

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

WRIT PETITION NO.9494 OF 2015

M/s Siddhi Vinayak Enterprises and anr. ... Petitioners
v/s
The Union of India and others ... Respondents

WITH

WRIT PETITION NO.9207 OF 2015

Virendra Chandrakant Patil ... Petitioner
v/s
The Union of India and others ... Respondents

WITH

WRIT PETITION NO.9208 OF 2015

Jyotendra C. Patil ... Petitioner
v/s
The Union of India and others ... Respondents

WITH

WRIT PETITION NO.9266 OF 2015

Sachin H. Kanojia ... Petitioner
v/s
The Union of India and others ... Respondents

WITH

WRIT PETITION NO.9418 OF 2015

M/s Blue Wave ... Petitioner
v/s
The Union of India and others ... Respondents

**WITH
WRIT PETITION NO.9419 OF 2015**

M/s Krish Impex ... Petitioner
v/s
The Union of India and others ... Respondents

*Mr Prakash Shah with Mr Jas Sanghavi i/b PDS Legal for the Petitioners.
Mr Pradeep S. Jetly for the Respondents.*

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

**Reserved On : 21 November, 2016.
Pronounced On : 04 April, 2017.**

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

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

2. By these Writ Petitions filed under Article 226 of the Constitution of India, the Petitioners seek a writ of certiorari calling for the records of the Petitioners' cases and after going through the validity and legality thereof, to quash and set aside the final order dated 27th March, 2015 passed by Respondent No.4 (**the Settlement Commission**). In all these Writ Petitions, a common

order dated 27th March, 2015 has been assailed by the respective Petitioners by which the Settlement Applications filed by all the Writ Petitioners were rejected by Respondent No.4 – Settlement Commission.

3. As far as Writ Petition No.9494 of 2015 is concerned, the Petitioners were the Applicants before the Settlement Commission. As far as Petitioners in the other Writ Petitions are concerned, they were all Co-Applicants. This is how all the Writ Petitioners before us have assailed this common order dated 27th March, 2015.

4. For the sake of convenience, we shall refer to the facts in Writ Petition No.9494 of 2015.

- (a) Petitioner No.1 is a proprietary firm registered under the Indian Partnership Act, 1932 and carrying on business of trading in imported goods. Petitioner No.2 is the Proprietor of Petitioner No.1. Respondent No.1 is the Union of India and Respondent Nos.2 and 3 are the Officers of Respondent No.1 exercising powers and discharging duties conferred upon them under the

provisions of the Customs Act, 1962. Respondent No.4 is the Settlement Commission which is constituted under the provisions of section 32 of the Central Excise Act, 1944 and inter alia deals with the settlement of cases in accordance with the provisions of Chapter XIV-A of the Customs Act, 1962.

- (b) In the ordinary course of business, the Petitioners imported four consignments of certain electronic components and in respect of which the Petitioners filed four Bills of Entry, the particulars of which have been set out in paragraph 4 of the Petition. According to the Petitioners, the goods covered by the said Bills of Entry were duly assessed and allowed to be cleared by the proper Officer of the Nhava Sheva Customs on payment of duty.
- (c) In view of the purported intelligence allegedly received by Respondent No.2, investigations were initiated against the Petitioners alleging that electronic components (DVD parts) were imported by the Petitioners (in addition to the four consignments), using

Importer Exporter Codes (“**IEC**”) obtained in the name of dummy firms. This led to evasion of duty by indulging in gross undervaluation and mis-declaration of the description of the goods so imported, was the allegation. During the investigation, Respondent No.2 recorded the statements of various persons and seized goods covered by twenty two Bills of Entry.

- (d) Thereafter, vide show-cause notice dated 31st October 2013, Respondent No.2, inter alia, called upon the Petitioners to show cause as to why the differential duty amounting to Rs.5,66,05,713/- should not be recovered from the Petitioners under section 28 of the Customs Act, 1962 together with interest under section 28AA thereof, in respect of the goods covered by all the 24 consignments claimed to have been imported by the Petitioners and others. In addition to this, the show-cause notice further called upon the Petitioners to show cause why imposition of penalty and also confiscation of goods, more particularly described in paragraph 7 of the Petition ought not to be done. The show-cause notice

further proposed to appropriate Rs.1,50,00,000/- deposited by the Petitioners herein and by other importers during the investigation.

