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

Date of Decision: 10.02.2020

+ W.P.(C) 4143/2018

THE PRINCIPAL ADDITIONAL DIRECTOR GENERAL
DIRECTORATE OF REVENUE INTELLIGENCE
THROUGH DEPUTY DIRECTOR

..... Petitioner

Through: Mr. Aditya Singla, Sr. Standing
Counsel with Ms. Akanksha Mehta, Adv.

versus

CUSTOMS, CENTRAL, EXCISE AND SERVICE TAX
SETTLEMENT COMMISSION,
PRINCIPAL BENCH & ORS.

..... Respondents

Through: Mr. Saurabh Kapoor, Adv. for R-2 to
R-4
Mr. Ashish Bansal, Adv. for R-8 to R-11

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This writ petition has been preferred challenging the order passed by Settlement Commission dated 15th February, 2018 (Annexure P-1 to the memo of this writ petition). The impugned order has been passed by the Settlement Commission under Section 127C of the Customs Act, 1962.

2. **FACTUAL MATRIX:**

- (i) These proceedings emanate from show cause notice dated 7th April, 2017, issued by the Additional Director General (ADG), Directorate of Revenue Intelligence (DRI), New Delhi, to respondent Nos.2 to 11 herein.
- (ii) Given the limited scope of controversy in the present writ petition, it is not necessary to enter into detail in the facts of the case, suffice it is to state that at about 9:15 p.m. on 09.04.2016, Officers of the DRI intercepted an Innova vehicle, one Ford Figo car and a truck, which arrived at a godown located in Darshan Vihar, Burari, Delhi, and on searching the said vehicles, 300 cartons of cigarettes, with 60 boxes in each carton were found concealed behind Aluminium scrap. The goods were found to be of Indonesian origin. The persons in the aforesaid vehicles were unable to produce any document/evidence of licit import of the aforesaid cigarettes. Under the reasonable pleas that the cigarettes have been smuggled to India, they were seized. Subsequently, another container, at ICD Ludhiana, imported by respondent No.2, was also seized, in which imported cigarettes were found concealed.
- (iii) Mr. Neeraj Aggarwal, Mr. Tarun Aggarwal, Mr. Sanjiv Aggarwal, Mr. Murarilal Girdharilal Sharma and Mr. Sanjay Lal Choudhary and Mr. Bhushan Bansal who were involved in the aforesaid imports filed W.P. No.12517/2016 before the High

Court of Punjab & Haryana seeking provisional of release of cigarettes imported with Bills of Entry Nos. (i) 4785466 dated 04.04.2016, (ii) 4308262 dated 19.02.2016 and (iii) 4410560 dated 27.02.20216 which had been seized at Ludhiana and Delhi. They also requested that directions be issued, to the DRI, to issue show cause notice, so that they could approach the Settlement Commission and have the case settled.

- (iv) The High Court of Punjab and Haryana disposed of the aforesaid writ petition with directions *inter alia* to the DRI, to issue a show cause notice in respect of the aforesaid three Bills of Entry under Section 28 read with Section 123 of the Customs Act, 1962 (hereinafter referred to as “the Act”) within four weeks, and to the petitioners, before the High court to move the Settlement Commission within four weeks of the date of issuance of the show cause notice. The Settlement Commission was given liberty to decide all issues in respect of the aforesaid three Bills of Entry.
- (v) Subsequently, that the order dated 26.08.2016 passed on an application moved by DRI, time of issuance of show cause notice was extended, by the High court, by four weeks.
- (vi) Ultimately, show cause notices, were issued, proposing confiscation of the cigarettes imported with the aforesaid three Bills of Entry Nos. (i) 4785466 dated 04.04.2016, (ii) 4308262 dated 19.02.2016 and (iii) 4410560 dated 27.02.20216 as well as

confirmation and demand of duty of Customs Duty of ₹6,74,92,998/- in respect of the cigarettes and ₹2,77,451/- in respect of the Aluminium scrap imported with the said Bills of Entry. The show cause notices also proposed appropriation towards the said demand of ₹6,30,84,822/- deposited during the investigation. Respondent Nos.2 to 11 were also directed to show cause against imposition of penalty.

- (vii) Respondent Nos.2 to 11 approached the Settlement Commission after depositing ₹6,63,66,048/- against demand of ₹6,77,70,449/- proposed in the show cause notice. Liability, to interest of ₹4,76,389/- was also admitted.
- (viii) The three applications of settlement were filed on 16.08.2017, 11.12.2017 and 12.12.2017.
- (ix) In the *interregnum*, Notification No.103/2016 – Customs(NT) dated 26th July, 2016, cigarettes were notified under Section 123 of the Customs Act, 1962. In other words, on the date of filing of aforesaid settlement applications by respondent Nos.2 to 11, cigarettes stood notified under Section 123, by the aforesaid notification.
- (x) Section 127B of the Customs Act, 1962 provides thus:

“127B. Application for settlement of cases.- (1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, in respect of a case, relating to him make an application, before adjudication to the Settlement Commission to have

the case settled, in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification, under-valuation or inapplicability of exemption notification [or otherwise] and such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,—

(a) the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer;

(b) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(c) the applicant has paid the additional amount of customs duty accepted by him along with interest due under section 28AA:

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending in the Appellate Tribunal or any court:

Provided also that no application under this sub-section shall be made in relation to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) has been committed:

Provided also that no application under this sub-section

shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975 (51 of 1975).

