**(2014) 12 BOM CK 0234**

**In the Bombay High Court**

**Case No :** Writ Petition No. 8028 of 2013

JSK Industries Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 08-12-2014

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 11, 11A, 11AA, 11AC, 31 — Constitution of India, 1950 - Article 226 — Customs Act, 1962 - Section 127B

**Citation :** (2015) 317 ELT 671 : (2015) 34 GSTR 118

**Hon'ble Judges :** S.C. Dharmadhikari, J;A.A. Sayed, J.

**Bench :** Division Bench

**Advocate :** V. Sridharan, Senior Counsel and Prakash Shah i/b PDS Legal, for the Appellant; Pradeep S. Jetty, for the Respondent

## Judgement

1. Rule. Respondents waive service. By consent Rule made returnable forthwith. By this Writ Petition under Article 226 of the Constitution of India the Petitioners have challenged the order passed by the Second Respondent on 29th May, 2013. The Second Respondent before us is the Settlement Commission, Customs and Central Excise. Respondent Nos. 1, 3 and 4 are the authorities exercising powers under the Central Excise Act, 1944 and the Rules made thereunder. It is the case of the Petitioners that they have set up a factory and for manufacture of aluminium wire rods and aluminium conductors falling under Chapter 76 of the Central Excise Tariff Act, 1985. A show cause notice was issued on 30th August, 2011 proposing to demand differential duty on the aluminium conductors manufactured and cleared by the Petitioners and demand of the Cenvat credit equal to Cenvat credit alleged to have been irregularly taken on inputs Annexure ''B'' is a copy of the show cause notice. According to the Petitioners there were two types of issues raised in respect of which the demand of differential duty has been made. These two issues are distinct and independent. The demand for differential duty on aluminium conductors manufactured and cleared is one aspect and the demand for the Cenvat credit alleged to have been incorrectly and irregularly obtained is the other aspect.

2. After setting out as to how the issue relating as to alleged under violation of goods manufactured and cleared by the Petitioners has been raised, the Petitioners then refer to the issue of availment of Cenvat credit. These are extensively set out in the Writ Petition.

3. It is then alleged that the Petitioners had also initiated proceedings under Rule 12AA of the Cenvat Credit Rules, 2004 and Rule 12CC of the Central Excise Rules, 2002. That is pertaining to a notice dated 6th October, 2008 and seeking to withdraw the facility of monthly payment of Central Excise duty on the goods manufactured and cleared by the Petitioners for three months and also direction to the Petitioners to pay Central Excise duty for each consignment at the time of removal of the goods without utilizing the Cenvat credit for payment of such Central Excise duty.

4. That is an aspect dealt with by the Petitioners from para 36 of the Writ Petition and they submit that an order was passed on 6th January, 2009 by the Member (Central Excise), Central Board of Excise & Customs and which led to the Petitioners filing a Writ Petition being Writ Petition No. 74 of 2009 in this Court. There is an Interim Order passed on 16th January, 2009 by this Court and which is a restraint pertaining to Cenvat credit of Rs. 2 Crores in the Cenvat Credit Account.

5. We are not concerned in this case about the merits of the show cause notice. The Writ Petition essentially arises out of an Application made by the Petitioners to the Settlement Commission under Section 32E of the Central Excise Act, 1944. Annexure ''B'' is a copy of the show cause notice. The Petitioners requested the Commission to settle the issues, namely, (i) alleged under valuation of goods by accepting demand of Rs. 1,72,00,781/- as referred in Annexure ''I'' to the show cause notice, (ii) alleged non-payment of Excise duty of Rs. 13,79,686/- recovered from M/s. Kalpataru Power Transmission Ltd. and demand of Excise duty of Rs. 13,98,690/- on the ground of Excise duty rate difference at the time of issue of supplementary Invoices and at the time of removal of goods. The Petitioners paid an amount of Rs. 2,12,51,157/- demanded in Annexures ''A'', ''B'' and ''E'' of the show cause notice and they prayed to the Commission to drop the proposal to impose the penalty under Rule 25 of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act, 1944 and waiver of payment of interest.

6. The Petitioners have not made any Application for settlement of the issue of alleged wrong availment of Cenvat credit (Annexure ''C'' to the show cause notice dated 30th August, 2011) since that is according to the Petitioners, is independent and regarding which the Petitioners claim to have a strong case on merits.

7. The Petitioners have also clarified in the Writ Petition as also in the Application (refer paras 40.6 and 40.7) that they do not admit the demand of interest on the supplementary invoices issued by the Petitioners (Annexure ''D'' to the show

 

cause notice). They claim that they have not made any Application for settlement of the claim or issue because it is independent, severable and has no relation with other issues involved in the show cause notice. The Petitioners have also not admitted that they have paid the entire interest liability on the demand of duty in terms of Annexures A, B and E to the show cause notice. In the submission of the Petitioners this sum is not due on the ground that they maintained sufficient credit balance in their Cenvat Credit Account. The Petitioners complained that this Application made by them to the Settlement Commission was heard on 21st May, 2013 and the Petitioners argued in terms of the aforesaid pleas. However, by the impugned order, the Settlement Commission has held that the Application filed by the Petitioners (Applicants and Co-Applicants) in this case is not found admissible in terms of Section 32E of the Central Excise Act, 1944. The Commission, therefore, proceeded to reject it.