- (e) According to the Petitioners, with a view to buy peace and not to litigate with the Department, the Petitioners filed two separate applications in Form SC (C)-1 for settlement of the case arising out of the above show-cause notice dated 31st October, 2013 before the Settlement Commission. The Petitioners accepted the differential duty as proposed in the said show-cause notice dated 31st October 2013. The said Applications were filed by the Petitioners on 27th May, 2014. The Petitioners and other importers paid the entire differential duty without interest prior to and during the pendency of the Applications, in respect of the goods imported by them. Similarly other importers also filed their respective Applications for settlement before the Settlement Commission in respect of the imports made by them under their respective IECs admitting the duty on the imports made by them. Thereafter, the defects pointed out by the Registry of the Settlement

Commission were also rectified.

- (f) On 1st August 2014, the Settlement Commission (Respondent No.4) issued notice to the Petitioners and others informing them that the hearing of the case is fixed on 28th August, 2014 on the issue of the admissibility of the Applications. However, on that day, the matters were adjourned and new date was fixed on 28th October, 2014.
- (g) Pending the hearing of the above Settlement Applications, a Corrigendum / Addendum dated 8th August, 2014 was issued by Respondent No.2 whereby the demand made pursuant to the said show-cause notice dated 31st October 2013, inter alia, was sought to be revised from Rs.5,66,05,713/- to Rs.13,02,06,668/-. By the said Corrigendum / Addendum, certain other amendments to the said show-cause notice dated 31st October, 2013 were sought to be made. According to the Petitioners, the said Corrigendum / Addendum was issued based on the alleged report dated 20th November, 2013 received by Respondent No.2 from the Hong Kong

Customs through the Consulate General of India allegedly giving the value of the imported goods declared at the port of shipment before the Chinese Customs. The alleged report gave the alleged value of the 22 consignments, out of the said 24 consignments, which was the subject matter of the said show-cause notice dated 31st October, 2013 before the Chinese Customs by the exporters. The demand was therefore recomputed based on the value indicated in the alleged report of the Consulate General of India in Hong Kong.

- (h) Be that as it may, on 28th October 2014, after hearing the Petitioners and Respondent No.2, the Settlement commission directed the Petitioners to remove the defects pointed out by the Secretariat of Respondent No.4 and thereafter the hearing would be fixed subject to the case being allowed to proceed with. Thereafter, on 4th March 2015, Respondent No.4 held a second hearing of the case. After hearing both the sides, Respondent No.4 granted one week's time to file written submissions made during the hearing. In its submissions, it was the contention of Respondent No.2

that it was upon the Petitioners and others to revise their Applications accepting the full liability of Rs.13,02,06,668/- and in that event, the Revenue would have no objection to the case being settled. On the other hand, the Petitioners' written submissions were filed vide their Advocate's letter dated 10th March 2015. In the written submissions of the Petitioners it was contended that the importer had in fact paid the entire duty of Rs.5,70,91,449/- against the total demand of Rs.5,66,05,713/- after the filing of the Settlement Applications. The Petitioners were therefore under a bonafide impression that the Settlement Applications have been admitted and it would be proceeded with by the end of November, 2014. The Petitioners submitted that if they had any indication that the Settlement Commission was not going to proceed with their Applications, no duty would have been paid and the Petitioners would have elected to proceed with the adjudication proceedings. Therefore, the objection of the Department regarding maintainability of Applications before the Settlement Commission was devoid of any merit, was the submission.

- (i) After considering the written submissions filed by Respondent No.2 as well as the Petitioners, the Settlement Commission, by its impugned order dated 27th March, 2015 rejected the Applications filed by all the Writ Petitioners as inadmissible under section 127B of the Customs Act, 1962. It is in this light that the Petitioners are before us assailing the impugned order.

5. Mr Prakash Shah, learned counsel appearing on behalf of the Petitioners, submitted that the impugned order is clearly untenable and unsustainable in law and is liable to be quashed and set aside by us. He submitted that Chapter XIV-A of the Customs Act, 1962 deals with settlement of cases. Section 127B of the Act allows any importer / exporter or any other person to approach the Settlement Commission by way of a Settlement Application for settlement of his case. This, of course has to be done before the adjudication of the show-cause notice which would be the subject matter of settlement. The proviso to section 127B(1) stipulates the conditions of filing the Application before the Settlement Commission. Thereafter, section 127C talks about the procedure to be followed on receipt of a Settlement Application under section

127B of the said Act. Mr Prakash Shah laid great stress on section 127C(1) and argued that once the Settlement Application has been filed, the Settlement Commission shall, within seven days from the date of receipt of the said Application, issue a notice to the Applicant to explain in writing as to why the Application made by him should be allowed to be proceeded with. After taking into consideration the explanation provided by the Applicant, the Settlement Commission shall, within 14 days of the notice, by an order, allow or reject the Application, as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection. Mr Prakash Shah also laid great stress on the proviso to section 127C(1) which stipulates where no notice has been issued or no order has been passed under section 127C(1) within a period of 14 days as stipulated therein, then the Application shall be deemed to have been allowed to be proceeded with.

