

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2778 OF 2001

1. M/s Halliburton Offshore Services Inc.,]
Sanghi Oxygen Compound, Mahakali]
Caves road, Andheri(E),]
Mumbai-400 093.]
2. Mr.Steve Watson, having his]
office at Sanghi Oxygen Compound,]
Mahakali Caves road, Andheri(E),]
Mumbai-400 093.]
3. Mr.Kulin Asher, having his office]
at Sanghi Oxygen Compound,]
Mahakali Caves road, Andheri(E),]
Mumbai-400 093.]
4. Mr.Sanjay Ahuja, having his office]
at Sanghi Oxygen Compound,]
Mahakali Caves road, Andheri(E),]
Mumbai-400 093.]
5. Mr.Shivram Gurav, having his]
office at Sanghi Oxygen Compound,]
Mahakali Caves road, Andheri(E),]
Mumbai-400 093.] Petitioners.

Versus

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|----|---|---|------------------|
| 1. | The Union of India, |] | |
| | (through the Joint Secretary, Ministry |] | |
| | of Law Justice and Company affairs |] | |
| | Aayakar Bhawan, M.K.road, Churchgate |] | |
| | Mumbai – 400 020. |] | |
| 2. | The Commissioner of Customs (M & P) |] | |
| | having his office at “Everest”, 2 nd floor, |] | |
| | Marine Lines, Mumbai – 400 002. |] | |
| 3. | The Settlement Commission, Customs |] | |
| | and Central Excise, Additional Bench |] | |
| | having its office at 6 th floor, Ulpad |] | |
| | Shulka Bhavan, Bandra-Kurla Complex, |] | |
| | Bandra(E), Mumbai – 400 051. |] | |
| 4. | M/s Hardy Exploration and Production |] | |
| | (India) Inc. |] | |
| | having its office at 5 th floor, Westminster |] | |
| | building, 108, Dr.Radhakrishnan Salai, |] | |
| | Chennai 600 004. |] | ... Respondents. |

Mr.Mihir Mehta a/w Mr.Viraaj Bhate i/b PDS Legal, Advocates for petitioners.

Mr. Sham V. Walve a/w Ms Maya Majumdar, Advocates for respondent nos.1 to 3.

**CORAM : K.R. SHRIRAM &
PRITHVIRAJ K.CHAVAN, JJ.**

DATE : 9TH JUNE, 2022.

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

1. On 18th December 2001, rule was issued and ad-interim relief was granted.
2. Petitioner no.1 is a Company incorporated under the laws of Cayman Islands and is operating in India since 1983 for providing logging and perforating services to the Oil companies. Other petitioners are employees of petitioner no.1.
3. Upto 1998, petitioner no.1 provided logging and perforating services to only ONGC. Petitioner no.1 caused number of logging tools for its contract with ONGC to be imported by ONGC without payment of customs duty or at a concessional rate of duty under different notifications issued u/s 25 (1) of the Customs Act, 1962 (for brevity the 'Act'). Most of the tools and equipments imported were not subject to the condition of re-export under the Act by reason of the fact that they were not fully exempt from payment of custom duty. Some of the tools and equipments were subject to condition of re-export under the Act. Petitioner no.1 was therefore, entitled to retain most of the imported tools in India. Ownership of tools always vested in petitioner no.1. As per understanding with ONGC Customs duty if any, was borne and paid by ONGC.

4. In 1998, petitioner no.1 was awarded a contract for a private oil company, i.e., 'Hardy Exploration and Production Inc.' (for brevity 'Hardy'). Said Hardy, in the said Contract, acted on behalf of consortium of various entities which included ONGC. Relationship between petitioner and Hardy was purely contractual. There was no common beneficial ownership.

5. Petitioner no.1 caused Hardy to import 24 capital equipments without payment of customs duty as per notification that were then in force. Said tools were permitted to be cleared without payment of customs duty on the strength of Essentiality Certificate issued by the Directorate General of Hydrocarbons, subject to re-export condition. Petitioner no.1 on completion of Hardy Contract, re-exported certain equipments. Later petitioner realised that what it had re-exported were equipments that were imported for its contract with ONGC not with Hardy. Having realized this error, petitioner decided to pay customs duty and to that extent avail of the provisions of Section 127-B of the Act. This realization dawned upon petitioner during certain investigation that customs authorities carried out. Petitioners, therefore, approached the customs authorities offering to pay the customs duty. Show cause notice came to be issued to petitioner. Having received show cause notice, petitioner approached Settlement Commission, i.e., respondent no.3, by way of an application u/s 127-B of

the Act. Application of petitioner came to be rejected by respondent no.3 vide its order dated 11.10.2001 which is impugned in this petition. Rejection was not on merits but on eligibility of petitioner to file the application. According to respondent no.3 only the person who has filed a bill of entry could have filed this application and since in the bill of entry, importer was shown to be Hardy, this application could have been filed by Hardy and not petitioner. It is this finding which is challenged by petitioner in this petition.

6. Mr. Mehta submitted that Section 127-B of the Act provides for any importer, exporter or any other person who has been issued a show cause notice to file application. Mr. Mehta stated that proviso (a) to Section 127-B of the Act only clarifies who is applicant but provides that any person who is being served with a show cause notice charging with duty is also entitled to file application.

7. Mr. Walve submitted that proviso (a) to Section 127-B of the Act requires applicant to have filed a bill of entry and since applicant had not filed a bill of entry, respondent no.3 was correct in rejecting the application.

