BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.10055, 10116, 10374 and 10428 of 2024
and
W.M.P.(MD)Nos.9092, 9139, 9349 and 9391 of 2024

W.P.(MD)No.10055 of 2024:-

M/s.Alba Industries Ltd.,
Represented by its Director,
S.Senthil Kumaran,
Registered Office - BMC House,
No.32-2, Halls Road,
Egmore,
Chennai - 600 008. ... Petitioner

Vs.

1.The Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

2.The Additional Commissioner of Customs (Preventive),
Office of the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

3.Customs and Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House,
No.60, Rajaj Salai,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Order-in-Original No.41/2024, dated 26.03.2024 in C.No.VIII/10/04/2021-Cus.Adjn. GEN/ADJ/COMM/183/2021, DIN-20240381OI000000F07D, passed by the second respondent herein insofar as the petitioner is concerned and to quash the same as illegal, unjust, unfair and in excess of jurisdiction and in violation of principles of natural justice and further allow the petitioner to pay the balance amount of interest portion on the total duty already paid and to file Settlement Application before the Hon'ble Settlement Commission, Chennai, as provided under Section 127B of the Customs Act, 1962, the third respondent herein within a reasonable time as fixed by this Court to settle the case in Final.

W.P.(MD)No.10116 of 2024:-

S.Masanam ... Petitioner

Vs.

1.The Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

2.The Additional Commissioner of Customs (Preventive),
Office of the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

3.Customs and Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House,
No.60, Rajaj Salai,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Order-in-Original No.41/2024, dated 26.03.2024 in C.No.VIII/10/04/2021-Cus.Adjn. GEN/ADJ/COMM/183/2021, DIN-20240381OI000000F07D, passed by the second respondent herein insofar as the petitioner is concerned and to quash the same as illegal, unjust, unfair and in excess of jurisdiction and in violation of principles of natural justice and further allow the petitioner to file Settlement Application before the Hon'ble Settlement Commission, Chennai, as provided under Section 127B of the Customs Act, 1962, the third respondent herein as a Co-Noticee after the Main Noticee pays the balance amount of interest portion on the total duty already paid within a reasonable time as fixed by this Court to settle the case in Final.

W.P.(MD)No.10374 of 2024:-

S.Sukumar ... Petitioner

Vs.

1.The Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

2.The Additional Commissioner of Customs (Preventive),
Office of the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

3.Customs and Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House,
No.60, Rajaj Salai, Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Order-in-Original No.41/2024, dated 26.03.2024 in C.No.VIII/10/04/2021-Cus.Adjn. GEN/ADJ/COMM/183/2021, DIN-20240381OI000000F07D, passed by the second respondent herein insofar as the petitioner is concerned and to quash the same as illegal, unjust, unfair and in excess of jurisdiction and in violation of principles of natural justice and further allow the petitioner to file Settlement Application before the Hon'ble Settlement Commission, Chennai, as provided under Section 127B of the Customs Act, 1962, the third respondent herein as a Co-Noticee after the Main Noticee pays the balance amount of interest portion on the total duty already paid within a reasonable time as fixed by this Court to settle the case in Final.

W.P.(MD)No.10428 of 2024:-

M/s.Balamurugan Chemicals (P) Limited,
Represented by its Director S.Vethanayagam,
No.51/6, Thattaparai Road,
South Silukanpatti,
Pudukottai,
Tuticorin - 628 103. ... Petitioner

Vs.

1.The Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

2.The Additional Commissioner of Customs (Preventive),
Office of the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

3.Customs and Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House,
No.60, Rajaj Salai,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Order-in-Original No.41/2024, dated 26.03.2024 in C.No.VIII/10/04/2021-Cus.Adjn. GEN/ADJ/COMM/183/2021, DIN-20240381OI000000F07D, passed by the second respondent herein insofar as the petitioner is concerned and to quash the same as illegal, unjust, unfair and in excess of jurisdiction and in violation of principles of natural justice and further allow the petitioner to file Settlement Application before the Hon'ble Settlement Commission, Chennai, as provided under Section 127B of the Customs Act, 1962, the third respondent herein as a Co-Noticee after the Main Noticee pays the balance amount of interest portion on the total duty already paid within a reasonable time as fixed by this Court to settle the case in Final.

