

IN THE HIGH COURT OF MADRAS

**WA No.2036 of 2010 and
MP No.1 of 2010**

**THE COMMISSIONER OF CUSTOMS (IMPORTS)
CUSTOMS HOUSE, RAJAJI SALAI
CHENNAI-600001**

Vs

**1) M/s FLEMINGO DFS PVT LTD
I FLOOR, CENTRE BERTH BUILDING
CHENNAI PORT TRUST, CHENNAI-600001**

2) SHRI ATUL ABUJA

3) SHRI P A PONNAPPA

4) SHRI J RAVEENDRAN

5) SHRI V RAJAGOPAL

6) SHRI JOHN WILLIAM

**7) SETTLEMENT COMMISSION CUSTOMS AND CENTRAL EXCISE
NO.60, RAJAJI SALAI, CHENNAI-600001**

Dr Vineet Kothari & C V Karthikeyan, JJ

Dated: July 03, 2019

Appellant Rep by: Dr S Seethalakshmi

**Respondent Rep by: Mr C Manishankar, Sr. Counsel for M/s K
Krishnamoorthy-for RR 1 to 3**

Cus - The Single Judge, by the impugned order upheld the order passed by Settlement Commission and disallowed the prayer of Revenue to assail the findings of Settlement Commission - Both the Assessee and the Revenue were equal parties and had an opportunity to place their respective case before the Settlement Commission - Without any allegation of fraud played by any party upon such authority viz., the Settlement Commission, the orders passed by the Settlement Commission is final as per Section 127J of Customs Act, 1962 - The court is little surprised that despite dismissal of writ petition by Single Judge, the present writ appeal was preferred before a Division Bench of this Court way back in the year 2010, which has occupied the time of various Judges of this Court, who have dealt with this from time to time until now - The court would have inclined to impose costs on officials, who have filed such writ petition and writ appeal before this Court - However, taking a lenient view of matter, at the request of Revenue, which is not seriously objected by assessee, court refrain from imposing such costs on the Revenue authorities, with a warning that if such frivolous

litigation is found in future, the responsibility will be fixed on the officers sanctioning the filing of such cases before the High Court: HC

Writ appeal dismissed

Case law cited:

C.M.A.No.2359 of 2018 (M/s. Supreme Petrochem Limited -Vs- The Commissioner of Central Tax and Central Excise)... Para 3

JUDGEMENT

Per: Dr Vineet Kothari:

The learned Single Judge, by the impugned order dated 19.12.2009 upheld the order passed by the Settlement Commission and disallowed the prayer of the Revenue Department of Customs, to assail the findings of the Settlement Commission, by way of a writ petition. The relevant portion of the order passed by the learned Single Judge is quoted below for reference.

"15. As for the respondent company, they were required to place the goods on board the vessel and get such placement certified by the officers concerned. Since the respondents had complied with the said requirement, the allegation of the Department has no merit. All these factors would clinchingly establish that all the sales under the disputed cash memos were made to eligible persons and there was documentary evidence to prove that they had been placed on board the vessel.

16. The respondent company had also pointed out that their operations were subject to audit by the Department. The Revenue had pleaded that the violations alleged in the show cause notice were beyond the scope of audit. Even admitting the said contention of the Department, it is seen that the audit department did not find any defect in the records kept by the duty free shop. In the given situation, the irresistible conclusion that could be arrived at was that there was no evidence to prove the allegation with regard to 3004 cash bills under dispute and there was also no evidence to indicate that there was any departure from the regulations warranting demand of duty in respect of such sales.

17. It was only under the said circumstances, the eighth respondent, namely, Settlement Commission, vide the order impugned held the total liability of the respondents was the amount admitted by them ie., Rs.82,25,502.45. By the said order, the Commission awarded simple interest at 10% p.a. on the admitted amount from the date of sale of the goods till the date of actual payment.

18. Above all, in the Division Bench decision cited by the learned Senior Counsel for the respondents in New Bharat Rice Mills case cited supra, the High Court of Punjab & Haryana has held that the Statute has bestowed Settlement Commission with discretionary powers and if such powers have been exercised diligently and reasonably, the same cannot be faulted with. Similarly, in the other Division Bench decision in Aluminium

Profiles Limited, the Bombay High Court has held that the writ Court, ordinarily, ought not to interfere, in the exercise of its extraordinary jurisdiction, with the order passed by the Settlement Commission.

19. Therefore, the order of the Settlement Commission, dated 04.06.2007, impugned herein, in the considered opinion of this Court, is perfectly valid and does not suffer from any infirmity. As a result, this writ petition is dismissed. No costs. Consequently, the connected M.P.Nos.2 and 3 of 2008 are also dismissed."