8. Section 127-B(1) of the Act reads as under:

SECTION 127-B Application for settlement of cases-

(1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, at any stage of a case relating to him make an application 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 or otherwise of goods to the Settlement Commission to have the case settled 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, in respect of import or export of goods, (as the case may be, and in relation to such Bill of entry or shipping bill) 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 two lakh rupees:

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).

9. The word “case” used in Section 127-B of the Act is defined u/s 127-

A(b) to mean any proceeding under this Act or any other Act for the levy,

assessment and collection of customs duty, pending before an adjudicating authority on the date on which an application under sub-section(1) of section 127B is made.”

10. Plain reading of Section 127-B of the Act, in our view, would indicate that the term “any other person” appearing in the said Section would mean any other person to whom show cause notice has been issued charging him with duty and such any other person can file an application. Use of the words “filed bill of entry” would not mean that a bill of entry in the case has to be necessarily filed by him. Only requirement is that there must be a case properly relating to applicant with reference to a bill of entry filed and in this case, case relating to petitioner has been pending before proper Officer. Indisputably, a show cause notice had been issued to petitioner and therefore, a proceeding under this Act for the levy, assessment and collection of customs duty was pending before an adjudicating authority when the application under Section 127B was made. If we accept what Mr.Walve states that a bill of entry not having been filed by petitioner, petitioner was not eligible to file application, in that case, show cause notice also could not have been issued to petitioner because the petitioner was not the importer, which Hardy was. Therefore, Mr.Walve’s submission cannot be accepted. Term “any other person” appearing in Section 127-B

of the Act has to be interpreted to mean in its literal sense and proviso to the said Section should be interpreted to mean that a bill of entry must be filed in a case, not necessarily by the person who approaches the settlement commission, provided such person is served with a show cause notice charging him with duty. Therefore, a person who may not be an Importer or Exporter, can still file such an application u/s 127-B of the Act before the Settlement Commission if he is served with a show cause notice charging him with duty. Similar view was taken by a Division Bench of Gujarat High Court in **Mahendra Petrochemicals Ltd. Vs. Union of India**¹ and we respectfully agree with the view taken by the Gujarat High Court.

Paragraph nos.3, 3.1, 3.2 and 5 of the said judgment reads as under:

3. Learned Advocate, Mr.Dave, has drawn our attention to provisions of Section 127 B of the Customs Act, which refers to the persons who can make application to the Settlement Commission. The said Section provides that any importer, exporter or any other person may make such an application. The emphasis is on words “any other person”. Mr.Dave submitted that, if proviso to the said Section is seen, it is clear that no such application can be made unless the applicant has filed bill of entry or shipping bill in respect of import and export of goods, as the case may be, and in relation to such bill of entry or shipping bill, a show cause notice has been issued to him by the proper officer. Mr. Dave submitted that, in the instant case, show cause notice has been issued to the petitioner by a proper officer and, therefore, second part of the proviso stands satisfied. So far as first part is concerned, he submitted that filing of bill of entry by the applicant may not be considered as essential because, there may be occasions where a person may have imported goods in absence of a bill of entry.

3.1 Mr. Dave relied on the decision in the case of A.Mahesh Raj, 2001 (131) E.L.T.707 (Settlement Commission) where similar situation came to be dealt with by Settlement

1 2010(257) E.L.T.412(Guj)

Commission, Chennai. There also the Commissioner had objected to admission of application mainly on the ground that no bill of entry was filed by the applicant and, as such, the condition under clause (a) under the first proviso of sub-section (1) of Section 127B of the Customs Act, 1962 was not satisfied. There the Commission took a view that, as per Section 127B(1) of the Customs Act, 1962, it is not the importer or the exporter alone but any other person can also make an application containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer.

3.2 *Mr.Dave also relied on decision of a Larger Bench of Settlement Commission, Chennai, in the case of Yousuff Kasim Sait, 2003 (161) E.L.T. 1069 (Settlement Commission), where the term “any other person” appearing in Section 127B of the Act was examined and it was held that “any other person” to whom show cause notice has been issued charging him with duty can file an application, provided bill of entry has been filed in the case, not necessarily by him and a case must be pending before the proper officer relating to him with reference to the bill of entry filed. Mr. Dave, therefore, submitted that the view taken by the Settlement Commission in the impugned order is erroneous and may be set aside.*

5. *A plain reading the of the decision in the case of Yousuff Kasim Sait (supra) would go to show that the term “any other person” appearing in Section 127B of the Customs Act is interpreted to mean in its literal sense and the proviso to the said Section is interpreted to mean that the bill of entry must be filed in the case not necessarily by the person who approaches the Commission, provided such person is served with a show cause notice charging him with duty. Differently put, a person, who may not be the importer or exporter, can file such an application before the Commission, if he is served with a show cause notice charging him with duty. The view taken by the Commission in the impugned order is, therefore, not in consonance with the view taken by the Larger Bench of the Settlement Commission, Customs and Central Excise, Chennai, in the case of Yousuff Kasim Sait and we, therefore, without expressing any opinion on merits of the case of the petitioners, set aside the order impugned in the petition and direct the commission to examine the application of the petitioner in the light of the decision in the case of Yousuff Kasim Sait and in accordance with law. The petition, accordingly, stands allowed. Rule is made absolute. No costs.*

11. In the circumstances, we hereby set aside the order impugned in this

petition and direct the Settlement Commission to examine the application of petitioner on merits and in accordance with law and dispose the application on merits within 12 weeks from today.

12. Petition, accordingly, stands allowed. Rule is made absolute.

13. Copy of this order to be made available by petitioner to the Settlement Commission.

(PRITHVIRAJ K.CHAVAN, J.)

(K.R.SHRIRAM, J.)

