

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

Reserved on: 8th November, 2019
Pronounced on: 19th November, 2019

+ W.P.(C) 6495/2019 & CM APPL.27484/2019

HONEYCOM SYNERGIES

..... Petitioners

Through: Mr. A.K. Seth,
Mr.Chinmaya Seth &
Mr.Ekansh Mishra, Adv

COMMISSIONER OF CUSTOMS (EXPORT)
& ORS.

..... Respondents

Through: Mr. T.P. Singh, Sr.
Central Govt., Counsel
for R-3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

%

C. HARI SHANKAR, J.

1. The proceedings which were commenced, against the petitioner, *vide* Show Cause Notice No. 09/2017, dated 24th March, 2017, issued by the Directorate of Revenue Intelligence (DRI), stands settled, by Final Order, dated 1st November, 2018, passed by the Customs, Central Excise and Service Tax Settlement Commission (hereinafter referred to as “the Settlement Commission”) in Settlement Application No. 5580/2018, subject to appropriation of ₹ 84,28,058/-, deposited by the petitioner towards Customs Duty escaped on imports effected by it, and ₹ 22,12,969/-, towards interest on the said amount of duty, and

payment of penalty, by the petitioner, of ₹ 8,54,000/-. Aggrieved by the imposition of penalty on it, the petitioner filed a Rectification Application, before the Settlement Commission, which stands rejected by communication, dated 18th February, 2019, addressed to the petitioner by the Senior Investigating Officer (SIO), communicating the decision, of the Settlement Commission, to reject the Rectification Application as, in its view, there was no error apparent in the Order dated 1st November, 2018.

2. The petitioner, by means of this writ petition, calls into question the aforesaid decision of the Settlement Commission, to reject the Rectification Application filed by the petitioner, as communicated to the petitioner *vide* letter dated 18th February, 2019 *supra*, and prays, further, that the Settlement Commission be directed to reconsider the Rectification Application filed by the petitioner.

Facts

3. Acting on the basis of information, regarding evasion of Customs duty on import of signage materials from China and Taiwan, by misdescription and undervaluation, by various importers including M/s. Taneja Technocom, a proprietary concern of Manish Taneja, a search was conducted, by a team of the DRI, at the premises of M/s Taneja Technocom, on 3rd October, 2016. Electronic goods, valued at ₹ 44,20,365/–, were found therein which, on further investigation, were found to have been imported in the name of the petitioner, which is also a proprietary concern of Puneet Taneja, brother of Manish

Taneja. Following thereupon, search was conducted, by the DRI team, at the office-cum-godown of the petitioner, where goods, of which the declared value was ₹ 1,20,34,534/-, were found and subjected to investigation, as undervaluation, thereof, was suspected. During investigation, the petitioner deposited ₹ 26 lakhs, towards partial payment of duty liability on undervalued imports, effected by it.

4. Puneet Taneja, in his statement under Section 108 of the Customs Act, 1962 (hereinafter referred to as “the Act”) admitted under invoicing of the goods imported by the petitioner. He also admitted that the goods, seized at M/s. Taneja Technocom, had been imported by the petitioner. The differential value, according to his statement, was remitted to the overseas supplier through *hawala* channels. He also admitted the fact that two sets of invoices were prepared, in respect of the consignments, with the actual value thereof being reflected in proforma invoices and undervalued commercial invoices being presented before the Customs authorities for the purposes of payment of duty. Printouts, of data present in the computers found in the office of the petitioner, were shown to Puneet Taneja, who admitted that the said data related to the imports effected by the petitioner, and included the proforma invoices and the commercial invoices, as well as receipts of differential payments made to the overseas suppliers. He also correlated some of the documents with the corresponding Bills of Entry. He further furnished, to the investigating officers, certain proforma invoices, which were retained

by him. He submitted that the same *modus operandi* had been followed, by the petitioner, in respect of all imports effected by it.

5. In view of the above admissions, by Puneet Taneja, the goods, seized from the premises of M/s. Taneja Technocom, and of the petitioner, were seized on 7th January, 2017, and were subsequently released, provisionally, to the petitioner, subject to furnishing of Provisional Duty bond and bank guarantee.