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be specified by rules.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

[(5) Any person, other than an applicant referred to in sub-section (1), may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified by rules.]”

- (xi) Among the objections which were taken by the DRI before the Settlement Commission, was the objection that, by virtue of the third proviso to Section 127B of the Customs Act (*supra*), the Settlement applications were not maintainable, as they had been filed at the time when cigarettes stood notified under Section 123. The aforesaid objection of the DRI has been rejected, by the Settlement Commission in the impugned final order dated 15th February, 2018, the findings of the Settlement Commission read as under:

“(v) The Bench finds that DRI and jurisdictional Commissioner has contested that Cigarettes comes within the ambit of goods on which Section 123 applies and on the date of filing application under Section 127B of the Customs Act, 1962, cigarettes were notified goods under Section 123 of Customs Act, 1962, vide Notification No 103/2016-Customs (NT) dated 25.7.2016, and hence the

applicant was not allowed to apply for Settlement. The Bench finds that all the Bills of entry no 4785466 dated 04.04.2016, 4308262 dated 19.02.2016 and 4410560 dated 27.02.2016 were filed before 25.7.2016, the date on which the cigarettes were notified under Section 123 of the Customs Act, 1962, and the Bench does not agree with the contention of the Revenue that the applicant cannot apply for Settlement. The Bench refers to the case law in case of DGFT V/s Kanak Exports [2015(326)ELT 26(SC) wherein Para 108 of the judgement states that Notification cannot be given retrospective effect. ”

- (xii) Having thus the applications filed before us, the impugned final order, of the Settlement Commission proceed to settle the case arising out of the aforesaid show cause notice dated 07.04.2017 quantifying the duty payable at ₹6,63,66,448/-, along with interest ₹46,45,025.05. Confiscation of the aforesaid cigarettes and aluminium scraps on the option to redeem the same at ₹10,000/-. Personal penalties have also been imposed on the notified applicants before the Settlement Commissions who are respondents in the present proceedings.
- (xiii) Aggrieved by the aforesaid order dated 15th February, 2018 passed by the Settlement Commission, the DRI has filed the present writ petition.

3. **Arguments canvassed by the counsel for petitioner**

Mr. Aditya Singla, Advocate appearing on behalf of the petitioner – DRI contends that the Settlement Commission seriously erred in entertaining the applications before it by respondent Nos.2 to 11, as, in view of the fact

that cigarettes stood notified in Section 123 of the Act, the applications were not maintainable. Learned counsel has also submitted that the reliance by the Settlement Commission, on the judgment of the Hon'ble Supreme Court in *DGFT vs. Kanak Exports* (*supra*) was also misdirected.

4. **Arguments on behalf of the respondents:**

Mr. Saurabh Kapoor, Advocate appearing for the respondent Nos.2 to 4 canvassed two preliminary objections viz. Firstly, that the present writ petition is not maintainable at the instance of DRI and could have been filed only by the Commissioner, who was seized of the show cause notice issued to the petitioner and secondly, that this Court did not possess the territorial jurisdiction to hear the matter as the show cause notices have been issued by the Office of the DRI and imports also taken place within the jurisdiction of the Punjab and Haryana. On merits learned counsel for respondents contends that the applications before the Settlement Commission had been filed as per the liberty granted by the High Court of Punjab and Haryana and in view thereof, the applications should not have been rejected on the ground of maintainability. Besides, learned counsel submits that the finding of the Settlement Commission, that, as cigarettes were not notified under Section 123 on the date of the importation by his clients, the applications filed, by them before the Settlement Commission were maintainable.

5. **REASONS:**

- (a) Having heard the counsel for both sides and looking to the facts and circumstances of the case, it appears that looking to the provisions of Section 127B especially, third proviso thereof, no application could

have been made by the respondent in relation to the goods to which Section 123 of the Customs Act, 1962 applies. In the facts of the present case, show cause notice was issued to this respondent on 7th April, 2017 (Annexure P-11 to the memo of this writ petition). The goods involved in this case is cigarettes which is a notified item. The Central Government notification is dated 25th July, 2016 with Notification No.103/2016 – Customs(NT).

