

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No. 2731/2003**

% **Reserved on: 8th November, 2011**
Date of Decision: 23rd December, 2011

Union of India ...Petitioner
Through Mr. Mohan Prasaran, ASG with
Mr. S.K. Dubey and
Mr. Vivek Pipersenia, Advocates.

Versus

M/s Honda Siel Car India Limited ...Respondent
Through Mr. V. Lakshmi Kumaran,
Mr. L. Badri Narayanan and
Mr. Krishna Rao, Advocates.

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CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.

The Union of India has preferred these writ petitions impugning the final decision of the Settlement Commission vide orders dated 20th August, 2002 and 7th January, 2004.

2. As the issues involved and the questions raised are identical and similar, we are disposing of these writ petitions by this common decision. For the sake of convenience, we have referred to and treated the Writ Petition (Civil) No. 2731/2003 as the lead case.

3. The respondent no. 1 in the present cases, Honda Siel Car India Limited, was the applicant before the Settlement Commission. The said respondent is a joint venture company of M/s Honda Motors Company, Japan (Honda Japan, for short) and M/s Siel India Limited, the Indian Partner. The equity of the respondent no.1 is held by Honda Japan and Siel in the ratio of 90% and 10% respectively.

4. M/s Siel India Ltd. entered into an agreement dated 12th September, 1995, with Honda, Japan for manufacture and sale of automobiles with technical know-how/technical information etc. from them. Foreign Investment Promotion Board (FIPB, for short) granted approval to the said joint venture vide letter dated 13th November, 1995. Subsequently, Honda Japan and the respondent No.1 entered into a Technical Collaboration Agreement (TCA, for short) and a Memorandum on Exchange of Technicians both dated 21st May, 1996.

5. The respondent No.1 had imported into India drawings, plans, designs, manuals including CD roms, video cassettes etc. (drawing etc. for short) under the TCA agreement from Honda, Japan. The dispute pertains to drawings etc. which were imported on or before 1st March, 1997. These imported drawings etc. were cleared and custom duty was paid as per declarations made computing the import value as equivalent to the cost of the physical tangible material i.e. cost of paper, printing, cost of video cassette or CD etc. without including the value of the technical information, which was embedded in the drawings etc.

6. The petitioner issued two show cause notices to the respondent No.1 that the imported drawings etc. were grossly undervalued and the lump sum fee of US\$ 30.5 million (equivalent to about Rs. 120 crores @ Rs.40 per dollar) reflects their true value. Thus, the custom duty on the drawings etc. had been undervalued because of the false and wrong declarations at the time of import. The petitioner had conducted search in the premises of the respondent No.1 to collect and obtain important information. In the first show cause notice dated 17th November, 2000, the respondent no.1 was asked to show cause as under:-

“(i) Transaction value should not be rejected and valuation should not be made in terms of Section 14(1) of the Custom Act 1962 read with Rule 8(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988.

(ii) Commercial value in CIF of Rs.7,08,97,829/- and Rs.8,26,827/- (total Rs.15,35,85,656/-) should not be taken for the drawings covered by the Bills of Entry No.

930554 dated 6.11.95 and No. 935034 dated 23.11.95, in place of declared CIF value of Rs.64,880/- and Rs.34,148/- respectively.

(iii) The drawings of value of Rs.15,35,85,656/- covered by Bills of Entry No. 930554 dated 6.11.95 and No. 935034 dated 23.11.95 should not be held liable for confiscation under section 111(m) of the Customs Act, 1962 for mis-declaration of commercial value and description of goods.

(iv) The differential duty of Rs.87,40,334/- should not be recovered under section 28 of the Customs Act, 1962, after adjusting amounting to Rs.3,00,00,000/- against total demand of Rs.3,87,40,334/-, as Rs.3,00,00,000/- has already been realized provisionally.

(v) A penalty of Rs.3,87,40,334/- equal to the total differential duty may not be recovered under section 114-A of the Customs Act, 1962 for willful suppression of fact.

(vi) Further penal action against the importers, M/s Shriram Honda Power Equipment Ltd. and M/s HSCIL, as above, President Shri Teruo Fujisaki, Vice-President and Shri Nandan Kumar Goila and Finance Director Shri Hironobui Goto under section 112 of the Customs Act, 1962, may not be taken for the misdeclaration, misleading and suppression of facts.

(vii) Interest in terms of section 28-AB of the Customs Act, 1962, may not be recovered.”

7. In the second show cause notice dated 16th March, 2001, the respondent No.1 was asked to show cause as under:-

“(i) take the commercial value as Rs.3,47,375,735/- CIF as against the declared nominal value;

(ii) demand differential duty of Rs.10,19,98,137/- under Section 28 of the Act;

(iii) hold the consignments liable for confiscation under Section 111(m) of the Act;

(iv) impose penalty under Section 114A of the Act;

(v) demand interest under Section 28AB of the Act; and

- (vi) impose penalty on S/Sh. Teruo Fujisaki, Nandankumar Goila and Hironbu Golo, President, Vice President and Finance Director respectively of the applicant firm.”

8. During the course of investigation, the respondent No.1 vide their letter dated 15th April, 1997 had given break-up of the lump sum fee of US \$ 30.5 million paid to Honda, Japan under the TCA. It was/is the contention of the respondent No. 1 that the lump sum fee can be divided into six parts and only three parts can be taken into consideration for computing the value of the imported drawings etc. This letter, the contention of the respondent no. 1 and the assertion of the petitioner are discussed below.

9. While the show cause notices were pending consideration, the respondent No.1 approached the Settlement Commission by way of two applications dated 15th May, 2001 and 26th November, 2001. The petitioner is aggrieved by the two impugned orders dated 20th August, 2002 and 7th January, 2004, by which the Settlement Commission has disposed of these applications.

10. The operative portion and the directions given by the Settlement Commission vide order dated 20th August, 2002 read as under:-

“21. In view of our findings, the case is ordered to be settled in following terms:-

- (i) The correct duty liability of the applicant in this case is **Rs.32,63,032/-** which has been paid by them by appropriating from the deposit of **Rs.3 crores** made during

the investigations. Revenue shall consider the return of the balance amount of deposit in accordance with the Law.

(ii) The applicant is granted immunity for offences under the Customs Act, 1962 read with the IPC in respect of the case covered under the application and the SCN in question.

