

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.01.2018

Coram

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.74 of 2017
and
CMP.No.1233 of 2017

M/s.Standard Shoe Sole & Mould (India) Ltd.,
No.19/1 & 4/4, Mailam Pondicherry Road,
Sedarpet, Pondicherry - 605 111. ... Appellant/Petitioner

Vs.

1. Customs, Central Excise & Service Tax
Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
2. The Commissioner of Central Excise,
Puducherry. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in W.P.No.38054 of 2016 dated 02.11.2016 filed to issue a Writ of Certiorari to To call for the records relating to the impugned order No.25/2016-Cus. dated 25.05.2016 passed by the 1st respondent and quash that portion of the order No.25/2016-Cus which includes the duty on the raw materials the same as illegal arbitrary beyond the scope of the prayer in the application filed by the petitioner for settlement and violative of principles of natural justice.

For Petitioner : Mr.K.Jayachandran
For Respondents : Mr.A.P.Srinivas

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN, J.)

The Appeal arises against the order of this Court made in W.P.No.38054 of 2016 dated 02.11.2016.

2. Brief facts of the case are as follows:-

The Appellant Company was earlier known as M/s.Chemcrown India Limited, Mylam Pondicherry Road, Puducherry, and now known as M/s.Standard Shoe Sole & Mould (India) Ltd, Pudhucherry. It was a 100% Export Oriented Unit (EOU). The said company was importing machinery spare parts and raw materials during the period upto March 1996, for manufacturing and exporting "Thermo Plastic shoe and polyurethane shoe soles". The appellant filed Writ Petition No.38054 of 2016 before this Court, challenging the order of the first respondent / Settlement Commission dated 25.05.2016, on an application filed by the petitioner for settlement of their case, after a show cause notice dated 22.09.1997, demanding duty to the tune of Rs.3,28,27,082/- under Section 72(1)(2) of the Customs Act,1962 and proposing to levy penalty, under Section 112 of the Customs Act, 1962. The said Writ Petition was dismissed by a learned single Judge. Against which, the present Writ Appeal has been filed raising the following grounds:-

i) The order passed by the learned Judge is contrary to law, weight of evidence and probabilities of the case.

ii) The finding of the learned Judge that there was no allegation made as to the violation of principles of natural justice. In ground 20.a), the appellant raised the specific plea of violation of principles of natural justice which has not been properly considered.

iii) The learned Judge failed to appreciate that the order passed by the 1st respondent is beyond the scope of application filed by the appellant before the 1st respondent.

iv) The finding given by the learned Judge about the shortage of raw materials and payment of duty thereon, were not relevant to the application for settlement of the case. It is only whether there is true and full disclosure and whether the appellant co-operated with the proceedings is the only criteria to decide by the Settlement Commission.

v) The learned Judge failed to appreciate that in the application filed before the 1st respondent itself, the appellant claimed NIL liability insofar as the raw materials are

concerned and there is no suppression or mis-declaration by the appellant.

vi) The learned Judge failed to appreciate that the only issue pending decision by the 1st respondent as it stood while the matter was to be heard finally by the 1st respondent, on 05.04.2016, was the following:-

Issue	Position
As far as the demand of duty of Rs.2,92,01,610/- on Mould, was concerned, whether the claim of 90% depreciation was allowable.	As per order dated 22.09.2006, on the admitted liability of duty on Moulds, taking into account 90% depreciation, was Rs.10,17,283/- and this was also paid in installment and the same taken on record. This alone required final settlement by the 1 st Respondent Settlement Commission and accordingly it was also duly settled. The duty liability on raw materials, was not an issue for settlement on the final hearing stage.

vii) The 1st respondent failed to appreciate that when the issue regarding duty liability on raw materials was considered at the time of admission of the application for settlement and the prayer was favourably considered, then at the final stage, there cannot be a different opinion or order. In other words, when the issues about the liability on raw materials have been considered and allowed at the admission stage, then that issue cannot be taken up again. There cannot be two orders on the same issue.