8. It is this rejection which is questioned in this Writ Petition and on several grounds. There is no Affidavit-in-Reply filed in this Writ Petition. We have heard Mr. Sridharan, learned Senior Counsel, appearing on behalf of the Petitioners and Mr. Jetly, learned Counsel, appearing on behalf of the Respondents on this short point and as to whether the Commission was justified in rejecting the Application.

9. Mr. Sridharan, learned Senior Counsel submits that the Settlement Commission''s powers are those enumerated by the provisions of the Central Excise Act, 1944 and particularly Chapter V thereof. Section 31 contains the definitions and Mr. Sricharan, relied upon definition of the terms ''assessee'' as appearing in clause (a) and ''case'' as appearing in clause (c) of the section. Mr. Sridharan submits that by Section 32, the Customs and Central Excise Settlement Commission has been set up by the Central Government and it consists of a Chairman, Vice-Chairman and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters. The jurisdiction and powers of Settlement Commission are set out by Section 32A and by Section 32B of the Central Excise Act, 1944. There are several contingencies which are dealt with and in regard to the functioning of the Commission. Similar is the provision in Sections 32C and 32D. Mr. Sridharan has placed heavy reliance on Section 32E and the same reads as under:

"32E. Application for settlement of cases. - (1) 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 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 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 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;

(c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(d) the applicant has paid the additional amount of Excise duty accepted by him along with interest due under Section 11AB.

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 of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986).

(1A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1), before the 1st day of June, 2007 but an order under sub-section (1) of Section 32F has not been made before the said date or payment of amount so ordered by the Settlement Commission under sub-section (1) of Section 32F has not been made, the applicant shall within a period of thirty days from the 1st day of June, 2001, pay the accepted duty liability failing which his application shall be liable to be rejected.

(2) Where any excisable goods, books of account, other documents have been seized under the provisions of this Act or rules made thereunder, the assessee shall not be entitled to make an application under sub-section (1), before the expiry of one hundred and eighty days from the date of the seizure.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant."

10. Similarly, he places reliance on Section 32F which sets out the procedure on receipt of an Application under Section 32E of the Central Excise Act, 1944. Mr. Sridharan submits that sub-sections (5), (6) and (8) thereof indicate as to how the Settlement Commission must proceed after receipt of the Application. The powers of the Settlement Commission thereafter are set out in Sections 32G, 32H of the Central Excise Act, 1944. The Settlement Commission possesses powers under Section 32-1 and which would indicate according to Mr. Sridharan as to how this Settlement Commission has been conferred with exclusive

 

jurisdiction to exercise the powers and perform the functions of any Central Excise Officer under the Act in relation to the case. The powers of the Settlement Commission include a power to grant immunity from prosecution and penalty The Settlement Commission can send a case back to the Central Excise Officer. Mr. Sridharan therefore, submits that this Chapter enacts a complete code insofar as settlement of a case by the Settlement Commission. He submits that the provisions are salutary in nature and character. It is submitted that in normal adjudication remedies are available and if parties like the Petitioners are aggrieved by an adverse order, they can file Appeals.

11. In so far as the Settlement Commission''s powers are concerned the orders passed by it cannot be challenged in the forums provided by the Act. Its orders would have to be necessarily challenged by way of a Writ Petition under Article 226 of the Constitution of India. Mr. Sridharan submits that merely because the Petitioners contended that interest is not payable does not mean that the Application for settlement made by them is not maintainable. Mr. Sridharan therefore, submits that the powers conferred on the Settlement Commission by Section 32C, Section 32E(1) clause (b) and Sections 32K and 32M seen in juxtaposition with the powers on a similar Commission conferred by the Income Tax Act, 1961 would indicate that there is a segregation possible and of claims and issues. It is not as if the Settlement Commission can proceed on the lines indicated by it in the impugned order. Mr. Sridharan has also invited our attention to the impugned order and the reasons assigned by the Settlement Commission. He submits that the Settlement Commission lost sight of the fact that an Application that the Assessee made in terms of sub-section (1) of Section 32E is in respect of a case relating to him. The Application has to be made before adjudication. The Application is made to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed. The Application was containing a full and true disclosure of the duty liability which has not been disclosed before the Central Excise Officer having the jurisdiction, the manner in which such liability has been derived, the additional amount of Excise duty accepted to be payable by the Assessee 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, undervaluation, inapplicability of exemption notification of Cenvat credit. A show cause notice for recovery of duty issued by the Central Excise Officer and received by the Applicant Assessee alone will make the Application maintainable and the Assessee can invoke the powers of the Settlement Commission. There is only one embargo and that the Application under sub-section (1) shall not be concerning interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985. Further no Application can be entertained by the Commission in cases which are pending in the Appellate Tribunal or any Court. Mr. Sridharan therefore, submits that the reasons assigned by the Tribunal are that the Assessee is admitting the duty liability. However, the Assessee has not made payment of interest. The matter is pending before the High Court is another