(iii) The applicant is granted immunity from fine and penalty under the Customs Act, 1962 in respect of the case covered by the application and the SCN in question.

(iv) No interest in chargeable under Section 28AB of the Act as the duty in this case became payable before the said Section was inserted in the Customs Act by Finance (no. 2) Act, 1996. Further, the importer made a large deposit during the investigation itself, far in excess of their correct duty liability.

11. The operative portion and the directions given by order dated 7th

January, 2004 read as under:-

“42. Taking all the above into account, the case is settled in terms of Section 127C(7) of the Act on the following terms and conditions:

(i) The case is settled for a duty amount of Rs.84,00,257/-. The said amount has already been paid. No further amount towards duty is due from the applicant.

(ii) The applicant is to pay simple interest @ 10% per annum in terms of Section 28AB of the Act. The applicant shall calculate the interest amount, get it verified from the Revenue and after getting the confirmation, pay the same within 30 days of receipt of this order. Immunity from payment of interest in excess of 10% is granted.

(iii) Immunity from confiscation of the goods is granted.

(iv) Immunity from penalty and prosecution under the provisions of the Customs Act is granted to the applicant and S/Sh. Teruo Fujisaki, Nandan Kumar Goila and Hironbu Golo, President, Vice-President and Finance Director respectively of the applicant company.”

12. Broadly two contentions have been raised by the petitioners.

Firstly, the lump sum fee of US\$ 30.5 million cannot be bifurcated and

constitutes the true and correct value of the imported drawing etc. The second contention relates to jurisdiction of the Settlement Commission.

13. By order dated 19th December, 2006, interim applications filed by respondent No.1 were decided by this Court and directions were issued to refund the payments made by the respondent No.1 along with interest. This order was made subject matter of challenge before the Supreme Court and the appeals stand partly allowed. It was held by the Supreme Court that the High Court had erred in directing refund of the Rs.3 crores (approximately) as an important question of law of the jurisdiction of Settlement Commission was involved. It was also observed that the High Court had erred in giving direction to the officers of the Customs Department to pay penalty by way of interest to the tune of 15%. Respondent No. 1 was directed to furnish a bank guarantee for a sum of Rs.3 crores. Directions were also given to the High Court to dispose of the writ petitions expeditiously. Directions to recover Rs.65 lakhs from the officers was set aside. Similarly the directions to initiate disciplinary proceedings against the officers were directed to remain suspended.

14. Thereafter, on 6th November, 2007, the following order was passed:-

“Mr. Parasaran, who is appearing for the Customs Department in this matter, states that the petitioners in this case do not have a strong case

on the issue with regard to the jurisdiction of the Settlement Commission to entertain the settlement petition, but he would like to press the petition on the merits of the order passed by the Settlement Commission. However, we have to examine how far this Court can go into merits of the order passed by the Settlement Commission under the power of judicial review. Be that as it may, the petitioners shall file synopsis of arguments enclosing therewith copies of judgments which they wish to rely upon with advance copy to the counsel for the respondent within three weeks, who shall file their revised synopsis of arguments within two weeks thereafter.

List on 15th January, 2008 for final arguments at 2.30 P.M.”

15. It is clear from the said order that the Union of India has given up their contention regarding jurisdiction of the Settlement Commission to entertain the settlement applications.

16. During the course of hearing before us, Mr. Mohan Parasaran, ASG, did not raise/press this issue.

17. The imports in question were made in the year 1996 and before 1st March, 1997. It is an accepted case of both parties that imports of drawings etc. made after 1st March, 1997, are exempted and not dutiable. Whether the technical data and information recorded in the form of drawings etc. are goods capable of being valued other than the value assigned to the material on which they were copied was ambiguous and debatable at the time of import. This controversy was put to rest by the Supreme Court in *Associated Cement Companies Ltd.*

vs. Commissioner of Customs, 2001 (4) SCC 593. Paragraphs 27, 33-34, 41-42, and 44 of this judgment are relevant and are reproduced below:-

“27. According to Section 12 of the Customs Act, duty is payable on goods imported into India. The word ‘goods’ has been defined in Section 2(22) of the Customs Act and it includes in clause (c) ‘baggage’ and clause (e) ‘any other kind of movable property’. It is clear from a mere reading of the said provision that any movable article brought into India by a passenger as part of his baggage can make him liable to pay customs duty as per the Customs Tariff Act. An item which does not fall within clauses (a), (b), (c) or (d) of Section 2(22) will be regarded as coming under Section 2(22)(e). Even though the definition of the goods purports to be an inclusive one, in effect it is so worded that all tangible movable articles will be the goods for the purposes of the Act by residuary clause (e) of Section 2(22). Whether movable article comes as a part of a baggage, or is imported into the country by any other manner, for the purpose of the Customs Act, the provision of Section 12 would be attracted. Any media whether in the form of books or computer disks or cassettes which contain information technology or ideas would necessarily be regarded as goods under the aforesaid provisions of the Customs Act. These items are movable goods and would be covered by Section 2(22)(e) of the Customs Act. (SCC pp. 609-10, para 27)

* * *

33. It is true that what the appellants had wanted was technical advice on information technology. Payment was to be made for this intangible asset. But the moment the information or advice is put on a media, whether paper or diskettes or any other thing, that what is supplied becomes a chattel. It is in respect of the drawings, designs etc. which are received that payment is made to the foreign collaborators. It is these papers or diskettes etc. containing the technological advice, which are paid for and used. The foreign collaborators part with them in lieu of money. It is, therefore, sold by them as chattel for use by the Indian importer. The drawings, designs, manuals etc. so received are goods on which customs duty could be levied.

34. The decision of *Winter v. Putnam case* is also of no help to the appellants as in that case it was the quality of information regarding mushrooms which was not regarded as a product even though the encyclopaedia containing the information was regarded as goods. Here we are not concerned with the quality of information given to the appellants. The question is whether the papers or diskettes etc. containing advice and/or information are

goods for the purpose of the Customs Act. The answer, in our view, is in the affirmative.

* * *

41. Significantly Chapter 49 also includes items which have substantial intellectual value as opposed to the value of the paper on which it is put. Newspapers, periodicals, journals, dictionaries etc. are to be found in Chapter 49 wherein maps, plans and other similar items are also included, while Chapter 97 talks about original engravings. It is clear that intellectual property when put on a media would be regarded as an article on the total value of which customs duty is payable.

