(2016) 10 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23412 of 2016

Essar Steel APPELLANT

Vs

Central Board Of Excise RESPONDENT

Date of Decision : 13-10-2016

Acts Referred:

Citation : (2017) 345 ELT 625

Hon'ble Judges : V. Ramasubramanian and Anis, JJ.

Bench : Division Bench

Advocate : Shri Gandra Mohan Rao, Counsel, for the Petitioner; Shri M.V.J.K. Kumar, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—Aggrieved by the refusal of the respondents to grant a waiver of interest, in terms of Section 61(2) of the Customs Act, 1962, the assessee is before us.

2. Heard Mr. G. Mohan Rao, learned counsel for the petitioner, and Mr. M.V.J.K. Kumar, learned senior standing counsel for Central Excise, Customs and Service Tax, appearing for the respondents.

3. Admittedly, the petitioner imported certain goods during the period 1994-95 and cleared them under bills of entry. The goods were transferred under bond to the customs private bonded warehouse of a Company, by name, P.S.L. Holdings Limited, under Section 67 of the Customs Act, 1962.

4. Thereafter, a long litigation commenced with the issue of a show cause notice, dated 27-6-1996. Eventually, the imported material was auctioned on 4-9-2001 and a sum of Rs. 1,53,82,862/- was recovered in the public auction sale.

5. Contending that the duty component finally arrived at worked out to Rs. 1,77,55,557/-, and that the amount realized through the public auction was lesser than that, the Department issued a demand calling upon the petitioner to

pay the differential duty amount of Rs. 22,37,699/- together with interest to the tune of Rs. 1,31,40,822/-.

6. After paying the difference in duty to the tune of Rs. 22,37,699/-under protest, the petitioner made an application for waiver of the interest component alone. The request was turned down by the Department, forcing the petitioner to come up with the above writ petition.

7. It is, no doubt, true that the power of the Central Board to grant a waiver, which stems from the first proviso to sub-section (2) of Section 61, has to be exercised only in circumstances of exceptional nature. The first proviso to Section 61(2) reads as follows :

"Provided that the Board may, if it considers it necessary so to do in the public interest, by order and under circumstances of an exceptional nature to be specified in such order, waive the whole or part of any interest payable under this Section in respect of any warehoused goods".

8. What are circumstances of exceptional nature are not indicated in the Act. We do not know whether there are any Board Circulars laying down the guidelines as to how the discretion conferred by the first proviso to Section 61(2) has to be exercised. Therefore, on first principles, it will be clear that such discretion may have to be exercised, in an objective manner. With this first principles in mind, if we have a look at the impugned order passed by the Commissioner of Central Excise, to whom the Board has delegated the power, it is clear that the Chief Commissioner simply went by a decision of the Gujarat High Court in Panchsil Exim Private Limited v. Union of India - 2011 (265) E.L.T. 324 and the plain language of the proviso to Section 61(2). The history of the case has not been taken note of by the Chief Commissioner, while passing the impugned order rejecting the request for waiver.

9. Even from Paragraph 12 of the counter affidavit filed by the respondents to the writ petition, it is clear that the petitioner was drawn into a long drawn litigation from 1996, on the question of clearance of goods. The tabulation provided by the respondents themselves in Paragraph 12 of the counter affidavit would show this and, hence, it is extracted as follows :

Date of event

Particulars

27-6-1996

A show cause notice C. No. IV/29/92/95-T.III, dated 27-9-1996 was issued to both the parties demanding payment of customs duty u/s. 72(1) of Customs Act, 1962 for non-removal of warehoused goods at the expiry of the warehousing period and for failed to file application for extension of warehousing period.

26-8-1996

Reply to show cause notice.

12-8-1997

OIO No. 22/97, dated 12-8-1997 passed by Asstt. Commr., VSP detaining the goods and for recovery of customs duty of Rs. 2,01,20,194/- involved. Recovery of balance interest amount of Rs. 3,41,768/- (Total interest Rs. 57,25,626/- (-) paid Rs. 53,83,858/-) and penalty of Rs. 20,00,000/- also imposed.

14-8-1998

Being aggrieved, Essar filed appeal before Commr. (A), Hyderabad. Vide OIA No. 06/98(V)CUS., dated 14-8-1998 Commr. (A) set aside the order passed by AC, VSP and remanded back for de novo proceedings. Penalty of Rs. 20 lakhs set aside.