6. Mr. Shah submitted that in the facts of the present case, the Settlement Commission completely fell in error in dismissing the Settlement Applications of the Petitioners as being inadmissible in view of the fact that by virtue of the provisions of section 127C(1) read with its proviso, the Applications filed by the

Petitioners were deemed to have been allowed to be proceeded with. In this light of the matter, Mr Prakash Shah submitted that the Settlement Commission ought to have heard the Settlement Applications on merits and not throw out the Petitioners on the ground that the Settlement Applications are inadmissible. To fortify this argument, he submitted that in the facts of the present case, even a report was called for by the Settlement Commission as contemplated under section 127C(3). He submitted that section 127C(3) itself contemplates that where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of the order under sub-section (1), call for a report alongwith the relevant records from the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction, and the Commissioner shall furnish the report within a period of 30 days of receipt of communication from the Settlement Commission. He submitted that if the Application was not allowed or deemed to be allowed to be proceeded with, there would have been no occasion for the Settlement Commission to call for a report as contemplated under section 127C(3).

7. Mr. Shah thereafter brought to our attention to section

127C(5) which stipulates that after examination of the record and the report received under sub-section (3) and after giving the Applicant and Respondent No.2 a hearing as well as examining such further evidence as may be placed before it or obtained by it, the Settlement commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the Application and any other matter relating to the case not covered by the Application but referred to in the report under sub-section (3) or sub-section (4). He submitted that this order as contemplated under section 127C(5), is a final order, which is an order passed on merits and not an order passed under section 127C(1) which is on the admissibility of the Settlement Application.

8. Mr Prakash Shah also drew our attention to the impugned order itself which states that the impugned order has been passed under section 127C(5) of the Customs Act 1962. This being the case, he submitted that the Settlement Applications of the Petitioners could not have been rejected on the ground that they were inadmissible and this was a grave error on the part of the Settlement Commission. He submitted that in the facts of the present case, admittedly the Applications were filed on 27th May, 2014 and a notice as required under section 127C(1) was issued to

the Petitioners within a period of seven days from the receipt thereof. The second notice was issued by the Settlement Commission on 23rd September, 2014 by which it re-fixed the hearing on 28th October, 2014. In view of the aforesaid, Mr Prakash Shah submitted that the Settlement Commission is deemed to have allowed the Applications to be proceeded with, especially considering the fact that it also called for the report of the Commissioner of Customs, Nhava Sheva and thereafter fixed a hearing on 28th October, 2014. Looking to all these facts and considering that no order was passed by the Settlement Commission rejecting the Applications of the Petitioners under sub-section (1) of section 127C, Mr Prakash Shah submitted that the Settlement Applications filed by the Petitioners were deemed to have been allowed to be proceeded with and the Settlement Commission could not have dismissed the Settlement Applications of the Petitioners under section 127C(5) as being inadmissible and that too as late on 27th March, 2015 (i.e. after one year of filing of the Applications) and after hearing both the sides on all issues connected with the matter.

9. As far as non-payment of interest is concerned, Mr Prakash Shah submitted that the Settlement Commission totally

misdirected itself in law in holding that the Applications filed by the Petitioners were not admissible on the ground for non-payment of interest when in fact the Settlement Commission itself, at the hearing held on 4th March, 2015 had recorded the submissions of the learned Advocate for Petitioners that interest liability would be paid within a period of 30 days of the order of Settlement Commission in that behalf. Mr Prakash Shah submitted and in some of its orders the Settlement Commission has allowed interest to be paid within 30 days from passing of the final order in view of the difficulty faced in calculating the interest.

