



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.06.2021

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.24706 of 2017
and
W.M.P.No.26060 of 2017

M/s.Diksat Transworld Limited,
No.24, South Mada Street,
Mylapore, Chennai-600 004.

.. Petitioner

-vs-

1.The Commissioner of Service Tax-II,
Newry Towers, 2054-1,
Second Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

2.The Customs, Central Excise & Service
Tax Settlement Commission,
Additional Bench, Narmada Block,
Customs House,
No.60, Rajaji Salai, Chennai-600 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent No.2 made in final order No.27 of 2017-ST dated 25.05.2017 and quash the same and consequentially direct respondent No.2 to consider the application of the petitioner afresh.

For Petitioner : Ms.V.Kirubalini

For Respondents: Mr.A.P.Srinivas,
Senior Standing Counsel

ORDER

The Final Order No.27 of 2017-ST dated 25.05.2017 passed by the Customs, Central Excise & Service Tax Settlement Commission (hereinafter referred to as "the Settlement Commission") is under challenge in the present writ petition.

2.The petitioner states that they got registered under the Commissionerate of Central Excise and Service Tax and got the Registration Certification on 04.03.2008. The petitioner availed the benefits of Finance Act, 2013 on 18.09.2014, which provided Voluntary Compliance of Encouragement Scheme (VCES) and paid the dues and the first respondent issued the acknowledgement. Thereafter, the first respondent issued the show cause notice on 20.10.2014 alleging certain arrears of



service tax. Thus, the petitioner had invoked the jurisdiction of Settlement Commission by filing an application under Section 32E of the Central Excise Act, 1944 (hereinafter referred to as "the Act") on 09.12.2016. The Settlement Commission without considering the grounds raised by the petitioner, rejected their claim and returned the case back to the adjudicating authority. Thus, the petitioner is constrained to move the present writ petition.

3.The main contention of the petitioner is that despite true declarations made by the petitioner in Form VCES-1 and despite an acknowledgement of discharge in Form VCES-3 issued by the respondent on 18.09.2014, the second respondent ventured to reopen the case in a deliberate manner violating the provisions made under Section 18(2) of the Finance Act, 2013, Service Tax Voluntary Encouragement Scheme, 2013. At the outset, it is contended that the petitioner has made a true declaration and had cooperated for the settlement of the issues before the Commission and thus, the order passed by the second respondent is to be set aside.

4.The learned Senior Standing Counsel appearing on behalf of the respondents disputed the said contentions by stating that the provision is very clear under Section 32L of the Act wherein, power of the Settlement Commission to send the case back to the Central Excise Officer is enumerated. As per Section 32L, if a person has not cooperated with the Settlement Commission in the proceedings before it, then the Commission is well within its powers to send the case back to the competent adjudicating authority.

5.In the present case, there is a clear finding that the petitioner has not cooperated for the adjudication only in the event of true and clear declaration. Settlement can be made and even an iota of doubt in respect of the declaration could be sufficient to send the matter back to the adjudicating authority. Thus, the writ petition is devoid of merits and is liable to be dismissed. In this regard, the learned Senior Standing Counsel relied on the findings of the Settlement Commission in paragraphs 5.4 to 5.6 which are extracted hereunder:-

"5.4. The Bench observes that the disputed demand related to the income shown in the balance sheets vis a vis the taxable value declared in the VCES declaration. The applicant has also disputed the SCN for the period covering the VCES declaration on the ground that any legal proceedings could be initiated by the department under Section 111 of the Finance Act, 2013 only after rejecting the VCES application as fraudulent claim wherein the issue of



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Acknowledgement of Discharge does not arise. On the other hand the jurisdictional Commissioner while reiterating the demand made in the SCN submitted that the applicant had not made true disclosure under VCES or under the present application and hence the application should be rejected. On examination of the points raised by the applicant and the Commissioner, the Bench observes that apart from the issue of taxability or otherwise of a major portion of income claimed as non taxable without production of any supporting documents or evidence, the applicant has also raised the legality of issue of SCN for the period already covered under VCES declaration for which Acknowledgement of Discharge was also issued by the Department.

5.5. In view of the complexities involved in the case where there seems to be no convergence of views on the correct tax liability and the legal issues relating to issue of Show cause notice in terms of Section 111(1) of the Finance Act, 2013 after issue of Acknowledgement of Discharge to the applicant, it would be in the fitness of things that the matter is decided after a complete analysis of all the facts and evidences, which in the opinion of the Bench, would be at best done by the Adjudicating Authority.

