

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

WRIT PETITION NO. 13839 OF 2017

Sony India Pvt. Ltd.

A company incorporated under
the Companies Act, 1956

having its registered office at

A-18, Mohan Co-operative Industrial

Estate, Mathura Road,

New Delhi-110044

... Petitioner

Vs.

1. The Union of India through the
Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001.

2. The Directorate of Revenue Intelligence
Nhava Sheva Unit, 1st Floor,
Port Users Building (PUB)
Nhava Sheva, Uran,
Raigad – 400707.

3. The Customs, Central Excise and
Service Tax Settlement Commission,
Additional Bench, 6th Floor,
Plot No.C-24, Utpad Shulk Bhavan,
Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051.

... Respondents

.....

Mr. V. Sridharan, Senior Advocate a/w Mr. Jas Sanghavi i/by
M/s. PDS Legal for the Petitioner.

Mr. Pradeep Jetly for the Respondents.

.....

**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : JANUARY 12, 2018.

ORAL JUDGMENT (PER S. C. DHARMADHIKARI, J.) :

1. By this Petition under Article 226 of the Constitution of India, the petitioner is seeking following two reliefs:-

- "(a) *that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioners case and after going into the validity and legality thereof quash and set aside the Impugned Letter of F.No.DRI/MZU/NS/ENQ-102/2014/3322 dated 10.4.2017 issued by Respondent No.2 thereby demanding payment of interest from the Petitioners and Impugned Letter dated 30.11.2017 issued by Respondent No.3 thereby dismissing the Miscellaneous Application filed by the Petitioners as non-maintainable;*
- (b) *that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, under Article 226 of the Constitution of India ordering and directing that: (i) interest is not payable in cases of provisionally assessed Bills of Entry, when the complete differential duty has been paid prior to the finalization of the assessment and (ii) Respondent No.3 has power to issue clarifications, even after passing of Final Order under Section 127C(5) of the Customs Act, 1962;"*

2. The consequential prayer is of a writ of mandamus or any other writ or direction in the nature thereof, directing the respondents, their servants, officers and agents to refrain from recovering interest on the differential duty of Rs.79,65,52,147/- paid in respect of the provisionally assessed Bills of Entry in pursuance of the impugned letter dated 10th April, 2017 issued by the 2nd respondent.

3. Since extensive arguments have been canvassed and affidavits are placed on record, we proceed to admit this Petition.

4. We dispose it of by consent of both sides by this order. Thus, Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

5. We should note a few facts necessary to deal with the rival contentions.

6. The petitioners are a company registered under the Companies Act, 1956, now, the Companies Act, 2013. The 1st respondent is the Union of India and the 2nd respondent is the

Directorate of Revenue Intelligence (DRI) which is functional in terms of one of the statutes involved, namely, the Customs Act, 1962. The 3rd respondent is the Settlement Commission set up under Section 127B of the Customs Act, 1962.

7. The petitioners are *inter alia* engaged in import and trading of various electronic equipments, including television sets. The relevant period is April 2011 to February 2015. The petitioners were importing television sets of various sizes and models manufactured by M/s. Sony, Malaysia.

8. At the time of import, the petitioners claimed the benefit of concessional rate/exemption from Basic Customs Duty under a notification, details of which are mentioned in paragraph 7 of the Petition. It is claimed that certain Rules were framed so as to give effect to an agreement on the comprehensive economic cooperation between India and Association of Southeast Asian Nations. The petitioners state that exemption was available subject to their producing certificates of origin certifying that 35% value addition has been undertaken in Malaysia.

