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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WRIT PETITION (CIVIL) No. 8290/2007**

Date of decision: 16th May, 2018

RAJENDRA SINGH SETHIA ..... Petitioner
Through Mr. Yakesh Anand & Mr. Nimit Mathur, Advocates.

versus

UOI & ORS. ..... Respondents

Through Mr. Satish Aggarwala, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Rajendra Singh Setia has filed the present writ petition challenging the rejection order dated 10th August, 2007 passed by the Settlement Commission, Customs and Central Excise, Principal Bench, New Delhi.

2. The petitioner, who is one of the Directors of M/s Continental Sales Emporium (Private) Limited, had filed application dated 24th July, 2007 for settlement of disputes arising from show cause notice No. DRI-23/61/2006-DZU/1411 dated 23rd March, 2007 issued by the Directorate of Revenue Intelligence, Delhi Zonal Unit.

3. The operative portion of the impugned rejection order passed by the Settlement Commission reads as under:-

> "7. The Bench has considered the records of the case, written explanation of the applicant sent in response to the Notice and the contentions made during the hearing. The Bench observes that as per First Proviso to Section 127 of the Act, deposit of the entire additional amount of Customs duty accepted by the applicant, alongwith interest due thereon is a condition precedent for making an application. In the present case, the applicant has not complied with this condition inasmuch as he has not paid the entire interest due on the amount of accepted customs duty liability. Accordingly to the applicant himself, the interest on the accepted customs duty liability worked out to Rs. 18,635/-. However, by taking the plea that an amount of Rs. 25,000/- works out to be interest due form the Revenue with respect to the amount of Rs. 2,00,000/- deposited by the applicant towards duty during the investigation, the applicant has had deposited an interest of (-) Rs. 6365/-. He has, thus, not paid the amount of interest on the accepted duty liability. The Commission, therefore, has come to the conclusion that settlement application is liable to be rejected under Section 127 C (1) of the Act for non-compliance of the provisions of First Proviso to Section 127 B (1) of the Act.
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> 8. The Commission accordingly rejects the settlement application of the applicant under Section 127 (1) of the Act."

4. The rejection order records that in the application for settlement the petitioner had admitted duty liability of Rs.3,24,233/- out of duty liability of Rs.3,80,007/- relating to seizure of imported foreign liquor worth Rs.3,88,000/- from the godown of M/s Continental Sales Emporium (Private) Limited. It may be pertinent to mention here that the show cause

notice issued to M/s Continental Sales Emporium (Private) Limited, the present petitioner and Mr. Gurdeep Bagga, another Director of the afore-stated company, relates to customs duty demand of Rs.1,41,372/- and Rs.11,43,617/- plus interest and confiscation of the seized goods in addition to customs duty demand of Rs.3,80,007/-. Aforesaid show cause notice arises from investigation and search and seizure operations at the bonded warehouse of M/s Continental Sales Emporium (Private) Limited. M/s Continental Sales Emporium (Private) Limited, it is alleged, had illicitly diverted duty free foreign liquor meant for consumption of diplomats, etc. to third persons. During the search of the residential premises of the petitioner, imported foreign liquor of value of Rs.2,94,000/- involving customs duty of Rs.1,41,372/- was seized. Imported liquor as recorded above worth Rs.3,88,000/- involving customs duty of Rs.3,80,007/-, was recovered and seized from the godown premises of M/s Continental Sales Emporium (Private) Limited. The allegations in the show cause notice also pertain to illicitly diverted imported liquor worth Rs.8,89,675/- involving customs duty of Rs.11,43,017/-.

5. The impugned order passed by the Settlement Commission records that the petitioner had deposited Rs.2,00,000/- vide letter dated 27th September, 2006 towards partial discharge of their duty liability.

6. As noticed above, the Settlement Commission has rejected the settlement application on the ground that the petitioner had not deposited the entire additional amount of customs duty alongwith interest as he had failed to deposit the interest element of Rs.18,635/-. The plea taken by the petitioner was that having deposited Rs.2,00,000/- with the

respondent/Revenue, the petitioner was entitled to interest, which was computed as Rs.25,000/-. Accordingly, the petitioner was entitled to refund of Rs.6,365/-. Thus, interest of Rs.18,635/- was not required to be paid.

7. We agree with the Settlement Commission that the plea on the question of deposit of interest, i.e., setting of or netting of notional interest on Rs.2,00,000/- deposited by the petitioner during investigation is rather far-fetched and completely unacceptable. However, we do notice that the petitioner had deposited admitted duty liability of Rs.3,24,233/-. Failure to deposit interest of Rs.18,635/-, it is apparent, was based upon legal advice and understanding of the experts consulted by the petitioner. Moreover, we find that the High Court while issuing notice on the writ petition vide order dated 13th November, 2007 had directed the petitioner to deposit Rs.19,000/- with the Registrar General of this Court. The said deposit was made on 20th November, 2007. The writ petition has remained pending since then and was admitted to hearing vide order dated 4th August, 2009.

8. Counsel for the respondents, during the course of hearing, has accepted that adjudication proceedings are still pending and order-in-original has not been passed for last nearly nine years.

9. We would also notice that the impugned rejection order has adversely commented upon the lack of instructions and failure of Mr. Murari Kumar, Advocate, to furnish authorization for appearance before the Settlement Commission. Apparently, the petitioner was not properly guided on the strict time lines prescribed. Applications before the Settlement Commission have to be taken up for hearing in a time-bound manner. As per Section 127-C, the Settlement Commission, on receipt of application under Section

127-B has to issue notice to the applicant within seven days and pass an order within fourteen days from the date of notice.

10. Counsel for the petitioner has apologized for the said lapses and states that the petitioner would make payment of Rs.50,000/- to the Prime Minister's Relief Fund within a period of four weeks from today and receipt of the same would be shown to the Settlement Commission. The petitioner would not be entitled to any income tax relief on the aforesaid payment.

11. Rs.19,000/- deposited by the petitioner in this Court alongwith interest accrued would be paid to the Customs Department and treated as payment towards and on account of the settlement application. The petitioner would be also liable to pay difference in the interest accrued on Rs.19,000/- and interest payable on Rs.18,635/- in terms of the Customs Act. This amount would be computed by the respondent/Revenue and communicated to the petitioner within one month, who would pay the same within a period of one month from the date of communication.

12. The writ petition is allowed in the aforesaid terms. The impugned order dated 10th August, 2007 would be treated as quashed and set aside, subject of course to the petitioner making payment of Rs.50,000/- to the Prime Minister's Relief Fund and the petitioner making payment of the balance amount of interest payable on Rs.18,635/-. In case the petitioner does not make the aforesaid payments, it will be open to the Settlement Commission to pass a rejection order. We clarify that this Court has not made any comments on merits. We further clarify that the Settlement Commission would be entitled to examine all aspects, including question of full and true disclosure, etc.

13. To cut short delay, the petitioner will appear before the Settlement Commission on 16th July, 2018, when a date of hearing will be fixed.

Dasti under signature of the Court Master.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MAY 16, 2018
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