 

reason and the final reason is that there is a truncated Application made. Mr. Sridharan has in all fairness pointed out that with regard to the claims and which are mentioned in paras 9.2(i), (iii) at page 104 of the paper book the liability has been admitted. In regard to the Cenvat credit of Rs. 1,59,39.047/- availed by the Applicant allegedly illicitly without receipt of inputs, Mr. Sridharan has submitted that the Petitioners pointed out that as far as payment of interest on the admitted duty liability of Rs. 2,12,51,157/- that was not due and on the ground that the Assessee had sufficient Cenvat credit balance in their Cenvat credit account. Mr. Sridharan submits that the Tribunal also held that the demand of Cenvat credit amounting Rs. 1,59,39,047/- also is the disputed claim. However, that has not been placed before the Commission for Settlement. It is in this light Mr. Sridharan assails the findings in paras 9.6 and 9.7 of the impugned order. He submits that the same run completely contrary to the scheme of the Chapter V of the Central Excise Act, 1944. Mr. Sridharan has invited our attention to the Central Excise (Settlement of Cases) Rules, 2007 and the judgment of the Division Bench of this Court in the case of Mandhana Dyeing v. Union of India reported in 2010 (251) E.L.T. 481 (Bom.) . Mr. Sridharan also places reliance on the judgment of the Hon''ble Supreme Court delivered in the case of Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, .

12. On the other hand, Mr. Jetly, learned Counsel appearing on behalf of the Respondents submits that the wording of Section 32E is crucial. That read together with the definition of the term ''case'' would indicate that it is a single matter pertaining to the Assessee. In the present case, the show cause notice issued to the Petitioners/Assessees is the case relating to them. No bifurcation or segregation of the issues in the show cause notice is permissible. The basic requirement of entertaining the Application is not satisfied. It is in these circumstances that Mr. Jetly supports the order of the Commission and submits that the Writ Petition be dismissed. He has submitted that all the findings and which are directly referable to the powers of the Settlement Commission to throw out a case even at the preliminary stage indicate that this Court should not exercise its writ jurisdiction. The findings cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. Therefore, the Writ Petition deserves to be dismissed.

13. With the assistance of the Counsel appearing for both sides we have perused the Writ Petition and the relevant Annexures including the impugned order. We have also perused Chapter V of the Central Excise Act, 1944.

14. The Chapter V came to be introduced by Act 21 of 1998 with effect from 1st August, 1998. There was a substitution by Act 22 of 2007 and with effect from 1st June, 2007. The term "case" was defined and earlier as well as post the substitution. The terms "assessee" and "case" read as under:

""assessee" means any person who is liable for payment of Excise duty assessed under this Act or any other Act and includes any producer or manufacturer of excisable goods or a registered person under the rules made under this Act, of a private warehouse in which excisable goods are stored;"

"case" means any proceeding under this Act or any other Act for the levy, assessment and collection of Excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of Section 32E is made:

Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any Court, Appellate Tribunal or any other authority to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause;"

15. A perusal thereof would indicate that a person who is liable for payment of Excise duty assessed under the Central Excise Act, 1944 or any other Act including any producer or manufacturer of excisable goods or registered person under the rules made under the Act of the private warehouse in which excisable goods are stored is termed as the Assessee. The term ''case'' has been defined to mean any proceeding under the Act or any other act for the levy, Assessment and Collection of Excise Duty pending before an adjudicating authority on the date on which an Application under sub-section (1) of Section 32E is made. A pending proceeding before a Court, Appellate Tribunal but which is remanded to the adjudicating authority by such Court, Appellate Tribunal or any other authority for fresh adjudication or decision is not deemed to be a proceeding pending within the meaning of this clause. We had been taken through the scheme of this Act and by the Counsel appearing for parties. In the Division Bench decision in the case of Mandhana Dyeing v. Union of India reported in 2010 (251) E.L.T. 481 (Bom.) on which reliance is placed by Mr. Sridharan, the point was as to whether the Settlement Commission while admitting the Application made by the Petitioners before this Court for settlement was justified in directing them to deposit total amount of duty to the extent of Rs. 3,12,75,928/- by order dated 15th November, 2006. Whether the Settlement Commission was so justified and when the show cause notice demanded the duty, penalty and interest under the provisions of the Central Excise Act and Rules framed thereunder.