9. We are not concerned with the later disputes and issues for the simple reason that certain investigations resulted in the show cause notice dated 25th April, 2016 being issued calling upon the petitioners to show cause as to why:

- i. Payment of differential duty amounting to Rs.290,91,27,182/- should not be demanded and recovered from the Petitioners under Section 28 of the Customs Act, 1962 along with interest under Section 28AA;
- ii. The differential duty amounting to Rs.79,65,52,147/- should not be demanded and recovered from the Petitioners under Section 18(2) of the Customs Act, 1962 along with interest under Section 18(3);
- iii. Rs.300,00,00,000/- deposited by the Petitioners during investigations, should not be appropriated against the differential duty and interest payable;”

Thus, as per the show cause notice, differential duty and interest demands were raised against the petitioners with respect to both, finally assessed Bills of Entry as well as provisionally assessed Bills of Entry, but total duty demanded, according to the petitioners, is 370,56,79,329/-.

10. The petitioners claimed that in order to show their bonafides, they deposited Rs.300,00,00,000/- prior to the issuance of the show cause notice itself. After the show cause notice was issued and duly received, the petitioners deposited Rs.70,56,79,329/- towards differential duty demanded and Rs.114,54,59,876/- towards interest payable on the differential duty demanded under Section 28AA of the Customs Act, 1962.

11. The petitioners then approached the respondent no.3-Commission and sought settlement of the issues and disputes under the show cause notice dated 25th April, 2016. The petitioners claim that in their application, they clearly stated that they have paid the following sums:

Amount paid	Paid towards
Rs.370,56,79,329/-	Differential duty demanded in respect of the finally assessed Bills of Entry and the Provisionally assessed Bills of Entry.
Rs.114,54,59,876/-	Interest in respect of the differential duty paid with regard to the finally assessed Bills of Entry.

12. It is stated that this application was accepted by the 3rd respondent and it was listed for hearing on 14th December, 2016. The contention is that the 2nd respondent, before, during or after the hearing, did not allege that complete or full payment of interest has not been paid by the petitioners. After the proceedings concluded, the Commission made the following order:

*"8.1 **Customs Duty:** The differential Customs duty is settled at Rs.370,56,79,329/-. Applicant had deposited Rs.300.00 crores during investigation and paid the balance amount subsequently. The deposit of Rs.300.00 crores and balance amount paid subsequently are appropriated towards their duty liability. As the applicant has already paid the entire duty, no further liability subsists on this account. The duty settled herein includes differential duty of Rs.79,65,52,147/- payable by the applicant on the 187 Bills of Entry provisionally assessed which now stand finally assessed as proposed in the SCN.*

*8.2 **Interest:** The applicant have deposited Rs.1,14,54,59,876/- towards interest which is directed to be appropriated. The Revenue is directed to verify the applicable interest on the settled amount and balance if any payable by the applicant, should be deposited by the applicant within 30 days of the receipt of this order.*

*8.3 **Penalty:** (i) The Bench imposes a penalty of **Rs.32,00,00,000/- (Rupees Thirty-two crores only)** on the applicant **M/s Sony India P. Ltd.** and grants immunity to them from penalty in excess of this amount.*

*(ii) The Bench imposes a penalty of **Rs.50,00,000/- (Rupees Fifty lakhs only)** on the co-applicant **Shri K.Hibi** and grants immunity to him from penalty in excess of this amount.*

(iii) The Bench imposes a penalty of **Rs.30,00,000/- (Rupees Thirty lakhs only)** on the co-applicant **Shri Sanjay Bhargava** and grants immunity to him from penalty in excess of this amount.

(iv) The Bench imposes a penalty of **Rs.20,00,000/- (Rupees Twenty lakhs only)** on the co-applicant **Shri Jiro Anagaki** and grants immunity to him from penalty in excess of this amount.

The above penalties should be paid by the applicant/co-applicants within 30 days of receipt of this order.

8.4 Redemption Fine: The goods valued at Rs.6016,56,43,121/- are held liable to confiscation. However, since the same are not available for confiscation, no redemption fine is imposed.

8.5 Prosecution: Subject to payment of dues as adjudged above, full immunity from prosecution under Customs Act, 1962 is granted to the applicant/co-applicants so far as this case is concerned.

