IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8716 OF 2005

The Assistant Commissioner, Central Excise, Satara Division, P-11/14 MIDC, Satara	}	Petitioner
versus		
1. Settlement Commission, Additional Branch, Custom & Central Excise, Mumbai, Utpad Shulk Bhavan, Bandra-Kurla Complex, Bandra (East), Mumbai-400 005	}	
2. Allied Ferromelt Pvt. Ltd. Satara Gut No. 376, 381-385, Village Sanghavi.	}	Respondents

Mr. J. B. Mishra for the petitioner.

Mr. Chirag Shetty for respondent no. 2.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- APRIL 17, 2018

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. This petition by the Revenue challenges an order dated 27th January, 2005 of the Settlement Commission.

2. The first respondent-Commission exercises powers in terms of the Central Excise Act, 1944. This is a Commission set up to

bring about settlement of cases and which fall within the parameters of the statutory provisions. The second respondent is an entity to whom the immunity has been granted in terms of the order passed by the Commission and therefore, is a necessary party. The petition is filed by the Assistant Commissioner, Central Excise, Satara Division, Satara alleging that the second respondent is the holder of Central Excise registration. It is a manufacturer of rolled steel products, namely, TMT Bars falling under Chapter 72.14 of the First Schedule to the Central Excise Tariff Act, 1985. These TMT Bars are manufactured out of ingot procured either from open market or manufactured within their factory itself.

3. Since there was a suspicion about the activities of the second respondent, a search was carried out at its office premises and from the data that was made available during the course of the search, it was revealed that the second respondent is in the habit of maintaining parallel invoices. Thus, the Department/ Revenue suspected clandestine removal of the finished goods without declaration and payment of excise duty. It is in these circumstances and in light of these serious allegations covering a period from November, 2001 to March, 2002 and March, 2004, eventually that a statement was recorded and a show cause

notice came to be issued. The show cause notice dated 17th September, 2004 demanded a sum of Rs.1,05,35,493/-. Section 11A(1) of the Central Excise Act, 1944 was invoked and the Department was also anxious to impose penalty under section 11AC of the Act for evasion of Central Excise duty and interest under section 11AB of the said Act. Exhibit 'A' is a copy of the show cause notice.

4. The second respondent approached the Settlement Commission under section 32E(1) of the Central Excise Act, 1944 on 8th November, 2004. It admitted the duty liability to the extent of Rs.71,75,961/-. It sought immunity from fine, penalty and adjustment of interest and dropping of the prosecution.

5. A copy of the application before the Commission is at Exhibit 'B'. The petition itself proceeds to state in para 14 that the Assistant Commissioner-petitioner before us submitted a report before the Settlement commission in terms of section 32F(1) of the Central Excise Act, 1944. The report contained two prayers and one of which was that the application for settlement be rejected in the light of section 32E of the Central Excise Act, 1944 and the law laid down by the Hon'ble Madras High Court in the case of *Commissioner of Customs, Chennai vs. Customs and*

Central Excise Settlement Commission[1]. Even if the application is admitted, the prayer made by the second respondent for grant of immunity from penalty and interest be rejected.

6. It is evident from the petition itself that the hearing was held on 27th January, 2005, at which, the second respondent claimed certain benefits and that is how the revised duty liability was admitted to the extent of Rs.91,38,562/-. That was paid. The petitioner-Assistant Commissioner says that he objected to the admission of the application. He strongly opposed the claim for extending benefit-cum-duty price and grant of any immunity. In these circumstances, a prayer was also made that the Department should be permitted to engage a special counsel to defend this case. That application was rejected, final hearing was concluded and on the same day, the impugned order has been passed.

7. The only contention raised before us by Mr. Mishra appearing for the petitioner is that the Settlement Commission in this case completely bypassed the mandatory requirements stipulated in law and entertained the application. It not only proceeded to entertain it, but allowed it. There is a gross violation of the principles of natural justice and that of the legal provisions.

