(2016) 09 AHC CK 0162

In the Allahabad High Court

Case No : Writ Tax No. 412 of 2014

Commissioner of Central Excise APPELLANT

Vs

Sun India Pharmacy Pvt. Ltd. RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Citation : (2016) 340 ELT 464

Hon'ble Judges : Sudhir Agarwal and Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : Shri Ashish Agrawal, Counsel, for the Respondent; Shri Amit Mahajan, SSC, for the Petitioner

Final Decision : Dismissed

Judgement

Heard Sri P. Chandra for petitioner and learned Standing Counsel for respondents.

2. Order passed by Customs & Central Excise Settlement Commission (Principal Bench), New Delhi, is under challenge on the ground that it was a third application and barred by Section 32-O(1) of Central Excise Act, 1944 (hereinafter referred to as "Act, 1944"). Since earlier order of Commission dated 20-12-2013 has imposed penalty upon assessee and, therefore, under Section 32-O(1) of Act, 1944, application was barred. However, we find that Section 32-O(1) would apply only when penalty was imposed on the ground of concealment of particulars of his duty liability. On the contrary in the order dated 20-12-2013, Commission has categorically held as under :-

"12. .... The Bench observes that the applicant has made full and true disclosure and cooperated in the settlement proceedings. The applicant company has admitted entire duty liability and paid the same along with the interest ??."

3. Thus, it is evident that penalty was not imposed on account of concealment of particulars of his duty liability but for other reason.

4. If that be so, it cannot be said that third application was barred under Section

32-O(1) of Act, 1944. Learned Counsel for petitioner has not been able to show that at any point of time Settlement Commission imposed penalty on the assessee on the ground of concealment of particulars of his duty liability so as to contradict Section 32-O(1) of Act, 1944. Hence, we find no merits in this petition.

5. Writ petition is dismissed.

