IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2020

Pronounced on : 25.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26666 of 2004

M/s.Axles India Limited,
Represented by its Secretary,
R.K.Kothandaraman,
21, Pattulos Road,
Chennai 600 002. ... Petitioner

vs.

1.Customs & Central Excise Settlement Commission,
Additional Bench,
Narmada Block, 2nd Floor,
Custom House,
No.33, Rajaji Salai,
Chennai 600 001.

2.Deputy Commissioner of Customs (Group-7),
Customs House,
Old No.33, Rajaji Salai,
Chennai 600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 1st respondent, in the order No.VIII/10/57/2003-SC, final order No.15/04-cus dated 29.4.2004 and quash the same.

For Petitioner : Mr.S.Murugappan

For R1 & R2 : Mr.T.R.Senthil kumar
Sr.Standing counsel

O R D E R

The petitioner had imported goods under the Duty Exemption Scheme namely Duty ExemptionEntitlement Certificate(DEEC) Scheme of the Export and Import Policy issued for the years 1992-97 in the year 1993 and 1994.

2. The petitioner was issued with Advance Licence No. 32970/1/01/90/1/13 dated 15.7.1993 and Advance Licence No. 33017/1/01/90/1/05 dated 26.8.1993 by the Joint Director-General of Foreign Trade the licensing authority to import goods duty-free without payment of Customs duty.

3. These 2 Advance Licenses were issued in the year 1993 as per the Export and Import Policy, 1992-97 as inforce at that time read with relevant Hand Book of Procedure issued under and the Foreign Trade (Development and Regulation) Act, 1992. The petitioner was required to fulfil export obligation.

4. Under these licenses, the petitioner was entitled to import goods duty-free as per the corresponding Customs Notifications issued by the Central Government, Ministry of Finance.

5. Imports were made under Customs Notification No 159/90-Cus dated 13.3.1990 and Customs Notification 204/92 Cus dated 19.5.1992 issued by the Central Government, Ministry of Finance which were issued to implement the Policy of the Central Government, Ministry of Commerce under the aforesaid Export Import Policy.

6. At the time of obtaining respective advance licences, the petitioner had executed bonds and had undertaken to pay interest at 24% in the event of failure to fulfil the export obligation undertaken under the respective advance licence issued to the petitioner.

7. The petitioner cleared the goods without payment of duty in terms of Customs Notification No 159/90-Cus dated 13.3.1990, 204/92 Cus dated 19.5.1992 and 44/93 Cus dated 28.2.1993.

8. It appears that the petitioner had difficulties in meeting of export obligation undertaken under the respective

advance licence and therefore failed to discharge the export obligation undertaken.

9. The petitioner was therefore issued with a show cause notice dated 25.3.2003 by the 2nd respondent. The notice called upon the petitioner to pay an amount of Rs..48,18,110/-.

10. The 2ndrespondent thereafter, re-quantified the amount of customs duty to be paid by the petitioner as Rs. 39,25,511/-.

11. Before approaching the 1st respondent Settlement Commission, the Joint Director General of Foreign Trade had declined to extend the period for discharging the export obligation as a result of which the liability of the petitioner got crystallised and it is in this background the above application to settle the case was filed before the 1st respondent settlement commission to settle the case.

12. The petitioner thereafter approached the 1st respondent Settlement Commission on 9.6.2003 to settle the dispute under section 127 B of the Customs Act, 1962 and admitted liability of Rs. 39,25,511/- apprehending collateral proceedings by the authorities to impose penalty interest and prosecution.

13. Before the 1st respondent Settlement Commission, the petitioner prayed for settling the case on payment of payment of Rs. 39,25,511/- and prayed for immunity from penalty and waiver of interest under the provisions of the Customs Act, 1982. The petitioner paid the aforesaid amount on 27.5.2005.

14. Before the Settlement Commission, the petitioner primarily submitted that there is no provision under the Customs Act, 1962 and the relevant notification cited above which enabled the 2nd respondent to levy interest and penalty. In this connection, reference was made to several decisions of the courts before the Settlement Commission.

15. The Settlement Commission has passed the impugned final order No.15/2004-Customs dated 29.4.2004 and has allowed the application subject to the petitioner to pay a simple interest at 10% of the amount of duty within a period of 15 days from the date of receipt of the order. Subject to aforesaid payment, the petitioner was granted immunity from penalty under section 127 H (1) of the Customs Act, 1962.

16. The petitioner is aggrieved by the aforesaid order of the 1st respondent Settlement Commission asking the petitioner to pay simple interest on the duty foregone at 10% from the due date till the date of actual payment, the present writ petition has been filed.

17. It has been submitted by the learned counsel for the petitioner that the 1st respondent Settlement Commission erred in imposing interest as interest was not in contemplation of the notifications under which the goods were cleared without payment of Customs duty.

18. It is further submitted that the respondents cannot enforce interest liability on the petitioner on the strength of the bond executed by the petitioner for the grant of the respective Advance Licence under the Duty Entitlement Exemption Scheme of the Export and Import Policy, 1992-97 read with relevant Handbook of Procedure issued for the aforesaid purpose.

