IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.132 of 2015

S.Saravana Arul ...Petitioner

Vs.

1.The Customs & Central Excise Settlement Commission,
Additional Bench,
II Floor, Narmada Block,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

2.The Commissioner of Service Tax,
Service Tax Commissionerate,
Chennai. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order No.37/2014-ST dated 17.09.2014 passed by the 1st respondent-Settlement Commission and quash that portion of the order denying the Cum-tax benefit claimed by the petitioner and further direct the 1st respondent-Settlement Commission to grant the cum-tax benefit treating it as cum-tax value in terms of Sec.67 (2) of the Finance Act, 1994, with consequential relief of refund of the excess amount paid by the petitioner.

For Petitioner : Mr.M.A.Mudimannan

For Respondents : Mr.V.Sundareswaran
(Senior Panel Counsel)

ORDER

The order passed by the Customs, Central Excise and Service Tax Settlement Commission (for brevity 'the Settlement Commission') in proceeding dated 17.09.2014 is under challenge in the present Writ Petition. The order of settlement was issued under Section 32F(5) of Central Excise Act, 1944 (hereinafter referred to as 'the 1944 Act') made applicable to Service Tax vide Section 83 of the Finance Act, 1994.

2.The petitioner is engaged in the business of textiles, jewellery, household articles in Chennai for decades. The petitioner's father, late V.Saravana Selvaratnam, is a well known businessman in Chennai, especially in T.Nagar area. The petitioner took over his family business and the commercial properties. The petitioner states that the business concerns are duly registered with VAT authorities for the trading business and is periodically filing returns and remitting taxes. In respect of Service Tax collected from the tenants, the same has been remitted with the department and petitioner was filing periodical ST-3 Returns. As far as the tenant let out to Canara Bank is concerned, they refused to pay Service Tax, citing the decision of High Court/Tribunal. In view of the confusion involved in the issue, the petitioner neither collected Service Tax nor remitted the same for some of the properties rented out. Only those Service Tax paid by clients were remitted to the department and returns were filed. In those circumstances, the Directorate General of Central Excise Intelligence, Chennai (DGCEI) initiated action by visiting the business premises of the petitioner on 24.01.2012 and conducted inquiries regarding renting of immovable property for commercial purposes.

3.In order to settle the issue in a peaceful manner, the petitioner filed an application before the 1st respondent, setting out the facts and the circumstances. The application submitted for settlement was adjudicated and the Settlement Commission inclined to grant partial immunity from penalty to the applicant and further, granted immunity from prosecution.

4.In the light of the settlement, the 1st respondent-Settlement Commission, settles the case on terms and conditions under the 1944 Act made applicable to Service Tax vide Section 83 of the Finance Act, 1994.

5.The contentions of the petitioner is that they were remitting the Sales Tax with the department, with reference to the Service Tax collected from the respective tenants. Thus, they have not committed any irregularity. It is contended that the petitioner filed the application before the Settlement Commission, under Section 32E of the 1944 Act, made applicable to Section 83 of Finance Act, 1994 and it was taken up for hearing. The mandatory requirement for submission of application is that the applicant shall provide full and true disclosure of his duty liability, which has not been disclosed before the Central Excise Officer having jurisdiction at the time of assessment. Thus, the settlement can be made under the provisions of the Act, if the assessee come forward with full and true disclosure, including information and materials not provided under the jurisdictional officer at the time of assessment. In the present case, the application submitted by the assessee was entertained by the adjudicating officer and an adjudication was conducted and final order was passed on 17.09.2014, by the Settlement Commission. The said order is under challenge in the present Writ Petition.

6.The learned counsel for the petitioner strenuously contended that the petitioner had paid the entire Sales Tax and there was no due. While so, the interest portion settled by the Settlement Commission is erroneous and contradictory facts placed before the Commission. Thus, the petitioner is constrained to move the present Writ Petition.

7.The learned Senior Standing Counsel appearing on behalf of the respondent-Department disputed the said contention by stating that there was a short payment by the service provider with reference to the payment of Service Tax and in respect of such short payment, the interest was charged and the Settlement Commission also settled the matter in this regard. Once the matter is settled pursuant to the application submitted by the writ petitioner, there is no scope for further adjudication of facts on merits and thus, the Writ Petition is liable to be rejected.

8.This Court is of the considered opinion that admittedly the application filed under Section 32E of the 1944 Act, for settling the issues, was entertained by the Settlement Commission. The Settlement Commission also adjudicated the issues with reference to the informations and particulars provided by the assessee. The Settlement Commission accepted the terms of reference and finally granted partial immunity from penalty to the applicant and further, granted immunity from prosecution and the order was passed. As far as the Service Tax and interest is concerned, the finding of the Settlement Commission in para 5.3 is relevant, which is extracted hereunder:-

> "5.3.As pointed out by Commissioner in the report dated 12.02.2014 further interest of Rs.29,16,985/- was paid in addition to the interest of Rs.20,66,124/- paid before the issue of SCN. The payment of interest in full was confirmed on the day of hearing on 23.07.2014. The applicant claimed cum-tax benefit, which was disputed by the Revenue during the hearing as there were no agreements, and the values charged were not shown as inclusive of Service Tax. In this case, Service Tax was demanded on the value

> shown in the ledgers. The rent amounts charged by the applicant were not inclusive of Service Tax. In the case of Canara Bank and SSRPL, there were no agreements. In fact, the Service Tax amount recovered subsequently from Canara Bank is over and above the rent amount recovered earlier. Similarly, in the case of SSRPL, the amount of rent charged is not inclusive of Service Tax as admitted by the applicant that they were under the impression that Service Tax was not attracted in this case. The applicant has also not produced any evidence that the Service Tax is not recoverable or would not be recovered from SSRPL at any point of time in future. Therefore, in terms of the judgment of Hon'ble Supreme Court in the case of Amrit Agro Industries Ltd., reported at 2007 (21) ELT 183 (S.C.) and the judgment reported at 2014 (300) ELT 119 (Tri.-Mumbai) the Bench is in agreement with the jurisdictional Commissioner, that the benefit of Cum-tax value is not admissible in this case. Accordingly, the Service Tax amount is settled at Rs.1,57,39,836/- and the interest amount is settled at Rs.49,86,109/-. The applicant had also accepted this Service Tax amount in his application and paid the same. The interest amount has also been worked out and paid by the applicant accordingly without considering the Cum-tax value benefit."

9.The interest is chargeable based on certain admitted facts and circumstances placed before the Settlement Commission. If at all there is any error apparent in respect of such findings with reference to the original records, the petitioner is at liberty to approach the Settlement Commission for clarification or for rectification of any such error apparent regarding the facts admitted or pleaded. However, such an adjudication cannot be done by the High Court in a writ proceedings, which require examination of original records and the admission statements made by the parties before the Settlement Commission with reference to the application filed under Section 32E of the 1944 Act.

10.This being the factum, this Court is of the opinion that the order passed by the Settlement Commission pursuant to the admission made by the parties need not be interfered with. However, if there is any error apparent on record or if there is any factual error regarding the admitted statements, the Settlement Commission is empowered to rectify such mistakes by following the procedures contemplated. In this regard, the petitioner is at liberty to file an application, if required.

11.With the above observations, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Customs & Central Excise Settlement Commission,
   Additional Bench,
   II Floor, Narmada Block,
   Custom House, No.60, Rajaji Salai,
   Chennai 600 001.

2. The Commissioner of Service Tax,
   Service Tax Commissionerate,
   Chennai.

+1 cc to Mr.K.Jayachandran,Advocate Sr.No.30498.

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NSK 29/07/2021