(2016) 09 BOM CK 0124

In the Bombay High Court

Case No : Writ Petition No. 8072 of 2015

JBM Auto Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Citation : (2017) 345 ELT 10

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Shri V. Sridharan, Sr. Advocate with Prakash Shah and Jas Sanghavi i/b. M/s. PDS Legal, for the Petitioner; Shri M. Dwivedi i/b. Pradeep S. Jetly, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges that part of the order dated 29th October, 2014, which, according to the petitioner, contains an adverse remark and one letter dated 6th April, 2015 issued by the second respondent rejecting a miscellaneous application.

2. Mr. Sridharan submits, on instructions and information that the petitioner has informed him to give up the challenge to the final order except to above extent and rather one small remark in Para 7.4, which reads as under :-

"7.4 It is a clear case of suppression and misdeclaration of facts with intent to evade duty."

3. Mr. Sridharan would submit that if Para 8 and the findings ultimately arrived at cannot be reconciled with this remark, then, that remark should have been expunged or deleted.

4. On instructions, he also states that the Central Excise Duty, as per the order, has been paid. The interest component has also been paid as settled. Equally, the penalty also has been paid. Since all amounts under the impugned order

have been paid, then, bearing in mind the bona fide conduct of the petitioner, this remark should be deleted.

5. On the other hand, it is submitted that the remark was justified. Inasmuch as, the petitioner was found to have not disclosed the value of dies/fixtures in the declared value of parts/components. This resulted in short payment of the Central Excise Duty. It is in these circumstances that the remark was inserted and it does not cause any prejudice and therefore, it should not be deleted.

6. The petitioner approached the Settlement Commission. The application for settlement was admitted and a report of the Revenue was called for. The petitioner pointed out that it contains the details of value of dies/fixtures supplied by M/s. Tata Motors Limited. The petitioner/applicant was not amortizing the same in the value of goods/sub-assemblies being cleared on payment of duty and therefore, it was not being reflected in the monthly returns filed. The argument was that there were no mala fides and when the relevant information became available, the dues as worked out, interest and penalty have been paid. The reasons that have been assigned during the course of these disclosure, were considered. The commission found that the petitioner before us is a subsidiary unit of M/s. Tata Motors Limited engaged in the manufacture of motor vehicle parts and components. They were receiving dies/fixtures free of cost from M/s. Tata Motors Limited for use in their manufacturing process, but failed to include the amortized value of such dies/fixtures in the final value of parts/components manufactured. That is how, being aware about the legal position regarding the inclusion of such value, the petitioner was faulted, but having come forward to settle the claim, the findings were rendered and to the above effect. The entire findings are rendered after examining the application of the petitioner and the report received from the Jurisdictional Commissioner and the submissions at a personal hearing. There are other evidences available and once the show cause notice was based on the requirement of amortized value and as noted above, the conclusions were arrived at. The submissions have been recorded and in Paras 7.3 and 7.4, the commission holds that the Revenue''s representative, while confirming full payment of duty and interest by the petitioner, submitted that the petitioner/applicant had similar units manufacturing auto parts/components for M/s. Tata Motors Limited, where dies/fixtures were being supplied by M/s. Tata Motors Limited. They were, therefore, aware about inclusion of value of such dies/ fixtures in the value of parts/components manufactured.

7. We do not think that in the given facts and circumstances, there was any need to record a finding that there is a suppression and misdeclaration of facts with intent to evade duty. The Settlement Commission, in this case, took the application for settlement on record and adjudicated it in accordance with law. The very purpose was to provide an opportunity to parties like the petitioner to come clean by readily accepting the calculations and computation. Precisely, that has been done and there is no challenge to the order of the Settlement Commission on merits. The findings that the disclosures are honest and yet there

is suppression and misdeclaration of facts cannot be reconciled. We, therefore, delete that part of the order. The writ petition is allowed to that extent. There would be no order as to costs.

8. By virtue of this order, the petitioner will not derive any benefit in the form of refund of duty, interest and penalty already paid under the order of the Settlement Commission.