
(2014) 11 MAD CK 0314

In the Madras High Court

Case No : Writ Petition No. 30162 of 2012 and W.P. No. 15706 of 2014

Vela Smelters (P) Ltd.

APPELLANT

Vs

The Customs and Central Excise Settlement Commission

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

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

Citation : (2015) 320 ELT 107

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.

1. The petitioner in both the Writ Petitions is a private limited company engaged in the manufacture of MS Ingots falling under Chapter 72 of the Central Excise Tariff. The petitioner is a registered with the Central Excise Department falling under the control of the second respondent.

2. In W.P.No. 30162 of 2012, the challenge is to an order passed by the Customs and Central Excise Settlement Commission (hereinafter referred to as the "Settlement Commission"), dated 09.10.2012.

3. In W.P.No. 15706 of 2014, the petitioner has challenged the order-in-original dated 15.04.2014, passed by the first respondent during the pendency of the W.P.No. 30162 of 2012, in and by which, the proposal made in the show cause notice dated 27.10.2009, was confirmed and wrongly availed CENVAT credit of Rs.1,43,43,417/- was demanded, apart from imposing equal penalty on the petitioner company as well as the Managing Director of the company.

4. A show cause notice dated 15.01.2008, was issued to the petitioner calling upon them to explain as to why action should not be taken for suppression of production of clearance of MS Ingots, demanding duty and proposing to impose penalty and levy interest. After considering the objections submitted by the

petitioner, an order was passed on 07.01.2009, confirming the proposal in the show cause notice. The petitioner preferred an appeal before the first Appellate Authority and the appeal was dismissed confirming the order passed by the Original Authority. The petitioner preferred further appeal to the CESTAT and the same was pending. At that juncture the Director General of Central Excise Intelligence (DGCEI) issued a show cause notice dated 27.10.2009, demanding CENVAT credit of Rs.1,64,43,413/-. It is submitted by the petitioner that the allegations in the second show cause notice were entirely based on the statements, which were recorded from persons said to have been involved in the transaction and the allegations were diametrically opposite to the stand taken by the department in the earlier show cause notice, which culminated in an order passed by the Commissioner (Appeals), Salem, wherein the demand of duty was reduced to Rs.12,36,267/-. The petitioner pointed out an error in the computation of duty in the second show cause notice and the department considered the same and the total demand was reduced to Rs.1,43,43,413/-. The petitioner would contend that they had imported 6914.490 MT of MS scrap from various high sea sellers for utilisation in the manufacture of MS-Ingots during the period from 01.04.2005 to 14.06.2006 vide 74 bills of entry.

5. According to the petitioner, the imported and locally purchased scraps were properly accounted in the raw material register, which were subject matter of investigation by the officers of the second respondent and that the petitioner had informed 26340.907 MTs of MS Scrap imported and purchased locally. The petitioner availed the benefit of the concession rate of duty extended under Customs notification No. 21 of 2002, dated 01.03.2002. The condition in the said notification was that the importer has to submit an End-use certificate in the prescribed format certifying that the imported scrap had been actually utilised in the manufacture of final products. According to the petitioner, they have obtained end-use certificate for the quantity imported under 64 Bills of entry. However for the remaining 10 Bills of entry, they did not obtain any end-use certificate. The petitioner would state that the jurisdictional officers of Central Excise have clearly certified that the petitioner have consumed the imported material for manufacturing MS-Ingots. The petitioner would further state that the allegation in the second show cause notice was based on the statements recorded from High Sea Sellers, Customs House Agent, Container freight station and scrap dealers and those persons were cross examined before the Commissioner of Central Excise, Salem and they had retracted the statements given before the Investigating Officer. During the cross examination, the officers who signed the end-use certificate also confirmed their signatures. On receipt of the second show cause notice, the petitioner filed an application before the Settlement Commission on 10.01.2012 admitting the duty liability of Rs.22,04,747/- along with the interest of Rs.4,82,359/-. The Settlement Commission by order dated 20.01.2012, allowed the case to be proceeded with. The second respondent filed their comments on 07.03.2012, stating that the end-use certificate issued by the officers, were not based on physical verification of the case and therefore, the

validity of the end-use certificates were questioned.

