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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th January, 2019

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W.P.(C) 2684/2016

RITAM STEEL PVT. LTD.

..... Petitioners

Through: Mr. Anirudha Samantaray, Adv.

versus

UOI & ORS.

..... Respondents

Through: Mr. Prasanta Varma, Sr. Central
Govt. Counsel with Ms. Shalu
Goswami, Adv. for UOI.
Mr. Harpreet Singh, Sr. Standing
Counsel with Ms. Suhani Mathu,
Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (OPEN COURT)

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1. The petitioner's grievance is that its Settlement Application under Section 32E of the Central Excise Act, 1944 was rejected. Pursuant to search, and subsequent investigation, a Show Cause Notice was issued to the petitioner alleging that it was involved in the clandestine removal and suppression of true quantity and under valuation of the goods. Thereupon, the petitioner applied to the Settlement Commission. In its application, it claimed that its duty liability was ₹32,39,687/-. The amount demanded, however, was ₹80,52,971/-.
2. The Settlement Commission initially issued notice under Section 32E(1) in the preliminary hearing and admitted the application for hearing.

At that stage, the Commission's order (as communicated to the petitioner on 16.04.2015) was as follows:-

"I am directed to communicate that the Hon'ble Bench has allowed the application filed by the above mentioned applicant to be proceeded with in terms of sub-section(1) of section 32F of the Central Excise Act 1944, as the conditions laid down under section 32E of the Central Excise Act, 1944, subject to the condition that the applicant show at the time of final hearing that they fulfill the conditions of section 32 E of the Central Excise Act, 1944. "

3. Thereafter, considering the submissions of the parties and the material on record, it rejected the Settlement Application. The *rationale* for rejection of the Settlement Application *inter alia* given by the Commission is as follows:-

"17. The Bench has gone through the application filed and considered the rival submissions made orally as well as in writing both by the applicant and the Revenue. The Bench observed that this is a case of clandestine clearance of cast iron products by suppressing the production and also mis-declaring their weight; also of suppression of transaction value of the finished goods cleared to related persons. The applicant has accepted the total duty liability of Rs. 32,39,687/- out of a total duty demand of Rs. 80,52,971/-. The applicant has accepted his total duty liability on account of sale to related person (M/s. Manjeet Traders). However, the applicant has not accepted the duty liability on products where the weight was mis-declared in the range of 60% to 80%. The applicant's contention is that goods have been sold by M/s. Manjeet Traders on 'piece' basis and hence the mis-declaration of weight is immaterial. They have further contended that the department should not have loaded the value in proportion to the increase of weight and should have charged the duty on the price on which goods were sold by M/s. Manjeet Traders to unrelated persons. Further

when the price at which products were sold by M/s Manjeet Traders was available from their balance sheet, the assessable value should not have been loaded. The contention of the applicant prima facie is not acceptable and looks illogical. It is pertinent to mention that in the invoice, the value of the product was shown on kg. basis and not on piece basis. Only in the challan, the correct weight was mentioned; which was in majority of the cases higher by 60 to 80%. If the goods were sold only on piece basis, there was no necessity for the applicant to mis-declare the weight. The cast iron products are mostly sold on weight basis, no assessee will mis-declare the weight if the goods are to be sold on piece basis. If there was no evasion of duty in mis-declaring the weight, the applicant would have declared the weight correctly or there might have been a marginal error of maximum 5 to 10%. Thus, the contention of the applicant, in this regard, is not acceptable. Another contention of the applicant is that when price at which goods were sold by M/s. Manjeet Traders was available, the Revenue should not have increased the value in proportion to increase in weight. The price mentioned in the balance sheet of M/s. Manjeet Traders is co-related to the price at which the products were purchased by M/s. Manjeet Traders after adding a trading margin of 5 to 8%. When M/s. Manjeet Traders has procured the goods where the weight was mis-declared, they have sold the same products by adding the trading margin only. The excess payment made for procurement of the goods and sale price realized will not be reflected in their balance sheet. The loading in the price of M/s. Manjeet Traders in proportion to increase in weight is prime facie correct. The applicant contention, in this regard, is unacceptable.

