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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4022 OF 2012

Union of India through the
Commissioner of Customs (Import)
Jawaharlal Nehru Custom House
Nhava Sheva, Taluka – Uran
Dist. Raigad
Maharashtra – 400 707.

....Petitioner

V/s.

1. Bobsons Corporation,
a sole proprietary concern of
Shri Amrit Pal Singh Chandok
having its place of business at
881, Adarsh Nagar, Oshiwara,
Jogeshwari (W),
Mumbai – 400 102.

2. Settlement Commission, Customs
& Central Excise Additional Bench,
Mumbai , 6th Floor, Plot No.C-24.
Utpad Shulk Bhavan,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondents

Mr. P.S. Jetly, Senior Advocate a/w Mr. J.B. Mishra and Ms. Sangeeta Yadav
for Petitioner.

Mr. Prakash Shah for Respondents.

**CORAM : K.R. SHRIRAM &
MILIND N. JADHAV, JJ.
DATED : 15th JULY, 2022**

ORAL JUDGMENT : (PER : K.R. SHRIRAM, J.)

1. Respondent No.1 had filed various bills of entries for clearance of goods with declared description “Secondary Defective High Speed Drills/Rods”. Intelligence report was received that there has been gross

misdeclaration in the description, quantity and value in order to evade payment of appropriate duty of customs. Therefore, Special Investigation and Intelligence Branch (SIIB) of the customs department took up the investigation and found lot of discrepancies. Accordingly, show cause notices were issued. Upon receiving show cause notice Respondent No.1 approach the Settlement Commission under Section 127 B of the Customs Act, 1962 (the Act) by filing two applications. The duty demanded in two show cause notices was Rs.2,13,72,356/- whereas petitioner admitted additional duty of Rs.72,64,064/-. The application that was filed on 21st September 2010 came to be disposed by an order dated 25th February 2011. The Union of India through Commissioner of Customs (Import) has approached this court impugning the said order dated 25th February 2011 passed by Respondent No.2 – Settlement Commission.

2. Mr. Jetly urged that Section 127 B(1) of the Act mandates that any importer in respect of a case relating to him may 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. The application shall contain full and true disclosure of its duty liability which has not been disclosed before the proper officer, the manner in which such liability has 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.

3. Mr. Jetly submitted that from the reading of impugned order it is evident that disclosure made by Respondent No.1 was neither full nor true. In such circumstances, Respondent No.2, i.e., the Settlement Commission ought to have summarily rejected the application for settlement.

4. To elaborate, Mr. Jetly submitted that application filed by Respondent No.1 on 21st September 2010 accepted duty liability of Rs.16,03,948/- as against demand of Rs.36,32,032/- set out in the show cause notice. This liability was revised upward from Rs.16,03,948/- to Rs.22,11,856/- during the course of hearing by way of submissions dated 16th January 2011. This liability was further revised upward from Rs.16,03,948/- to Rs.22,11,856/- and to Rs.32,08,337/-. According to Mr. Jetly, it was thus evident that Respondent No.1 failed to comply with the mandatory conditions of Section 127 B of the said Act. Respondent No.1, it was submitted that at no point of time made a disclosure of the correct transaction value at which he had procured the goods.

5. Mr. Jetly also submitted that Respondent No.1 continued with his dishonesty even before the Settlement Commission by making references to

other cases that could not have been made and therefore failed to comply with the condition precedent for making application to Settlement Commission. Therefore, the order requires to be quashed and set aside.

6. Mr. Jetly also referred to the order dated 25th February 2011 passed by Respondent No.2 regarding the proceedings that was held on 3rd February 2011. Mr. Jetly pointed out that even in the said order it is recorded that Respondent No.2 had asked Respondent No.1 to make true disclosure regarding the price actually paid for the goods rather than taking shelter under other appeal orders to make piecemeal admissions of duty liability. Mr. Jetly stated that in the order Respondent No.2 has noted that applicant was also reminded of its obligation to make a true disclosure and to pay the admitted duty liability with interest before the case was taken up for further disposal. Mr. Jetly submitted that this itself was enough to conclude that petitioner was in breach of the conditions precedent to make true and full disclosure and Respondent No.2 have rejected the application.

7. Mr. Shah submitted that the order dated 25th February 2011 was only the record of proceedings of the hearing held on 3rd February 2011, was not the final order and even got merged with the final order dated 12th September 2011 which is impugned in this petition. Mr. Shah submitted that even though the Settlement Commission has reminded applicant-Respondent No.1 to meet its obligation to make a true disclosure

and to pay the liability with interest before the case was taken up for further disposal, Respondent No.2 having taken up the case for further disposal should be admitted to have accepted that applicant-Respondent No.1 had mended its way and applicant-Respondent No.1 has also paid the admitted duty liability with interest. Mr. Shah submitted that Respondent No.2 went ahead, entertained the application and passed its final order which is impugned in the petition and there is not even a reference in the final order about any failure on the part of applicant-Respondent No.1 to make full and true disclosure to Respondent No.2. Mr. Shah submitted that in the impugned order what transpired during the hearing on 3rd February 2011 is referred to and Respondent No.2 has not made any reference to the alleged failure to make full disclosure. Mr. Shah further submitted that in the final order the difference between majority view and minority view (as there was a split 2 : 1 decision) was only on the valuation of the imported goods and the resultant customs duty payable and not on the conduct of respondent no.1.