6. Based on, *inter alia*, the aforesaid evidence, Show Cause Notice No. 09/2017, dated 24th March, 2017, was issued to the petitioner, requiring the petitioner to show cause as to why

(i) the assessable value of the aforesaid imported goods, as declared, be not rejected under Section 14 of the Customs Act, read with Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as “the Customs Valuation Rules”), and be not re-determined as ₹ 21,57,64,703/-, under Section 14 of the Customs Act read with Rules 3 and 9 of the Customs Valuation Rules,

(ii) differential Customs duty of ₹ 79,21,701/-, evaded/short paid in respect of the goods imported under the Bills of Entry covered by the Show Cause Notice, be not demanded and recovered from the petitioner under Section 28 of the Customs Act, along with interest,

- (iii) the amount of ₹ 26 lakhs, paid during investigation, be not appropriated against the aforesaid demand,
- (iv) the seized goods be not confiscated, under Section 111 (m) of the Customs Act, and
- (v) penalty be not imposed on the petitioner under Sections 112 and 114AA of the Customs Act.

7. Instead of contesting the aforesaid Show Cause Notice, dated 24th March, 2017, by subjecting himself to adjudication proceedings, the petitioner chose to approach the Settlement Commission, under Section 127B of the Customs Act, to have the case settled. The petitioner did not contest any part of the demand proposed in the Show Cause Notice and admitted, and paid, the entire proposed differential duty liability of ₹ 84,28,058/–, along with interest, thereon, of ₹ 22,12,969/–.

8. The Settlement Commission settled the case, arising from the issuance of the aforesaid Show Cause Notice dated 24th March, 2017, *vide* Final Order, dated 1st November, 2018. The findings of the Settlement Commission may be reproduced thus:

“22. The Bench has carefully examined the case records and arguments put forth by the applicant and the Revenue. The applicant has accepted entire differential Custom duty liability of Rs.84,28,058/– as demanded in the SCN along with interest of Rs.22,12,969/–. The Revenue seeks imposition of penalty in view of applicants willful mis-declaration of value of the imported goods at the time of import.

(i) The Bench observes that in the instant case, applicant had resorted to mis-declaration of value of goods at the time of import with intent to evade Customs duty. The fact of mis-declaration of value has been admitted by Shri Puneet Taneja, Proprietor of the applicant firm in his statements dated 5.12.2016 and 2.1.2017 and retrieval of documentary evidence of applicant firm retrieved from hard drive which contained Performa Invoice/Commercial Invoice containing actual value of goods.

The Bench observes that the applicant had devised a well planned to give effect to his design of evading the Customs Duty. Specifically the applicant consciously chose to spread out the imports through the various Ports, with a view to test his chances of success in evasion of duty at different ports. The acts of the applicant were willful and carefully organized and orchestrated to engage in mis-declaration of the goods and evade the statutory levies thereof. Such acts, as they impinge upon the economy of a country adversely, do not require leniency and must be visited with appropriate penalty so as to deter the similarly placed importers from engaging in such acts.

The Bench observes that had the investigations is not been initiated and search not conducted, it would have been impossible to detect such a fraud and the applicant would have succeeded in clearing the goods with mis-declared value at the time of import thereby benefiting at the cost of the exchequer. The Bench holds that the applicant is liable to penalty under the provisions invoked in the impugned SCN.

(ii) Under the circumstances, the Bench holds that the seized goods imported through ICD TKD (Export) under cover of Bills of entry no.7457415 dated 15.11.2016 having re-determined value of Rs. 43,08,325/- and the goods seized at godowns of the applicant, having redetermined value of Rs.1,47,98,678/- and released provisionally are liable to confiscation.”

9. Observing that, the petitioner had fully and truly disclosed its liability, and had deposited the same and cooperated with the proceedings, the Settlement Commission held that the petitioner was entitled to have the case settled, under Section 127C(5) of the Customs Act. Accordingly, the case was settled in the terms already set out in para 1 *supra*.

10. Invoking the jurisdiction, vested in the Settlement Commission by Section 127C(5A) of the Customs Act, the petitioner moved an application, for rectification of the aforesaid Final Order, dated 1st November, 2018. It was sought to be urged, in the said application, that the Settlement Commission had imposed penalty on the petitioner on the basis of an erroneous finding that the petitioner had consciously chosen to spread out its imports through various ports and had, thereby, devised a planned strategy to evade Customs duty. No such allegation, the petitioner sought to point out, was contained in the Show Cause Notice, dated 24th March, 2017 *supra*, issued to the petitioner. Pointing out that the penalty imposed by the Settlement Commission was exorbitant, the Rectification Application prayed that the “error apparent on the face of the order” dated 1st November, 2018 *supra*, be rectified and the decision, to impose penalty on the petitioner, be, accordingly, reconsidered.

