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CALCUTTA HIGH COURT

Case No: Writ Petition No. 1442 of 2008

Commissioner of C. Ex., Kolkata-IV	APPELLANT
Vs	
Assam Tubes Ltd.	RESPONDENT

Date of Decision: Sept. 22, 2016

Citation: (2016) 342 ELT 234

Hon'ble Judges: Debangsu Basak, J.

Bench: Single Bench

Advocate: S/Shri S. Ganguli and B.P. Banerjee, Advocates, for the Petitioner; S/Shri S.P. Majumder and P. Das, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Debangsu Basak, J. - The department as the petitioner has assailed an order passed by the Settlement Commission acting under the provisions of Section 32F of the Central Excise Act, 1944.

2. Learned advocate for the petitioner has submitted that the Settlement Commission had erred in failing to appreciate that, the respondent had obtained Cenvat credit before the closure of its factory. The Settlement Commission had also failed to appreciate that the respondent is guilty of removing the goods clandestinely. He has submitted that the impugned order of the Settlement Commission is therefore bad.

3. Learned advocate for the respondent has submitted that the respondent was a Sick Industrial Undertaking within the meaning of the Sick Industrial Undertaking (Special Provisions) Act, 1985 and that a reference to the Board for Industrial and Financial Reconstruction (BIFR) was made in respect of the respondent. The respondent had made an application for settlement under Section 32F before the Settlement Commission upon receipt of a show cause notice. It had disclosed all its materials before the Settlement

Commission. The Settlement Commission had considered the rival contentions on a detailed basis and has returned the findings as recorded in the impugned order. The impugned order has dealt with the contentions raised by the petitioner presently. He has referred to the grounds of the writ petition and has submitted that no ground has been made out challenging the impugned order. He has also referred to the points of law claimed to be raised in the writ petition and submitted as a part of writ petition and has submitted that, such points of law has to be answered in favour of the respondent.

4. I have considered the rival contentions of the parties and the materials made available on record.

5. The order impugned in the writ petition has been passed by the Settlement Commission under Section 32F of the Central Excise Act, 1944. It is a detailed order. It takes into consideration the rival contentions. It has dealt with every aspect of the matter. It has returned the finding that the respondent is entitled to amnesty against prosecution, and that the department is not entitled to levy penalty or interest against the respondent.

6. Essentially the petitioner has canvassed the point of alleged failure of the Settlement Commission to appreciate facts. A writ court is not a First Appellate Court where the facts are to be re-apprised to find out whether another view can be taken on the facts established. The Settlement Commission has considered the relevant facts and has arrived at a finding as recorded in the impugned order. Such finding has not been demonstrated to be perverse. The jurisdiction of the Settlement Commission to pass the impugned order has also not been questioned.

7. In those circumstances, I am not inclined to interfere under Article 226 of the Constitution of India with the order impugned.

8. WP No. 1442 of 2008 is dismissed. No order as to costs.