
(2011) 08 DEL CK 0480

In the Delhi High Court

Case No : Writ Petition (C) No. 15926 of 2006

ICON Industries

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 32E(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2011) 187 ECR 304

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Pradeep Jain and Shubhankar Jha, for the Appellant; Satish Kumar, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Being dissatisfied with the order dated 9th March, 2006 passed by the Settlement Commission in Settlement Application No. 1133/2006, the Petitioner has preferred this writ petition under Articles 226 and 227 of the Constitution of India for quashment of the same.

2. The facts which are requisite to be stated are that the Petitioner M/s. Icon Industries (Unit-I & II) filed a the settlement application in respect of the proceedings initiated vide SCNC. No. IV (Hqrs. Prev.) 15/5/03/2598 dated 8th April, 2005 issued by the Commissioner, Central Excise, Delhi-I. The Settlement Commission adverted to the various facts and submissions put forth and eventually came to hold that the search was conducted on 7th February, 2003 and thereafter units of the Petitioner were registered on 18th February, 2003. After that, consolidated return was filed with the Department. It was contended before the Commission that after the search, a sum of Rs. 50 lacs was deposited with the Department towards duty and, therefore, the Petitioner is entitled to get the benefit of approaching the Settlement Commission.

3. The Settlement Commission opined that the units were registered only after

the search was conducted and prior to that there was no registration and no returns as mandated by Clause (a) to Section 32E(1) of the Central Excise Act, 1944 (Act, for short) were filed. Being of this view, the Commission has held that the application does not conform to the parameters as stipulated u/s 32E(1) of the Act. Be it noted, before the Commission reliance was placed on the decision of the Special Bench of five members rendered in M/s Emerson Electric Company India Pvt. Ltd. 2005 (189) ELT 377 (Settlement Commission). As far as the Petitioner's case is concerned, the bench constituted of three members distinguished the decision in M/s Emerson Electric Company India Pvt. Ltd. (supra) on the ground that the said decision is not applicable as the Petitioner has filed consolidated returns belatedly.

4. Mr. Pradeep Jain, learned Counsel for the Petitioner would contend that the Commission has faulted in not following the decision of the Special Bench, though the Special Bench has addressed to the said issue in specific terms and given a finding that even a belated return filed before enquiry or show cause, will entitle an Assessee to put forth his grievance before the Settlement Commission and claim the benefit.

5. Learned Counsel has invited out attention to paragraph 11(b) of the decision, which reads as follows:

(b) Whether a consolidated return filed just before filing the application or along with the application by a person who is not registered with Central Excise and did not obtain ECC Number can be considered as satisfying the condition in Clause (a) of Section 32E(1) of the CEA, 1944.

Answer

No. Though Section 32E(1) does not refer to Rule 12 of the C.E. Rules under which ER1/ER3 returns are prescribed, since the said returns contain details of excisable goods manufactured, cleared and duty paid in the prescribed manner, the said return can be deemed to be the "return" referred to in Section 32E(1). Therefore, even if the views of the counsels that Clause (a) of the first proviso to Section 32E(1) lays down for filing of returns in the prescribed manner are to be accepted, then too as per Rule 12 of the Central Excise Rules, 2002, "returns" are to be filed by an Assessee on a monthly/quarterly basis. There is no provision for filing of these "returns" in a consolidated manner covering more than one month. Through there is no specific bar against filing of belated returns relating to a particular month, there is no provision for consolidating the returns for any number of months. But going by the earlier stated view that the said Section 32E(1) only refers to mentioned of the duty paid in the prescribed manner in the return, the Bench observes that if the applicant is to file a consolidated return belatedly without ECC Number, and covering more than one month, such return cannot, naturally, contain the details of any duty paid in the prescribed manner, as no duty would have been paid at nil till then. Further, if the Assessee is to file a consolidated return before filing an application or along with the application,

there would be questions even on the details of production and clearances shown therein. If the applicant is to furnish the quantum, which is to be reflected in the application for settlement, there will be no additional duty liability disclosure in the said settlement application over and above that in the consolidated return. He cannot also show at the belated stage and ad hoc quantum of production and clearances merely to be able to show extra disclosure in the application form, as the said ad hoc disclosure would not be truthful at that stage. As a result, a consolidated return filed just before filing the application or along with the application by a person, not registered with Central Excise and not having ECC Code Number, cannot be considered as satisfying the requirement of having filed returns as laid down in Clause (a) of the first proviso to Section 32E(1) of the Central Excise Act, 1944.

