



Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 335 OF 2006**

Jayant Chawla
of Delhi, Indian Inhabitant,
Residing at E-11, Masjid Moth, New Delhi ... Petitioner

Versus

- 1 Union of India,
Through the Joint Secretary
Ministry of Law Justice and Company
Affairs, Aayakar Bhawan,
M. K. Road, Churchgate,
MUMBAI – 400 020
 - 2 Commissioner of Customs &
Central Excise, Goa, having his
Office at Pato, Panjim,
 - 3 The Additional Director General,
DRI (Headquarters), having his
Office at B-lock, I. P. Bhavan,
7th Floor, I. P. Estate, New Delhi
 - 4 The Customs & Central Excise Settlement
Commission (Principal Bench),
having its office at 3rd Floor, Samrat Hotel,
Kautilya Marg, Chanakyapuri, New Delhi
110 001

... Respondents

Mr S. M. Singbal with Mr Vishal Agarwal (Through V.C.) and Ms Neelam Kukalekar, Advocates for the petitioner.

Ms Asha Desai, Central Government Standing Counsel for the respondents.

CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.

DATED: 17th September 2024/
4th October 2024

JUDGMENT (Per M. S. Karnik, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioner prays for quashing of the impugned order dated 09.05.2006 passed by Customs and Central Excise Settlement Commission.

2. The brief facts of the case are as follows:-

3. An intelligence was received that M/s. Laxmi Enterprises and M/s. Pepsi Trading Company, are engaged in the import of electronic items, by misdeclaring and understating their values causing huge Government revenue loss by evading customs duty and selling the imported goods through the petitioner - Jayant Chawla of New Delhi. On the basis of the said information, a search was conducted at the office premises of the petitioner on 25.02.2004. The statement of the petitioner was recorded on 25.02.2004 and 28.06.2004 under Section 108 of the Customs Act, 1962 (the Customs Act for short).

4. In his statement, the petitioner stated that he was engaged in the business of import and trading of electronic components i.e. VCD Compact, Tape Deck Mechanism, VCD, PCB etc., in the name of two firms namely M/s. Pepsi Trading Company and M/s. Laxmi Enterprises, Gaziabad. Mr Dharmender was the proprietor of M/s Pepsi Trading Company and Mr Ramprakash was the proprietor of M/s. Laxmi Enterprises. Both Mr Dharmender and Mr Ramprakash were proprietors only on paper and actually, the petitioner - Jayant Chawla operated all the business activities of these firms which included all financial, administrative, and policy matters. The petitioner used to give some commission to these proprietors on each

consignment imported in the name of respective firms. The petitioner admitted that he had imported MPEG Card –Mounted PCB for VCD wrongly declaring the same as PCB for VCD unbranded and declared the price of these imported MPEG Cards between Rs.25/- to Rs.30/- per piece before the Custom whereas the market price of these items in local market was ranging from Rs.325/- to Rs.350/- per piece. The petitioner also stated that he used to give Rs.4000/- to Rs.5000/- per month to the proprietors of these firms and both these proprietors were never concerned with the import of electronic goods and sale of the same in the local market. The petitioner in his statement on 25.02.2004 admitted that goods shown in the bills of entry were MPEG Cards and the same had been undervalued to evade customs duty and the bill of entry No.632569 dated 06.02.2004 filed by M/s. Super Cassettes India Ltd., Noida, an importer for the clearance of electronic items having the description as VISBA-3 Card, whose price was declared as 5.9 US \$ per piece was imported from Hong Kong. The petitioner has confirmed that his firms had also imported an identical item VISBA-3 Card as shown in the bills of entry and also admitted that this item had been wrongly declared as components for VCD populated PCB (unbranded) and the price of the same had been declared as 3.50 Hong Kong \$ per piece which was grossly undervalued. The petitioner admitted that the amount shown in the import documents had been remitted through banks and the amount of undervaluation made had been paid to foreign suppliers through hawala transactions in cash.

5. The statement of Ram Prakash, proprietor of M/s. Laxmi Enterprises was recorded on 28.06.2004 under Section 108 of the Customs Act. Chapter XIV-A of the Customs Act deals with settlement of cases. Section 127-A contains the definitions. Section 127-B provides for making an application for the settlement of cases and its disposal in terms of the procedure provided under Section 127-C of the Customs

Act. Section 127-C prescribes the procedure on receipt of an application under Section 127-B of the Customs Act.

6. Section 127-B of the Customs Act which is relevant in the context reads thus:-

“127-B. Application for settlement of cases.-(1)

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 rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification, 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 has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage

declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, 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 under [Section 28-AA]:

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending in the Appellate Tribunal or any Court:

Provided also that no application under this sub-section shall be made in relation to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) has been committed:

Provided also that no application under this sub-section shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975 (51 of 1975).

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[***]

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be specified by rules.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

[(5) Any person, other than an applicant referred to in sub-section (1), may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified by rules.]