- (b) Having heard the learned counsel for respondents and applied our mind to the record, we are unable to extend to any of the submissions advanced by Mr. Saurabh Kapoor, Advocate on behalf of respondents and entirely concur with Mr. Aditya Singla, Advocate in his submission that the Settlement Commission had no jurisdiction to entertain the respondents' applications.
- (c) We find that two preliminary objections advanced by Mr. Saurabh Kapoor, Advocate on behalf of the respondents to be totally bereft of substance. The show cause notices, in the present case were issued by the DRI. Seizure of the goods had also been effected by the DRI. The show cause notices were yet to be adjudicated. It cannot, therefore, be said that the DRI "aggrieved party" ineligible to maintain a writ petition against the order of the Settlement Commission.
- (d) Equally, we find no substance in the objection regarding territorial jurisdiction as advanced by learned counsel for the respondents. A Division Bench of this Court has in *Vishnu Security Services vs.*

Regional Provident Fund Commissioner (2012) 129 DRJ 661 (DB) has already held that, where the order of quasi judicial authority, which is being challenged, has been passed within the territorial jurisdiction of this Court, this Court would have jurisdiction to entertain the matter. Admittedly, the impugned order was passed by the Principal Bench of Settlement Commission located at New Delhi. As such, we reject the objection of territorial jurisdiction, as raised by Mr. Saurabh Kapoor, appearing on behalf of the respondents. The third proviso to Section 127B of the Customs Act states that “No application in this Section *shall be made* in relation to goods to which Section 123 applies”. As such, maintainability of the application vis-a-vis notification of the goods under Section 123 of the Act, would have to be assessed on the basis of goods were so notified *on the date when the application was made, and not on the date when the goods were imported*. Dealing with the expression “made” as implied in Section 58(2) of the Motor Vehicles Act, 1939 which refers to renewal of a permit “on an application made and disposed of”, the High Court of Allahabad in ***Kanchan Singh vs. S.T.A.T. Lucknow***, AIR 1986 All 23 held that the word “made” means “filed” which implied receipt by the authority concerned. Similarly, dealing with expression “made” as contained in Section 66 of the Indian Income Tax Act, 1922, the High Court of Mysore held in ***Shanta Bai Devarao v. CIT (1962) 46 ITR 272 (Mys.)*** that an application under Section 66(1) of the Act can be deemed to have been ‘made’ only when that application is received in the office of the Appellate Tribunal. An application posted before the expiry of period of

limitation and received by the office of the Tribunal after the expiry of that period cannot be held to have been 'made' within the prescribed period. Similarly, in *Rishikesh v. Salma Begum*, (1995) 4 SCC 718, the Hon'ble Supreme Court approved the definition "make", contained in the Collins English Dictionary has meaning "to cause to exist.. to do in form of law; to perform with due formalities; to execute in legal form; .."

- (e) The proscription contained in third provision to Section 127B of the Customs Act, 1962 clearly attaches at the time of making of the application before the Settlement Commission, and not at any prior or later period of time including the date of the import of the goods. Applications, in respect of items which are notified under Section 123 of the Act on the date when the applications are made, are statutorily incompetent, by virtue of the aforesaid third proviso to Section 127B of the Customs Act.
- (f) Thus, in view of these facts, once the goods in question are covered under Section 123, in view of the aforesaid notification, no application could have been preferred by the respondents under Section 127B of the Customs Act, 1962. The first application was preferred on 16.08.2017, the second was preferred on 11.12.2017 and the third application was preferred on 12.12.2017 which are subsequent to the aforesaid notification dated 25th July, 2016. Thus, by no stretch of imagination it can be said that the Settlement Commission had any power, jurisdiction and authority to decide an application preferred by the respondent under Chapter XIV of the Customs Act, 1962. Thus,

the order dated 15th February, 2017 passed by the Settlement Commission (Annexure P-1 to the memo of this writ petition) *de horse* the jurisdiction. Hence, the same deserves to be quashed and set aside.

- (g) We are unable to agree with the submission of Mr. Saurabh Kapoor, Advocate that the settlement application having been filed pursuant to the liberty granted by the High Court of Punjab and Haryana, was *ipso facto* maintainable. It is obvious that the High Court of Punjab and Haryana never entered into the aspect of maintainability of the settlement application. In any event, as cigarettes were notified prior to the filing of the settlement application, the applications were expressly not maintainable. It is well settled that an order passed by a Court cannot be so interpreted as permitting a statutory authority to act in violation of the statute. We are unable, therefore, to extend the order of the High Court of Punjab and Haryana as permitting the Settlement Commission to entertain the application, filed by the respondents before it on merits, even in the face of the expressed statutory proscription contained in the third proviso to Section 127B of the Customs Act. The reliance by Mr. Saurabh Kapoor, Advocate on the judgment of the High Court of Punjab and Haryana is, therefore, misconceived, is accordingly rejected.

6. In view of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the order dated 15th February, 2018 (Annexure P-1 to the memo of this writ petition) passed by the Settlement Commission.

7. With these observations, this writ petition stands disposed of.

CM APPL.16289/2018 (*Stay*)

8. In view of the final order passed in W.P.(C) 4143/2018, the application stands disposed of as infructuous.

CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 10, 2020
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