

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THE HONOURABLE SRI JUSTICE P. SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA
WRIT PETITION NO.6376 OF 2008**

Date: 21.04.2026

Between:

***M/s. Airan Comtrax Towers (P) Ltd. and 2 others
...Petitioners***

AND

***The Superintendent, Additional Bench,
Customs & Central Excise, Settlement Commission,
Customs House, Chennai and another
...Respondents***

ORDER: *(As per the Hon'ble Sri Justice Narsing Rao Nandikonda)*

Heard **Ms. Mamatha**, learned counsel representing **M/s. CKR Associates**, learned counsel for the petitioners and **Ms. Pravallika**, learned counsel representing **Mr. Dominic Fernandes**, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs (CBIC) appearing for the respondents.

2. This Writ Petition is filed under Article 226 of Constitution of India seeking to call for the records relating to Order No.6/2008-C.Ex. in C.No.V/15/37-39/2007-SC dated 28.02.2008 passed by respondent No.1 and set aside the same and consequently direct respondent No.1 to admit the application and consider the case of the petitioners under the provision of Chapter V of Central Excise Act, 1944.

3. The brief facts of the case are that the petitioners are manufacturers of MS ingots. They were operating under the Compounded Levy Scheme w.e.f. September 1997, which was introduced for sectors such as induction furnaces, steel re-rolling mills etc., with the object of levying and collecting excise duty based on the annual production capacity of the manufacturer, as determined by the jurisdictional Commissioner after considering Rule 3 of the Induction Furnace Annual Capacity Determination Rules, 1997, the annual capacity of production was required to be determined. In the present case, the Commissioner of Central Excise determined the intrinsic

capacity of the petitioners plant as 2.4 MTs and accordingly fixed the duty liability at Rs. 4,00,000/- per annum.

4. The Compounded Levy Scheme, as provided under the Central Excise Act, 1944 r/w. the erstwhile Central Excise Rules, 1944, was withdrawn w.e.f. 31.03.2000. Thereafter, the petitioners took over M/s. Giridhar Ispat Private Limited and continued clearing the MS ingots on payment of duty under the regular assessment procedure as declared by them. It is relevant to mention that, at the time of takeover, the intrinsic capacity of the plant was only 2.4 MTs.

5. It is further submitted that for the manufacture of MS ingots, they had been procuring MS Scrap from several parties. All receipts of raw material into the factory were properly accounted in the statutory Form-IV Register, and Central Excise duty was paid at the time of clearance of MS ingots from the factory.

6. A Show Cause Notice dated 04.04.2005 was issued to the petitioners by the learned Commissioner of Customs & Central

Excise, Hyderabad-IV alleging the clandestine production and removal of MS ingots during the period from April, 2000 to 03.09.2001. It is alleged in the said show cause notice that the petitioners had produced 19,497.733 MTs of various raw materials like MS Scrap, Sponge Iron, PCM Jams, Silico Manganese etc. which was not accounted a major portion of the same in the Raw Material Inward Registers and Form IV Raw material accounts by using the name of Shakti Steels, a proprietary concern with Shri Munnalal Agarwal who is also the Managing Director of petitioner No.1, and procured raw materials without proper accounting under kutchha slips and the said production of the goods was deliberately suppressed.

7. The said cause notice called upon the petitioner to show cause as to why a sum of Rs. 2,00,36,154/- towards the duty, payable on 12,223.418 MTs of ingots and 399.401 MTs of Runners and Risers valued at Rs.12,21,41,994/- and Rs.30,84,020/- respectively, removed by them without payment of duty during the period from April, 2000 to 03.09.2001 and not paid by petitioner No.1 in terms of Section 11A (1) of the Central

Excise Act, 1944. The payment of Rs. 10,00,000/- was already paid by petitioner No.1 *vide* TR-6 Challans dated 18.09.2001 and 06.10.2001 and adjusted towards the part of the alleged duty.

