

(2003) 10 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 39535 of 2002, W.P.M.P. No. 58876 of 2002 and
W.V.M.P. No. 1163 of 2003

CC (Sea Port)

APPELLANT

Vs

S.R.F. Ltd.

RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Citation : (2004) 113 ECR 218

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Judgement

P. Sathasivam, J.—By consent of both parties main writ petition itself is taken up for disposal. Aggrieved by the final order No. 2/2002,

dated 28.5.2002 : 2003 (158) ELT 788 (Sett. Comm.) passed by the Settlement Commission, Additional Bench, Office of the Customs and

Central Excise-first respondent herein, the Commissioner of Customs (Sea Port), Chennai-I has filed the above writ petition to quash the same on

various grounds.

2. The case of the petitioner is briefly stated hereunder:

The second respondent herein has filed an application u/s 127B of the Customs Act, 1962, seeking to settle the matter on the basis that he needs

certain consideration in regard to benefits of exoneration of the prosecution etc. The second respondent-company, registered for manufacture and

export of plastic ophthalmic lenses, had also obtained two advance licences bearing Nos. 2040439, dated 30.3.1995 and 3491572, dated

17.3.1995 from Joint Director of Foreign Trade (JDGFT), Bangalore for import of certain raw material required for manufacture and export of

ophthalmic lenses before converts to 100% EOU. After the import of raw materials, the 2nd respondent-company failed to export the finished

goods as required under law even after the lapse of export obligation period, which is a clear violation of the exemption notification. The second

respondent-company had sold off all its assets such as Plant and Machinery etc., to a Multi National Company. After enquiry and search, one

Gururajan, Senior Accountant of M/s. SRF Limited, New Delhi, who was incharge of operation of Bangalore Unit, was summoned and examined

and he revealed that the unit was started at Doddaballapur during 1994 1995 and later converted into an 100% EOU. After the infringement of

law and its implications being pointed out by the investigating agency, the 2nd respondent-company volunteered to pay to the Customs duty and

interest, thereon under TR 6 Challans. Though the 2nd respondent in the application filed u/s 127B of the Customs Act, 1962 has clearly stated

that the duty liability of Rs. 30,99,664/- has already been paid, however, they are liable to pay interest on the basis of EXIM Policy in force under

which the 2nd respondent is entitled to get the advance licence to import the goods and cleared them without payment of duty. Without knowing

the correct position, the settlement Commissioner arrived at conclusion that the demand of interest by the Department is contrary to law.

Questioning the order of the Settlement Commission holding that no interest is chargeable under the provisions of the Customs Act, 1962, the

petitioner has filed the above writ petition.

3. The second respondent filed a counter affidavit highlighting their stand. It is stated that the product manufactured by the second respondent

require stringent quality norms, being health sensitive material. The imported raw materials under the said advance licence have a very short shelf-

life of less than six months and due to technological constraints and ensuing problem encountered during the commercial production, the imported

raw materials could not be fully used within six months from the date of import, resulting in shortfall of export obligation. The issue was further

Compounded as the unit had to shut down its operation on account of the distributor closing its business of distribution in the US. Consequently,

results were devastating and the unit had to close down its operations. The Vision Care Division of the second respondent-company however

made few exports before it was converted into a 100% EOU. Consequently, the export obligation (EO) under the advance licence could not be

fulfilled as undertaken under the advance licence. The second respondent-Bank sent representations to the Office of the Joint Director General of

Foreign Trade, Bangalore, for regularisation of export obligation in their letter dated 11.1.1999. Meanwhile, the second respondent-company sold

the assets and utilities of its Vision Care Division to M/s. Indian Ophthalmic Lenses Manufacturing Company Limited, in the month of September,

1998. After receiving the approval from the Deputy Commissioner of Customs, Bangalore, the duty along with interest was voluntarily paid on the

imported capital goods and raw material in one instalment. The provisions of Sections 28AB and 114A of the Customs Act, 1962 were

introduced with effect from 28.9.1996 and, therefore, the question of imposing penalty and interest under the aforesaid provision would be without

jurisdiction. The purpose of the present writ petition appears to be deny legitimate refund that is due to the petitioner on account of excess

collected. Instead of refunding the amount paid by mistake, the petitioner is trying to retain the amount by filing the present writ petition.

