

IN THE HIGH COURT OF DELHI

WP (C) 1108/2008

UNION OF INDIA

Vs

ROSE ZINC LTD AND ORS

D N Patel, CJ & C Hari Shankar, J

Dated: October 21, 2019

Appellant Rep by: Mr Satish Aggarwala, Sr. Standing Counsel-DRI with Mr Akshay Saxena, Adv.

Respondent Rep by: Ms Praveena Gautam, Ms Sweety Pandey and Mr Pawan Shukla, Advs.

Cus - The present writ petition has been preferred by the Directorate of Revenue Intelligence, challenging an Admission Order dated 11.1.2008 passed by the Customs and Central Excise Settlement Commission under section 127C of the Customs Act, 1962 [Act] as well as an order of transfer of the matter by the Chairman, Principal Bench to the Additional Bench, Mumbai vide order dated 18.10.2007.

Held: Principal Bench, Delhi has all the powers, jurisdiction and authority to transfer the case to Additional Bench, Mumbai - no illegality has been committed by the Principal Bench, Delhi in transferring a case to Mumbai - a subjective satisfaction was arrived at by the Settlement Commission as stated in paragraph 6 of the order passed under section 127C by the Settlement Commission of the admission of an application preferred under section 127B of the Act - moreover, by now final order has also been passed by the Settlement Commission under section 127D of the Act - the final order has not yet been challenged by the Union of India meaning thereby the final order passed by the Settlement Commission remain intact and as it is - much has been argued out by the petitioner that if the admission order dated 11.1.2008 passed by the Settlement Commission under section 127C of the Act is quashed and set aside by this Court, automatically the final order passed by the Settlement Commission under section 127D of the Act will be quashed de facto - this Court is not quashing and setting aside the order of admission passed by the Settlement Commission for the reasons as stated herein above - moreover, there is nothing like "automatic cancellation of the order under Section 127D of the Customs Act" - it ought to be kept in mind that unless the final order is challenged by the Union of India passed by the Settlement Commission under section 127D, such order remain intact and as it is - there is nothing like a concept "automatically being extinct" - it is well settled that an order passed in excess of jurisdiction, too, would remain valid till it is eviscerated by a competent judicial or higher forum - the direction of this Court not to give effect to the Final Order of the Settlement Commission neither immunized the Final Order from challenge, nor inhibited the petitioner from challenging the order in accordance with law - besides, whenever the Settlement Commission passes the order under section 127D, the admission order always merges with the final order - thus, the admission order now does not remain in existence because final order has already been passed by the Settlement Commission -

admission order has now merged with the final order passed by the Settlement Commission - thus, there is no separate existence of the order under section 127C and a final order under section 127D of the Act is already passed and that too the said order remains valid from 29th February, 2008 onwards because the final order under section 127D was passed more than a decade ago and the same has not been quashed and set aside by any competent court because there exists no challenge to the final order of the Settlement Commission - hence, no reason seen to entertain this writ petition and the same is, therefore, dismissed : HIGH COURT [para 9, 10, 11, 13]

Writ Petition dismissed

Case law cited:

State of Kerala vs. M.K.Kunthikannan Nambhar, (1996) 1 SCC 435... Para 11

JUDGEMENT

Per: D N Patel:

1. The present writ petition has been preferred by the Directorate of Revenue Intelligence, challenging an Admission Order dated 11th January, 2008 passed by the Customs and Central Excise Settlement Commission under Section 127C of the Customs Act, 1962 as well as an order of transfer of the matter by the Chairman, Principal Bench to the Additional Bench, Mumbai vide order dated 18th October, 2007.

2. We have heard the counsel for both sides and it appears from the facts of the case that respondent No.1 has imported Zinc Ash, Zinc Skimming and Zinc Dross from US, Canada and Dubai and other countries from 2002 to 2006.

3. There are allegations about the suppression of actual transaction value and mis-declaration of the actual description of goods.

4. Two show cause notices were issued by the Department; one is dated 25th January, 2007 and another is dated 30th March, 2007.

5. Thus, it appears that:

(a) The import of goods was at Nhava Sheva Port, Mumbai.

(b) The show cause notice of 25th January, 2007 was issued at Mumbai.

(c) Another show cause notice dated 30th January, 2007 was also issued at Mumbai.

(d) All the transactions being taken place at Mumbai and Udaipur.

(e) Registered office of the respondent at Udaipur and a corporate office is at Mumbai.

6. An application was preferred by the respondent under Section 127B of the Customs Act, 1962 for the settlement of cases at a Principal Bench, Delhi whereas, looking to the aforesaid aspects of the matter that the goods imported at Mumbai, the show cause notices were issued at Mumbai. All the transactions have taken place at Udaipur and Mumbai, the registered office was at Udaipur and corporate office at Mumbai, hence, an application preferred by the respondent No.1 under Section 127B of the Customs Act for the settlement of cases was transferred by the Chairman, Principal Bench to the

Additional Bench, Mumbai under Section 32-C to be read with Section 127N of the Customs Act, 1962 vide order dated 18th October, 2007. Principal Bench, Delhi has all the power, jurisdiction and authority to transfer the case to Additional Bench, Mumbai. No illegality has been committed by the Principal Bench, Delhi in transferring a case to Mumbai.