viii) The learned Judge failed to appreciate that after the amendment to Sec.127A (c) of the Customs Act, in 2007, the definition of "case", the 1st respondent is having the power that of an adjudicating authority and in such circumstances, the request of the appellant to exercise the powers under Sec.127 F of the Customs Act

ought to have been considered.

ix) The learned Judge failed to appreciate that it is not a case of partial relief. It is the case of the appellant from the date of filing of the application before the 1st respondent that there is no liability with regard to raw materials. That alone was not taken into account by the 1st respondent which is the portion of which the appellant is aggrieved and is entitled to agitate the same before this Hon'ble Court.

x) If the 1st respondent found that there is no true and full disclosure in the application of the appellant or if there was non-cooperation on the part of the appellant, then the 1st respondent was empowered to send the entire matter to the adjudicating authority."

The appellant has also filed C.M.P.No.1233 of 2017 under Section 151 of CPC praying to grant stay of the operation of the order passed in Order No.25 of 2016-Cus. Dated 25.05.2016 passed by the first respondent pending disposal of the Writ Appeal.

3. Learned counsel for the appellant would submit that in the application filed before the 1st respondent, the appellant has claimed NIL liability, insofar as the raw materials is concerned, which amount was not mentioned anywhere by the Department in the report and 90% depreciation claimed by the petitioner was objected by the Department and the first respondent fixed the admitted liability, even though the appellant has claimed that the raw materials were unfit for consumption and to be destroyed. That is why, the appellant in the application before the first respondent and in the worksheet attached has mentioned NIL duty on the raw materials.

4. Learned counsel for the appellant would also submit that in the order dated 21.02.2006, the Bench had pointed out to the Advocate that his plea for destroying the raw materials, which are unfit for consumption can be accepted, but his plea regarding destruction of the moulds for the same reason cannot be accepted; Moulds are capital goods and therefore, should be treated on par with the machinery; The Advocate agreed to this suggestions. Learned counsel would further submit that only because of this finding, in the beginning stage itself, the Department had never raised the issue regarding the duty liability on the raw materials, which have become unfit for

consumption and hence to be destroyed.

5. Learned counsel for the appellant would further submit that in the impugned order passed by the Settlement Commissioner, it has been mentioned about the submissions of the Department through their letter dated 10.05.2016 that duty remission on the imported goods can be granted, if only the goods were either lost or destroyed at any time, before the clearance of home consumption and in the absence of the above, no remission can be granted, because the goods have lost their utility because of misuse, as per Section 23 of the Customs Act. The appellant would also contend that at any point of time, the appellant can claim remission of duty under Section 23 of the Customs Act on the imported raw materials, since they became unfit for consumption.

6. Learned counsel for the petitioner would also submit that the Writ Court erred in finding that there was no averment made by the appellant, as to the violation of principles of natural justice, as the appellant had raised the specific plea of non-furnishing of copy of the letter dated 10.05.2016 to the appellant/petitioner. For the above reasons, learned counsel prayed that the Writ Appeal be allowed.

7. Learned counsel for the respondents would contend that in the show cause notice itself it was stated that the appellant had imported capital goods and raw materials upto March 1996 for a value of Rs.6,28,12,691/- involving duty of Rs.3,28,27,082/-. 90% depreciation claimed by the appellant was also objected to, by the department and it was also submitted before the Settlement Commission that since the LOP functioning as an EOU had been cancelled, depreciation should not be allowed and benefit of depreciation is available only if the export obligation has been discharged. Learned counsel for the respondents would also submit that the goods were not lost or destroyed, but the raw materials lost its utility due to the appellant's failure to clear the goods and leaving it to become unworthy and therefore, it cannot be construed, as a case of goods lost or destroyed, and such cases are not covered by the provisions of Section 23 of the Customs Act.

8. Learned counsel would further contend that the letter dated 10.05.2016, is the reply to the letter of Settlement Commission dated 28.04.2016, calling for comments for the letter dated 25.04.2016 received by the department from the learned counsel for the applicant, and in the said letter itself, the department has mentioned about the duty on raw materials.

