



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 13609 of 2005
and
W.M.P. No. 14921 of 2005

Yousuff Kasim Sait

...Petitioner

Vs

1.Customs and Central Excise
Settlement Commission,
Additional Bench, Nadmada Block,
Customs House, 33, Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs,
Customs House, 33, Rajaji Salai,
Chennai - 600 001.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the First Respondent viz. The Customs and Central Excise Settlement Commission in so far as it relates to the imposition of interest and penalty in SA(C) No. 33/2002 dated 31.03.2005 under File No.VIII/10/33/2002-SC and to quash same.

For Petitioner : Mr. Zaffarullah Khan

For Respondents : Mr. S. Rajasekar
Junior Standing Counsel

for Ms. R. Hemalatha
Senior Standing Counsel

ORDER

The Petitioner has challenged the impugned order dated 31.03.2005 bearing reference File No.VIII/10/33/2002-SC passed by the First Respondent Settlement Commission in S.A(C) No. 33/2002 insofar as the Petitioner has been asked to pay a penalty of Rs.10,00,000/-.



2. The Petitioner along with a few others has traded in DEEC Licenses by manipulating and fabricating the amount and had facilitated various importers to avail the benefit of advance licence scheme on the strength of fabricated/manipulated DEEC licenses. On account of the Petitioner the revenue would have lost a sum of Rs. 2,42,36,494/-.

3. Appearing on behalf of the Petitioner learned counsel for the Petitioner submits that imposition of penalty for an amount of Rs.10,00,000/- on the Petitioner was discriminative and therefore the impugned order of the First Respondent-Settlement Commission was liable to be set said insofar as the penalty of Rs.10,00,000/- was imposed.

4. It is further submitted that the Petitioner has paid a sum of Rs.3,34,696/- in excess and therefore prays that same may be directed to be appropriated towards penalty.

5. I have considered the arguments advanced on behalf of the Petitioner and the Respondents.

6. The extent of customs duty which had escaped payment at the time of import of goods by various importers on the strength of fabricated/manipulated DEEC licenses by the Petitioner in comparison with others involved is comparatively high and considering the fact that the Petitioner has paid the customs duty which had escaped payment on account of the fraud played by the Petitioner, the First Respondent-Settlement Commission has awarded a meagre penalty of Rs.10,00,000/- only. Therefore I find no reasons to interfere with the order passed by the First Respondent-Settlement Commission.

7. At the same time, the Petitioner appears to have paid an amount of Rs.3,42,000/- in excess of the amount agreed to be settled by the Petitioner.

8. Therefore, I am inclined to allow the Petition, a set off of the aforesaid amount from the penalty of Rs.10,00,000/- imposed by the Settlement Commission subject to verification by the office of the Second Respondent. The Petitioner is therefore directed to pay a sum of Rs.6,57,304/- within a period of thirty days from the date of receipt of this order. The office of the Second Respondent may therefore confirm whether the aforesaid amount of Rs.6,57,304/- satisfies the order of the First Respondent-Settlement Commission within a period of thirty days thereafter. If there is any balance to be paid, the Petitioner is directed to pay the balance within a period of thirty days thereafter.



9. On such payment, the order of the First Respondent-Settlement Commission shall be construed to have been complied.

10. In case, the Petitioner fails to pay the balance amount within the period prescribed herein, the immunity granted to the Petitioner by the Investigation Officer shall stand withdrawn and the customs department will be free to initiate appropriate proceedings in accordance with law against the Petitioner.

11. The present Writ Petition stands disposed with the above observation. No cost. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

1. Customs and Central Excise Settlement Commission,
Additional Bench, Nadmada Block,
Customs House, 33, Rajaji Salai,
Chennai - 600 001.

2. The Commissioner of Customs,
Customs House, 33, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr. Zaffarullah Khan, Advocate, S.R.No.15501

+1cc to Mrs. Hemalatha, Advocate, S.R.No.14899

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and
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VGII (CO)
RN (13/07/2020)