

(2012) 06 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No's. 4451 and 2611 of 2011 and MP. No. 1 of 2012

C.C. (Imports-Seaport), Chennai-I

APPELLANT

Vs

Rohan Anirudha Seolekar

RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Customs Act, 1962 — Section 112(a), 114A, 127B, 127C, 14

Citation : (2013) 288 ELT 353 : (2013) 22 GSTR 199

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : K. Ravi Anantha Padmanaban, SCGSC, for the Appellant; K. Jayachandran, for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthana Raja, J.—With the consent of both sides, these writ petitions themselves are taken up for final disposal. In Writ Petition

No. 2611 of 2012, the petitioner is the assessee and is the respondent in the other writ petition filed by the Revenue. As both the writ petitions are

interconnected, they are taken up for disposal and a common order is passed. The brief facts arising out of the writ petition are as under:-

The petitioner/assessee in W.P. No. 2611 of 2012 imported a new Ferrari Car F430, Fi Coupe, classifiable under Chapter Heading 8703 24 91

of the Customs Tariff Act by Bill of Entry B.E. No. 918522, dated 23-12-2008 for assessment and clearance. The said car was imported for the

personal use of the petitioner in W.P. No. 2611 of 2012. At the time of filing of Bill of Entry, the petitioner also filed all the requisite documents

such as Bill of Lading, Invoice, etc. The petitioner declared the value of the car as 106000GBP. In the Bill of Entry, it was stated that by the

petitioner that the said car is a brand new car and the same was assessed and the petitioner also paid the assessed Customs duty of Rs.

86,47,464/- on 9-1-2009 and the car was released. The petitioner also got temporary registration with RTO, Chennai with certificate of

registration in TN-09-TEMP-174. Later, the petitioner took the car to his native place of Pune and once again the same was registered with RTO,

Pune. Afterwards, Revenue seized the car on 15-9-2010 on the ground that the value declared by the petitioner is not correct. The petitioner was

also forced to pay a sum of Rs. 90,00,000 additionally on completion of assessment by the officials. The Additional Director, DRI, Ahmedabad

issued a show cause notice dated 22-9-2010 purposing to re-determine the value of the car at GBP 1,44,485.43 (INR 1,11,05,295/-) u/s 14 of

the Customs Act, 1962 read with Rule 3(1) of the Customs (Valuation) Rules, 2007 and confiscate the car and to demand differential duty of Rs.

89,33,824/- on the re-determinable value and also the said Additional Director proposed to impose penalty u/s 114A and Section 112(a) of the

Customs Act. After receiving the issuance of notice, the petitioner instead of replying to the same, filed an application for settlement before the

Customs and Central Excise Settlement Commission, the second respondent herein on 18-11-2010. On application the petitioner also admitted an

amount of Rs. 50,44,833/- towards duty payable and interest of Rs. 10,41,948/-. Subsequently, the petitioner also filed a writ petition, later the

said writ petition was withdrawn with liberty to move before the Settlement Commission. Therefore, the petitioner filed a fresh application for

settlement u/s 127B of the Customs Act before the second respondent on 11-4-2011. In the fresh application, the petitioner had admitted an

amount of Rs. 5,27,696/- towards the duty payable, and Rs. 67,097/- as interest payable and also requested the second respondent to adjust

these amounts from the amount of Rs. 90,00,000/- paid by the petitioner during investigation, further requested to refund excess amount. The

second respondent admitted the application filed for settlement on 29-4-2011. After following the procedures contemplated under Chapter XIV-

A of the Customs Act, 1962, the Settlement Commission issued a notice to Revenue and considering the arguments advanced by both the parties

passed the following order:

11.1. In the light of the above, the bench settles the case u/s 127C of the Customs Act, 1962 on the following terms and conditions:

(1) The additional amount of Customs Duty is settled at Rs. 14,64,690/- (Rupees Fourteen Lakhs Sixty Four Thousand Six Hundred Ninety Only)

over and above the duty paid at the time of import. As the payment of Rs. 90,00,000/- has been made by them subsequently during investigation

the settled amount of duty shall be appropriated from this amount.