4. In the light of the above pleadings, I have heard Mr. K. Veeraraghavan, learned Senior Central Government Standing Counsel and Mr. Arvinda

P. Datar, learned Senior Counsel for 2nd respondent.

5. In view of the reference made in the earlier part of my order regarding the case of both the parties and the order to be passed herein, it is

unnecessary to refer the factual details once again. As said earlier the petitioner has filed the above writ petition mainly on the ground that the

conclusion of the Settlement Commission that no interest is chargeable under the provisions of the Customs Act, 1962 is erroneous and cannot be

sustained. Learned Senior Central Government Standing Counsel has also pointed out that the very same Commission, in the subsequent orders

has upheld the power of the Department in levying interest. It is seen that even in the settlement application before the Settlement Commission, the

second respondent, while not disputing the failure to fulfil the export obligations and the consequent liability to pay the customs duty, only

highlighted their bona fides and pleaded for grant of immunities. They also prayed that no interest is chargeable as Notification No. 204/92 did not

contain any provision to charge interest nor did the Customs Act contain any provision during the relevant time of imports.

6. It is further seen that the Settlement Commission has perused the relevant records and considered the submissions made by the applicant and

the Department. There is no dispute that the second respondent herein wrote a letter dated 11.1.1999 to the JDGFT, Bangalore explaining the

reasons for shortfall in the export obligation and seeking to settle their export obligation. It is further seen that in response to the said letter, the

JDGFT, Bangalore advised the applicant therein to pay the customs duty and interest in respect of the materials mentioned in their letter

07/02/190/04404/AM 95, dated 6-0 3/4-1999 (sic). They were also advised to surrender SIL for twice the CIF value of the excess quantity of

materials imported and also surrender SIL for twice the shortfall in FOB value of exports, in respect of advance licence dated 30.3.1995. There is

no dispute that the applicant has responded to the said letter on 10.1.2001, in respect of both the advance licences. As said earlier, the Settlement

commissioner after considering the relevant materials, arrived at a factual conclusion that even before the Officers the relevant materials, arrived a

factual conclusion that even before the Officers of DRI, took up the investigation, the applicant therein had in fact approached the JDGFT for

regularisation, as they failed to fulfil the export obligation and paid Rs. 21,05,271/- on 7.9.2000 and also Rs. 42,40,069/- on 26.9.2000. To put it

clear it is the special factual finding of the Settlement Commission that in about a month of the search by the DRI Officers, the applicant therein had

paid the said amount. It also arrived a conclusion that the applicant having made full and true disclosure of the duty liability and co-operated with

the Settlement Commission, they are entitled for the immunities. After arriving at such a factual conclusion based on acceptable materials, the

Settlement Commission passed an order and granted the relief in favour of the applicant. There is no serious dispute with regard to the factual

conclusion and the ultimate decision arrived at by the Settlement Commission.

7. In so far as interest is concerned, the Settlement Commission by referring Notification 204/92-Cus., dated 19.5.1991, arrived a conclusion that

it does not lay down any condition requiring payment of interest in case of failure to fulfil the export obligations. The Commission has also

concluded that as per the said notification, no interest is demandable for failure to comply with the conditions of the notification. Likewise, by

referring to Section 28AA of the Customs Act, 1962, the Commission has concluded that interest becomes payable only if there is failure to pay

the duty determined under Sub-section (2) of Section 28 within 3 months from the date of determination. It also concluded that since the duty

amount is being adjusted from the amount already paid, there is no question of liability to pay interest in terms of this Section. Mr. Arvind P. Datar,

learned Senior Counsel for the second respondent, would contend that in the light of their conduct, and prompt payment prior to the search of the

action thereon, there is no liability on their part to pay interest, and that the general proposition of the Settlement Commission that "no interest is

chargeable under the provisions of the Customs Act, 1962" cannot be sustained. In the light of the question raised, I have perused the relevant

provision contained in the EXIM Policy and by virtue of the legal undertaking was well as Para 128 of the Handbook of Procedures 1992-1997,

the defaulter is liable to pay the interest and the contrary conclusion by the Settlement Commission in so far as the conclusion regarding interest

cannot be sustained. While disagreeing with the conclusion of the Settlement Commission with regard to interest in Para 6(2), I hold that interest is

chargeable as per the provisions contained in the EXIM Policy. However, in so far as the second respondent is concerned, in the light of the

materials placed, and the factual conclusion arrived by the Settlement Commission, I accept that the second respondent is not liable to pay interest.

8. In the light of what is stated above, except setting aside the general proposition regarding interest in Para 6(2) of the Order of the Settlement

Commission - 1st respondent herein, I confirm the order in other respects and dispose of the writ petition accordingly. No costs. Consequently,

connected miscellaneous petitions are closed.