6. The petitioner filed re-joinder to the comments furnished by the department stating that the department is trying to invalidate the certificate issued by their own officers just to defend the case and such belated stage, doubt cannot be raised on the authenticity of the certificate. Further the file notings filed by the jurisdictional officers were also placed to establish that the end-use certificate were validly issued. The petitioner also denied the other allegations made in the comments filed by the department before the Settlement Commission. The petitioner was heard by the Settlement Commission and by order dated 09.10.2012, the Settlement Commission held that the petitioner has not made a true and complete disclosure and under such situation, there is no other alternative except to send the case back to the jurisdictional Commissioner for disposal in accordance with law. Further, the Settlement Commission observed that the petitioner has not extended their co-operation. Thus by virtue of the power conferred under Section 32L(1) of the Central Excise Act, 1944, the case was sent back to the second respondent for adjudication in accordance with the provisions of the Act. The petitioner has challenged the order dated 09.10.2012 in this writ petition.

7. The writ petition was listed for admission on 09.11.2012 and notice was ordered to the respondents. Thereafter, the matter was periodically listed for hearing and the Writ Petition was admitted by this Court by order dated 18.01.2013. However, no interim order was granted in this writ petition.

8. In the light of the fact that there was no interim order granted in this writ petition, the second respondent called upon the petitioner to participate in the adjudication proceedings. It is stated by the petitioner that the pendency of W.P.No. 30162 of 2012, was informed to the second respondent and it was stated that though no stay was granted, the Writ Petition has been admitted and the same is pending disposal and therefore, requested the second respondent not to proceed further. However, the second respondent passed the order dated 15.04.2014, confirming the proposal in the show cause notice dated 27.10.2009. This order is impugned in W.P.No. 1507 of 2014 and the Writ Petition was admitted on 10.06.2014 and an order of interim stay was granted initially for a limited period and subsequently, ordered to be continued.

9. The learned counsel for the petitioner reiterated the factual contentions, which were placed before the Settlement Commission and contend that in respect of quantity covered in 64 bills of entry, the petitioner had produced end-use certificate and in respect of the quantity covered in 10 bills of entry, the petitioner was unable to produce end-use certificate and therefore, they accepted the duty demand and paid the same along with the interest. However, the show cause notice proposed action against all the 74 bills of entry.

10. The learned counsel elaborately referred to the factual contentions raised by the petitioner before the Settlement Commission with regard to the benefit,

which was extended to the petitioner under Customs Notification No. 21 of 2004 , dated 01.03.2002 and the petitioner having produced the end-use certificate issued by the jurisdictional Central Excise Officer, there is absolutely no justification on the part of the department to disbelieve those certificates. Further, it is submitted that the petitioner made full and true disclosure before the Settlement Commission and admitted the duty amount of Rs.22,04,747/- and interest of Rs.4,82,359/-. However, the Settlement Commission without considering the petitioner's contention, solely relying upon the reports/comments submitted by the second respondent, rejected the application. Further, the learned counsel referred to the sample end-use certificate and the information which was secured by the petitioner under the Right to Information Act by communication dated 18.03.2011, to demonstrate that the end-use certificates were issued by the respondent's office and it is not a fabricated document and the respondent cannot disbelieve the said document and the findings rendered by the Commission is wholly erroneous. Further, the learned counsel elaborately referred to each one of the allegations made against the petitioner and submitted that the entire case as projected by the department is unsustainable, as the department has ignored the statutory documents and the verification done in the office of the Regional Transport Officer reveals discrepancy only in respect of 19 vehicles registration number out of the 400 vehicles used by the petitioner during the relevant period and the department was guided solely by the scrap register maintained by the lower level staff of the Customs House Agent.

11. Further, the payments effected by the petitioner towards transportation charges were not taken into consideration and there was no proof placed by the department to establish that there was substitution of imported raw materials with local purchasers. Further, it is submitted that the figures appearing in the books of accounts of third parties cannot determine the actual despatch and receipt of books and the petitioner was able to establish during cross examination that the out-standing dues in the petitioner's books of accounts are correct. Further, it is submitted that the allegation against the petitioner of non-utilisation of the imported scrap covered under the 64 bills of entry has no basis in the absence of proper evidence for allowing the diversion imported scrap, when there are end-use certificate issued by the jurisdictional Central Excise Officer. Therefore, it is submitted that the order passed by the Settlement Commission is liable to be set aside and the petitioner's case should be considered by the Settlement Commission on merits afresh.