16. After considering the rival submissions, the Division Bench in paras 11 to 16 held as under:

"Background Legislation:

11. As early as 1992, in the Budget speech, the Finance Minister had proposed setting up of Settlement Commission for Customs and Central Excise disputes. But, such provisions were actually introduced only in the Finance Bill of 1998. The stated objective was that the door to settlement with errant tax payer should be kept open keeping in mind the primary objective to raise revenue. There has to be room for compromise and settlement. A rigid attitude would inhibit a one-time tax evader or unintending defaulter from making a clean breast of his

 

affairs and unnecessarily strain the investigation resources of the Government. The settlement machinery is thus meant for providing a chance to a tax-evader who wants to turn a new leaf as recommended by the Direct Taxes Inquiry Committee, popularly known as "Wanchoo Committee."

12. Keeping the aforesaid objective in mind, the Settlement Commission is constituted under Section 32 of the Act vide Notification No. 40/99-C.E. (N.T.), dated 9th June, 1999. The various provisions of sections in Chapter V provide details of the functioning of the Settlement Commission. The Central objective of the Settlement Commission is to provide quick and easy settlement of tax dispute of high revenue stake so as to save the time and energy of both, the Litigant and the Department adding to the proverb "time saved is money saved". Any assessee can make an application to the Settlement Commission containing full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer. The applicant has to accept the additional amount of Central Excise duty payable by him and such liability should be not less than Rs. 2 lac in a particular case. With this background, we may turn to the relevant Section for the purpose of deciding the controversy involved in the present petition i.e. Section 31(F) of the Act.

Section 32F: Procedure on receipt of an application under Section 32F:

(1) On receipt of an application under sub-section (1) of Section 32(E), the Settlement Commission shall call for a report from the Commission of Central Excise having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this subsection, unless an opportunity has been given to the applicant of being heard:

Provided further that the Commissioner of Central Excise shall furnish such report within a period of one month of the receipt of the communication from the Settlement Commission, failing which it shall be presumed that the Commissioner of Central Excise has no objection to such application; but he may raise objections at the time of hearing fixed by the Settlement Commission for admission of the application and the date of such hearing shall be communicated by the Settlement Commission to the applicant and the Commissioner of Central Excise within a period not exceeding two months from the date of receipt of such application, unless the presiding officer of the Bench extends the time, recording the reasons in writing.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.

(3) Subject to the provisions of sub-section (4), the applicant shall within thirty

 

days of the receipt of a copy of the order under subsection (1) allowing the application to be proceeded with, pay the amount of additional duty admitted by him as payable and shall furnish proof of such payment to the Settlement Commission.

(Emphasis supplied)

(4) If the Settlement Commission is satisfied, on an application made in this behalf by the assessee that he is unable for good and sufficient reasons to pay the amount referred to in sub-section (3), within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by installments, if the assessee furnishes adequate security for the payment thereof.

(5) Where the additional amount of duty referred to in sub-section (3) is not paid by the assessee within the time specified or extended period, as the case may be, the Settlement Commission may direct that the amount which remains unpaid, together with simple interest at the rate of eighteen per cent, per annum or at the rate notified by the Central Board of Excise and Customs from time to time on the amount remaining unpaid, be recovered, as the sum due to Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of Section 11.

(6) ........

(7) ........

(8) ........

(9) ........

(10) ........

(11) ........

Consideration:

13. Having heard rival parties and having examined the impugned order passed by the Settlement Commission, it is necessary to examine subsection 3 of Section 32F, which specifically lays down that subject to the provisions of Section (4), the applicant shall within thirty days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the amount of additional duty admitted by him as payable and shall furnish proof of such payment to the Settlement Commission. A bare reading of this sub-section unequivocally goes to show that the admitted liability is required to be paid by the applicant within 30 days from the receipt of the copy of the order under sub-section 1 of Section 32F. The question is what do you mean by additional amount of duty admitted by the petitioner?

14. The object of the legislation as stated hereinabove is not to close the door for settlement. The object of the Legislature is to open the doors for settlement. It is

 

well settled canon of construction that in construing the provisions of a beneficial legislation, the Court should adopt the construction, which advances, fulfills and furthers the object of the Act rather than the one, which would defeat the same and prevent settlement. Beneficial statutes should not be construed too rigidly as it was for the protection of certain class of persons that the statute was enacted. The intention of the legislature and the policy underlying it has also to be kept in mind. As far as possible, the language of the statute, unless it goes against the intention of the specific provisions, must be construed consistent with the changing social attitudes. The well settled principle of interpretation is that a statutory provision should be construed according to the plain natural meaning of its language. When the language of a particular provision is clear and according to the plain natural meaning thereof one need not travel in the territory of interpretation [See: Commissioner of Income Tax, Madras Vs. T.V. Sundaram Iyengar and Sons (P.) Ltd., .