For Petitioners in all the W.Ps.: Mr.A.K.Jayaraj

For R1 and R2 in all the W.Ps.: Mr.N.Dilip Kumar
Senior Standing Counsel

COMMON ORDER

In these Writ Petitions, the respective petitioners are challenging the impugned Order-in-Original No.41/2024 dated 26.03.2024.

2. By the impugned order, the demand proposed in the show cause notice dated 23.03.2021 in C.No.VIII/10/04/2021-Cus.Adjn has been confirmed against the respective petitioners. Operative portion of the impugned order reads as under:-

ORDER

i. I deny the benefit under Notification No. 52/2003 dated 31.03.2003 availed by M/s. AIL for import of machineries listed in Annexure III to the notice, totally valued at Rs. 18,99,99,667/ for violating the various conditions of the notification such as:

(a). import of goods with a view to divert them;

(b) installation and commissioning of the same at the place other than EOU; and

(c) usage of such equipment therein.

ii. I confirm the differential duty liability of Rs.5,12,10,091/- (Rupees Five Crore Twelve Lakhs Ten Thousand and Ninety One only) as detailed in Annexure-III to the notice under Section 72(1)(a) of the Customs Act, 1962 in r/o the bond executed by M/s. Alba Industries Limited for obtaining procurement certificate for the import of capital goods duty free and violated of the bond conditions.

iii. I order for appropriation of Rs.5,12,10,091/- (Rupees Five Crore Twelve Lakhs Ten Thousand and Ninety One only) paid an amount of Rs 1.00 Crore vide SC 34 receipt no. 93131 dated 21/09/2020 and Rs 4.13 Crores vide SC 34 receipt no. 94362 dated 07/12/2020 towards the duty liability of M/s. Alba Industries Limited.

iv. I order for confiscation of the seized machineries under Section 111(j) and 111(o) of the Customs Act, 1962, imported by M/s. AIL vide Bill of Entries as listed in Annexure III to the notice under Section 124 of the Customs Act, 1962 for violation of Notification No. 52/2003 dt. 31.03.2003. However, I give an option to M/s. Alba Industries Ltd. to redeem the machineries under seizure on payment of redemption fine of Rs. 3,80,00,000 (Rupees Three crore eighty lakh only) in lieu of confiscation under Section 125 (1) of Customs Act 1962.

v. I confirm interest liability under Section 28AA (erstwhile 28AB) of the Customs Act, 1962 read with Section 72(1)(a) of the Customs Act, 1962, on the differential duty of Rs.5,12,10,091/- in respect of M/s. Alba Industries Limited.

vi. I order for appropriation of Rs.9,89,909/- (Rupees Nine Lakhs Eighty Nine Thousand Nine Hundred and Nine only) paid amount of Rs. 2.00 lakh vide SC 34 receipt no. 96126 dated 12.04.2021, Rs.2.00 lakh vide SC 34 receipt no. 96299 dated 27.04.2021 and Rs 5.00 Lakh vide SC 34 receipt no. 97858 dated 20.09.2021 and balance amount paid towards duty of Rs.89,909/- totaling Rs. 9,89,909/- towards the interest liability of M/s. Alba Industries Limited.

vii. I impose a penalty on the following under Section 112(a)(ii) of the

Customs Act, 1962:

Sl. No.	Name of Person / Firm	Amount in Rs.	Amount in words
1.	M/s. Alba Industries Limited	50,00,000/-	Fifty lakh only
2.	Shri S.Sukumar	50,00,000/-	Fifty lakh only
3.	Shri R.Masanam	50,00,000/-	Fifty lakh only
4.	M/s. BCPL	50,00,000/-	Fifty lakh only

iii. I impose a penalty on the following under Section 114AA of the Customs Act, 1962:

Sl. No.	Name of Person / Firm	Amount in Rs.	Amount in words
1.	M/s. Alba Industries Limited	80,00,00,000/-	Eighty crore only
2.	Shri S.Sukumar	80,00,00,000/-	Eighty crore only
3.	Shri R.Masanam	80,00,00,000/-	Eighty crore only

57. This order is issued without prejudice to any other action that may be taken under the Customs Act, 1962 and / or any other law for the time being in force.

3. Prior to the issuance of the show cause notice, the petitioner in W.P.(MD)No.10055 of 2024, had paid the disputed amount of Rs.5,12,10,091/-. *Ex Post facto* during the pendency of the present Writ Petitions, the proportionate interest payable by the said petitioner has also been paid.

4. The admitted facts of the case are that after the show cause notice dated 23.03.2021 in C.No.VIII/10/04/2021-Cus.Adjn was issued, the petitioners had been sending repeated request for adjournments in response to the personal hearing notices stating that the petitioners wanted to settle the dispute under Chapter XIV-A of the Customs Act, 1962.

5.The specific case of the petitioners is that the petitioners were proceeded under the provisions of the Insolvency and Bankruptcy Code, 2016 by Federal Bank Limited in IBA/43/2020 under Section 7 of the said Code and that in view of the same, there was an moratorium and a Resolution Professional was also appointed. It is submitted that thereafter a final order came to be passed by National Company Law Tribunal, Division Bench -II, Chennai, in IBA/43/2020 on 16.03.2022.

6. The admitted facts of the case is that earlier also the petitioners were issued with another show cause notice dated 02.01.2020, in respect of which Order-in-Original No.2/2021 dated 29.01.2021 in File C.No.VIII/10/01/2020-Cus.Adjn., was passed by the Joint Commissioner of Customs.

7. The petitioners had approached this Court in W.P.(MD)Nos. 3847, 3849, 3850 and 3851 of 2021. After recording the submissions and considering the fact that the petitioners had paid the entire duty liability amount, this Court allowed the said Writ Petitions with the following directions:-

> *“5.The petitioners' counsel also drew my attention to the order dated 22.06.2018 passed in W.P.(MD)No.12571 of 2018, where a learned Judge of this Court had granted time to the assessee to approach the settlement commission.*
>
> *6.In view of the foregoing premises, the orders impugned in the writ petitions are quashed. The writ petitions are allowed. The petitioners are directed to pay the interest amount as quantified by the respondents 1 to 3, within a period of six weeks from the date of receipt of a copy of this order. Thereafter, the petitioners will immediately move the settlement commission. If the petitioners fail to adhere to the time line stipulated above, the order now passed would stand automatically recalled and the orders impugned in these writ petitions would spring back to life. No costs. Consequently, connected miscellaneous petitions are closed.”*

8. Pursuant to the same, the petitioners had filed a case before the Settlement Commission under Chapter XIV-A of the Customs Act, 1962. The specific case of the petitioners is that in the present case also, the petitioners wanted to settle the dispute under the Settlement Commission. However, without awaiting for the petitioners to approach the Settlement Commission, the second respondent/the Additional Commissioner of Customs proceeded to pass the impugned Order-in-Original No.41/2024 dated 26.03.2024.

9. It is submitted that the impugned order is liable to be quashed, as mandatory requirement of Section 122-A of the Customs Act, 1962, has not been complied with and therefore, the petitioners may be given an opportunity to reply. It is submitted that this would also endue the petitioners to explore the possibility of settling the dispute under Chapter XIV-A of the Customs Act, 1962.

10. Specifically, the learned counsel for the petitioners submits that the Settlement Commission is empowered to grant immunity from prosecution and penalty under Section 127-H of the Customs Act, 1962.