42. To put it differently, the legislative intent can easily be gathered by reference to the Customs Valuation Rules and the specific entries in the Customs Tariff Act. The value of an encyclopaedia or a dictionary or a magazine is not only the value of the paper. The value of the paper is in fact negligible as compared to the value or price of an encyclopaedia. Therefore, the intellectual input in such items greatly enhances the value of the paper and ink in the aforesaid examples. This means that the charge of a duty is on the final product, whether it be the encyclopaedia or the engineering or architectural drawings or any manual.

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44. It is a misconception to contend that what is being taxed is intellectual input. What is being taxed under the Customs Act read with the Customs Tariff Act and the Customs Valuation Rules is not the input alone but goods whose value has been enhanced by the said inputs. The final product at the time of import is either the magazine or the encyclopaedia or the engineering drawings as the case may be. There is no scope for splitting the engineering drawing or the encyclopaedia into intellectual input on the one hand and the paper on which it is scribed on the other. For example, paintings are also to be taxed. Valuable paintings are worth millions. A painting or a portrait may be specially commissioned or an article may be tailor-made. This aspect is irrelevant since what is taxed is the final product as defined and it will be an absurdity to contend that the value for the purposes of duty ought to be the cost of the canvas and the oil paint even though the composite product, i.e., the painting, is worth millions.”

18. The view expressed in the said case was followed and elucidated by the Supreme Court in *Commissioner of Customs vs. Parasrampuriah Synthetic Ltd.*, (2001) 9 SCC 74 (as clarified in *Commissioner of Customs Vs. Gujarat Perstorp Electronics Ltd.*, (2005) 7 SCC 118) and

Tata Consultancy Services Vs. State of Andhra Pradesh, (2005) 1 SCC 308.

19. We are satisfied that the Settlement Commission had jurisdiction and the condition of full and true disclosure of duty liability stipulated in Section 127B of the Act is not violated and infringed in the present case.

Reasons are as under:-

(i) The question of valuation was debatable issue at the time of imports in question and was subsequently settled by the decisions of the Supreme Court.

(ii) Even after the aforesaid decisions, the value to be assigned to imported drawings etc. was matter of debate and required adjudication. Settlement in such cases is preferable and is certainly not a barred or prohibited.

(iii) The Settlement Commission had passed orders dated 17th October 2001 and 27th March 2002 admitting applications after recording that the conditions stated in Section 127B were satisfied. These orders were not made subject matter of challenge. The petitioner have filed the present writ petitions only after the Settlement Commission passed the final orders dated 20th August, 2002 and 7th January, 2004.

(iv) It can be argued that during the course of settlement proceedings also, the respondent No.1 should have acted fairly and cooperated. Spirit of settlement and probity on the part of the respondent No.1 was

required. There are no adverse findings or observations in the orders that are impugned before us. Merely because the Settlement Commission has accepted the stand of the respondent No.1 cannot be a ground to dislodge and throw out the respondent No.1 by holding that they have violated Section 127B of the Act.

(v) Requirement of Section 127B that an applicant should disclose fully and truly the duty liability was not violated merely because the Settlement Commission has accepted the bifurcation given by the respondent No.1 in their letter dated 15th April, 1999 and not accepted the stand of the petitioner that US\$ 30.5 million represents the value of imported drawings etc. Further, the defence and contention of respondent no.1 on import value, the bifurcation of consideration of US\$ 30.5 million into different heads and attribution of a part thereof towards imported drawings etc., does not establish or show that there was failure to fully or truly disclose duty liability. The figures given in the letter are not disputed, but the question is whether such bifurcation is permissible or relevant for determination of value of the imported drawings etc. This is a matter of perception/understanding and is certainly debatable, and it cannot be equated with failure or omission to make full and true disclosure of the duty liability. Question of valuation of imported drawings etc., is not free from difficulty and a certain amount of guesswork and estimation is involved in the present case.

20. This brings us to the core issue raised in the present case, whether this Court in exercise of jurisdiction under Article 226 and 227 of the Constitution, should interfere with the final order and directions passed by the Settlement Commission. This Court accepts that it has limited jurisdiction and can interfere in case there is any error in the decision making process and not reflect and adjudicate the merits of the decision itself. The said terms are well understood and define the scope and confines of jurisdiction of a writ Court. The said terms/expression has been interpreted and elucidated by the Supreme Court to mean that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. The High Court interferes with orders of subordinate courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby. In the exercise of the power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence. Exercise of writ jurisdiction is justified and required where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied. In regard to a finding of fact recorded by a tribunal, a writ can be issued

only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law.

21. The contention of the petitioners is that the decisions of the Settlement Commission are flawed, bad and is a result of errors in the decision making process for the following reasons:-

(a) TCA agreement does not postulate and permit bifurcation and the lump sum fee of US\$ 30.5 million represents the true and correct value of the imported drawings.

(b) Expenses on personnel are not part of lump sum fee payable under the TCA and were separately payable under the Memorandum of Exchange of Technicians dated 21st May, 1996.

(c) Rule 9(2)(e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (CVR, for short) is applicable.

(d) The conclusions and the valuation of the imported drawings etc. made by the Settlement Commission is otherwise *per se* based on surmises and conjectures.

22. Section 14 of the Act states that value of imported goods is deemed to be the price at which such or like goods are ordinarily sold, and offered for sale, or delivered at the time of sale or importation. The price is determined on arms' length basis i.e. the seller and buyer have

no interest in the business of each other and the price is sole consideration for sale or offer for sale. As noticed above, respondent No.1 and Honda, Japan are closely associated as the latter has 90% share holding in the respondent No.1-company. In Section 14(1) of the Act, there is reference to 'deemed price' or the 'transactional value of the goods', which is the deemed price and is required to be determined in accordance with the CVR. Referring to different rules in the CVR and different methods of valuation stipulated therein, in *Commissioner of Customs vs. Messrs Ferodo India Pvt. Ltd.*, (2008) 4 SCC 563, it has been held as under:-

“11. Rule 3 of the CVR, 1988 inter alia provides for six methods of determination of the price of imported goods. The six methods are:

Method 1 ' Transaction Value (Rule 4)

The primary basis for customs duty is "transaction value", as defined in rule 4(1) of CVR, 1988, which is the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of rule 9. Adjustments to the price actually paid or payable are required in cases where certain specific elements which form part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Rule 9 embodies the principle of attribution of certain costs to the price of the imported goods. Rule 9 also provides for inclusion of certain considerations which passes from the buyer to the supplier in the form of specified goods or services, other than in the form of money.

