



2025:DHC:5154



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 25th February, 2025

Pronounced on: 28th June, 2025

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CRL.REV.P. 567/2002

ANIL KAPOOR

M/s Beeta Exports

R/o 14-A/33, WEA 3rd Floor,

Karol Bagh,

New Delhi-110024

.....Petitioner

Through: Mr. Naveen Malhotra & Mr. Ritwik
Malhotra, Advocates.

versus

SHRI NIRANJAN SUBUDHI

Enforcement Officer,

Enforcement Directorate,

Ministry of Finance,

Govt. of India,

Jam Nagar House,

Akbar Road,

New Delhi-110002

.....Respondent

Through: Mr. Manish Jain Spl. Counsel for
ED with Ms. Souganta Ganguly,
Ms. Gulnaz Khan and Ms. Snehal
Sharda, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Criminal Revision under Section 397/401 of *the* Code of Criminal Procedure, 1973, (*hereinafter referred to as (Cr.P.C.)*) has been filed against the Order dated 29.07.2002 of the Addl. Chief Metropolitan Magistrate, New Delhi

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CRL.REV.P. 567/2002

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Page 1 of 25



2025:DHC:5154



whereby the Application for discharge under the Offences under Section 56 of the Foreign Exchange Regulation Act 1973 (*FERA*) and *Subsection 3 and 4* of Section 49 of the Foreign Exchange Management Act, 1973(*FEMA*), has been dismissed.

2. Briefly Stated, a Complaint bearing *No. 48/1* dated 20.02.2002 under Section 56 FERA Act 1973 and Subsection 3 and 4 of Section 49 of the Foreign Exchange Management Act 1973 was filed against the Petitioner, for alleged violation of Section 18(2) and Section 18(3) of FERA 1973, before the court of Ld. ACMM by the Respondent, on behalf of the Complainant/Enforcement Directorate, in his official capacity and in view of the authorisation issued vide Central Govt. Order No.17/93 (F. No. 1/2/93) AD-IC dated 24.09.1993, in exercise of powers conferred upon under Section 61(2)(ii)(b) of FERA 1973.

3. It was submitted that Canara Bank, Connaught Circus, New Delhi *vide* its Letter dated 02.09.1999, informed the Delhi Zonal Office of the Enforcement **that there were Overdue Export Bills Pending Realisation in the account of M/s Beeta Exports**, West Karol Bagh, New Delhi, of the equivalent value of Rs.84.46 Crores involving 119 GRs.

4. Subsequently, information was received from the Bankers of M/s Beeta Exports, in response to the enquiries made under Section 33(2) of the FERA 1973, that Delhi Zonal Office of the Directorate of Revenue Intelligence, New Delhi (*for short 'DRI'*) **was also making investigations against M/s Beeta Exports, for Evasion of Customs through fraudulent means** and the Current Account of M/s Beeta Exports, had been put under seizure under Section 110 of the Customs Act *vide* Letter dated 05.11.1999.



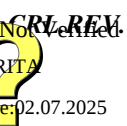
2025:DHC:5154



5. The business and the residential premises of the Proprietor, Mr. Anil Kapoor R/o Greater Kailash were searched by the Enforcement Directorate on 06.12.1999 under Section 37 FERA,1973, which resulted in seizure of documents from both the places.

6. It was alleged that during the year 1997-1999, M/s Beeta Exports made export of goods to the parties/consignees in Moscow, Sweden and Dubai, under 119 GRs, for the value equivalent to Rs.34.46 Crores. Further enquiries from the Reserve Bank of India revealed, that so far as violations of FERA are concerned, irregularity was found on the part of M/s Beeta Exports in the matter of *non-realisation of export proceeds to the extent of Rs.40 Crores approximately*. Canara Bank after checking their records, confirmed *vide* their Letter dated 19.10.2000 that export payments were for a total value of Rs.40,06,34,929/- covered under 135 GRs which were as reported by RBI to be pending realisation in the Account of M/s Beeta Exports.

