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W.P.No.17679 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.17679 of 2020
and WMP No.21920 of 2020

M/s.K.P.Manish Global Ingredients Pvt. Ltd.,
Represented by its Director, P.Manish Jain,
Aged 38 years,
No.41, Raghunayakulu Street,
Chennai-600 003.

... Petitioner

Vs

1.Customs, Central Excise & Service Tax Settlement Commission,
Additional Bench,
II Floor, Narmada Block,
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

2.The Commissioner of Customs (Chennai-II),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified to call for the records of the first respondent culminating in the Order No.02/2020-CUS dated 20.08.2020 issued from File No.S.A.Cus./22/2020-SC read with letter dated 28.09.2020 and quashing the same, direct the first respondent to hear the petitioner company on admissibility of the application filed by them against Demand Notice issued



W.P.No.17679 of 2020

from File No.S.Misc.2075/2017-Gr.2.; TA Memo No.116002/04.04.2016-Gr.2 dated 30.03.2018 read with Corrigendum issued from File No.S.Misc.104/2018-Gr.2. TA Memo No.116002/04.04.2016-Gr.2 dated 05.12.2018.

For Petitioner : Ms.M.Poojah
for Mr.S.Murugappan

For Respondents : Mr.K.Umesh Rao
Senior Standing Counsel

ORDER

The petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is a holder of an Import Export Code, regularly importing chemicals. Action was initiated by the Directorate of Revenue Intelligence on the ground that there was misclassification of the goods by the petitioner and a consignment imported through Nhava Sheva Port, Mumbai was seized.

2. Show cause notice dated 25.06.2018 was issued demanding duties in respect of consignments imported at Nhava Sheva Port at Mumbai as well as Chennai port. The show cause notice covered the period June, 2014 to July, 2017 and the demands raised are as follows:



W.P.No.17679 of 2020

Sl.No.	Duty Demanded (INR)	Port of Import
1.	9,73,553/-	Nhava Sheva Port (Seized goods)
2.	1,29,02,999/-	Chennai Sea Port (Past Import)
3.	19,98,945/-	Nhava Sheva Port (Past Import)
	1,58,75,497/-	

3. Even prior to the issuance of show cause notice, a demand notice had been issued on 30.03.2018 in respect of 17 bills of entry for the period 21.05.2016 to 17.02.2017. Though the aforesaid period stood telescoped in the period dealt with under the show cause notice, the 17 bills of entry did not form part of the show cause notice issued.

4. The petitioner has settled the demand under demand notice dated 30.03.2018 belatedly with interest, on 14.08.2020. A corrigendum dated 05.12.2018 had been issued to the demand notice making certain modifications to demand notice dated 30.03.2018. As far as demand notice is concerned, it attained finality with the settlement of the duty and interest demanded.

5. To be noted, that demand notice dated 30.03.2018 had also proposed, apart from re-classification and interest, confiscation under Section 111(m) and penalty under Section 112(a)/114(a) of the Customs Act, 1962 (in short 'Act').

6. Separately, the petitioner filed an application before the Customs,



W.P.No.17679 of 2020

Commission') on 04.07.2019 even prior to the settlement of the demand under demand notice dated 30.08.2018 read with corrigendum dated 05.12.2018. In that settlement application, a conscious choice was made to address only the transactions and demand covered under the show cause notice dated 25.06.2018. The transactions and demand relating to the 17 bills of entry that were the subject matter of demand notice and Corrigendum did not form part of the application.

7. Proceedings continued before the Settlement Commission in accordance with Chapter XIV-A of the Act relating to '*settlement of cases*'. The Settlement Commission passed a final order on 07.07.2020 under Section 127C of the Act. The matter was settled imposing a differential duty along with interest.

8. The petitioner was also permitted, on payment of a redemption fine, to redeem the goods confiscated. As far as penalty is concerned, the Bench imposed penalty of a sum of Rs.4,50,000/- granting immunity to the petitioner of penalty in excess of the aforesaid amount.

9. The petitioner was directed to pay the penalty within 30 days from date of receipt of the order and report compliance. Subject to payment of redemption fine and penalty within 30 days as granted, the petitioner as well as co-applicants were granted immunity from prosecution and were also permitted



W.P.No.17679 of 2020

to receive back the PD bond and bank guarantee that had been executed pending application.

