(2013) 08 BOM CK 0191

In the Bombay High Court

Case No : Writ Petition No. 6424 of 2013

Uttam Chand Sawal Chand Jain — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2014) 299 ELT 45 : (2013) 42 GST 11

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : Durgesh Khanapurkar, Anupam Dighe and Ms. Karishma Shah, for the Appellant; J.B. Mishra, for the Respondent

Judgement

M.S. Sanklecha, J.—In this Petition filed under Article 226 of the Constitution of India, short questions raised is:-- Whether the Customs & Excise Settlement Commission was justified in rejecting the petitioner''s application for settlement under the Customs Act, 1962 (in short "the Act"), merely on the ground that the petitioner had not filed a Baggage Declaration Form?

On 9 June, 2011, a show-cause notice was issued to the petitioner, demanding the duty of Rs. 76.45 lakh under the proviso of Section 28(1) of the said Act in respect of 1425 kgs of "888" brand glass chatons (in short" the said goods") which is alleged to have been illegally imported into the country without payment of customs duty. The show-cause notice demanded duty at the rate applicable for baggage i.e. 100% of value of said goods being classified under Chapter 98 of the Customs Tariff Act, 1975 (in short "the Tariff Act") without extending the benefit of any exemption Notification.

2. On 31 January, 2012, the petitioner filed an application for settlement with the Settlement Commission u/s 127B of the said Act, seeking to settle the dispute raised in the show-cause notice dated 9 June, 2011. By the above application, the petitioner sought to settle the dispute by payment of Rs. 26.19 lakhs as the duty payable on the said goods is 35% after claiming benefit of exemption under

Notification No. 136/90 dated 20 March, 1990. The petitioner in its application for settlement at Serial No. 6(d) thereof made it clear that the dispute sought to be settled is in respect of import of the said goods without declaration and payment of customs duty in Baggage. The petitioner has also stated at Serial No. 7 of its settlement application that though no bill of entry was filed, the Baggage Declaration Form u/s 77 of the said Act was filed by the carrier of the said goods, when brought into India.

3. The Settlement Commission by an order dated 21 May, 2012 dismissed the application for settlement on the ground that the petitioner did not satisfy the condition precedent for entertaining the settlement application as provided under the proviso (a) to section 127(B)(1) of the said Act. This was on the ground that the Baggage Declaration Form required to be filed u/s 77 of the said Act, was not filed by the applicant. Thus disentitling the petitioner from making an application for settlement before the Settlement Commission u/s 127(B)(1) of the said Act.

4. Before considering the rival submissions, it would be convenient to reproduce the relevant portion of Section 127(B)(1) of the said Act, which reads as under:--

Section 127(B)(1):--Application for settlement of cases:-Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, in respect of a case, relating to him make an application, before adjudication to the Settlement Commission to have the case settled, in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by the rules including the particulars of such dutiable goods in respect of which he admits short levy on account of mis-classification, under valuation or inapplicability of exemption Notification [or otherwise] and such application shall be disposed of in the manner hereinafter provided.

Provided that no such application shall be made unless:--

(a) the applicant had filed a bill of entry, or a shipping bill, in respect of import or export of such 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;

(b) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(c) the applicant has paid the additional amount of customs duty accepted by him along with interest due u/s 28AB.

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5. Mr. Dighe, learned Counsel appearing for the petitioner in support of the petition, submits as under:--

(a) the case of the revenue in the show-cause notice issued to the petitioner is that the said goods had been imported by the petitioner as baggage by professional carriers. In that view of the matter, it was not open to the Settlement Commission to conclude that no Baggage Declaration Form had been filed at the time of import by the carrier to oust the jurisdiction of the Settlement Commission;

(b) the Settlement Commission has itself in other cases allowed settlement in respect of the applicants who had not themselves filed Baggage Declaration Form. In support, reliance was placed upon the decision of the Settlement Commission in the matter of Abu Jani Sandeep Khosla, In re 2012 (276) ELT 421 (Sett. Comm.-Mum.). Thus there is no reason to discriminate against the petitioner; and

(c) the Baggage Declaration Form has no column to describe the goods and only the value of goods being carried as baggage is declared. Therefore, if the said goods have been imported as Baggage, the filing of the Baggage Declaration Form would by itself be sufficient and proof that it referred to the said goods is not necessary.