15. Keeping the objective of the Legislation in mind and the scheme framed, any assessee can make application to the Settlement Commission containing full and true disclosure of his liability which was not disclosed by him before the Central Excise Officer. The applicant is expected to deposit additional amount of Excise duty admitted to be payable by him as per his own calculations. Sub-sections (1) to (5) of Section 35F is a stage prior to determination of controversy on merits. At the stage of making application, the question of determination of liability by the Settlement Commission does not arise. The provision contemplates a voluntary act on the part of the applicant. Under these circumstances, the amount of additional duty admitted contemplates voluntary admission on the part of the applicant itself. As already stated above, sub-section (3) of Section 35F is absolutely clear and includes no ambiguity. As long as there is no ambiguity in the statutory language resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. The intention of the legislator in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. A rigid attitude would inhibit a one-time tax evader or unintending defaulter from making a clean breast of his affairs end would also unnecessarily strain the investigation resources of the Government.

16. Having examined the statutory provisions of Section 35F in general and sub-section (3) and (4) in particular in the light of the settled principles of interpretation, it is clear that the Settlement Commission can either accept the implication as it is or reject the same in toto. In the present case, Settlement Commission has erroneously borrowed figures from the petitioner letter dated 12th October, 2006 of the petitioner, the contents of which are already reproduced in paragraph 4 (supra) to hold that the petitioner has admitted total duty liability in the sum of Rs. 3,12,75,928/- as demanded in show cause notice. Whereas, bare reading of the aforesaid letter reveals that the petitioner admitted their liability only to the extent of Rs. 42,92,771/- towards payment of duty. It

 

appears that the Settlement Commission, ignoring the mandate of sub-clause (3) of Section 35F went on to lift certain figures from the said letter, ignoring subtractions indicated in the said letter by the petitioner from the duty demanded in the show cause notice which in our view is erroneous and impermissible."

17. The Division Bench held that when the claim or demand of the Department is not admitted in its entirety but partially the Commission would not be justified in rejecting the Application. The Settlement Commission can either accept the Application as it is or reject the same in toto. That is because this Settlement Commission has been set up and with the avowed object of encouraging settlement of contested claims with the aid of the Department. There are certain vexed issues and which are raised time and again and the litigation drags on and on. To curtail the litigation and to encourage settlement of revenue issues by such mode that a comprehensive legislation has been made in the Chapter V of the Central Excise Act, 1944. It is not as if this mode of putting an end to the litigation has been initiated only in this Act.

18. Another Division Bench of this Court in the case of B.K. Industrial Corpn. Vs. Union of India (UOI), held that the Settlement Commission being exercising the very same power which can be exercised by the adjudicating authority it can, while deciding the Application, direct payment of interest on the duty liability. Thus it is not as if the powers of the Settlement Commission are in any way restricted or curtailed. The Division Bench in this case noted that the Commission was justified in directing the Petitioners to pay interest. That is how in para 19 of the judgment in this case the Settlement Commission''s powers to levy interest was upheld and the Petition was dismissed.

19. In another decision of this Court in the case of Union of India (UOI) Vs. Hoganas India Ltd. and Others, the powers of the Settlement Commission under the Customs Act came to be discussed and what we find and relevant for our purpose is that the Division Bench observed that the disputes take long time to get resolved and resultantly the Government revenue suffers. The following observations of the Division Bench are pertinent:

"41 One cannot forget that since the disputes take longer time to get it resolved, the revenue of the Government suffers. The very object of introducing Chapter XIV-A regarding "Settlement of Cases" in the Act was to enable the Customs Authorities to recover dues in all the cases as clearly indicated in the object when the amendment was introduced, and to resolve all the disputes. Relying on the similar provisions provided under the Income Tax Act, the Parliament felt it necessary to introduce such a remedial measure by way of a Settlement Commission and accordingly Chapter XIV-A was provided. Another aspect to be noted is that the entire scheme under Chapter XIV-A as enumerated hereinabove clearly indicate that the Settlement Commission has been given very wide powers to settle the matter. It has also been given the widest discretion including the power to declare the settlement to be void with a power to direct de novo adjudication. Ample power is given to the Settlement Commission to protect the interests of the revenue and even with regard to the grant of immunity from prosecution and penalty. However, as indicated hereinabove, the Settlement Commission does not grant immunity as a matter of course. It has discretion to grant immunity in a given case. Even if it were to grant immunity, the Settlement Commission can always impose conditions while doing so. The Settlement Commission has power even to attach the properties of the Applicant to secure the interest of the Revenue during the pendency of the proceedings before him, which power even the adjudicating authority does not have. As lightly pointed out by the learned Counsel appearing for the private parties, the Settlement Commission has power to grant immunity with regard to all kinds of prosecution under the Customs Act and any other law including the Indian Penal Code, which obviously would necessitate the Applicant being involved in a serious fraud wherein he is likely to be prosecuted under the Indian Penal Code or any other penal law. If that be so, one cannot say that the Settlement Commission has jurisdiction only to deal with the bona fide case of misclassification or at the most willful case of misclassification.