Method 2 ' TV of Identical Goods (Rule 5)

Rule 5 through rule 7A provides for four alternate methods of determining the customs value whenever such value cannot be decided under the provisions of rule 4.

Under Rule 5, the value of imported goods shall be the transactional value of identical goods sold for export to India if the goods are:

(i) the same in all respects (including physical characteristics, quality and

reputation);

(ii) produced in the same country as the goods being valued; and

(iii) produced by the producer of the goods being valued.

Method 3 'TV of Similar Goods (Rule 6):

Under this method, the value of imported goods is the transaction value of similar goods if:

(i) goods closely resemble the goods being valued in terms of components, materials and characteristics;

(ii) goods which are capable of performing the same functions and are commercially interchangeable with the goods being valued;

(iii) goods which are produced in the same country and by the producer of the goods being valued.

Rule 6A provides for determination of value when transaction value cannot be determined under rules 4, 5 and 6. In such cases, the following two methods are envisaged on the request of the importer and subject to the approval of the proper officer, i.e., under rules 7 and 7A.

Method 4 'Deductive Value (Rule 7)

Rule 7 provides that when customs value cannot be determined on the basis of transaction value of the imported goods or identical or similar goods, the value of the imported goods shall be based on the unit price at which the imported goods or identical goods or similar goods are sold to an unrelated buyer in the country of importation in the greatest aggregate quantity.

The starting point in calculating the deductive value is the same price in the country of importation. Various deductions are necessary to reduce that price to the relevant customs value. These deductions are:

(i) commissions usually paid or agreed to be paid, profits and general expenses added in connection with sales;

(ii) usual transport cost and corresponding insurance are to be deducted from the price of the goods when these costs are usually incurred within the country of importation;

(iii) the **customs duty** and other national taxes payable in the country of importation by reason of importation;

(iv) value added by further processing, wherever applicable.

Method 5 ' Computed Value (Rule 7A)

Computed value determines the customs value on the basis of the cost of production of the goods being valued plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind. It is, therefore, the total sum of production cost and profit and general expenses.

Method 6 ' Fall-Back Method (Rule 8)

When the customs value cannot be determined under any of the previous methods, it has to be determined using reasonable means consistent with the principles and general provisions of the CVR, 1988 and Section 14(1) of the 1962 Act and on the basis of data available in India. To the great extent possible, this method is based on previously determined values and methods with a reasonable degree of flexibility in their application.”

23. On the question, which method should be adopted for valuation of the imported drawing etc., the Settlement Commission has observed and held as under:-

“The question of valuation of the drawings, designs etc., is no longer *res interga*. In *Associated Cement Companies Ltd. Vs. Commissioner of Customs*, 2001 (128) ELT 21(SC), the Apex Court have held that the value of drawings, designs etc. has to be on the basis of transaction value (i.e.) including the cost of intellectual component. Relying on the same judgment, the Advocate for the applicant has contended that the Apex Court have ruled in the said judgment that in the absence of any specific value for the designs, drawings, etc., 1/3 of the total contract value has to be adopted. The Ld. Advocate of the Revenue is correct in pointing out that the Apex Court has not ruled so. In para 57 of the said judgment, the Apex Court have observed that they were informed that some of the Appellants before them had themselves volunteered that about 1/3 of the total amount payable to the collaborator should be taken as a figure representing transaction value of the technical material imported. In fact, in the same judgment, the Apex Court have held that the value has to be arrived at in terms of the contract, vide para 48 of the judgment. While on this question, it is also to be mentioned for the sake of record that Sh. Lakshmi kumaran submitted that the above judgment has been referred to a Larger bench vide the judgment of the Apex in *Tata Consultancy Service Vs. State of Andhra Pradesh* 2001 (129) ELT 3 (SC), which was disputed by Sh. Bajpai, Ld. Advocate for Revenue.

Anyhow, this controversy is academic since in this case the value is being arrived at in terms of TCA, and in terms of transaction value and not on any notional basis.”

24. We have noticed the aforesaid paragraph as it was contended by Mr. V. Lakshmi Kumaran, Advocate appearing on behalf of the respondent No.1 that in *Associated Cement Company* (supra), the Supreme Court has held that 1/3 of the amount payable by the importer should be taken as a figure representing the technical value of the imported material. The said contention was rightly rejected by the Settlement Commission in view of the TCA in the present case. This is not a case of a composite/multiple contract.

25. In order to decide the aforesaid contentions, we have to refer to clauses of the TCA and the break-up given in the letter dated 15th April, 1999.

26. TCA agreement dated 21st May, 1996 defines the term “knowhow and technical information” in clauses 6 and 7 of Article 1. The said clauses read as under:-

“6. The term “Know-How” shall mean any and all secret technical information (except for the Intellectual Property Rights), whether in writing or not including but not limited to drawings, standards, specifications, material lists, process manuals and direction maps, which directly relates to the Products or the Licensed Parts themselves or is necessary for the manufacture of the Products or the Licensed Parts and which LICENSOR owns at the time of execution of this Agreement or may own from time to time during the term of this

Agreement or under which LICENSOR is entitled to grant a license to LICENSEE;

7. The term “Technical Information” shall mean (i) the Know-How, and (ii) any technical information, not included in the Know-How, such as service materials and Japanese Industrial Standard (JIS), whether in writing or not, which directly relates to the Products or the Licensed Parts or is necessary for the manufacture of the Products or the Licensed Parts and which LICENSOR owns at the time of execution of this Agreement or may own from time to time during the term of this Agreement or under which LICENSOR is entitled to grant a license to LICENSEE, and the Technical Information shall include the “Technical Materials” designated by LICENSOR as “Technical Materials”.

27. Article 2 and Article 4 of the Agreement are also relevant and read as under:-

“Article 2. GRANT OF LICENSE

Subject to the terms and conditions herein contained, LICENSOR hereby grants to LICENSEE an indivisible, non-transferable and exclusive right and license to manufacture, use and sell the Products and the Licensed Parts within the Territory under the Intellectual Property Rights and by using the Know-How, and the Technical Information, provided that the LICENSEE may grant sub-licenses with a proper written consent of LICENSOR.

