IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.4394 of 2005

M/s.A.V.Bhanojirow,
Garuda Pattabhiramaiya & Co.,
Rep. by its Partner,
P.B.No.17, Vishakapatnam - 530035. ...Petitioner

Vs

1. Union of India,
   Ministry of Finance,
   Department of Revenue,
   Government of India
   through Secretary,
   North Block, New Delhi - 110011.

2. The Settlement Commission,
   Customs & Central Excise,
   Additional Bench,
   Narmada Block, Customs House,
   33, Rajaji Salai,
   Chennai - 600001. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent in Settlement Application No.SA(C) No.69 of 2003 dated 27.02.2004 and quash the portion of the order by which the second respondent has levied interest from the date of importation and direct that the interest shall run only from 17.11.2000 in accordance with Customs Act and direct the refunds of the excess interest paid.

For Petitioner : Mr.R.Shankaranarayanan, Senior Counsel for Mr.K.P.Pramodh Kumar

For Respondents: Mrs.R.Hemalatha, Senior Standing Counsel

ORDER

The short point for consideration in the present writ petition is as to whether the order of the Settlement Commission in imposing interest from the date of import of the goods should be interfered with.

2. The learned Senior Counsel appearing for the petitioner would submit that the determination of the date, from which the interest is liable, is in violation of the provisions of Section 28(AA) of the Customs Act and in view of this violation of the statutory provisions of the Act, the High Court would be entitled to interfere under Article 226 of the Constitution of India. Though the order of the Settlement Commission, insofar as the point of determination of interest is put under challenge, the learned Senior Counsel fairly submitted that they would be satisfied, if such a portion of the order is reviewed by the Settlement Commission.

3. Per contra, the learned Standing Counsel for the respondents would submit that the point of determination in the facts of the present case would be from the date of import alone, in view of Section 15(1)(b) of the Customs Act.

4. The Hon'ble Supreme Court in the case of Sanghvi Reconditioners Pvt. Ltd. vs Union of India reported in 2010 (251) E.L.T. 3 (S.C.), had held that the appellant cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not. To such a contention, the learned Senior Counsel appearing for the petitioner relies upon a decision in the case of Union of India and others vs Asahi India Safety Glass Limited reported in (2015) 11 SCC 451, wherein the Hon'ble Supreme Court, to a contention made by the petitioner therein that the High Court had tinkered with a portion of the Settlement Commission's order, had held that such a portion was not tinkered with, but the High Court had only held the correct proposition of law and thereby had remanded back the matter to the Settlement Commission for re-consideration.

5. In the instant case, what the petitioner intends to submit before this Court is that, in view of Section 28(AA), the Settlement Commission had erred in levying the interest from the date of import on the goods, whereas, it should have been only from the date of determination, which in the present case is on

17.08.2000, the day on which the adjudication order of the Deputy Commissioner of Customs was passed. Since the error in construing the statutory provision can be interfered with under Article 226 of the Constitution of India and the Hon'ble Supreme Court in Ashahi Glass case (supra) has held that the High Court would be entitled to hold the correct proposition of law, this would not amount to dissecting the Settlement Commission's order.

6. This Court is of the view that when Section 28 (AA) clearly states that the commencement of levy of interest would commence only from the expiry of three months from the date of determination, the Settlement Commission had not justified itself as to why the date of import was referred to as the date of determination and hence, the matter requires reconsideration. Though the learned Standing Counsel appearing for the respondents would rely upon Section 15(1)(b) and on the facts of the case and attempt to substantiate the order of the Settlement Commission, this Court is of the view that any findings rendered therein would have a bearing, when the matter is remanded back to the Settlement Commission, for reconsideration.

7. In the light of the above observations, the impugned order of the Settlement Commission dated 27.02.2004, insofar it relates to the portion levying interest from the date of duty is concerned, shall be kept in abeyance and the order of the Settlement Commission, insofar as such portion is concerned, is remanded back for fresh consideration. The Settlement Commission shall endeavour to pass final orders on this aspect, as expeditiously as possible, after giving due opportunity of personal hearing to the petitioner, in any event, within a period of 3 months from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

hvk

To
1. The Secretary,
   Union of India,
   Ministry of Finance,
   Department of Revenue,
   Government of India
   North Block, New Delhi - 110011.

2. The Settlement Commission,
   Customs & Central Excise,
   Additional Bench,
   Narmada Block, Customs House,
   33, Rajaji Salai,
   Chennai - 600001.

+1cc to Mrs.R.Hemalatha,, Advocate SR.No. 73663

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A.SK(09/10/2019)