(2008) 04 MAD CK 0149

In the Madras High Court

Case No : Writ Petition No''s. 1149 and 1557 to 1562 of 2008 and M.P. No. 1 of 2008

Shri Renuga Soft-X Towels, (Spinning and Towels Division) and Others — APPELLANT

Vs

The Commissioner of Central Excise and The Customs and Central Excise Settlement Commission, (Additional Bench) — RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC, 32, 32(1), 32(6), 32(7)
Customs Act, 1962 — Section 114A, 117

Citation : (2008) 229 ELT 359

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : N. Venkatraman S.C. for R. Karthikeyan, for the Appellant; R. Aravindan, A.C.G.S.C. for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

K. Venkataraman, J.—These writ petitions have been filed challenging the order of the second respondent dated 25.1.2008 and consequently, directing the second respondent to admit the application preferred by the petitioners dated 2.4.2007.

2. The short facts which are necessary for the disposal of these writ petitions are set out hereunder:

The first respondent issued show cause notice dated 6.1.2006 and corrigendum dated 15.2.2006 and 20.11.2006 proposing a duty demand together with interest besides seeking to initiate penal proceedings u/s 11-AC of the Central Excise Act, 1944 and Section 114-A and Section 117 of the Customs Act, 1962. As against the said demand, petitioners preferred an application before the second respondent in some cases admitting the liability to certain extent and in some cases contending that no due is payable. The first respondent filed counter in those proceedings. The second respondent has posted the matter for admission on 7.1.2008. However, by an order dated 25.1.2008, the second respondent was pleased to reject the applications filed by the petitioners. Challenging the same, these writ petitions have been filed.

3. The learned Senior counsel appearing for the petitioners contended that the second respondent rejected the claim of the petitioners on three grounds viz., (i) the amount admitted by the petitioners are too low (ii) because of the complexity of the matter it requires thorough investigation (iii) it is not a matter of adjudication before the Commission.

4. According to the learned Senior counsel, these grounds cited by the second respondent cannot be the grounds for rejecting the application of the petitioners.

5. Secondly, the learned Senior counsel appearing for the petitioners contended Section 32 Clause 6 and 7 of the Central Excise Act, 1944 contemplate wider power for the Settlement Commission to call for an investigation and without conducting the investigation as contemplated under the said provision, the second respondent had rejected the claim of the petitioners. Thus, according to the learned Senior counsel appearing for the petitioners, the impugned order of the second respondent is liable to be set aside.

6. Per contra, the learned Counsel appearing for the respondents contended that (a) show cause notice has been issued by the first respondent after thorough investigation and without challenging the said show cause notice, the matter cannot adjudicated before the Settlement Commission, the second respondent herein, (b) petitioners have to satisfy that they have gone to the second respondent making a full and true disclosure of the duty liability and in the present case, since they have not approached the Settlement Commission disclosing the full and true particulars of the amount of duty liability, the second respondent had rightly rejected their applications, (c) the second respondent viz., the Settlement Commission cannot be compelled to admit the adjudication preferred at the end of the petitioners. Thus, the learned Counsel appearing for the respondents sought for the dismissal of these writ petitions.

7. I have carefully considered the submissions made by the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

8. The petitioners have filed their applications before the second respondent dated 2.4.2007 wherein the entire statement of facts have been set out which form part of the typed set of papers from page 61 to 100. Each and every issue in brief has been set out and the reply to those issues have been set out in those applications. Written submissions have also been filed before the second respondent in detail. While so, the second respondent after extracting the rival contentions, finally at paragraphs 12 and 13 has passed the following order:

12. So, the law clearly lays down as to how and on what basis an application for

settlement has to be proceeded with or to be rejected. The basic points to be considered by the Commission in this regard are materials contained in the report of the jurisdictional Central Excise Commissioner on the application, nature and circumstances of the case and/ or the complexity of the litigation involved therein and an opportunity has to be given to the application of being heard. The Bench finds that the report of the Commissioner of Central Excise in this regard is not agreeing with the applicant''s contention in his application and that the investigation conducted by them has been very complex. The contentions of the applicant in his application against the Show Cause Notice are not only very lengthy but also complicated and on legal, procedural, technical and evidentiary points. The Bench finds that if this case is admitted for settlement, it will be very difficult to arrive at the correct amount of duty without ordering a very detailed investigation again which may not be possible at this stage. Going into the detailed and contentious submissions made by both sides and to come to a conclusion giving detailed reasons of Bench''s findings on duty involved in several annexures to the Show Cause Notice would be a job which may amount to a detailed adjudication of the case by the Commission. The Bench is of the view that the job of this Commission is to settle the duty amount so that the immunities prayed for by the applicant are considered, rather than adjudicate the case of two litigating parties. The Bench feels that this Commission is not to undo a Show Cause Notice against a small amount of additional admitted duty as compared to the amount demanded in the Show Cause Notice inspite of strong opposition of the jurisdictional Central Excise authorities. The applicant does not appear to have approached this commission with a spirit of settlement but rather in a spirit of litigation. The applicant may or may not have a strong case against the Show Cause Notice, but they do not have a strong case for settlement by making submissions and arguing before the commission as if their case is before the adjudicating authority or before an appellate authority and Revenue not agreeing with their submissions at all.

