

Settlement Commission

Question 1

Who can make an application for settlement under Central Excise Act, 1944 ? Can such an application be withdrawn?

Answer

According to section 32E of Central Excise Act, 1944 an assessee may make an application for settlement under Central Excise Act, 1944. An assessee is defined under section 31(a) as any person who is liable to pay excise duty assessed and includes any manufacturer or producer or a registered person of a private warehouse.

Further, Section 32E (4) provides that an application once made for settlement can not be withdrawn.

Question 2

Briefly examine the provisions relating to 'Settlement Commission' under the Central Excise Act, 1944.

Answer

The various provisions in respect of Settlement Commission are briefly discussed as under:-

- (i) **Application only if a 'case' is pending** : Application to Settlement Commission can be made only when a 'case' is pending before adjudicating authority on date of application in accordance with section 32E(1) read with section 31(c) of Central Excise Act. The term '**case**' means any proceeding under Central Excise Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under section 32E(1) is made.
- (ii) **Amendment of section 32E putting certain restrictions** : No application can be made if proper records are not maintained in daily stock register or when there is clandestine removal of goods. The additional amount of duty accepted by the applicant as payable **shall be more than ₹3 lakhs**. The appellant is required to pay duty admitted to be payable by him along with interest.
- (iii) **Application for settlement only once in life time** : Section 32-O of the Central Excise Act provides that application for settlement can be made only once during the life time of the applicant. However, w.e.f. 08-05-2010 it has provided that the said provision of one time application applies only in respect of cases as specified in section 32-O(1). In other cases, repeated application can be submitted.

- (iv) **Cases involving classification or valuation can not be taken** : According to third proviso to section 32E(1) applications involving interpretation of the classification of excisable goods under Central Excise Tariff Act 1985 can not be taken by Settlement Commission.
- (v) **Application 180 days after seizure** : If any excisable goods or books of account or other documents have been seized, application for settlement can be made only 180 days after such seizure.

Question 3

The assessee's premises were searched by the Anti Evasion wing of the Excise Department. A show cause notice was issued alleging that the assessee had cleared goods without the cover of duty paid invoice and without accounting the same in the stock register. The assessee was required to pay the duty demanded with interest. The assessee filed an application before the Settlement Commission to put an end to the litigation and buy peace. The application was dismissed by the Settlement Commission on the ground that the petitioner in its petition had not admitted the entire duty liability. The assessee's contention is that Department is yet to substantiate the allegations made in the show cause notice and the dismissal order is not correct in law. Briefly discuss, with a note, whether the action of the Settlement Commission is correct in law.

Answer

The dismissal order is valid in law. In case of **Cus. & C.Ex. Settlement Commission v. Mars Therapeutics & Chem. Ltd 2008 (223) ELT 363 (AP)**, the High Court held that an application made under section 32E of the Central Excise Act, 1944 could be admitted and proceeded with only when Settlement Commission was satisfied that the applicant had made a full and true disclosure of duty liability and the manner in which same was arrived at. The assessee's plea that obligation to make truthful disclosure of duty liability would arise after application was admitted and not before and that Revenue was required to first establish the stand taken in show cause notice, was not acceptable.

HC further clarified that it was only when the Settlement Commission was satisfied that the applicant had made a full and true disclosure, the application could be admitted and proceeded with. This was for the reason that the object behind the enactment of the provisions relating to settlement was the creation of a forum for self- surrender. The Settlement Commission was constituted as an extraordinary measure for providing an opportunity to such persons to make a **true confession** and to have matters settled once for all. The **Settlement Commission was not a forum for challenging the legality of orders passed under the provisions** of the Act. The Settlement Commission, in the case on hand, having found that the applicant-petitioner did not fully satisfy the mandatory requirements of full and true disclosure of its liability, was justified in rejecting the application. Thus, the **validity of the dismissal order was upheld by the Court.**

Question 4

Discuss in brief the powers of Settlement Commission to grant immunity from prosecution.

Answer

The Settlement Commission, subject to certain provisions, has the power to grant immunity from prosecution in respect of the case covered by the settlement, if the applicant has **co-operated with the Commission** and has made **full and complete disclosure**. If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity is withdrawn [**Sub-sections (2) and (3) of section 32K of Central Excise Act 1944**].

Immunity can be granted only in respect of prosecution for any offence under the Central Excise Act and not in respect of prosecution for any offence under the Indian Penal Code or any other Central law. However, the immunity from prosecution for any offence under the Indian Penal code or any other central law can be granted in cases filed upto 31-05-2007 [**Section 32K(1)**].

If prosecution has already been launched before submission of application for settlement, the immunity cannot be granted [**Proviso to section 32K (1)**].

Question 5

An assessee made an application under section 32E of the Central Excise Act, 1944 to the settlement commission. The settlement commission was not satisfied saying that the applicant had not made a true and full disclosure of his duty liability and the manner in which same was arrived at was also not correct and rejected the application. The assessee contended that obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not before that. Is plea taken by the assessee acceptable in law? Explain in brief, with the help of a decided case law, if any.

Answer

The plea taken by the assessee is not acceptable in law. The matter of the case is similar to the case of **Customs & Central Excise Settlement Commission v. Mars Therapeutics & Chemicals Ltd. 2008 (223) ELT 363 (HC)**. The High Court held that the application made under section 32E of the Central Excise Act, 1944 could be admitted and proceeded with only when Settlement Commission is satisfied that the applicant has made true and full disclosure of the duty liability and the manner in which the same was arrived at.