12. As regards the impugned order in W.P.No. 15706 of 2014, it is submitted by the learned counsel that the impugned order is in violation of the principles of natural justice and came to be passed inspite of the fact that the petitioner informed the department that W.P.No. 30162 of 2012, was pending and department was directed to file counter affidavit. Further, it is submitted that the legality and competency of end-use certificate issued by the competent officer cannot be discredited on frivolous grounds, such as the Officer has issued the

same has not physically verified and such statement was made without any basis. Further, it is submitted that no disciplinary or penal action has been taken against the officers of the department, who issued the end-use certificate and therefore, the order passed by the second respondent is liable to be quashed. Further, it is submitted that the statement of witnesses recorded were not corroborated during cross examination and such statements have been relied on for imposing penalty, which is opposed to the principles of natural justice. Further, it is submitted that the impugned order has been passed without considering the merits of the matter and therefore, the impugned order is liable to be quashed.

13. Further the learned counsel appearing for the petitioner contended that the Settlement Commission did not consider the merits and details of the application submitted by the petitioner, the effect of the exemption notification and in terms of the provisions of the Act, the Settlement Commission is bound to consider the merits of the contention and it has passed an order ignoring the provisions of the law and therefore, the order passed by the Settlement Commission is liable to be set aside. In support of said contention, reliance was placed on the decision of the Bombay High Court in the case of the Commissioner of Customs (Import) Vs Noshire Moody in W.P.No. 2426 of 2012, dated 26.04.2012 and the decision of this Court in the case of M/s.Techno Rubber and Plastics Vs Customs and Central Excise in W.P.No. 19909 of 2011, dated 29.10.2011 and Ran India Steels Pvt. Ltd., Vs Commissioner of Central Excise & Ors., in W.P.No. 13754 of 2011, dated 14.11.2011 and M/s.Shri.Renuga Soft-X Towels & Ors., Vs The Commissioner of Central Excise reported in W.P.No. 1149 of 2008 dated 15.04.2008. On the above grounds, the learned counsel for the petitioner sought for setting aside both the impugned orders.

14. The learned Standing counsel appearing for the respondent raised a preliminary objection regarding the scope of judicial review under Article 226 of the Constitution of India against an order passed by the Settlement Commission. It is submitted that the Settlement Commission has rendered a finding that the petitioner has not made true disclosure and rejected the application and directed the matter to be adjudicated under Section 32L of the Act, this Court will not entertain a Writ Petition and direct the Settlement Commission to consider the matter afresh, when the Commission has specifically recorded that there was no true disclosure. Further, it is submitted that there is no allegation of any violation of principles of natural justice or provisions of law and in such circumstances, the Writ Petition filed by the petitioner is not maintainable. In this regard, reliance was placed on the decisions of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Jalpaiguri Vs. Om Prakash Mittal, , and Union of India (UOI) and Others Vs. Ind-Swift Laboratories Ltd., .

15. On the merits of the matter, the learned counsel made elaborate reference to the reports/comments filed by the Commissioner stating that four Import Scrap Registers were seized from the factory premises of the petitioner on 14.06.2006,

under Mahazar Sl.No. 42 1/4 to 42 4/4 which contain inter-alia the vehicle registration numbers under which the imported consignments were said to have been transported from the port of importation to the factory. Therefore, investigations were conducted at Raja CFS, Tuticorin through which majority of the consignments were cleared. The CFS is maintaining a Register for receipt and disposal of imported scrap titled "Scrap Delivery Note". This Register inter-alia contains the vehicle registration numbers under which the goods have been actually transported from the CFS. On comparison of the above said Registers, it is noticed that certain vehicle numbers were inconsistent and were at variance. It has been admitted by Shri.S.Vasudevan, General Manager of the petitioner company, in his statement dated 04.05.2009, that once the MS Scrap is loaded on to a vehicle at the CFS, it will reach the factory, which means that the consignment is not transferred to another vehicle enroute. Further verification conducted at RTOs with respect to the vehicle registration numbers purported to have been used for transportation of scrap from the port to the factory as appearing in the Registers seized from the petitioner, revealed that certain vehicle registration numbers were allotted to two wheelers, cars and tankers which are incapable of transporting such goods.