11. On the other hand, the learned Senior Standing Counsel for the respondents 1 and 2 would submit that the Writ Petitions are devoid of merits. It is submitted that at the time, when the order came to be passed on 12.03.2021, wherein the petitioners had challenged the Order-in-Original No.2/2021 dated 29.01.2021 in File C.NoVIII/10/01/2020-Cus.Adjn, the show cause notice in C.No.VIII/10/04/2021-Cus.Adjn. dated 23.03.2021 had already been issued.

12. It is submitted that the petitioners should have filed a composite application for settling the dispute before the Settlement Commission. It is submitted that there is no scope for truncating the application merely because the petitioners were proceeded under the provisions of the IBC Code, 2016.

13. The learned counsel for the respondents further submits that the petitioners were taking time to approach the Settlement Commission without paying the admitted tax liability and the interest thereon. It is submitted that on this count, the Writ Petitions are liable to be dismissed.

14. That apart, it is submitted that having received the show cause notice dated 02.01.2020, in respect of which the Order-in-Original No. 2/2021 dated 29.01.2021 in File C.No.VIII/10/01/2020-Cus.Adjn., was passed, the petitioners ought to have filed a composite application for a settlement of the dispute.

15. Arguing further, the learned Senior Standing Counsel for the respondents 1 and 2 submits that the Writ Petitions are without any merits. It is submitted that the petitioners ought to have paid the disputed tax, penalty and interest by opting the case being settled under Chapter XIV-A of the Customs Act, 1962 earlier. It is submitted that the petitioners were aware of the proceedings, which preceded the show cause notice dated 23.03.2021 starting from 2018.

16. The learned Senior Standing Counsel for the respondents 1 and 2 submits that although the petitioner in W.P.(MD)No.10055 of 2024 has paid the duty on 21.09.2020 for a sum of Rs.1 Crore and on 07.12.2020 for a sum of Rs.4.3 Crores towards the Customs duty foregone at the time of import of capital goods as per Notification No.50 / 2003 – Cus, dated 31.03.2003 and Notification No.50 / 2018 – Cus, dated 08.06.2018. The petitioners should have made full and true disclosure along with the application filed against the show cause notice dated 02.01.2020 demanding a sum of Rs.97,53,452/- towards tax.

17. It is submitted that there is no justification in truncating the application for the demand covered by the show cause notice dated 02.01.2020 and the show cause notice dated 23.03.2021 in respect of which, the impugned Order-in-Original No.41/2024, dated 26.03.2024 has been passed. It is submitted that the petitioner in W.P.(MD)No.10055 of

2024 has paid a sum of Rs.3,48,09,075/- on 15.07.2024 towards interest *i.e.*, long after the show cause notice dated 23.03.2021 was issued.

18. It is further submitted that the petitioners also cannot take any advantage of moratorium under the provisions of the IBC Code, 2016, as the case against the petitioner in W.P.(MD)No.10055 of 2024 in IBA/43/2020 was closed as early as 16.03.2022. It is submitted that the petitioners are not entitled to have the impugned order set aside as the petitioners were wilfully evading a reply by taking time repeatedly right from 06.09.2021 after the documents were furnished to the petitioners on 12.07.2021.

19. It is submitted that the Department has also acceded to the request by adjourning the personal hearing. However, the petitioners belated the proceedings and thus, the impugned Order-in-Original No. 41/2024 has been passed on 26.03.2024.