The High Court clarified that the onus is on the applicant to make full and true disclosure of the duty liability and the manner in which the same was arrived at. And the Settlement Commission will admit the application only when the Commission is satisfied on the true and full disclosure of the duty liability and the manner it was arrived at. The High Court also clarified that the **object behind the enactment of the provisions of Settlement Commission is the creation of a forum of self surrender and true confession and to have matter settled once for all**. The Settlement Commission is not a forum to challenge the

legality of the order passed under the provisions of the Act. The Settlement Commission, in the case on hand, having found that the applicant did not fully satisfy the mandatory requirements of full and true disclosure of its duty liability, can reject the application.

Question 6

An assessee is barred from making an application for settlement of cases under section 32E of the Central Excise Act, 1944 in certain circumstances. Briefly enumerate these circumstances.

Answer

Under the following circumstances an assessee is barred from making an application for settlement of cases under section 32E of Central Excise Act, 1944:

- (a) Where the assessee has filed the application for settlement in respect of a case relating to him after the adjudication thereof;
- (b) If the applicant has not filed returns showing production, clearance and central excise duty paid;
- (c) Where the application has not received a show cause notice;
- (d) Where the case is pending before the Appellate Tribunal or any Court;
- (e) Where the dispute relates to interpretation of classification;
- (f) Where excisable goods/books/documents are seized, the applicant can not prefer an application for 180 days from the date of such seizure;
- (g) The amount in the application should be at least ₹ Three lakh or more. In different words, cases less than ₹ Three lakh can not be settled;
- (h) Where the applicant, while filing the application, has not deposited the additional amount of excise duty accepted by him along with interest due under section 11AA.
- (i) Where the assessee admits short levy on the goods for reasons other than misclassification, undervaluation, inapplicability of exemption notification or CEN VAT Credit.

Question 7

Briefly explain whether the following statements are correct with reference to the Central Excise Act, 1944 .

- (i) *Time limit for passing of the settlement order in terms of Section 32F(6) is nine months from the last day of the month in which the application was made and no extension of this period is permissible.*
- (ii) *An assessee cannot apply for settlement more than once under Section 32-O.*

Answer

- (i) The said statement is incorrect. The Proviso to section 32F(6) provides that Settlement Commission can extend time-limit for passing of the settlement order for a further period

18.5 Indirect Tax Laws

not exceeding three months for reasons to be recorded in writing by the Settlement Commission.

- (ii) The said statement is incorrect. Section 32-O provides that the assessee is now entitled to apply for settlement more than once.

Note: The above statement can also be answered as false on the reasoning that since an application for settlement is made under section 32E, settlement cannot be applied for under section 32-O.

Question 8

M/S Jagannath got its unit Jagannath Internationals Limited (JIL) registered after few days of the search conducted in its unit. Thereafter, it filed consolidated return with the Department for the period prior to search. After that, it filed a settlement application in respect of the proceedings issued by the Commissioner. The Settlement Commission opined that the units were registered only after the search was conducted and prior to that there was no registration and no returns as mandated by clause (a) of first proviso to section 32E(1) of the Central Excise Act, 1944 were filed. Consequently, the Commission rejected the settlement application on the ground that the application did not conform to the parameters as stipulated under section 32E(1) of the Act.

Explain, with the help of a decided case law, whether the rejection order passed by Settlement Commission is valid in law?

Answer

Yes, the rejection order passed by Settlement Commission is valid in law. The facts of the given case are similar to case of **Icon Industries v. UOI 2011 (273) E.L.T. 487 (Del.)** In the instant case, The High Court noted that certain riders have been provided in section 32E(1) of the Central Excise Act, 1944 for entertaining applications for settlement. Clause (a) of first proviso clearly lays down that unless the applicant has filed returns, showing production, clearance and Central Excise duty paid in the prescribed manner, no such application shall be entertained.

The Court referred the case of *M/s. Emerson Electric Company India Pvt. Ltd.* wherein it was held that although section 32E(1) does not refer to rule 12 of the Central Excise Rules, 2002 under which ER-1/ER-3 returns are prescribed, since the said returns contain details of excisable goods manufactured, cleared and duty paid in the prescribed manner, the said return can be deemed to be the 'return' referred to in section 32E(1). Hence, the concept of return has to be understood in context of rule 12 of the Central Excise Rules, 2002. However, in case of consolidated returns filed in the instant case, the applicant would not be able to indicate 'duty paid' in the prescribed manner (or even in any manner) and question would continue to agitate about the details of production and clearance to be filled in such belated returns.

Considering the above discussion, it rejected the submission of the petitioner that filing of consolidated return covering all the past periods would serve the purpose. Hence, it held that a consolidated return filed by the assessee after obtaining registration, but for the period prior to obtaining registration, could not be treated as a return under clause (a) of first proviso to section 32E(1).

Exercise

1. *Can all cases of disputed excise duty be settled in a Settlement Commission? If not, then enlist the exceptions.*
2. *Describe the procedure to make an application before the Settlement Commission?*
3. *Explain whether the Settlement Commission can grant immunity from prosecution and penalty/interest/fine?*
4. *Can a case be sent back by the Settlement Commission to the Central Excise Officer? Discuss.*