16. Further it is submitted that after filling the Bill of Entry and its assessment thereon, the goods were moved to CFS either in a trailer or in a lorry, where Customs examination of the scrap takes place after the clearance from the Customs, Form XX is prepared by M/s.Sealine Forwarders, in the name of the buyers of M/s.Subha International. Though the Bills of Entry were filed in the name of M/s.Sri Vela Smelters them, in most of the cases. After the Form XX was prepared by M/s.Sealine Forwarders/M/s.Subhasree Logistics (P) Ltd., mentioning the vehicle numbers given by M/s.Subha International, the consignments of scrap were moved from CFS to the godown of M/s.Subha International, Tuticorin situated at Periasamy Nagar, Tuticorin, the receipt of which has also been acknowledged by their staff at the godown premises on the reverse side of the gate pass for outgoing cargo. From the godown, the said scrap has been sold to various buyers viz., Munna of Tirupathi Steel, Trichy, Shanker of Tuticorin and Janakaraj of Tuticorin. The value of such sale of scrap has been realized in cash from these buyers. This clearly proves that the imported scrap did not accompany form XX to the petitioner.

17. Further, it is submitted that according to the above reports of the RTOs, certain vehicle registration numbers as appearing in the above 4 seized registers, were that of Motorcycles, Cars, Tankers etc, which are incapable of transporting such heavy consignment of Scrap. It is seen that the petitioner in their Import Scrap registers, have recorded registration numbers of cars, two wheelers, tankers and trailers which are incapable of transporting LMS/HMS scrap. From this, it is clear that the consignments of MS Scrap purportedly delivered to the petitioner have actually been diverted and that the petitioner have recorded certain imaginary vehicle registration numbers to show as if the consignments have been delivered at their factory premises in order to improperly avail

CENVAT credit.

18. Further, the learned counsel referred to the findings recorded by the Settlement Commission in paragraph 7.6 and submitted that the Settlement Commission noted the nature of fraudulent transaction and recorded a clear finding of fact that the petitioner has not made true and complete disclosure. In such circumstances, the question of compelling the Settlement Commission to settle the petitioner's case by accepting the duty offered to be paid by the petitioner, cannot be done and the matter has to be adjudicated.

19. Insofar as W.P.No. 15706 of 2014, it is submitted that in W.P.No. 30162 of 2012, there was no interim order was granted and therefore, notices were issued to the petitioner to appear for adjudication and the petitioner failed to respond to the notices and repeatedly adjournments were taken. Therefore, the Commissioner proceeded to hear the counsel for the petitioner and pass the impugned order and the petitioner if aggrieved, has to prefer an appeal to the Tribunal and the Writ Petition is not maintainable. In support of his contention, the learned counsel referred to the decision of the Bombay High Court in the case of Santogen Textile Mills Ltd. Vs. Union of India (UOI), , which was confirmed by the Hon''ble Supreme Court in (2002) 145 ELT 162. Reliance was placed on the decision of the Hon''ble Division Bench of this Court in the case of S.V. Shankar Vs. Settlement Commission (It and Wt) and Another, ; the decisions of the Hon''ble Supreme Court in the case of Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India (UOI) and Others, and Union of India (UOI) and Others Vs. Ind-Swift Laboratories Ltd., and the decision of this Court in the case of Marshal Power and Telecom (India) Limited Vs. The Customs and Central Excise Settlement Commission, The Commissioner of Central Excise and The Additional Director General, Directorate General of Central Excise Intelligence, .

20. The learned counsel appearing for the respondent submitted that the decision relied on by the learned counsel appearing for the petitioner are not applicable to the facts and circumstances of the case and the decision of the High Court of Bombay in the case of Commissioner of Customs (Import) Vs Noshire Moody (supra), was a Writ Petition filed by the department against an order of the Settlement Commission, which allowed the application filed by the applicant and on facts, the Bombay High Court rejected the matter. In the case of M/s. Techno Rubber and Plastics (supra), it was whether assessment of CENVAT credit was permissible and in the background of those facts, the order was passed and it is not applicable to the case of the petitioner. In the case of Ran India Steels Pvt. Ltd., (supra), this Court interfered, since the application was rejected by the Settlement Commission at the threshold without even calling for a report from the Commissioner. The decision in the case of M/s. Shri. Renuga Soft-X Towels & Ors., (supra), is also clearly distinguishable on facts and not applicable to the case of the petitioner.