9. The above immunities to the applicant/co-applicants are granted under Section 127H(1) of the Act. Their attention is also invited to the provisions of sub-section (2) and (3) of Section 127H *ibid*. This order shall be void and immunities withdrawn if the Bench, at any time finds that the applicant had concealed any particular material from the Commission or had given false evidence or had obtained this order by fraud or misrepresentation of facts.

10. This order settles the case of the applicant and Co-applicants herein only. The Adjudicating authority is free to take action against the other Noticees to the Show Cause Notice as per law.

11. A copy of this order is given to the applicant/co-applicants and Jurisdictional Commissioner for their use in the implementation of this order. No one should use this order in any other manner or for any other purpose without the written permission of the Commission.”

13. Mr. Sridharan, learned Senior Counsel appearing on behalf of the petitioners would submit that this order finalizes the assessment of provisionally assessed Bills of Entry. There is nothing in the order which would indicate that any interest in respect of the same is payable. The petitioners have paid the penalty adjudged and reported compliance of the same to the 3rd respondent. Thus, the final order dated 2nd March, 2017 issued by the 3rd respondent was complied with.

14. It is the complaint of the petitioners that after this order was issued and duly implemented, the impugned communication has been received.

15. The impugned communication, copy of which is at annexure "A" (page 23 of the paper book), reads as under :

"F.No.DRI/MZU/NS/ENQ-102/2014/3322 Date-10.04.2017.

*To,
M/s. Sony India Pvt. Ltd.
A-31, Mohan Cooperative Ind. Area
Mathura Road, New Delhi-110044*

Gentlemen,

Sub- Order No.27/FINAL ORDER/CUS/KNA/2017 dated 02.03.2017 passed by the Hon'ble Settlement Commission, Mumbai-Reg.

Please refer to the above Final Order dated 02.03.2017 passed by the Hon'ble Settlement Commission, Additional Bench, Mumbai on an application filed by you and other applicants.

2. Pay orders submitted towards the penalties imposed on you and other applicants were deposited in the Govt. Treasury at JNCH vide TR-6 Challans dated 29.03.2017 and original copy of the said challans are enclosed.

3. Attention is drawn to para 8.2 of the said order wherein a direction was given by the Hon'ble Settlement Commission to the department to verify the applicable interest payable. It is found that interest of **Rs.114,54,59,876/-** paid, was payable on the differential duty arising out of the bills of entry finally assessed at the time of clearances. Interest on the differential duty of **Rs.79,65,52,147/-** payable on provisionally assessed 187 bills of entry has not been paid. Vide the impugned order dated 02.03.2017, those 187 bills of entry have been order finally assessed.

4. It is, therefore, requested that deposit the interest payable of the differential duty of **Rs.79,65,52,147/-** on the provisionally assessed 187 bills of entry, as provided under Sub-Section 3 of the Section 18 of the Customs Act, 1962.

Yours Sincerely,

Sd/-

(Dr UMAIR MIR)

DEPUTY DIRECTOR,
DRI, NHAVA SHEVA.

Encl- as above

Copy for information to:- The Senior Investigating Officer, Settlement Commission, Customs, Central Excise & Service Tax, Additional Bench, Mumbai.”

16. It is this communication which is challenged on several grounds. It is contended that the petitioners paid the duty alongwith interest before filing the application seeking settlement. No interest was admitted and paid by the petitioners for the duty demanded in respect of the provisionally assessed Bills of Entry. This is clear from Sr. No.10 of the form of application filed before the Settlement Commission at pages 161 and 162 of the paper book. By relying upon the language of Section 127B(1) of the Customs Act, 1962 and the first proviso (c) thereto, it is urged that any applicant before the Settlement Commission is required to deposit the additional amount of customs duty accepted by him alongwith interest due as condition precedent. Only then the application can be admitted before the Settlement Commission. The Settlement Commission admitted the application by order dated 16th September, 2016. The Commission disposed of this application by order dated 2nd March, 2017. There is no challenge by the Revenue to this order of the Settlement Commission. Further, the Revenue filed a report dated 20th October, 2016 before the Settlement Commission accepting that the petitioners deposited interest of Rs.114,54,59,876/- payable on the

differential duty. The only liberty that was reserved by the Revenue pertains to any discrepancy found in the calculation of this sum of interest. The Revenue did not report any such calculation or computation error. Thus, there was no discrepancy in the calculation of interest.

