HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition No.13822 of 2017

Order: (per V.Ramasubramanian, J.)

The petitioners have come up with the above writ petition challenging an order passed by the Settlement Commission under Section 32E of the Central Excise Act, 1944, accepting the application of the petitioner for settlement, subject to certain terms and conditions.

2. Heard Mr. Anup Koushik Karavadi, learned counsel for the petitioners. Dr. N.Uma Shankar, learned Junior Standing Counsel, takes notice for the 1st respondent. Mr. B.Narasimha Sarma, learned Senior Standing Counsel, takes notice for the respondents 2 and 3.

3. The 1st petitioner is a company engaged in the manufacture of sponge iron falling under Chapter Sub-heading 72031000 of the Central Excise Tariff Act, 1985. The 2nd petitioner is the Managing Director of the 1st petitioner.

4. Initially, a show cause notice was issued to the petitioner on 24-12-2012 proposing to confiscate about 111.5 metric tonnes of sponge iron on the basis of the interception of 4 lorries coming out of the factory of the petitioner. This show cause notice resulted in an Order-in-Original dated 31-7-2013 and later an order of the Appellate Tribunal dated 26-12-2013.

5. Another show cause notice was issued on 30-4-2014, on the basis of certain statements allegedly recorded forcibly

from the petitioner. Instead of fighting out a litigation, the petitioner thought fit to file an application before the Settlement Commission under Section 32E of the Central Excise Act, 1944. This application was accepted by the Settlement Commission and the Settlement Commission permitted the settlement of the case subject to the following conditions:

> "7.1. In the light of the above, the Bench settles the case under the Central Excise Act, 1944 on the following terms and conditions:
>
> a) The additional amount of Central Excise Duty is settled at Rs.41,36,655/- (Rupees Forty one lakhs thirty six thousands six hundred and fifty five only) under the Central Excise Act, 1944. An amount of Rs.40,69,128/- having already been paid, the applicant is liable to pay the balance of Rs.67,528/- (Rupees Sixty Seven Thousands Five hundred and twenty eight only).
>
> b) The jurisdictional Commissioner has worked out the interest liability as Rs.12,94,947/- on the amount of duty paid so far. The interest on the remaining amount of duty would be worked out after the payment of the same. However, the applicant is at liberty to work out their interest liability to the satisfaction of the jurisdictional Commissioner and pay the same along with the payment of balance amount of duty, within 30 days of receipt of this order.
>
> c) In the facts and circumstances of the case, the Bench imposes a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) on the applicant under the provisions invoked in the Show Cause Notice and grants immunity from penalty in excess of that amount.
>
> d) The Bench imposes penalty of Rs.25,000/- (Rupees Twenty Five Thousands only) on Shri N.Anand Rao, Managing Director, and co-applicant, under the provisions invoked in the Show Cause Notice;
>
> e) The amounts of duty and interest settled and penalties imposed in paras 7.1(a), (b), (c) and (d) should be paid by the applicant and the co-applicant within 30 days of

> receipt of this order and proof of payment be furnished to Jurisdictional Commissioner.
>
> f) Subject to payment of sums ordered as above the applicant and the co-applicant are granted immunity from prosecution under the Central Excise Act, 1944."

6. Aggrieved by the imposition of the terms and conditions for the settlement of the case, the petitioner has come up with the above writ petition primarily contending that the impugned order has been passed on the basis of the report of the Jurisdictional Commissioner dated 21-5-2015 and that the copy of the said report was not furnished to the petitioner, resulting in a violation of the principles of natural justice.

7. But we are not impressed with the above contention. It is true that paragraph-3.1 of the impugned order speaks about the report of the Jurisdictional Commissioner. But paragraph-4 narrates what happened in the course of hearing of the petition before the Settlement Commission and paragraph-5.1 deals with the contentions. All the contentions raised by the petitioner, virtually challenge the report of the Jurisdictional Commissioner.

8. In any case, the findings recorded by the Commission from paragraph-6.1 onwards disclose that the findings were not based upon the report of the Jurisdictional Commissioner.

9. It must be understood that Settlement Commission is not an adjudicating authority. The role of the Settlement Commission is to arrive at an amicable settlement of the dispute between the parties. If the Settlement Commission is also

converted into an adjudicating body, then the very purpose of having a Commission will get lost. This is why certain pre-conditions are laid in Section 32E. The assessees who have excellent cases, may be entitled to fight out their cases in the normal channel of remedies available under the Act.

10. When the scope of the jurisdiction under Article 226 of the Constitution of India even as against the Orders-in-Original is circumscribed, the same is much more rigorous in respect of orders of the Settlement Commission. The Settlement Commission in this case has recorded certain findings about clandestine removal of goods and thought fit to still accept the application for settlement, by imposing certain conditions. The scope of the jurisdiction to interfere with those conditions or to set aside the order on the ground of violation of natural justice, is extremely limited and we do not find the case on hand fit enough to undertake that exercise.

11. Therefore, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

20th April, 2017.
Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition No.13822 of 2017
(per VRS, J.)

20th April, 2017.
(Ak)