8. The petitioners have submitted a detailed reply along with the numerous documents and further contended that the Commissioner of Customs and Central Excise had taken up the hearing of the case and at that stage considering the material on record and in order to put a quietus to the issue approached the Customs and Central Excise Settlement Commissioner under Section 32E of the Act. Accordingly, they filed application No. C.No.V/15/37-39/2007-SC for settlement of the proceedings initiated *vide* show cause notice dated 04.04.2005, admitting the duty liability of Rs.42,20,347/- based on the installed capacity when the factory was operating under the compounded levy scheme. It was further contended that based on the installed capacity of the factory, a quantity of 2930.859 MT of ingots at the most, could be manufactured during the relevant time and duty liability comes to Rs.68,40,000/-. Out of this, an amount

of Rs.26,19,563/- was already paid by the petitioners through PLA at the time of clearance of goods. Thus, the differential duty liability, according to the petitioners, was Rs.42,20,473/- out of which Rs.10,00,000/- had been paid during the course of the investigation and the petitioners expressed their willingness to pay the balance amount of Rs.32,20,437/-.

9. When the matter came up for hearing on 03.12.2007, an interim order was passed on 04.12.2007. The petitioner also filed an affidavit admitting additional liability and submitted written submissions on 20.02.2008 before the learned Customs & Central Excise Settlement Commission. However, by order dated 28.02.2008, the Additional Bench at Chennai rejected the settlement application under Section 32F(1), holding that the disclosure made by the petitioners could not be considered at that stage as “full and true” as required under Section 32E of the Act. The issues involved detailed examination and complex investigation, which could be adjudicated only through regular proceedings.

10. Aggrieved by the same, the present writ petition is filed on the ground that the learned Settlement Commissioner failed to take into consideration the amendment to Section 32F of the Act, making it mandatory to deal with the cases filed before 31.05.2007 and in the manner laid down under the New Provisions and failed to take notice of the statutory provision providing for calling for a report from the Commissioner (Investigation), which could have assisted in resolving the issues arising before the learned Commission, in case where the applicant defers from the proposal in the show cause notice and claims a lower sum as admitted liability and that the Commission which has passed the order is a non-speaking order and violating the principles of natural justice and liable to be set aside for not considering of relevant material by the Settlement Commission.

11. Learned counsel for the petitioners argued and contended that the duty liability ought to have been calculated under the Compounded Levy Scheme based on installed furnace capacity, not on alleged actual production and the admitted liability of

Rs.42,20,473/- was based on full and true disclosure under the capacity-based method and also argued and contended that the amendment to the 32F of the Act, made it mandatory for the learned Commission to deal cases with effect from 01.06.2007, whereas prior thereto, the provision of Section 32F of the Act was referred to.

12. The provisions of Section 32F of the Central Excise Act, which prescribes the application filed under Section 32E, the Settlement Commission shall call for a report from the Commissioner of Central Excise having jurisdiction, the manner in which such liability has been derived and the learned counsel for the petitioner also points out that on the basis of materials contained in such report and having regard to the nature and circumstances of the case and the complexity of investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application and no such application can be rejected unless an opportunity is being given. She also took us to the provisions of Section 32L, wherein it provides that the Settlement Commission

may send the case back to the Central Excise officer having jurisdiction if the person who has made an application under Section 32E has not cooperated with the Settlement Commission in the proceedings.

13. The learned counsel for the petitioners further contended that in view of the amended provisions of Section 32F, the Settlement Commission ought to have decided the application on or before 28.02.2008. Though, the application under Section 32E was filed on 02.03.2007, and the amendment came into force on 01.06.2007. It was further argued that under Section 32F (1), the Settlement Commission could not have rejected the application filed under Section 32E in the manner done in the present case. Initially, a show cause notice was issued on 04.04.2005 and on 23.06.2007, the application under Section 32E was filed.

