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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-09-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.1692 of 2014

And

MP Nos.1 and 2 of 2014

Ran India Steels Private Limited,
Represented by its Managing Director, Mr.R.Radha,
1st Floor, Aayappa Tower,
Opp: Selva Vinayagar Kovil,
CBH Colony, Velur Road,
Thiruchengode - 637 211,
Namakkal District.

.. Petitioner

vs.

1. The Customs and Central Excise Settlement Commission,
Additional Bench,
II Floor, Narmada Block,
Customs House,
60, Rajaji Salai,
Chennai - 600 001.
2. The Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
Salem Commissionerate,
No.1, Foulks Compound,
Anaimeedu,
Salem - 636 001.
3. The Additional Director General,
Office of the Additional Director General of
Directorate General of Central Excise Intelligence,
Chennai Zonal Unit,
C-3, "C" Wing, Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in file C.No.V/15/11-15/2010-SC dated 10.10.2013 and quashing the same while directing the first respondent to re-



dispose the application for settlement filed by the petitioner under Section 32-E dated 17.06.2010, after ordering an investigation on the application filed by the applicant under Section 32-F(4) of the Act on 26.08.2013, seeking an investigation and determination of the electricity consumption patterns in the factory of the petitioner at S F No.255/6A2, Nallur Village Kavundipalayam Post, Kandampalayam, via Paramathi Taluk, Namakkal District, Tamil Nadu.

For Petitioner : Mr.A.Thiagarajan,
Senior Counsel, assisted by
Mr.S.Ramesh Kumar.

For Respondent-1 : Settlement Commission

For Respondents-2&3 : Mr.V.Sundareswaran,
Senior Panel Counsel.

O R D E R

The writ on hand has been instituted to quash the order passed by the Customs and Central Excise Settlement Commission dated 10.10.2013 and to issue directions to re-dispose the application for settlement filed by the petitioner under Section 32-E of the Central Excise Act [hereinafter referred to as the 'Act', in short].

2. The petitioner is a Private Limited Company incorporated under the Companies Act. The petitioner is, inter alia, involved in the activity of manufacture of MS-Ingots and CTD bars/rods, falling under Chapter 72 of the Central Excise Tariff Act, 1985. The purchaser-Company is registered with the Central Excise Registration and submitting monthly returns with the jurisdictional range.

3. A search was conducted in the premises of the petitioner-Company by the Officers of the Director General Central Excise Intelligence on 30.01.2006. On 07.02.2006, two computers were opened with the assistance of the officials of the petitioner-Company and the authorities seized two hard disks and sealed the same in the presence of the Company Officials.

4. The grievance of the petitioner is that the two seized hard disks are not produced before the Settlement Commission for investigation. Thus, there was no transparency in the matter of conducting an investigation by the Department Officials. Pursuant to the search, show cause notice was issued on 07.11.2008. Under those circumstances, the petitioner filed an application before the Settlement Commission under Section 32-E of the Act.



5. The learned Senior Counsel, appearing on behalf of the petitioner, mainly contended that there was a discrepancy in Commissioner's Report and absolutely, there was no transparency in dealing with the seized hard disks. In the absence of any such transparency, the contentions raised on behalf of the petitioner, cannot be taken into consideration for the purpose of rejection of the application filed for settling the issues.

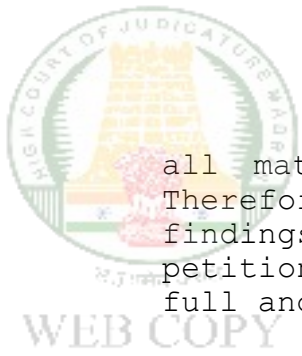
6. The learned Senior Counsel, appearing on behalf of the petitioner, drew the attention of this Court with reference to the objections filed by the petitioner in this regard. Detailed objections are filed elaborating the facts and circumstances, leading to non-transparency and non-adjudication of the contents in the two hard disks retrieved by the Officials of the Central Excise Intelligence Wing. Therefore, the matter is to be remitted back to the Settlement Commission for the purpose of conducting further investigation in respect of the hard disks and other objections raised by the petitioner for settling the issues.

7. The findings made by the Settlement Commission are unilateral in this regard. The objections filed by the petitioner were not considered in its real spirit. Only in the event of investigation and adjudication, the petitioner would be getting an opportunity to settle the issues.

