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

\+ W.P.(C) 11158/2017

AMIT SIROHI & ORS. ..... Petitioner

Through Mr. Subhankar Jha, Advocate.

versus

DIRECTORATE OF REVENUE INTELLIGENCE & ORS. ..... Respondent

Through Mr. Satish Aggarwala, Advocte for the DRI.

Mr. Harpreet Singh, Advocate for the respondent Nos.2 to 5.

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

<u>O R D E R</u>

% **18.04.2018**

The Settlement Commission vide order dated 29th August, 2017 had disposed of settlement application recording as under:-

> "47. The above facts shows that the applicants have committed several offences. Their activities would have continued and remained masked, but for the painstaking investigations done by Revenue. The offences, are punishable under the Customs Act.
>
> In view of the above, and the fact and circumstances of the case, the Bench hereby settles the case under Section 127C(5) of the Act, on the following terms and conditions:-
>
> (a) Customs duty in this case is settled at Rs. 1,75,46,389/- (One Crore Seventy Five Lakhs Forty Six Thousand Three Hundred Eight Nine Only). An

amount of Rs. 1,25,00,000 /-(One Core Twenty Five Lakhs Only) & Rs. 2,50,000/(Two Lakh Fifty Thousand Only) already deposited by the applicants is ordered to be appropriated towards the settled duty liability. The applicants are further directed to pay the balance amount of duty amounting to Rs. 47,96,389/- within 15 days of receipt of order.

(b) The applicants have claimed to have deposited of sum of Rs.7,81,362/- (Seven Lakhs Eighty Thousand Three Hundred Sixty Two Only) towards his interest liability. The Revenue should verify and calculate the amount of interest to be paid by the applicants and the same should be appropriated out of Rs.7,81,362/- (Seven Lakhs Eighty Thousand Three Hundred Sixty Two Only) claimed to have been deposited by the applicants. In case, the amount of interest recoverable from the applicants is more than the amount already claimed to have been paid, the details of the same should be intimated to the applicants by the Revenue within 15 days of the receipt of this order and the applicants shall make good the remaining amount towards interest, if, any, within a period of 15 days thereof.

(c) A penalty of Rs. 10,00,000/- (Ten Lakhs Only) is imposed on each of the applicants i.e. Sh. Amit Sirohi, Sh. Vipin Chanana and Sh. Sanjeev Goel and immunity is granted from penalty in excess of the said amount.

(d) **Fine** :The Bench finds that the Show Cause Notice has sought confiscation of the impugned goods having re-determined assessable value. The Bench notes that the offence is related to past consignments and the goods are not available for seizure. Keeping in the view a number of pronouncements in this regard, and that no bond etc. been taken, the bench refrains from imposing redemption fine.

> The duty, penalty and interest is to be paid by the applicant within 30 days. A compliance report on payments of Duty, Interest and Penalty by the applicant, to be paid within the period of 30 days, should be sent by Jurisdiction Commissioner to Settlement Commission, Principal Bench, New Delhi.
>
> (e) Prosecution : Subject to the payment of the aforesaid amount, the Bench grants immunity to the applicant from prosecution under the Act and Rules framed there-under as applicable in so far as this case is concerned."

2. The petitioners have filed the present writ petition asserting that they are entitled to credit of Rs.47,96,389/- paid on different dates or credited on account of encashment of bank guarantees by the respondents.

3. While issuing notice vide order dated 15th December, 2017, we had recorded contention and statement of the petitioners that during the course of settlement proceedings, respondents were unable to ascertain and verify deposit/credit of Rs.47,96,389/-, a factum mentioned by the Settlement Commission in paragraph 37 of their order dated 29th August, 2017.

4. Thereafter, order dated 13th February, 2018, records that the respondents had accepted payment of Rs.47,96,389/- either by way of deposits or by encashment of bank guarantees. This order also mentions the difficulty faced by the respondents in ascertaining details of the Bill of Entry against which payments were made and adjusted, as the petitioners had made payments vide TR-6 Challans and for the reason that credit has to be given on account of encashment of bank guarantees. Respondents were directed to carry out necessary verification and file an affidavit within a

period of three weeks.

5. Affidavit filed by Mr. Sumit Kumar, Senior Intelligence Officer, Directorate of Revenue Intelligence accepts total payment of Rs.1,89,24,073/-, as against the total tax liability excluding interest of Rs.1,75,46,389/-. Annexure-A to this affidavit is a computation chart of interest payable. As per the affidavit, the petitioner is liable to pay further interest of Rs.18,53,388/-. This figure has been computed after giving benefit of excess payment of Rs.13,77,684/- (Rs.1,89,24,073 minus Rs.1,75,46,389/-).

6. Counsel for the petitioner has disputed the computation and submits that computation of interest as recorded is incorrect. He submits that as the respondents have accepted receipt of Rs.47,96,389/-, the question of computation of interest may be referred to the Settlement Commission for examination. Counsel for the Directorate of Revenue Intelligence, on instructions, states that he would leave it to the Court and, in principle, the said respondent would not have any difficulty if this aspect is examined by the Settlement Commission.

7. We would accordingly accept the prayer made by the petitioners and request the Settlement Commission to go into the question of computation of interest. While examining the said aspect, the computation made by the Directorate of Revenue Intelligence would be taken into consideration. Comments or objections of the petitioners would also be examined.

8. To cut short delay, the parties are directed to appear before the Settlement Commission on 9th May, 2018 at 11 A.M. If required, the

Settlement Commission would fix a date of hearing.

9. Recording the aforesaid, the writ petition is disposed of without any order as to costs. We clarify not having commented on merits.

Dasti under signature of the Court Master.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

APRIL 18, 2018
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