(2015) 08 BOM CK 0331

In the Bombay High Court

Case No : Writ Petition No. 1979 of 2013

Nigel Panwala APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 325 ELT 565

Hon'ble Judges : S.C. Dharmadhikari and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : J.C. Patel i/b. Sugar V. Kasar, for the Appellant; Jitendra B. Mishra, Sujay Kantawalla and Brijesh Pathak, for the Respondent

Judgement

1. The Settlement Commission has passed an order on 22-3-2013, copy of which is at Annexure-D (page 81) and the order has been assailed before us to the extent of imposition of fine. Paragraph 35 of the operative order directs settlement of the case under Section 127C(5) of the Central Excise Act, 1944* on the terms and conditions indicated therein. They inter alia cover the imposition of fine. To that extent, the order reads as under:

"The seized cars are held liable to confiscation under the provision invoked in the SCN. However, since the seized cars have already been provisionally released, the Bench orders a sum of Rs. 5,00,000/- (Rupees five lakh only) to be paid in terms of the Bonds as fine in lieu of confiscation of the seized cars. An equivalent amount is ordered to be appropriated from the amount recovered from the residence of applicant No. 2."

The learned counsel appearing for the petitioner has submitted that this part of the order cannot be sustained because an equivalent amount is ordered to be appropriated from the amount recovered from the residence of the petitioner/ original applicant No. 2. In the present case, fine has been imposed because the seized cars are liable for confiscation under the provisions invoked in the show cause notice. However, these cars were already provisionally released. A sum of

Rs. 5,00,000/- to be paid in terms of the Bond as fine in lieu of the confiscation of the seized cars has been directed to be appropriated, as above.

The counsel for the petitioner submits that before the Settlement Commission it was argued that the amount was liable to be paid by the person who had executed the Bonds before the authorities and not the petitioner/original applicant No. 2. The second respondent failed to appreciate that the vehicles in question were seized from the possession of the third respondent. They were provisionally released to him on execution of Bonds and Bank Guarantees. The same were executed by the third respondent and therefore any direction of this nature is unsustainable in law. The direction, therefore, could not have been issued. If at all there was any liability, it was on the third respondent and not the petitioner.

2. Upon such a contention which was raised on the earlier occasion and after hearing the petitioner for some time, we had called upon Mr. Mishra, appearing for respondent Nos. 1 and 2, to explain as to how the terms and conditions for settlement would incorporate a direction of this nature. Mr. Mishra sought time and to take appropriate instructions.

3. We had also given time to Mr. Mishra so that complete file can be perused by him. The matter was, therefore, placed today and for admission and final disposal.

4. Today as well we have heard the parties and Mr. Mishra fairly conceded that there is no material in the possession of the authorities by which such a direction could be sustained. On whom fine should be imposed and should be directed to be paid is a matter which should not be clarified by this Court, is the submission of Mr. Kantawalla. If the matter is to go back to the Settlement Commission only for this limited purpose, then the request of the third respondent is that this Court should not make any observations nor render any conclusive findings.

5. What we have noted in this case is that there were two applicants before the Settlement Commission and in the settlement application filed on 23-4-2012. The petition is filed by applicant No. 2. The other applicant who had filed the petition/application before the Settlement Commission is impleaded as respondent No. 3 to this writ petition. The Settlement Commission has recorded that as far as applicant No. 2 is concerned, his residential premises were searched and the officers recovered Rs. 5.50 lakhs in cash under panchnama dated 5-9-2009. The order of the Settlement Commission then recites that applicant No. 2 had brought the said vehicles for the purpose of selling the same on behalf of the importers and had informed applicant No. 1 that the vehicles are properly duty paid. The argument then was that applicant No. 1 was only a dealer and acted as an agent for the purpose of sale of the vehicles on the request of applicant No. 2. The stand of applicant No. 1 is extensively noted by the Settlement Commission in para (ii). The seizure of the vehicles and their release on Bonds is then narrated and thereafter what had been brought to the

notice of the Settlement Commission is payment of certain amounts styled as differential duty. The proceedings before the Settlement Commission also refer to a statement of applicant No. 2 wherein he stated that he knew applicant No. 1 since 2005 and was partner with him in the business in local deals with him. He was approached by applicant No. 1 with an offer to be his partner in the import of cars and sports utility vehicles as well. The applicant No. 1 informed that it is he who would arrange for sourcing the vehicles. That is how the matter was discussed and the willingness expressed. However, the order of the Settlement Commission and the proceedings before it refer to another deal by applicant No. 2 and what we are concerned with really is not the version of the parties as noted by the Commission but after the Settlement Commission referred to all the records and reports, it purported to settle the matter and in the findings recorded the Settlement Commission had categorically observed that the residential premises of the present petitioner were searched and his statement was recorded by the Officers of the Directorate of Revenue Intelligence. Thereafter, they followed up the matter by recording the statement of the co-applicant No. 1/respondent No. 3 before us, who deposited Rs. 50,00,000/- as payment of differential duty and other liabilities in respect of five imported vehicles. On 9-8-2010, another statement of this applicant No. 1/respondent No. 3 before us was again recorded and on that day he deposited a sum of Rs. 11,61,126/- as differential duty and Rs. 4,32,320/- as interest in respect of an imported Range Rover sports vehicle. Ten days before issuance of a show cause notice, an amount of Rs. 8,26,116/- was paid towards the differential duty. Both the applicants have admitted the allegations in the show cause notice. However, as far as short payment of duty and payment of differential duty are concerned, the responsibility has been owned by applicant No. 1/respondent No. 3 before us. The Commission only noted that the acts of applicant No. 2 and the co-applicant have rendered the goods liable to confiscation and penalty. This part of the order of the Settlement Commission has not been assailed before us. These conclusions are recorded in paragraphs 33 and 34. However, in paragraph 35 the direction with regard to fine and reproduced, as above, has only been impugned.

6. We find from a reading of the entire order of the Settlement Commission that this direction is patently inconsistent with the conclusions reached by the Settlement Commission and noted above. We, therefore, are of the opinion that such a direction and with regard to imposition of fine cannot be sustained. In the facts and circumstances of the present case, therefore, to the extent noted by us, the order of the Settlement Commission is erroneous and illegal and the Settlement Commission clearly exceeded its jurisdiction in directing the appropriation and as observed above.

7. In the light of these conclusions, we allow the writ petition. We quash and set aside the order of the Settlement Commission to the limited extent of imposition of fine and the appropriation. The Settlement Commission shall now re-determine the extent of the fine to be imposed, if any, in accordance with law. While re-determining this aspect of the matter, the Settlement Commission shall

hear both the applicants, as also the Revenue and pass a fresh order. Needless to clarify that beyond noticing the rival contentions and versions before the Commission, we have expressed no opinion as to the aspect of imposition of fine, the amount thereof and equally its appropriation and from whom. All contentions in that regard of the parties are kept open. The writ petition is accordingly allowed with no order as to costs. The Settlement Commission shall endeavor to take up the application and dispose it of expeditiously. We clarify that beyond the aspect of fine, the other aspects and the directions pertaining to the same are left untouched by us, nor shall our order in any manner amount to interference with the Settlement Commission''s order on the same.

* Seems to be Customs Act, 1962 - Ed.