8. The learned Senior Panel Counsel, appearing on behalf of the respondents 2 and 3, disputed the contentions by stating that once the Settlement Commission found that the applicant has not disclosed the material facts truly and fully, then such applications are liable to be rejected in limine. Opportunities were provided to the petitioner to settle the issues in an amicable manner. However, the petitioner-Company was reluctant in disclosing certain facts even at the time of investigation as well as before the Settlement Commission.

9. When the Intelligence Wing Officials retrieved two hard disks and traced out certain facts, which were not disclosed by the petitioner and such facts are placed before the Settlement Commission, then the petitioner ought to have at least come forward with the truth during the relevant point of time, enabling the Settlement Commission to grant the relief in favour of the petitioner. The reluctance and non-disclosure of relevant facts resulted in rejection of an application.

10. The present writ petition is the second writ petition filed by the petitioner-Company. The Settlement Commission, at the first instance, rejected the application on the same ground and pursuant to the orders of this Court, again the Settlement Commission provided an opportunity to the petitioner to disclose



all material facts for the purpose of settling the issues. Therefore, the present writ petition is devoid of merits, as the findings of the Settlement Commission would reveal that the petitioner has not approached the Settlement Commission with full and true material facts.

11. Considering the arguments as advanced by the respective learned Senior Counsel for the petitioner and the learned Senior Panel Counsel for the respondents 2 and 3, let us now consider the scope of the application filed before the Settlement Commission under the provisions of the Act.

12. Section 32-E of the Act, contemplates 'application for settlement of cases'. Sub-section (1) of Section 32-E stipulates that an Assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, in such form and in 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 and such other particulars, as may be prescribed, including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or CENVAT credit or otherwise and any such application shall be disposed of.

13. Therefore, the application submitted must contain full and true disclosure of duty liability, which has not been disclosed before the Central Excise Officer having jurisdiction. It is a mandatory pre-condition contemplated under Section 32-E of the Act. Thus, if the Settlement Commission, while scrutinisation of the materials available on record traced out any such non-disclosure of full and true materials and the duty liability and then, such an application is liable to be rejected at the admission stage.

14. Once the application is admitted based on the prima facie scrutinisation, then Section 32-F contemplates 'procedure on receipt of an application under Section 32-E of the Act'. Section 32-G of the Act stipulates 'power of Settlement Commission to order provisional attachment to protect revenue'. Section 32-I of the Act denotes 'powers and procedure of Settlement Commissions'. Section 32-J of the Act provides 'inspection etc., of reports' filed by the Commissioner. Section 32-K of the Act provides 'power of Settlement Commission to grant immunity from prosecution and penalty'. Section 32-L of the Act states 'power of Settlement Commission to send a case



back to the Central Excise Officer'. Section 32-M of the Act, stipulates 'order of settlement to be conclusive'. Importantly, Section 32-P of the Act states 'proceedings before Settlement Commission to be judicial proceedings'. Therefore, the facts, legal provisions and the reports are to be considered by the Settlement Commission, while dealing with the application filed under Section 32-E of the Act.

15. As far as the present writ petition is concerned, the Settlement Commission rejected the application filed by the petitioner on the ground that the petitioner has not cooperated with the Settlement Commission in the proceedings before it. In this regard, sub-section (1) of Section 32-L of the Act contemplates that "the Settlement Commission may, if it is of opinion that any person who made an application for settlement under Section 32-E has not cooperated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under Section 32-E had been made."

16. Therefore, for entertaining an application under Section 32-E of the Act, the application must contain full and true disclosure of duty liability, which had not been disclosed before the Central Excise officer having jurisdiction. Secondly, sub-section (1) of Section 32-L of the Act contemplates that any person who made an application for settlement under Section 32-E has not cooperated with the Settlement Commission in the proceedings before it. Unless the first condition is satisfied, the application cannot be admitted. Once the application is admitted, till the end of the proceedings, the person who submits an application has to cooperate with the Settlement Commission for the purpose of settling the issues.

17. The twin conditions admitted in the above two conditions are of paramount importance. In view of the fact that once the issues are settled before the Settlement Commission, then there is no scope for reopening by the authorities and under those circumstances, these conditions are to be considered as vital in order to protect both the interest of the Department as well as the interest of the persons, who submits an application.

