

(2014) 09 AP CK 0034

Andhra Pradesh High Court

Case No: Writ Petition No. 1701 of 2002

Anil Re-rolling Mills

APPELLANT

Vs

The Commissioner of Central
Excise

RESPONDENT

Date of Decision: Sept. 1, 2014

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 32E, 32L

Citation: (2015) 2 ALD 148 : (2015) 317 ELT 240 : (2014) 48 GST 504 : (2015) 30 GSTR 648

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: S. Vivek Chandra Sekhar, Advocate for the Appellant; B. Narayana Reddy, Asst. Solicitor General and Jalakam Sathyaram, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

This writ petition is filed challenging the order, dated 23.10.2001 passed by the Customs & Central Excise Settlement Commission, Chennai - 2nd respondent.

2. The petitioner is a manufacturer and is an assessee under the Central Excise Act. It has been filing the returns from time to time. A show cause notice was issued to it on 30.09.1998 pointing out that some of the facts were concealed and thereby same manufactured goods escaped excise duty. At that stage, the petitioner approached the Settlement Commission, the 2nd respondent, by filing an application under Section 32E of the Central Excise Act (for short "the Act"). It admitted that some irregularities have taken place in the past, and prayed for settlement of the matter.

3. The 2nd respondent entertained the application and verified the matter. At one stage, it has also directed the Commissioner attached to it, to make further investigation. A report, dated 27.06.2001, was submitted accordingly. On a perusal

of the report, the 2nd respondent found that the petitioner did not make full and truthful disclosure before it, and thereby did not extend the required amount of cooperation. Accordingly, it passed the impugned order, directing that the case will go back to the Central Excise Officer, who has jurisdiction to adjudicate the dispute, as though no application under Section 32E of the Act was filed. Hence, this writ petition.

4. Sri Vivek Chandra Sekhar S., learned counsel for the petitioner, submits that the 2nd respondent was not justified in arriving at the conclusion that there is non-cooperation on the part of the petitioner. He contends that a simple observation to that effect would not constitute the basis for denial of settlement and the conclusion must be supported by valid reasons. Learned counsel submits that apart from disclosing the true and full facts, the petitioner has extended cooperation throughout the proceedings and still the matter was sent back to the assessing authority.

5. Sri Jalakan Sathyaram, learned counsel for the respondents, on the other hand submits that Section 32E of the Act provides a typical and specific remedy which totally depends upon the honesty and truthfulness of the assessee and a Commission can proceed to settle the dispute only when it is satisfied that the disclosure is genuine and truthful. He contends that this is not a case where the 2nd respondent has simply observed that the assessee is not cooperating but, on the other hand, it proceeded to point out the aspects on which the true disclosure is not forthcoming. He submits that the 2nd respondent has taken note of the principles that govern the settlement of disputes under Section 32E of the Act and had passed the orders under Section 32L of the Act strictly in accordance with law.

6. The Central Excise Act, the Customs Act and the Income Tax Act provide mechanisms for adjudication of disputes, at various levels such as the appeals before the Commissioners and further appeals before the Tribunals. Apart from such adversarial mechanism, those enactments contain provisions for constitution of Settlement Commissions, which are conferred with the power to settle the disputes. The proceedings before the Settlement Commissions partake the character of inquisitorial adjudication, which would depend upon the nature of disclosure on the part of the assessee. If, after examination of the matter, the Settlement Commission comes to the conclusion that there is still some concealment on the part of the assessee, it can simply decline to proceed further, and leave it open for the assessee, to pursue other remedies in accordance with law.

7. In the instant case, the 2nd respondent has processed the application submitted by the petitioner, to a substantial stage. Not only the matter was discussed at length with reference to the relevant material, but also the report was called for, through a Commissioner attached to it. On a perusal of the record before it, as well as the report submitted by the Commissioner, the 2nd respondent took the view that there are some more aspects that were not revealed by the writ petitioner.

8. The expression "Cooperation" occurs at more places than one under the relevant chapters. In the ordinary parlance, the word "Cooperation", in the context of adjudication, is taken to mean the non-participation of the concerned party, in the proceedings. However, in the context of settlement, it has a different connotation, altogether. The cooperation in such instances connotes the true and full disclosure of the facts pertaining to the assessee; and non-cooperation, the opposite of it.

9. The relief to be granted by the Settlement Commission is in the form of immunity from prosecution. That, however, is a reward for the assessee being truthful. The relevant procedure mandates that it is only when the disclosure is complete and truthful in all respects, without any reservation, that the Settlement Commission can be expected to grant relief. If it finds that any information or fact that has bearing upon the assessment has been withheld from it, it can simply refrain from proceeding further, and drop the proceedings at that. In the instant case, the report submitted by the Commission as well as the facts referred to in para-4 of its order, the 2nd respondent has enlisted about 10 aspects, as regards which, information was withheld from it. On general conduct also, the Commission took note of the evidence and opined that the writ petitioner is not extending cooperation, meaning thereby that it has not placed the full and true facts before it. It must be said to the credit of the Commission that it had a clear comprehension of the contours of adjudication and took note of the relevant precedents on the subject.

10. The contention of the petitioner that the settlement was not preceded just by making an observation that the cooperation is not being extended; is not correct. Substantial portion of the impugned order demonstrated the aspects on which the cooperation was not forthcoming. Further, it is not as if that the impugned order has taken away any accrued rights of the petitioner. Even at this stage, it can pursue the remedies that are provided for under law. The net result is that it cannot avail the benefits of immunity from prosecution. We do not find any merit in the writ petition and the same is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending if any, shad stand closed.