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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/149/2022
IA NO. GA/2/2022
M/s. WEBEL SL ENERGY SYSTEMS LIMITED
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 14, 2022.

<u>Appearance</u>:
Mr. Akash Dutta, Adv.
Mr. Aditya Dutta, Adv.
… for appellant
Mr. K.K. Maiti, Adv.
…for respondent

The Court :- This intra-Court Appeal by the writ petitioner is directed against the order dated 16th June, 2022 in WPO 590 of 2018. In the said writ petition the appellant had challenged an order passed by the Settlement Commission under the provisions of the Central Excise and Service Tax Act dated 9th August, 2018. The appellant was aggrieved by the order passed by the Commission imposing penalty on the appellant. The appellant is before us contending that the show-cause notice issued to the appellant was barred by limitation and that issue requires to be adjudicated. The question would be as to whether such a ground can be canvassed before us in this proceeding.

The answer to the question should be against the appellant for the following reasons :-

This is the second round of litigation. Earlier the appellant had approached this Court challenging the order passed by the Settlement Commission in WPO no.608 of 2008. In the said writ petition various grounds have been raised challenging the order passed by the Commission. It is the submission of the learned Advocate for the appellant the ground as regards the validity of the show cause notice was also one of the grounds urged in the said writ petition. However, the writ petition was allowed by order dated 12th April, 2017 and the order passed by the Settlement Commission was set aside on the ground that the computation done by the Commission was incorrect. Therefore, the order passed by the Commission was set aside and the parties were at liberty to recompute the liability before the Commission. The appellant had accepted the said order passed in the writ petition and had voluntarily gone before the Settlement Commission which has recomputed the liability and also imposed penalty. In such circumstances, the appellant would be estopped from now contending that the order of the Settlement Commission impugned in the present litigation should be held to be bad in law and that the appellant should be entitled to challenge the jurisdiction of the authority in issuing the show cause notice. In terms of Section 32E of the Central Excise Act, 1944 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. The application should be in the prescribed form and the assessee is required to fully and truly disclose his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction and such other particulars as may be prescribed the additional amount of excise duty accepted to be payable by the assessee etc. Thus going by the language of Section 32E it is seen the option to go before the Commission is solely on the assessee and there is no compulsion on any assessee to approach the Settlement

Commission. Thus, the assessee having voluntarily gone before the Commission, the question of now reopening the issue and attempting to agitate the validity of the show cause notice is impermissible. The learned Advocate for the appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of *SRI SOURAV JAIN & ANOR VS. ABP DESIGN & ANR,* Civil Appeal No. 4448 of 2021 dated August 5, 2021. This decision is relied on for the proposition that the appellant is entitled to raise the ground of jurisdiction at any point of the litigation, though not canvassed in the initial stages but cannot be precluded from canvassing the ground at a belated state or the second appellate stage.

The Hon'ble Supreme Court in the said decision held that the ground which was canvassed by the appellant therein was a pure question of law and strikes at the heart of the matter and therefore, it was held that there can be no bar for raising such a ground. However, the case on hand is factually different and the said decision cannot be applied to the facts and circumstances of the present appeal. That apart, the question of limitation is not a pure question of law. It is a mixed question of facts and law. We take note of the submission of the learned standing Counsel of the revenue that the allegation of suppression has also been made against the appellant.

In such circumstances, having voluntarily offered themselves for settlement of their case prior to adjudication, that is, immediately after issuance of the show-cause notice and having had the benefit of an order passed in a proceeding filed by the appellant in the earlier round and voluntarily gone before the Settlement Commission for re-computation of the liability, it is too late in the day for the appellant to now urge that the show-cause notice itself is barred by time.

For the above reasons, we find no grounds to interfere with the order passed by the Settlement Commission.

Accordingly, the appeal fails and is dismissed.

The stay application being GA 2 of 2022 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH/SN/SPal