

Settlement Commission endears itself.

Settlement is a novel concept in tax administration where the rule of law is given a go by in the interest of speedy settlement of dispute, avoidance of protracted litigation, providing an alternative mechanism to settle the dispute in a friendly manner, ensuring quick collection of revenue to the Government exchequer instead of locking it up in the corridors of Tribunals and Courts and what not. But, this new born child has not been nourished well and is slowly turning out to be a banished child.

Rightly or wrongly, a trend was set by the Commission in not awarding all the immunities which can be granted by it, even in deserving cases. While immunities from penalties and prosecution are granted as a matter of right, the Commission has been highly conservative in granting complete immunity from interest. In an era, where interests are waived even by the Hon'ble Supreme Court and High Courts, when the disputed taxes are paid before the issue of show cause notice, the Settlement Commission is yet to come out of its self imposed shackles in granting immunities from interest.

In its decision which is reported today, the Hon'ble Commission has observed that since the assessee has not paid the duty when it was ought to be paid and has paid it only after 2 years, it has enjoyed "financial accommodation" and hence interest of 10 % has to be paid by it. What is completely overlooked by the Commission was the basic fact that if the assessee has paid the duty, on the date when it was ought to be paid, the poor assessee would not at all land himself up before the Commission! The facts of the case is more appalling. The assessee availed cenvat credit on some goods, which are not his inputs. But, when he sold them, he paid duty. Duty was demanded only on the stock which was yet to be sold. If the officers have not knocked the doors of the assessee, the remaining duty of around Rs.30,000 would have been automatically paid back by the assessee. The another allegation is as to amortization of the value of capital goods supplied by the customers, which has not been done by the assessee, leading to a duty demand of around Rs.1.80 Lakhs. According to the Commission, by not paying he above duties, the assessee has enjoyed financial accommodation of, lo and behold, a little over Rs.2,00,000, the threshold limit to knock the doors of the Hon'ble Commission. A reading of the order would reveal that even though the assessee has told the Commission that he can still contest the demand on the basis of the Apex Court decision in the case of International Auto – 2005 – TIOL – 81 SC-CX-LB, it did not want to do so, but would prefer to "settle" the dispute.

Had the hapless assessee chosen to litigate the issue, it would have certainly got complete waiver from interest, on the strength of the catena of decisions, holding that no interest is payable, if duty is paid before the issue of show cause notice. And that is the cost of "settlement".

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