IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.19114 of 2018
Date of Decision: August 02, 2018

M/s Apple Enterprises, B-XXX-230/A, Sherpur Road, Rana Gas Street, Ludhiana

...Petitioner

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr. Chanderhas Yadav, Advocate &
Mr. Sudhir Malhotra, Advocate,
for the petitioner.

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AMIT RAWAL, J.

The petitioner has assailed the order dated 12.06.2018 (Annexure P-3) passed by the Custom Central Excise and Service Tax Settlement Commission, Principal Bench, New Delhi, whereby the application of the petitioner had been settled at ₹ 38,53,578/- instead of duty accepted by the respondents of ₹ 31,38,526/-.

It has been stated that the petitioner, during the period January, 2016 to May, 2017, imported bicycle parts and bicycle pumps falling under Chapter heading 8714 and 8414 of the Customs Tariff Act, 1975. On 03.05.2017, the premises of the petitioner were searched by the Directorate of Revenue Intelligence, Ludhiana. During search, incriminating documents, electronic devices (laptop, mobile phones and pen drives) were recovered and resumed. On enquiry, it was found that the petitioner had some stock of imported bicycles parts valued ₹ 24,17,578/-. The same were detained and handed over to one Rajeev Kumar Kalia, proprietor of the petitioner on superdari. A show cause notice dated 02.11.2017 was served upon the petitioner vis-a-vis imposition of penalty under the provisions of Section 112 (a) & (b) of the Customs Act, 1962 (for short, the Act) by demanding duty of ₹ 38,53,718/-.

The petitioner submitted an application dated 13.01.2018 under Section 127B of the Act, before the Settlement Commission, Customs & Central Excise, New Delhi (Annexure P-2) by accepting duty liability of ₹ 31,38,526/- and accordingly the petitioner deposited the aforementioned amount along with interest of ₹ 2,95,000/-. The Settlement Commission settled the application of the petitioner at ₹ 38,53,718/- and called upon him to deposit the remaining customs duty of ₹ 7,15,192/- along with interest, besides redemption fine of ₹ 35,000/- and ₹ 25,000/- was also imposed along with penalty of ₹ 2,00,000/-. The aforementioned order has been challenged on the ground whether the Settlement Commission was justified in settling at ₹ 38,53,718/-, for, respondent authorities admitted the liability to the tune of ₹ 31,38,526/-.

We are afraid, the order of the Settlement Commission does not call for any interference as it does not fall in any of the conditions enabling this Court under Article 226 of the Constitution of India to bring the order under the expression "judicial review", for, the order of the Settlement Commission is not based only on documentary evidence but the statements of the witnesses including that of the petitioner.

The scrutiny of resumed records and recovery of printouts from email id of Rajeev Kumar Kalia revealed that another firm M/s N.K. International was operating from the same premises, in which his son Nishant Kumar Kalia was also engaged in evasion of duty by resorting to under-valuation and misdeclaration of bicycle parts and bicycle pumps. The recovery of actual invoices, proforma invoices, calculation sheets, email correspondence also revealed that the petitioner resorted to misdeclaration at the time of import from China and similarly firm M/s N.K.International owned by his son. They were receiving two sets of invoices/documents, the one with lower value was presented to the Customs and the actual one was retained for commercial transaction. Differential amount of undervaluation of both the firms was sent to Chinese Supplier through TTs from third country.

We cannot sit over the order of the Settlement Commission by assuming the role of appellate authority. In our view, the amount settled by the Settlement Commission cannot be said to be erroneous or inequitable. No ground for interference is made out.

Writ Petition stands dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

August 02, 2018
ramesh

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**