18. The applicant during the hearing has contended that if they were granted cum-duty price benefit, their duty liability will get reduced to 55.56 lakhs from the total duty demand of Rs. 80.52 lakhs. Thus, they have claimed that they are entitled to cum

duty price benefit of Rs. 24.96 lakhs. It may be mentioned that the duty rate on cast iron products ranged from 8.24% to 12.36% and majority of the clearances were made when the rate of duty was 10.3%. On a demand of Rs. 80.52 lakhs, the cum duty price benefit when the rate of duty is 10.3% (in the case of 85% clearance) cannot exceed rupees nine lakhs. Even at the highest rate of 12.36% it would not be more than 10 lakhs. This clearly shows that the applicant has not calculated their duty liability correctly and has tried to mislead the Commission by submitting wrong and incorrect claims.

19. The Bench observed that the applicant has only accepted about 40% of their duty liability and has contested the evidence collected by the Revenue. They have rejected the evidences given by the Revenue in respect of their duty demand without convincing explanation. From these facts, it can be inferred that there is no true and correct disclosure by the applicant.

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27. In view of the foregoing discussion, the Bench observes that the applicant has not only denied a substantial part of the demand but has also contested the evidence collected by the Revenue. They have claimed certain facts which need further investigation by the Revenue. Therefore, the Bench observes that the case is not one that can be settled in this forum. In view of the complex issues of fact raised by the rival parties to the case, it would be more appropriate that the case is adjudicated by the proper Officer after appreciation of facts and evidence now produced by the applicant.”

4. Learned counsel for the petitioner contends that given the mandate of Section 32L(1), the Commission was bound to consider the application and record its reasons for its order, and could not reject the application in the manner it did i.e. to remit the matter to the Adjudicating Authority. Learned

counsel submitted that the settlement offer made by the petitioner was in fact a full and true disclosure, which compelled the Commission to examine the merits of its application and decide the terms on which the settlement, if any, could be recorded. It could not have, after entertaining the application under Section 35E, proceed to reject it on the very grounds mentioned in that provision. In support of the contention learned counsel relied upon the Division Bench ruling of this Court in *H.H. Interior & Auto Component Ltd. v. Commissioner of Central Excise* (2016) 337 ELT 175. The observations in that decision pertinently are as follows:-

“14. The fact of the matter is that for rejection of an application made to it there are only a few grounds available to the CCESC. Under Section 32F(1) of the CE Act, the CCESC may reject an application even at the preliminary stage if it is of the view that a full and true disclosure has not been made of the material facts by the Petitioner. If, however, the CCESC decides to proceed with the application then the grounds on which it can decline to entertain the application, as stated in Section 32-L of the CE Act, is where the CCESC is of the opinion that the applicant has not cooperated with the CCESC in the proceedings before it. It can then send the matter back to the Central Excise Officer having jurisdiction who can then proceed to dispose of the case in terms of the provisions of the CE Act as if no application seeking settlement had been made. None of the provisions in Chapter 5 of the CE Act dealing with the ‘settlement of cases’ envisages the CCESC sending the matter for adjudication to the Central Excise Officer because of the differences between the applicant on the one hand and the Department on the other. In other words unless the applicant before it has not stated the true and full particulars or fails to cooperate with it, the CCESC cannot decline to examine the application on the ground that there is difference between the applicant and the Department on an issue arising from the application.”

5. This Court is of the opinion, that the petitioner’s submissions with

respect to the lack of jurisdiction or authority of the Commission to reject the application after entertaining it under Section 32E are insubstantial. The rejection of an application is possible at both stages – either at the stage of admission [Section 32E] or later, at the stage of hearing [Section 32K]. The opening phrase in Section 32K(1) is that if the “Settlement Commission may, if it is satisfied...”. If one reads this with the subsequent terms of the provision, i.e. empowering the Commission to grant to the person concerned immunity from prosecution for any offence and in effect settle the issue, the satisfaction should be that the applicant “has cooperated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of its duty liability”. In the present case, the Commission had entertained the petitioner’s application expressly subject to the condition that “the applicant show at the time of final hearing that they fulfill the conditions of section 32 E of the Central Excise Act, 1944”. Parties had proceeded on this basis. The ratio of *H.H. Interior* (supra) cannot, in any event, apply to such a case.

