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

WRIT PETITION NO. 11422 OF 2024

Vikas Welding Company And Anr. ... Petitioners

Versus

Union of India And Ors. ... Respondents

Mr. Rudresh Kumar Tomar a/w Mr. Gaurav S. Sarfare, for
Petitioners.

Mr. Ram Ochani a/w Mr. S. R. Ketkar, for Respondent.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 04 November 2025

PC:-

1. Heard Mr. Rudresh Tomar, who appears with Mr. Gaurav Sarfare, for the Petitioners and Mr. Ram Ochani, who appears with Mr. S. R. Ketkar, for the Respondents.
2. Rule. The Rule is made returnable immediately, at the request of and with the consent of the learned counsel for the parties.
3. The Petitioners challenge the impugned communication dated 09 May 2024, by which their Applications for settlement were returned to them on the ground that they were not maintainable.

4. Records show that the Petitioners were issued a show cause notice dated 11 September 2020 by the DRI, New Delhi, answerable to the Commissioner of Customs, Nhava Sheva. It is the Petitioners' case that whilst the adjudication on this show cause notice was pending, the Petitioners, by their Applications dated 01 April 2024, applied for settlement under Section 127(B) of the Customs Act.

5. Arguing that the show cause notice was already disposed of by an order dated 29 March 2024, the impugned orders and communications dated 09 May 2024 were issued by referencing the provisions of Section 127A(b) of the Customs Act, 1962. This provision is cited in paragraph No.2 of the impugned communication dated 09 May 2024, and therefore, paragraphs 2, 3, and 4 of the same communication are transcribed below for ease of reference.

"2. The Hon'ble Bench has gone through the application, your submission dated 15 04 2024 and the statute. On perusal of the documents and statute the Hon'ble Bench has observed that your application does not satisfy the condition of the "CASE" as defined under section 127A(b) of the Customs Act, 1962; which reads as:

Section 127A(b) of the Customs Act, 1962:

*"case" means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, **pending before an adjudicating authority on the date on which an application under sub-section (1) of section 127-B is made.***

Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any Court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be

deemed to be a proceeding pending within the meaning of this clause;

*3. In view of the above the Hon'ble Bench has order that the impugned applications/Show Cause Notice does not satisfy the definition of 'Case' as the same is already being adjudicated by the Jurisdictional Adjudicating Authority and is not pending before the adjudicating authority on the date of filing the application. Hence, the same is **not maintainable** in terms of section 127A(b) read with sub-section (1) of section 1278 of the Customs Act, 1962.*

4. I have been directed by the Hon'ble Bench to return your application in original, being not maintainable.”

6. Mr Tomar has contended that the order of 29 March 2024 disposing of the show cause notice was posted to the Petitioner only on 06 April 2024 and received on 09 April 2024. Therefore, relying upon the decision of this Court in the case of **M/s. Vishnu Steels V/s. The Union of India and Anr.¹**, Mr Tomar contended that the Petitioners' Settlement Application filed before the date of dispatch of the adjudication order was maintainable before the Settlement Commission. He further submitted that even the impugned communication dated 09 May 2024 should have been issued after affording the Petitioner a reasonable opportunity to be heard, and since that was not done, the impugned communication deserves to be set aside. He also pointed out that there is no provision for the return of such an Application, and the Applications would have either been allowed or rejected if indeed there were any valid grounds for rejection.

¹ 2013 (5) TMI 482 - BHC

7. Mr Ochani submitted that the adjudication order of 29 March 2024 was communicated to the Petitioners by email on the date it was made. He pointed out that the order was also affixed on the notice board. He pointed out that these are valid modes of service under Section 153 of the Customs Act, and therefore, the adjudication order should be held as validly served upon the Petitioners before the Petitioners filed the settlement applications.

8. Mr. Ochani submitted that the facts in the case of *M/s. Vishnu Steels* (supra) were different, and therefore, the said decision would not assist the case of the Petitioners. He submitted that the Petitioners' contentions regarding maintainability were duly considered before the impugned communication dated 09 May 2024 was issued. Accordingly, he submitted that there was no failure of natural justice.

9. In our opinion, the service of the adjudication order dated 29 March 2024 is a highly disputed issue. Significantly, in the affidavit filed on behalf of the Respondents in this Petitioner, there is no reference to service by email. Mr Tomar, on instructions, denies receipt of the email and, on a demurrer, submits that it was impossible for the email to be dispatched on 29 March 2024, which was a Friday. He pointed out that dispatching orders by email takes considerable time and paperwork. He also submitted that there was no proper proof of publication on the notice board, and in any event,

publication on the notice board can hardly be regarded as valid service.

10. At this stage, we do not wish to delve into the issue of the valid service of the adjudication order of 29 March 2024. However, we observe that this issue is highly disputed and debatable. Arguments have been raised on both sides, and the Settlement Commission was not justified in not affording the Petitioners an opportunity of a personal hearing to make good their version. The Settlement Commission has virtually accepted the Respondents' version without giving the Petitioners any opportunity to rebut the same. This, in our view, violates the principles of natural justice and fair play.

11. In *M/s. Vishnu Steels* (supra) the Division Bench of this Court has held that the Settlement Application filed by the Assessee before the date of the dispatch of the adjudication order is maintainable before the Settlement Commission. This was after taking cognisance of the provisions similar to those in Section 127(A)(b) of the Customs Act, 1962, quoted in the impugned communication. Therefore, the issue of dispatch and service of the adjudication order is crucial. The Settlement Commission should not have decided such an issue without giving the Petitioners a reasonable opportunity to make good their version or to rebut the Respondents' version.

12. Therefore, on the grounds of failure of natural justice, we set aside the impugned communication dated 09 May 2024 and restore the Petitioners' Applications for settlement

before the Settlement Commission. The Settlement Commission is now directed to afford the Petitioners and the Respondents the opportunity of a personal hearing, including the production of necessary documents/records regarding the issue of service of the adjudication order dated 29 March 2024.

13. All contentions of all parties in this regard are explicitly left open for the decision of the Settlement Commission. Even the issue of maintainability, in the context of the statutory provisions quoted or applicable, is left open for decision by the Settlement Commission by following the principles of natural justice and fair play. The Settlement Commission is requested to dispose of the Petitioners' Settlement Applications as expeditiously as possible and preferably within three months of the parties producing an authenticated copy of this order.

14. The Rule is made absolute in the above terms without any costs order. All concerned are to act on an authenticated copy of this order.

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(Advait M. Sethna, J)

(M.S. Sonak, J)