2. We do not find any good reason to entertain such writ petition or writ appeal by the Revenue Department, against the order passed by the Settlement Commission. Both the Assessee and the Revenue were equal parties and had an opportunity to place their respective case before the Settlement Commission. The reason behind the creation of Settlement Commission is to give a quietus to the dispute between the two parties viz., Revenue and the Assessee. Without any allegation of fraud played by any party upon such authority viz., the Settlement Commission, the orders passed by the Settlement Commission is final as per Section 127J of the Customs Act, 1962.

3. We have recently dealt with this provision in the judgment dated 25.06.2019 in C.M.A.No.2359 of 2018 (M/s.Supreme Petrochem Limited - Vs- The Commissioner of Central Tax and Central Excise), in which this Court has observed as follows.

"13. We are of the considered opinion that the present Appeal of the Assessee has no merit and deserves to be dismissed. The effort of the Assessee in the present case seems to be taking away what was given by it under the order of the Settlement Commission under another law. In other words, what was paid under the Customs Act resulting in a binding order passed by the Settlement Commission is sought to be scuttled by the proceedings under the Central Excise Act,1944. It is precisely these kinds of loopholes, which were sought to be checked and plugged by the Parliament, by enacting the provision of Section 127-J of the Customs Act,1962, which is quoted below :

"127-J. Order of Settlement to be conclusive.-

Every order of settlement passed under sub-section (5) of Section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force."

14. What is intended by making the order of the Settlement Commission to be conclusive is that both the parties, namely, the Assessee and the Revenue, are for ever bound and to remain within the four corners of the orders of the Settlement Commission and this is the specific negation of re-opening of any proceedings under the Act (The Customs Act,1962) or under

any other law for the time being in force (including the Central Excise Act,1944, or the Cenvat Credit Rules made thereunder).

15. If what the learned counsel for the Assessee contended was to be allowed as claimed, the very purpose of settlement of dispute, in which the Assessee succeeded in not allowing the authorities to arrive at any adverse findings of fact as the Settlement Commission was approached at the initial stage of Show Cause Notice itself and also got immunities from penalty and prosecution and all thus would be defeated, will undo what was achieved for settling the dispute between both the parties, by invoking Chapter XIV of the Customs Act, 1962, for settlement of the dispute.

16. The provision of Chapter XIV-A of the Customs Act,1962, providing for settlement of disputes by the Settlement Commission is an independent Code and while it is provided to enact a remedial forum for putting an end to disputes in a quicker and more peaceful manner, it gives several advantages to the Assessee and the disputing parties mainly in the form of immunity from penalty and prosecution, which rigor of law would have been otherwise applicable to the Assessee besides the determination of disputed amount of duty under the provisions of the Act. The impermissibility of reopening of the order passed by the Settlement Commission in any proceeding under the Customs Act itself or under any other law does not only mean Assessment or other legal proceedings, but the said provision is intended to put an end to any possibility of later on tinkering, modification, adjustment or disturbance of what has been achieved by that order.

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18. Giving a finality and conclusiveness to the orders of the Settlement Commission has to be taken to its logical end and the position inter se between the parties flowing from the order of the Settlement Commission cannot be allowed to be disturbed in any manner, much less any indirect gain or duty paid can be allowed to be taken back by the Assessee under the provisions of any other law, including the Central Excise Act and the Cenvat Credit Rules. Therefore, we do not find any merit in the said contention of the Assessee and the same is liable to be rejected, which is, accordingly, rejected."

5. Learned counsel appearing for the appellant Revenue could not point out any such error in the order passed by the Settlement Commission or the order passed by the learned Single Judge.

6. Having heard both the learned counsel, we find that the present appeal has no merits and it is liable to be dismissed. We express our anguish on the Revenue Departments of the Central Government in filing such petitions before the High Court, without really examining the merit and worth of their petitions before hand. On the other hand, the recent litigation policies issued to such Revenue Departments, compels the Revenue Departments to withdraw the cases where the Revenue stakes are less than Rs.50 Lakhs and

such circulars have been issued from time to time earlier also to reduce the burden of the Courts by withdrawal of such cases, even if they have some arguable points, where the Revenue stake are less than the monetary limits prescribed.

7. We are little surprised that despite dismissal of the writ petition by the learned Single Judge, the present writ appeal was preferred before a Division Bench of this Court way back in the year 2010, which has occupied the time of various Judges of this Court, who have dealt with this from time to time until now. We would have inclined to impose costs on the officials, who have filed such writ petition and writ appeal before this Court. However, taking a lenient view of the matter, at the request of the learned counsel for the appellant Revenue, which is not seriously objected by the respondent assessee, we refrain from imposing such costs on the Revenue authorities, with a warning that if such frivolous litigation is found in future, the responsibility will be fixed on the officers sanctioning the filing of such cases before the High Court.

8. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.