17. It is clear from the provisions of the Act, and particularly Section 127H(1) of the Customs Act, 1962 that the Settlement Commission has power only to grant immunity from penalty and prosecution for any offence under the Customs Act, 1962. It has no power to grant immunity from payment of any duty or interest. Albeit, the Settlement Commission in regard to the case before it, can exercise all the powers of the Customs Officers and that is clear from the language of Section 127F(1). Mr. Sridharan would submit that the settled position in law is that the Commission has to pass an order in accordance with the provisions of the Customs Act, 1962 and in that regard he relied upon Section 127C(5) of the Customs Act, 1962. The Commission cannot direct payment of interest which is not payable under the Customs Act, 1962. Mr. Sridharan, therefore, would submit that no interest was payable

by the petitioners on the differential duty in respect of the provisionally assessed Bills of Entry. The provisionally assessed Bills of Entry were finalized by the Settlement Commission pursuant to the order dated 2nd March, 2017 and the Revenue appropriated the duty already paid. The Commission did not pass any order directing the petitioners to pay interest. There was never any waiver of interest directed by the Commission either. Thus, both the Settlement Commission and the 2nd respondent clearly understood that no interest is payable by the petitioners on the differential duty consequent upon the final assessment thereof pursuant to the order dated 2nd March, 2017 of the Settlement Commission. It is in these circumstances, Mr. Sridharan would submit that the impugned communication is *ex facie* erroneous and illegal. The 2nd respondent is taking advantage of para 8.2 of the order of the Settlement Commission in seeking to reopen the case by contending that the petitioners are liable to pay interest on the differential duty found payable on finalization of the Bills of Entry by the Settlement Commission.

18. Alternatively and without prejudice, it is argued that if by para 8.2 of the order of the Settlement Commission it purports to direct the payment of interest on the differential duty on account of finalization of the assessment of 187 Bills of Entry, then, the petitioners are entitled to challenge that order to that extent in this Court.

19. For all these reasons, he would submit that the Writ Petition be allowed.

20. Mr. Sridharan has relied upon the language of Section 18 of the Customs Act, 1962 and Section 28AA of that Act. He also brings to our notice the relevant portions of the amendments brought to the Customs Act, 1962. He invites our attention to a document styled as 'Budget Changes 2016-2017', which is nothing but an extract from the Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, New Delhi's communication enlisting the changes in Customs and Central Excise Law and rates of duty proposed through the Finance Bill, 2016.

21. Finally, Mr. Sridharan would heavily rely upon the observations in the judgment of this Court to which one of us (Shri S. C. Dharmadhikari, J.) was a party, rendered in the case of *CEAT Limited vs. Commissioner of Central Excise & Customs, Nashik*, reported in *2015 (317) Excise Law Times 192 (Bom.)*. He would submit that the Revenue brought a Special Leave Petition to challenge this judgment and order which Special Leave Petition has also been dismissed by the Hon'ble Supreme Court.

