(2004) 09 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No. 12919 of 2003

Kashish Silk Mills Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-09-2004

Acts Referred:
Central Excises and Salt Act, 1944 — Section 32F(7)
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 183 ELT 134

Hon'ble Judges : Sharad D. Dave, J;B.J. Shethna, J

Bench : Division Bench

Advocate : Paresh M. Dave, for the Appellant; Dharmishta Raval and Jitendra Malkan, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Heard the learned Counsel Shri Dave for the petitioner. By way of this petition, the petitioner has challenged the impugned Order passed by the Settlement Commission at Annexure ''F'' on 7-4-2003 in Settlement Application No. 50 of 2000.

2. Having heard the learned Counsel Shri Dave for the petitioner and having carefully gone through the impugned Order Annexure ''F'' passed by the Settlement Commission, it appears to us that the Settlement Commission, on the facts of this case, came to the conclusion that the cum duty price concept would not be applicable in this case because of the non availability of figure of realization on sale of goods. Accordingly, the learned Settlement Commission held that the duty finally demandable in this case was Rs. 84,68,535/- and accordingly it settled the case on the following conditions u/s 32F(7) of the amended Central Excise Act, 1944 amended by Finance Act of 1998.

"1. CENTRAL EXCISE DUTY :

The case is settled at Rs. 84,68,535/- so far as the Central Excise Duty liability is concerned. A sum of Rs. 80,31,447/- has already been recovered from the applicant. The balance amount of Rs. 4,37,088/- shall have to be paid by the applicant within 30 days from the date of receipt of this Order and they shall produce proof thereof."

3. From the impugned Order at Annexure ''F,'' it is clear that the Settlement Commission granted immunity to the petitioner from payment of interest under the Central Excise Act, 1944 so as the prosecution.

4. The aforesaid impugned Order was duly complied with by the petitioner by depositing the balance amount of Rs. 4,37,088/- within 30 days from the date of receipt of the order. As the learned Settlement Commission settled the matter for Rs. 84,68,535/- so far as the Central excise duty liability was concerned and out of which Rs. 80,31,447/- was already paid by the petitioner. Therefore, the balance amount of Rs. 4,37,088/- was deposited within a period of 30 days from the date of the receipt of the order. However, thereafter, the petitioner addressed a letter dated 23-4-2003 to the Commissioner of Central Excise, Surat-I stating that under protest they were depositing balance amount of Rs. 4,37,088/-. Thereafter, they have approached this Court by way of this petition filed under Articles 226 and 227 of the Constitution of India on 6-8-2003 i.e. after a period of four months.

5. It is clear from bare reading of Section 32F(7) of the Act that the Order passed by the Settlement Commission under this Section is final and it cannot be challenged on any other ground except on the ground of fraud or on the ground of jurisdictional error. It was tried to be submitted by Mr. Dave for the petitioner that while passing the impugned order, the Settlement Commission committed jurisdictional error as it had not considered Full Bench judgment of the Tribunal cited before it. We do not find from the impugned Order of the Settlement Commission that said decision was cited before it at the time of oral hearing of the case. When the learned Commissioner has arrived at just conclusion and settled the matter for Rs. 84,68,535/- out of which the petitioner had already deposited Rs. 80,31,447/-, then the petitioner was required to deposit balance amount of Rs. 4,37,088/- which it had already deposited within 30 days of the receipt of the order.

Thus, in short, the petitioner had initially accepted the Order passed by the Settlement Commission, but later on, it seems that it had changed its mind and made an application in writing on 23-4-2003 to the Commissioner of Central Excise stating that they were depositing the amount under protest.

6. Even assuming for the sake of argument that the Settlement Commission committed error on law while settling the application in exercise of its powers u/s 32F(7), then also this petition being petition under Article 227 of the Constitution of India, this Court would not like to exercise its powers when no jurisdictional error committed by the Commission when it had arrived at just conclusion and the fact is that the Order impugned at first instance is accepted and complied

with by the petitioner itself.

7. In view of the above discussion, this petition fails and is hereby dismissed. Notice discharged with no Order as to costs.