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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2214 OF 2006

Union of India through	]	
The Commissioner of Central Excise	]	
Pune-II, ICE House, 41/A, Sasoon Road	]	
Opp. Wadia College, Pune -1	]	 Petitioner.

V/s

1] M/s Manmade Spinners India Ltd.,	]	
Tilwani, Tal – Hatkanangale	]	
Dist – Kolhapur	]	
	]	
2] Hon'ble Settlement Commission	]	
Additional Bench Customs and Excise	]	
Mumbai, having its office at Utpad,	]	
Shukla Bhavan, Bandra-Kurla Complex,	]	
Bandra (E), Mumbai – 400 051	]	 Respondents.

Mr. Swapnil Bangur i/b Mr. Sham V. Walve, Advocate for the Petitioner.

Mr. Jas Sanghavi i/b PDS Legal, Advocate for Respondent No.1.

**CORAM: B. R. GAVAI &
SANDEEP K. SHINDE, JJ.**

DATE: 2nd November, 2017

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] This Petition challenges the order passed by the Settlement Commission, thereby allowing the application filed by Respondent

No.1 for settling the matter.

2] The facts, in brief, giving rise to the present Petition are as under:-

3] Respondent No.1 is holding central excise registration and is engaged in the manufacture of “Polyester Viscose Yarn” of different varieties, falling under Chapter 55 of the First Schedule to the Central Excise Tariff Act, 1985. On a surprise visit conducted by the Officers of the Anti Evasion Branch of Central Excise, Kolhapur in the factory of Respondent No.1, it was found that the RG-1 Register was written up to 31.12.2000 only and the last date of payment of Central Excise duty was 15.01.2001, for the clearances made against Invoices No. 528 dated 01.01.2001 to 540 dated 15.01.2001. It was found that the clearances, which were made on the basis of various invoices, were made on the date much prior to 15.01.2001, which were not accounted for in the statutory register or in the returns filed with the Department. It was therefore found that the case of evasion of duty was made out.

4] After investigation, show cause notice came to be issued on 03.11.2003, demanding Central Excise duty amounting to Rs 57,10,404/- and also invoking the penal provisions under the Central Excise Act and the Rules made thereunder. However, it appears that Respondent No.1, during the course of investigation itself, admitted the liability and paid the amount which was found to be short

alongwith interest thereon. Respondent No.1, therefore, filed an application before the Settlement Commission under the provisions of Section 32E of the said Act.

5] The application was vehemently opposed by the the Petitioners by raising various grounds. However, the contention of the Revenue was rejected and the settlement was permitted. The Settlement Commission granted to Respondent No.1 immunity from the penal action. However, Respondent No.1 was directed to pay interest. Being aggrieved thereby, the present Petition has been filed.

6] Mr. Bangur, learned Counsel appearing on behalf of the Revenue, submits that the learned Tribunal has grossly erred in not taking into consideration the law laid down by the Chennai High Court in the case of *Commr of Cus. (AIR), Chennai vs. CUS. & C. Ex. Settlement Commission*¹. He further submits that since Respondent No.1 had not filed returns, provisions of Section 32E of the said Act could not have been invoked. He therefore submits that the order of the learned Settlement Commission is liable to be set aside.

7] Mr. Sanghavi, learned Counsel appearing on behalf of Respondent No.1, submits that the order passed by the learned Tribunal is just and proper and warrants no interference.

8] Insofar as the judgment of the Chennai High Court in *Commr of*

¹ 2002 (139) E.L.T. 512 (Mad.)

Cus. (AIR), Chennai (cited supra) is concerned, the learned Tribunal has distinguished the said judgment and observed that the said case was with regard to smuggling. However, the present case was not with regard to smuggling. The learned Tribunal has further noted that under the provisions of the Customs Act, there is a specific bar for invoking jurisdiction of the Settlement Commission in a case involving smuggling. As such, the Tribunal has rightly distinguished the said judgment.

9] Insofar as the second ground with regard to Respondent No.1 not filing returns is concerned, we find that the same is without merit. Firstly, the learned Tribunal has itself found that Respondent No.1 was filing returns. Apart from that, in view of second proviso to sub-section 1 of Section 32F of the said Act, even if the returns are not filed, the learned Tribunal, on being satisfied that the application can be entertained, is empowered to entertain the application. In that view of the matter, we find that even in the case of non-filing of the returns, the learned Tribunal is not without jurisdiction to entertain the application, if it finds that a case is made out. The Division Bench of this Court in *Tata Teleservices (Maharashtra) Ltd. vs. Union of India*¹ has taken a view that jurisdiction of the Settlement Commission is wide enough to take within its compass all kinds of settlement claim, depending upon the nature and circumstances of case and complexity of case. The legislative intent behind Section 32E is to encourage the full and true disclosure of the duty liability and make

1 2006 (201) E.L.T. 529 (Bom)

payment thereof by the defaulters, while granting them immunity from the penal action.

10] It would be relevant to refer to the following observations of Division Bench of this Court in the case of Tata Teleservices (Maharashtra) Ltd (cited supra) while considering the *pari materia* provisions of the Customs Act.

“44. The entire approach with regard to such legislation is to unearth frauds and dishonesty so as to collect the revenue for the Government. By this process in fact the duty which was illegally not paid by various parties would ultimately come to the Revenue and if one were to restrict the interpretation to mean only the bonafide cases, then there would be no scope of unearthing the revenue for the Government.....”

The view, as expressed by the Division Bench of this Court, has been affirmed by the Apex Court in its judgment in the case of *Union of India vs. Tata Teleservices (Maharashtra) Ltd.*¹

11] This Court, would entertain the Petition under Article 226 arising out of the order of the statutory Tribunal, only if it is found that the view taken by the Tribunal is either perverse or impossible. No perversity or impossibility is noticed in the order of the learned Tribunal. The learned Tribunal has given cogent and sound reasons as

¹ 2016 (338) E.L.T. A293 (S.C.)

to why it felt it appropriate to entertain the grievance of Respondent No.1.

12] In that view of the matter, no case is made out for interference. Petition is rejected. Rule stands discharged.

(SANDEEP K. SHINDE, J.)

(B. R. GAVAI, J.)