(2013) 04 BOM CK 0173

In the Bombay High Court

Case No : Writ Petition No. 1136 of 2011

Vishnu M. Harlalka APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 127C(5), 150, 150(2), 27, 27(2)

Citation : (2013) 3 ABR 643 : (2013) 4 ALLMR 166 : (2013) 6 BomCR 198 : (2013) 294 ELT 5 : (2013) 21 GSTR 82 : (2013) 4 MhLj 912

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : V.M. Doiphode, instructed by V.M. Doiphode and Co, for the Appellant; Pradeep S. Jetly, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule. Learned counsel for the Respondents waive service. By consent, the Rule is made returnable forthwith. The writ petition is taken up for hearing and final disposal, by consent and on the request of learned counsel. The Settlement Commission by an order dated 9 November 2009 passed u/s 127C(5) of the Customs Act, 1962, directed as follows:

(i) The customs duty was settled at Rs. 5,48,381/- which was already paid;

(ii) Interest of Rs. 32,660/- was paid by the Petitioner;

(iii) Immunity was granted from payment of a penalty in excess of Rs. 50,000/-; and

(iv) Immunity was granted from fine in lieu of confiscation in excess of Rs. 1.00 lakh.

2. The Settlement Commission also granted an immunity from prosecution under the Customs Act, 1962 (''the Act''). The Settlement Commission further issued the following direction:

Release of Goods/Sale Proceeds: The Bench holds that the applicant is entitled to release of the seized goods on payment of fine and penalty adjudged as above. Since the seized goods are reported to have already been auctioned, the Bench directs the Revenue to refund to the applicant the amount remaining in balance after adjustment of expenses and charges as payable in terms of Section 150 of the Customs Act, 1962 and further adjustment of fine and penalty adjudged as above.

3. The Petitioner addressed a communication on 9 January 2010 to the Commissioner of Customs (Import) to implement the order of the Settlement Commission. This was followed by a further representation dated 20 January 2010 and an Advocate''s notice dated 17 May 2010. In response to a query under the Right to Information Act, documents were supplied to the Petitioner which indicated that the Superintendent of Customs put up a proposal for the payment of the sale proceeds after adjustment of expenses and charges u/s 150 of the Act on 6 January 2010. The Commissioner of Customs (Exports) granted his approval on 7 May 2010 and on 1 June 2010 a refund order was proposed. Despite this no refund was granted. The Petitioner''s advocate once again submitted a letter dated 16 December 2010 seeking implementation of the order of the Settlement Commission.

4. These proceedings under Article 226 of the Constitution were filed on 27 June 2011 for implementing the order of the Settlement Commission dated 9 November 2009 and for a refund of the balance due to the Petitioner with interest.

5. During the pendency of the proceedings, this Court was informed on 23 January 2013 by the Revenue that an amount of Rs. 15,40,309/- was paid to the Petitioner on 20 May 2012. The only surviving issue related to the payment of interest on which the Revenue was required to file an affidavit-in-reply.

6. A reply has been filed by the Deputy Commissioner of Customs. The submission in the reply is that the amount paid to the Petitioner pursuant to the order of the Settlement Commission represents the balance of sale proceeds of the goods auctioned or disposed of after adjustments u/s 150 of the Act. According to the Revenue, since the amount paid does not represent the amount of duty or interest, the provisions of Sections 27 and 27A of the Act are not applicable. It has also been stated in the reply that a cheque of Rs. 15,40,309/- was paid to the Petitioner on 23 May 2012.

7. Section 27 provides for an application by a person claiming refund of duty and interest, if any, paid or borne by him before the expiry of one year from the date of payment. Section 27(2) requires an order to be passed on the receipt of an application subject to the satisfaction of the Assistant Commissioner of Customs that the whole or part of the duty or interest paid by the applicant is refundable. Section 27(2)(a) stipulates that if any duty ordered to be refunded u/s 27(2) to an applicant is not refunded within three months from the receipt of the

application, interest shall be paid at such rate not below 5% and not exceeding 30% p.a. as fixed by the Central Government. Section 150(2) provides for an application of the sale proceeds of goods where any goods not being confiscated goods are not sold under the provisions of the Act. The proceeds have to be applied for the payment of (i) expenses of sale, (ii) freight and other charges to the carrier, (iii) duty, if any; (iv) charges to the person having custody of the goods; and (v) any amount due to the Central Government from the owner of the goods, under the provisions of the Act or under any law relating to customs. The balance is to be paid to the owner of the goods.

8. The Settlement Commission directed the authorities to refund to the Petitioner the balance of the sale proceeds after adjustment of expenses and charges u/s 150 of the Act. This order was passed on 9 November 2009. Though no period was stipulated in the order of the Settlement Commission for the grant of refund, the entire exercise ought to have been carried out within a reasonable period of time. A refund in the present case was not granted to the Petitioner despite several representations. Moreover, as the documents which have been revealed in pursuance of a query under the RTI Act now demonstrate, though a refund was duly sanctioned by the Commissioner, no refund was paid over till the petition was filed. All statutory powers have to be exercised within a reasonable period even when no specific period is prescribed by a provision of law. It can be no defence to urge that the Customs Act, 1962 provides for the payment of interest only in respect of a refund of duty and interest and hence the Petitioner would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission. Acceptance of the submission would mean that despite an order of the competent authority having jurisdiction, directing the Department to grant a refund, the Department can wait for an inordinately long period; perhaps for years together without granting a refund in compliance with the directions of the Settlement Commission. This would be destructive to the rule of law and cannot be countenanced. The Petitioner has been deprived of a refund of its monies legitimately due to him in pursuance of an order of the Settlement Commission. There is absolutely no reason or justification for the unexplained delay. Hence, in exercise of the jurisdiction of this Court under Article 226 of the Constitution, an order awarding the payment of interest would be necessary.

9. In the circumstances, we dispose of the petition by directing the Respondents to grant to the Petitioner and pay over, within a period of eight weeks from today, interest computed at the rate of 9 per cent per annum. Since the Commissioner of Customs had approved the proposal for sanctioning the refund on 7 May 2010 (which period would be a reasonable period after the order of the Settlement Commission for the grant of a refund), we direct that the Petitioner would be entitled to interest computed at the rate of 9 per cent per annum from 8 May 2010 until the payment was made to the Petitioner by a cheque dated 23 May 2012. The petition stands disposed of. There shall be no order as to costs.