Learned counsel would further submit that the appellant cannot challenge an order of the Settlement Commission, in a piecemeal manner, and the findings of the fact recorded by the Commission is not open for examination either by the High Court or by the Hon'ble Supreme Court. Substantiating his above contentions, learned counsel cited the following decisions:-

(i) Hon'ble Apex Court Judgment reported in (2010) 251 ELT 3 (Singhvi Reconditioners Private Ltd., ..vs.. Union of India and others), wherein it has been held that:-

"Be that as it may, we are of the opinion that having opted to get their customs duty liability settled by the Settlement Commission, under Chapter XIV-A of the Act, the appellant cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.

37. As observed by Krishna Iyer, J. in CIT v. B.N Bhattacharjee 1979 4 SCC 121, the recommendation of the Wanchoo Committee was: (SCC p. 128, para 20)

"20. ... a compromise measure of a statutory settlement machinery where [a] big evader could make a disclosure, discharge what the Commission fixes and thus buy quittance for himself and accelerate recovery of taxes in arrears by the State, although less than what may be fixed after long protracted litigation and recovery proceedings."

(ii) Hon'ble Supreme Court Judgment reported in 2011 (265) ELT 3 (SC) (Union of India ..vs.. Ind-Swift Laboratories Ltd.,). The relevant portion is extracted hereunder:-

"An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any provisions of the Act. So far findings of the fact recorded by Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement Commission clearly indicates that the said order, particularly, with regard to the imposition of simple interest @ 10 per cent per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby

arrived at an erroneous finding."

(iii) Madras High Court Judgment reported in 2012 CJ (Mad) 2781 (C.C (Imports - Seaport), Chennai -I ..vs.. Rohan Anirudha Seolekar), which followed the decision of the Hon'ble Supreme Court reported in 2011 (265) ELT 3 (SC) cited supra.

(iv) The relevant portions of Madras High Court Judgment reported in 2017 (346) ELT 90 (Mad.) (Hi-Design ..vs.. Commissioner of Central Excise, Pondicherry) are as follows:-

"10. It is not the case of the petitioner that it did not have an opportunity to put forth its submissions. It was represented by counsel; it made actual and legal submissions and the Settlement Commission has considered the matter elaborately and recorded a finding that the applicants are attempting to hoodwink the legal provisions and therefore, while settling the case, directed the entire Central Excise duty to be paid, apart from imposing penalty of Rs.50,00,000/- on the applicant and giving an option of redemption of the seized goods on payment of redemption of fine of Rs.2,00,000/- with simple interest and settling the interest at 10% (simple interest), and granting immunity from prosecution to the applicant and co-applicants.

11. The Constitutional Bench of the Hon'ble Supreme Court in the case of Brij Lal & Ors., vs. Commissioner of Income Tax, (Civil Appeal Nos.516-527 of 2004, reported in (2011) 1 SCC 1 held that the order of Settlement Commission under Section 245D(4) of the Income Tax Act shall be final and conclusive. In UOI vs. IndSwift Laboratories Ltd., reported in 2011 (265) ELT 3 (SC), the Hon'ble Supreme Court held that an order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any statutory provisions of the Act.

12. So far the findings of the fact recorded by the Commission or questions of fact are concerned, the same is not opened for examination either by the High Court or by the Hon'ble Supreme Court. Challenge to the order of the Settlement Commission on those grounds was rejected by the Court in the case of

Commissioner of Customs (Imports) vs. Rohan Anirudha Seolekar reported in 2013 (288) ELT 353I. "

9. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

10. Perusal of the materials on record shows that the appellant Company which was originally known as M/s.Chemcrown India Limited, Mylam Pondicherry Road, Puducherry, now known as M/s.Standard Shoe Sole & Mould (India) Ltd, Pudhucherry, was a 100% Export Oriented Unit (EOU). The said company was importing machinery, spare parts and raw materials during the period upto March 1996, for manufacturing and exporting "Thermo Plastic shoe and polyurethane shoe soles". The Superintendent of Central Excise, Pondicherry Range-III issued a show cause notice dated 22.09.1997, as to why a sum of Rs.3,28,27,082/- should not be demanded, towards duty under Section 72(1)(2) of the Customs Act, 1962, and penalty should not be imposed under Section 112 of the Customs Act, 1962, on the ground that since the export obligation was not fulfilled by the said company, the duty on the imported machinery and raw materials has to be recovered. Challenging the show case notice, the appellant straight away invoked Section 127(B) of the Customs Act, 1962 by filing an application for settlement, before the Settlement Commission/first respondent, during the year 2005, by taking a plea that the raw materials imported upto March 1996 have become unfit for consumption and that the same have to be destroyed and therefore, no duty is recoverable on those raw materials; and machineries which were imported upto March 1996 have become old and taking into consideration of permissible depreciation, admitted a sum of Rs.25,29,277/-, as the liability payable for settlement.