Article 4. FURNISHING OF TECHNICAL INFORMATION.

4.1 During the term of this Agreement, LICENSOR shall furnish LICENSEE with the Technical Information required by the LICENSEE,

based on mutual consultation between LICENSOR AND LICENSEE, by disclosing it in documentary form, and/or by dispatching LICENSOR's technical expert(s) to LICENSEE and/or accepting LICENSEE's engineer(s) at LICENSOR's facilities to instruct and advise them as to the application of the Technical Information and/or otherwise, in the manner mentioned in this Article 4.

4.2 Furnishing of the Technical Information in documentary form, that is the Technical Materials, which shall be written in the English language, shall be effected within reasonable period of time after the Effective Date hereof, with regard to the Technical Information existing as of the Effective Date hereof, and shall be effected from time to time, at the time when LICENSOR deems it necessary to do so, or effect within reasonable period of time from the day when the LICENSOR approves LICENSEE's request, or be effected within reasonable period of time from the day when LICENSOR and LICENSEE agree to a model change of the Products with regard to the Technical information coming to exist after the Effective Date hereof. All expenses for preparation and delivery of the Technical Materials shall be borne by LICENSOR. Any incidence of taxation or Customs Duties shall be borne by LICENSEE.

4.3 Technical guidance by dispatching to LICENSEE technical expert(s) of LICENSOR and/or technical training of LICENSEE's engineer(s) at a factory or factories of LICENSOR or its designee shall be made in accordance with the "Memorandum of Exchange of Technicians" separately entered into between the parties hereto as Exhibit III attached hereto."

28. The consideration payable in the agreement is mentioned in Article 14 and the said Article reads as under:-

“Article 14: CONSIDERATION

14.1 In consideration of the right and license granted to LICENSEE under Article 2 hereof and of the furnishing of the Technical Information under Article 4.2 hereof, LICENSEE shall pay to LICENSOR the following fees:

1. Lumpsum fee:

The amount of lumpsum fee payable by the LICENSEE to the LICENSOR shall be US\$ 30.5 million. This fee shall be payable in 5 continuous equal annual instalments, the amount of each of which installments shall be six million one hundred thousand US dollars (US\$6,100,000), beginning from the 3rd year after the commencement of Commercial Production. The lumpsum fees shall be payable by LICENSEE in currency of US dollars by bank transfer remittance to the bank account designated by LICENSOR, based on final government approval.

2. Royalty:

The rate of royalty payable by the LICENSEE to the LICENSOR shall be Four (4) percent, both on internal sales and exports, subject to taxes.

The royalty shall be calculated on the basis of ex-factory sale price of the product exclusive of excise duties, minus the cost of standard brought out components and the landed cost of imported components irrespective of the source of procurement, including ocean-freight, insurance, customs duties, and other similar charges.

The royalty shall be payable for a period of seven (7) years from the date of commencement of Commercial Production.

List of standard brought-out items is as per exhibit II.

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14.4 It is understood and confirmed that it should be separately agreed to by the parties hereto in the “Memorandum on Exchange of Technicians” referred to in Article 4 hereof that any and all fees, costs, expenses and other consideration for and in connection with the technical guidance provided by LICENSOR by dispatching to LICENSEE technical expert(s) of LICENSOR and the technical training of LICENSEE’S engineer(s) at a factory or factories of LICENSOR or any of its designees, including but not limited to technical guidance fees, per diem allowances, travelling expenses, staying or living expenses and other incidental expenses, shall be payable by LICENSEE to LICENSOR in accordance with such “Memorandum on Exchange of Technicians”, separate from and in addition to the payments under this consideration is included in the payments under this Article 14.”

29. Article 16 of the agreement deals with trademark and states that Honda Japan has granted indivisible and non-transferable license to the respondent no.1 to use the trade marks in connection with sale and distribution and marketing of cars, parts etc.

30. Article 19 deals with terms of agreement and states that the agreement shall come into force from the effective date and continue for a period of ten (10) years from the date of agreement or seven (7) years

from the date of commencement of commercial production and shall be thereafter renewed subject to prevailing laws in India. There are also provisions relating to termination.

31. The contention of the respondent No.1, which has been accepted by the Settlement Commission, is that 30.5 million dollars or Rs.120 crores should be bifurcated into six heads in terms of their letter/bifurcation given by Honda, Japan. The said letter is relevant and material and therefore is reproduced in entirety:

“COST BREAK DOWN OF KNOWHOW/TECHNICAL INFORMATION SUPPLIED/ TO BE SUPPLIED TO HONDA SIEL CARS INDIA LTD. AS OF APRIL 14, 1999.

No.	DETAILS	UPTO FEB 28, 1997	MAR 1, 1997 – MAR 31, 1999	APR 1, 1999 – DEC. 2004 (ESTIMATED)	TOTAL
1.	COST OF MARKET RESEARCH & FEASIBILITY STUDIES FOR INDIA	¥48,520,000		¥ 55,000,000	¥103,520,000
2.	COST OF DEVELOPMENT	¥106,229,900	¥180,528,300	¥300,000,000	¥586,758,200
	(1) DRAWINGS				
	(2) MANUALS & HAND BOOKS (QUALITY/EQUIPMENT MAINTENANCE/ SAFETY/SHOP PRACTICES/SERVICE/ PARTS/ OTHERS)	¥165,600,000	¥110,400,000	¥305,000,000	¥581,000,000
3.	OPERATION STANDARDS & SPECIFICATIONS AND CATALOGUES IN BOOK FORM	¥20,452,000	¥30,678,000	¥55,000,000	¥106,130,000
4.	TRAINING MANUALS/HANDBOOKS, VIDEO CASSETTES SUPPLEMENTING MANUALS FOR SERVICE/PARTS/OTHERS	¥ 416,000	¥3,744,000	¥4,600,000	¥8,760,000
5.	TESTING & HOMOLOGATION		¥136,431,000	¥150,000,000	¥286,431,000
6.	OTHER INCIDENTAL COSTS – HONDA PERSONNEL INVOLVED IN TOA	¥ 710,109,000	¥728,291,000	*	* ¥1,438,400,800
7.	TOTAL	¥1,051,326,900	¥1,190,073,100	¥869,600,000	¥3,111,000,000

NOTES:

1. EXCHANGE RATE AS ON NOV 95 – US\$ 1 = ¥ 102
2. WITH RESPECT TO SERIAL NO. 6. “HONDA PERSONNEL INVOLVED IN TCA” – HONDA HAS SET UP A PROJECT TEAM OF ENGINEERS & OTHER SENIOR LEVEL PERSONNEL, TO WORK EXCLUSIVELY ON THE INDIA PROJECT; THIS WOULD NOT HAVE BEEN NECESSARY BUT FOR THE INDIA PROJECT, RESPONSIBILITY OF THE INDIA PROJECT TEAM, INTER ALIA INCLUDES PROJECT PLANNING, ASSISTING IN & MONITORING PROJECT IMPLEMENTATION, TRAINING & EFFECTIVE TRANSFER OF THE KNOW-HOW & TECHNICAL INFORMATION TO HONDA SIEL.

