IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.6564 of 2007
and
M.P.No.1 of 2007

M/s.Naushie Exports,
No.55, New Street, Kottar,
Nagarcoil - 629 002,
Kanyakumari District represented by its
Managing Partner Luquman .. Petitioner

Vs.

1.Customs & Central Excise Settlement
Commission, Narmada Block,
Customs House, No.33, Rajaji Salai,
Chennai-600 001.

2.The Commissioner of Customs,
Office of the Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the First Respondent in Final Order No.S.A.(C)/90/2005 Dated 31.07.2006, passed in File No.VIII/10/90/2005-SC Dated 08.09.2005, and to quash the same in so far as it seeks to levy interest.

For Petitioner : Mr.B.Satish Sundar

For Respondents: Mr.A.P.Srinivas
Standing Counsel

O R D E R

The petitioner challenges an order of the Customs and Central Excise Settlement Commission dated 31.07.2006 on the limited question of imposition of interest.

2.Heard Mr.Satish Sundar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel for the respondents.

3.There is no dispute as regards the duty liability and as recorded by the Settlement Commission, the liability to duty, as demanded in the show cause notice has been remitted in full by the petitioner. As regards immunity from payment of interest, the contention of the revenue was that the payment of interest ought to be as per the terms of contract between the petitioner and the authorities, being 15%, whereas the Settlement Commission, taking note of the changes in Foreign Trade Policy and the provisions of Section 127 H of the Customs Act, 1962 dealing with the power to grant immunity from interest, passed an order granted partial immunity from payment of interest in excess of 10% simple interest per annum.

4.The petitioner relies on two decisions of this Court in the case of SLS Exports Pvt. Ltd. v. Customs and Central Excise Settlement Commission and others dated 08.09.2006, wherein the issue arising therein is crystallized as follows:

> '4.The short question is whether the Settlement Commission was right in holding that it had no jurisdiction to consider the claim of the petitioner for waiver of interest.....'

5.After distinguishing of the decision of the Calcutta High Court in the case of Commissioner of Cus. (Port) v. Settlement Commission. Cus. & C. Ex. (179 ELT 386), the Bench remanded the matter to the Settlement Commission for reconsideration.

6.This decision has been followed in the case of Tropical Foods v. Customs and Central Excise Settlement Commission and others (W.P.No.19197 of 2006 dated 11.10.2006).

7.Mr.A.P.Srinivas, learned Standing Counsel, appearing for the Revenue for his part points out that the law on this issue has been settled by the Supreme Court in the case of Rexnord Electronics and Controls Limited v. Union of India (224 ELT 184), wherein the Supreme Court has affirmed the decision of the Calcutta High Court in Commissioner of Customs (Port) (supra). Thus according to him, the decisions relied on by the petitioner carry no force as on date.

8. The judgment of the Supreme Court in Rexnord Electronics (supra) has been applied by a learned single Judge of the Court in the case of FAL Industries Limited V. DGFT (W.P.No.44020 of 2002 dated 21.08.2013). At paragraph Nos. 19 and 20 thereof the findings in Rexnord Electronics (supra) are discussed as follows:

> 19. In this regard, now, I may refer to the judgment of the Hon'ble Supreme Court in Rexnord Electronics and Controls Limited vs. Union of

India and others, reported in (2008) 12 Supreme Court Cases 156, the case referred to above. That was also a case, where a bond executed in terms of the Customs Notification No. 160/92, dated 20.04.1992 (the notification, which is the subject matter in the present Writ Petition) was considered. In that case, the exporter had executed a bond, thereby, agreeing to pay interest in the event of his failure to fulfil the export obligation. But, he did not pay interest. In the meanwhile, he approached the Settlement Commission under Section 127-H of the Customs Act, for immunity from prosecution and for waiver of imposition of penalty, fine and interest under the Customs Act. The Settlement Commission accepted the said request of the exporter and granted waiver of payment of penalty, fine as well as interest. Aggrieved over the same, the matter was taken up to the Supreme Court. Before the Supreme Court, it was contended that the Settlement Commission, had not authority to waive the interest, which is leviable under the bond executed in terms of the Scheme. It was further contended that as per Section 127-H of the Customs Act, the interest, which is payable under the Customs Act alone could be waived by the Settlement Commission under Section 127-H of the Act. But, by the exporter, it was contended that the Settlement Commission had power to waive the interest payable both under the Customs Act or under the Scheme. But, the Hon'ble Supreme Court negatived the claim of the exporter. In that case, the Hon'ble Supreme Court has held that there was a vast difference between the interest payable under the Customs Act and the interest payable in terms of a bond executed as per the Scheme floated under the Foreign Trade (Development and Regulation) Act, 1992. The Hon'ble Supreme Court has further held that the Settlement Commission had power to waive the interest payable under the Customs Act. But, in the said case, since, the interest was demanded not under the Customs Act, but, in terms of the bond executed as per the Scheme, the Hon'ble Supreme Court has held that the Settlement Commission had no power to waive the interest, which was required to be paid in terms of the bond executed.

20. While concluding so, the Hon'ble Supreme Court, in the said judgment i.e.,Rexnord Electronics and Controls Limited vs. Union of India and others, reported in (2008) 12 Supreme Court Cases 156, had occasion to elaborately deal with the Scheme under the Foreign Trade (Development and Regulation) Act, 1992 and the customs duty payable under the Customs Act. In paragraph No.16 of the said judgment, the Hon'ble Supreme Court has framed the following question:-

> "16. The core question which, therefore, arises for consideration is as to whether the term "interest" used therein would include within its fold interest payable under the bond furnished by the appellant before the Director General of Foreign Trade."

In paragraph No. 25 of the said judgment, the Hon'ble Supreme Court has held as follows:-

> "25. The appellant having evaded payment of duty was bound to pay the same and furthermore was bound to pay interest in terms of the bond executed by it. The Settlement Commission, therefore, could not have given any direction for deduction in regard thereto. As the Settlement Commission, did not have any jurisdiction to waive the amount of interest payable under the bond, we do not see that any jurisdictional error has been committed by it in directing the payment of the said amount which is otherwise payable. In any event the appellant is not prejudiced thereby as irrespective of such direction, the appellant was bound to pay the interest payable under the bond."

9.The Settlement Commission, in this case has taken note of the provisions of Section 127 H as well as the decision of the Calcutta High Court in the case of Commissioner of Port (supra) and has exercised discretion concluding that interest upto 90% would be liable to be waived. The point for consideration is whether there is any basis for the aforesaid conclusion. Upon perusal of the relevant portion of the impugned order, I do not find any reasoning whatsoever for the conclusion by the Bench.

10.I thus deem it fit to remit the matter back to the file of the Settlement Commission to be decided afresh in accordance with law and in line with the judgment of the Supreme Court in the case of Rexnord Electronics (supra). The petitioner shall appear before the Settlement Commission on (Monday) 30.09.2019 and appropriate orders be passed by the Commission, after hearing both parties, within a period of four weeks thereafter.

11.This writ petition is disposed with the aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
1.The Customs & Central Excise Settlement
Commission, Narmada Block,
Customs House, No.33, Rajaji Salai,
Chennai-600 001.

2.The Commissioner of Customs,
Office of the Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

+1cc to Mr.A.P.Srinivas, Advocate, SR.No.78617

W.P.No.6564 of 2007
and
M.P.No.1 of 2007

Kak(27/09/2019)