IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.37774 of 2016
and W.M.P.No.32373 of 2016

M/s.Fitness One Group India Limited,
Represented by its Managing Director
Shri.Arun Kathiresan
17, Lakshmi Street, Kilpauk,
Chennai - 600 010. ... Petitioner

vs.

1.Customs, Central Excise and Service Tax
Settlement Commission, Additional Bench,
II Floor, Narmada Block, Custom House,
60, Rajaji Salai, Chennai - 600 001.

2.The Commissioner of Service Tax-I,
Newry Road, Towers, 2054-I, II Avenue,
12th Main Road, Anna Nagar,
Chennai - 600 040. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari to call for the records pertaining to the impugned order dated 22.09.2016 in Final Order NO.69/2016-ST passed by the first respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

For Respondents: Mr.A.P.Srinivas
Senior Panel Counsel

ORDER

Heard Mr.G.Derrick Sam, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel appearing for the respondents. By consent, the writ petition is taken up for final disposal.

2.The petitioner has filed this writ petition challenging an order passed by the Customs, Central Excise and Service Tax Settlement Commission by which the case has been settled by the

Commission with regard to the service tax liability apart from imposing penalty.

3.The petitioner's case is that they are not aggrieved by the entire order passed by the Settlement Commission but are aggrieved only by a portion of the order. In order to demonstrate as to what is the aggrieved portion of the impugned order, the learned counsel for the petitioner referred to the tabulated statement contained in paragraph 5.2 of the impugned order. In the tabulated statement, there are six serial numbers, out of which, the petitioner disputes the amount quantified by the Settlement Commission with regard to Sl.Nos.5 and 6, which is as follows:

Sl. No.	Issues in SCN	Amount demanded in SCN (Rs)	Amount Accepted (Rs)	Amount disputed	Reasons for disputing the demand
1.	Irregular credit taken on ineligible input services	9,89,796	6,24,492	3,65,304	Amount related to pre 1.4.2011 period
2.	Irregular credit taken on common input services	15,42,500	7,17,572	8,24,928	Amount related to pre 1.4.2011 period

4.For the disposal of this writ petition, the following facts would suffice. The petitioner is engaged in providing health and fitness service, business auxillary service, etc. An application was filed before the Settlement Commission for settlement of their case arising out of a show cause notice dated 20.10.2014 and the statement of demand dated 02.07.2015 issued by the Commissioner of Service Tax I, Commissionerate, Chennai. In the application filed before the Commission, the petitioner admitted the total liability of Rs.86,02,114/- out of the demand of Rs.1,30,30,990/-. As pointed out earlier, the dispute is with regard to the irregular credit taken on ineligible input services and irregular credit taken on common input services.

5.The learned counsel for the petitioner strenuously contended that the Settlement Commission committed a serious error on the said issue as to whether the re-assessment made as per Notification No.3/2011 CE(NT) dated 01.03.2011 will have retrospective effect and apply even for the period prior to 01.04.2011. Further, it is submitted that prior to 01.04.2011 the CENVAT credit of service tax paid on input service was eligible even if it was used for trading since it was not an exempted service. Therefore, it is submitted that the Commission committed a serious error under these two heads and therefore the Court should exercise its jurisdiction and interfere with the order of the Settlement Commission.

6.First and foremost what is to be borne in mine is that the petitioner cannot selectively accept the portion of the order passed by the Settlement Commission and dispute correctness of the other portions of the order which in the opinion of the petitioner is not fully favourable.

7.In Singhvi Reconditioners Pvt., Ltd., vs. UOI reported in 2010 (251) ELT 3 (SC), the Hon'ble Supreme Court pointed out that the assessee having opted to get their customs duty liability settled by the Settlement Commission cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.

8.That apart, the scope of interference of orders passed by the Settlement Commission while exercising the writ jurisdiction is no longer res integra. The Writ Court will not exercise its extraordinary jurisdiction examining the correctness of the order of the Settlement Commission as if acting as an Appellate Authority.

9.So far the findings of the fact recorded by the Commission or questions of fact are concerned, the same is not opened for examination either by the High Court or by the Hon'ble Supreme Court. Challenge to the order of the Settlement Commission on those grounds was rejected by the Court in the case of Commissioner of Customs (Imports) vs. Rohan Anirudha Seolekar reported in 2013 (288) ELT 353I.

10.Admittedly, the petitioner had full and effective opportunity before the Commission and it is on their own volition they had approached the Commission and filed an application for settlement of the case. Unless and until the petitioner is able to establish total non-application of mind or perversity in the approach of the Commission or when there is violation of principles of natural justice, the question of examining the correctness of the proceedings of the Commission in exercise of writ petition cannot be made. However, in this writ petition there is no challenge to the impugned order on these grounds. Hence, for the above reasons, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cse

To

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Settlement Commission, Additional Bench,
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Chennai - 600 040.

+1cc to Mr.K. Ravi, Advocate, S.R.No.62977
+1cc to M/s. Hari Radhakrishnan, Advocate, S.R.No.62019

SSI(CO)
Eu 10.12.16

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