14. The petitioners were engaged in the manufacture of M.S. Ingots under the Compounded Levy Scheme framed under the Central Excise Act, 1944. Under the said scheme, excise duty was determined on the basis of installed/assessed

production capacity and not on actual production. The competent authority had determined the annual production capacity of the unit at 2.5 MTs per month, and the said assessment remained operative for several years. The petitioner consistently contended that the factory was technically incapable of producing quantities beyond the assessed capacity.

15. Learned counsel for the petitioners contended that the petitioner had filed an application under Section 32E of the Central Excise Act before the Settlement Commission seeking settlement of the dispute arising from the show cause notice, with full disclosure of additional duty liability and its computation. The allegations in the show cause notice regarding excess production were based on assumptions relating to scrap consumption, power usage, and certain statements, without any technical or scientific basis.

16. Under the Compounded Levy Scheme, excise duty was determined on the basis of installed production capacity and not on actual production. The competent authority had already fixed the plants production capacity at 2.4 MTs per month with a duty

liability of Rs.4 lakhs per month, which remained unchanged during the relevant period i.e., April 2000 to September 2001.

17. Learned counsel for the petitioners further contended that the factory could not have produced quantities beyond the assessed capacity and placed technical certificates and supporting materials to substantiate the same. A detailed worksheet showed total duty liability of about Rs.68 lakhs, out of which Rs.26 lakhs was paid in cash (PLA) and Rs.31 lakhs through CENVAT credit. The petitioners offered to pay the remaining differential amount, later revised to about Rs.45 lakhs. Even according to the Department's recalculation, the duty liability would not exceed approximately Rs.65 lakhs, broadly supporting the petitioner's disclosure.

18. Further, the learned counsel for the petitioners relied upon the judgment in **SSF PLASTICS INDIA P. LTD. AND ANOTHER V. UNION OF INDIA AND ANOTHER**¹, wherein the relevant portion is extracted below:

¹ (2016) 40 GSTR 94

Pertinently, on this application the Settlement Commission found that compliances pre-admission are made and that is how the matter proceeded in terms of section 32F (1). The Revenue filed a report and objecting to the computations and calculations, including raising an issue about the correctness of the certificates obtained by the petitioners. The matter was fixed by the Settlement Commission before it on March 26, 2014. Submissions were canvassed with regard to the chartered engineer's certificate. From the record it appears that the Settlement Commission gave time to the Department to examine the chartered engineer's certificate and submit a report. The Department submitted its report on April 28, 2014. Then, the Department was also informed that it has an option to go to another chartered engineer and obtain appropriate certificates so as to place them before the Commission.

And also relied upon the judgment in **RAN INDIA STEELS P. LTD. V. CUSTOMS, EXCISE AND SERVICE TAX SETTLEMENT COMMISSION AND OTHERS**², wherein the relevant portion is extracted hereunder:

Pursuant to the above directions dated April 29, 2013, an Investigation report was submitted on June 21, 2013, wherein, the following was, inter alia, recorded/observed:

(i) The claim that the said original hard disc examined by GEQD is not genuine was rejected.

(ii) The website of the petitioner-company states that the installed capacity has a production capacity of 43,800 M.T., of MS ingots per year, which according to the report is in the nature of an admission by the appellant as to its production capacity.

(iii) A close study of the production pattern revealed that the maximum production of 14.07 M.T., per heat was achieved on

² (2023) 24 GSTR-OL 243

October 6, 2005 and thus, the case of the appellant that it was Incapable of producing in excess of 10 M.T., per heat was understood to be disproved.

(iv) Finally, on an overall analysis, it was concluded that the company is involved in large scale suppression of production and clandestine removal to their own unit located nearby. That there is large-scale manipulation of the data and that the data contained in the GEQD Report was acceptable, while rejecting the appellant's claim of being incapable of manufacturing more than 10 M.T., per heat and 10 heats per day as allegedly the appellant had on several occasions exceeded 10 M.T., per heat and 10 heats per day.

