

Settlement Commission! Born in 1998, with much hype and fancy, this denarion, has grown over a period, only as a spastic child!

While its elder cousin CESTAT is busy with truck loads of cases flowing in every day, this forlorn forum has not even got its minimum ration! Why this sorrow state for this Settlement Commission? Where it went wrong? What are the bottlenecks? Does it have any future? Is there a way out so that the Commission could live upto its purpose or will it have its own burial? Whenever I appear before the Commission, seeing the inactivity surrounding, I always ponder over the above nagging questions...

First and foremost, to me, the cheapest teaser in the Act is Sec 32L of the Act (Sec 127I of the Customs Act). As per this Section, if the Commission is not admitting the application of a person, for any reason, it shall send the case back to the jurisdictional Central Excise officer, to dispose of the case. While sending back, the Commission shall also send all the materials, evidences, results, depositions and any other information placed by the applicant before the Commission. The Central Excise officer shall use all these materials while deciding the case, as if it were submitted to him.

This is the most unbecoming provision of the Settlement Commission, where the so-called "in camera" proceedings

are thrown to public eye and used against the applicant. In other words, the applicant is made to dig his own graveyard. It may be argued that, the case is sent back only because of the applicants "non-cooperation" and hence he deserves the same. Tell me, is it ethical and not a betrayal of his disclosure? The prime requirement of the Settlement Commission is " honest disclosure". It is as good as making a confession in a Church. Once a person confesses and seeks absolution, can the Church, for any reason, make the confessions public? NO LAW CAN BE SO IMMORAL OR UNETHICAL. If you don't want him, at the worst, throw him away. But using one's own confessions against him and punishing him based on such confessions, is definitely a shameful and unethical act and is highly condemnable.

Further, there is another major threat to an applicant who opts for the Settlement is in the nature of his other fiscal implications, under the Income tax, etc., which are paraphernalia implications to his accepted liability. At least, if he loses his case in an appellate forum (Tribunals, High courts or Supreme Court), and pays his liability, he can still argue with the Income Tax and Sales Tax departments that it is not his accepted liability (and hence not an accepted turnover) but has lost the case due to lack of evidence or incapacity of the counsel, whereas, in case of the Settlement Commission, it's given in a platter!

Hence it shall be codified that the proceedings of the Commission shall be proprietary to the Commission and shall not be used by any other person or agency, either if the case is settled or sent back for adjudication.

Now to the title of this piece. **SC for ST - Settlement Commission for Service Tax!**

Service Tax is the tax of the future. Most of the Service Tax disputes are now only crawling in the corridors of higher judicial fora. The unawareness and the misinterpretations prevailing in the Service Tax, among the taxmen, tax payers as well as the tax consultants, are abundant. The inclination to settle the disputes among the service providers is very evident and profound. The response to the voluntary disclosure scheme announced by the Government is also testimony to the willingness of the trade to settle their service tax disputes.

NOW THAT THE SETTLEMENT COMMISSION HAS BEEN INTRODUCED TO SERVICE TAX IN THIS BUDGET, I AM SURE THAT THIS INSTITUTION IS NO MORE A FORLORN FORUM AND A PARK FOR THE SERVICE EXTENSION SEEKERS IN THE DEPARTMENT!