11. The impugned communication, dated 18th February, 2019, whereby the decision, of the Settlement Commission, to reject the aforesaid Rectification Application, preferred by the petitioner, was

communicated, to the petitioner, by the SIO in the Settlement Commission, reads thus:

“The Hon’ble Bench, on examination of the Final Order dated 01.11.2018, has observed that there is no error apparent in the order and hence there is no need for the proposed rectifications in the Final Order. The Bench has further observed that this is not a fit case under Section 127C (5A) of the Customs Act, 1962.

2. This issues with the approval of Hon’ble Bench of Settlement Commission, Principal Bench, New Delhi.”

12. The petitioner claims to be aggrieved thereby.

13. We have heard Mr. A.K. Seth, learned counsel for the petitioner and Mr. T.P. Singh, learned counsel for the Revenue.

14. The only contention, seriously advanced by Mr. A.K. Seth, appearing for the petitioner, was that the decision, of the Settlement Commission, to award a penalty to the petitioner, was vitiated, as it had been taken on the basis of an erroneous finding, regarding the petitioner having “consciously chosen to spread out the imports through the various Ports, with a view to test his chances of success in evasion of duty at different ports”. There was, it is pointed out by the learned Counsel, no such allegation in the Show Cause Notice, dated 24th March, 2017, issued to his client; ergo, the Settlement Commission erred in returning the said finding. Consequently, the penalty imposed on his client, being based on the said finding, was also unsustainable and, therefore, the Settlement Commission ought to

have reversed the decision to award penalty, while adjudicating the Rectification Application filed by him.

15. We do not agree.

16. We are unable to subscribe to the contention, advanced by Mr. Seth, that the finding, of the Settlement Commission, regarding the petitioner having spread out its imports over various ports, so as to explore the chance of evading duty, is foreign to the Show Cause Notice. Para-12 of the Show Cause Notice clearly sets out, in tabular form, the ports through which imports had been effected by the petitioner, as well as the number of Bills of Entry filed at each port. A glance thereat reveals that imports were effected via 77 Bills of Entry filed at ICD, TKD (Export), 6 Bills of Entry filed at ICD, TKD (Import), 1 Bill of Entry filed at Chennai Sea Port, 2 Bills of Entry filed at ICD, Nagpur and 6 Bills of Entry filed at ACC, Delhi, totaling 92 Bills of Entry. The fact that the petitioner had spread out its imports through various ports is, therefore, part of the record, with specific allusion, thereto, available in the Show Cause Notice. That the petitioner had done so, in order to create an orchestrated system of evading duty, was a finding arrived at, by the Settlement Commission, which, in our view, was entirely within the province of jurisdiction of the Settlement Commission, and at which it was quite competent to arrive. We cannot, therefore, accept the submission, advanced by Mr.Seth, that the said finding, by the Settlement Commission, travelled beyond the allegations in the Show Cause Notice.

17. In any event, we are not convinced that the decision, of the Settlement Commission, to impose penalty on the petitioner, was premised solely on this finding. The paras, in the Order, dated 1st November, 2018, of the Settlement Commission, wherein penalty has been imposed on the petitioner, read thus:

“Penalty: The Bench imposes penalty on the applicant in respect of imports made from various ports as detailed below:

SR NO	Port of Import	Penalty Imposed (Rs)
1	ICD TKD (Export)	8,00,000
2	ICD TKD (Import)	40,000
3	Chennai Sea Port	4,000
4	ICD Nagpur	7,000
5	ACC Delhi	3,000

The Branch grants immunity from penalty in excess of the above amount. No separate penalty is imposable on Shri Puneet Taneja being the Proprietor of the applicant firm as per settled law.”

A reading of the above paras, from the Final Order of the Settlement Commission, clearly indicates that the decision, of the Settlement Commission, to award penalty, is not based on any particular finding, but is premised on the overall merits of the case. The Settlement Commission has chosen to pentfurcate the total quantum of penalty, depending on the quantum of imports effected at different ports and,

in doing so, we do not see that the Settlement Commission committed any “rectifiable” error.