22. On the other hand, Mr. Jetly appearing for the respondents, particularly respondent nos. 1 and 2, relies upon the affidavit-in-reply to this Petition. He would submit that it is correct that the Settlement Commission passed an order on 2nd March, 2017. However, the petitioners had not paid any interest on the differential duty of Rs.79,65,52,147/- arising out of the finalization of the provisionally assessed 187 Bills of Entry vide the impugned order of the Settlement Commission. Though the finalization comes under the order of the Settlement Commission, the payment of interest which is statutorily payable, was not done. That is how the communication was issued. The petitioners had

responded to that communication by their reply dated 1st May, 2017. Thereafter, the Directorate of Revenue Intelligence communicated with the Settlement Commission on the issue and requested for a clarification in that regard. A communication was received from the office of the Settlement Commission on 19th June, 2017, informing that there are provisions under Section 127C(9) read with Section 127K, Section 127J and 127H(2) of the Act, which are self explanatory, and appropriate action may be taken as deemed fit. It is in these circumstances, it is submitted that there is nothing erroneous or illegal about the communication. Once the language of the statute is clear, enunciating particularly the power to recover interest, then all the more, the Petition should not be entertained. It is clear that the reliance placed on the decision of this Court and that of the Hon'ble Supreme Court is misplaced. They were rendered in different facts and circumstances. For these reasons, Mr. Jetly would submit that the Petition be dismissed.

23. For properly appreciating these contentions, it would be necessary to refer to the impugned letter. We have already reproduced it in the foregoing paragraphs. This letter refers to the

final order of the Settlement Commission dated 2nd March, 2017 on the application of the petitioner and the other applicants. This communication also refers to the receipt of the pay orders towards penalties imposed on the petitioner and the other applicants and the deposit thereof in the Government Treasury. The communication relies upon para 8.2 of the order of the Settlement Commission wherein a direction was given by the Settlement Commission to the Revenue to verify the applicable interest payable. The communication says that the interest of Rs.114,54,59,876/- paid, was payable on the differential duty arising out of the Bills of Entry finally assessed at the time of clearances. Interest on the differential duty of Rs.79,66,52,147/- payable on provisionally assessed 187 Bills of Entry has not been paid. True it is that by the order of the Settlement Commission, the 187 Bills of Entry have been finally assessed. It is, therefore, the request of the Revenue that the petitioner should deposit the interest payable on the differential duty of Rs.79,65,52,147/- on the provisionally assessed 187 Bills of Entry and in that regard it refers to Section 18(3) of the Customs Act, 1962. Pertinently, this communication from the Deputy Director on behalf of the

Directorate of Revenue Intelligence, Nhava Sheva Unit refers to the order of the Settlement Commission dated 2nd March, 2017 as an impugned order. We do not see anybody has impugned this order at least on the date of issuance of this communication dated 10th April, 2017. This is a clear pointer to what the Revenue understands that order to be and its complaint thereagainst. For that purpose, if we refer the proceedings before the Settlement Commission, it would be clear that the Commission had before it, the application of the petitioner. The application of the petitioner prayed for the following reliefs:

- “a) accept the amount of Rs.370,56,79,329/- as submitted above along with applicable interest of Rs.114,54,59,876/- and admit & settle the application filed by the Applicant;
- b) grant waiver of penalty leviable under the Customs Act in full;
- c) to direct the Common Adjudicating Authority, namely the Additional Director General (Adjudication), Directorate of Revenue Intelligence, Mumbai, not to proceed further with the subject matter including passing of adjudication order till the final disposal of this settlement application;
- d) to provide immunity to the Applicant from prosecution under the Customs Act and under any other applicable laws;
- e) grant a personal hearing; and

- f) pass such order or such other order/s as may be deemed fit and proper in the facts and circumstances of the case.”