42. One cannot minimize the scope of jurisdiction of the Settlement Commission without any express provisions found in the said Chapter, whereas on the contrary, the provisions as indicated hereinabove clearly show that the Settlement Commission has a very wide jurisdiction to entertain all kinds of settlement claim applications with the liberty to reject the same even at the preliminary stage, depending upon the nature and circumstances of the case and the complexity of the case. Therefore, it is not the case that the Settlement Commission is forced to entertain and accept all settlement applications. After the scrutiny it may or may not entertain the same. It is one thing to say that the Settlement Commission does not have the jurisdiction at all to look at the claim which is not pertaining to the short levy due to misclassification or otherwise, whereas it is another thing to say that the Settlement Commission has jurisdiction to entertain all kinds of applications and it has jurisdiction to reject the same even at the preliminary stage.

43. The following observations of the Hon''ble Supreme Court in Paragraph No. 8 of its judgment in the case of R.K. Garg and Others Vs. Union of India (UOI) and Others, - are very apt in the above context, which read as under:-

"The Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry".

"Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore, it cannot provide for all possible situations or anticipate all possible abuses."

 

"There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid."

"There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses."

44. The entire approach with regard to such legislation is to unearth frauds and dishonesty so as to collect the Revenue for the Government. By this process in fact the duty which was illegally not paid by various parties would ultimately come to the Revenue and if one were to restrict the interpretation to mean only the bona fide cases, then there would be no scope of unearthing the Revenue for the Government. As we are very clear in our mind that the earlier part of Section 127B lays down the jurisdiction and the later part only deals with the rules whereby certain details are to be provided. Hence, the entire argument with regard to the short levy due to misclassification or otherwise is purely a procedural one, in the sense, as long as rules are not even provided, there is no need to decide the same.

45. In any event, having regard to the entire structure of Chapter XIV-A we are very clear in our mind that the Settlement Commission has jurisdiction to entertain all kinds of applications for settlement, provided they satisfy the mandatory requirements of filing the Bill of Entry/Shipping Bill, and issuance of a show cause notice in relation to such a Bill of Entry/Shipping Bill and by making a full and true disclosure of a duty liability which was not disclosed earlier before the proper officer and the manner in which such liability has been incurred and the additional amount of Customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification or otherwise of goods. These are the essential requirements for making an application under Section 127B of the Customs Act, which are also clear from the wording of the very section as well as from the particulars to be given in the Form prescribed by the Department, as we have indicated herein above."

20. In another decision and which was rendered by the Hon''ble Supreme Court in the case of Rexnord Electronics and Controls Ltd. Vs. Union of India (UOI) and Others, the Hon''ble Supreme Court has held that the Settlement Commission did not have any jurisdiction to waive the amount of interest payable under the bond. Therefore, all that we wish to emphasize in all such matters is that there could be a partial admission of the demands of the Department and there could be a contest in relation to others.

21. The later Division Bench Judgment and which is essentially being relied upon namely, in the case of M/s. Indorama Synthetics (India) Ltd. Vs. Union of India,

 

Settlement Commission, Customs and Central Excise, Commissioner of Central Excise and Directorate General of Central Excise Intelligence, also does not indicate that the Settlement Commission has refused to consider the pleas of the Petitioner before this Court on merits of the duty demanded as that was admitted and for that very reason also the Settlement Commission did not disregard the valuation fraud. Therefore, it proceeded to impose penalty. The justification for imposition of penalty by the Settlement Commission was cancelled. However, this Court clarified in para 10 of the judgment that it has not examined the issue whether it is open to challenge a part of the order passed by the Settlement Commission and accept the other part.

22. For the purposes of the present case, however, what we have noted is that the Settlement Commission had before it an entire Application and it is not as if the Petitioners Application has been thrown out because it did not comply with the requirements stipulated in Section 32E of the Central Excise Act, 1944. The Settlement Commission has referred to the contents of the Application and rather it has referred to the show cause notice and the allegations therein. Thereafter, it has referred to the stand of the parties. The Record of Personal Hearing has been referred by the Commission in para 8.1 onwards. In relation to para 8.3 the advocate appearing for the Petitioners before us submitted that the demands raised in the show cause notice pertaining to valuation and rate of duty applicable as detailed in Annexures A, B and E of the show cause notice are admitted. However, demand relating to inadmissible Cenvat credit, as detailed in Annexure C of the show cause notice is not placed before the Commission and may be considered as not included in their Application. Further, in para 8.4 the Petitioners clarified that the show cause notice had raised two separate issues relating to valuation and the availability of Cenvat credit and it was open for the Petitioners to place only certain issues before the Commission. In para 8.5 the Tribunal also noticed the contention of the Petitioners that though the demand of duty is admitted in terms of Annexures A, B and E of the show cause notice and that amount is paid, the interest thereon is not due and payable. The reasons for same are also set out in para 8.5. Then in para 8.7, the Commission records the submission of the Revenue that the attempt of the Applicants/Petitioners is of splitting the case in as much as there is a demand in respect of three issues and which is admitted The fourth issue relating to inadmissible Cenvat credit has not been placed before the Commission. The matter is kept pending before this Court and which makes the present Application not admissible.