15-10-1998

Vide OIO No. 73/98, dated 15-10-1998 Asstt. Commr., VSP ordered Essar to clear the goods on payment of duty of Rs. 2,26,42,882/- along with interest of Rs. 1,21,05,644/-.

17-3-1999

Being aggrieved, Essar filed appeal before Commr. (A), Hyderabad. Vide OIA No. 2/99(V)CUS., dated 17-3-1999 Commr. (A) rejected the appeal filed by Essar.

12-4-1999

Essar filed appeal in CEGAT, Chennai along with stay application.

29-6-1999

CESTAT, Chennai vide Final Order No. 1578/99, dated 29-6-1999 remanded back to Commr. (A) for de novo proceedings.

14-10-1999

Commr. (A), Hyderabad vide OIA No. 12/99 (V) CUS., dated 14-10-1999 modified the order passed by Asstt. Commr., VSP and ordered Asstt. Commr. for the quantification of duty and interest. Also directed Essar to clear the goods within one month of the receipt of the order after discharging the duty liabilities.

12-11-1999

Asstt. Commr. vide C. No. V/29/92/95 T.III PF VI, dated 12-11-1999 quantified the duty amounting to Rs. 1,77,55,557/- interest of Rs. 98,74,693/- and penalty of Rs. 1,000/-.

6-11-2002

Since the full amount was not realized, department issued letter dated 6-11-2002 for recovery of balance amount of duty of Rs. 22,37,699/-, interest of

Rs. 1,31,40,822/- and penalty of Rs. 1,000/-.

10-12-2002

Essar deposited balance amount of duty of Rs. 22,37,699/- vide TR-6 Challan No. 001.

27-1-2003

Essar filed a representation before C.B.E. & C. seeking waiver of interest payable.

4-3-2003

AC issued a letter directing the Superintendent to detain the finished goods to the worth of Rs. 1.32 crores.

17-3-2003

DC vide demand notice dated 17-3-2003 for recovery of dues.

20-3-2003

Writ Petition No. 4757/2003, dated 20-3-2003 filed before Hon''ble High Court of Andhra Pradesh at Hyderabad, which was admitted by Hon''ble High Court.

1-1-2004

C.B.E. & C. informed Essar to approach the Commissioner of Customs after the pronouncement of judgment by Hon''ble High Court.

21-4-2015

Hon''ble High Court disposed of W.P. No. 4757 of 2003 directing the competent authority to consider and decide M/s. Essar''s representation for waiver of interest under Section 61(2) of the Customs Act, 1962.

6-4-2016

Chief Commissioner vide Order C. No. V/30/100/2015-CC(VZ) Legal, dated 6-4-2016 in pursuance of Hon''ble High Court''s order dated 21-4-2015 rejected the request of M/s. Essar for waiver of interest.

10. Along with the counter-affidavit, the respondents have also filed a copy of letter, dated 6-11-2002, issued by the Assistant Commissioner of Central Excise, to which, a calculation working sheet is attached. A comparison of the tabulation given in Paragraph 12 of the counter-affidavit filed by the respondents and the calculation working sheet attached to the letter of the Assistant Commissioner of Central Excise, would show that an amount of Rs. 53,83,858/- already paid by the petitioner in August, 1997, has not been taken note of. The result of this is that the petitioner has not only paid the differential duty of Rs. 22,37,699/-, but had already paid a sum of Rs. 53,83,858/-. To be precised, the petitioner appears to have paid a sum of Rs. 53,83,858/- much before August, 1997. The amount of duty was actually quantified only subsequently at Rs. 1,77,55,557/-,

by a final order passed on 12-11-1999. The amount realized through the sale of the imported goods in the public auction was Rs. 1,53,82,862/-. Thereafter, the petitioner has paid the differential duty of Rs. 22,37,699/- (Rs. 1,77,55,557/- minus Rs. 1,53,82,862/-). It is this aspect, which made the case of the petitioner one of exceptional nature, but to this aspect, the respondents have not applied their mind at all.

11. As a matter of fact, if the goods had not been auctioned, the petitioner would have had the benefit of the goods and the amount already paid by them would come to nearly 50% of the duty demanded. By making payment of the remaining amount, they could have retained the goods. Today, the payments made by them to the tune of about Rs. 75.00 lakhs, is in addition to the goods that they have lost. Therefore, if this is not a case, which will fall under the parameters of the first proviso to Section 61(2), we do not know which other case would fall. Therefore, the writ petition is allowed and the impugned demand is set aside. However, it is made clear that the petitioner will not be entitled to refund of the amounts already paid by them.

12. Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

