(2004) 03 CAL CK 0070

In the Calcutta High Court

Case No : Writ Petition No''s. 413 and 515 of 2004

Commissioner of Cus. (Port) APPELLANT

Vs

Settlement Commission, Cus. and C. Ex. RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2004) 116 ECR 629 : (2004) 171 ELT 455

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Pal, Ghose and Das, s, for the Appellant;Kapoor, Addl. Solicitor General and Samaddar, Counsel, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—Mr. Das, Ld. Sr. Counsel appearing for the respondent No. 10, who is the Director of the respondent No. 2, has taken a preliminary objection to entertaining of and/or proceeding with this writ petition filed by the Revenue against the decision of the Settlement Commission on the strength of a judgment of the Supreme Court, reported in Oil and Natural Gas Commission Vs. Collector of Central Excise, . He contends that the Revenue has come up with this writ petition against the decision of the Settlement Commission which is another wing of the Government Department and has been formed by and under the provisions of the Customs Act. According to him, the ratio of the aforesaid Supreme Court decision will have full application as the idea behind pronouncing the aforesaid judgment by the Apex Court was that the Government of India and/ or its intra Department or the Government Undertaking should not fight against each other in order to save the valuable Government exchequer. According to him, the writ petition should be directed to be placed before the High Power Committee as envisaged under the aforesaid Supreme Court decision. The said Supreme Court decision was rendered following the earlier two pronouncements of the same Court, reported in 1992 (2) Supp. SCC 432 and 1992 (61) ELT 3 (SC) Mr. Das has laid emphasis on paragraphs 3 and 4 of the said decision which I feel, should be reproduced hereunder :-

"3. We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertaking of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with."

2. Mr. Pal, Ld. Sr. Counsel for the company, supports and adopts the argument of Mr. Das on this point so far as this writ petition is concerned. Mr. Kapoor, Ld. Addl. Solicitor General, appearing with Mr. Ghose, Ld. Sr. Counsel and Mr. Samaddar, Ld. Counsel, has found serious fallacy in the argument of Mr. Das. He contends that aforesaid decision cited by Mr. Das is not applicable at all on the facts and circumstances of this case. Paragraphs mentioned above are very clear that litigant must; be Government of India on one hand and on the other, Government of India Undertaking or any other Department of Government of India. He contends here the Settlement Commission is not a litigant at all. It is an adjudicatory body as formed under the special provisions of the Customs Act by the Parliament. His further contention is that the litigant here is the Revenue Department on one hand and on the other hand the private respondents, namely, clients of Mr. Pal and Mr. Das in reality. It is absurd to suggest that Settlement Commission can partake the character of litigant having passed an order in exercise of jurisdiction under the statute. If this logic is accepted, he contends, then in each and every matter dealt with by the Tribunal formed under the statute, will have to be referred to the High Power Committee.

3. He has also drawn my attention to the earlier two decisions of the Supreme Court, earliest one being 1992 (61) ELT 3 (SC) . The then Hon''ble Chief Justice Mr. Ranganath Mishra while evolving this procedure has decided that Government, should not waste money in fighting litigation against its own Undertaking and/or its own Department. As such the body, namely, High Power Committee was formed for settlement of the disputes.

4. Having read all these decisions and giving anxious thought over this matter, I think learned Additional Solicitor General is right in saying, that these judgments have no application, and Mr. Das is on a wrong footing while urging to apply the aforesaid pronouncement in this case. I am of the view that in order to send the matter to a High Power Committee, the following conditions are to be satisfied :-

(a) The litigants must be Central Government on one hand and on the other hand any Government of India Undertaking or enterprises; and

(b) In between two departments of Government of India.

5. It is clear from the aforesaid three judgments that there is no place of the private individual litigants to be asked to go to High Power Committee. In this case, I find the private litigants viz. Mr. Paul''s client, taking advantage of the settlement provision approached the Commission after the show cause notice was issued under the appropriate provisions of the Customs Act, 1963. Upon hearing and deliberation the learned Commission has settled the matter meaning thereby the dispute between the Revenue Department, namely, Government of India and the private company in relation to the Customs duties and the obligation under the Foreign Trade and Development Act have been resolved. Mr. Ka-poor learned Additional Solicitor General has rightly said that if the Commission is treated to be a litigant under the scheme of the aforesaid Supreme Court decision, then logical conclusion will be the Judge becoming party to the cause which is decided by it, and fair justice delivery system never demands the Judge will sit for judgment of his own cause or is expected to sit on judgment and/or mediation of its own cause. Factually, it was not so here. The power and duties under the provision for settlement of cases is to adjudicate, mediate, and while doing so, to bring about a settlement in accordance with law so that the dispute in relation to any case mentioned therein is settled once for all, without resorting to any other procedure and method. A complete mechanism has been provided in this chapter as to how this settlement can be resolved. Even power of recovery of the dues after settlement is also provided for. Therefore, it is difficult to accept the argument of Mr. Das that the Settlement Commission in this respect is a litigant for the purpose of referring the matter to High Power Committee. Accordingly, I do not find any substance on this point. I think that this Court has exclusive jurisdiction to decide this mater as the power of judicial review under Articles 226 and 227 which is basic feature of the Constitution and which is inviolable one, and this has been consolidated by the pronouncement of the judgments by the Supreme Court more than quite often and also in a fairly recent pronouncement held in L. Chandra Kumar Vs. Union of India and others, . The first case which examined the scope and power of Articles 226 and 227 of the High Court is the decision of a Full Bench of the Supreme Court in the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . Even subsequently legislature wanted to impair the jurisdiction of the Court under Articles 226 and 227 by the constitutional amendment and that too was negatived by Apex Court in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, observing that this power cannot be taken away even by constitutional amendment as it is the basic structure like other portion of the Constitution. Of course, Mr. Das has hastened to say that it is not ouster of jurisdiction rather it is an alternative remedy and an advice of the Supreme Court, the High Court, should respect the pronouncement of the Supreme Court in a case of this nature, referring the matter to High Power Committee. As I have

observed, there is no need in this case to refer to the High Power Committee, which cannot have jurisdiction to decide the dispute involved between the Government of India and the private individual litigants. Settlement Commission has come in picture as because the private litigant approached and invited it to settle.

6. Now coming to the merit of the matter/ after having heard some times both parties have agreed now the matter should be heard on affidavits, however, expeditiously as the bank guarantee has been kept valid till 20-5-2004, as has been informed by Mr. Das and Mr. Pal. They submit that hearing should be concluded and judgment should be delivered before any renewal is needed. They are prepared to wait till 20-5-2004. In view of this concession I decide this matter should be heard expeditiously.

7. Therefore, respondents shall file affidavits-in-opposition in both the matters by 31-3-04. Affidavits-in-reply shall be filed by 8-4-04. Let both the matters appear on 21-4-04 at the top of the list immediately after ''Court Application'' and be heard analogously as the same and identical points are involved in both the matters. Meanwhile, all the parties shall maintain status quo as of today in all respects.

8. At the time of final hearing of the writ petition, except the point of maintainability of the writ petition in the context of formation of High Power Committee, which has been dealt with by me exhaustively, other points are kept open for argument.

9. Affidavit of service filed in the second matter be kept with the record.

10. Let xeroxed signed copy of this order be made available to the parties only after putting in requisition for drawing up and completion of the order and also for the xeroxed certified copy thereof.