21. Heard the learned counsels appearing on either side and perused the materials placed on record.

22. The first question to be considered is as to whether this Court exercising jurisdiction under Article 226 would be justified in interfering with the order passed by the Settlement Commission in the light of the fact that there is no allegation made by the petitioner that there is any violation of principles of natural justice. The object of establishing a procedure for settlement of cases under the provisions of the Central Excise Act as well as the Customs Act was with a view to resolve the dispute by conferring powers on the Settlement Commission to settle the matters. However, the Settlement Commission does not grant immunity as a matter of course and exercise of its jurisdiction is discretionary. Even in cases, where the Settlement Commission grants immunity, it can impose conditions while doing so, even attached properties of the applicant to secure the interest of revenue during the pendency of the proceedings before it, which power is not exercisable by the adjudicating authority. The scheme of the Act provides that the Settlement Commission cannot be forced to entertain and accept all settlement application, but after scrutiny, it may or may not entertain the same. The settlement of cases by the commission is an exception to the normal procedure of adjudication of duty liability and other deterrent provision like penalty and prosecution. Any order passed by the Commission, which was obtained by fraud or misrepresentation would render the order as void. One of the foremost essential condition for settlement of the dispute is that the application for settlement shall contain a full and true disclosure of duty liability, which was not being disclosed before the proper officer, the application shall contain the manner in which such liability has been incurred and the additional amount of customs duty accepted to be payable.

23. It is to be noted that the requirements of disclosure of duty liability not disclosed to the proper officer and amount of additional duty accepted as payable are two different aspects and they do not refer to the same thing. The expression "duty liability" not disclosed before the proper officer really refers to how the liability was attracted or how the liability arose. It has to be now seen as to whether the petitioner apart from fulfilling the essential ingredients to invoke the jurisdiction of the Settlement Commission. The pre-requisite is that whether the application contained full and true disclosure of the duty liability which was not disclosed before the proper officer.

24. As pointed out earlier, this disclosure should not be misunderstood or taken to be the same as regards the additional amount of customs duty accepted to be payable. The petitioner would state that they imported goods under 74 Bills of entry and availed the benefit of an exemption notification and the requirement for benefit under the notification is that the petitioner should produce an end-use certificate. The petitioner would contend that in respect of the quantity imported under 64 bills of entry, they have produced end-use certificate and in respect of the quantity in the remaining 10 bills of entry, they have admitted the duty liability. Therefore, the petitioner would state that it is a full and true disclosure of the duty liability, which was not admitted before the proper officer. This contention is wholly misconceived and this appears to be the case of the

petitioner right through.

25. The full and true disclosure of duty liability in fact is that which was not disclosed before the proper officer. For which purpose, the allegation in the show cause notice against the petitioner has to be looked into. The allegation is wrong availing of CENVAT credit stating that investigation conducted, revealed that the petitioner imported MS Scrap and diverted the same in the local market and various other allegations have been made in the show cause notice as to how the goods imported never reached the factory gate and that the end-use certificate was issued based on the raw material register maintained by the petitioner and the range superintendent did not visit the factory for verification of the receipt of the raw material and that the issue of end-use certificate alone does not prove the receipt of the imported raw material and such certificate is not reliable as utilisation of raw materials not physically verified.

26. Apart from this, there are other allegations made against the petitioner stating that the vehicle numbers given by the petitioner, which are said to have transported the imported raw material do not tally with the records maintained in the Regional Transport Office and several such vehicles are either two wheelers or four wheelers and do not match description given by the petitioner. The petitioner contend that 400 vehicles were utilised for transportation of the material and the percentage of the discrepancy in the registration number is very meagre and therefore that could not have been a reason to disbelieve the end-use certificate in respect of the entire consignment.

27. It is to be pointed out that though such stand is taken even to that extent the petitioner did not make full and true disclosure of the duty liability, which was obviously not disclosed to the proper officer. Therefore, the Settlement Commission examined the merits of the contention vis-à-vis, the stand taken in the Commissioner's reports/comments.

28. After considering all the facts, which were placed, the Commissioner recorded that the petitioner has not made a full and true disclosure. In the light of the said finding, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India and examine the factual finding recorded by the Settlement Commission, as if, this court is the Appellate Authority over the findings of fact recorded by the Settlement Commission, by which the Settlement Commission declined to entertain the petitioner's application and directed the matter to be proceeded by the second respondent under the normal procedure under the Act.

29. As already pointed out that the petitioner has not challenged the order passed by the Commission on any technical grounds such as violation of principles of natural justice, failure to afford reasonable opportunity etc. The contention that the Commission has not examined the merits of the case is also not sustainable, as a bare reading of the order passed by the Commission would reveal that the merits of the case has been gone into and this Court is not

inclined to go into the factual aspects of the matter, as it has to be adjudicated on merits. As long as the petitioner has failed to fulfil the twin essential tests as pointed out earlier, the application before the Settlement Commission was not maintainable and therefore, the Commission was fully justified in refusing to entertain the application.