10. In addition to the aforesaid, Mr Prakash Shah submitted that assuming without admitting that the Settlement Applications of the Petitioners were inadmissible, it was incumbent upon the Settlement Commission to dismiss the Applications of the Petitioners without recording any finding on merits and without looking legality or validity of the Corrigendum / Addendum issued. By giving findings on this Corrigendum, the Petitioners' right to raise all contentions before the Adjudicating Authority with reference to the same have been foreclosed by the impugned order, was the submission. In view of all these facts, Mr Prakash Shah submitted that the impugned order is liable to be set aside and the

matter be remanded back to the Settlement Commission for a de novo hearing and on merits.

11. On the other hand, Mr Jetly, learned counsel appearing on behalf of the Revenue, sought to support the impugned order. He submitted that looking to the record before the Court as well as before the Settlement Commission, it was all along the Petitioners who were well aware that their Settlement Applications were not admitted. Mr Jetly drew our attention to the record and proceedings held on 28th October, 2014 as well as 4th March, 2015 whereunder it was clear that the Petitioners were aware that the Bench was hearing the matter on the issue of admissibility of the Settlement Applications. He submitted that looking to the fact that admittedly the full duty as also required under the Corrigendum was not paid by the Petitioners, the Settlement Commission was fully justified in coming to a finding that the Settlement Applications filed by the Writ Petitioners were not admissible under section 127B of the Customs Act, 1962 in view of the fact that they had not complied with the conditions and stipulations stated therein. Consequently, Mr Jetly submitted that there is no merit in these Writ Petitions and the same ought to be dismissed with costs.

12. We have heard the learned counsel for the parties at length and perused the papers and proceedings in these Writ Petitions. We have also given our anxious consideration to the impugned order. Before we deal with the present controversy, it would be necessary to note certain provisions of the Customs Act, 1962 and more particularly Chapter XIV-A which deals with the settlement of cases. This Chapter contains sections 127A to 127N and was inserted w.e.f. 1st August 1998 by section 102 of Finance (No.2) Act 1998 (21 of 1998). The object for inserting this Chapter was that the door to settlement with an errant and defaulting taxpayer was kept open, keeping in mind the primary objective to raise revenue. The Legislature was of the view that a rigid attitude would inhibit a one-time tax evader or an un-intending defaulter from making a clean breast of his affairs and unnecessarily strain the investigation resources of the Government. The settlement machinery was thus meant for providing a chance to a tax-evader who wants to turn over a new leaf as recommended by the Direct Taxes Inquiry Committee (popularly known as the “Wanchoo Committee”). Keeping the aforesaid objective in mind, this Chapter viz. Chapter XIV-A, was inserted in the Customs Act, 1962 under which the Settlement commission (the 4th Respondent) exercises power for settlement of cases.

13. Having set out in brief the purpose for which Chapter XIV-A was inserted in the Customs Act, 1962, we shall turn our attention to some of the statutory provisions. The first provision that we would like to reproduce is section 127B. On the date when the Settlement Applications were filed by the Petitioners (i.e. on 27th May, 2014), section 127B read as under:-

“127-B. Application for settlement of cases. - (1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this chapter) may, in respect of a case, relating to him make an application, before adjudication to the Settlement Commission to have the case settled, in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification, under-valuation or inapplicability of exemption notification or otherwise and such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,—

- (a) the applicant has filed a bill of entry, or a shipping bill, in respect of import or export of such goods, as the case may be, and in relation to such bill of entry or shipping bill, a show cause notice has been issued to him by the proper officer;**
- (b) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and**
- (c) the applicant has paid the additional amount of customs duty accepted by him along with interest**

due under section 28-AB:

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending in the Appellate Tribunal or any court:

Provided also that no application under this sub-section shall be made in relation to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) has been committed:

Provided also that no application under this sub-section shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975 (51 of 1975).

(1-A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1) before the 1st day of June, 2007 but an order under sub-section (1) of section 127-C has not been made before the said date, the applicant shall within a period of thirty days from the 1st day of June, 2007 pay the accepted duty liability failing which his application shall be liable to be rejected.

(2) Where any dutiable goods, books of account, other documents or any sale proceeds of the goods have been seized under section 110, the applicant shall not be entitled to make an application under sub-section (1) before the expiry of one hundred and eighty days from the date of the seizure.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be specified by rules.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant."