6. That similar considerations might weigh in the minds of the Tribunal at the preliminary stage [by reason of the conditions spelt out in Section 32E and 32F with respect to making of full disclosure]; does not in any manner constrain the power of the Commission to reject the application before it at the final stage, on the ground that full disclosure is not made and that the applicant has not cooperated with it.

7. This Court is fortified in the view that is expressed by the judgment in *Union of India v. Dharampal Satyapal* 2013 (298) ELT 653 (Del.) where it was held as follows:-

“48. It has been held in several judgments that the primary condition for approaching the Settlement Commission is that

the application shall contain a full and true disclosure of the duty liability and the manner in which it was derived.....

The position under the Central Excise Act prior to the amendment made w.e.f. 01.06.2007 to Chapter V of the Act was considered by a Division Bench of this Court in Commissioner of Central Excise v. Woods Pvt. Ltd. in W.P. (C) No.21055/2005. The judgment was rendered on 10.11.2005. In that case it was held by this Court that the requirement of a full and true disclosure is a continuing requirement that needs to be satisfied from the beginning of the proceedings till the conclusion thereof and if at any stage of the proceedings it appears to the Settlement Commission that the disclosure made by the assessee was incomplete or untrue, the settlement application can be thrown out. The position is no different under Section 32E(1) of the Central Excise Act even after the amendment made w.e.f. 01.06.2007. The requirement continues to be that the application shall contain a full and true disclosure of the duty liability which has not been disclosed before the Central Excise Officer and the manner in which such liability was derived. It is true that on and after 01.06.2007 the Settlement Commission need not call for a report from the Commissioner before the settlement application is allowed to be proceeded with. However, the requirement that the settlement application shall contain a full and true disclosure continues to remain in the statute and it is, therefore, the duty of the Settlement Commission to examine this aspect by itself on the basis of explanation provided by the applicant.

49. The other principle which has been set down in several judgments of this Court is that the Settlement Commission is not a substitute for adjudication proceedings before the Central Excise authorities and where complex issues of fact and law are involved for which a detailed inquiry is necessary, settlement proceedings cannot act as a proper substitute for the adjudication proceedings.”

The Division Bench, following earlier judgments on the point, also held that settlement proceedings cannot substitute adjudication proceedings where complex issues of fact and law are involved.

8. Likewise the Allahabad High Court held in *Vinay Wires Product Pvt. Ltd. v. Director General of Central Excise Intelligence* 2014 (307) ELT 438 (All):-

“26.... The Settlement Commission has given good and cogent reasons for sending the case back to the adjudicating authority. The Settlement Commission noticed that the applicants had not accepted a substantial part of the duty liability and had in fact contested the evidence collected by the Revenue as being fabricated and tampered with. It also noticed that the Revenue had given reasons to substantiate its position regarding investigation as well as the quantification of duty liability. In such a situation, the Settlement Commission thought it appropriate, particularly when the applicants had not made a true and full disclosure and that complex questions of fact, which required appreciation of evidence, were required to be settled through adjudication. A fair amount of discretion has to be given to the Settlement Commission in cases where matters are placed before it for settlement keeping in mind the well settled principle that settlement is not akin to adjudication.”

9. In the present case, the reasons furnished by the Commission for rejecting the petitioner's application i.e., the petitioner not making full disclosure, but rather persisting in its contention that the original value of clearances and the quantum that was cleared was the true and correct value, fully justified the decision that it took.

10. For the above reasons, this Court finds no merit in the writ petition. It is accordingly dismissed.

S. RAVINDRA BHAT,J

PRATEEK JALAN,J.

JANUARY 15, 2019

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