13. In view of the above and having regard to the nature and circumstances of the case and the complexity of the investigation involved herein, the application of the main applicant as well as those of the co-applicants are rejected.

9. The order extracted above, disclose that the second respondent had arrived at the conclusion rejecting the applications of the petitioners mainly on three grounds viz., (a) the investigation conducted by the Commissioner of Central Excise is very complex, (b) the contention of the applicants in their applications against the show cause notice are not only very lengthy but also complicated and on legal, procedural, technical and evidentiary points, (c) it will be very difficult to arrive at the correct amount of duty without ordering a very detailed investigation, if the case is admitted for settlement, (d) the applicant does not appear with the spirit of settlement but rather in a spirit of litigation, (e) the applicants may or may not have a strong case against the show cause notice but they do not have a strong case for settlement by making submissions and arguing before the Commission as if their case is before the adjudicating

authority or before an Appellate Authority.

10. Now, we have to find out whether under the said Excise Act 1944, what is the power vested with the second respondent derives u/s 32 (6) and (7). Section 32 of the said Act reads as follows:

(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).

11. The above provision makes it very clear that 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. Therefore, the Settlement Commission viz., second respondent is vested with a power to call for a report after thorough investigation. But unfortunately, the second respondent had stated in its order that without ordering a very detailed investigation, it will be very difficult to arrive at a correct amount of duty payable by the petitioners. When a power has been vested with the second respondent under the Central Excise Act 1944 calling for a report after thorough investigation by the Commissioner (Investigation), it is not known why such power has not been exercised by the second respondent.

12. The second ground on which the impugned order has been passed is that the condition of the applicant to the show cause notice is very lengthy and also complicated one on legal, procedural, technical and evidentiary points, I am of the considered opinion that merely because the contention of the applicant to the show cause notice is very lengthy cannot be a ground to reject the admission of the petitioners claim before it. Further more, without even discussing about the

contention raised by the applicants, the second respondent has chosen to say that it is not only lengthy but also complicated one on legal, procedural technical and evidentiary points. Such a finding arrived at by the second respondent is totally erroneous and unacceptable one.

13. The other ground on which the claim of the applicant had been rejected is that the amount admitted is too low. Merely, because the amount accepted by the petitioners are very low cannot be a ground to reject the claim of the petitioners when the second respondent is empowered to decide the matter in issue and when it is vested with such powers under the Central Excise Act 1944. It is expected to do so fairly and without washing its hands on the issues raised by the petitioners.

14. Though the learned Senior counsel drawn my attention to several decisions rendered by the second respondent, however the learned Senior counsel fairly submitted that decisions may not have the binding factors on this Court, but the same has been cited in order to show that the reasoning given in the impugned order is totally unacceptable in view of the decisions of the second respondent in certain other matter which came before it for adjudication. Hence I am not traversing each one of the orders enclosed along with the typed set and relied on by the learned Senior counsel. However it would be suffice to incorporate only the judgments of the Apex Court, which has been relied on by the Settlement Commission when it has been asked to adjudicate a matter. In Commissioner of Income Tax, Madras Vs. M/s. Express Newspaper Ltd., , the Hon''ble Apex Court has observed as follows:

It is equally evident that once an application made u/s 245-C is admitted for consideration (after giving notice to and considering the report of the Commissioner of Income Tax as provided by Section 245-D) the Commission shall have to withdraw the case relating to that assessment year (or years, as the case may be) from the assessing/appellate/revising authority and with the case, as a whole, by itself. In other words, the proceedings before the Commission are not confined to the income disclosed before it alone. Once his application is allowed to be proceeded with by the Commission, the proceedings pending before any authority under the Act relating to that assessment year will be dealt with by the Commission itself. The words "at any stage of a case relating to him" only make it clear that the pendency of proceedings relating to that assessment year, whether before the Assessing Officer or before the appellate or revisional authority, is no bar to the filing of an application u/s 245-C so long as the application complied with the requirements of Section 245-C.

15. In 1979 (S.C.2)-GJX-0299-S.C. the Honourable Apex Court has held that Settlement Commission is Judicial Tribunal. Again, in S. Nagaraj and Others Vs. State of Karnataka and Another, in paragraph 18, the Apex Court has held as follows:

Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice.

16. The above decisions makes it very clear that the second respondent Settlement Commission has to decide the matter in issue raised by the petitioners after hearing the first respondent. But unfortunately, the second respondent Settlement Commission has not gone into the details of issues raised by the petitioners but has thrown out the applications preferred by the petitioners on certain grounds which could not be accepted.

17. However, since the second respondent has not given any findings which they are expected to do it, I am inclined to set aside the order and to remit the matter before second respondent.

18. In fine, the order of the second respondent dated 25.1.2008 is set aside and the matter is remanded back to the second respondent for full adjudication of the matter on the issues raised by the petitioners. Accordingly, these writ petitions are allowed. Consequently, connected M.Ps. are also closed. No costs.