8. It is settled law that this court is not the court of appeal while exercising its jurisdiction under Article 226 of the Constitution of India against the order of Settlement Commission. The Hon'ble Apex Court in *Santogen Textile Mills vs. Union of India*¹ upheld the view expressed by Division Bench of this Court in *Santogen Textile Mills vs. Union of India*² that this court would only be permitted to examine legality of the procedure

1 2002 (145) E.L.T. A162

2 2002 (143) E.L.T. 289 (Bom)

and not validity of the order of Settlement Commission. Even in the case that was before this court (Bombay judgment) in *Santogen Textile Mills* (supra) the court observed that the Hon'ble Apex Court in *Jyotendrasinhji vs. S.I. Tripathi*³ while considering the scope of writ jurisdiction of the High Court, cautioned the writ court and permitted it to examine the legality of the procedure followed, not the validity of the order, it not being a court of appeal. The court also noted that the Hon'ble Apex Court had laid down that the writ court should not be concerned with the decision but with the decision making process. Paragraph No. 20 and 21 of the *Santogen Textile Mills* (supra) (Bombay judgment) reads as under :

20. In the present case, it is not disputed that, full and true disclosures were not made by the petitioners. The second report submitted by the Commissioner of Excise (Inv.) and the facts referred to in Para 10 (supra) is sufficient to conclude this issue. The Settlement Commission could have dismissed the entire petition of the petitioner, but considering the fact that subsequent diversion of raw material and evasion of excise duty being the subject matter of the other three show cause notices the Settlement Commission thought it fit not to reject the petition presented by the petitioners and left it open to the petitioners to contest the said show cause notices. In this view of the matter, we are of the opinion that the Settlement Commission has exercised its discretion reasonably and judiciously and rightly confined its enquiry to the disclosures made in the application filed under Section 32E(1) of the Act. The Apex Court in the case of Fatechand Nursing Das v. Settlement Commission (II and WT) 176 ITR 169 and followed by it in another judgment in the case of Jyotendrasinhji v. S.I.Tripathi (1993) 201 ITR 611, while considering the scope of writ jurisdiction of the High Court cautioned the writ Court and permitted it to examine the legality of the procedure followed, not the validity of the order, it not being a Court of appeal. As laid down by the Apex Court, the writ Court should not be concerned with the decision but with the decision making process.

21. Thus, taking overall view of the matter, we are of the

³ (1993) 201 ITR 611

opinion that the Settlement Commission adopted proper decision making process and the same is in accordance with law. No fault can be found with the decision making process. As observed by the Apex Court in S.I. Tripalhi's case (supra) judicial scrutiny cannot go beyond this point. As already pointed out above, the Settlement Commission was well within its jurisdiction to refuse to grant immunity to the petitioners. The Settlement Commission rightly came to the conclusion that the petitioners failed to make true and full disclosure of its duty liability, as such it was well within its jurisdiction to confine itself to the petition filed under Section 32E(1) of the Act. As a matter of fact, we are constrained to observe that the petitioners did not approach the Settlement Commission with clean hands. Petitioners did not make full and true disclosure as required by law. They suppressed material facts from the Settlement Commission. It came before the Settlement Commission through the report of the Commissioner of Central Excise. It was expected of the petitioner to make true, full and correct disclosure at the first instance. Having failed to disclose true and full material particulars, the petitioner cannot be allowed to take advantage of the material brought before the Commission to say that other disputes ought to have been covered and treated as part of the impugned Settlement process. In our view, considering the conduct of the petitioners before the Settlement Commission and attempt to play game of hide and seek, we are not inclined to entertain this petition.

9. We feel it will also be useful to reproduce the following paragraph from *Jyotendrasinhji* (supra).

It is true that the finality clause contained in Section 245-I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review. May be, there is also some force in what Dr. Gauri Shankar says viz., that the order of commission is in the nature of a package deal and that it may not be possible, ordinarily speaking, to dissect its order and that the assessee should not be permitted to accept what is favourable to

him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the commission to make a particular order; unless of course the commission itself chooses to, give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is, contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (audi alteram partem) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears, to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same whether the order of the Commission is contrary to any of the provisions of the Act apart from ground of bias, fraud & malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in Sri Ram Durga Prasad v. Settlement Commission 176 I.T.R. 169, which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji J., speaking for the Bench comprising himself and S.R. Pandian, J., observed that in such a case, this Court is "concerned with the legality of the procedure followed and not with the validity of the order." The learned Judge added 'judicial review is concerned not with the decision but with the decision-making process.' Reliance was placed upon the decision of the House of Lords in Chief Constable of the North Wales Police v. Evans, [1982] 1 W.L.R.1155. Thus, the appellate power under Article 136 was equated with the power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant.

Though Mr. Jetly submitted that the order dated 25th February 2011 recording the proceedings held on 3rd February 2011, the Settlement Commission has noted that respondent no.1 had to be reminded of its obligation to make a true disclosure, that was not the final order and it got

merged with the final order dated 12th September 2011 which is impugned in this petition. In the final order, there is no reference about any failure on the part of respondent no.1 to make full and true disclosure to respondent no.2. Even in the minority view, there is no reference about respondent no.1 not making full and true disclosure. The minority view was only differing with the majority view on the valuation of the imported goods and the resultant customs duty payable and not on the conduct of respondent no.1. Having perused the findings of the Settlement Commission, we find nothing wrong in the legality of the procedure adopted. We would go ahead and state that there is nothing wrong in the validity of the order of the Settlement Commission.”

10. In the circumstances, we are not inclined to entertain the petition.

11. Petition dismissed with no order as to costs.

12. The bank guarantee submitted by petitioner pursuant to the order dated 31st July 2012 to be cancelled and returned within six weeks of receiving application. If the bank guarantee has been encashed then respondent shall refund the encashment amount within six weeks of receiving an application together with applicable interest, in accordance with law.

(MILIND N. JADHAV, J.)

(K.R. SHRIRAM, J.)