11. Facts stated by the appellant before the Settlement Commission were that the said M/s.Chemcrown (India) Limited [now known as M/s.Standard Shoe Sole & Mould (India) Ltd, as per the Certificate of Incorporation dated 14.12.2001] is a 100% EOU concern, as per the approval granted vide LOI No.EOB/14/90/EO/562/89-Comp. dated 07.03.1990 for manufacturing and exporting "Thermo Plastic shoe and polyurethane shoe soles". The appellant unit has been registered by the Assistant Commissioner of Central Excise, Pondicherry Division, as a Private Bonded Warehouse with Licence No.3/92. The EOU imported machinery, spare parts and raw materials for the value of Rs.6,28,12,691/- in terms of Notification No.13/81-Cus. dated 09.02.1981. However, the imported machineries were found to be old and used machineries and because of the wrong supply of the sub-standard machines, the appellant could not produce any goods, as per the

norms and fulfill the export obligation.

12. The further case of the appellant before the Settlement Commission is that the appellant has filed a suit before the Hon'ble Supreme Court of India, against the German Collaborator, who supplied the machinery, for breach of contract, which resulted in closure of the unit and also claimed compensation for the loss suffered by the company. The Hon'ble Apex Court appointed an Arbitrator and an Arbitration award was in favour of the appellant herein and that the appellant is trying to execute the award. In the meanwhile, the appellant company has been declared as a sick unit under the Sick Industrial companies (Special Provisions) Act, 1985 as per BIFR's order dated 15.10.1996. Meanwhile, the Development Commissioner, MEPZ, Chennai, issued a Show Cause Notice on 15.09.2003 and in reply to the same, the appellant expressed inability to run the EOU project. Taking all the aspects into consideration, the Development Commissioner ordered for suo motu exit from the EOU Scheme. Taking into account the request of the appellant, who expressed inability to pay duty in the event of exiting from EOU status and requested the Development Commissioner not to impose any penalty, the Assistant Commissioner of Central Excise, Pondicherry, at the request of the appellant, permitted them to shift all the machineries and materials imported by them from the existing warehouse premises to another premises within the same complex. Thus, the erstwhile M/s.Chemcrown Exports Limited Unit-III, owners of the land wherein, the appellant's EOU was functioning, requested the Assistant Commissioner to allow manufacture of exercisable goods in the premises, wherein the EOU was originally setup and sought registration under the Central Exercise Rules. However, the Deputy Commissioner, refused to grant registration to the said company on the ground that the appellant did not come forward to pay Customs and other duties with interest on their own and for not fulfilling the export obligation.

13. Before the Settlement Commission, the appellant has also submitted that out of the total value goods, value of the machinery imported is Rs.5,59,88,950/- and the value of the raw materials imported is Rs.78,93,943/-. The Central Excise officials inspected and found shortage of raw materials for a value of Rs.10,70,202/-. The appellant did not accept the value as arrived at in the Show Cause Notice on the raw materials and machinery and before the Settlement Commission prayed that the appellant case may be settled accepting an additional liability of Rs.25,29,277/- as per their calculation of the worksheet (annexed in Annexure-XI) before the Settlement Commission.

