

(2006) 09 P&H CK 0228
In the Punjab And Haryana At Chandigarh

Light Engg. Corporation

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11, 32A, 32D, 32E, 32F

Citation : (2007) 207 ELT 40

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This petition challenges order passed by the Customs and Central Excise Settlement Commission, New Delhi, rejecting application of the petitioner u/s 32E of the Central Excise Act, 1944 (for short, "the Act") in respect of show cause notice dated 4-3-2004, Annexure P.2.

2. In the show cause notice, Annexure P.2, it has been alleged that on 4-10-2003, Preventive Staff visited the factory premises of the assessee and found that the assessee was taking Cenvat credit on Pig Iron, though no infrastructure for casting iron was available in the factory. The representative of the assessee in a statement stated that electric fans under brand name "LEC Concorde" were being supplied to the railways. It was admitted by Shri Ravi Bartarya, partner of the assessee that they were selling Pig Iron in the open market and were not getting any job work done. It was also found that the noticee illegally availed of Cenvat credit on Copper wire. Certain other violations were also mentioned in the notice.

3. The assessee filed a petition u/s 32E of the Act before the Commission, wherein certain violations were admitted. The commission found that the petitioner was not candid and forthright and disclosure of the liability was not full and true, which was the condition precedent for entertaining an application filed by the petitioner. It was noticed that though, the petitioner took the stand that

casting was done on job work basis but failed to furnish names of the job workers. The Commission found that the petitioner was taking varying and conflicting stands.

4. Learned Counsel for the petitioner submitted that the view taken by the Settlement Commission was arbitrary and against the principles of natural justice and the Commission ought to have entertained the application. The Commission failed to notice that the fans have been supplied to the railways.

5. We have heard learned Counsel for the parties.

6. Sections 32E and F of the Act are 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 or 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 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 this application exceeds two lakh rupees :

Provided further that 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).

(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.

32F. Procedure on receipt of an application u/s 32E. - (1) On receipt of an application under Sub-section (1) of Section 32E, the Settlement Commission shall call for a report from the Commissioner 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 sub-section 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 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.

(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 instalments, 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) Where an application is allowed to be proceeded with under Sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner of Central Excise having jurisdiction and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner (Investigation) to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(7) After examination of the records and the report of the Commissioner of Central Excise received under Sub-section (1) and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under Sub-section (6), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks 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 Sub-section (1) or Sub-section (6).

(8) Subject to the provisions of Section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the Bench concerned before passing any order under Sub-section (7) and, in relation to the passing of such order, the provisions of Section 32D shall apply.

(9) Every order passed under Sub-section (7) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts.

(10) Where any duty payable in pursuance of an order under Sub-section (7) is not paid by the assessee within thirty days of the receipt of a copy of the order by him, then whether or not the Settlement Commission has extended the time for payment of such duty or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at the rate of eighteen per cent, per annum or at such other rate as notified by the Central Board of Excise and Customs on the amount remaining unpaid from the date of expiry of the period of thirty days aforesaid.

(11) Where a settlement becomes void as provided under Sub-section (9) the proceedings with respect to the matters covered by the Settlement shall be deemed to have been revived from the stage at which the application was

allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

The above provisions in Chapter V of the Act envisage exclusive jurisdiction to the Commission, empowering the Commission to grant immunity from prosecution and penalty. The condition precedent for invoking the jurisdiction of the Commission is "full and true disclosure of his duty liability". The scheme of the statute is to provide an opportunity to an assessee who wants to be forthright and truthful and who may be willing to pay the dues, irrespective of evasion of duty earlier.

7. Reference may be made to the law laid down by the Hon^{ble} Supreme Court.

8. In Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, , it was observed :

66. It is not inappropriate to state that the policy of the law as disclosed in Chapter XIXA is not to provide a rescue shelter for big tax-dodgers who indulge in criminal activities by approaching the Settlement Commission. The Settlement Commission will certainly take due note of the gravity of economic offences on the wealth of the nation which the Wanchoo Committee had emphasized and will exercise its power of immunization against criminal prosecutions by using its power only sparingly and in "deserving cases : otherwise such orders may become vulnerable if properly challenged.(underling supplied).

