect and on the view taken by the Settlement Commission, for the document styled as Notice in this case is

issued after these amendments and is dated 4-5-2018, and the impugned order is passed on 13-6-2018. Both make no reference to these amended provisions.

5. However, we are spared the requirement of assigning detail reasons and noting not only the rival contentions but the impact of these amendments. Further, we do not have to consider whether the amendments would remove the basis of the earlier views taken by the Hon'ble Supreme Court and this Court and in the reported Judgments, which are compiled for our perusal by Mr. Jetly.

6. After a brief submission, upon noticing these amendments, both sides are agreeable to the disposal of this writ petition by keeping the wider and larger issues and the question raised open for decision in an appropriate case.

7. They are agreeable to this petition being disposed of, without assigning detail reasons but by the following conclusions and directions:-

(i) In the facts and circumstances peculiar to this case, the order of the Settlement Commission is maintained.

(ii) The petitioner shall be served with a Show Cause Notice by the Revenue on or before 30-9-2018.

(iii) Upon receipt of such Show Cause Notice, it will be open for the petitioner to file a fresh application before the Settlement Commission and thereafter the Settlement Commission shall deal with it strictly in accordance with law and would, if required, pass an order at the initial stage of admission but uninfluenced by any of its earlier conclusion. All questions on the maintainability of that application, as also on merits and of both sides are kept open.

(iv) In the event the Show Cause Notice is not issued by 30-9-2018, the Revenue shall not retain the sum deposited by the petitioner as payment of duty and interest and that amount shall be refunded to the petitioner. The refund thereof shall not preclude the Revenue from taking appropriate steps and in accordance with law. The petitioner says that the deposit constitutes the full amount of duty and interest. We express no opinion on this aspect. It is entirely for the petitioner to seek refund, but if he seeks it and the monies are lying with the Revenue beyond 30-9-2018, but without compliance with our direction, then, on receipt of the request from the petitioner made in writing, the said amount shall be refunded within a period of eight weeks from the date of receipt of that application.

8. The writ petition is disposed of in the above terms but without any order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

Suresh Jagdish Sajnawat
Digitally signed by Suresh Jagdish Sajnawat
Date: 2018.08.02 15:30:56 +0530