IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 340 OF 2015

Ajay Singh Sandhu	**}**	**Petitioner**
versus		
Union of India and Ors.	**}**	**Respondents**

Mr. Ajinkya Patil i/b. India Law Alliance for the Petitioner.

Mr.Pradeep S.Jetly for Respondent Nos.1 to 3.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- AUGUST 31, 2015

P.C. :-

This Writ Petition challenges the order passed by the Settlement Commission dated 11th November, 2014.

2) It is common ground that an application for settlement was filed on 6th January, 2014 before the Settlement Commission. It was made over to the Settlement Commission's Additional Bench. The application is traceable to section 127B of the Customs Act, 1962. That sought settlement of a dispute arising out of show cause notice dated 25th March, 2009 issued by the Additional Director General of the Directorate of Revenue Intelligence, Mumbai, demanding differential Customs Duty of Rs.63,95,846/- under section 28 with interest under section 28AB of the Customs Act, 1962. This application was received in the office of the Commission and came to be registered as SA(C) 08/2014.

3) We are not really concerned with the further steps that are required to be taken by the Commission or the facts and circumstances in which the application was made simply because the only argument before us is that the dismissal of this application in the absence of the Petitioner/Applicant, that too on merits, has caused serious prejudice to the Petitioner. The Petitioner only made a reasonable request of furnishing copies of documents, based on which the Revenue demanded the differential duty. In the absence thereof, the Petitioner would not have been able to proceed with the matter. True it is that some adjournments were sought for that purpose, but the intent was never to delay, leave alone procrastinate the matter indefinitely. In these circumstances, for the breach of principles of natural justice, the order should be set aside.

4) Mr. Jetly appearing for the Revenue, on the other hand, justified this order and stated that as many as seven adjournments were sought on the same ground. The adjournments were found to be flimsy and without any reasonable cause. Yet, the Commission postponed the hearing and when it realised that even after more than three weeks, no further documents have been filed and the settlement application should be ordinarily disposed of expeditiously that it dealt with the application on merits. That was a last resort and such order of the

Commission, which is fair, just and proper, should not be interfered with and the Petition be dismissed.

5) With the assistance of both sides, we have perused the Petition paper book and the impugned order. We are of the view that the Commission was justified in holding that if the application has been filed on 6th January, 2014 and earlier hearings were fixed on 17th June, 2014, 14th August, 2014, 9th September, 2014 and 7th October, 2014, then, the Petitioner/Applicant should have bothered to remain present at the last hearing held in November, 2014. The absence of the Petitioner, without any reasonable and justifiable cause, enabled the Commission to proceed in his absence.

6) However, we find that since in this case a large amount of differential duty was demanded from an individual, the Commission should have ensured that he obtains all the records including electronically generated so that he can make complete submissions on the merits of the application. The final opportunity therefore should have been granted before the settling of the application with the final order and direction. Since the final order is imposing the condition of payment of differential duty, interest, fine and penalty, we are of the view that the larger interest of justice would be subserved if we allow this Petition with a conditional order. This order and direction shall not

be treated as the precedent in all future cases. It is in the facts and circumstances peculiar to this case and to give a final opportunity to an individual that we allow this Petition, set aside the impugned order and direct that the documents sought by the Petitioner shall be allowed to be inspected and copies furnished to him by the Revenue on or before 7th September, 2015. If he remains present in the office of the competent officer and complies with this direction, he would get an opportunity to appear before the Commission and the Commission then should proceed with his application in accordance with law. The Commission's order and impugned in this Writ Petition is set aside with this condition and an additional condition of payment of costs quantified at Rs.50,000/-. The costs shall be paid within a period of two weeks from the date of receipt of a copy of this order and compliance reported to the Commission. On the Petitioner satisfying the Commission with regard to compliance of both the conditions, the Commission shall revive the proceedings and dispose them of in accordance with law, expeditiously. The Petitioner shall co-operate with the Commission and not seek frivolous or unnecessary adjournments. No extension of time will be granted and failure to comply with the conditions would result in dismissal of the application.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**