14. Meanwhile, the Settlement Commission called for a report from the Commissioner of Central Excise, Puducherry, who submitted a report dated 02.12.2005, which categorically stated

that the appellant unit has not used the capital goods imported for the purpose to which it was imported; the unit has not exported any goods by using imported capital goods and raw materials; though they had undertaken to export 100% of their production excluding rejects during the entire period of 10 years under the EOU Scheme, their export was very minimal and they had exported only 4100 pairs of shoe soles against the annual capacity of 77.18 lakh; in ten years, they exported 0.005% of the permitted value, in total. The Development Commissioner has issued suo-motu exit order for non-functioning of the appellant unit under the scheme and to stop them from getting goods without payment of duties under EOU scheme; Suo-motu exit order could not be treated as permission for debonding and therefore, the appellant unit is not eligible for depreciation and the rate of duty applicable, which is prevalent at the time of suo-motu exit order.

15. On 21.02.2006, the Settlement Commission passed Proceedings-Cum-Interim order of the hearing held on 21.02.2006, wherein, the Additional Bench of Customs & Central Excise Settlement Commission, accepted the plea of the petitioner for destroying the raw materials, unfit for consumption, however, directed the department and the petitioner to re-work the amount payable after taking into account the value of moulds and after extending the depreciation. Pursuant to the same, the petitioner had taken depreciation at 90 %, as per the CBEC instructions and worked out the liability at Rs.10,17,283/- and submitted a worksheet dated 02.03.2006. But the department worked out the liability at Rs.46,52,571/- stating that the petitioner can avail depreciation, if only the capital goods are put in manufacturing, and therefore, depreciation on the capital goods is not permissible. After submission of the calculation, the Settlement Commission, by accepting the rework amount payable, vide interim order dated 22.09.2006 found that the appellant, prima facie, was eligible for depreciation at 90% and their revised claim of duty liability appeared to be in order and that the same can be considered in detail at the final hearing. The first respondent/ Settlement Commission fixed the admitted duty liability at Rs.10,17,283/- and directed the appellant to pay the said amount within 30 days from the date of receipt of a copy of the said order. The appellant did not comply with the order and after paying a sum of Rs.1,70,000/- on 30.10.2006, the appellant prayed the Settlement Commission to permit the appellant to pay the balance amount in 11 monthly installments. The Settlement Commission vide order dated on 27.11.2006, rejected the request of the appellant company to pay the remaining sum of Rs.8,47,283/- in 11 monthly installments and directed the appellant to pay the remaining amount within 10 days from the date of hearing ie. on 20.11.2006.

16. Against which, the appellant filed Writ Petition in

W.P.No.46471 of 2006 before this Court and while admitting the writ petition, this Court granted stay. It is pleaded by the petitioner that in the said Writ Petition, the High Court directed the appellant to pay a sum of Rs.2,00,000/- initially and thereafter, to pay the balance amount in installments and as per the directions issued by this Court, it is the submission of the appellant that the entire amount was paid by the appellant. Record of proceedings shows that in the letter of the Superintendent of Central Exercise, Pudhucherry, it was informed that the appellant has paid the full amount of Rs.10,17,283/- as ordered by Hon'ble Settlement Commissioner and the appellant has fulfilled the conditions of Settlement Commission as well as Hon'ble High Court of Madras. Subsequent to the said letter, the appellant moved the first respondent to fix the date of hearing in the case. The case was fixed for final hearing on 05.04.2016. The department representative confirmed that the admitted liability had been discharged by the appellant, however, pleaded for imposition of suitable penalty, and as regards immunities, the departmental representative left it to the discretion of the commission.

17. After affording necessary opportunities and recording the proceedings, under various hearing including post - hearing submissions made by the appellant dated 25.04.2016, as well as the revenue dated 10.05.2016, and accepting the claim of 90% depreciation on the capital goods by the appellant, the Settlement Commission, passed Final Order No.25 of 2016-Cus. dated 25.05.2016 and ordered that the amount of Customs Duty is settled at Rs.46,52,571/- (Rs.10,27,099/- for capital goods on the depreciated value and Rs.36,25,472/- on the raw materials). After giving credit to Rs.10,17,283/- paid by the appellant, the Settlement Commission ordered the appellant to pay the balance amount within 30 days from the date of receipt of a copy of the order dated 25.05.2016. That apart, immunity from payment of interest under Section 127 H of the Act was granted and an amount of Rs.50,000/- alone was imposed as penalty. The petitioner was also granted immunity from prosecution under the Act.