24. It is evident that all the facts and circumstances, as are set out in the show-cause notice, are extensively referred by the Settlement Commission in its final order including the allegations therein. The issue or dispute was noted with all the details. The Commission, in paragraph 2.28, makes a reference to the goods imported under the Bills of Entry as detailed in annexures A-1, B-1, C-1, D-1 and E-1 of the show cause notice and observes that they have been assessed provisionally for the reasons as discussed elsewhere in the show cause notice. The assessment thereof is required to be finalized under Section 18(2) of the Customs Act, 1962 after denying the benefit of Notification No. 46/2011 dated 1st June, 2011 to duty as indicated in Column (o) of the said annexures. Consequently, differential duty in respect of these imports as detailed in the above annexures, totally amounting to Rs.79,65,52,147/- is payable by the petitioner under the provisions of Section 18(2) of the Customs Act, 1962. The Commission then summarizes the computation and calculations in relations to the demand at internal page 14 of its order.

25. In paragraph 3 of its order, the Commission refers to the submissions of the applicants. Then, at internal page 17 (running page 199) para 4, the Settlement Commission holds that these applications were allowed to be proceeded under Section 127B of the Customs Act, 1962 by orders of the Commission dated 16th September, 2016. Then, the Commission refers to the report of 20th October, 2016 filed on behalf of the Revenue and in which the Revenue says that the applicant Company has paid entire duty of Rs.370,56,79,329/- demanded in the show cause notice. They have also paid an amount of Rs.114,54,59,876/- towards interest payable on the said differential duty amount. Paragraph 5.1 of the order of the Settlement Commission reads as under :

“5.1 The applicant company has paid the entire duty of Rs.370,56,79,329/- demanded in the show cause notice. They have also paid an amount of Rs.114,54,59,876/- towards interest payable on the said differential duty amount. The interest so paid by the applicant prima facie appears to be correctly paid. However, any discrepancies found in the calculation will follow the natural course of intimation to the Hon'ble Commission, separately.”

26. Then, the Settlement Commission makes a reference to the report and says that the DRI has no objection to the settlement of

the applicants' case subject to the following :

- (a) confirmation of entire amount of differential duty with interest;
- (b) imposition of appropriate penalty and personal penalty, and
- (c) any other order as the Settlement Commission may deem fit.

27. Then, the pleas raised by the parties are noted. After para 8, the operative order of the Commission reproduced above has been passed. Thus, the Bench takes note of the fact that the parties like the petitioners have cooperated with it and made a true and complete disclosure of their liabilities and the Commission is inclined to settle their cases under Section 127C(5) of the Customs Act, 1962 by granting partial immunity from penalties in the terms noted in its operative order.

28. We cannot pick one sentence from the operative order, and particularly in paras 8.1 and 8.2 and read it in isolation. On the customs duty, the Commission says that it has settled it at Rs.370,56,79,329/-. The petitioner has deposited Rs.300.00 crores during investigation and paid the balance amount subsequently. The deposit of Rs.300.00 crores and balance amount paid

subsequently are appropriated towards the duty liability. As the petitioner has already paid the entire duty, according to the Commission, no further liability subsists on this account. The pertinent observations of the Commission are that the duty settled includes differential duty of Rs.79,65,52,147/- payable by the petitioner on the 187 Bills of Entry provisionally assessed which now stand finally assessed as proposed in the show cause notice.

29. As far as the interest is concerned, the petitioner has deposited Rs.114,54,59,876/- towards interest and that is also directed to be appropriated. The Revenue was directed to verify the applicable interest on the settlement amount and balance, if any, payable by the petitioner, should be deposited by the petitioner within 30 days of receipt of that order.

30. Pertinently, Revenue does not do anything in order to verify the applicable interest on the settled amount and balance, if any, payable by the petitioner.

31. The direction in paras 8.1 and 8.2 of the operative order has to be noted and reconciled with para 5.1 of the order of the

Settlement Commission which we have reproduced above. Thus, the differential duty was computed in the above sum. The interest also, which has been paid, was directed to be verified. The Revenue in the report had already indicated that this figure *prima facie* appears to be correct. Any discrepancy found in the calculation will follow the natural course of intimation to the Commission separately. Pertinently, the Revenue made no communication with the Commission intimating discrepancy in the calculation. Thus, the calculation and computation was directed to be verified. We do not see any substantive issue, and particularly of the nature highlighted in the impugned communication/letter, could have been surviving for adjudication after such comprehensive order of the Commission. The impugned letter does not refer to any computation or calculation error but purports to raise a substantive demand. That is something which we do not find to be permissible and sustainable in the given facts and circumstances.