9. In Commissioner of Income Tax, Madras Vs. M/s. Express Newspaper Ltd., , it was observed :

...It is neither possible nor advisable to seek to lay down exhaustively the several situations in which the Commission would decide to allow the application to be proceeded with or in which the application has to be rejected. A case may be a complex one; it may involve prolonged or cumbersome investigation. Another situation may be where having regard to the nature of the case and other circumstances, the Commission may feel in the interest of the Revenue and in the interest of justice that it is better to give a quietus to the case once for all instead of allowing it to be fought through the usual channels. The decision has to be taken by the Commission having regard to all the facts and circumstances before it, in the light of the object, purpose and scheme of the enactment. It is precisely because such wide discretion is given to the Commission that the Act requires that it should be manned by men of integrity and outstanding ability, having special knowledge of direct taxes and business accounts....

The idea underlying the said words (in the main limb of Sub-section (1A) is self-evident. The disclosure u/s 245C must be of an income not disclosed before the Assessing Officer. If the Assessing Officer (or the Income Tax authority) has

already discovered it and has either gathered the material to establish the particulars of such income or fraud fully or is at a stage of investigation/enquiries where the material gathered by him is likely to establish the particulars of such income or fraud, the assessee cannot be allowed to defeat or forestall, as the case may be, the entire exercise of the Income Tax authorities just by approaching the Commission. In such a case, it cannot be said that he is acting voluntarily or in good faith. He should not be allowed to take advantage of the comparatively easy course of settlement. He must be allowed to face the normal channels of assessment/appeal, etc. Section 245C is meant for those assessees who seek to disclose income not disclosed before the officer including "the manner in which such income has been derived". If the Department already knows and has gathered particulars of such income and the manner in which it has been derived, there is no "disclosure" by the assessee. Let it be remembered that the words in question in Section 245C(A) are not words of limitation nor are they meant to help unscrupulous assessees. Chapter XIX-A is a part of the Income Tax Act and must be construed consistent with the overall scheme and object. The chapter is meant for those assessees who want to disclose income not disclosed till then together with the manner in which the said income is derived. It is not meant for those who come after the event, i.e., after the discovery of the particulars of income and its source, or discovery of particulars of fraud perpetrated by the assessee, as the case may be - nor even to those who come to the Commission to forestall the investigation/enquiries which have reached a stage where the Department is in possession of material which though not sufficient to establish such concealment or fraud, is such that it is likely to establish it - may be some more material is required to establish it fully. The Commission has to keep all this in mind while deciding whether to allow the application to be proceeded with before it or to reject it.

10. In *Ashirvad Enterprises and Others Vs. State of Bihar and Another*, , it was observed :

6...reasons are envisaged in *Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another*, , Wherein it was observed that Section 245-H is a magnet which attracts large tax-dodgers, and it was emphasized that power of immunization against criminal prosecution should be used in deserving cases. Whether grant of immunity is called for in a given case is to be decided by the Commission on the facts of each case and no straitjacket formula for any universal application can be laid down.

11. In *Commissioner of Income Tax, Jalpaiguri Vs. Om Prakash Mittal*, , it was observed :

16. The foundation for settlement is an application which the assessee can file at any stage of a case relating to him in such form and in such manner as is prescribed. The statutory mandate is that the application shall contain "full and true disclosure" of the income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived. The fundamental

requirement of the application u/s 245-C is that full and true disclosure of the income has to be made, along with the manner in which such income was derived. On receipt of the application, the Commission calls for report from the Commissioner and on the basis of the material contained in the report and having regard to the nature and circumstances of the case or complexity of the investigation involved therein, it can either reject the application or allow the application to be proceeded with as provided in Section 245-D(1).

12. Thus, the Commission is justified in not entertaining an application where full and true disclosure is not made by an assessee, which is sine qua non for entertainment of application by the Commission.

13. In exercise of power of judicial review, this Court does not act as an appellate court by substituting its own opinion for the opinion of Settlement Commission arrived at after following due procedure under the law.

14. The impugned order cannot, thus, be held to be illegal or liable to be interfered with by examining the merits of the case of the assessee unless the finding that the assessee had not made true and full disclosure is shown to be perverse or patently erroneous.

15. After hearing learned Counsel for the parties, we are unable to hold that the finding recorded by the Commission on the question of failure of the assessee to make true and full disclosure is perverse or patently erroneous. We, thus, do not find any ground for interference.

16. The writ petition is dismissed.