“*” THE TERM “OTHER INCIDENTAL COSTS” COVERS THE OUTFLOW ON SUCH PERSONNEL OF INDIA PROJECT TEAM, RELATED COSTS SUCH AS

INTERNATIONAL TRAVEL. DOMESTIC TRAVEL ETC OF THESE PERSONNEL EMPLOYED BY HONDA MOTOR CO. LTD., JAPAN EXCLUSIVELY FOR THE IMPLEMENTATION OF THE TCA.

“*” THE ACTUAL EXPENDITURE INCURRED UPTO MARCH 1998 ON HONDA PERSONNEL INVOLVED IN TCA IS ¥2,006,157,000 HOWEVER, OUT OF THE ACTUAL EXPENDITURE ONLY AN AMOUNT OF ¥ 1,438,400,800 HAS BEEN SHOWN BECAUSE OF THE FACT THAT THE LUMP SUM CONSIDERATION OF ¥ 3,111,000,000 (\$ 30.5 MILLION) FOR TCA HAD AN ESTIMATED COMPONENT OF ONLY ¥ 1,438,400,800 FOR “OTHER INCIDENTAL COSTS” THE ACTUAL EXPENDITURE IN EXCESS OF ¥ 1,438,400,800 IS NOT RECOVERABLE AND HAS NOT BEEN RECOVERED FROM HONDA SIEL IN TERMS OF THE TCA SINCE THIS IS PROJECT SUPPORT EMANATING FROM HONDA MOTOR CO. LTD. JAPAN.

3. THE COSTS INDICATED UNDER SERIAL NO. 2,3 & 4 ABOVE, INCLUDE THE EXPENSES ON CONCEPTUALISATION, DESIGN & DEVELOPMENT AND PREPARATION OF THE DOCUMENTS AND NOT MERELY THE COSTS OF REPRODUCTION.

Cost Buildup of Drawings					
Drawings supplied to India		Drawings not need in India	Estimated Supply Plan of Drawings		Total Drawings
1995/11 – 1997/2/28	1997/3/1 – 1999/3/31		2000-2002	2003-2004	
City			New City	Civic or X Model	
7,500	6,193	9,131	2,000	23,000	47,824

Breakup of 7,500 Dutiable Drawings

Number of Special Drawings for India out of Dutiable Drawings	178
Number of Common Drawings out of Dutiable Drawings	7,322

Cost of Total Drawings for “City” Model to be Produced in 7 Countries.

Labour cost per hour (¥5,500) x working hour per day(8) x Days in a month (30) x man months (1940) = ¥ 2,560,800,000 (a)

These costs include the expenses on conceptualization, design & development and preparation of the designs & drawings, and do not represent merely the costs of reproduction of designs & drawings.

Proportion of proposed production Plan of City Model in India, during 1995 through 2002
10.5% of the total production plan in 7 countries

(a) ¥2,560,800,000 x 7322/22824x10.5% = X	¥ 86,258,703
(a) ¥2,560,800,000 x 178/22824 = Y	¥ 19,971,188
Total X + Y	¥106,229,892

Cost of balance 15324 drawings of CITY

¥2,560,800,000 x 15324/22824 x 10.5% = ¥180,528,300”

32. There is merit in contention of the petitioner that the aforesaid bifurcation is not stipulated in the TPA quoted above and is a unilateral act on the part of the respondent No. 1. We have quoted Articles 2, 4

and 14 of the TPA under which US\$ 30.5 million was payable. The tribunal while accepting the bifurcation and including only three elements mentioned at serial Nos. 2, 3 and 4, has acted merely on *ipsi dixit* of the respondent No. 1. It has ignored the terms and conditions of Articles 2, 4 and 14 mentioned above. The consideration of US\$ 30.5 million is consideration for know-how and technical information. This is obvious if the proposal submitted to the Government for FDI approval and the order/approval dated 13th November, 1995 passed by the FIPB are scanned and examined. The relevant paragraphs of the proposal read as under:-

“4.2 SERVICES TO BE RENDERED BY HONDA

- Honda will provide the know-how including drawings, designs, production techniques and processes, material specifications/sources of supply, quality control symptoms and procedures etc. in relation to the business of the new company.
- Assisting in supply of materials, machinery and other equipment necessary for the operation of the JV company.
- Training of joint venture personnel in India and in other overseas plants/locations of Honda.
- Deputation of technical personnel for technical advise and guidance for installation and commissioning of the plant, manufacture and assembly of passengers cars design and development, vendor development, Testing, Marketing, Service/Parts etc., as per Agreement to be signed on exchange of technical personnel.

4.3 TRADEMARK USER AGREEMENT

- As a part of JV Agreement, Honda will allow use of “HONDA” name and insignia and other trademarks on the products, as per Trade Mark User Agreement to be signed.

4.4 PAYMENTS TO HONDA MOTOR CO., JAPAN

1. TECHNICAL KNOW-HOW FEE

For the Technology and know how to be transferred to the JV Co., Honda will receive a technical know-how fee of US\$ 30 mn. (Gross) subject to tax deduction at source). In order to support the cash flows of the new JV company, Honda has agreed to receive this know how fee in 5 equal, interest free, instalments beginning from the 3rd year of commercial production.

2. MODEL CHANGE FEES

Honda usually change its models every 4-6 years depending on the market needs. In order to provide the latest updated technology and designs for model change, following lumpsum technical fee will be payable at the time of such change:

- Full Model Change of first model : US\$ 0.5 mn.
(expected to be in the 6th
Year of commercial production of the first model)

- Minor changes
Additions/deletions/variations : No change.”