23. The findings of the Settlement Commission proceed on the footing that the Petitioners cannot dispute their liability to pay interest and in terms of Section 11AA of the Central Excise Act, 1944. We do not see any justification for making such observations and when the Bench was not inclined to admit the Application. If at the threshold the Bench was required to comment on the demand of interest and made by the Department and justify it with reference to a legal provision, then, that only means that the Commission had the power to entertain the arguments of both sides even with regard to this contested claim of interest.

 

It is not as if it was prohibited from enquiring in to the same. It is not the argument of the Petitioners either before the Commission or before us that when they dispute the claim of the Department of interest on the duty demanded and admittedly paid that the Commission could not have considered the rival contentions and made an order in terms of the legal provisions particularly under Chapter V of the Central Excise Act, 1944. If that was not the stand of either parties and the Commission has sought to justify the imposition of interest or the claim in relation thereto by referring to a legal provision then what we find is that while it faults the Petitioners for splitting of the claims or issues in the Application, it is the Commission which has split its order or rather has partially adjudicated the Application and at the threshold. We are surprised that such an order has been passed and at the inception by the Commission. If the Application was non-compliant or did not meet the requirement of sub-section (1) of Section 32E then we could have seen a justification for rejection. However, while faulting the party for splitting up the claims or issues the Commission itself has not deemed it fit and proper to throw out the Application of the Petitioners on any preliminary grounds but has virtually commented and observed on merits of some of the issues. In that regard, we find that the observations in paragraph 9.6 run counter to the scheme of Chapter V of the Central Excise Act, 1944.

24. The term ''case'' has been defined to mean any proceeding under the Act or any other Act for the levy, assessment and collection of Excise duty, pending before an adjudicating authority on the date on which the Application under sub-section (1) Section 32E is made. The Settlement Commission had before it an Application and in respect of a case relating to the Assessee. If the case relating to the Assessee according to Mr. Jetly appearing before us for the Revenue is that which pertains to the show cause notice, then, we do not see how the Commission could have refused to entertain the Application. If the ''case'' relating to the Applicant before the Commission is the show cause notice and it is not yet adjudicated but the Settlement Commission can make an adjudication in terms of sub-section (1) and settle it, then, we do not see how the Application could have been rejected or thrown out at the threshold. The Application could have been made in terms of sub-section (1) of Section 32E only upon the show cause notice for recovery of duty being issued by Central Excise Officer has been received by the Applicant. However, the show cause notice can comprise of several claims and made by the Department. The demand in the show cause notice for payment of duty, interest and penalty can be comprehensively raised. If that can be raised and the show cause notice is composite or comprises of all such issues, then, we do not see how in the facts and circumstances of the present case, the Commission could have refused to adjudicate it. The reliance placed by Mr. Sridharan on Section 32F in this regard is well placed. That section contemplates as to how on receipt of an Application under sub-section (1) of Section 32E, the Settlement Commission should proceed. It should issue a notice to the Applicant to explain in writing as to why the Application made by him should be allowed to be proceeded with and after consideration of his explanation

 

the Settlement Commission shall within the period specified in sub-section (1) of Section 32F allow the Application or reject it. If the Application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), then the further steps have to be taken and in terms of sub-section (3), (4) and (5). The powers of the Settlement Commission in terms of sub-section (5) include hearing of the case either in person or through representative duly authorized and examination of further evidence as may be placed before it or obtained by it. It can pass such order as it deems fit on the matters covered by the Application and any other matter relating to the case not covered by the Application but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under Section 32F(3) and (4). Under sub-section (6) an order can be made in terms of subsection (5) and disposing of the case. By sub-section (8) of Section 32F the order under sub-section (5) can provide from the terms of settlement including any demand by way of duty, penalty or interest, the manner in which sum due under the settlement shall be paid and all other matters to make the settlement effective. In such circumstances and when the Commission found that in the present case, the duty, liability was admitted but the claim for interest was disputed, then, it is not termed as a faulty Application or not complying with the procedural provisions or the manner in which the same has to be made. Rather para 9.4 of the order under challenge would reveal that the contention of the Petitioners while disputing the demand for interest is set out and held to be not correct and in terms of Section 11A of the Central Excise Act, 1944. This could very well have been done by entertaining the Application and proceeding in terms of Section 32F of the Central Excise Act, 1944.

25. Similarly, in relation to the infirmities pointed out in para 9.5, there, the Cenvat credit demanded is Rs. 1,59,39,047/-. It has been held to be a matter given up by the Assessee Petitioners and they desire to go and proceed with the adjudication. However, what the Commission faults the Petitioners for is that the issues raised in the show cause notice relating to Central Excise duty evasion were also before the Central Board of Excise and Customs which by its order dated 6th January, 2009 withdrew the facility of monthly payment of Excise duty under Rule 8(1) of the Central Excise Rules, 2002 and also stopped the utilization of Cenvat credit during the relevant period. The matter is pending before this Court.