Once a report is obtained from the Principal Commissioner under sub-section (3) of the Act and if on examination of the same, the Commission is of the opinion that a further enquiry/Investigation is necessary, it may for reasons to be recorded in writing direct the Commissioner (Investigation) within 15 days of the receipt of such report to make or cause further enquiry/investigation and require a report to be furnished by the Commissioner (Investigation) within a period of 90 days of the communication. In the event of failure to furnish the report within the prescribed period by the Commissioner (Investigation), the Commission shall proceed to pass order under sub-section (5) of the Act without such report.

19. Learned Standing Counsel for CBIC appearing for the respondent contended that the learned Settlement Commission initially admitted the application and issued interim directions, thereby crossing the preliminary stage under Section 32F (1). After admission, the Commission was required to proceed under Sections 32F (3), (4) and (5) and decide the case on merits. The subsequent rejection of the application on the ground that the

disclosure was not full and true and that the matter required complex investigation was illegal, as complexity of investigation is not a valid ground for rejection after admission. The impugned order defeats the objective of the settlement provisions and is liable to be set aside with a direction to the Settlement Commission to decide the application on merits.

20. Learned counsel for the respondent argued and contended that the petitioner failed to meet the mandatory precondition for settlement i.e., a full and true disclosure of duty liability. The petitioner admitted to only Rs.44 to Rs.45 lakhs, while the Department's quantified demand was approximately Rs.2 crores. The petitioners disclosure was based on theoretical assumptions and outdated compound levy principles rather than verified records under the petitioner's own affidavit admitted an inability to pinpoint the actual quantity of unaccounted goods, which the respondent argues is a clear admission of non-disclosure.

21. The Department built a robust case against the petitioner using private records and physical evidence including parallel invoices, private production slips and labor payment sheets

which corroborated the unaccounted clearance of goods. Electricity consumption data indicated production levels far exceeding declared quantities. The petitioner had previously accepted the correctness of these private records in statements made under Section 14 of the Act.

22. The respondent argues that the petitioner misunderstood the nature of the Settlement Commission and that the Settlement Commission is to provide an opportunity for voluntary and candid confessions, not for adversarial litigation. By contradicting previous statements and seeking to demolish the show cause notice rather than settle honestly, the petitioner did not approach the Commission with clean hands. Under Section 32F (1), the Commission has the absolute right to reject an application at any stage, if statutory conditions are not met. The petitioner is not remediless and may pursue regular adjudication through standard legal channels. Prolonging the interim stay prejudices the public interest by delaying the collection of Rs.2 crores which is substantial revenue.

23. However, a search was conducted at undeclared office premises, during which the respondents allegedly recovered private ledgers, parallel sets of invoices, and kachha slips indicating large scale unaccounted procurement of raw materials and clandestine removal of finished goods. The searches were conducted on 07.09.2001. It was further revealed during investigation that, between April 2000 to September 2001, the petitioners had allegedly manufactured and clandestinely removed substantial quantities of M.S. ingots without payment of duty.

24. Learned counsel for the respondent relied on the following judgments:

In **UNION OF INDIA V. DHARAMPAL SATYAPAL**³, the relevant portion is extracted hereunder:

It has been held in several judgments that the primary condition for approaching the Settlement Commission is that the application shall contain a full and true disclosure of the duty liability and the manner in which it was derived. There are identical provisions in the Income-tax Act relating to the Settlement Commission proceedings. In Ajmera Housing Corporation [2010] 326 ITR 642 (SC) the Supreme Court held that disclosure of full and true

