(2009) 06 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 2351 of 2002

Mahendra Petrochemicals Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:
Customs Act, 1962 — Section 127B, 127B(1)

Citation : (2010) 257 ELT 412

Hon'ble Judges : K.A. Puj, J;A.L. Dave, J

Bench : Division Bench

Advocate : Paresh M. Dave, for the Appellant; Amee Yajnik, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—The petitioners challenge the Final order passed by Settlement Commission, Mumbai, bearing No. 34 of 2002-Cus., dated 12-12-2001, turning down the application of the petitioner on the ground that it was not maintainable in light of Section 127B of the Customs Act, 1962, as the petitioner was not the person who had filed the bill of entry.

2. Certain undisputed facts:

2.1 The petitioner purchased certain quantity of polyester chips from one Rajwada Industries of SEPZ, Sachin, Surat, which was imported by the said Rajwada Industries. It was detected during investigation by the Customs authority that customs duty was not paid on those chips and, therefore, a demand was made from Rajwada Industries as well as the petitioner for the customs duty payable on the chips in proportion of the quantity purchased by the petitioner. Substantial part of that duty has been paid by the petitioner. The petitioner approached the Settlement Commission with an application, which came to be turned down by the impugned order and, therefore, this petition.

2.2 It is also not in dispute that a show cause notice was served on the petitioner besides Rajwada Industries.

3. Learned Advocate, Mr. Dave, has drawn our attention to provisions of Section 127B of the Customs Act, which refers to the persons who can make application to the Settlement Commission. The said Section provides that any importer, exporter or any other person may make such an application. The emphasis is on words "any other person". Mr. Dave submitted that, if proviso to the said Section is seen, it is clear that no such application can be made unless the applicant has filed bill of entry or shipping bill in respect of import or export of goods, as the case may be, and in relation to such bill of entry or shipping bill, a show cause notice has been issued to him by the proper officer. Mr. Dave submitted that, in the instant case, show cause notice has been issued to the petitioner by a proper officer and, therefore, second part of the proviso stands satisfied. So far as first part is concerned, he submitted that filing of bill of entry by the applicant may not be considered as essential because, there may be occasions where a person may have imported goods in absence of a bill of entry.

3.1 Mr. Dave relied on the decision in the case of A. Mahesh Raj 2001 (131) E.L.T. 707 (Settlement Commission), where similar situation came to be dealt with by Settlement Commission, Chennai. There also the Commissioner had objected to admission of application mainly on the ground that no bill of entry was filed by the applicant and, as such, the condition under Clause (a) under the first proviso of Sub-section (1) of Section 127B of the Customs Act, 1962 was not satisfied. There the Commission took a view that, as per Section 127B(1) of the Customs Act, 1962, it is not the importer or the exporter alone but any other person can also make an application containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer.

3.2 Mr. Dave also relied on decision of a Larger Bench of Settlement Commission, Chennai, in the case of Yousuff Kasim Salt, 2003 (161) E.L.T. 1069 (Settlement Commission), where the term "any other person" appearing in Section 127B of the Act was examined and it was held that "any other person" to whom show cause notice has been issued charging him with duty can file an application, provided bill of entry has been filed in the case, not necessarily by him and a case must be pending before the proper officer relating to him with reference to the bill of entry filed. Mr. Dave, therefore, submitted that the view taken by the Settlement Commission in the impugned order is erroneous and may be set aside.

4. Learned Standing Counsel for the respondent authorities, Ms. Yagnik, has opposed this petition. According to her, the proviso to Section 127B has been properly interpreted by the Commission and no interference is called for. She was, however, unable to indicate any contrary view taken by any High Court or the Supreme Court than the view taken by the Larger Bench of the Settlement Commission, Chennai.

5. A plain reading of the decision in the case of Yousuff Kasim Sait (supra) would go to show that the term "any other person" appearing in Section 127B of the Customs Act is interpreted to mean in its literal sense and the proviso to the said

Section is interpreted to mean that the bill of entry must be filed in the case not necessarily by the person who approaches the Commission, provided such person is served with a show cause notice charging him with duty. Differently put, a person, who may not be the importer or exporter, can file such an application before the Commission, if he is served with a show cause notice charging him with duty. The view taken by the Commission in the impugned order is, therefore, not in consonance with the view taken by the Larger Bench of the Settlement Commission, Customs and Central Excise, Chennai, in the case of Yousuff Kasim Sait and we, therefore, without expressing any opinion on merits of the case of the petitioners, set aside the order impugned in the petition and direct the Commission to examine the application of the petitioner in light of the decision in the case of Yousuff Kasim Sait and in accordance with law. The petition, accordingly, stands allowed. Rule is made absolute. No costs.