26. We do not find that the Commission was justified in taking this view in relation to the demand of Cenvat credit. That demand was pertaining to availment of the said credit illicitly and without receipt of inputs. There, it was the stand of the Petitioners that though the Application mentions the same or the claim in relation thereto, yet they do not desire to proceed before the Settlement Commission for adjudication of the demand which is disputed and the matter should go before adjudicating authority. The Bench in that regard has held that the Petitioners cannot split the issues raised in the show cause notice and seek settlement of certain issues while claiming the liberty to approach the adjudicating authority on other issues. That is held to be impermissible. We do

 

not fault the Commission in this regard.

27. Para 9.6 of the impugned order sets out the reasons for which the Application made by the Petitioners is termed as truncated. The Application was not truncated as held by us. But it was the stand of the Petitioners which resulted into the Settlement Commission being required to go into the merits of the show cause notice in relation to the claims of interest but not the illicit availing of Cenvat credit. The show cause notice squarely raised this aspect and it was not open for the Petitioners in the given facts and circumstances so also in view of Chapter V of the Central Excise Act, 1944 to urge before the Commission that they do not wish to have any adjudication by the Commission with regard to this demand of Cenvat credit of Rs. 1,59,39,047/-. That part of the order passed by the Commission need not be interfered with.

28. In para 9.7, the Commission has also held that no Application can be entertained by it in cases which are pending with the Appellate Tribunal or any Court. This finding is rendered by the Commission because the show cause notice refers to a Central Excise duty evasion by the Petitioners and which was part of an order dated 6th January, 2009.

29. In that regard we have carefully perused the Writ Petition. The Petitioners have pointed out in the Memo of Writ Petition itself as to what is pending before this Court. The Petitioners have pointed out that what is pending before this Court is a Writ Petition and which Writ Petition has a distinct claim. The Writ Petition, which is filed in this Court is not connected with the demand of differential duty. It is not related to the demand of duty. It pertains to Rule 12AA of the Central Excise Rules, 2002 and 12CC of the Cenvat Credit Rules, 2004. The order passed by the Member Central Board of Excises and Customs imposes a restriction on utilization of Cenvat credit. That is a distinct matter and which is pending before this Court. Therefore, the adjudication in to the Application made by the Petitioners under Section 32E could not have been refused on the ground that the matter is pending before this Court. The matter which is pending before this Court has nothing to do with the show cause notice dated 30th August, 2011 and the claims therein which are referred to particularly in Annexures A, B, C and E. In such circumstances, we do not see any justification for the Commission rejecting the Application on the ground that the matter is pending before the Authority. The refusal to entertain the Application on the ground that it is pending before the Authority is therefore, patently erroneous and illegal. The Application could have been refused to be entertained in cases which are pending with the Appellate Tribunal or any Court. That could have been in relation to the case/proceedings under the Act or under any other Act and which is subject matter of show cause notice in this case. It is conceded that when the Petitioners approached the Settlement Commission and admitted their duty liability all that had happened and transpired was that they had received a show cause notice raising the claims and which they have admitted. In such circumstances, the other reason assigned in para 9.7 for rejecting the Application at the threshold

 

cannot be sustained. We are of the view that the Commission would have to proceed in accordance with law. The issues raised in the show cause notice and which are before the Settlement Commission are not dealt with in the Central Board of Excise and Customs'' order dated 6th January, 2009 or in the Writ Petition which is pending before this Court.

30. In such circumstances, we are of the view that the Commission erred in rejecting the Application made by the Petitioners on the ground that it is not admissible in terms of Section 32E of the Central Excise Act, 1944. The Settlement Commission would have been well advised in proceeding with the Application and passing a final order thereon. Such an approach of the Commission in the given facts and circumstances defeats the object and purpose of approaching the Commission with an Application for settlement of the case.

31. In such circumstances, the Writ Petition succeeds in part. The order dated 29th May, 2013 is set aside to the above extent. The Commission will adjudicate the Application made by the Petitioners under Section 32E in terms of all the claims which are referred to in para 9.2 (i) to (iv) but in so far as (i), (ii) and (iii) the adjudication will proceed with regard to payment of interest and the Commission would also be empowered to decide as to whether the show cause notice rightly demands a sum of Rs. 1,59,39,047/- stated to be a Cenvat credit illicitly availed by the Petitioners. In such circumstances, and it being relatable to the excisable goods, aluminium conductors and the aluminium standard wire rods being stated to be inputs for manufacturing of the excisable goods aluminium conductors, even that aspect will be gone into by the Settlement Commission. The matter should now proceed and in accordance with law. The Settlement Commission to pass an order in terms of Section 32F uninfluenced by any conclusions that have been drawn and have been reached in the impugned order. We clarify that we have not expressed any opinion on the rival contentions and in particular, on merits of the show cause notice. In the view we have taken, it is not necessary to refer to other decisions cited by Mr. Sridharan learned Senior Counsel, appearing on behalf of the Petitioners. We have decided the matter essentially on the ambit and scope of the powers of the Commission and as provided in Chapter V of the Central Excise Act, 1944.

 