IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2692 OF 2014

Poona Tools Pvt. Ltd. and Ors.	**}**	**Petitioners**
versus		
The Union of India and Ors.	**}**	**Respondents**

Mr. Prakash Shah with Mr. Durgaprasad Poojari i/b. M/s. PDS Legal for the Petitioners.

Mr. Vijay Kantharia with Mr. Jitendra B. Mishra for the Respondents.

CORAM :- S. C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.
DATED :- JANUARY 28, 2015

ORAL JUDGMENT :- (Per Sunil P. Deshmukh, J.)

Rule.

2) Rule made returnable forthwith by consent of the parties and heard finally.

3) By this Petition invoking powers of this Court under Article 226 of the Constitution of India, the Petitioners question the propriety and legality of the order dated 28th July, 2014, whereunder, the Settlement Commission purports to decline consideration of the application, with reference to bar under section 32O(1)(i) of the Central Excise Act, 1944.

4) A show cause notice dated 19th December, 2012 was issued to the Petitioner, alleging taking of incorrect and irregular cenvat credit and seeking explanation as to why extended period of limitation under section 11A(4) of the Central Excise Act, 1944, read with rule 14 of the Cenvat Credit Rules, 2004 should not be invoked for willfully suppressing facts, why cenvat credit of Rs.63,22,329/- availed of in contravention of rule 3 of the Cenvat Credit Rules, 2004 should not be disallowed and recovered, why interest should not be recovered under section 11AB of the Central Excise Act, 1944 and as to why penalty should not be imposed.

5) The Petitioners, with reference to aforesaid show cause notice, lodged an application on 5th December, 2013 pursuant to section 32E of the Central Excise Act, 1944, seeking settlement. Thereafter, the Settlement Commission had issued notice asking the Petitioners to remove discrepancies occurring in the application and making certain other queries. The requirements under the said notice were attended to and complied with by the Petitioners. It appears that under order dated 20th December, 2013, the Settlement Commission decided to proceed with the application. The Petitioners, however, thereafter sought exemption from appearance. While the order dated 28th July, 2014 was passed by the Settlement Commission in said proceeding, the

Commission considered that under an earlier settlement application in respect of a show cause notice dated 28th December, 2012 issued to the Petitioners under the order dated 31st October, 2013, the Petitioners were penalised and as such bar under section 32-O(1) would be attracted. Further, it went on to observe that the applicants had committed fraud on the department by showing payment of duty, in their return, while no payment has been actually made and it would not have been found out but for the investigation by DGCEI.

6) Mr. Shah-learned Counsel appearing for the Petitioners vehemently submits that the impugned order in present Petition dated 28th July, 2014 is in gross violation of principles of natural justice. Present application for settlement had been lodged after the order dated 31st October, 2013 passed by the Settlement Commission in respect of show cause notice dated 28th December, 2012 alleging mis-statement with regard to payment of duty. He further submits that on realisation of the mistake upon issuance of show cause notice, the Petitioners had sought settlement in the same and under the order dated 31st October, 2013, differential central excise duty to the tune of Rs.9,11,461/- was settled along with interest of Rs.14,384/- and imposition of penalty on Petitioner No. 1 of Rs.30,000/- and 5,000/- each in respect of Mr. Tushar Ganage and two others. He further submits that it was under a

mistake the statement had gone from the Petitioners and upon realisation of the same, the Petitioners have made amends in respect of the same. The Petitioners have referred to the duty liability, however, the payment, as depicted under the statement, could not be made due to financial hardship and crisis. The Petitioners have not gained any advantage from said mistake nor have benefited and profited for the same. He submits that it is not a case where concealment of particulars of duty liability had been concerned. He submits that the case would not be covered by section 32-O(1) of the Central Excise Act, 1944.

7) The learned Counsel points out that the present proceedings for settlement are in respect of earlier show cause notice dated 19th December, 2012 alleging incorrect and irregular taking up cenvat credit during 31st March, 2009 to 1st April, 2010. In the present case, the procedure as contemplated under section 32E and 32F of the Central Excise Act, 1944 has been scrupulously followed and on being satisfied that the Petitioners have fulfilled all the norms prescribed for settlement, the application was decided to be proceeded with. In such a case, according to him, the decision to proceed with cannot be altered and reviewed. He further submits that as a matter of fact, the Petitioners were absolutely unaware about 'a bar' is being considered after the Settlement Commission had decided to proceed with the

matter. He submits that the consideration which has weighed with the Settlement Commission is fragile by very nature and has no basis. He submits that section 32-O has no application in the present case. It cannot be said that there is any case against the Petitioners of concealment of particulars of duty liability and in none of the show cause notices, this was a matter in issue and as such the impugned order deserves to be interfered with and set aside.

8) Mr. Kantharia appearing for the Respondents submits that looking into the facts and circumstances, no fault can be found with the ultimate decision taken by the settlement commission. He submits that the statement occurring in respect of the payment of duty in the return submitted by the Petitioners/Assessees is indeed a mis-statement and would tantamount to concealment of particulars of duty liability.

9) In the present case, it would be pertinent to refer that there is no dispute about existence of the order passed by the Settlement Commission on 20th December, 2012 to proceed with the application filed by the Petitioners for settlement in respect of show cause notice dated 19th December, 2012. It transpires that the Revenue/Respondents had no objection for the admission of the application to proceed with the same, as the Petitioners had fulfilled the required norms to be eligible to make such an application pursuant to section 32E. The

decision was taken to proceed with in respect of an application for settlement lodged after the order dated 31st October, 2013. In such a case, it would not be proper to abandon the proceedings much less without putting the applicant on notice about consideration of section 32-O. We, in this peculiar set of facts, deem it appropriate that the decision with respect to proceeding with the matter being already taken, it does not deserve to be looked back to and reviewed and the Commission would rather proceed with the same.

10) We therefore set aside the order passed by the Settlement Commission and remand the matter for reconsideration by the Commission, giving opportunity to the parties concerned and after hearing them and to decide the application. The Commission to proceed with the application in accordance with its decision dated 20th December, 2013. Rule made absolute in the aforesaid terms.

(SUNIL P. DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**