10. The matter ended there as far as the transactions covered by show cause notice dated 25.06.2018 were concerned. While this is so, the petitioner has filed an application on 14.08.2020 on the heels of order dated 07.07.2020 and within a month from receiving the same, addressing the 17 transactions covered under demand notice dated 30.03.2018. That application was styled as a fresh application in terms of Rule 3 of the Customs (Settlement of cases) Rules, 2007 (in short 'Rules').

11. Inter alia, they refer to the earlier settlement application filed by them for the period 21.05.2016 and 15.02.2017 and the order passed thereupon by the Principal Bench on 07.07.2020. In conclusion, they request the Settlement Commission to admit the present application filed on 14.08.2020, take into account order dated 07.07.2020 and grant immunity in respect of the 17 transactions covered by the demand notice dated 30.08.2018. The prayer is to the effect that the duty paid in respect of those 17 bills of entry be taken to be the duty already paid.

12. The objective of the application is clearly to obtain immunity from penalties and prosecution under the Act. The Settlement Commission has



W.P.No.17679 of 2020

proceeded to reject that application by its order dated 19.08.2020 invoking the bar under Section 127 L placed on subsequent applications, seeking settlement.

13. The question is as to whether the procedure adopted by the Bench in dismissing the application without hearing the petitioner is appropriate and as to whether the bar under Section 127L would be, at all, applicable in the present case.

14. The petitioner relies on a judgment of the Hon'ble Supreme Court in the case of *R.B.Shreeram Durga Prasad and Fatechand Nursing Das V. Settlement Commission (It and Wt) and ors.* (176 ITR 169). This is cited to say that once an application is filed, the petitioner/assessee must be heard even at the threshold to determine the question of maintainability of the application.

15. In the present case, the application filed was under the provisions of Section 127B and hence the proper procedure as per Section 127C was for the Commission to have issued notice within 7 days from date of receipt of the application, hear the petitioner and thereafter either allow the application to be proceeded with or reject the same. This procedure has, admittedly, not been followed in this case, insofar as no notice has been issued prior to order dated 19.08.2020. This is the main submission of the petitioner.

16. Per contra, learned Senior Panel Counsel appearing for the respondents would draw attention to the judgment of the Hon'ble Supreme



W.P.No.17679 of 2020

Court in *Surya Dev Rai V. Ram Chander Rai and ors.* (AIR 2003 SC 3044) to

state that Chapter XIV-A is a code by itself. According to the learned counsel, what ought to have been done in the present case is to file a Civil Revision Petition under Article 227 and not one under Article 226 of the Constitution of India, as the challenge is to an order passed by the Settlement Commission.

17. In this context, he would also rely upon a decision of a learned single Judge of this Court in *Venkata Sai Ram Traders V. Cus., C.Ex. & S.T. Sett. Comm., Chennai* (2018 (9) GSTL 235), wherein the distinction between Articles 226 and 227 have been referred to, to state that even an order passed by the Tribunal is capable of being tested in exercise of power of judicial review under Articles 226 and 227.

18. The relevant portions of the aforesaid judgments of the Hon'ble Supreme Court are extracted below for completion of narration.

Surya Dev Rai (supra)

'Difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227.

23. The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram and Ors. v. Smt. Radhikabai and Anr., MANU/SC/0132/1986 : [1986]1SCR731. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals



WEB COPY



W.P.No.17679 of 2020

as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

24. Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labeling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as



W.P.No.17679 of 2020

WEB COPY

commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.'

Venkata Sai Ram Traders (supra)

'18.Learned Senior Standing Counsel for the revenue referred to the decision in M.S.Kazi v. Muslim Education Society and others reported in MANU/SC/0921/2016 : (2016) 8 SCALE 139 (SC), wherein it was held that if the Settlement Commission is deleted from the array of parties, then the writ petition against the second respondent would not be maintainable. As it has been held in the said decision that an order passed by a Tribunal is capable of being tested in exercise of power of judicial review under Articles 226 and 227 of the Constitution and when such a remedy is invoked, the Tribunal is not required to step into arena of conflict for defending its order and hence, the Tribunal is not a necessary party to the proceedings. Therefore, it is submitted that the Settlement Commission should not have been impleaded as the first respondent and if the Commissioner of Customs, Hyderabad is the sole respondent, the writ petition is not maintainable.

19.Thus, the legal principle deducible from the above decisions are while entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinised by the High Court depending upon the facts of each case.'

