THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION NO.14260 OF 2018

ORDER: (per SK,J)

Challenge in this writ petition is to the order dated 16.03.2018 passed by the Customs, Central Excise and Service Tax Settlement Commission, Additional Bench, Chennai, rejecting the application of the petitioner company under Section 32 L of the Central Excise Act, 1944, made applicable to Service Tax, *vide* Section 83 of the Finance Act, 1994.

2. Perusal of the impugned order dated 16.03.2018 reflects that the Settlement Commission proceeded on the ground that despite all the Annexures sought by the petitioner company being provided to it, it had not responded for more than three months. On that premise, the Settlement Commission recorded that there was total non-cooperation warranting rejection of its application for settlement.

3. Sri S.Ravi, learned senior counsel representing Sri Ch.Pushyam Kiran, learned counsel for the petitioner company, would inform this Court that 10 out of the 17 Annexures sought by the petitioner company were supplied to it but not the remaining 7. He would therefore contend that it was erroneous on the part of the Settlement Commission to assume that there was delay on the part of the petitioner company in submitting its response and non-suit it on that ground.

4. Sri A.Radha Krishna, learned counsel for the Revenue, would inform this Court that out of the remaining 7 Annexures, 2 were traced out and were provided to the petitioner company and steps are being taken to find the remaining 5 Annexures.

5. In these circumstances, we are of the opinion that the Settlement Commission could not have held against the petitioner company on the ground that despite receiving all the Annexures sought by it, it was dragging its feet. In this regard, we may also note that the finding of the Settlement Commission that there was non-cooperation on the part of the petitioner company is not in keeping with the law laid down by a Division Bench of the High Court for the States of Telangana and Andhra Pradesh in ANIL RE-ROLLING MILLS V/s. COMMISSIONER OF CENTRAL EXCISE[1]. Therein, the Division Bench observed that the expression 'cooperation' in the context of adjudication by the Settlement Commission would mean true and full disclosure of the facts pertaining to the assessee and 'non-cooperation' would mean the opposite of it.

6. Therefore, the failure to submit its response and that too when the material sought by the petitioner company had not been provided to it would not amount to 'non-cooperation' as understood by the Settlement Commission. The order dated 16.03.2018 passed by the Settlement Commission non-suiting the petitioner company on the ground of such 'non-cooperation' therefore cannot be countenanced.

7. The writ petition is accordingly allowed setting aside the order dated 16.03.2018 passed by the Settlement Commission and remitting the matter to it for consideration afresh. The petitioner company shall submit its response within three weeks from the date the remaining Annexures are made available to it by the Revenue. In the event any such document is not traceable, the Settlement Commission shall proceed with the adjudication of the matter eschewing the same from consideration but before doing so, the petitioner company shall be put on notice and

[1] 2013 (320) ELT 397

sufficient time shall be granted to it to submit its response. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

K.LAKSHMAN,J

Date:03.09.2019
GJ