18. Challenging a portion of the order, viz., demanding duty of Rs.36,25,472/- on the raw materials, the petitioner filed Writ Petition W.P.No.38054 of 2016 and that the same was dismissed by the Writ Court on 02.11.2016 holding that the order impugned therein, requires no interference. Against which, the present Writ Appeal is filed.

19. The main ground of challenge by the appellant in the present Appeal is that the Writ Court did not appreciate the issue in proper prospective, as the issue pending before the 1st respondent, as it stood, while the matter was to be heard finally by the 1st respondent, on 05.04.2016 was with regard to

the demand of duty of Rs.2,92,01,610/- on mould and as to whether claim of 90% of depreciation was allowable. That apart, the appellant had also raised a ground that it is not a case of partial relief, as there was no liability with regard to raw materials, which was not taken into account at all by the 1st respondent, and the said portion is aggrieved by the appellant, and is entitled to agitate before this Court.

20. On perusal of the entire materials, it is clear from the facts submitted by the appellant before the Settlement Commission that the appellant (then M/s.Chemcrown India Limited) did not manufacture goods by using the imported goods and raw materials valued at Rs.6,28,12,691/- in terms of Notification 13/81-Cus. dated 09.02.1981. The appellant herein had only pleaded that the company became sick because the imported machinery, was found to be old and used machinery, and because of the wrong supply of sub-standard machines, the appellant could not manufacture and fulfill the export obligation. As such, when the appellant had candidly admitted that they were not able to fulfill the export obligation for various reasons, as stated by them, show cause notice dated 22.09.1997 becomes significant, when the appellant had voluntarily invoked Section 127(B) of the Customs Act, 1962, before the Settlement Commission, seeking to pay the accepted additional liability of Rs.25,29,277/- in 12 equal installments. After calling for the report, the Settlement Commission, directed the revenue and the appellant to rework the amount payable. After submission of the calculation, Settlement Commission, 1st respondent herein, has granted 10 days time to the appellant to pay the remaining amount. After affording full and fair opportunity, the 1st respondent has proceeded to pass final order dated 25.05.2016 settling the appellant's case, by arriving at the customs duty payable, at Rs.46,52,571/- by giving credit to Rs.10,27,099/-, which was deposited by the appellant, for the capital goods, on the depreciated value, apart from directing the appellant, to remit the remaining amount, with regard to raw materials. The appellant has sought settlement on the admitted liability, and prayed for immunity provided under the law. The direct answer to the grounds raised by the appellant are that even during the preliminary proceedings, wherein an interim order was passed by the respondents, at no point of time, the department has accepted that there is no liability towards the duty on raw materials. In fact, on the submission made by the appellant, at various points of time, when the appellant was assailing against the liability on raw materials, it could be seen from the records that the case of the appellant that the machinery imported was found to be old and unused machinery and because of the wrong supply of sub-standard machines, the appellant could not produce the goods and fulfill the export obligation, in which case, the appellant should have immediately informed the authorities regarding the same, which the appellant failed to do

so.

21. In fact, the Settlement Commission called for a report from the Jurisdictional Commissioner, who vide its letter dated 10.05.2016 reiterated that the duty demand on capital goods is Rs.10,27,099/- for the capital goods on depreciated value and Rs.36,25,372/- on the raw materials, totalling to Rs.46,52,571/- with interest and with regard to duty demand on raw materials, remission of duty will arise only in the cases where the goods have been lost or destroyed, at any time, before the clearance. However, it is a clear case and is also admitted by the appellant before the authority that the goods were never lost or destroyed, but they become unfit for consumption, since they were not put into use by the appellant. Besides that the appellant failed to inform the department about stoppage of production at any point of time. When the officers verified stocks, they found shortage of stocks, which the appellant admitted and also paid duty on such quantities of shortage. The authorities below have appreciated the aspect of depreciation of value of capital goods at 90% of the value in terms of CBEC Circular 43/91-Cus. dated 26.06.1998 and accordingly, ordered the appellant to deposit the admitted liability of Rs.10,17,283/-, which is a direct answer to the grounds raised by the appellant against the order passed by the Writ Court.

