

(2011) 08 DEL CK 0357
In the Delhi High Court
Case No : Writ Petition (C) 289 of 2007

J.R.B. Engineering Works

APPELLANT

Vs

Customs and Central Excise Settlement Commission and
Another

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Central Excise Rules, 2002 — Rule 12
Central Excises and Salt Act, 1944 — Section 11AC, 32E(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 275 ELT 179

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

Bench : Division Bench

Advocate : Pradeep Jain and Shubhankar Jha, for the Appellant; Ashwini Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Being dissatisfied with the rejection order dated 18th October, 2006 passed by the Settlement Commission in Settlement Application No. 1269/2006, the Petitioner has preferred this writ petition under Articles 226 and 227 of the Constitution of India for setting aside the same.

2. The facts which are requisite to be stated are that the Petitioner M/s. J.R.B. Engineering Works filed a the settlement application in respect of the proceedings initiated vide SCN C. No. IV (Hqrs. Prev.) 12/27/D-II/2005/467 dated 31st March, 2006 issued by the Additional Commissioner, Central Excise, Delhi-II.

3. The Settlement Commission adverted to the various facts and submissions put forth and eventually came to hold that the search was conducted on 20th March, 2006 and the department carried out investigations upon which it transpired that the Petitioner was wrongly availing the benefit of SSI exemption. Thereafter, a demand of duty of Rs. 20,59,184.33/- along with interest was proposed and the

Petitioner was asked to show cause against penal action u/s 11AC of the Central Excise Act, 1944. It was contended by the Petitioners then that since the amount of Rs. 20 lakhs had been paid before the issue of the notice and the remaining amount of duty for Rs. 59,184.33/- was deposited in April 2006, the application be admitted and taken up for consideration by the Settlement Commission.

4. The Settlement Commission opined that since the Petitioner was neither registered with the Central Excise Department, nor did they file any declaration or return during the relevant period, they were not eligible to the benefit of the aforesaid exemptions for SSI units with regard to the goods of the brand name "Kalsi". It was observed that the brand name "Kalsi" was owned by another person i.e. M/s Kalsi Mechanical Works and that the Petitioner had defaulted in paying duty all along on the said goods and for obtaining registration for the same as mandated by Clause (a) to Section 32E(1) of the Central Excise Act, 1944 (Act, for short). 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) and on M/s JMD Beverages Pvt. Ltd, New Delhi AO No. A 466/CE/06-SC (PB) dated 9th June, 2006. The Settlement Commission however held that the two decisions are of No. help to them.

5. Mr. Pradeep Jain, learned Counsel for the Petitioner contended that the applicant was using brand names owned by the same family and were under the impression that the benefits of the said exemptions for SSI units were available. Learned Counsel has invited out attention to paragraph 5 of the decision, which reads as follows:

5. On a query from the Bench whether the applicant was registered with the Central Excise and had filed returns showing production, clearances and Central Excise duty paid in the prescribed manner in fulfillment of the condition in (a) in the First Proviso to Section 32E(1) of the Act, the Advocate for applicant submitted that the applicant was manufacturing the goods under the brand name "Optigear" owned by the applicant itself and brand name "Kalsi" owned by the same family. They were under an impression that the benefit of the aforesaid exemptions for SSI units was available....

6. After so stating, the learned Counsel requested that the case should be admitted as the Petitioner had accepted all the allegations and had paid the entire duty liability in the spirit of settling the matter. The Settlement Commission considered the matter weighing the relevant records and submissions made during the hearing. It was observed as follows:

6. ...It is observed that the applicant was not registered with the Central Excise Department nor did they file any declaration or return during the relevant period. They were not eligible to benefit of the aforesaid exemptions for SSI units in

respect of the goods of the brand name "Kalsi" which was owned by another person i.e. M/s Kalsi Mechanical Works. The applicant was required to pay duty all along on the said goods and obtain registration and submit returns. They had defaulted on all the counts. In the circumstances, the two orders of the Settlement Commission cited by the applicant are of No. help to them. The Bench observes that the applicant do not fulfill the requirement as per Clause (a) of the first proviso to Section 32E(1) of the Act.

7. On a careful reading of the aforesaid paragraphs we find that the Commission had posed the question whether the Petitioners were eligible to benefit of the exemptions available to SSI units even if they were not registered with the Central Excise Department as this could not be considered as satisfying the condition of Clause (a) of Section 32E(1) of the Act. The same has been answered in negative.

8. Mr. Pradeep Jain, advocate for the Petitioner has submitted that non filing of "returns" cannot be a ground to reject the application for settlement. He relies upon the decision of the Settlement Commission in M/s Emerson Electric Company (supra). 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. Referring to Clause (a) of Section 32E(1) of the Act in paragraph 11(6) in Emerson Electric (*supra*), it has been held

(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.

10. 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.

11. On a perusal of the Section 32E(1)(a), 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 they had accepted all the allegations and had paid the entire duty liability in the spirit of settling the matter does not stand to reasons. This does not satisfy mandatory requirement of Clause (a) to Section 32E(1) of the Act.

12. 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.