18. In this context, it is sufficient if the findings of the Settlement Commission are considered.

19. It is not in dispute that the application filed by the petitioner on 17.06.2010 was dealt with by the Settlement Commission and it was rejected on the ground that as the applicant vehemently rejects authenticity of GEQD report and



also claims that the copy of the hard disks, which was given to him in the interest of natural justice, is no longer available for examination by the Bench. The Bench finds that the applicant has virtually stonewalled the proceedings. Besides discarding GEQD report, the applicant has apparently levelled wild charge against the officials of DGCEI that someone among them had even made entries in the six pocket diaries. In such hostile atmosphere, it is not possible to settle the matter and the Bench feels that it would be in the interests of the applicant, the co-applicant and Jurisdictional Commissioner if the adjudication proceedings, which are already in advanced stage should be allowed to be proceeded with.

20. The order passed by the Settlement Commission, in paragraph 14, reads as under:-

"14. In view of non disclosure of true facts by the applicant and non cooperation with the Bench by neither letting the Commission rely on computer data as deciphered by GEQD nor producing his own copy, which was given at the time of seizure on 07.02.2006, the Bench remands the case to the Commissioner of Central Excise, Salem Commissionerate in terms of Section 32-L of Central Excise Act, 1944 for proceeding with the adjudication in respect of SCN No.105/2008 dated 07.11.2008 issued from file No.INV/DGCEI/ CHZU/61/2007. However, the Bench refrains from expressing its views on merits of this case to avoid prejudice to the interest of the applicant and co-applicants in adjudication proceedings".

21. The petitioner-Company filed WP No.13754 of 2011, this Court set aside the order passed by the Settlement Commission and restored the application before the Settlement Commission for fresh adjudication. Pursuant to the orders of this Court, again the Settlement Commission considered the issues and the relevant findings of the Settlement Commission, in paragraphs 8.13, 8.15, 8.16, 8.17, 8.18 and 8.19, are as under:-

"8.13 It is observed by the Bench that majority of balance demand for '16.20 crores (Approx.) out of total demand of '16.73 crores (Approx.) is based on entries in various seized documents which also found place in the computer data as deciphered by GEQD. The applicant pleaded vehemently not to place any reliance on the GEQD data as according to him the entire data had been



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manipulated and doctored by unknown departmental officers just to justify the demands raised against the applicant company.

8.15.

During hearing, amongst all other things, the Applicant pleaded that points raised relating to authenticity of GEQD report has not been investigated and requested for ordering investigation which was agreed to by the Bench. The Bench ordered for an investigation vide order dated 29.04.2013 by the Commissioner (Investigation) to conduct a detailed investigation on the aspects stated therein. After conducting the investigation, the Commissioner submitted his report dated 21.06.2013, a copy of which was sent to the Applicant along with letter dated 11.10.2013. The applicant was heard by the Bench on 25.09.2013. During the hearing Advocate raised technical issues relating to investigation ordered by the Bench, to which the Bench drew the attention of the Minutes of the Proceedings dated 06.02.2013. Thereafter the Advocate reiterated that he has made a true and full disclosure in his application wherein he had admitted additional duty liability of '1,19,67,923/- though the demand made in the Show Cause Notice was to the extent of '16,79,19,499/-. The Bench had made it very clear that there was no legal or procedural irregularities in ordering investigation since it was done on the request of the applicant during hearing held on 06.02.2013 and therefore the Applicant should confine to the facts, as stated by him in his Application vis-a-vis what has been brought out in the report of the Commissioner (Investigation) dated 21.06.2013.

8.16.

Bench notes that it is clearly established in the report dated 21.06.2013 of the Commissioner (Investigation) that the data in the GEQD Report were obtained from the seized hard disk of the applicant firm and no data found to be present or entered after the date of seizure. The Applicant's claim that the data retrieved from the seized original hard disk examined by GEQD is not



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genuine as it did not belong to them, is not established by direct or substantive evidence.

8.17.

The Bench, prima facie, came to the conclusion that there is no reason why the findings contained in the Report given by Commissioner (Investigation) dated 21.06.2013 should not be accepted as the basis for determining the additional duty amount for settlement purposes. During proceedings held on 25.09.2013 Bench expressed their view accordingly for which the Advocate sought time to reply up to 05.10.2013. The applicant in his reply dated 07.10.2013 reiterated what has been submitted by him in his application and subsequently. Thus admittedly the Applicant has not given any credence to the findings of the Commissioner (Investigation) though Bench, prima facie, agrees with it.

