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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1068/2016

HH INTERIOR & AUTO COMPONENTS LIMITED Petitioner

Through: Mr. Balbir Singh, Senior Advocate with
Mr. Raghav Shankar, Mr. Anuj Malhotra,
Ms. Rubal Maini & Ms. Gunika Gupta,
Advocates.

versus

COMMISSIONER OF CENTRAL EXCISE & ANR.... Respondents

Through: Ms. Sonia Sharma, Senior Standing
Counsel for the Department with Ms. Neha
Chugh, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

27.05.2016

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Dr. S. Muralidhar, J.:

1. The challenge in this petition by HH Interior and Auto Components Limited is to the orders dated 9th June, 2014, 3rd September, 2014 and 16th November, 2015, passed by the Customs and Central Excise Settlement Commission ('CCESC') under Section 32F of the Central Excise Act, 1944 ('CE Act') dismissing the settlement application filed by the Petitioner under Section 32E of the CE Act.

2. A search took place in the premises of one Mr. Pawan Goel on 22nd December, 2010 as a result of which certain books and registers were seized. The statement of Mr Goel was also recorded. Consequent thereto

the Petitioner's premises were searched on 19th January, 2011. This resulted in a show cause notice ('SCN') issued to the Petitioner by the Department on 8th July, 2011, raising a demand of Rs.6,24,88,396/- towards Cenvat credit wrongly availed by the Petitioner. Within a short while thereafter, on 21st October, 2011, the Income Tax Department (ITD) also undertook a search in the premises of the Petitioner and seized a diary stated to have been maintained by Mr. Rajeev Rai, an employee of the Petitioner.

3. On 27th June, 2013, the Petitioner filed an application (hereinafter referred to as the 'first application') before the CCESC under Section 32E(1) of the CE Act. In this application, the Petitioner accepted a duty liability of Rs.1,97,69,622/- and interest of Rs.96,01,968/-. It is stated that the documents seized by the ITD were enclosed with this application. It was contended that the figures contained in the diary maintained by Mr Rai should form the basis of the settlement.

4. On 5th August, 2013, the Department filed its report under Section 32F(3) of the CE Act before the CCESC raising a preliminary objection that the documents seized by the ITD were not brought to its notice by the Petitioner during the course of investigation. Meanwhile, the Petitioner also approached the Income Tax Settlement Commission ('ITSC') under Section 245C of the Income Tax Act, 1961 ('IT Act'). The materials before the ITSC included the diaries maintained by Mr. Rai, which had been seized.

5. By the order dated 7th April, 2014, the ITSC allowed the application for settlement to be proceeded with under Section 245D(1) of the IT Act. The

Petitioner then filed an application on 21st April, 2014 before the CCESC seeking to bring on record the aforementioned order dated 7th April, 2014 passed by the ITSC. On 9th June, 2014, the CCESC passed a final order rejecting the first application of the Petitioner seeking settlement under the CE Act. The CCESC sent the matter back to the adjudicating authority in terms of Section 32F(5) of the Act. The CCESC in the said order dated 9th June 2014 observed that the diary maintained by Mr. Rai was not produced before the Department during investigation and the existence of such diary had been brought to the notice of the CCESC only at the stage of hearing. Since there was no meeting ground between the Petitioner and the stand of the Department, the CCESC observed that the matter should be "better settled through adjudication".

6. On 27th June, 2014, the Petitioner filed a second application (hereinafter referred to as the 'second application') before the CCESC this time declaring a sum of Rs.2,59,05,014/- towards Cenvat credit wrongly claimed and interest of Rs.1,19,30,190.41/-. The stand of the Petitioner was that the entries in the diary of Mr. Rai represented an accurate and comprehensive enumeration of the transactions undertaken by it.

7. The Department filed its report under Section 32F(3) of the CE Act before the CCESC on 7th August, 2014. It reiterated the objections raised to the first application. It again contended that since Mr. Rai's diary had not been brought to the notice of the Department during investigation, it could not be relied upon by the Petitioner.

8. On 3rd September, 2014, the CCESC passed the final order rejecting the Petitioner's second application. The CCESC again observed that Mr. Rai's

diary was not before it and, therefore, there was no occasion to revisit the earlier order dated 9th June, 2014 remanding the matter to the adjudicating authority.

9. On 23rd December, 2014, the Petitioner filed an application for rectification of mistake made in the order dated 3rd September 2014 as regards the observation that the diary of Mr. Rai was not before the CCESC. A further application in this behalf was filed on 1st June, 2015.

10. By order dated 15th December, 2015, the CCESC dismissed the Petitioner's application. It, however, corrected the sentence in its order dated 3rd September, 2014 to remove the words to the effect that Mr. Rai's diary was not on the record of the CCESC. However, the CCESC was of the view that the above correction did not change the final outcome in regard to both the first and the second application of the Petitioner.