7. Much has been argued out by the counsel for petitioner that the admission order passed by the Settlement Commission under Section 127C of the Customs Act deserves to be quashed and set aside. The said order of admission of an application preferred by respondent No.1 is dated 11th January, 2008 which is at Annexure – E to the memo of this writ petition.

8. Counsel for the petitioner submitted that there is no full and true disclosure by respondent No.1, hence this admission order deserves to be quashed and set aside. We are not in agreement with this contention of the counsel for petitioner for the reasons that:

(a) Looking to paragraph 6 of the order dated 11th January, 2008 passed by the Settlement Commission, it appears that there was a satisfaction arrived at by the Settlement Commission that there was a full and true disclosure by the respondent No.1. For ready reference paragraph 6 of the order dated 11th January, 2008 passed by the Settlement Commission reads as under:

"6. The Bench has gone through the records of the case. On the face of it, this apparently is a case of mis-declaration and under valuation. We find that the applicant fulfils all the conditions for admission of the case as laid down in Section 127B of the Act. Hence the applications are allowed to be proceeded with under sub section (1) of Section 127C of the Act. The amount already deposited by the applicant is allowed to be adjusted against the duty liability of the applicant."

(Emphasis Supplied)

(b) It further appears from the facts of the case that a final order has also been passed by Settlement Commission which is dated 29th February, 2008 under Section 127D of the Customs Act, 1962.

(c) Looking to the order passed by this Court dated 19th August, 2010 in this writ petition, the present petitioner – Union of India has made a statement before this Court that petitioner does not intend to challenge the final order passed by the Settlement Commission. For ready reference order dated 19th August, 2010 passed by this Court in this writ petition reads as under:

"Learned counsel for the petitioner does not intend to challenge the order passed by the Settlement Commissioner on the foundation that if eventually his argument is accepted, the order shall automatically become extinct.

In view of the aforesaid, let the matter be added to the list of 'Regular Matters' in the week commencing 3rd January, 2011."

9. Thus, it appears from the facts of the case that a subjective satisfaction was arrived at by the Settlement Commission as stated in paragraph 6 of the order passed under

Section 127C by the Settlement Commission of the admission of an application preferred under Section 127B of the Customs Act. Moreover, by now final order has also been passed by the Settlement Commission under Section 127D of the Customs Act. The final order has not yet been challenged by the Union of India meaning thereby to the final order passed by the Settlement Commission remain intact and as it is.

10. Much has been argued out by the counsel for petitioner that if the admission order dated 11th January, 2008 passed by the Settlement Commission under Section 127C of the Customs Act is quashed and set aside by this Court, automatically the final order passed by the Settlement Commission under Section 127D of the Customs Act will be quashed de facto.

11. We are not quashing and setting aside the order of admission passed by the Settlement Commission for the reasons as stated herein above. Moreover, there is nothing like "automatic cancellation of the order under Section 127D of the Customs Act". It ought to be kept in mind that unless the final order is challenged by the Union of India passed by the Settlement Commission under Section 127D, such order remain intact and as it is. There is nothing like a concept "automatically being extinct". It is well settled that an order passed in excess of jurisdiction, too, would remain valid till it is enscirated by a competent judicial or higher forum. In the case of *State of Kerala vs. M.K.Kunthikannan Nambhar*, (1996) 1 SCC 435, it has been held in paras 7 and 8 as under:

"7. In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter parties until it is successfully avoided or challenged in a higher forum"

8. *In Halsbury's Laws of England, 4th Edn., (Re-ssue) Vol.I(1) in para26, p.31, it is stated, thus*

"If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved."

(Emphasis Supplied)

12. Much has been argued out by the counsel for petitioner that as this Court has passed an order in this writ petition that a final order passed by the Settlement Commission will not give effect to, this petitioner could not have challenged the final order of the Settlement Commission.

13. The direction of this Court not to give effect to the Final Order of the Settlement Commission neither immunized the Final Order from challenge, nor inhibited the petitioner from challenging the order in accordance with law. Besides, whenever the Settlement Commission passes the order under Section 127D, the admission order always merges with the final order. Thus, the admission order now does not remain in existence because final order has already been passed by the Settlement

Commission. Admission order has now merged with the final order passed by the Settlement Commission. Thus, there is no separate existence of the order under Section 127C and a final order under Section 127D of the Customs Act is already passed and that too the said order remains valid from 29th February, 2008 onwards because the final order under Section 127D was passed more than a decade ago and the same has not been quashed and set aside by any competent court because there exists no challenge to the final order of the Settlement Commission. Hence, we see no reason to entertain this writ petition and the same is, therefore, dismissed.

14. With these observations, this writ petition is disposed of.

CM No. 2164/2008 (Stay)

15. In view of the final order passed in W.P.(C) 1108/2018, this application stands disposed of.