8.18.

The Bench now finds prima facie in the light of the Commissioner (Investigation)'s report dated 21.06.2013 that the authenticity of the GEQD report cannot be disputed. This along with the other primary evidences recovered from the applicant's premises lead us to believe that the Revenue's position is well founded. However, the applicant has neither agreed to the Revenue's stand nor produced any fresh evidences to reconsider the matter.

8.19. As such response from the applicant is neither conducive nor cooperative for settlement of the dispute. Therefore, Bench holds that it would be appropriate to return the case to the adjudicating authority for disposal in accordance with law due to lack of cooperation for settlement on their part."

Finally, the Commission remanded the case to the Commissioner of Central Excise, Salem Commissionerate in terms of Section 32-L of the Central Excise Act, 1944, for proceeding with the adjudication.

22. Perusal of the above findings made by the Settlement Commission would reveal that the Commissioner's Investigation Report dated 21.06.2013 and its authenticity of the GEQD Report, cannot be disputed. Primary evidences were also recovered from



the premises of the petitioner. Thus, the position of the Revenue was well established. In such circumstances, the petitioner has neither agreed to the Revenue's stand nor produced any fresh evidences to reconsider the matter.

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23. Importantly, if the Report of the Commissioner (Investigation) is not agreeable to the petitioner-Assessee, then the petitioner-Company is expected to submit contra evidences to disprove the report filed by the Commissioner.

24. Mere objection in this regard is insufficient and based on such objections not supported with any evidences cannot be relied upon by the Settlement Commission for the purpose of settling the issues between the parties. Thus, it is an established principle, where the Competent Investigating Authority submitted a report in a particular manner and such a report is disputed by the Assessee, then the Assessee is obligated to submit evidences to disprove the findings in the Investigation Report, then alone the Settlement Commission would be in a position to adjudicate the contentions raised on behalf of the petitioner-Assessee and form an opinion for the purpose of settling the issues.

25. In the present case, the Revenue could establish their position based on Investigation Report along with the primary evidences recovered from the premises of the petitioner. However, the petitioner had neither agreed to the Revenue's stand nor produced any fresh evidences for the purpose of reconsidering the issues, as the said exercise was done by the Settlement Commission pursuant to the directions issued by this Court in WP No.13754 of 2011.

26. Settlement of issues between the parties is an enabling provision under the Act. Settlement of issues can never be claimed as a matter of right by the Assessee. The provision for settlement is provided under the Act with a legislative intention to produce evidence by the Assessee, by submitting true and full disclosure of material facts. Thus, a person, who is approaching the Settlement Commission with clean hands alone is entitled to get the relief under the provisions of the Act and the adjudication before the Settlement Commission can never be compared with the regular investigation or enquiries to be conducted by the Competent Authorities under the provisions of the Act. Thus, the scope of settlement of issues are confined with reference to the scope available under the provisions of the Act. The Settlement Commission is not empowered to go beyond the procedures contemplated as well as the scope enumerated.

27. This being the principles, settlement of issues are possible only when a person making an application has approached



the Settlement Commission with full and true disclosure of all material facts and further cooperate with the proceedings throughout, enabling the Settlement Commission to form an opinion that the person approached the Commission is entitled for settlement of issues.

28. This being the sanctity attached to the provisions regarding the Settlement, this Court is of an opinion that the petitioner has failed in extending their cooperation for the purpose of settling the issues by the Settlement Commission and thus, the petitioner is not entitled for the relief, as such, sought for in the present writ petition.

29. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

Svn

To

1. The Customs and Central Excise Settlement Commission,
Additional Bench,
II Floor, Narmada Block,
Customs House,
60, Rajaji Salai,
Chennai - 600 001.
2. The Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
Salem Commissionerate,
No.1, Foulks Compound,
Anaimey,
Salem - 636 001.
3. The Additional Director General,
Office of the Additional Director General of
Directorate General of Central Excise Intelligence,
Chennai Zonal Unit,
C-3, "C" Wing, Rajaji Bhavan,
Besant Nagar,
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+1cc to Mr.S.Ramesh Kumar, Advocate Sr No.46608
+1cc to Mr.V.Sundareswaran, Advocate Sr No.46578

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PR (21/09/2021)