

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10423 OF 2016

M/s Shree Ganesh Enterprises	... Petitioner
v/s	
Union of India and others	... Respondents

WITH
WRIT PETITION NO.10474 OF 2016

Ms Deepali Poojari	... Petitioner
v/s	
Union of India and others	... Respondents

Mr Sujay Kantawala with Mr Brijesh Pathak for Petitioner.
Mr M. Dwivedi with Mr Sham V. Walve for Respondent No.2.

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

RESERVED ON : 24th October, 2016
PRONOUNCED ON : 21st November, 2016

JUDGMENT [PER B. P. COLABAWALLA J.] :-

1. Rule. Respondents waive service. By consent of parties,
rule is made returnable forthwith and heard finally.

2. By these Writ Petitions filed under Article 226 of the Constitution of India, the Petitioners have challenged the common impugned order dated 14th March 2016 (Exh. 'J' to the Petition) passed by the Settlement Commission, Additional Bench, Customs and Central Excise, Mumbai (Respondent No.4 herein) by which it rejected the Settlement Application filed by the Petitioners. To decide the admissibility of the said Settlement Application, Respondent No.4 examined the following three conditions:-

- (i) Whether the Application was in respect of a 'case' within the meaning assigned in the clause (b) of section 127A of the Customs Act, 1962?
- (ii) Whether the Applicant has paid the additional admitted duty liability along with the interest as required by clause (c) of the first proviso to section 127B of the Customs Act, 1962?
- (iii) Whether the condition of filing of a Bill of Entry as stipulated in clause (a) of the first proviso to section 127B of the Customs Act, 1962 is fulfilled?

3. As far as Condition Nos.(i) and (ii) are concerned, the

Settlement Commission held in favour of the Petitioners. However, as far as Condition No.(iii) is concerned, the Settlement Commission inter alia held that the same was not complied with by the Petitioners in view of the fact that the requisite bill of entry had not been filed before the issuance of the Show Cause Notice.

4. In the companion Writ Petition filed by M/s Auto Creators v/s Union of India and others, (Writ Petition No.10422 of 2016) decided by us on 21st November 2016, we have already held that Condition No.(iii) was complied with by the said M/s Auto Creators. As the facts in these Writ Petitions are almost identical to the one filed by M/s. Auto Creators, on the same parity of reasoning as given in our decision in Writ Petition No.10422 of 2016, these Writ Petitions also succeed and are allowed in terms of prayer clause (b). Rule is made absolute in the aforesaid terms. The Settlement Applications filed by the Petitioners are restored to the file of Respondent No.4 for a de novo consideration in terms of what we have held in our judgment in Writ Petition No.10422 of 2016. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)