20. In support of his submissions, the learned Senior Standing Counsel for the respondents 1 and 2 has placed reliance on the decision of this Court in **K.P.Manish Global Ingredients Pvt. Ltd.** vs. **Customs,**

Central Excise and Service Tax Settlement Commission, Chennai, 2023 (386) ELT 84 (Mad.) : 2023:MHC:2009. A specific reference was made to Paragraph Nos.21 to 29 of the said decision, which read as under:-

> *"21. The purpose of the bar is very clear. Settlement of a case is by way of alternate dispute resolution mechanism. The applicant is, if the offer is accepted, the beneficiary of the wholistic settlement, and oftentimes, of deletion or waiver of penalty and prosecution, where appropriate.*
>
> *22. The present case is no exception. It is for this reason and bearing in mind the spirit and objective of Chapter XIV-A, that Legislature imposes a bar upon parties to approach the Settlement Commission in any other matter in three specified situations:-*
>
> > *(i) Where a penalty is imposed on the assessee on the ground of concealment of particulars of duty liability.*
> >
> > *(ii) Conviction of an offence and*
> >
> > *(iii) Remand of the case to the proper officer under Section 127I.*
>
> *23. The phrase 'any other matter' is relevant here. While the petitioner emphasises upon the word 'other' to state that the bar applies only to a cause of action different from that in regard to which the first application was filed, I disagree. The phrase 'any other matter', in my considered view, would bar an assessee from approaching the Settlement Commission ever, in the three situations set out under clauses (i) (ii) & (iii) in Section 127L(1). This is by way of a caution/deterent, to ensure that an assessee who approaches the Settlement Commission*

comes with a full and true disclosure placing all cards on the table in the spirit in which that Chapter must be seen to apply.

24. In the present case, the case of the petitioner has been found to attract penalty and a sum of Rs.4,50,000/- imposed. In such an event, I am of the considered view that the bar under Section 127L would apply on all fours.

25. Thus, merely because the petitioner has chosen to style the application culminating in the impugned order as a fresh application does not mean that the Settlement Commission has to close its eyes to the relief sought and the lineage of the matter, particularly the bar under Section 127 L that must be strictly enforced.

26. In this connection, I may refer to a judgment of the Calcutta High Court in C.P.Re-Rollers Ltd. V. Union of India (W.P.No.3043 (W) of 2015 dated 04.05.2015) where Section 32-O of the Central Excise Act which is in pari materia with Section 127L has been the subject matter of interpretation. The learned Judge states therein 'it is absurd to suggest that the expression 'concealment of particulars of his duty liability', pertains to the application made before the Settlement Commission. If that were to be so, every knave and his accomplice would conceal the duty payable in course of every transaction and approach the Settlement Commission only in the cases wehre he would be caught and would be slapped a show cause notice for additional duty. At paragraph 10, the Court states as follows:

> *'10.The scheme of the provisions introduced for settlement of a demand indicates that a person may approach the Settlement Commission once for having*

> *concealed the particulars of the duty payable, but having exercised such option, the doors of the Settlement Commission are forever closed to the concerned assessee if the Settlement Commission imposes any fine on such assessee.'*

27. In the present case, the petitioner is well aware of the duty that has been imposed in respect of 17 addtional transactions as amended by the subsequent corrigendum. The petitioner has also settled the duty demand acquiescing to the fact of wrongful classification by it at the original instance.

28. In such circumstances, the petitioner ought to have, even at the original instance, included those transactions in the ambit of settlement application and hence having failed to do so cannot be granted a second innings merely to obtain the benefit of waiver.

29. This Writ Petition stands dismissed, as is the connected Miscellaneous Petition. No costs."

21. It is therefore submitted that the ratio laid in the above said judgment squarely applies to the cases and therefore, the learned Senior Standing Counsel for the respondents 1 and 2 prays for dismissal of the Writ Petitions.

22. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Senior Standing Counsel for the respondents 1 and 2.

23. The point for consideration in these Writ Petitions is whether the petitioners are entitled to have the impugned order set aside on account of failure on the part of the respondents to give three personal hearing notices as is contemplated under Section 122-A of the Customs Act, 1962 and whether any purpose will be served by setting aside the impugned order to facilitate the petitioners to approach the Settlement Commission in view of Section 127 L of the Customs Act, 1962. The said provision has undergone changes from time to time.