32. We do not see how we can be called upon in such circumstances to decide any wider question or a larger issue. All

that we are concerned with is the sustainability of the impugned communication. We find that once the final order of the Commission has been accepted by both sides, particularly by the Revenue, and not challenged, could the Revenue have, after appropriation and adjustment in terms of this final order, called upon the petitioner to pay interest on the differential duty payable on provisionally assessed 187 Bills of Entry. If that was the remaining or the outstanding issue, the Commission would have notified the same during the course of its proceedings. Section 18 of the the Customs Act, 1962 has been relied upon. Section 18 of the said Act is to be found in Chapter V titled as “Levy of, And Exemption From Customs Duties”. Section 18 follows Sections 12 to 17 which refer to 'dutiable goods', 'duty on pilfered goods', 'valuation of goods', 'date for determination of rate on duty and tariff valuation of imported goods', 'date for determination of rate of duty and tariff valuation of export goods' and importantly, Section 17 titled as 'Assessment of duty'.

33. By Sub-section (1) of Section 17, it is stated that an importer entering any imported goods under Section 46, or an

exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self assess the duty, if any, leviable on such goods. Then, the proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary. Prior to the substitution of Sub-section (3) w.e.f. 31st March, 2017 by the Finance Act, 2017, it was clarified that the proper officer may require the importer, exporter or any other person, for verification of self-assessment under Sub-section(2), to produce any contract or broker's note etc., or any document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information. Where the self-assessment is correct, the question does not arise, but when it is not done correctly, then the proper officer, without prejudice to any other action which may be taken under the Customs Act, 1962, re-assess the duty leviable on such goods. Then follows the eventuality of re-assessment and

that is set out by Sub-sections (5) and (6) of Section 17. Thus, any disagreement with the self-assessment or any contravention of the self-assessment by the importer in such reassessment necessitates passing of a speaking order within the time stipulated by Sub-section (5). By Sub-section (6), the consequences of not doing reassessment or not passing a speaking order have been set out. Then, there is an explanation appearing in this Section.

34. Section 18 deals with provisional assessment of duty and opens with a non-obstante clause. That is, where the importer or the exporter is unable to make self-assessment under Sub-section (1) of Section 17 and makes a request in writing to the proper officer for assessment, or where the proper officer deems it necessary to subject any imported or exported goods to any chemical or other test, or where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further inquiry, or where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further inquiry, then the proper

officer can direct that the duty leviable on such goods be assessed provisionally and if the importer or exporter, as the case may be, furnishes such security as he deems fit for the payment of deficiency, if any, between the duty as may be finally assessed or reassessed, as the case may be, and the duty provisionally assessed. Thus, the deficiency in the duty as may be finally assessed or reassessed, as the case may be, and the duty provisionally assessed has to be cleared by furnishing security. The consequences of final assessment and the re-assessment are set out in Sub-section (2) and then follows Sub-section (3) which has been inserted by the Act 29 of 2006 with effect from 13th July, 2006. There, the liability to pay interest arises and on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under Sub-section (2), at the rate fixed by the Central Government under Section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof. We need not refer to Section 28AB for what we find is that this route has not been taken in this case. The show cause notice was issued and that, as a whole, went for settlement before the Settlement Commission.

