(2012) 08 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 2088 of 2012

Hazel Mercantile Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 28 STR 349

Hon'ble Judges : R.Y. Ganoo, J;J.F. Devadhar, J

Bench : Division Bench

Advocate : Sujay Kantawala with Brijesh Pathak, for the Appellant; P.S. Jetty and H.V. Mehta, for the Respondent

Judgement

1. Rule. Rule is made returnable forthwith. By consent, the writ petition is taken up for final hearing. This writ petition is filed to challenge the final order of the Settlement Commission dated 16th January 2012, whereby the case has been relegated to the adjudicating authority.

2. In the present case, by a show-cause notice dated 23rd February 2011 the petitioner was called upon to show cause as to why the petitioner and the foreign supplier should not be treated as related companies and why the invoice value should not be enhanced and differential duty amounting to Rs. 60.45 lakhs should not be recovered from the petitioner.

3. On receiving the show-cause notice, the petitioner filed an application before the Settlement Commission seeking settlement of the dispute. In the said application, the petitioner admitted the duty liability of Rs. 60.45 lakhs and accordingly paid the said amount. During the course of hearing before the Settlement Commission, the petitioner computed the interest liability on the said amount of Rs. 60.45 lakhs at Rs. 5.28 lakhs, but the same was disputed by the Revenue. By the impugned order dated 16th January 2012, the Settlement Commission held that the petitioner has not cooperated by not disclosing full facts with honesty and accordingly relegated the matter to the adjudicating

authority.

4. It is the case of the petitioner that when the entire amount claimed in the show-cause notice has been offered to tax, the Settlement Commission could not have recorded that the petitioner has not cooperated. Counsel for the Revenue is unable to point out as to what cooperation was not extended by the petitioner before the Settlement Commission. Since the petitioner has admittedly paid the entire duty liability of Rs. 60.45 lakhs claimed by the Revenue and has also offered to pay interest amounting to Rs. 5.28 lakhs, in our opinion, the decision of the Settlement Commission that the petitioner has not cooperated in the proceedings cannot be sustained. Counsel for the petitioner states that the petitioner is ready and willing to deposit the interest amount of Rs. 5.28 lakhs with the respondents within one week from today.

5. Subject to the petitioner depositing Rs. 5.28 lakhs with the respondents within a period of one week from today, the impugned order of the Settlement Commission dated 16th January 2012 is quashed and set aside and the matter is restored to the file of the Settlement Commission for fresh adjudication on merits and in accordance with law. The writ petition is disposed off in the above terms with no order as to costs.