

IN THE HIGH COURT OF JUDICATURE OF MADRAS**RESERVED ON : 15.09.2020****PRONOUNCED ON : 01.10.2020****CORAM:****THE HONOURABLE MR. JUSTICE M.S. RAMESH****W.P.Nos.28034 & 32137 of 2014**
and M.P.No.1 & 1 of 2014

M/s.Aalaya Jewel Industry (P) Ltd.,
rep. by its Director Viz.,
S.Shreeganth,
S/o.R.Sriharan,
Having Office at
Unit No.23, SDF-III,
MEPZ-SEZ, Thambaram,
Chennai. ...Petitioner in both W.Ps.

Vs.

1.The Settlement Commission,
Customs, Central Excise & Service Tax,
Additional Bench, II Floor,
Narmadha Block,
Custom House,
No.60, Rajaji Salai,
Chennai. ... Respondent in W.P.28034/2014

2.The Development Commissioner,
Madras Export Processing Zone-SEZ,
National Highway,
Tambaram, Chennai. ...Respondent in both W.Ps.

PRAYER in W.P.No.28034 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in Order No.01/2014-CUS dated 15.10.2014 and to quash the same and

consequently directing the first respondent to dispose of the application of the petitioner company dated 29.09.2014 on merits.

PRAYER in W.P.No.32137 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent in O.S.No.01/2014 (File No.S.Misc.16/2014 (MEPZ-CUS) dated 19.11.2014 and to quash the same.

For Petitioner : Mr.S.Natarajan
For Respondents : Mr.G.Karthikeyan, ASG-I

COMMON ORDER

With the consent of both parties, the present Writ Petitions are heard through Video Conferencing on 15.09.2020.

2. Pursuant to the proposal to confiscate the impugned quantities of gold and levy of penalty, the petitioners had approached the respondent/Settlement Commission of the Customs and Central Excise Act for settlement of the customs duty in terms of Chapter XIV (A) of the Customs Act by making disclosure of the duty validity. The Settlement Commission had rejected the application under Section 127(C)(1) of the Customs Act as not maintainable through an order dated 15.10.2014, which is

impugned in W.P.28034 of 2014. Consequently, the Development

Commissioner had issued an adjudication order dated 19.11.2014, whereby the value of the offending goods were arrived at and 12003 gms of gold removed from the SEZ and thereby the demand of customs duty was confirmed. The order dated 19.11.2014 is put under challenge in W.P.32137 of 2014. Since the issues arising in both these Writ Petitions are one and the same, these Writ Petitions are disposed of through a common order.

3. Among other grounds, the petitioner had predominantly raised the ground that only when the subject goods are covered under Section 123 of the Customs Act, the bar under third proviso to Section 127 (B)(1) would operate and not merely gold could be covered under Section 123(2) of the Act. Thus, in other words, the petitioner's submission is that the rejection of the application for settlement on the grounds that the subject gold is covered under Section 123 and thereby the Settlement Commissioner's jurisdiction is excluded and without authority of law.

4. Mr.G.Karthikeyan, learned Additional Solicitor General-I submitted that in view of the third proviso to Section 127(B) of the Act, the jurisdiction of the Settlement Commission is specifically excluded in relation to goods to which Section 163 applies and therefore the application was rightly rejected, as not maintainable.

5. It is seen that while the application filed by the petitioner before the Settlement Commission was rejected as not maintainable, no opportunity was extended to the petitioner to put forth their objections, with regard to the maintainability of the application. Though the learned counsel for the petitioner as well as the learned Additional Solicitor General-I placed their submissions with regard to the maintainability of the petitioner's application, by placing reliance on various decisions, this Court is of the view that the preliminary issue with regard to maintainability can be taken up by the Settlement Commission itself, after hearing both the parties and thereafter, a final decision could be arrived at. This Court is inclined to take such a view in the light of the various objections raised by the petitioner with regard to the correctness of the order rejecting the petitioner's application as not maintainable. Since I am inclined to remand back the matter for fresh consideration, the merits of the grounds raised by both the counsels are not dealt with in these Writ Petitions.

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6. (i) Accordingly, the Order No.01/2014-CUS dated 15.10.2014 passed by the Customs and Central Excise Settlement Commission is hereby set aside and the matter is remanded back to the Settlement Commission for fresh consideration. During the course of such consideration, the Settlement Commission shall take

into consideration the reply given by the petitioner to the show cause notice dated 14.06.2014 and after giving due opportunity of personal hearing to the petitioner, pass final orders as expeditiously as possible.

(ii) Since the order in O.S.No.01/2014 (File No.S.Misc.16/2014 (MEPZ-CUS) dated 19.11.2014 passed by the Development Commissioner is a consequential order to the rejection of the petitioner's application and the issue is with regard to maintainability is remanded back to the Settlement Commission for fresh consideration, it would not be appropriate to keep the order in force. Accordingly, the order in O.S.No.01/2014 (File No.S.Misc.16/2014 (MEPZ-CUS) dated 19.11.2014 is set aside with liberty to the Development Commissioner to pass necessary orders depending on the outcome of the decision taken by the Settlement Commission.

7. Both the Writ Petitions stands disposed of accordingly.

Consequently, connected Miscellaneous Petition is closed. No costs.

01.10.2020

Index:Yes/No

Order: Speaking/Non-speaking

M.S.RAMESH.J,

DP

To

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Custom House,
No.60, Rajaji Salai,
Chennai.

2.The Development Commissioner,
Madras Export Processing Zone-SEZ,
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ORDER MADE IN

W.P.Nos.28034 & 32137 of 2014

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