IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15715 of 2006
and
W.M.P.Nos.15488 & 15489 of 2006

M/s.Sri Muni Pachaiyappan Textiles Pvt. Ltd,
Represented by A.M.Munusamy Mudaliyar,
Managing Director,
Iyeppedu Village,
Sholinghur - 631 102,
Vellore District. ...Petitioner

Vs.

1.Customs & Central Excise Settlement Commission,
Additional Bench,
II Floor, Narmada Block,
Custom House, No.60 Rajaji Salai,
Chennai - 600 001.

2.Commissioner of Customs(Exports),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

3.Assistant Commissioner of Customs (EPCG),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

4.Joint Director General of Foreign Trade,
No.38-39, Whites Road,
Royapettah,
Chennai - 600 014. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent culminating in the issue of Final Order No.8/2006-CUS dated 02.03.2006 issued from File No.VIII/10/79/2005-SC and quash the same.

For Petitioner : Mr.S.Murugappan

For R1 to R3 : M/s.S.Seethalakshmi
Standing Counsel

For R4 : Mr.J.Madana Gopal
SCGSC

O R D E R

The petitioner is aggrieved by the impugned order dated 02.03.2006 passed by the 1st respondent settlement commission.

2.By the impugned order, the settlement commission has settled the case of the petitioner on payment of Customs duty of Rs.5,47,567/- together with interest at 15% per annum.

3.The respondent was directed to calculate the interest within 15 days from the date of the issue justified order for the petitioner to pay the aforesaid amount within a period of 15 days thereafter.

4.The petitioner had imported goods under Export Promotion Capital Goods scheme under the Export and Import Policy issued under the Foreign Trade (Development and Regulations) Act, 1992.

5.The petitioner had availed the benefit of Notification No.28/97- customs dated 01.04.1997 at the time of import. The petitioner had forgone an amounts of Rs.8,47,888/- at the time of import of the capital goods under the aforesaid scheme/notification.

6.At the time of issue of the EPCG, the petitioner had executed bond and had undertaken to pay an interest at 24% per annum in case of failure to discharge export obligation.

7.There was a failure on the part of the petitioner to discharge the export obligation and therefore, the 2nd respondent issued a demand cum Show Cause Notice dated 05.10.2001 and called upon the petitioner to produce proof of discharge of export obligation and on failure to produce the same to pay customs duty foregone together with interest at 24% per annum from the date of assessment of the bill of entry.

8.Meanwhile, the petitioner also applied for extension of time for discharging the export obligation which was granted by the office of the 4th respondent.

9.Petitioner was issued a second notice by the office of the 3rd respondent and called upon the petitioner to furnish the documents.

10.The petitioner furnished some of the documents stating that it had applied for extension of time for discharging the export obligation with the office of the 4th respondent.

11.Meanwhile, the period to discharge export obligation was also extended from 29.04.2002 to 28.09.2003. However, the petitioner was unable to discharge export obligation within the aforesaid extended period and therefore applied once again.

12.Meanwhile, the office of the 3rd respondent called upon the petitioner to produce export obligation discharge certificate within 15 days from date of receipt of the letter, failing which, the petitioner was called upon to pay customs duty and interested at 15%.

13.It is in this background, the petitioner approached the 1st respondent Settlement Commission under Section 127B of the Customs Acct, 1962 admitting it liability of Rs.5,44,853/-.

14.By the impugned order, the Settlement Commission has granted substantial relief to the petitioner by accepting the liability of the petitioner to Rs.5,47,567/- and reduced the interest payable on the aforesaid amount at 15% from the date of import.

15.By a communication dated 28.04.2006, the office of the 3rd respondent also communicated to the petitioner that the amount of interest payable by the petitioner works of Rs.7,05,998/- and therefore, called upon the petitioner to pay the aforesaid amount within 15 days from the date of the said letter.

16.I have considered the arguments advanced on behalf of the petitioner and the respondents.

17.The petitioner had imported capital goods under the EPCG scheme read with Notification No.28/97-Cus dated 01.04.1997.

18.The notification contemplates that in the event an importer failing to fulfil condition, the importer should pay not only the customs duty foregone but also interest at 24% per annum.

19.The Settlement Commission has exercised the discretion vested with it and has reduced the interest at 15%.

20.The amount of interest that has been quantified to be paid by the petitioner has quantified as Rs.7,05,998/- which is less than the customs duty that was payable by the petitioner.

21.In fact the above notification was amended by Notification No.46/2013-cus dated 26.09.2013. The said amendment has kept interest to maximum amount. However, by the time said Notification was issued, the impugned order had been passed.

22.Therefore, I do not find any reasons to interfere with the impugned order. That apart the order of a Settlement Commission is final and conclusive in terms of Section 127J of the Customs Act, 1962. In fact as per 127H(2) of the Customs Act, 1962, an immunity granted shall stand withdrawn if such person fails to pay any sum specified in the order of the Settlement Commission within the specified time or fails to comply with any other conditions subject to which the immunity was granted and upon the provisions of this act shall apply as if such immunity had not been granted. Therefore, there is no merits of the present Writ Petition.

23.The present Writ Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas / jen

To

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+1cc to Mr.S.Murugappan, Advocate, S.R.No.15035

+1cc to Mr.S.Seethalakshmi, Advocate, S.R.No.15338

W.P.No.15715 of 2006
and
W.M.P.No.15488 of 2006

MP(CO)
RN(09/06/2020)