24. Section 127 L of the Customs Act, 1962, published by Professional Book Publishers, Delhi and the Commercial's Book reads as under:-

Commercial's Book	***Professional's Book***
Section 127L of the Customs Act, 1962	Section 127L of the Customs Act, 1962

127L. Bar on subsequent application for settlement in certain cases.— [1][(1)] [2][Where, [3][xxx]],- (i) an order of settlement [4][*passed under sub-section (7) of section 127C as it stood immediately before the commencement of section 102 of the Finance Act, 2007 or sub-section (5) of section 127C*] provides for the imposition of a penalty on the applicant under section 127B for settlement, on the ground of concealment of particulars of his duty liability; or [5][*Explanation:* In this clause, the concealment of particulars of duty liability relates to any such concealment made from the officer of customs.] (ii) after the passing of an order of settlement [4][*under said sub-section (7), as it stood immediately before the commencement of section 102 of the Finance Act, 2007 or sub-section (5) of section 127C*] in relation to a case, such person is convicted of any offence under this Act in relation to that case; or (iii) the case of such person is sent back to the proper officer by the Settlement Commission under section 127-I,	**127L. Bar on subsequent application for settlement in certain cases.—** [1][(1)] [2][Where, [3][***],- (i) an order of settlement [4][***] provides for the imposition of a penalty on the applicant under section 127B for settlement, on the ground of concealment of particulars of his duty liability; or [5][*Explanation:* In this clause, the concealment of particulars of duty liability relates to any such concealment made from the officer of customs.] (ii) after the passing of an order of settlement [6][***] in relation to a case, such person is convicted of any offence under this Act in relation to that case; or (iii) the case of such person is sent back to the proper officer by the Settlement Commission under section 127-I, then such person shall not be entitled to apply for settlement under section 127B in relation to any other matter. [7][***]

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Note:-

Section 127L re-numbered as sub-section (1) thereof by the Finance Act, 2007 (22 of 2007), dt.11-5-2007.
Substituted for 'Where', ibid
Words “before the 1st day of June, 2007” omitted by Finance Act, 2010 (Act No. 14 of 2010), dt. 8-5-2010.
Words in italics omitted by Finance Act, 2015 (20 of 2015), dt. 14-5-2015, w.ef. 14-5-2015
Inserted by Finance (No.2) Act, 2014 (Act 25 of 2014), dt. 6-8-2014
Sub-section (2) omitted by Finance Act, 2010 (Act No. 14 of 2010), dt. 8-5-2010

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Note:-

S.127L renumbered as sub-S. (1) thereof by Act 22 of 2007, S.108 (w.e.f. 1-6-2007).
Substituted by Act 22 of 2007, S.108, for “Where” (w.e.f. 1-6-2007)
The words figures and letters “before the 1st day of June, 2007” omitted by Act 14 of 2010, S.59.
The words “passed under sub-section (7) of section 127-C, as it stood immediately before the commencement of section 102 of the Finance Act, 2007 or sub-section (5) of section 127C” omitted by Act 20 of 2015, S.90(a).
Inserted by Act 25 of 2014, S.85 (w.e.f. 1-10-2014).
The words “under said sub-section (7) as it stood immediately before the commencement of section 102 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of section 127C” omitted by Act 20 of 2015, S.90(b).
Sub-S. (2) omitted by Act 14 of 2010, S.59(b).

