IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM

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

WRIT PETITION NO.20746 OF 2003

M/s.Victoria Bleaching & Dyeing,
Ara Gounder Thottam,
Periandipalayam Pirivu Mangalam Road,
Tirupur - 641 687. ...Petitioner

Vs.

1.Customs & Central Excise
Settlement Commission,
Additional Bench,
Narmada Block, Customs House,
33, Rajaji Salai, Chennai 600 001.

2.Commissioner of Central Excise,
Coimbatore. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the first respondent relating to the impugned order No.13/2003/(CEX) dated 30.05.2003 passed by the first respondent and to quash the said impugned order dated 30.05.2003 and consequently direct the first respondent to admit the application filed under Section 32E of the Central Excise Act, filed by the petitioners before the first respondent.

For Petitioner : Mr.T.Ramesh
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard Mr.T.Ramesh the learned counsel appearing for petitioner and Mr.A.P.Srinivas, the learned Senior Standing Counsel for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent/Customs and Central Excise Settlement Commission (for short, Settlement Commission) rejecting the petitioner's application for settlement of the case.

3. A show cause notice, dated 06.06.2002 was issued by the second respondent, by which, the petitioner was directed to pay Central Excise duty, amounting Rs.5,60,660/- under Section 11 A (1) Central Excise Act, 1944, (hereinafter, referred to as the ACT) and to show case as to why penalty should not be imposed under Rule 173 Q of the Rules and penalty under Section 11 A C of the Act and interest should not be demanded. The petitioner approached the Settlement Commission, by filing an application for settlement of their case, adding that they have purchased polyester yarn and cleared the same, without duty due to severe competition in the market, especially, since the buyers were not willing to bear the burden of duty element and accept the entire duty amount demanded in the show cause notice. The Settlement Commission, while rejecting the application, by the impugned order, did not allow the application to be proceeded with, in terms of Section 32 F (1) of the Act, as the petitioner did not satisfy the condition in Clause (a) of Section 32 E (1) (a). The said condition being that, the applicant should have filed returns, showing production, clearance and Central excise duty paid in the prescribed manner. The explanation offered by the petitioner appears to have not been considered in the proper perspective by the Settlement Commission. The Court is convinced to make such observation, in the light of the communication between the petitioner and the Superintendent of Central Excise, Range I, Tiruppur, by letter dated 30.03.1999. The petitioner informed the Central Excise Department that, they are dyeing cotton yarn, cotton fabric, and 100% polyester yarn, for dyeing at their factory, under Section 57 F(3) challan and they have an idea to do job work for dying of blended yarn and 100 polyester yarn. Therefore, the petitioner enclosed the copy of the application for registration with schedule, factory site plan and the photostat copy of the partnership deed. In response to the said report, the Superintendent of Central Excise, by a reply, dated 08.12.2000, stated as follows:-

> "Please refer to your letter, dated 30.03.1999, submitted along with the application for R.T.
>
> It is noticed that you have taken out the licence No.5/99, dated 05.04.1999 to do the processing of dyeing of blended yarn and

100% polyster yarn apart from the job works carried out under Rule 57 F (4). And you have not filed the R.T. 12 returns and the declaration under Rule 173 B and the other details required by this Office since the inception of the Unit. So, you are instructed to file a RT 12 return for No.2nd quarter on or before 20 of December, 2000 and declaration under Rule 173-B immediately. Apart from these, you may furnish the reasons for not filing the RT 12 returns and declaration under Rule 173 B so far. To verify the past performance, you may produce the DC copies, 57F challans, invoices issued for job changes, production register and raw materials registrar and their DCs since April, 1999 on or before 20.12.2000".

4. By way of reply, dated 04.01.2001, the petitioner stated that, there was no processing of dyeing blended yarn in the last year, so, they did not file 173 B during that period, and in future, they will commence processing of blended yearn and they will file 173 B return. The petitioner specifically mentioned that they are doing job work, i.e., 100% polyester yarn to M/s Kousalya Thread Mills, Tiruppur, under Rule 57 F (4) transactions and apart from that, they are doing job work of Bleaching and Dyeing for the knitted fabrics and not doing the same process for woven fabrics. Appropriate declaration under Rule 173 (B) was also filed, mentioning the relevant details and furnishing the necessary declaration. If the correspondence between the petitioner and Superintendent of Central Excise is considered, it will be required to be seen as to what would be the necessity for filing returns in terms of Section 32 (F) (1) (A).

5. Therefore, in my considered view, the application filed before the Settlement Commission ought not to have been rejected at the threshold, and the Commission could have endeavored to examine, the above aspects, especially, as they are factual. That apart, there is also correspondence with the Central Excise Department, which is of much relevance to decide as to whether the nature of activity done by the petitioner. Hence, I am of the view that the application ought to have been entertained by the Settlement Commission and matter could have been examined on merits, especially, when the petitioner admitted the entire duty liability.

6. Thus, for the above reasons, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent/ Customs & Central Excise Settlement Commission for fresh consideration, with the direction to entertain the application and take a decision on merits and in accordance with law. No costs.

-Sd/-
Assistant Registrar
// True Copy //

Sub Assistant Registrar

To

1.The Customs & Central Excise
Settlement Commission,
Additional Bench,
Narmada Block, Customs House,
33, Rajaji Salai, Chennai 600 001.

2.The Commissioner of Central Excise,
Coimbatore.

- 1 cc to Mr.T.Ramesh, Advocate Sr.No.4405
- 1 cc to A.P.Srinivas, Advocate Sr.No.4683

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KP 28/02/2018