³ [2014] 27 GSTR 484

particulars of undisclosed income and the manner in which such income was derived are the pre-requisites for a valid application under section 245C(1) of the Income-tax Act. It was observed that the Settlement Commission has to record its satisfaction on this aspect and without recording of the satisfaction it will not have jurisdiction to pass any order on the matter covered by the application. This is the position prior to the amendment to Chapter XIX-A of the Income-tax Act with effect from June 1, 2007. The position under the Central Excise Act prior to the amendment made with effect from June 1, 2007 to Chapter V of the Act was considered by a Division Bench of this court in CCE v. Woods P. Ltd. in W. P. (C) No. 21055 of 2005. The judgment was rendered on November 10, 2005 CCE v. True Woods P. Ltd. (2006) 199 ELT 388 (Delhi). In that case it was held by this court that the requirement of a full and true disclosure is a continuing requirement that needs to be satisfied from the beginning of the proceedings till the conclusion thereof and if at any stage of the proceedings it appears to the Settlement Commission that the disclosure made by the assessee was incomplete or untrue, the settlement application can be thrown out. The position is no different under Section 32E(1) of the Central Excise Act even after the amendment made with effect from June 1, 2007.

The requirement continues to be that the application shall contain a full and true disclosure of the duty liability which has not been disclosed before the Central excise officer and the manner in which such liability was derived. It is true that on and after June 1, 2007 the Settlement Commission need not call for a report from the Commissioner before the settlement application is allowed to be proceeded with. However, the requirement that the settlement application shall contain a full and true disclosure continues to remain in the statute and it is, therefore, the duty of the Settlement Commission to examine this aspect by itself on the basis of explanation provided by the applicant.

The majority opinion has taken a view that though in principle, a case involving deep or intensive investigation into complex issues of facts of law is not to be brought within the purview of the Settlement

Commission, the present case does not involve such an adjudication and, therefore, can be settled. They have preferred to look upon the need for testing a statement recorded under section 14 of the Act as one which does not involve any complexity of facts or law and that merely because the statements may have to be tested by cross-examination, either at the instance of the applicant or at the instance of the Revenue, it cannot be stated that the case is complex. The dissenting member has, however, met this finding effectively by pointing out in the quote extracted earlier that this is not the complete picture on the basis of which complexity of facts and law and the need for adjudication was put forth by the Revenue. He has noticed that both the Revenue and the assessee are to be accorded the right of cross-examination and this procedure is not conducive for a settlement of the case and it properly belongs to the domain of adjudication by the adjudicating authority.

We are inclined to agree with this view taken by the dissenting member as against the rather simplistic view of the issue taken by the majority. The majority of the Settlement Commission have expressed the opinion that "the question of adjudication would arise where there is a huge gap between the duty demanded in the show-cause notice and the amount of duty admitted by the applicant and the applicant does not accept the amount of duty, which appears to the Commissioner, as payable by him, on looking at the evidence produced by both sides during the proceedings before the Commission". The amount of duty admitted by the applicant is only Rs. 81,75,625 along with the interest at Rs. 66,91,245 as against the demand of Rs. 245.65 crores raised in the show-cause notice. Therefore, even on the very opinion expressed by the majority, it would be a question for adjudication and not settlement. In fact, the Division Bench of this court in the case of Director General of Central Excise Intelligence v. Murarilal Harishchandra Jaiswal P. Ltd. [2010] 5 GSTR 403 (Delhi) have expressed the view that in a case where at the admission stage the case shows a high degree of variation between the facts and contentions of both the parties before the Settlement Commission, then in such a case the Settlement Commission should not even admit the application because it is clear

that the Department of customs does not accept the duty which an applicant feels is payable by him and therefore the Settlement Commission would be bound to enquire into highly disputed question of facts. The Division Bench, of course, excluded from the sweep of their observations cases of astronomical demands raised by the Revenue which may be totally unsupported even by the admitted facts appearing from the records.

In **VELA SMELTERS PVT. LTD. V. CUSTOMS AND CENTRAL EXCISE SETTLEMENT COMMISSION**⁴, the relevant portion is extracted hereunder:

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

⁴ [2015] 49 GST (Madras)

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.

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.

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 availment 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 utilization of raw materials not physically verified.

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 utilized 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.

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.

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.

The case of Ran India Steels (P.) 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.

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.