(2) The interest on the differential customs duty is settled at Rs. 2,32,413/- (Rupees Two Lakhs Thirty Two Thousand Four Hundred Thirteen

only). This amount shall also be adjusted from the deposit of Rs. 90,00,000/- made by the applicant.

Aggrieved by the order of the Settlement Commission, the Revenue filed the writ petition in W.P. No. 4451 of 2012. The petitioner/assessee also

filed a writ petition in W.P. No. 2611 of 2012 requesting the court to give direction to the Commissioner of Customs (Sea Port-Import) to

implement the order passed by the Settlement Commission so that he is entitled to the refund of the duty.

2. Learned counsel appearing for the Revenue vehemently contended that the order passed by the Settlement Commission is not in accordance

with law. The Settlement Commission had considered the irrelevant material and reduces the amount of duty payable by Rs. 14,64,690/-. It is also

to be noted that the Revenue has not questioned the other findings of the Settlement Commission and questioned only the additional amount of

Customs duty fixed by the Settlement Commission. It was further contended that the second respondent Settlement Commission has not

considered properly the scope of the Notification 21/2002-Cus., dated 1-3-2002 and further it was contended that the Settlement Commission is

wrong in holding that it is a new car. There is no material for the Settlement Commission to come to the conclusion that it is a new car that the car

was registered in London. Therefore, the order passed by the Settlement Commission is not in accordance with law and the same has to be set

aside.

3. Learned counsel for the assessee submitted that the Settlement Commission has considered all the facts and circumstances of the case and

properly considered the relevant Notification and came to the conclusion that the

assessee imported only a new car. Further it is also submitted that similar issues involved in another petitioner's case which came before the Settlement Commission, Bombay wherein, the Commission has allowed the case of the assessee/petitioner and aggrieved against such Settlement Commission Order, Revenue filed an appeal before the Bombay High Court and the Bombay High Court dismissed the writ petition filed by the Revenue. Further it was contended that the question involved here is the valuation of the car and also whether it is a new car or not? It is a question of fact and the Revenue cannot question the order of the Settlement Commission under Article 226 of the Constitution of India. Relying on the Supreme Court decision in the case of Union of India (UOI) and Others Vs. Ind-Swift Laboratories Ltd., the learned counsel appearing for the assessee contended that the order passed by the Settlement Commission is in accordance with law and the same should be confirmed, consequently, the petitioner is also entitled to refund the duty. Hence, prays that the writ petition filed by the Revenue should be dismissed and the writ petition filed by the assessee should be allowed.

4. Heard the learned counsel on either side and perused the documents on record. Before considering the merits of the case, this Court has to decide what are the circumstances under which the order of the Settlement Commission can be interfered. In the case of Jyotendrasinhji Vs. S.I.

Tripathi and others, the Apex Court has considered under what circumstance the Courts can interfere with the order of the Settlement Commission and held as follows :

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 and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in R.B.

Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT) 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 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 N.W. Police v. Evans. Thus, the appellate power under Article 136 was equated to 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 the order of the Commission is contrary to the provisions of the Act and that such contravention has

prejudiced the appellant.

The abovesaid principle reiterated in the case of Union of India v. Ind-Swift Laboratories Ltd. cited supra and the Apex Court has held in

paragraph 21 as follows:

An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any provisions of the Act.

So far findings of the fact recorded by Commission or question of facts are concerned, the same is not open for examination either by the High

Court or by the Supreme Court. In the present case, particularly, with regard to the imposition of simple interest @ 10 per cent per annum was

passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an erroneous

finding.

