

(2008) 07 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4475 of 2007

Vyas Exports

APPELLANT

Vs

Commission of Customs, Mumbai and others

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Citation : (2008) 4 RCR(Civil) 355

Hon'ble Judges : Satish Kumar Mittal, J and Rakesh Kumar Garg, J

Advocate : Mr. Jagmohan Bansal, Advocate. Mr. Munish Jolly, Advocate.,
Advocates for appearing Parties

Judgement

Satish Kumar Mittal, J.

1. The petitioner has filed this writ petition under Articles 226/227 of the Constitution of India for partly quashing the order dated 5.2.2007 (Annexure P4) passed by the Settlement Commission, Customs and Central Excise, New Delhi (hereinafter referred to as 'the Settlement Commission') to the extent of nongrant of immunity from interest @ 15% to the petitioner while passing the order under Section 127C of the Customs Act, 1962 (hereinafter referred to as 'the Act'). By the aforesaid impugned order, the Settlement Commission while settling the duty liability of the petitioner at Rs. 11,75,093/ under Section 127C of the Act, on an application filed by the petitioner, has ordered that the petitioner shall pay interest @ 15% from the date the duty was due till the date of its payment. However, the petitioner has been granted immunity from penalty and prosecution.

2. The sole contention raised by the learned counsel for the petitioner is that in the impugned order, the petitioner was not granted the immunity from payment of interest on the ground that the Settlement Commission has no jurisdiction to grant immunity from interest covered under a contractual obligation. Learned counsel for the petitioner while relying upon a judgment of the Calcutta High Court in M/s Ceean Commerce Pvt. Ltd. and others v. Commissioner of Customs (Port) and others, decided on 30.8.2007 and a judgment of the Madras High

Court in Writ Petition No. 18607 of 2005 and Writ Appeal No. 1193 of 2005 titled as M/s SLS Exports Pvt. Ltd. v. The Customs and Central Excise Settlement Commissioner and others, decided on 8.9.2006, and while referring to the provisions of Section 127H of the Act, submitted that the Settlement Commission has jurisdiction/power to grant immunity from interest covered in a contractual obligation.

3. On the other hand, learned counsel for the respondents submitted that under Section 127H of the Act, the Settlement Commission has the jurisdiction/power to grant immunity either wholly or in part from the imposition of any penalty, fine and interest under the Act, with respect to the case covered by the settlement. However, discretion lies with the Settlement Commission to grant immunity from interest either wholly or partly in respect of the case covered under the settlement. Learned counsel submitted that once the petitioner has voluntarily chosen the adjudication of the entire issue by the Settlement Commission and the Settlement Commission after hearing the petitioner settled the amount of duty and directed the petitioner to pay the said duty with interest, such an order should not be interfered in exercise of the writ jurisdiction. Learned counsel submitted that in the present case the Settlement Commission has not denied the immunity from interest on the ground that the Settlement Commission has no jurisdiction/power to grant immunity from interest, but the same has been denied to the petitioner on the ground that the same was arising from contractual obligation and the petitioner itself had executed the bond to pay the interest @ 15% on the duty which it is liable to pay from the date it was due till it was paid. In support of his contention, learned counsel for the respondents relied upon a Division Bench judgment of the Bombay High Court in Pratibha Syntext Ltd. v. Union of India, 2003(157) E.L.T. 141 (Bom.).

4. After hearing the learned counsel for the parties, we do not find any merit in the instant petition. In the present case, the petitioner itself invoked the jurisdiction of the Settlement Commission by making an application for settling the dispute with regard to import of Acrylic Fibre under Advance Licence vide two bills of entries. The petitioner did not fulfill its export obligation. In the application, the petitioner also sought the grant of immunity from penalty and payment of interest. Vide impugned order, the matter has been settled at Rs. 11,75,093/ and the petitioner was held liable to pay the said amount with interest @ 15% from the date the duty was due till the date of its payment. However, the immunity was granted from penalty and prosecution subject to payment of all the dues, including the interest. A perusal of the impugned order shows that the Settlement Commission has not denied the immunity from interest on the ground of jurisdiction, but the same has been denied in the facts and circumstances of the case while observing that in case of contractual liability where the bond was executed to pay the duty with interest, the immunity cannot be granted. In our view, the Settlement Commission has denied the said benefit while exercising its discretion. In such a situation, where the petitioner itself sought the settlement of the dispute by making an application under Section

127C of the Act and submitted to the jurisdiction of the Settlement Commission, then in that circumstances, once the matter has been settled by the Settlement Commission, who also granted immunity from penalty and prosecution, but declined to grant immunity from payment of interest on the duty from its due date, such an order, in our view, should not be interfered in exercise of the writ jurisdiction under Articles 226/227 of the Constitution of India. Once the petitioner did not fulfill the export obligation and committed breach of the bond executed by it, then the custom authorities were entitled to enforce the declaration with bond and legal undertaking given by it and recover customs duty with interest. If the custom authorities were entitled to recover duty with interest, then no fault could be found with the Settlement Commission in directing the petitioner to pay the customs duty with interest. The judgment of the Madras High Court in M/s SLS Exports Pvt. Ltd.'s case (supra) though provides that the Settlement Commission has power to waive interest even in the matter of contractual obligation, but the said judgment does not lay down that the Settlement Commission is bound to grant immunity from interest also. It is a matter of discretion to be exercised by the Settlement Commission. When in the facts and circumstances of the case, the Settlement Commission has exercised the discretion and declined to grant immunity from interest to the petitioner, we do not find any ground to interfere in the impugned order in exercise of the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India.

Dismissed.