IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11132 of 2008
and
M.P.No.1 of 2008

M/s.Kosmic Studios,
represented by its Managing Partner,
Mr.N.V.K.Krishna,
Rutland Towers, IV Floor,
No.33, Shaffee Mohammed Road,
Off Greams Road, Chennai - 600 006. ..Petitioner

vs.

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

2.Commissioner of Customs,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

3.Assistant Commissioner of Customs (Gr.5B),
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent culminating in the issue of Order No.46/2004 (CUS) dated 23.07.2004 issued from File C.No.VIII/10/40-43/2004-SC and quashing the same and directing the first respondent to hear the application filed by the petitioner firm lying in File C.No.VIII/10/40-43/2004-SC as permissible in terms of Section 127B of Customs Act, 1962.

For Petitioner : Mr.S.Murugappan
For Respondents: Mr.V.Sundareswaran
Senior Panel Counsel

O R D E R

Heard Mr.S.Murugappan, learned counsel for petitioner and Mr.V.Sundareswaran, learned senior panel counsel for respondents.

2. Petitioner has filed this writ petition challenging the order passed by Customs & Central Excise Settlement Commission dated 23.07.2004 in Order No.46/2004 (CUS). Petitioner filed an application u/s.127-B of the Customs Act, 1962, in relation to the show cause notice dated 18.03.2004 issued by the third respondent herein answerable to the Additional Commissioner (Customs). The Settlement Commission, by the impugned order, held that the application for settlement is not admissible as the proceedings initiated under the show cause do not propose to assess, levy and collect any differential duty and therefore, it is not a case as defined u/s.127-A(b) of the Customs Act, 1962. On the above reason, the application was held to be not admissible and was not allowed to be proceeded with vide Section 127-C(1) of the Act. To examine the correctness of the impugned order, we need to take note of the definition of the 'case' as defined u/s.127-A(b) of the Act which reads as follows:

> '(b) ''case'' means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 127-B is made:
>
> Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any Court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause.'

In terms of the above definition, a 'case' would mean any provision under the Act or any other Act for levy, assessment and collection of customs duty pending before an adjudicating authority on the date of application. Section 127-B of the Act provides for application for settlement of cases. An importer or exporter may in respect of a case relating to him make an application before adjudication to the Settlement Commission to have the case settled. Proviso u/s.127-B(1) of the Act provides that no application shall be made unless the following are complied with

> '(a) the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage

declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer;

(b) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(c) the applicant has paid the additional amount of customs duty accepted by him along with interest due under Section 28-AA.'

In terms of Clause (a), the applicant has filed a bill of entry or a shipping bill accompanying the goods imported or exported, as the case may be and in relation to such document or documents, petitioner is entitled to maintain an application. In the instant case, admittedly, a show cause notice has been issued to the petitioner dated 18.03.2004. In the show cause notice, there is an allegation that the petitioner/importer have grossly undervalued the goods imported and the goods were allowed to be provisionally released on payment of the full duty as determined by the Department. Thus, the show cause notice proposes to reject the value declared by the petitioner and fix the actual value of the goods and also confiscate the same in terms of Section 111(d) & (m) of the Act and proposes to impose penalty against the importers. Therefore, in my considered view, the petitioner is entitled to maintain the application before the Commission as there is a show cause notice for confiscation and it would fall within the definition of 'case' as defined u/s.127-A(b) of the Act. Thus, the Settlement Commission was entitled to entertain the application submitted by the petitioner. This view is supported by the judgment of Division Bench of this Court in V.C.Mohan v. Commissioner of Customs (AIR), Chennai-I [2008 (222) E.L.T.344 (Mad)], the relevant portion of the judgment reads as follows:

'18. A contention has been raised on behalf of the Department that under Section 127-A, the terminology "case" has been defined to mean "any proceeding under this Act or any other Act for the levy, assessment or collection of customs duty or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before the proper officer or Central Government, can only be regarded as a case coming within the purview of Section 127-B since the presence case is one of prima facie smuggling, there is no question of levy, assessment and collection of customs duty and as such the dispute will not come within the purview of Section 127-B, which contention was found in favour of the Department by the learned single Judge. We are not able to countenance this contention also for the reason that as per second limb of Section 125 of the Customs Act, if the goods confiscated are not prohibited goods, an option has to be given to the importer to pay, in lieu of confiscation, such fine i.e., the redemption fine. In such case, the importer has to pay duty and charges payable in respect of such goods. In order to arrive at the duty and charges payable under Section 125, an assessment has to be made, the duty has to be levied and colelction has to be made for the purpose of giving effect to the second limb of Section 125. For the aforesaid reasons, the contention that the dispute in the present case does not involve levy, assessment and collection has to be rejected and the same is rejected. The Division Benches of the Bombay High Court in the case of Union of India v. Hoganas India Limited reported in 2006 (199) E.L.T. 8 and Tata Teleservices (Maharashtra) Limited v. Union of India reported in 2006 (201) E.L.T. 529 have also taken a similar view with which we are in complete agreement.'

For the aforesaid reasons, the Writ Petition is allowed and the impugned order is set aside. The matter is remanded to the Settlement Commission for fresh consideration which shall take the application filed by the petitioner on file and proceed in accordance with law. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gm
To

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

2.The Commissioner of Customs,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

3.The Assistant Commissioner of Customs (Gr.5B),
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

+1cc to Mr.S.Murugappan, Advocate Sr.no.27616
+1cc to Mr.V.Sundareswaran, Advocate Sr.No.27848

sm:29.5.2018

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