18. In that view of the matter, it cannot be said that the decision, of the Settlement Commission, to impose penalty on the petitioner, suffers from any error apparent on the face of the record. Consequently, the impugned decision, of the Settlement Commission, to reject the petitioner’s application for rectification, too, does not suffer from any such infirmity, as would call for interference by this Court, in exercise of its writ jurisdiction.

19. The petitioner’s grievance, regarding the quantum of penalty awarded, too, fails to impress. We are in agreement with the finding, of the Settlement Commission, that the petitioner had deliberately sought to evade Customs duty by undervaluing its imports. No doubt, the petitioner made a clean breast of its affairs, and did not dispute the duty liability, as quantified in the Show Cause Notice, dated 24th March, 2017 *supra*. That, by itself, would not, however, entitle the petitioner to immunity from penalty. Section 127H(1) of the Customs Act, which deals with the power, of the Settlement Commission, to grant immunity from prosecution and penalty, reads thus:

“127H. Power of Settlement Commission to grant immunity from prosecution and penalty. —(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 127B has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act and also

either wholly or in part from the imposition of any penalty and fine under this Act, with respect to the case covered by the settlement:

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 127B.”

20. Clearly, cooperation with the Settlement Commission does not, *ipso facto*, insulate an applicant from penalty, though non-cooperation does disentitle an applicant thereto. Cooperation with the Settlement Commission, and the making of a full and true disclosure of liability, constitute the essential imperatives, for the Settlement Commission to grant immunity from prosecution or penalty, *either in whole or in part*. The nonfulfillment of either of these criteria, i.e., non-cooperation with the proceedings before the Settlement Commission, or absence of a full and true disclosure of liability, would completely disentitle the applicant to any immunity, from prosecution or penalty. If, however, these two criteria stand fulfilled, the Settlement Commission is empowered to grant immunity to the applicant, from prosecution or from penalty.

21. Immunity from penalty can be granted, by the Settlement Commission, either in whole or in part. The Show Cause Notice, dated 24th March, 2017 *supra*, proposed imposition of penalty, on the petitioner, under Sections 112 and 114AA of the Customs Act. The quantum of penalty, as awarded by the Settlement Commission, is only 10% of the duty evaded by the petitioner, and is, therefore, much less than the penalty which the petitioner might have had to suffer, had the matter proceeded to adjudication. It cannot, therefore, be said

that the penalty imposed, by the Settlement Commission, on the petitioner, was unreasonably high.

22. We, therefore, do not find any substance in the writ petition filed by the petitioner.

23. Before parting, we feel it necessary to enter a caveat. Sub-section (5A), of Section 127B, whereby the Settlement Commission has been invested with the power to rectify errors in orders passed by it, was inserted in the Customs Act by the Finance Act, 2017, w.e.f. 31st March, 2017. We do not find, either in the said provision, or in the somewhat oddly-named Customs and Central Excise Settlement Commission Procedure, 2007 (which governs the procedure of the Settlement Commission), any provision, empowering the Settlement Commission to dispose of applications, under Section 127B(5) of the Customs Act, by circulation, without hearing the parties. We are also of the view that the Settlement Commission is bound to provide reasons, howsoever brief, for the order proposed to be passed, by it, on the application under Section 127B(5). An administrative communication, such as the letter dated 18th February, 2019, signed by the SIO in the Settlement Commission, conveying the decision of the Settlement Commission to reject the Rectification Application filed by the petitioner is, in our view, completely intolerable in law.

24. We clarify, therefore, that applications under Section 127B(5) have to be heard in open Court by the Settlement Commission, and orders, disposing of such applications, are required to be reasoned.

25. Though the impugned communication, dated 18th February, 2019, does not conform to these parameters, we, nevertheless, refrain from interfering, in the present case as, even on merits, we are not satisfied that the decision, of the Settlement Commission, to impose penalty on the petitioner, suffers from any infirmity, either in law or on facts.

26. The writ petition is, therefore, dismissed, with no orders as to costs.

27. Pending applications, if any, stand disposed of accordingly.

C.HARI SHANKAR, J.

CHIEF JUSTICE

NOVEMBER 19, 2019

HJ