11. Mr. Balbir Singh, learned Senior Advocate appearing for the Petitioner referred to Section 32F of the CE Act as well as Section 32L thereof and submitted that none of the grounds on which the application could be rejected by the CCESC exist in the present case. Relying on the decisions in *SSF Plastics India Pvt. Ltd. v. Union of India 2015 (325) E.L.T. 837 (Bom.)* and *Cineyug Worldwide v. Union of India* (decision dated 22nd January, 2016 of the Bombay High Court in WP No.2474/2015), he submitted that with the Petitioner having made a full and true disclosure of all facts in its application and with none of the grounds in Section 35- L CE Act being attracted, the CCESC could not have sent back the matter to the adjudicating authority only because there was no consensus between the Petitioner on the one hand and the Department on the other. Secondly

he submitted that with the ITSC having held to the contrary on the very same evidence produced by the Petitioner, the order of the ITSC ought to be taken into consideration by the CCESC.

12. Countering the above submissions, Ms. Sonia Sharma, learned counsel for the Department referred to Section 32M of the CE Act, which states that every order of the CCESC under Section 32F(5) of the CE Act shall be conclusive as to the matters stated therein and could not be reopened under the CE Act or any other law for the time being in force. She also referred to Section 32L of the CE Act and sought to support the order of the CCESC.

13. At the outset it requires to be noticed that in its order dated 3rd September 2014 declining to entertain the first application and sending the matter back to the adjudicating authority, the CCESC specifically ruled on the question of maintainability of the second application before the CCESC by the Petitioner. The CCESC referred to Section 32O of the CE Act and in particular Section 32-O (1) (iii) of the CE Act. In any event this part of the order has not been questioned by the Department and the Court need not examine it further.

14. The fact of the matter is that for rejection of an application made to it there are only a few grounds available to the CCESC. Under Section 32F (1) of the CE Act, the CCESC may reject an application even at the preliminary stage if it is of the view that a full and true disclosure has not been made of the material facts by the Petitioner. If, however, the CCESC decides to proceed with the application then the grounds on which it can decline to entertain the application, as stated in Section 32-L of the CE

Act, is where the CCESC is of the opinion that the applicant has not cooperated with the CCESC in the proceedings before it. It can then send the matter back to the Central Excise Officer having jurisdiction who can then proceed to dispose of the case in terms of the provisions of the CE Act as if no application seeking settlement had been made. None of the provisions in Chapter 5 of the CE Act dealing with the 'settlement of cases' envisages the CCESC sending the matter for adjudication to the Central Excise Officer because of the differences between the applicant on the one hand and the Department on the other. In other words unless the applicant before it has not stated the true and full particulars or fails to cooperate with it, the CCESC cannot decline to examine the application on the ground that there is difference between the applicant and the Department on an issue arising from the application.

15. There is no finding in the impugned order of the CCESC that the Petitioner before it failed to cooperate with the CCESC. Although Section 32M of the CE Act states that the order the CCESC would be conclusive, judicial review of the said order in a petition under Article 226 of the Constitution of India is permissible. As explained in *SSF Plastics India Pvt. Ltd. (supra)*, the application seeking settlement filed before the CCESC cannot possibly be rejected only because there is a difference between the Assessee on the one hand and the Department on the other. In that case the CCESC rejected the settlement application stating that it could not examine the case without going into a 'lot of details of the dispute'. The High Court while disapproving the order of the CCESC observed as under:

“10. If such an approach is adopted, the very purpose of setting up a

Commission and enabling settlement of disputes expeditiously and promptly is defeated. That is to encourage settlement of claims which are long overdue and by pendency of which larger public interest cannot be sub-served. Delay in recovery of taxes harms the National economy and one need not over-emphasize this aspect.”

16. In the present case, the Court finds that both in the order dated 9th June, 2014, rejecting the first application and the subsequent order dated 3rd September, 2014, rejecting the second application, the CCESC has proceeded on two wrong premises. One was that the diary of Mr. Rai was not before it. However, this error was rectified by it by the order dated 16th November, 2015. The second error was in concluding that since the Department and the Assessee were not ad idem on certain factual details, the matter should be sent back for adjudication before the concerned Excise Officer. The CCESC failed to appreciate that the grounds on which the application can be rejected are restricted to those set out in Section 32-F (1) and Section 32-L of the CE Act.

17. For the aforementioned reasons, this Court sets aside the impugned order dated 9th June, 2014 of the CCESC rejecting the first application and the order dated 3rd September, 2014 passed by it rejecting the second application. The order passed by the CCESC on 16th November, 2015, to the extent of correcting the mistake as noted does not call for interference.

18. Since the ITSC on the same material appears to have allowed the application filed by the Assessee, the CCESC will take that fact into consideration while hearing the second application afresh.

19. The second application stands restored to the file of the CCESC and shall be listed for hearing before it on 22nd August, 2016.

20. The writ petition is disposed of in the above terms but in the circumstances with no order as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 27, 2016
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