
(2016) 11 DEL CK 0098

In the Delhi High Court

Case No : Writ Petition (C) 8712 of 2016, CM APPL. 35749 of 2016

Door Deco Industries

APPELLANT

Vs

Customs, Central Excise and Service Tax

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Central Excises and Salt Act, 1944 — Section 31(c), Section 32E

Citation : (2017) 3 ADDelhi 64 : (2016) 235 DLT 689 : (2017) 346 ELT 323 : (2017) 59 GST 230

Hon'ble Judges : Mr. S. Ravindra Bhat and Mr. Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Mr. Pramod Kumar Rai, Advocate, for the Respondent; Ms. Priyanka Goel, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J. (Oral)—Common question which arises in these petitions is whether the rejection of the petitioner's request to the Settlement Commission to adjudicate upon the show cause notice issued to them on 04.12.2015 as a proceeding connected with the applications made upon the issuance of show cause notices dated 16.01.2015 and whether directions to entertain them are to be issued.

2. Brief facts necessary for decision in these petitions are that searches were conducted in the premises of the petitioners in July, 2014 during the course of which statements of various individuals were recorded. Similar searches were conducted in the residential premises of the proprietors of some of the applicant company/concerns and further statements were recorded. Show causes notices which were phrased identically were issued on 16.01.2015 demanding duty based upon valuation of the goods seized, as well as in some instances currency seized (these are hereby described as "the first notice"). Thereafter, further statements were recorded and the petitioners deposited the amounts which according to them constituted admitted duty liability of the respondent/

department. A further show cause notice to each of the petitioners was issued (hereafter called "the second notice") on 04.12.2015 spelling out additional duty liability in respect of clearance for the past period but in respect of the same goods for which no duty was alleged to have been paid. In these circumstances, on 02.06.2016 all petitioners filed settlement applications (Nos. 5247, 5251, 5252, 5250, 5248 and 5258). The Settlement Commission issued notice to the petitioners under Section 32(f) of the Act. The commission issued notices requiring the petitioners to show why the applications could be proceeded with at all since they did not pertain to one show cause notice. The petitioners' position was that both the show cause notices were interconnected.

They relied on the narrative in the first show cause notice as well as the linkage established through the second show cause notice.

Furthermore, they relied upon the decision of a special bench of the Commission in Yousuff Kasim Sait [2003 (161) ELT 1069 (Sett. Comm.)] and decision of High Court of Gujarat in the case of Mahendra Petrochemical Ltd. v. Union of India - 2010 (257) ELT 412 (Guj).

3. The Settlement Commission ruled that the applications as filed could not be entertained and that each of the present petitioners should have filed two applications before the Commission. The reasoning of the Settlement Commission is as under:

"10. We have perused the case records including the submissions made by the Ld. Advocates during the hearing held on 08.07.2016. We find that the Special Bench in the case of M/s. Yousuff Kasim Sait vide Special Bench Order No. 1/2003 (Cus) dated 30.05.2003, though noting that Section 127B(1) by implication calls for separate application for each case, but placing reliance on the wordings used in the application form SC (C)-1 and reached the conclusion that a consolidated application can be made in respect of more than one proceedings provided the issues in the proceedings are inter-related. We find that the subject matter of both the SCNs in respect of application no. 5247/2016, although issued to the same person is different. One SCN dated 16.01.2015 relates to confiscation of seized goods and the other SCN dated 04.12.2015 relates to demand of duty on goods removed without payment of duty during the period 2012-13 to 2014-15. In the context we observe that Section 32E refers to "a case" and the "case" has been defined in Section 31(c) as any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made. Further, we find that Special Bench Order No. 112003 issued with reference to the Customs (Settlement of Cases) Rules, 1999 have since been superseded by Customs (Settlement Commission) Rules, 2007. Form SC(C)-I has also been amended vide notification no. 54/2007-Cus.(NT) dated 28.05.2007. In addition, we also observe that as per Section 32A(7), a Special Bench can be constituted for the disposal of a particular case and not for deciding the issues as has been done in

the case of Yousuff Kasim Sait where the Special Bench has laid down the guidelines for deciding different issues without disposing off any case. We also observe that in the case of Mahindra Petro Chemicals Ltd. v. Union of India, the issue before the Hon"ble Gujarat High Court was whether an application can be maintained where no Bill of Entry was filed. The issue relating to filing of composite application for more than one SCN was not before the Hon"ble High Court.

Regarding the case of Mis. Mangala Ispat (Jaipur) Ltd. settled by the Principal Bench of the Settlement Commission vide Order No. F-2245-50/CE/15-SC(PB), it is true that the Principal Bench has admitted and settled the case where a single application was filed involving more than one SCNs. The Bench in its order has not discussed the reasons for entertaining such an application and nor has dwelt on this subject. Thus, we hold that the order relating to Mangala Ispat (Jaipur) Ltd. is per incurium as far as this particular aspect is concerned.

11. In view of the provisions of Section 32E of Central Excise Act, 1944 as detailed above and also the fact that any application for settlement can be filed only if the conditions laid down in Section 32E are fulfilled independently, we hold that the applicant should have filed separate application for each of the two SCNs dated 16.01.2015 and 04.12.2015. This view is also fully endorsed by the Hon"ble High Court of Madras in the matter relating to Optigrab International v. Union of India - 2010 (253) ELT 722 (Madras). Accordingly, we hold that composite application filed by the applicant in respect of two SCNs cannot be allowed to be proceeded with."