33. The relevant paragraph of the approval by the FIPB, reads as under:-

“5. Royalty is 4.00% (four percent) both on internal sales and exports subject to sales, for a period of 7 years during the period of agreement.

6. Lumpsum Payments:

Technical know-how: US\$ 305.00 Lakhs (Three hundred and Five Lakhs) subject to taxes, to be paid in 5 (five) equal installments beginning from 3rd year of commencement of commercial protection.”

7. It is noted that you shall not pay any new model fees.”

34. There is also merit in the contention of the petitioner that break-ups given by the respondent No. 1 under serial No. 1 and 5 under the headings “cost of market research and feasibility studies for India” and

“testing and homologation” may have been incurred, but this by itself would not justify their exclusion. The TPA does not postulate reimbursement of expenses incurred by Honda Japan in market research feasibility studies, testing and homologation. What is taxable is the import value of the drawings etc. The market research feasibility, studies, testing and homologation may have been carried out or incurred in India or even abroad, but if they were used, utilized and incorporated in drawings, etc. imported from Japan into India, then they have to be added or included in the import value on which the custom duty is payable. At the same time, if the market research, feasibility, studies and testing homologation activities have been undertaken in India and had not been used or incorporated in the drawings, etc. imported from Japan, but utilized in India itself by personnel/officers of Honda Japan, or by the respondent no.1, then these have to be excluded and cannot be added to the import value of drawings etc. for computing the customs duty. The value of the imported goods, i.e. the drawings etc., has to be determined at the time and place of importation. Customs duty has direct nexus with the value of the goods imported.

35. There are several decisions in which the Courts have elucidated and explained what has to be included and would constitute the import value for computing customs duty (see *Commissioner of Customs Vs. M/s J.K. Corp. Limited*, 2007 (2) SCALE 459, *Commissioner of*

Customs Vs. Toyota Kirloskar Motor Private Limited, (2007) 5 SCC 371). Learned counsel for the respondent No. 1 had submitted that no customs duty is payable on drawings, plans etc. made in India. The said proposition is correct. Customs duty is payable on import. However, it is for the respondent No. 1 to show and establish that the drawings etc. were made in India or technical knowledge or information was furnished in India and not imported from Japan. The bifurcation and the figures at serial nos. 2, 3 and 4 alone do not show and establish the value of the imported drawings etc. Thus there is this flaw and error in the decision making process.

36. Settlement Commission by the impugned orders has held that the respondent No. 1 is liable to pay customs duty of Rs. 84,00,257/- and Rs.32,63,032/-. It is the case of both the sides that customs duty on drawings etc. was payable @ 10% of the import value computed as per Section 14 and CVR. Therefore, in other words, the Settlement Commission has held that the total import value of the drawings etc. was about Rs. 11.6 crores upto 1st March, 1997, out of the lump-sum payment of Rs.120 crores in terms of the TCA. Rs.11.6 Crores constitutes about 10% of the total lump-sum value. The date 1st March, 1997 is relevant as thereafter Customs duty on drawing etc. was withdrawn. During the course of hearing before us, it was stated by the respondent No.1 that about 48,000 plans, drawings, manuals etc. were

imported during the period of seven years after 21st May, 1996. It was submitted that till 1st March, 1997, only 7500 drawings, etc. were imported. The value mentioned at Sl. Nos. 2, 3 and 4 has been added and the entire amount was divided by 48,000 to compute the import value of 7500 drawings etc. Thus, the Settlement Commission has valued 7500 drawings etc. on prorate basis and each drawing has been given the same value. There are two apparent flaws in the said reasoning. Firstly, it is accepted that by December, 1997, the manufacturing plant for cars had been made operational. Most of the drawings etc., therefore pertaining to the manufacturing plant, had been imported before 1st March, 1997. Value assigned to the new car model in the FDI proposal was only US Dollars .5 Million. There is no dispute that certain amount of guess work and latitude has to be given to calculate the value but the Settlement Commission has to apply its mind to reach a particular figure and give reasons why a particular method/formula is acceptable. This is missing in the impugned orders and we find that out of the total value mentioned in the TCA of Rs. 120 crores, a small fraction has been assigned to the drawings, etc. imported before 1st March, 1997. These factors have not been given due credence and have not been examined/considered. The scrutiny and detailing, which was required, is missing. Secondly, as per the petitioner 6000 drawings

etc. were found at the time of search. This figure has been reiterated in the writ petitions.

37. The TCA does not provide for reimbursement of expenditure incurred by Honda-Japan on market survey, to decide whether or not to enter Indian Market and to select an appropriate model. The Settlement Commission made an error in holding that TCA provides for reimbursement of expenditure and the same cannot be included in the value of imported drawing etc. This reasoning is not supported by TCA and FIPB approval. Further, the quantum or the value of the technical information and know-how was quantified in the TCA. The relevant portion of the order of the Settlement Commission accepting the contention of the petitioner in this regard has been quoted above. The Settlement Commission therefore was not right in accepting the stand of the respondent No.1 that the reimbursement of expenditure incurred by Honda Japan should be deducted from the figure of USD 30.5 million.

38. The Settlement Commission has also erred in holding that the consideration of US\$ 30.5 million is for Article 2 i.e. for use of trademark/name Honda. As noticed above, the respondent No.1 had to pay annual royalty @ 4% under Article 14.1.2 in addition to US\$ 30.5 million. It appears that both sides had attributed 4% royalty as payable for use of trademark and rights under Article 2 and not towards know-how and technical information furnished under Article 4.2/14.

39. Thus, on these aspect we are in agreement with the petitioner that there is an error in the decision making process. These relevant aspects have been over looked and not considered.

