G N LAW ASSOCIATES

ARTICLES
2003 - 2004

www.gnlawassociates.com

IS SETTLEMENT COMMISSION ONLY FOR "REGISTERED EVADERS"?

Author: G. Natarajan, S. Jaikumar

The Customs and Central Excise Settlement Commission was constituted under the Central Excise Act, in the year 1998, after its successful history in the era of direct taxation. While recommending a body for settlement mechanism, the Direct Taxes Enquiry Committee, has observed :

> This, however, does not mean that the door for compromise with an errant tax payer should for ever remain closed. In the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. **A rigid attitude would not only inhibit a one time tax evader or an unintending defaulter from making a clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections"**

With the above background as to the history behind the establishment of the Hon'ble Settlement Commission, its functioning in the Central Excise field may now be looked into.

As per the first provisio to Section 32 E of the Central Excise Act, 1944, no application can be filed before the Settlement Commission unless,

a) the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;
b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant; and
c) the additional amount of duty accepted by the applicant in his application exceeds two lakhs rupees.

Whenever an application for settlement is filed before the Hon'ble Commission, the same would be admitted, if the above mentioned conditions are satisfied and in terms of the procedures laid down in Section 32 F of the Act. Of the above three conditions, the first one is the subject matter of this article. It is being interpreted by the Hon'ble Settlement Commission, that during the disputed period (period covered in the show cause notice), the applicant must have filed returns, showing production, clearance, etc. Filing of declarations, in case of SSI units are also accepted as being in compliance of the above said provision. It is relevant to point out here that the above mentioned condition, does not specifically lay down that the applicant must have filed returns, during the impugned period.

It is this interpretation, which practically shuts the doors of the Settlement Commission, to a Person genuinely seeking settlement of his case, with an intention to avoid protracted litigation and invocation of penal provisions. Though ignorance of law can never be a defence, it is a fact that we have not yet completely wiped off "ignorance" from our society. In many cases, if not in all, duty of excise is not paid by small manufacturers, out of sheer ignorance about their duty liability. When the department smells the rat and proceeds against them, by issue of show cause notice, many of them are willing to admit their past duty liability and comply with the levy, in future. They are only bothered about the draconian provisions of the law, empowering the officers to demand usury interest, impose equal amount of penalty and prosecute him. When such persons wish to knock the doors of the Hon'ble Settlement Commission, to their utter dismay, find that the Settlement Commission is alien to them. By imposing a condition that the applicant must have either registered or at least filed a SSI declaration, during the demand period, the Hon'ble Settlement Commission, has become a forum for "registered evaders", turning a blind eye to those, who are really in need of it.

In order to really meet the objectives of the establishment of the Settlement Commission, either

a) the Settlement Commissions shall exhibit a broad outlook and the impugned condition shall be interpreted that the applicant must be filing returns, when he makes the application before the Hon'ble Settlement Commission.
b) or the Act, be suitably amended.