19. These decisions as well as propositions set forth therein really do not answer the main question agitated by the petitioner in this case. In fact, Mr.Umesh also, after citing these decisions, does not pursue the challenge to



W.P.No.17679 of 2020

227. He would prefer to proceed on the legal issue that has been agitated without delving on the technicalities, and rightly so.

20. I now proceed to decide the legal issue that arises as to whether the bar under Section 127L of the Act would apply in the present case. Section 127L reads as follows:

'127-L. Bar on subsequent application for settlement in certain cases.- (1) [Where -

(i) an order of settlement provides for the imposition of a penalty on the applicant under section 127-B for settlement, on the ground of concealment of particulars of his duty liability; or

Explanation.-In this clause, the concealment of particulars of duty liability relates to any such concealment made from the officer of customs;

(ii) after the passing of an order of settlement in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the proper officer by the Settlement Commission under section 127-I, then such person shall not be entitled to apply for settlement under section 127-B in relation to any other matter.'

21. The purpose of the bar is very clear. Settlement of a case is by way of alternate dispute resolution mechanism. The applicant is, if the offer is accepted, the beneficiary of the wholistic settlement, and oftentimes, of deletion or waiver of penalty and prosecution, where appropriate.

22. The present case is no exception. It is for this reason and bearing in mind the spirit and objective of Chapter XIV-A, that Legislature imposes a bar



W.P.No.17679 of 2020

upon parties to approach the Settlement Commission in any other matter in three specified situations:-

- (i) Where a penalty is imposed on the assessee on the ground of concealment of particulars of duty liability.
- (ii) Conviction of an offence and
- (iii) Remand of the case to the proper officer under Section 127L.

23. The phrase '*any other matter*' is relevant here. While the petitioner emphasises upon the word '*other*' to state that the bar applies only to a cause of action different from that in regard to which the first application was filed, I disagree. The phrase '*any other matter*', in my considered view, would bar an assessee from approaching the Settlement Commission ever, in the three situations set out under clauses (i) (ii) & (iii) in Section 127L(1). This is by way of a caution/deterrent, to ensure that an assessee who approaches the Settlement Commission comes with a full and true disclosure placing all cards on the table in the spirit in which that Chapter must be seen to apply.

24. In the present case, the case of the petitioner has been found to attract penalty and a sum of Rs.4,50,000/- imposed. In such an event, I am of the considered view that the bar under Section 127L would apply on all fours.

25. Thus, merely because the petitioner has chosen to style the application culminating in the impugned order as a fresh application does not mean that the Settlement Commission has to close its eyes to the relief sought



W.P.No.17679 of 2020

and the lineage of the matter, particularly the bar under Section 127 L that must be strictly enforced.

26. In this connection, I may refer to a judgment of the Calcutta High Court in *C.P.Re-Rollers Ltd. V. Union of India* (W.P.No.3043 (W) of 2015 dated 04.05.2015) where Section 32-O of the Central Excise Act which is in pari materia with Section 127L has been the subject matter of interpretation. The learned Judge states therein '*it is absurd to suggest that the expression 'concealment of particulars of his duty liability', pertains to the application made before the Settlement Commission. If that were to be so, every knave and his accomplice would conceal the duty payable in course of every transaction and approach the Settlement Commission only in the cases where he would be caught and would be slapped a show cause notice for additional duty. At paragraph 10, the Court states as follows:*

'10.The scheme of the provisions introduced for settlement of a demand indicates that a person may approach the Settlement Commission once for having concealed the particulars of the duty payable, but having exercised such option, the doors of the Settlement Commission are forever closed to the concerned assessee if the Settlement Commission imposes any fine on such assessee.'

27. In the present case, the petitioner is well aware of the duty that has been imposed in respect of 17 additional transactions as amended by the



W.P.No.17679 of 2020

subsequent corrigendum. The petitioner has also settled the duty demand

acquiescing to the fact of wrongful classification by it at the original instance.

28. In such circumstances, the petitioner ought to have, even at the original instance, included those transactions in the ambit of settlement application and hence having failed to do so cannot be granted a second innings merely to obtain the benefit of waiver.

29. This Writ Petition stands dismissed, as is the connected Miscellaneous Petition. No costs.

13.03.2023

Index : Yes

Speaking Order

Neutral Citation: Yes

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WEB COPY



W.P.No.17679 of 2020

Dr.ANITA SUMANTH,J.

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13.03.2023