30. The Hon''ble Supreme Court in the case of Shriyans Pradad Jain Vs. Income Tax Officer and others, , held that the Court cannot go into the questions of fact recorded by the Settlement Commission. This decision was followed by the Hon''ble Division Bench of this Court in the case of S.V.Shankar Vs Settlement Commission (Income-tax and Wealth-Tax) & Anr., (supra). As pointed out by the Hon''ble Division Bench of the Bombay High Court in the case of Santogen Textile Mills Ltd.,(supra), a conjoint reading of sub-sections (a),(b) & "(7)" of Section 32F of the Act, would make it clear that the basic purpose of getting report, is to find out as required under Section 32E(1) in the application preferred before the Settlement Commission has been made or not and if the Settlement Commission finds that full and true disclosure has not been made in the application as required under Section 32E(1), then it is open for the Settlement Commission to reject the petition, while passing the final orders. This decision has been affirmed by the Hon''ble Supreme Court.

31. As far as the decisions relied on by the learned counsel appearing for the petitioner in the case of M/s.Techno Rubber and Plastics, (Supra) it pertains to whether the assessment of CENVAT credit was permissible and the Commission failed to take into consideration in that aspect, therefore, the Court interfered. In the case of M/s.Shri.Renuga Soft-X Towels & Ors., (supra) the Court found that the Settlement Commission has not gone into the details of the issues raised by the petitioners therein on certain grounds which were not accepted. However in the case of hand, this Court is satisfied that the Commission examined the contentions of the petitioner and on facts found, there was no full and true disclosure.

32. The case of Ran India Steels Pvt. Ltd.,(supra) was a case, where the application for settlement was dismissed at the threshold without even considering the Commissioner''s report, therefore, this Court interfered. The said decision is factually different and cannot advance the case of the petitioner. The decision of the Bombay High Court in the case of Noshire Moody (supra), was a Writ Petition filed by the Department against the order of Settlement Commission, which entertained the application and granted the relief to the applicant. On facts, the Court found that the findings recorded by the Settlement Commission cannot be interfered. The said decision is of no assistance to the case of the petitioner. Apart from the fact that the petitioner has not made full and true disclosure, the Settlement Commission has recorded a finding that the petitioner has not co-operated, this is all the more a good and substantial reason to reject the petitioner''s application.

33. Hence, for all the above reasons, the challenge to the order passed by the

Settlement Commission is devoid of merits and consequently, W.P.No. 30162 of 2012, is dismissed.

34. Insofar as W.P.No. 15706 of 2014, is concerned, the challenge is to the order passed by the respondent dated 15.04.2014. Admittedly, this order was passed when W.P.No. 30162 of 2012, was pending before this Court wherein the petitioner had challenged the order passed by the Settlement Commission. It is true that this Court did not grant any stay. Therefore, technically the Commissioner adjudicating the case was justified in calling upon the petitioner to participate in the adjudication proceedings. When notices were issued, the petitioner appeared and stated that the Writ Petition in W.P.No. 30162 of 2012, was pending and the matter may be adjourned. However, this request was not entertained and the respondent proceeded to adjudicate the matter, since it was informed to the respondent that there was no stay of adjudication granted by this Court in W.P.No. 30162 of 2012.

35. In my view, though the Commissioner cannot be faulted for proceeding with the adjudication proceeding, nevertheless when a specific request was made stating that the earlier Writ Petition was pending and it was also admitted, it would have been fair and reasonable, if the matter was kept in abeyance or atleast a outer time limit could have been afforded to the petitioner, so as to move this Court and secure an order of stay of adjudication or to expedite the hearing of the other Writ Petition. However, the same having not been followed, this Court is of the view that the impugned order dated 15.04.2014, is in violation of principles of natural justice, inasmuch as the petitioner was not afforded full and effective opportunity to put forth their defence.

36. Hence, for all the above reasons, the challenge to the order passed by the Settlement Commission is devoid of merits and consequently, W.P.No. 30162 of 2012, is dismissed.

37. Accordingly, W.P.No. 15706 of 2014, is allowed and the impugned order dated 15.04.2014, is quashed and the matter is remanded for fresh consideration to the Commissioner of Central Excise, Salem, who shall afford an opportunity of personal hearing to the petitioner and after hearing the petitioner and considering all the materials placed by the petitioner, shall adjudicate the case afresh and pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.