5. From the reading of the above, it is clear that unless and until the order passed by the Settlement Commission is contrary to the provisions of the

Act, the order cannot be interfered and further the Apex Court has held that on a question of fact, it is not open for the High Court as well as

Supreme Court to interfere. In the instant case, the issue is whether the imported car is a new car or second-hand car. It is a question of fact. The

Settlement Commission in Paragraphs 10.1 to 10.23 has considered the facts and circumstances of the case and arrived at the factual finding that

the car imported is a new car and applied the exemption Notification No. 21/2002-Cus., dated 1-2-1992 correctly. In Paragraph 10.23 the

Settlement Commission has held as follows:

Another ground taken in the Show Cause Notice against the import of the car is that as per Para 2(2) (1) (a), (2)(1) (c) of the Import Licensing

Notes of Chapter 87, a new imported vehicle that has not been manufactured/ assembled in India, that has not been sold, leased or loaned prior to importation into India or has not been registered for use in any country according to the laws of that country, prior to importation into India. Thus it is alleged that the car in the said notes carried registration as one of the criterion for considering such car as a second-hand car. In this connection, the Bench has already found that the registration of the vehicle taken only for transit purpose cannot be considered as fulfilling the requirement of "registration" in terms of the Exemption Notification No. 21/2002, dated 1-3-2002. The Bench considers that the same principle would be equally applicable for considering the use of the term ""registered"" for the purpose of the said Licensing Notes. The Bench further notes that the invoice relied upon by the Revenue itself is termed ""New Vehicle Invoice"". Further, the Bench finds that the invoice of M/s. HR. Owen Sports Cars Co., UK itself is addressed in the name of the applicant care of M/s. Hyperperformance Co. UK. Hence the argument of Revenue that the vehicle is a second-hand vehicle since it was sold by M/s. HR. Owen & Co., to M/s. Hyperperformance Co. and Settlement Application No. S.A./CUS-22/2011-SC than to the applicant is unacceptable. Thus, the Bench finds that the import of this vehicle through Chennai Port is in order.

From the reading of the above, it is clear that the Settlement Commission has given a categorical finding based on valid material and evidence. It is also pertinent to note that in similar issue involved in another petitioner's case which came before Special Bench and Additional Bench of the Settlement Commission, Bombay and the Settlement Commission considered the matter in very detail and also considered the notification stated above and decided the case in favour of the importer and granted exemption under the said notification. Aggrieved by that order Revenue preferred writ petition before the Bombay High Court in W.P. No. 2426 of 2012 and the Bombay High Court by order dated 26-4-2012 dismissed the writ petition and held as follows:

Counsel appearing on behalf of the Revenue submits that the car which was imported was not a new car within the meaning of the exemption notification. Whether a vehicle is or is not new is a pure finding of fact. The facts which was transhipped from the manufacturer in Italy to the

Ferrari dealer in the U.K. Who sold the car to a dealer in the U.K. The Respondent purchased the car from the dealer in the U.K. The Settlement

Commission has noted that the registration of the car in the U.K., was only to comply with the requirement of the licensing authorities in the U.K.

who require registration even for the purposes of exportation. The car was not used in the U.K. The finding that the vehicle was a new motor

vehicle is not perverse or contrary to the evidence. The Respondent made a fair and candid disclosure and accepted the undervaluation and paid

the differential duty together with interest.

After taking into consideration the principles enunciated by the Apex Court as well as the Bombay High Court as stated above, the issue involved

is a pure question of fact. The findings given are based on valid material and evidence. It is not a perverse order. We do not find any error or

illegality in the order of the Settlement Commission to warrant interference. Further, the learned counsel for the Revenue has also not brought to the

notice of this court any fresh material evidence or pointed out any statutory provision to take a contrary view of the Settlement Commission. Under

these circumstances, the order passed by the Settlement Commission is in accordance with law and the writ petition filed by the Revenue in W.P.

No. 4451 of 2010 is dismissed as devoid of merits. The writ petition in W.P. No. 2611 of 2012 filed by the petitioner/assessee is allowed and

consequently, they are entitled for refund. The Revenue is directed to refund the amount, within a period of two weeks, from the date of receipt of

a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.