In SAURASHTRA CEMENTS LTD. V. COMMISSIONER OF CUSTOMS⁵, the relevant portion is extracted hereunder:

It is well-settled that no finality clause in a statute would oust the jurisdiction of the High Court under Article 226 of the Constitution or that of the Supreme Court under Article 32 or 136 of the Constitution. Nevertheless, the parameters of judicial intervention in a decision rendered by an administrative Tribunal are well-recognized and well laid down Ordinarily, the court would, interfere if the Tribunal has acted-without-jurisdiction or failed to exercise jurisdiction vested in it or the decision of-the-Tribunal is wholly arbitrary perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations.

When examining the scope of judicial review in relation to a decision of Settlement Commission, we must further bear in mind that

⁵ [2014] 46 GST 543

the Settlement Commission is set up under the statute for settlement of revenue claims. Its decision is given finality and it also has power to grant immunity from prosecution, of course, subject to satisfaction of certain conditions. The scope of court's inquiry against the decision of the Settlement Commission, therefore, is necessarily very narrow. The Apex Court in the case of State of UP. v. Johri Mal [2004] 4 SCC 714 observed that the scope and extent of power of judicial review of the High Court under Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative.

Despite such narrow confines of judicial review of the decision of the Settlement Commission, is undeniable that the jurisdiction under Article 226 of the Constitution is not totally ousted. In a given situation if the Settlement Commission has taken into consideration irrelevant facts and such consideration has gone and prejudice to the party then narrow confines of the judicial review, interference would still be open.

In **UNION OF INDIA V. MOHIT MINERALS (P) LTD.**⁶, the relevant portion is extracted hereunder:

127. The term “recipient” of a supply of service has been exhaustively defined by Section 2(93) of the CGST Act:

“2. (93) “recipient” of supply of goods or services or both, means—

(a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or

⁶ (2022) 10 SCC 700

made available, or to whom possession or use of the goods is given or made available; and

(c) Where no consideration is payable for the supply of a service, the person to whom the service is rendered,

And any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;”

Thus, the language employed in Section 2(93)(a) of the CGST Act clearly stipulates that when a consideration is payable for the supply of services, the recipient would mean the person who is liable to pay that consideration. However, when no consideration is payable for the supply of a service, Section 2(93)(c) states that the recipient shall be the person to whom the service is rendered. Further, Section 2(93) provides that “any reference to a person to whom supply is made shall be construed as a reference to the recipient”. Hence, where the statute refers to a person to whom a supply is made, it has to be construed as a reference to the recipient of service.

In **VINAY WIRE & POLY PRODUCT (P.) LTD. V. DIRECTOR GENERAL OF CENTRAL EXCISE**⁷, the relevant portion is extracted hereunder:

The first contention is that the Settlement Commission could have sent the case back to the adjudicating authority only if it was of the opinion that any person who made an application for settlement under section 32-E did not co-operate with the Settlement Commission.

As noticed hereinabove, under sub-section (5) of section 32-F, the Settlement Commission, after examination of the records and the report of the Commissioner of Central Excise and the report, if any, of

⁷ [2015] 30 GSTR 213

the Commissioner (Investigation) and after giving opportunity to the applicant and to the Commissioner of Central Excise to be heard, has to pass such order as it thinks fit on the matters covered by the application. Under sub-section (8) of section 32-5, the order passed by the Settlement Commission under sub-section (5) shall provide for the terms of the settlement and in case of rejection contain reasons therefore. Thus, on a plain reading of the provisions of sub-sections (5) and (8) of section 32-F, it is clear that the Settlement Commission has to pass such order as it thinks fit and it has the power to not only provide for the terms of the settlement but also to reject the application in which eventuality, reasons have to be recorded. The power conferred on the Settlement Commission under section 32-L to send the case back to the Central Excise Officer is in addition to the aforesaid powers of the Settlement Commission. Such a power is given to the Settlement Commission under section 32-L, if it finds that any person who has made an application for settlement under section 32-E, has not co-operated with the Settlement Commission in the proceedings before it. This power given to the Settlement Commission under section 32-L does not and cannot take away the powers conferred the Settlement Commission under sub-sections (5) and (8) of section 32-F. It is, therefore, not possible for the Court to accept the first submission of learned counsel for the petitioners.