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<td colspan="2">The Finance Act, 2010</td>
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59. Amendment to section 127L.-- In section 127L of the Customs Act,-
(a) in sub-section (1)
(i) the words, figures and letters "before the 1st day of June, 2007" shall be omitted;
(ii) in clause (I), after the words, brackets, figures and letter "sub-section (7) of section 127C", the words, figures, brackets and letter "as it stood immediately before the commencement of section 102 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of section 127C" shall be inserted;
(iii) in clause (ii), after the words, brackets and figure "sub-section (7)", the words, figures, brackets and letter "as it stood immediately before the commencement of section 102 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of section 127C" shall be inserted;

(b) sub-section (2) shall be omitted

25. Section 127-L of the Customs Act, 1962 has been amended. Earlier, under Section 127-L(2) of the Customs Act, 1962, an importer or an applicant was not entitled to file a second application for settlement of the dispute under Chapter – XIV – A of the Customs Act, 1962. Section 127-L(2) was deleted/omitted by the Finance Act, 2010 (Act No.14 of 2010) dated 08.05.2010. Prior to its deletion, sub-clause 2 to Section 127-L of the Customs Act, 1962 reads as under:-

> ***"127L. Bar on subsequent application for settlement in certain cases.-***
>
> *(2) Where an applicant has made an application under sub-section (1) of section 127B, on or after the 1st day of June, 2007 and if such application has been allowed to*

> *be proceeded with under sub-section (1) of section 127C, such applicant shall not be entitled to apply for settlement under section 127B in relation to any other matter."*

26. Thus, the intention of the Parliament is itself to allow the multiple applications to be filed under Chapter – XIV – A of the Customs Act, 1962. Similar amendment would have also been made to the provisions of the Central Excise Act, 1944 as well.

27. The order has been passed without the petitioners participating in the proceedings. Therefore, the impugned order can be set aside with a direction to the second respondent to pass fresh orders on merits and in accordance with law within a period of three months from today.

28. The facts of the case indicate that the petitioner in W.P.(MD)No.10055 of 2024 has paid the customs duty as early as on 21.09.2020 and on 07.12.2020 for a sum of Rs.1 Crore and Rs.4.3 Crores respectively, as mentioned above. A part of the interest was also paid by the petitioner in W.P.(MD)No.10055 of 2024 as is evident from the operative portion of the impugned order in Paragraph No.56(iii), the content of which has been extracted above.

29. That apart, the fact remains that the petitioner in W.P.(MD)No. 10055 of 2024 has also paid the further amount of Rs.3,48,09,075/- towards interest on 15.07.2024. Although it was incumbent on the part of the petitioners to have filed a composite application for settlement of case, the scheme of the Customs Act, 1962, seems to indicate that the restrictions that were in place under the provisions of the Customs Act, 1962, Section 127-L(2) was done away w.e.f. 08.05.2010 vide Finance Act, 2010 (Act No.14 of 2010). There are no longer any statutory restriction in view of the amendment to the Customs Act, 1962 under the Finance Act, 14 of 2010. If the petitioners had paid the interest within a period of 30 days from the date of the impugned order together with 1/4th of the penalty, the petitioners would have partly got a partial reprieve under proviso to Section 112 (b) of the Customs Act, 1962. It reads as under:-

> *"**112. Penalty for improper importation of goods, etc.-** Any person,-*
>
> *(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*
>
> *shall be liable,-*
>
> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law*

for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114-A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest."

30. The petitioners therefore deserve the opportunity to approach the Settlement Commission. Since the petitioners have paid the disputed tax and the interest on the dates mentioned above, the petitioners can be given another chance.

31. Meanwhile, it is open for the petitioners to approach the Settlement Commission. It is for the Settlement Commission to pass appropriate orders on merits. Needless to state it is for the Settlement Commission to take note of the entire situation while exercising its discretion when the proposed application to be filed by the petitioners under Chapter – XIV-A of the Customs Act, 1962.

32. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No **31.07.2024**
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

To

1.The Commissioner of Customs (Preventive),
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

2.The Additional Commissioner of Customs (Preventive),
Office of the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

3.Customs and Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House,
No.60, Rajaj Salai,
Chennai - 600 001.

C.SARAVANAN, J.

smn2

Common order
W.P.(MD)Nos.10055, 10116, 10374 and 10428 of 2024

31.07.2024