7. We straightaway refer to the final order dated 09.05.2006 of the Settlement Commission which is under challenge. Para 8 of the impugned order which is relevant reads thus: -

“8. The Bench has carefully examined the applications along with relevant records and has considered the rival pleas of the two sides. It is observed that the fraudulent imports along with serious irregularities as alleged in the SCN are admitted and under-valuation of the imported goods is also accepted by the applicant. They are only pleading a lower extent of under-valuation. SCN is supported by the detailed evidence discussed therein including statements dated 25.2.04, 28.6.04 and

26.8.04 of Shri Jayant Chawla, statements dated 26.2.04 and 27.2.04 of Shri Mohan Banavaliker CHA at Goa and statement dated 28.6.04 of Shri Ram Prakash, Proprietor, M/s Laxmi Enterprises. The main applicant's plea that the assessable value should be taken as HK\$17 in view of the 17 cases of contemporaneous imports of identical goods as submitted at page 12 of their paper book, is not sound because this chart merely states the unit price as declared in the Bills of Entry. Revenue has pointed out with relevant particulars that these declared prices are not accepted and in some of the cases, SCNs have already been issued and in others SCNs are expected to be issued shortly and in some cases, differential amounts of duty have been accepted and deposited by the importers. Such declared prices are presently under question and subject matter of suitable proceedings and they can hardly be regarded as definitive evidence in support of the assessable value claimed by the main applicant. No concrete evidence has been adduced to controvert the contemporaneous value of US\$ 5.9 as relied upon in the SCN."

(emphasis supplied)

8. From the impugned order it is thus seen that in some cases of contemporaneous imports of identical goods, the declared prices are not accepted and in some of the cases the show cause notices have already been issued, and in others, show cause notices are expected to be issued shortly. In some cases, differential amounts of duty is accepted and deposited by the importers. The impugned order records that such declared

prices are presently under question and subject matter of suitable proceedings and they can hardly be regarded as definitive evidence in support of the assessable value claimed by the applicant. The impugned order records that no concrete evidence has been adduced to controvert the contemporaneous value of US\$ 5.9 as relied upon in the show cause notices.

9. Ms Desai, learned counsel for the respondents vehemently opposed the petition. She submitted that the findings in the impugned order are unassailable based on the materials on record. It is therefore submitted that the petition be dismissed.

10. The petitioner relied upon a list of importers having imported identical goods during the contemporaneous period through various ports at unit prices similar to those admitted by the applicant. At page 161 of the paper book, the petitioner relied on the import of identical goods made by N. K. Overseas at unit prices similar to those admitted by the petitioner.

11. The revenue has taken a stand that in some cases the show cause notices are expected to be issued shortly, however, there is no material produced on record as to whether the show cause notices have been issued in respect of N. K. Overseas which had imported identical goods during the contemporaneous period at unit prices similar to those admitted by the petitioner. Further, there is nothing placed on record to demonstrate what was the fate of the show cause notices issued to the importers who had imported identical goods at unit prices similar to those admitted by the applicant.

12. So far as N. K. Overseas is concerned, they had imported similar goods as that of the petitioner. At this stage, it would be pertinent to refer to the decision in ***M/s Mahahar Audiotronics Pvt. Ltd. Vs Union of India and others***¹. After considering various provisions of the Customs Act, it was held that in settling the case of under-valuation, the Settlement Commission is also required to determine the duty liability by adopting the lowest value in terms of Rule 5 and Rule 6 of the Valuation Rules. It was held that the Settlement Commission cannot ignore and/or overlook the provisions of Rule 5 and Rule 6 of the Valuation Rules. This Court relied on the decision of the Supreme Court in ***Jyotendrasinhji Vs S. I. Tripathi***², and was of the view that the orders of the Settlement Commission are amenable to the writ jurisdiction and the judicial review thereof is permissible under Article 226 of the Constitution of India. Learned counsel for the revenue submitted that the order passed in *M/s Mahahar Audiotronics Pvt. Ltd.* (supra) is pending challenge before the Hon'ble Supreme Court.

13. We are of the view that when the show cause notices have already been issued to those entities where the revenue did not accept the declared prices and other show cause notices are expected to be issued shortly, much would depend on the outcome of these show cause notices. Moreover, if the revenue had not issued show cause notices to some entities who had imported goods at prices similar to that of the petitioner, the Settlement Commission ought to have considered the effect of the revenue having accepted the unit prices declared in the bill,

¹ WP No.266 of 2002 decided on 27.07.2010

² 1993 Supp (3) SCC 389

as in the case of N. K. Overseas. The Settlement Commission was in error in observing that no concrete evidence has been adduced to controvert the contemporaneous value of US\$ 5.9 as relied upon in the show cause notices when the case of N. K. Overseas depicts otherwise. In our opinion, the Settlement Commission ought to have considered the case of the petitioner also on the basis of the declaration of prices by the importers during the contemporaneous period in respect of which no show cause notices were issued.

14. In our opinion, the matter needs to be remitted back to the Settlement Commission for fresh consideration and a decision in accordance with law. The impugned order is accordingly set aside.

15. Learned counsel for the revenue Ms Desai expressed an apprehension that the petitioner may avoid appearing in the proceedings before the Settlement Commission. An affidavit has been filed by the Petitioner Jayant Chawla providing a detailed address as a resident of E11, Masjid Moth, New Delhi 110048 along with his mobile number and email. Learned counsel for the petitioner on instructions of the petitioner who is present submits that the petitioner will remain personally present on the date of the hearing and on such dates as the Settlement Commission may direct. It is assured by the petitioner that he will cooperate with the Settlement Commission and shall not seek any unnecessary adjournments. The statements made are accepted as undertakings to this Court. Hence, the following order: -

16. The writ petition is allowed in the following terms:

- (i) The impugned order is quashed and set aside.
- (ii) The matter is remitted to the Settlement Commission for a fresh decision in accordance with law after hearing the petitioner.
- (iii) The petitioner to appear before the Settlement Commission on 14.10.2024. It is open for the petitioner to rely on additional materials during the contemporaneous period.
- (iv) The Settlement Commission is requested to expeditiously decide the settlement application which is the subject matter of the present petition preferably within a period of 12 weeks from 14.10.2024 on its own merits and in accordance with law.
- (v) It is made clear that we have not expressed any opinion on merits of the respective contentions.
- (vi) The petition is disposed of. No costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.