The second submission of learned counsel for the petitioners is that once the application filed under section 32-F has been allowed to be proceeded with under sub-section (1) of section 32-F. the Settlement Commission has to settle the case by passing an appropriate order under sub-sections (5) and (8) of Section C32-F and it cannot reject the application even if it finds that the application does not contain a full and true disclosure of the duty liability or that the case involves complex questions of fact which require detailed appreciation of evidence.

This submission of learned counsel for the petitioners cannot also be accepted. Under sub-section (1) of section 32-E, the applicant is required to make a full and true disclosure of his duty liability and merely because the Settlement Commission has, after considering the explanation offered by the applicant, allowed the application to be

proceeded with under sub-section (1) of section 32-F, will not mean that the Settlement Commission has accepted that the applicant has section (1) of section 32-F, will his duty liability because that is not the stage to make such an inquiry. It is clear from sub-section (3) of section 32-F that it is only when an application is allowed to be proceeded with that the Settlement Commission shall call for a report along with the records from the Commissioner of Central Excise having jurisdiction. It is after examination of the records and the report of the Commissioner of Central Excise that the Settlement Commission, after giving an opportunity to the applicant and to the Commissioner of Central Excise to be heard, is required to pass an order as it thinks fit under sub-section (5) on the matters covered by the application. It cannot, therefore, be asserted that once the application filed under sub-section (1) of section 32-E has been allowed to be proceeded with under sub-section (3) of section 32-F, the Settlement Commission has necessarily to make a settlement. If that was so, then in that event power would not have been conferred on the Settlement Commission under sub-section (8) of section 32-F to reject the application.

The third submission of learned counsel for the petitioners is about the mala fides of the officers of the department.

It is sought to be asserted that since a complaint had been filed under section 200 of the Code of Criminal Procedure in which charges had been framed on 10 December 2013, the officers, with a mala fide intention made attempts to ensure that the case was not settled. The officers have not been impleaded by name as party respondents and even otherwise the allegations are very vague and have not been substantiated.

The last submission is that the Settlement Commission should have settled the dispute even if complex questions of facts were involved and should not have sent the matter back to the adjudicating authority.

This submission cannot also be accepted. The Settlement Commission has given good and cogent reasons for sending the case back to the adjudicating authority. The Settlement Commission

noticed that the applicants had not accepted a substantial part of the duty liability and had in fact contested the evidence collected by Revenue as being fabricated and tampered with. It also noticed that the Revenue had given reasons substantiate its position regarding the investigation as well as the quantification of duty liability. In such situation, the Settlement Commission thought it appropriate, particularly when the applicants had not made full and true disclosure and that complex questions of fact, which required appreciation of evidence, required to be settled through adjudication. A fair amount of discretion has to be given to the Settlement Commission in cases where matters are placed before it for settlement keeping in mind the well settled principle that settlement is not akin to adjudication. Unless it is established that the discretion has exercised in an arbitrary or perverse manner or that it is not based on relevant considerations or has taken consideration irrelevant matters, Courts will not interfere in the exercise of such discretion by the Settlement Commission under Article 226 of the Constitution.

In COLLECTOR OF CENTRAL EXCISE V. PRADYUMNA STEEL

LTD.⁸, the relevant portion is extracted hereunder:

An application for rectification was made by the Department to the tribunal for rectification of its order dated 23/6/1987 deciding the appeal. In the main order, the only relevant part is contained in para 4 thereof, with which alone the other member of the bench expressed his concurrence. In that part of the order, it was held that the provision mentioned in the show-cause notice being inapplicable, the show cause notice was invalid and the correct provision to show-cause could not be seen to support the validity of the notice. The application for rectification made by the Department was on the ground that the mere mention of an incorrect provision of law in the show cause notice was not sufficient to invalidate the same and a decision was relied on in support of this proposition to make out the

⁸ (2003) 9 SCC 234

ground of an error apparent on the face of the order. This application has been rejected by the tribunal. Hence, this appeal by special leave.