1 **2002(139) ELT 512 (Mad.)**

8. On the other hand, the second respondent says that this is a fairly old case. The reduced duty liability has been entirely paid. Now the records relevant and germane to the issue are lost. Such an old matter should not be now reopened and in any event, there is complete compliance with the procedure set out in law and the principles of natural justice. Once there is no error of law apparent on the face of the record, then, the petition deserves to be dismissed.

9. Chapter V came to be inserted by Act XXI of 1998 in the Central Excise Act, 1944. It is titled as "Settlement of Cases". Section 31 sets out the definitions. Evidently, the jurisdiction and powers of Settlement Commission are not in issue. Section 32E says that an assessee may make an application before adjudication to the Settlement Commission to have a case settled, in such form and such manner, as may be prescribed and containing a full and true disclosure of his duty liability, which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him. Once this application is forwarded together with the fees, it shall not be allowed to be withdrawn. After the application meets the requirements under section 32E, then, the Settlement

Commission, within 7 days from the date of its receipt, issues a notice to the applicant to explain in writing as to why his application should be allowed to be proceeded with and after taking into consideration the explanation provided by the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with or reject the application, as the case may be and the proceedings before the Settlement Commission shall abate on the date of rejection.

10. In the instant case, what we find is that the show cause notice, styled as show cause-cum-demand notice, copy of which is at Exhibit 'A' was duly served. Upon its receipt on 8th November, 2004, the second respondent made the application along with exhibits against this show cause notice dated 17th September, 2004. It requested that as it has paid the requisite fees, earlier date be fixed for admission. The application is in the prescribed form and it is duly verified. Then, what happened is that the application filed for settlement by the second respondent was duly served on the office of the Commissioner of Central Excise-II Commissionerate.

11. Pertinently, a perusal of the copy of the application (Exhibit 'C') at page 80 of the paper book would reveal that this

Commissionerate addressed a communication to the Settlement Commission and stated that it has forwarded report in terms of section 32E(1) of the Central Excise Act, 1944. This sub-section calls for an explanation from the applicant-assessee as to why his application for settlement should be allowed to be proceeded with. After receipt of this explanation within a period of 14 days from the date of the notice, the Settlement Commission shall allow the application to be proceeded with or reject the application. It is evident from the communication, copy of which is at Exhibit 'C' at page 80 dated 7th January, 2005 that this Commissionerate complies with section 32F(1). It is a report, which has to be forwarded to the Settlement Commission by the Principal Commissioner of Central Excise, where an application for settlement is allowed or deemed to have been allowed to be proceeded with under sub-section (1) of section 32F.

12. In these circumstances, it is evident that the petitioner-Revenue before us has allowed the application for settlement to proceed. That is how it forwarded its report and in the report, while raising an objection to entertain the application, it also says that it should be rejected on merits.

13. Now, it is too late for the Revenue then to complain and particularly in the facts and circumstances of the case that there

is any non-compliance with the mandatory provisions of law. It is evident from this order and impugned in the petition that when the matter was taken up, the representative of the second respondent as also the petitioner was present. There is, therefore, a clear understanding that the matter can proceed. The consent of the Revenue was far too obvious. The facts, as reflected from the records and to be found in the order of the Settlement Commission, therefore, do not permit the petitioner to raise any contention and of the nature that the impugned order contravenes the provisions of law or is in breach of the principles of natural justice. In these circumstances, we feel that this argument is purely an afterthought. It is in the peculiar facts and circumstances of the case that the Commission proceeded with and decided the matter. There was never any objection raised, much less serious for all this was done in the presence of the Revenue officials. The whole matter was allowed to be proceeded with and was brought to an end with the consent of the Revenue officials.

14. Once we clarify that we are not endorsing or approving the course adopted by the Settlement Commission, but uphold it in the facts and circumstances of the case, then, all the more the order under challenge does not call for any interference in our

extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

15. Consequently, the writ petition has no merit. It is dismissed. Rule is discharged, but without any order as to costs.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**