22. The authorities below and the Settlement Commission have arrived at the conclusion that moulds are more appropriately treated as capital goods, and were excluded for duty, and so recognized under various enactments, and settled the duty liability, on capital goods as Rs.10,27,099/-. The Settlement Commission has taken note of the fact that the refund of duty under Section 27 of the Customs Act cannot be extended to the appellant, as the goods were neither lost nor destroyed as contemplated under Section 23 of the Customs Act and on the contrary, the appellant has accepted that the raw materials have lost its utility value due to the appellant's failure to clear the goods and leaving it to become unworthy and in such cases, remission of duty cannot be covered under Section 23 of the Customs Act, 1962. The appellant, on his own volition, has rendered the goods unfit for consumption and therefore, the same cannot be construed as the goods being destroyed or lost. Decisions cited by the learned counsel for the respondents are against the case of the appellant and that the appellant cannot be permitted to accept a portion of the order, which is favourable to them and make contra submissions against another portion, which is against to them. It is rightly held by the Writ Court that findings of fact recorded by the Commission are not open for examination or re-examination, by the High Court under Article 226 of the Constitution of India. Merely because, the order of the Settlement Commission does not suite the appellant herein, the appellant cannot be permitted to dissect

the order of the Settlement Commission.

23. Insofar as the ground of 'violation of principles of natural justice' is concerned, the learned counsel for the appellant submitted that the appellant has raised the specific plea of 'violation of principles of natural justice' in paragraph- (20.a) of the affidavit filed in support of the Writ Petition, but the same has not been properly considered by the learned Writ Court. Paragraph- (20.a) of the affidavit filed in support of the Writ Petition reads as under:-

"20.a) While relying on the letter dated 10.05.2016, the 1st respondent failed to consider that a copy of that letter was not furnished to the petitioner to put forth their reply. Further, the letter dated 10.05.2016 was filed by the Department after the date of final hearing held on 05.04.2016. In other words, the Department filed the letter behind the back of the petitioner and the 1st respondent also relied on the same without granting proper opportunity to the petitioner."

On perusal, it is seen that the letter/submission dated 10.05.2016 is the reply/submission filed by the Jurisdictional Commissioner against the letter/submission of the appellant dated 25.04.2016. The aforesaid submissions of both the appellant and the revenue have been extracted as 'post hearing submissions of the applicant dated 25.04.2016' and 'post hearing submissions of the jurisdictional commissioner dated 10.05.2016' and have been discussed in detail by the Settlement Commission in the order dated 25.05.2016. Therefore, the contention of the appellant that there is violation of principles of natural justice, cannot be accepted.

24. From the above, it is seen that the Settlement Commission has exercised its jurisdiction properly, under Section 127F(1) of the Customs Act, by going through the factual aspects, as well as the legal position, and exercised discretion and allowed 90% depreciation on capital goods and directed the appellant to deposit the admitted liability of Rs.10,17,283/- and thus, settled the liability on capital goods at Rs.10,27,099/-, including the moulds, as capital goods and given categorical finding regarding the duty on raw materials at Rs.36,25,472/- and granted immunity from payment of interest under Section 127H of the Customs Act and by imposing a penalty of Rs.50,000/- alone, and also granted immunity to the appellant, Writ Court has rightly held that the argument of the learned counsel for the appellant that the Settlement Commission should have exercised the power as an Assessing Officer does not merit acceptance. There is no infirmity in the order of the

Writ Court and the said order cannot be interfered with.

25. For the above stated reasons, this Writ Appeal fails and accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

raja/mra

To

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

2. The Commissioner of Central Excise,
Puducherry.

+1 CC to Mr.K. Jayachandran, Advocate sr 5102.

+1 CC to Mr.A.P. Srinivas, Advocate sr 6034.

W.A.No.74 of 2017
and
CMP.No.1233 of 2017

GJII(CO)
SP(16/02/2018)

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