IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP-19567-2017 (O&M).
Decided on: July 8, 2019.

M/s Gupta G & Company

.. Petitioner

VERSUS

Union of India and others

.. Respondents

* * *

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH
HON'BLE MR.JUSTICE LALIT BATRA

* * *

PRESENT Mr.Jagmohan Bansal, Advocate,
for the petitioner.

Mr.Sourabh Goel, Advocate,
for respondent Nos.1, 3 and 4.

Mr.Sunish Bindlish, Advocate,
for respondent No.2 assisted by
Mr.Rajat Malhotra, Senior Investigating Officer DRI.

JASWANT SINGH, J. (ORAL)

CM-9301-CWP-2019

Prayer in the misc. application moved under Article 226 of the Constitution of India read with Section 151 CPC, is for placing on record copy of letter dated 19.11.2018, addressed to the General Manager, Post Office, Chankyapuri, New Delhi, regarding status of delivery report w.r.t. Speed Post Slip No.ED354852852IN dated 16.6.2017 as **Annexure P16**, copy of reply to the same as **Annexure P17** as well as copy of letter dated **11.12.2018 (Annexure P18)**, addressed to the SIO, Technical Section Settlement Commission, New Delhi.

For the reasons stated in the misc. application, the same is allowed. Annexures P16 to P18, are permitted to be taken on record.

Main case

The petitioner - importer has invoked the writ jurisdiction of this Court assailing order dated 31.7.2017, (Annexure P13), passed by the Customs, Central Excise and Service Tax Settlement Commission, whereby demand of Rs.1,47,12,404/- has been confirmed towards custom duty upon a show cause notice issued by the Directorate of Revenue Intelligence (for short 'the DRI), for mis-declaration of description of the goods and their value. This Court while issuing notice of motion on 4.9.2017, has passed the following order:-

> *"Learned counsel for the petitioner, inter alia, submits that the hearing of the settlement application filed by the applicant-petitioner, was concluded by the Customs, Central Excise and Service Tax Settlement Commission, Principal Bench, New Delhi on 20.02.2017, whereas the final order was pronounced on 31.07.2017 (Annexure P-13). It was urged that while passing the final order, reliance was placed upon a communication dated 25.05.2017, received from the Revenue which was never confronted to the applicant petitioner. It was argued that the order passed by the*

> *Settlement Commission settling custom duty at ` 1,47,12,404/- against the applicant-petitioner is, thus, legally unsustainable.*
>
> *Notice of motion to respondents No.2 and 3 for 26.09.2017.*
>
> *Notice regarding stay.*
>
> *Process dasti only."*

To the specific plea of the petitioner regarding non-furnishing of the communication dated 25.5.2017 relied upon, and thus, violating the principles of natural justice, a specific reply has been filed by the DRI that the said letter was communicated to the petitioner – company vide letter dated 15.6.2017 through Speed Post.

It is admitted that during the course of previous hearings, some record was also produced by the respondents in support of their assertion and, thereby trying to rebut the aforesaid plea of the petitioner - company.

Petitioner by way of aforesaid misc. application has placed on record letter dated 11.12.2018 (**Annexure P18**), establishing that said communication dated 25.5.2017 was received back undelivered in the office of the Settlement Commission. It is thus, evident that an incorrect/false statement has been made by the respondents before this Court amounting to contemptuous conduct inviting severe punishment However, while strongly deprecating such conduct, we are restraining ourselves from initiating any such action, in view of the sincerest assurance tendered by the officer present in Court to be extremely careful in future while filing replies or tendering records before the Court.

In view of the now conceded position that the material which was not furnished to the petitioner has been taken into account while passing final impugned order (**Annexure P13**), thereby, violating the fundamental principles of natural justice, counsel for the parties have agreed for remanding the matter back to the Settlement Commission for a fresh adjudication in accordance with law. On the alternative prayer of the counsel for petitioner for referring the matter back to the Adjudicating Authority, it is also agreed that in case of non-consensus of claim/counter claim i.e. duty declared by petitioner vis-a-vis duty proposed by DRI, the Settlement Commission shall also consider the aspect of referring back the matter to the adjudicating authority in view of the provisions of Section 127-I of the Customs Act, 1962 and case law on the issue.

In view of the aforesaid agreed stand, impugned order dated 31.7.2017, (Annexure P13), passed by the Customs, Central Excise and Service Tax Settlement Commission, is set aside with a direction to the Settlement Commission to decide the issue afresh in accordance with law. The parties are directed to appear before the Settlement Commission on 7.8.2019.

(JASWANT SINGH)
JUDGE

July 8, 2019. **(LALIT BATRA)**
raj arora **JUDGE**

Whether speaking / reasoned Yes / No
Whether reportable Yes / No