6. After so stating, the Special Bench proceeded to state in paragraph 11(c) as follows:

(c) Can returns filed after obtaining ECC Code, but for the period prior to obtaining such Code Number, be treated as valid returns as per Section 32E(1) of the Central Excise Act, 1944.

Answer:

No. The reply furnished to question (b) applies in toto to this also. The only difference in the instant question is that in the earlier point, reference was to the consolidated returns filed without obtaining ECC Code, whereas the present question is on the returns (without reference to consolidated or otherwise) filed after getting ECC Number. In this case also, the applicant would not be able to indicate "duty paid" in the prescribed manner (or even in any manner) and question would continue to agitate about the details of production and clearance to be filled in such belated returns. However, in case the applicant had filed monthly/quarterly returns voluntarily, even if late, but before the commencement of any inquiry or at least issuance of a SCN, the position would be different. In the said belated returns filed after getting ECC Code the applicant would be able to indicate the duty paid by him in the prescribed manner at least from the date of obtaining the ECC Code, along with production and clearance as desired by him. Such returns can be taken cognizance of for the purpose of Section 32E(1) of the Central Excise Act, 1944 to allow filing settlement application.

7. On a careful reading of the aforesaid paragraphs we find that the Special Bench of the Commission had posed the question whether a consolidated return filed just before filing the application or along with the application by a person, who is not registered with Central Excise and had not obtained ECC number, could be considered as satisfying the condition of Clause (a) of Section 32E(1) of the Act. The Special Bench W.P.(C) No. 15926/2006 Page 6 of 8 has given the answer in the categorical negative. Thereafter, the Special Bench has further posed a question whether a consolidated return filed after obtaining ECC Code,

but for the period prior to obtaining such code number, could be treated as a return under Clause (a) to Section 32E(1). The same has also been answered in negative. Mr. Jain has drawn inspiration from the lines that "in case the applicant had filed monthly/quarterly returns voluntarily, even if late, but before the commencement of any inquiry or at least issuance of a SCN, the position would be different." As we understand, the Commission has drawn distinction between monthly/quarterly returns filed belatedly but before inquiry/show cause notice and consolidated returns. Consolidated returns as noticed above have not been treated as returns under Clause (a) to Section 32E(1).

8. In the case at hand, the Petitioner obtained the ECC Code after the search and filed the consolidated return for the previous period. Thus, the question that emanates for consideration is whether the condition engrafted u/s 32E(1)(a) of the Act is complied with. The said provision reads as under:

32E- Application for settlement of cases. (1) An Assessee may, at any stage of a case relating to him make an application 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 particular as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification or otherwise of such excisable goods, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless-

(a) The applicant has filed returns showing production, clearance and Central Excise duty paid in the prescribed manner.

(b) A show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant; and

(c) The additional amount of duty accepted by the applicant in his application exceeds two lakh rupees:

Provided further that no application shall be entertained by the Settlement Commission under this Sub-section in cases which are pending with the Appellate Tribunal or any Court:

Provided also that no application under this Sub-section shall be made for the interpretation of the classification or excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986)

9. On a perusal of the aforesaid provision, it is noticeable that certain riders have been added for entertaining applications for settlement. Clause (a) clearly lays down that unless the applicant has filed returns, showing production, clearance and Central Excise duty paid in the prescribed manner, no such application shall

be entertained. Rule 12 of the Central Excise Rules, 2002 provides for filing of monthly return in the form specified by every Assessee about their production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates. In the case of small scale manufacturers, the return has to be filed quarterly. The concept of return has to be understood in that context and that is what exactly the Special Bench has stated. The submission of Mr. Jain that filing of consolidated return covering all the past periods would sub-serve the purpose does not stand to reasons.

10. In view of the aforesaid, we are of the considered opinion that the order passed by the Settlement Commission is absolutely defensible and there is no warrant to interfere with the same. Resultantly, the writ petition being devoid of merits stands dismissed without any order as to costs.