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

\+ W.P.(C) 10793/2017 & CM APPL. 44262/2017

AJANTA OFFSET & PACKAGING LTD. ..... Petitioner
Through: Mr.Vipul Aggarwal and Mr.Anshuman Nayan, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr.S.D.Windlesh, Advocate for UOI.
Mr.Sanjeev Narula, Sr. Standing Counsel with Mr. Abhishek Ghai, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **24.09.2018**

1. Petitioner is aggrieved by an order made by the Settlement Commission which directed the settlement of its liabilities by payment of Rs.35,60,770/- duty and imposed a penalty of Rs.3,00,000/-. The Commission also granted immunity from penalty in excess of the amount.

2. The petitioner had approached the Settlement Commission on 28.7.2016, under Section 32E of the Central Excise Act, 1944. The

period that was the subject matter of settlement proceedings, was covered in a show cause notice issued on 06.01.2014 (for the period 2011-12, 2012-13 etc.).

3. The brief facts are that the petitioner is engaged in the manufacturing of dutiable and non-dutiable (exempted) paper products. Except diaries and calendars (which are the subject matter of the exemption notification), the other goods are dutiable. On a previous occasion sometime in 2010, a show cause notice was issued to the petitioner, asking it to reply why the credit as claimed to be not reversed and other duties imposed upon it. Reply to that show cause notice, the petitioner had responded stating that it was unaware as to whether which were the duty exempted products and could be claimed only upon fulfilment of certain conditions. In these circumstances, for the subsequent period, when pursuant to an enquiry, a show cause notice was issued on 06.01.2014, the petitioner approached the Commission for relief.

4. The materials on records disclose that the petitioner conceded to pay out the liability to the extent of Rs.24,41,512/-, an amount which was deposited. It sought a set off of credit on CENVAT Credit which it claimed was Rs.11,19,258/-. The Revenue's position before the Commission was that the CENVAT Credit that the petitioner claimed was inadmissible on account of the non-observation of the conditions spelt out in Rule 6(2)(a) of the Central CENVAT Credit Rules, 2004. It relied upon the statement of the director made on behalf of the petitioner in course of inspection that separate books of

account were not *per se* maintained for the purposes of CENVAT Credit. The Commission took a note of all these factors and directed that the entire duty liability i.e. Rs.35,60,770/- had to be specified and that Rs.3,00,000/- in addition had to be paid as penalty. These were the conditions on which the settlement order was made.

5. Learned counsel for the petitioner made two fold submissions. Firstly, that the Settlement Commission, in making its final order did so in violation of the principles of natural justice. It was argued that the petitioner was unrepresented during the hearing, which culminated in the final order took place. Learned counsel relied upon the record of hearing and stated that the Commission was well aware that the request for adjournment was made, despite which it proceeded to pass an order. It was pointed out that the period of limitation had been extended and the Commission had sufficient time to complete the proceedings and make an order after hearing the parties. The second argument was that the reliance placed by the Commission on the report of the Central Excise Authorities, in the proceedings was unwarranted since the copy of that document was never furnished to the petitioner/applicant. It was submitted that the report substantially urged that the CENVAT Credit ought not to be granted in view of the petitioner's submission during the course of enquiry and to that extent, the omission to furnish the report also prejudiced the case.

6. At the outset, this Court notices that the petitioner did not dispute the basic duty liability (which worked out to Rs.35,60,770/-), it had deposited Rs.25,96,572/- as to the rest claimed that it was

entitled to CENVAT Credit. The Settlement Commission took note of Rule 6(2)(a) of the CENVAT Credit Rules which reads as under:

> *"Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for-*
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> *The receipt consumption and inventory of input and input service meant for used*
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> *(i) In or in relation to the manufacture of exempted goods;'*
> *(ii) In or in relation to the manufacture of dutiable final products excluding exempted goods;*
> *(iii) For the provision of exempted services;*
> *(iv) For the provision of output services excluding exempted services;"*

7. From the impugned order, it is clear that the Settlement Commission did not principally or even in any ancillary manner go by the report which was submitted to it and according to the petitioner copy of which was never made available to him. Rather, the Commission went by the Rule which categorically requires that to avail CENVAT Credit in respect of a non-dutiable/exempt item, the concerned manufacturer has to disclose a separate account (with respect to duty exempt goods). In the present case, the Commission also noticed the statement made on behalf of the petitioner. During

the course of hearing, learned counsel has complained that the statement in its spirit was not considered. Relevant part of the statement made by the petitioner's director stated as follows:

> *"Today i.e. 1.7.2013, I Deepak Mohan appeared before the Superintendent central excise, anti-evasion branch, Faridabad in response to the summons dated 24.06.2013 issued to M/s Ajanta Offset & Packagings Limited. On being asked about following the procedure laid down in the provisions of Rule 6 of the cenvat credit rules, 2004, in respect of availing the cenvat on the inputs used in relation to manufacturing of dutiable products, I state that since we were under the impression that our products were exempted from duty, we have not followed procedure prescribed under the rules. But as a practice for each product manufactured by us we have a document called job-ticket on which we keep record of the raw material required for manufacturing of that item. From such job-ticket we can compute the amount/quantity of inputs required for manufacturing of particular product/finished goods. A copy of such job-ticket is sent to the printing and binding departments as per their requirement and as per the job-ticket. We will submit before you the reconciliation and details of the inputs i.e. paper and Paper board used in the manufacturing of diaries and calendars in ten days' time.*
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> *On being further asked about our claim of Rs. 8,52,921/- as credit of CENVAT on inputs used in manufacturing of diaries/calendars, I state that vide our letter dated 03.06.2013 we have requested for allowing us to avail above amount of CENVAT credit. This credit is against the two major inputs only i.e. the Paper and the Paper board. We have not claimed CENVAT on the remaining other inputs used in manufacturing of diaries and calendars. On being further asked if the paper or paper board used in the manufacturing of these products are exhaustively procured and used in manufacturing of dutiable products, I state that these two items are common input for exempted as well as*

dutiable products such as diaries/ calendars."

8. Plainly, the reading of both Rule 6 and the statement made by Deepak Mohan, the Director, clearly point to the absence of any record – that could have led the Revenue to conclude with some degree of accuracy as to what precisely the quantum of input and the amount spent towards purchasing it, in respect of the exempt product. In the circumstances, the conclusions of the Settlement Commission that the petitioner could not *per se* claim entitlement to CENVAT Credit, cannot be characterized as arbitrary. The petitioner's argument that the Settlement Commission confined only to consider what is shown to it and not adjudicating in the merits of the dispute, in the opinion of this Court is without merit. There is no provision which states that the Commission can ignore mandatory provision of the statute, or at least one which shells out the condition under which the credit or some benefit are to be granted. What the petitioner claimed, which is not disputed, is that it produces/manufactures the exempt goods. Now to the extent the goods were exempted, it might be entitled to avail their basic exemption notification. However, if it wished to claim input credit for the amount spent as explained in order to produce the output articles, it had necessarily to maintain separate books of account. This is a matter of law which the Commission could not ignore.

9. As far as the complaint with respect to failure of natural justice goes, this Court notices that the record (of the Settlement Commission) clearly shows that the petitioner was heard on

20.02.2017 and thereafter again later when on 25.4.2017 the petition was listed and it requested for adjournment; in the meanwhile it had all the occasions to place which ever material it wished to place on record. Its failure to do so cannot be the ground on which the Settlement Commission can be faulted for adopting of unfair procedure. For the above reason, this Court is of the opinion that there is no reason to interfere in the impugned order. The petition is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 24, 2018/ndn