In view of the above, learned Counsel appearing for the petitioner submits that the petition be allowed.

6. As against the above, Mr. Mishra, learned Counsel appearing for the respondents in support of the impugned order submits as under:--

(a) the impugned order has correctly refused to entertain the settlement application, as the petitioner has not filed a Baggage Declaration Form as required under the proviso to Section 127(B)(1) of the said Act; and

(b) the decision relied upon by the petitioner in the matter of Abu Jani Sandeep Khosla (supra), would not apply in the present facts as in that case the Baggage Declaration Form had been filed before Settlement Commission, even though the import was not done by the applicant therein but by professional carriers. In this case, the Baggage Declaration Form alleged to have been filed by the professional carrier is not available and thus not filed before the Settlement Commission. Therefore, the factual matrix is completely different and the case of Abu Jani Sandeep Khosla (supra), would have no application.

7. We have considered the rival submissions. In this case, the petitioner has not filed any bill of entry so as to satisfy the strict reading of the proviso (a) to Section 127(B)(1) of the said Act. However in the matter of Abu Jani Sandeep Khosla (supra), the Settlement Commission relied upon the decision of this Court in the matter of Commissioner of Customs v. Manish Kalvadia 2008 (228) E.L.T. 342 (Bom.) to hold that the Settlement Commission would have jurisdiction to settle cases, even in case where no bill of entry has been tiled for imported goods, if the same has been cleared under a Baggage Declaration Form. Therefore, the petitioner would be entitled to the benefit of Section 127(B)(1) of

the said Act if the Baggage Declaration Form has been filed at the time of the import of goods. However, in this case, it is an admitted position that no Baggage Declaration Form had been filed before the Settlement Commission by the petitioner to evidence its filing at the time of import. In these circumstances, the impugned order held that the petitioner cannot avail of the remedy of Settlement Commission to settle its dispute with the Customs Department in the absence of a Baggage Declaration Form. Further, the decision of the Settlement Commission in Abu Jani Sandeep Khosla (supra), is completely distinguishable as in the facts of that case, the applicant had before the Settlement Commission filed the Baggage Declaration Forms under which the goods had been imported by professional carriers. In this particular case, the applicant has not filed any Baggage Declaration Form.

Moreover, the show-cause notice issued to the petitioner has not been issued in relation to any Baggage Declaration Form. In fact, the show-cause notice does not extend the benefit of exemption Notification on the ground that they are smuggled goods. Non-filing of Baggage Declaration Form before the Settlement Commission would imply that no Baggage Declaration Form mentioning the said goods has even been filed. Therefore, the goods have been smuggled into India i.e. without having disclosed the same at the time of import. The submission of the petitioner that as the said goods were imported in baggage, it follows that the Baggage Declaration Form has been filed cannot be accepted. It is the case of the revenue in the show-cause notice that though the said goods have come as baggage, however, no Baggage Declaration Form has been filed, resulting in the said goods being smuggled into India. The import of goods as baggage does not ipso facto mean that Baggage Declaration Form has been filed by the carrier. We note that the Proforma of Baggage Declaration Form as prescribed u/s 81 of the Act has a column for description of goods. Therefore, the submission of the Counsel for the petitioner that the goods are not required to be described in the Baggage Declaration Form, cannot be accepted. In this case, the petitioner has not been able to even establish that the Baggage Declaration Form has at all been filed and if so, by whom and when. Hence, where Baggage Declaration Form is not filed, jurisdiction u/s 127(B)(1) of the said Act cannot be exercised by the Settlement Commission.

8. In view of the above, we find that the issue whether the Settlement Commission was justified in not entertaining the application for settlement in the absence of Baggage Declaration Form, is to be answered in the affirmative i.e. in favour of the respondents and against the petitioner. In view of the above, Writ Petition is dismissed, with no order as to costs.