40. However, on certain other aspects, it is not possible to accept interpretation and stand of the petitioner either in entirety or in part. It is important to state so as we are passing an order of remit for a fresh decision by the Settlement Commission. In case these observations are not made, it is likely to create confusion and doubt about some of the contentions raised but not adverted to by us. We agree on these aspects in full or in part with the contention of the respondent No.1 and the findings recorded by the Settlement Commission. For the sake of clarity, the contentions of the petitioner, which are not acceptable or, we do not find any ground to interfere with fully or in part, are noticed below:-

(i) **Whether TCA agreement pertains to knowhow and technical information in intangible form?**

The petitioner has contended that the agreement does not provide for technical information/support or knowhow except by way of drawings etc. The Settlement Commission has agreed with the contention of the respondent No.1 that the TCA requires Honda Japan to render technical information and knowhow in various forms but not limited and confined to drawings etc. The Settlement Commission after examining the provisions of TCA has held that knowhow and technical

information can be provided in writing or in intangible form. The words used in TCA are “in writing or not”. The findings of the Settlement Commission on “writing or not” in TCA cannot be faulted with. Technical information and knowhow need not be through the medium of plans, drawings, manuals etc. It can be by other modes and means or non document form including intangible forms like deploying personnel or overseeing construction of the factory or manufacturing, training to staff etc. It is clarified that bifurcation of value between drawing etc. and ‘others’, is another aspect and has to be specifically examined and considered and computed after detailing material/evidence.

(ii) Whether lump sum fee is for technical knowhow and information supplied till December, 1997 and not afterwards?

The Settlement Commission has agreed with the contention of the respondent No.1 that the lump sum fee on account of knowhow and technical information cannot be restricted to information/knowhow furnished till December, 1997. We do not agree with the petitioner that the aforesaid finding of the Settlement Commission requires interference in exercise of power of judicial review. After interpreting and examining the articles of the TCA, the Settlement Commission has reached the conclusion that the lump sum fee is not restricted to technical knowhow or information supplied or furnished till December, 1997 as there was a contractual requirement that the knowhow or

information shall be furnished for a period of 7 years or 10 years. The technical knowhow is not restricted to setting of the plant, but also for manufacture of cars including designs, engine, transmission etc. It is noticeable that as per the proposal initially submitted, payment of USD .5 million was to be made on introduction of new car model, but after approval of the FIBP, this component was added to USD 30 million lump sum fee. No additional fee was payable for new car models

(iii) Expenses on personnel whether they are included in the lump sum fee?

The TCA did stipulate that payment for personnel deputed by Honda Japan to India or expenses on technical training given to Indians, who travel abroad to Honda Japan for technical information and know-how shall be subject to another agreement. A separate agreement, i.e. Memorandum of Understanding dated 21st May, 1996, was entered into for the said purpose between the respondent No.1 and Honda Japan and the rates/consideration were stipulated therein. The Settlement Commission has accepted the stand of the respondent No.1 that the second agreement was not implemented and payments as stipulated in the Memorandum were not made at least till the commercial production started in December, 1997. We do not think that there is any error or mistake in the findings recorded by the Settlement Commission, which can be corrected in exercise of power of judicial review on the said

aspect. The Settlement Commission has accepted, on the basis of the payments made by the respondent No.1 and documents placed on record, that personnel from Honda Japan had visited India for imparting training to Indians and similarly, Indians had visited Japan for training but no payment was made under the Memorandum of Understanding dated 21st May 1996. Obviously, imparting of training to Indians in India or abroad does qualify and is covered by the concept of knowhow and technical information. In case respondent No.1 had separately paid for the personnel, then Settlement Commission can be faulted with but not otherwise. There is no material or evidence to show such payment. The petitioner cannot contend that the respondent no.1 and Honda Japan could not have by mutual consent agreed that consideration envisaged and payable under the TCA was suffice. A written agreement for modification was stipulated and envisaged by the TCA, but not mandated by law. Review or modification in law is not prohibited. FIPB approval for payment of knowhow etc. includes deployment and training of personnel. This cannot be equated with reimbursement of expenses/costs etc. The two companies are closely related and there can be mutual understanding. This cannot be objected to. It was for the respondent No.1 and the Honda Japan to regulate their affairs and mutually decide payment of consideration. The fact that no separate consideration was paid and payment of consideration under TPA was

adjusted towards personnel has been accepted by the Settlement Commission. The said finding cannot be challenged on the ground that it is faulty and is required to be set aside in exercise of writ jurisdiction. But, the Settlement Commission has erred and not noticed that the valuation is on the date of import and subsequent adjustment/reduction under any oral understanding cannot be taken into consideration. We may record that the respondent no.1 has contended that under TPA and Memorandum of Understanding separate payment was mandated when personnel were deputed or sent to Honda Japan on specific request of respondent no.1. This aspect will be re-examined by the Settlement Commission and contention accepted or rejected after giving reasons. The petitioner has relied and referred to Article 14.4 of the TPA, which has been quoted above. The effect and interpretation thereof will be considered. We do not give any firm opinion thereon. The caveat mentioned above will be considered.

(iv) Whether Rule 9(2)(e) is applicable?

This contention of the petitioner has to be rejected. The said Rule applies when an addition is made to value of imported tangible goods in the form of machinery, plant, etc. by including value of knowhow, which has been billed separately, but is intricately or otherwise linked with the imported machinery/plant. (see *Commissioner of Customs (Port), Chennai v. Toyota Kirloskar Motor Private Ltd.*, 2007 (5) SCC

371, *Tata Consultancy Services v. State of Andhra Pradesh*, (2005) 1 SCC 308). This is not so in the present case. The show cause notice does not make any such allegation. No case has been made out to show that imported tangible goods in the form of machinery were sold by Honda, Japan. It is not alleged in the present writ petitions that the knowhow and technical information relates to other imported goods in form of plant and machinery supplied by Honda Japan.

41. We have deliberated upon whether we should decide the question of valuation and compute the value of the imported drawings etc. or should remand the matter to the Settlement Commission for fresh adjudication. The first course is advisable as it will curtail delay, expedite and conclude the matter, but is not legally acceptable, inspite the fact that these writ proceedings have remained pending for long. There are substantive and legal difficulties in adopting the first approach. Question of valuation always requires expert and factual input. We cannot adorn or function as the Settlement Commission and re-examine the said aspects. In these circumstances, we have no option, but to remit the matter to the Settlement Commission for fresh decision keeping in view the aforesaid aspects. We want to clarify that we have dealt with the contentions raised by the petitioner for deciding the present writ petition. These observations and findings will be binding on the Settlement Commission to the extent indicated above. These

observations should not be construed as determinative in respect of issues on which we have not recorded categorical and final observations/findings. In facts of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(R.V. EASWAR)
JUDGE

December 23rd, 2011
NA