14. As the said section itself ex-facie reads, it gives an opportunity to a person to approach the Settlement Commission to settle a case relating to him before the same is adjudicated so that the same can be settled. For this purpose, the said person has to

make an Application before the Settlement Commission in such form and in such manner as may be specified by the Rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper Officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by the Rules. Thereafter, section 127B(1) stipulates that no such Settlement Application shall be made unless the conditions mentioned therein are complied with. We must at once mention here that section 28-AB was deleted from the Customs Act, 1962 and replaced with section 28-AA w.e.f. 8th April, 2011. Despite this, no corresponding amendment was carried out in section 127B (as reproduced above). Section 127B was amended much thereafter by Finance (No.2) Act, 2014 w.e.f. 6th August, 2014. Hence, even though section 28-AB was deleted from the statute books w.e.f. 8th April, 2011, a reference to the same still continued in section 127B till 6th August, 2014, when section 127B was amended. The reason why we are mentioning this is because when the Settlement Applications were filed by the Petitioners (i.e. on 27th May, 2014), reference to section 28-AB continued in section 127B even though the said section was deleted w.e.f. 8th April, 2011 and section 28-AA was substituted in its place.

15. Thereafter comes section 127C which prescribes the procedure to be followed on receipt of a Settlement Application under section 127B. Section 127C, in so far as the same is relevant for our purpose, reads thus:-

127-C. Procedure on receipt of an application under Section 127-B.—(1) On receipt of an application under Section 127-B, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with or reject the application, as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection :

Provided that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner of Customs having jurisdiction.

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Customs having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission :

Provided that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case :

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

(5) After examination of the records and the report of the Commissioner of Customs received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Commissioner of Customs having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Customs and Commissioner (Investigation) under sub-section (3) or sub-section (4).

(6)

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16. Section 127C(1) clearly stipulates that on receipt of an

Application under section 127B, the Settlement Commission shall, within seven days from the date of receipt of the Application, issue a notice to the Applicant to explain in writing as to why the Application made by him should be allowed to be proceeded with. After taking into consideration the explanation provided by the Applicant, the Settlement Commission shall, within a period of 14 days from the date of the notice, by an order, allow the Application to be proceeded with or reject the Application, as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection. The proviso stipulates that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the Application shall be deemed to have been allowed to be proceeded with. Thereafter, sub-section (3) of section 127C clearly states that where an Application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within 7 days from the date of the order under sub-section (1), call for a report alongwith the relevant records from the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction, and the Commissioner shall furnish the report within a period of 30 days of the receipt of communication from the Settlement Commission. What sub-section (3) of section 127C

contemplates is for a report to be called once the Application is allowed to be proceeded with or deemed to be allowed to be proceeded with. There would be no occasion for the Settlement Commission to call for a report if the Settlement Application has not been allowed to be proceeded with. Thereafter, section 127C(4) of the Act contemplates a situation where the Settlement Commission, after examining the report filed under section 127C(3), is of the opinion that any further inquiry or investigation in the matter is necessary, direct the Commissioner (Investigation), within 15 days of the receipt of the report, to make or cause to be made such further inquiry or investigation and furnish a report within a period of 90 days of the receipt of the communication from the Settlement Commission. After this entire procedure is over, sub-section (5) of section 127C stipulates that after examination of the records and the report received either under sub-section (3) and /or sub-section (4) and after giving an opportunity to the Applicant and the Revenue, the Settlement Commission may pass such order as it thinks fit on the matters covered by the Application and any other matter relating to the case not covered by the Application but referred to in the report of the Principal Commissioner of Customs or Commissioner of Customs and Commissioner (Investigation) under sub-section (3) and/or sub-section (4).

17. Looking at the entire scheme of section 127C, what becomes clear is that it contemplates two orders being passed. The first order is passed under section 127C(1). Whilst passing this order, the Settlement Commission simplicitor examines whether the Settlement Application should be allowed to be proceeded with. If not, then the Settlement Commission rejects the Application on the ground that it is not compliant with the mandatory provisions of section 127B. If no order is passed as contemplated under section 127C(1) within a period of 14 days, as stipulated in the said section, then the Application shall be deemed to have been allowed to be proceeded with. This order under section 127C(1) is an order that is passed at the threshold and the Settlement Commission is not required to discuss the merits of the case at all. Once the threshold bar is crossed, it is only thereafter that the Settlement Commission shall proceed to call for a report as contemplated under section 127C(3) and / or section 127C(4). After perusing those reports, if any, the Settlement Commission then passes a final order as contemplated under section 127C(5). What is important to note is that an order that is passed under section 127C(5) is the final order after the Settlement Application is either allowed to be proceeded with or deemed to be allowed to be

proceeded with. If that contingency happens, there is no question of passing any final order under section 127C(5) rejecting the Application on the ground that it is inadmissible under section 127B. This scheme is clear from an ex-facie reading of the provisions of section 127C.

