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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 3552/2017**

PANCHWATI PRAYOGSHALA PVT. LTD. ..... Petitioner
Through: Mr. J.K. Mittal, Advocate

versus

COMMISSIONER OF CENTRAL EXCISE, MEERUT-1 & ANR. ..... Respondents
Through: Mr. Sanjeev Narula, CGSC with Ms. Anumita Chandra, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **25.04.2017**

CM No.15536/2017

1. Allowed, subject to all just exceptions.

WP(C) No.3552/2017& CM No.15535/2017

2. Issue notice. Mr. Sanjeev Narula, Central Government Standing Counsel, accepts notice.

3. After considering the matter, it is taken up for hearing.

4. The facts, in brief, are that, on the basis of an application filed before it by the Petitioner under Section 32E of the Central Excise Act, 1944 ('CE Act'), arising out of a Show Cause Notice ('SCN') dated 13th July, 2012 issued to it, a final order was passed by the Customs & Central Excise Settlement

Commission ('CCESC') on 14th October, 2015. In terms of the said order, the customs excise duty payable by the petitioner was settled at Rs.38,96,729/-, which was asked to be appropriated out of the sum of Rs.75,00,000/- deposited by the Petitioner. As regards the interest liability, an admitted liability of Rs.76,645/- was asked to be appropriated. A redemption fine of Rs.50,000/- was also asked to be appropriated. The excisable goods worth Rs. 9,22,28,840/-, cleared during 1st April, 2011 to 14th July, 2011 were held liable for confiscation under the impugned SCN and the remaining gods that were not manufactured, were held not so liable for confiscation. A penalty of Rs.2,00,000/- was imposed on the Petitioner and immunity from penalty was granted, in excess of that amount.

5. It appears that, on 9th December, 2015, an application was filed by the Principal Commissioner before the CCESC, stating, *inter alia*, that the Petitioner had submitted forged agreements in order to get the case settled in its favour. It is pointed out that in para 54 of the final order dated 14th October, 2015 that the CCESC had categorically observed that the said order would be void and immunities withdrawn if the Bench finds, at any time, that the applicant had concealed any particular material to the settlement or had given false evidence or had obtained this order by fraud or misrepresentation of facts. Accordingly, it was prayed that the order dated 14th October, 2015 should be annulled "or any other appropriate order as deemed fit." This application was not forwarded to the Petitioner at this stage.

6. Mr. Sanjeev Narula, learned Central Government Standing Counsel, has placed before the Court an order, which shows that the said application was received on 11th December, 2015, which was placed before the CCESC. Two members appear to have left. There is then a noting of 14th December, 2015 by the Chairperson, which reads “The final order has been passed. The Revenue, if aggrieved, can approach the appropriate forum. Please inform accordingly.” It appears that on the basis of the above noting, a communication dated 6th December, 2015 was addressed by the Special Investigating Officer of CCESC to the Principal Commissioner as under:

> “Please refer to this office letter dated 09.12.2015.
> In this regard, I have been directed to communicate that in present matter, the Final Order has already been passed. The Revenue, if aggrieved, can approach the appropriate Forum.”

7. Nearly six months thereafter, on 31st May, 2016, another application was filed by the Director General, before the CCESC, again seeking review of the final order dated 14th December, 2015 “and it is subsequent letter of the even number dated 16th December, 2015.” The prayer in this application reads as under:

> “In the premises aforesaid, the Applicant, therefore, pray that this Hon'ble Court may kindly be pleased to review/ set aside the final order No. F-2563/CE/l5-SC/PB dated 14. I 0.2015 and subsequent letter dated 16.12.20 I5 passed by this Hon'ble Settlement Commission in the interest of justice.”

8. A copy of this application was provided to the petitioner for its comments. The Petitioner sent its reply on 14th July, 2016. It appears that this subsequent application of the Director General of Central Excise Intelligence (‘DGCEI’) was entertained by the CCESSC and on 27th

October, 2017, a notice was issued to the parties for hearing of the application. It was heard on 20th March, 2017, 29th March, 2017 and 7th April, 2017. The next date is now fixed for today. It is, at this stage, that the Petitioner approached this Court, stating that the aforementioned proceedings are without jurisdiction and that there is no power of the CCESC to entertain such an application after it had rejected the order dated 16th December, 2015. A similar application was earlier filed by the Respondents.