5.6. In the above circumstances, the Bench is of the considered view that Settlement Commission is not the forum to decide upon contentions issues, by evaluating the evidences let in by the rival parties to the proceedings. Such an act would tantamount to the Settlement Commission adjudicating upon the notice, based on the submissions made by the rival parties to the proceedings. It is now a well settled proposition that the Settlement Commission is not an adjudicating authority. It is only an arbitration forum where a dispute is settled in the interest of both the parties within the framework of law. This principle has clearly been enunciated by the Hon'ble High Court of Bombay in the case of Amrut Ornaments reported in 2014 (305) ELT 365 (Bom.) and by the Hon'ble Delhi High Court in the case of Union of India vs. Dharampal Satyapal as reported in 2013 (298) ELT 653 (Del.), by the Hon'ble Allahabad High Court in the case of Vinay Wire Poly Product P. Ltd. vs. Dir General of Central Excise Intelligence reported at 2014 (307) ELT 438 (All)



and also by the Hon'ble Madras High Court in the case of Australian Foods Ltd. vs. Commissioner of Central Excise, Chennai II reported in 2012 (254) ELT 392 (Mad.)”

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6. Considering the arguments, this Court is of the considered opinion that the scope of settlement by the Settlement Commission is to be considered with reference to the provisions of the Act. Section 32E of the Act provides for filing of an application for settlement of cases. Section 32E(1) enumerates 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 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 in the manner provided.

7. The provision as stated above would clearly reveal that a person approaching the Settlement Commission must establish that the application contains full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction. Thus, an approach to the Commission must be not only genuine, it must be proved that the application contains the true and full disclosure of duty liability, which has not been disclosed before the Central Excise Officer concerned. In the absence of an element of truthfulness in the application, the Commission is liable to reject the application in limine and send the matter back to the adjudicating authority by invoking Section 32L of the Act. This being the scope of consideration by the Settlement Commission, the findings of the Settlement Commission are of paramount importance for the purpose of considering this writ petition.

8. As extracted in the above paragraphs, the findings of the Settlement Commission reveal that the petitioner has not approached with clean hands and further, the learned counsel for the respondents pointed out that the petitioner approached the Settlement Commission after the second respondent issuing the show cause notice on 20.10.2014 and after undergoing the VCE Scheme. The show cause notice was issued for non-payment of service tax on broadcasting services and sale of space or time for advertisement services. Once a dispute is raised and the petitioner approached the Settlement Commission, without



furnishing full and true disclosures, then there is no reason whatsoever for the Commission to entertain the application for settlement and thus, the writ petitioner is not entitled for settlement by invoking the provisions of the Act.

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9. The findings of the Settlement Commission further state that the case is not one that can be settled in the Commission in view of the issues involved and rival claims leading to total divergence on facts, which are impediment for settling the case. The issue of analysing the facts, interpretation of legal provisions and consequently determining the correctness of tax paid or otherwise of services provided by the applicant merely on the basis of claims made by them vis-a-vis counter claims made by the Department cannot be decided in the Commission as in an adjudication proceedings. Further, the Settlement Commission observed that the applicant did not produce any documents substantiating their claim of substantial portion of income being relatable to non-taxable activity/exempted services before the investigating officers or before the Settlement Commission clearly indicating non-cooperation on their part for settling the issue. Thus, the case involves both disputed questions of fact and law and therefore, it would be appropriate that the case is to be adjudicated by the jurisdictional officer after appreciation of facts and evidences let in by the applicant.

10. The findings made in the impugned order would reveal that the complex nature of mixed question of law would be sufficient for the purpose of sending the matter back to the adjudicating authority. When such a finding is arrived by the Settlement Commission, High Court in a writ proceedings cannot direct the Commission to settle the issue. When the Commission itself categorically made a finding that it is not possible to settle the matter and documents and evidences are to be examined by the Adjudicating Authority, then there is no much scope for the High Court to interfere with the orders passed and by sending the matter back to the Adjudicating Authority, the petitioner would also get an opportunity to produce all the documents and evidences to establish his case.

11. Settlement of disputes can never be claimed as a matter of right. The provisions for settlement are provided in a statute enabling the aggrieved person to come out with true facts and settle the issue peacefully to avoid prolongation and protraction of disputes. Thus, the settlement provisions are made for the welfare of the assesseees and the said provisions are to be implemented in its spirit and the provisions for settlement cannot be dealt with reference to the disputes, if any, exist between the parties. In the event of no dispute and if the person approaching the Settlement Commission could able to furnish true disclosure of the facts and circumstances, then he is entitled to settle the matter and therefore, settlement



itself cannot be conferred as a right and it is only an enabling provision to get peace from the disputes and such a provision can be invoked, only if a person approaching the Commission is truthful in his disclosure of facts and other duty payments.

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12. In view of the facts and circumstances, this Court has no hesitation in arriving a conclusion that the petitioner has not established any acceptable reasons for the purpose of interfering with the order passed by the Settlement Commission.

13. Accordingly, the impugned order passed by the second respondent in Final Order No.27 of 2017-ST dated 25.05.2017 is confirmed. Consequently, the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Commissioner of Service Tax-II,
Newry Towers, 2054-1,
Second Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

2. The Customs, Central Excise & Service
Tax Settlement Commission,
Additional Bench, Narmada Block,
Customs House,
No.60, Rajaji Salai, Chennai-600 001.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.27808

W.P.No.24706 of 2017

GSM(CO)
B.VC(20.07.2021)