18. Coming to the facts of the present case, it is not in dispute that the Settlement Applications of the Petitioners were filed on 27th May, 2014. The first notice as contemplated under section 127C(1), was issued by the Settlement Commission on 10th June, 2014 to remove the defects and to show cause why the Applications of the Petitioners should be allowed to proceed with. After this notice was issued, there was no order passed on the admissibility of the Settlement Applications filed by the Petitioners up and until the passing of the impugned order on 27th March, 2015. This alone was in violation of the statutory provisions as set out in section 127C(1) which contemplates that an order either allowing the Application to be proceeded with or rejecting the same ought to be passed within a period of 14 days from the date of issuance of the notice. If this is not done, then the Settlement Applications are deemed to be allowed to be proceeded with. We would therefore be justified in setting aside the impugned order on

this ground alone, as the impugned order rejects the Settlement Applications of the Petitioners on the ground that they are inadmissible under section 127B.

19. However, the matter does not stop here. As the record would indicate that thereafter the Settlement Commission also called for a report as contemplated under section 127C(3). The question of calling for a report only arises once the Settlement Application is allowed to be proceeded with. This is clear from the opening words of section 127C(3) which state *"Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report....."*. If the Settlement Commission was of the opinion that the Settlement Application filed by the Petitioners ought not to be proceeded with, there was no question of calling for any report as contemplated under section 127C(3). The fact that the report was called for by the Settlement Commission under the provisions of section 127C(3) would itself show that the Settlement Applications of the Petitioners were deemed to be allowed to be proceeded with. It was then not open to the Settlement Commission to reject the Settlement Applications on the ground that they are

not admissible. If it wanted to dismiss or reject the Applications of the Petitioners, they ought to have done it on merits. However, the operative part of the impugned order states that the Settlement Applications filed by the Petitioners are all rejected as inadmissible under section 127B of the Customs Act, 1962. This to our mind, could not have been the procedure adopted by the Settlement Commission. Another factor that one needs to take note of is that the impugned order itself records that it is an order passed under section 127C(5). As set out earlier by us, an order passed under section 127C(5) is the final order passed on the Settlement Applications. We fail to see how the Settlement Commission on one hand records that this is an order passed under section 127C(5) and then rejects the Settlement Applications as being inadmissible under section 127B. This would then really be an order passed under section 127C(1).

20. In light of all this, we are unable to agree with the submissions made on behalf of the Revenue by Mr Jetly. Even assuming for the sake of argument that the hearings that took place before the Settlement Commission on 28th October, 2014 and 4th March 2015, the Petitioners understood them to mean that the Settlement Commission was hearing the matter only on the issue of

admissibility would make no difference. The statutory provisions of the Act are quite clear and have to be followed. They cannot be circumvented merely because the Petitioners purportedly understood something different. Furthermore, in any event, if the Settlement Commission was to reject the Settlement Applications of the Petitioners on the ground that they are not admissible, there was absolutely no need to pass a detailed order on merits of the case and that too taking into account the Corrigendum / Addendum that was issued by the Revenue to the show cause notice even after the Settlement Applications were filed by the Petitioners. Therefore, looking to the totality of the facts of the present case, we have no hesitation in holding that the impugned order passed by the Settlement Commission dated 27th March, 2015 cannot be sustained.

21. In view of the foregoing discussion, the impugned order dated 27th March, 2015 passed by the Settlement Commission is quashed and set aside. The Settlement Applications are restored back to the file of the Settlement Commission for a de novo consideration in accordance with law. The Settlement Commission shall give a reasonable opportunity of hearing to all concerned including the Petitioners. We, however, clarify that before hearing

the Petitioners de novo, the Settlement Commission shall be at liberty to impose a condition for payment of interest as determined by it under section 28AA of the Act which the Petitioners shall be obliged to pay before its Settlement Applications are de novo considered. If the payment of interest ordered by the Settlement Commission is not complied with by the Petitioners, then the Settlement Applications of the Petitioners shall not be de novo considered as ordered earlier and the impugned order dated 27th March, 2015 shall stand revived and consequently, the Settlement Applications filed by the Petitioners shall stand rejected. Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI J.)