9. Mr. Narula, however, submits that under Section 32 (k) (3) of the CE Act, the immunity granted to a person under sub-section (1) can 'at any time' be withdrawn if it is satisfied that such person had, during the course of settlement proceedings "concealed any particular material to the settlement or had given false evidence........" According to Mr. Narula, the earlier application which was filed before the CCESC, was, in fact, not considered by the CCESC at all. A communication dated 16th December, 2015 addressed by the CCESC to the Respondents should not be construed to be an order rejecting its application for review. According to him, the noting on file showed that there was not even an appropriate coram of the CCESC at the time when the said application was considered. For these reasons, according to him, it was open to the respondents to again approach the CCESC with another application.

10. Notwithstanding the communication dated 16th December, 2015, it is pointed out by Mr. J.K. Mittal, learned counsel for the Petitioner, in response, that in the second application filed before the CCESC, the

Respondents itself characterised the communication dated 16th December, 2015 as an order and in fact characterised as "non-speaking order."

11. The short question as far as the present petition is concerned, is whether the Respondents having once failed in their attempt to get the CCESC reopen the proceedings by invoking Section 32 K(3) of the CE Act, could have again gone before the CCESC with another application on the same grounds and asking for an identical relief, namely, annulment of the final order dated 14th December, 2015 passed by the CCESC. However, a formal application was filed on 3rd June, 2016 to correct the cause title since it was realised that the DGCEI had nothing to do with the case and it is the Commissioner of Central Excise, who had to be the appropriate party.

12. In the considered view of the Court, the answer has to be in the negative. Whatever may be the grounds, which are pleas of the Respondents, may have been justified, the Respondents did make an attempt by filing an application before the CCESC by invoking Section 32 (K)(3) of the CE Act. That attempt was not successful. From the order sheet, it is plain that the view was taken that the application should not be entertained and the Revenue should be asked to approach before the appropriate forum. The very view formed by the CCESC is whether it was an order that was illegal, incorrect or in other words, there was a remedy available to the respondents against such an order. In fact, even Mr. Narula, who is unable to dispute the fact that whenever the Department of the Revenue is aggrieved by an order of the settlement of the CCESC, there is an alternative remedy with the petitioner under Article 226 of the Constitution of India, questioning the said

order. In other words, it is not as if the Respondents did not have a remedy against the order, what they perceive to be an erroneous order. This erroneous order was passed in an application filed by them under Section 32 (K)(3) of the CE Act. With that attempt having failed, as is made clear by the communication dated 16th December, 2015, the next course available to the Respondents was to file a writ petition before this Court in which they could have questioned both the earlier order dated 14th October, 2015 and the subsequent order dated 16th December, 2015. However, going back to the CCESC six months thereafter with another application seeking the same relief, was impermissible in law. There is no question of a party going repeatedly before the CCESC with an application for identical prayer, once having failed before the CCESC. Recognising such a remedy would be fraught with grave consequences as it will give unbridled powers to the CCESC to get the review order over and over again. In fact, as is plain, in the present instance, on the second application, the CCESC appears to have proceeded with the hearing of the application. Clearly, the entire proceedings arising from the second application filed by the Respondents were wholly without jurisdiction.

13. Consequently, while leaving it open to the Respondents to file an appropriate petition, challenging the order of the CCESC in the matter. The Court nullifies the proceedings emanating from the second application filed by the Respondents before the CCESC, i.e., hearing notice first issued on 27th February, 2017 and all proceedings consequent thereto. In other words, the proceedings before the CCESC on the second application by the Respondents are hereby terminated.

14. It is clarified that this Court has not expressed any opinion on the orders passed by the CCESC on 14th October, 2015 and 16th December, 2015. As and when the petition is filed by the Respondents challenging those orders, it will be dealt with in accordance with law.

15. The petition is disposed of. The pending application is also disposed of.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 25, 2017
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