The Revenue verified the contents of that application in the backdrop of the show cause notice and submitted its report. In that report, it communicated its agreement with the figures and calculations, albeit *prima facie*, but reserving a limited liberty. The Commission was allowed to proceed on these lines and even the Commission proceeded accordingly. Once the dispute or the issues were settled by the Commission in terms of the order and with the operative directions, which only granted or reserved a limited liberty in the Revenue, then, in the facts and circumstances of this case, we see no justification for the Revenue now demanding interest on the differential duty. Everything that was payable, including duty and interest, is subsumed in the order of the Commission. That is clear, according to us, and there was never any ambiguity or error noted in the same. What we find interesting is, in response to this Petition, it is in the affidavit-in-reply that the Revenue refers to the communication. The Revenue, namely the Directorate of Revenue Intelligence, addresses a communication to the Assistant Commissioner, Customs and Central Excise Settlement Commission, Additional Bench, Mumbai. There, it makes reference to the impugned letter and

with a copy marked to the Commission. After it refers to all the operative directions, the Commission's attention is invited to Sub-section (3) of Section 18. In para 4.2.1 of this communication, the Revenue says that the 187 Bills of Entry assessed provisionally, have now stood finally assessed under the impugned order of the Settlement Commission. Though the petitioner has paid differential duty of Rs.79,65,52,147/- on the provisionally assessed 187 Bills of Entry, they have not paid interest on the said differential duty. Once again, the Commission's attention was invited to Section 18(3). The Revenue says that in compliance of the order of the Commission, by office letter dated 10th April, 2017, the petitioner was requested to pay the interest on the said differential duty arising out of the provisionally assessed Bills of Entry. Then, the response of the petitioner to this communication is set out. It is expressly stated in para 5.1 that the petitioner seeks assistance and takes shelter of the decision of this Court in the case of **CEAT Ltd.** (supra) and its stand that the interest provision under the Customs Act, 1962 was similarly worded to the interest provision under the Central Excise and no interest can be charged on such differential duties which are prior to finalization of the

provisional assessment. However, in the opinion of the Revenue, there are decisions to the contrary. It is in these circumstances that the Revenue says that though the petitioner has paid the differential duty before the final assessment, but that does not absolve them from paying interest on the same. The payment of differential duty before final assessment is the choice of the petitioner and hence, it is required to pay interest for the period from the first day of the month succeeding the month in which the duty is provisionally assessed till the date of payment thereof. However, despite being informed by the Revenue/Department, that interest has not been paid. That is stated to be a non-compliance of the order of the Settlement Commission and it was requested to therefore withdraw the immunities granted to the petitioner. Yet, the communication says that the Settlement Commission should do the needful as all the above circumstances have been brought to its notice. A decision should be taken by the Settlement Commission and duly communicated.

35. From the record, it is apparent that the Settlement Commission did not agree with this stand of the Revenue for, on 19th June, 2017, it communicated that the provisions of the

Customs Act, particularly in relation to the powers of the Commission, are clear and self explanatory. The Revenue was told to take appropriate action at its end.

36. It is in these circumstances that we do not see how the Revenue, when being in receipt of such communication from the Commission, could have pursued the action in terms of the impugned letter dated 10th April, 2017. The Revenue knew where it stands and in the scheme of the law. If it has not raised the contentions in the affidavit-in-reply or in the communication to the Settlement Commission during the proceedings or post its final order dated 2nd March, 2017, then, in the facts and circumstances of this case, it is alone to be blamed. It must blame itself if it has not conducted the proceedings before the Commission in the manner demanded by the statute or its report or its conduct of the proceedings was deficient in any manner. In the Petition challenging the impugned communication / letter dated 10th April, 2017 at the instance of the petitioner, the Revenue cannot call upon this Court to undertake an exercise which stands concluded by the final

order of the Settlement Commission dated 2nd March, 2017. More so, when the said final order is not challenged by the Revenue in substantive proceedings.

37. As a result of the above discussion, we find that the Petition succeeds on this limited issue. That is why we have not entered into any larger controversy. Rule is made absolute by quashing the impugned letter dated 10th April, 2017 and the Revenue is commanded not to act in furtherance thereof. In the circumstances, there would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)