4. The petitioners urged that the reasoning of the Settlement Commission is flawed and untenable. They highlighted that the first show cause notice in each of the cases, which quantified the duty liability and further action in respect of the seized material stated as follows:

"5. This show cause notice is being issued for the seized goods/currency only. Further investigations are in progress. Show cause notice as a result of subsequent investigation shall be issued separately."

5. It was submitted that having regard to this, the second show cause notice issued on 04.12.2015 sought to quantify further liability based on the very same notice after the investigation was concluded. The petitioners relied upon the following extract of the second show cause notice in that regard:

"15. The Show Cause Notice in respect of goods seized at the premises Door Deco Industries has already been issued vide SCN C. No. IV(Hqrs.Prev.)Int/19/5/2014 dated 16.01.2015."

6. It is urged on the strength of the decision of the Special Bench in Yousuff Kasim Sait (supra) and the Gujarat High Court in Mahendra Petrochemical Ltd. (supra) that substance of dispute or "lis" before the Settlement Commission was one and the same and that the insistence that separate applications should be

filed in the circumstances was unjustified.

7. Mr. Rai, the learned counsel for the Revenue urged that this Court should not entertain these proceedings. He stated that so far as the reasoning in Yousuff Kasim Sait (supra) is concerned, it was based largely on the structure of the form as then existing. It was highlighted that form has undergone substantial changes with pointed reference to specific show cause notice and "case". In turn he relied upon the authority of the Madras High Court in Optigrab International v. Government of India 2010 (253) ELT 722 (Mad.). In particular reliance was placed upon the following observation:

"17. Therefore, in the present case, three show cause notices were issued which were answerable to three different Adjudicating Authorities before three different Commissionerates and as such the cases covered in the three show cause notices are only three different cases(1) before Deputy Commissioner, Chennai(Sea Port) (2) Deputy Commissioner of Customs, Tuticorin (3) Deputy Commissioner of Customs(Air) Chennai and therefore, they cannot be treated as one single case and as a matter of fact it cannot be clubbed. The appellant cannot seek in aid of Section 219 of Criminal Procedure Code which is alien to the Customs Act especially with reference to the meaning of the "case" as per Section 127A(b) of the Act which has found its meaning of levy assessment and collection of customs Duty pending before the Adjudicating Authority etc. and all the more, the said term "case" does not any way refer to three offences of such kind within a year that may be charged, like the one under Section 219 of Criminal Procedure Code and therefore, the submission of the learned counsel for the appellant in regard to the applicability of Section 219 of Cr.P.C. is negated by this Court.

Admittedly no criminal cases were filed against the appellant by the second respondent. Only if criminal cases were filed by the second respondent, the second respondent may seek in aid of Section 219 of Cr.P.C. Hence the application of Section of 219 Cr. P.C. for clubbing of three show cause notices is untenable. Even if criminal cases are filed for the offences committed then there is no embargo in law for separate trial of each offence as per the decision of the Hon"ble Supreme Court AIR 1965 SUPREME COURT 1248."

8. Relevant provisions of the Central Excise Act are discussed hereinafter. 31(c) defines "case" as follows:

"31(c) ? "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made."

9. Section 32E (1) which is material for the purposes of deciding the present controversy reads as follows:

"32E(1) ? An assessee may, in respect of a case relating to him, make an

application, before adjudication, to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of mis-classification, undervaluation, inapplicability of exemption notification or CENVAT credit [or otherwise] and any 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 returns showing production, clearance and central excise duty paid in the prescribed manner;
- (b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- (c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and
- (d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under [section 11AA]"

10. As is evident "case" means a proceeding in the Act or any other Act for the levy, assessment and collection of excise duty ? (this provision has been incorporated for reference in the relevant provision of Customs Act), pending before an adjudicating authority before which the application under Section 32E is made. The decision in Optigrab International (supra) is premised upon the fact that separate show cause notices, that involved adjudication by different authorities, were issued. At the same time, a close reading of the facts of that case reveal that the searches and investigations were common; firms which received the show cause notices were the same; all of which were issued on the same day. What persuaded Madras High Court was that the adjudicating authorities fall in different Commissionaires.

11. This Court, however, is not persuaded to accept the Madras High Court's logic. The search and seizure proceedings relate to the premises of the petitioners each of whom applied for settlement. That investigation was split up and issuance of separate show cause notices was a matter of convenience of the Excise department. In respect of two sets of show cause notices potentially there even could have been six but these do not detract from the fact that investigation was a seamless one in relation to the same trigger, i.e., same search and seizure which took place on 17.07.2014. In that proceeding there was only one cause that resulted in the issuance of show cause notices.

12. Unlike in the Madras High Court decision, the Commissionaire which is concerned with the adjudicating authority is common. In such circumstance, if

the assessee/unit were not to approach the Settlement Commissioner, there is every likelihood of multifarious conflicting decisions. The Court in such circumstance should lean to a progressive interpretation that furthers the petition rather than based on purely procedural views.

13. For the foregoing reasons, we are of the opinion that the impugned order directing the petitioners to move separate applications has to be set aside. They are accordingly quashed. The applications pending ? in the two sets of show cause notices shall now proceed in accordance with law as expeditiously as possible. The petitioners shall cooperate in the completion of proceedings which shall be done within the time prescribed in accordance with appropriate provisions of law. The writ petitions are allowed in the above terms.

14. Next date of hearing given in WP(C) 8712/2016 and WP(C) 8998/2016 stands cancelled.