19. Learned Counsel for the Petitioner relied on the decision of the Courts in the following cases:-.

i) India Carbon Ltd., Etc vs. The State of Assam, 1997(6) SCC 479

ii)V.V.S.Sugars vs. Govt. of Andhra Pradesh and Ors, AIR 1999(SC) 2124

iii) Delta Paper Mills Ltd., vs. Collector of Central Excise, Gunter, 1995 (77) E.L.T. 544 (A.P.)

iv) The Income Tax Officer, 'A' ward Indore v. Gwailor Rayon Silk Manufacturing (Weaving) Co., Ltd., Birlagram.Nagda, AIR 1976 (SCC) 43

20. The learned counsel for the petitioner thereafter referred to the following decisions:-

i) In Re : SRF Ltd., 2003(158 E.L.T.788 (Sett.Comm.)

ii) Commissioner of Customs (Sea Port), Chennai vs. S.R.F.Ltd., 2004 (164) E.L.T.412 (Mad.)

iii) Rexnod Electronics and Controls Ltd., vs. Union of India, 2008(224) E.L.T.184 (S.C)

iv) Fal Industries Limited vs. Directorate General of Foreign Trade 2014 (306) E.L.T. 58 (Mad.)

v) Sheshank Sea Foods Pvt.Ltd.,vs. Union of India, 1996 (88) E.L.T.626 (S.C.)

vi) Pratibha Syntext Ltd., vs. Union of India , 2003(157) E.L.T.141 (Bom.)

vii) Commissioner of Customs, Hyderbad vs. Pennar Industries Ltd., 2015(322) E.L.T.402 (S.C.)

viii) Commr.of Cus.(Port) vs. Settlement Commission, Cus & C.Ex. 2005(179) E.L.T.386 (Cal.)

21. It is submitted that though these decisions were against the petitioner they were not binding on the court in as much as the issue raised by the petitioner that in absence of substantive provision to demand interest, the question of grant only partial waiver of interest by the 1st respondent Settlement Commission cannot be sustained.

22. It is submitted that the 1st respondent Settlement Commission ought to have considered the statutory frameworks of the Foreign Trade (Development and Regulation) Act, 1992 allowed complete waiver. It is therefore submitted that these decisions cannot be construed to be ratio decidendi and therefore the courts can interfere under the circumstances.

23. The learned counsel for the petitioner therefore place reliance on the decision of the Honourable Supreme Court and that of the Bombay High Court in the following cases:-

i) Commissioner of Income Tax vs. M/s. Sun Engineering Works (P) , 1992 Supp 1 SCR 732

ii) Krishena Kumar and Anr. Etc. Etc. vs. Union of India and Ors, 1990 AIR 1782, 1990 SCR (3) 352

iii) Mohandas Issardas And Ors. Vs. A.N.Sattananthan And Ors. AIR 1955 Bom 113 (1954) 56 BomMLR 1156

24. I have considered the arguments of the learned counsel for the petitioner and the respondent. I have also perused the records which have culiminated in the impugned order and also considered the case laws.

25. The Central Government has Issued Notification No. 46/2013-Customs dated 26.9.2013. The said notification has amended the a host of Notifications including Notification No 204/92-Customs dated 19.5.1992 wherein it has been stated that in a case of default in export obligation, when the duty on goods is paid to regularise the default, the amount of interest paid by the importer shall not exceed the amount of duty if such regularisation has been dealt in terms of Public Notice of the Government of India in the Ministry of Commerce No. 22 (RE-2013)/2009-2014 dated 12th August, 2013. However, in the present case the Settlement Commission had exercised its discretion the as per the provision as it stood at that point of time and granted partial waiver of interest. I therefore do not find any infirmity in the exercise of discretion vested with the settlement commission while granting partial waiver to the petitioner at that point of time.

26. Though not cited, it is noticed that this issue has already already answered by the Honourable Supreme Court in Rexnord Electronics and Controls Limited Vs. Union of India and Others, (2008) 12 SCC 156, wherein the Honourable 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.

27. The arguments advanced by the learned counsel for the petitioner though attractive can not be accepted in the light of the decision of the Hon'ble Supreme Court in Rex Nord Electronics and Control Ltd versus Union of India 2008 (224) E LT 184. It has already answered the issue against the petitioner. There the court held as follows:

> "The appellant then having evaded payment of duty was bound to pay the same and further more 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 a settlement commission did not have any jurisdiction to waive the amount of interest payable under the bond, we do not see 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 interest under the bond."

28. Since the revenue has not come forward with the challenge to the impugned order of the 1st Respondent Settlement Commission, I am not inclined to upset the order which has partly come in favour of the petitioner. The stand of the petitioner is one of an avarice. Having enjoyed duty free exemption it cannot ask for waiaver of interest. In fact, it would have been ideal for the petitioner to withdraw the present writ petition particularly in the light of the decision of the Honourable Supreme Court cited above instead of risking the benefit which has inured to it from the impugned order of the 1st respondent Settlement Commission.

29. If the decision of the Honourable Supreme Court in Rex Nord Electronics and Control Ltd versus Union of India 2008 (224) E LT 184 had been available before the 1st respondent Settlement Commission had passed the impugned order, the petitioner would not have got any relief which itself is a substantial relief.

30. Further, the order of the 1st respondent Settlement Commission is conclusive in terms of section 127 J of the Customs Act, 1962. In fact, as per Section 127 H (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.

31. Since the petitioner had wrongly assumed that it could challenge the impugned order of the 1st respondent Settlement Commission perhaps under a mistaken notion, I am not inclined deny and dilute the benefit which was conferred to the petitioner under impugned order of the 1st respondent Settlement Commission.

32. Petitioner is therefore directed to pay interest within a period of 30 days from date of receipt of copy of this order failing which the 2nd respondent will be entitled to proceed under Section 127 H of the Customs Act, 1962 as if no immunity was granted. The writ petition stands disposed with the above observation. No cost.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Customs & Central Excise Settlement Commission,
Additional Bench,
Narmada Block, 2nd Floor,
Custom House,
No.33, Rajaji Salai,
Chennai 600 001.

2.The Deputy Commissioner of Customs (Group-7),
Customs House,
Old No.33, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.S.Murugappan, Advocate Sr.15893
1cc to M/s.T.R.Senthilkumar, Advocate Sr.16901

W.P.No.26666 of 2004

mp[co]
srg 25/08/2020