

SUPREME COURT OF INDIA

Paul Industries (India)

Vs.

Union of India

C.A.No.5244 of 2004

(B. N. Agarwal and H. K. Sema JJ.)

13.08.2004

ORDER

1. Heard the parties.

2. Leave granted.

3. By the impugned order dated 25-2-2002, the High Court dismissed writ petitions Nos. 266/2002 and 267/2002. The Short facts are that on 2-8-2001 the Settlement Commission passed order on Application Nos. 21/2000 and 56/20001 and directed the appellants to pay import duty and penalty thereon. Against said order, the appellants of these appeals filed separate writ petitions bearing Nos. 2176 and 22 02/2001 and when the same petitions were placed for consideration, it appears that on the observations of the High Court, the appellants were permitted to withdraw the writ petitions to enable them to file rectification petitions before Settlement Commission and the Court did not go into merits of order passed by the Settlement Commission. Pursuant to the permission granted, the appellants filed rectification petitions before Settlement Commission which was rejected by order dated 4-12-2001 on the ground that there was no error apparent on the face of the record in the order sought to be rectified besides this that the Settlement Commission had no power to entertain prayer for rectification. Challenging the said order, two separate writ petitions were filed in the High Court by the appellants which have been dismissed by the impugned order on two grounds, firstly, that High Court could not have examined correctness of the original order passed by the Settlement Commission as earlier writ petitions filed by the appellants were withdrawn. The second ground was that there was no error apparent on the face of the record in the order of Settlement Commission.

4. So far as first ground is concerned, we are clearly of the view that withdrawal of the earlier writ petitions to enable the appellants to file rectification petitions would not show that the High Court on the earlier occasion had confirmed the original order passed by Settlement Commission. As a matter of fact in the writ petitions which have been disposed of by the impugned order, the High Court was obliged to go into the question as to whether the original order dated 2-8-2001 passed by the Settlement Commission, was in accordance with

law or not, but it has refrained itself from going into the said question. In this regard, learned Senior Counsel appearing on behalf of the appellants has placed reliance upon Rule 5(3) of the Customs Valuation Rules, 1988 which lays down that,

"in applying this rule, if-more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods"

It has been submitted that while passing the original order and fixing the duty, the Settlement Commission has not taken into consideration value of lowest transaction value of the identical goods out of several transaction values of the identical goods produced before it. Learned Counsel appearing on behalf of the Union of India submitted that from the impugned order, it does not appear that this point was raised before the High Court. Be that as it may, the point raised being a pure question of law, we are of the view that the High Court was not justified in refusing to go into the merits of the original order passed by the Settlement Commission.

5. For the foregoing reasons, appeals are allowed, impugned order rendered by the High Court is set aside and the matter is remitted to that court for disposing of the writ petitions on merits after examining correctness or otherwise of order dated 2-8-2001 passed by the Settlement Commission and after giving opportunity of hearing to the parties in accordance with law. Needless to say, that we should not be misunderstood to have expressed any opinion, one way or the other on merits of the original order passed by the Settlement Commission as the same is the matter to be examined by the High Court in the writ petitions, upon remand. No costs.