(2003) 07 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 3009 of 2001

Union of India (UOI) APPELLANT

Vs

Sai Impex RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 127C(1)

Citation : (2003) 160 ELT 128

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : R.V. Desai, P.S. Jetly, H.V. Mehta and S.V. Bharucha, instructed by T.C. Kaushik, for the Appellant; Sanklecha, V.M. Diophode and Balak Ram, instructed by V.M. Doiphode and Co., for the Respondent

Judgement

J.P. Devadhar, J.—This writ petition is filed by the Revenue challenging two orders passed by the Settlement Commission viz; order dated 20/23rd February, 2001 admitting the application filed by the respondent No. 1 and the order dated 24th October, 2001 rejecting the Review Application filed by the Petitioners.

2. In the present case, the Respondent No. 1 had imported Damar Batu (agricultural product) and had filed Bill of Entry on 5th October, 1999 for clearance of the goods as ''Damar Batu''. The Customs authorities on examination of the said goods found that the consignment contained Ball Bearings worth Rs. 14,22,178/- CIF and Damar Batu valued at Rs. 57,074/-. Further investigation carried out by Customs Officers revealed that in the past using the same modus operandi, the Respondent No. 1 had clandestinely cleared several consignments of Ball Bearing without payment of duty. Based on the investigation, a Show Cause Notice dated 29th March, 2000 was issued to the Respondent No. 1 calling upon them to show cause as to why imported goods should not be confiscated and duty amounting to Rs. 2,45,83,219/- in respect of earlier consignments should not be recovered and personal penalty should not be levied upon the Petitioners.

3. Before the said Show Cause Notice could be adjudicated upon, the Respondent No. 1 filed an application on 1-11-2000 before the Settlement Commission u/s 127B of the Customs Act. On 9th November, 2000 the Settlement Commission forwarded a copy of the said application to the Customs authorities seeking their comment in the matter. On 5th December, 2000, a report was submitted by the Customs Authorities, inter alia, stating therein that the case of the Respondent No. 1 does not fall within the scope of consideration by the Settlement Commission. However, by the impugned order dated 20/23rd February, 2001 the Commission allowed the application of Respondent No. 1 to be proceeded with u/s 127C(1) of the Customs Act, and the Respondent No. 1 was directed to pay the admitted liability of Rs. 67,56,056/- in four equal installments. From the said order, it is apparent that although the issue of jurisdiction was raised in their comments, the same was not canvassed by the Revenue at the time of the admission of the application filed by the Respondent No. 1.

4. Thereafter, on 20th June, 2001 the Customs Authorities filed a Review Application before the Settlement Commission seeking review of the order dated 20/23rd February, 2001, inter Alia, on the ground that the Settlement Commission had no power to entertain an application in respect of the goods which are not covered by a Bill of Entry filed by the importer. The Respondent No. 1 opposed the Review Application on the ground that the Settlement Commission had no power to review its own order unless the power of review is expressly conferred by the statute. By an order dated 24th October, 2001, the Settlement Commission without giving a clear finding on the preliminary issue as to whether the review was maintainable or not, held that the application filed by the Respondent No. 1 was maintainable before the Settlement Commission and further directed the Revenue to implement the interim order passed by the Commission forthwith. Challenging both the above orders the Revenue has filed the present petition.

5. We have heard Counsel on both sides. The basic issue as to whether the Commission had jurisdiction to entertain the application of the Respondent No. 1 was not considered by the Commission at the time of admitting the application on 20/23rd February, 2001, apparently because, no such argument was canvassed by the Revenue at the time of admission of the application.

6. Even though the issue relating to the jurisdiction of the Settlement Commission to entertain the application of the Respondent No. 1 was not raised at the time of admission of the application, it could still be raised by the Revenue at the time of the final hearing of the application filed by the Respondent No. 1. In the present case, instead of filing an application requesting the Commission to decide the issue of jurisdiction at the final hearing, the Revenue filed Review Application seeking review of the order dated 20/23rd February, 2001 and the Commission without recording any finding as to whether the Review Application was maintainable or not, decided the issue on merits and held that the Commission has jurisdiction to entertain the application filed by the Respondent

No. 1.

7. When the above Writ Petition was taken up for final hearing, Counsel on both sides fairly stated that under the statute there was no power conferred upon the Commission to review its own order dated 20/23rd February, 2001. It is well settled principle in law that the power to review is not an inherent power and it must be conferred by law either specifically or by necessary implication Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, . In the present case admittedly no such power of Review is conferred upon the Settlement Commission. Therefore, the order dated 24th October, 2001 passed by the Commission on the review Application being without jurisdiction the same cannot be sustained. Thus, in the first order passed by the Commission of 20/23rd February, 2001 the jurisdictional aspect was neither raised nor considered and in the second order dated 24th October, 2001 the issue of jurisdiction of the Commission is considered, but the order itself is without jurisdiction.

8. Under these circumstances, we deem it proper to set aside the order of the Commission dated 24th October, 2001 being without jurisdiction for want of power to review its own order and direct the Settlement Commission to treat the application filed by the Respondent No. 1 as preliminary objection to the jurisdiction of the Settlement Commission and to deal with the same and decide it first as a preliminary objection and then to deal with the rival contentions on merits, if the Commission comes to the conclusion that it has a jurisdiction to deal with the application moved by the Petitioner. We direct the Commission to decide the Settlement application, as expeditiously as possible and in any event within a period of four weeks from the date of the Commission receiving the writ of this Court. In the meantime, the amounts deposited by the Respondent No. 1 pursuant to the order dated 20/23rd February, 2001 shall remain deposited.

9. Mr. Sanklecha, learned Counsel appearing on behalf of Respondent No. 1 submitted that since the issue raised is purely a legal issue, the same could be decided in the present Writ Petition even though the review order is without jurisdiction. In our opinion, such a course is not permissible in law. If an order passed by the Authority, on a Review Application is without jurisdiction it will have to be quashed and set aside and it will not be open to the Court to decide the issue on merits on the assumption that the Review Application was maintainable before such Authority.

10. It was also contended that the order passed on the Review Application be ignored and treating the petition filed only against the order of the Commission dated 20/23rd February, 2001, the issue of jurisdiction of the Settlement Commission to entertain the application filed by the Respondent No. 1 be decided. In our opinion when the order dated 20/23rd February, 2001 does not deal with the jurisdictional aspect of the matter, in the facts of the present case, it would not be proper to judge the validity of the said order on the ground which is not even considered by the Commission. Moreover, to decide the issue of

jurisdiction it would be necessary to look into some facts and it would not be proper to look for the facts in the order passed by the Commission on the Review Application which is set aside being without jurisdiction.

11. Under these circumstances the petition is disposed of by setting aside the order of the Commission dated 24th October, 2001 and the Settlement Commission is directed to decide the issue of jurisdiction along with the application filed by the Respondent No. 1 finally within a period of four weeks from the date of receiving the writ from this Court. In the facts of the present case, there will be no order as to costs.

12. Parties to act on ordinary copy of this order, duly authenticated by the Associate.