It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the tribunals order dated 23/6/1987. Rejection of the application for rectification by the tribunal was, therefore, contrary to law.

25. It is an admitted fact that the above judgments clearly indicate that full and true disclosure is mandatory in settlement proceedings and the Settlement Commission may reject an application at any stage if such disclosure is absent, even after allowing it to proceed. Mere reference to a wrong statutory provision does not vitiate proceedings if the authority otherwise has the power.

26. It is pertinent to mention here that the Settlement Commission rejected the application under Section 32E on the ground that the petitioner had not made a full and true disclosure of its duty liability or its *modus operandi*. Though the petitioner admitted certain additional duty liability, the Commission found that the actual amount of unaccounted goods could not be pinpointed, alleged gap in accounting of

production was not satisfactorily explained, no clear evidence was furnished regarding unaccounted scrap, the admission made by affidavit was not supported by documentary records and the manner in which the additional duty liability was derived was not properly disclosed. Hence, the Commission held that the statutory requirement of full and true disclosure was not satisfied and dismissed the settlement application.

27. Considering the nature and circumstances of the case, the Settlement Commission took note of the complexity of the investigation as reflected in the Show Cause Notice. The notice disclosed that the Department had relied upon several materials, including excess power consumption, Procurement and consumption of raw materials, the pattern of accounting maintained by the unit and the alleged clandestine clearance of finished goods.

28. The Commission observed that the applicant had failed to effectively rebut these allegations. Instead of furnishing a comprehensive explanation supported by records, the applicant admitted only a limited additional duty liability, which was not

correlated with the data relating to raw material receipts, electricity consumption, or production records. Such partial admission, according to the Commission, was inconsistent with the materials available on record.

29. Learned counsel for the petitioner further contended that power consumption should be determinative of actual production, which was also considered and rejected by the Commission. The Commission held that the issue required a detailed factual examination involving technical and documentary scrutiny, which could appropriately be undertaken only in regular adjudication proceedings and not in summary settlement proceedings under Section 32E of the Central Excise Act, 1944.

30. The Commission further concluded that the applicant had not satisfied the mandatory requirement of making a full and true disclosure of duty liability as contemplated under Section 32E. Though the petitioner had admitted certain additional duty, such admission was not supported by any documentary evidence showing actual production, details of clearance of M.S.

ingots, runners and risers, records relating to procurement and consumption of raw materials or a clear and transparent method of computation of the admitted liability.

31. The contention of the petitioner that the Commission ought to have first called for a report from the Commissioner of Customs and Central Excise was also addressed. It was held that the Settlement Commission is empowered to consider any relevant material on record and is not confined to a specific procedural sequence before determining whether the statutory requirement of full and true disclosure is satisfied.

32. On an overall assessment, the Commission found that the materials indicated large scale manufacture and removal of ingots, runners and risers without proper accounting and without payment of duty. In the absence of documentary evidence and complete disclosure of facts by the applicant, the Commission held that the statutory precondition for entertaining the settlement application was not fulfilled.

33. Accordingly, the Settlement Commission rejected the application, holding that the applicant had failed to make a full and true disclosure of its duty liability, and that the matter required detailed adjudication in regular proceedings.

34. We are of the considered opinion that there is no error committed by the learned Settlement Commission in rejecting the application and does not require any interference with the said findings nor the petitioner is entitled for any such relief and liable to be rejected.

35. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE P. SAM KOSHY

JUSTICE NARSING RAO NANDIKONDA

Date: 21.04.2026.

ujb