7. Statement under Section 40 of FERA of Mr. Anil Kapoor, Proprietor of M/s Beeta Exports, was recorded on 06.07.2000 and on 18.07.2000, 29.08.2000 and 11.10.2000. He was confronted with the Statement of outstanding exports furnished by his banker, to which he *inter alia* stated that so far as the *exports made to Russia were concerned*, the buyers, who were earlier making payments of exports bills in time, were not able to make their payments as in December, 1997 on account of crash in Rouble-Dollar. Since the export bills were in dollars and the prices of goods in the local market did not rise in proportion to the crash of the Rouble, they could not fulfil their future export obligations against the advance licenses. ***The Petitioner moved the Settlement Commission of Customs and Central Excise at Mumbai.***





2025:DHC:5154

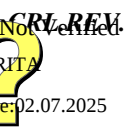


8. Insofar as payment of *Export bills from UAE* was concerned, the Agreement was entered into by Petitioner in July/August, 1998 with M/s Seven Star General Trading Co. U.A.E, which envisaged supply of 25000 pieces of Nibs per day for a period of three years with a minimum requirement of 3 Lakhs pieces per month. However, due to change of Government's Policy w.e.f. 26.03.1999 in respect of bank exports of Fountain Nibs, further export of Nibs could not be made from India. Consequently, because of the non-performance of the Agreement on their part, the buyers abroad did not make payments of export bills and wanted him to meet them personally to sort out the dispute for any payments to be made. The re-import of goods was not possible as the buyer had taken delivery of the goods and as per the telephonic discussions with the buyer, he was confident that the matter would be sorted out.

9. *No steps were taken to realise the proceeds from buyers in UAE* as his case was on a weaker wicket due to non-performance, as per the contract. Further, all the avenues of pursuing the matter were closed. Furthermore, it was not possible to furnish the copy of the Supplier Agreement between M/s Seven Star General Trading Company of UAE because the records were with the DRI.

10. Enquiries were made from the bankers of M/s Beeta Exports, RBI and DRI and records of the Income-Tax Department were also gone through, but the Agreement for supply of specified quantity of Gold Nibs for a specific period, was not found in the records of any of the aforesaid Departments. Mr. Anil Kapoor was also unable to furnish any such document during the course of investigation and his version was found to be contradictory.

11. The respondents asserted that M/s Beeta Exports without any permission from the RBI, refrained from taking any action for realising the export proceeds





2025:DHC:5154



to the tune of Rs.40,06,34,929/-, in respect of the aforesaid goods not being received in India within the prescribed period of time, by the said Firm, which was in contravention of Section 18(2) and Section 18(3) of Foreign Exchange Regulation Act, 1973 read with the Central Government Notification No. F.1/67/EC/73-1 and 2, both dated 01.01.1974.

12. Notice dated 20.07.2001 under Section 61 of the FERA, 1973, was duly served upon Mr. Anil Kapoor but he failed to produce any permission rendering himself liable to be tried and punished under Section 56 FERA, 1973 read with Section 49(3) & (4) of FEMA, 1999. **Thus, the Complaint was filed under Section 56 FERA, 1973 for the violation of the provisions of FERA, 1973 and FEMA, 1999.**

13. Section 18(3) FERA, provides that where in relation to any goods to which the Notification under Clause (a) of sub-Section (1) applies and the prescribed period has expired, it is presumed unless contrary is proved by the person who had sold or is entitled to sell the goods or to procure the sale proceeds thereof, that such person has not taken all reasonable steps to receive or recover the payment of goods and has thereby contravened Section 18(2). *Mr. Anil Kapoor thereby, rendered himself liable to be proceeded against under Section 56 and 49 (3) and (4) Foreign Exchange Management Act, 1999 (for short 'FEMA, 1999').*

14. The cognizance of the Complaint was taken on 20.02.2002 and the Petitioner was summoned under Section 56 of FERA, 1973 *vide* Order dated 26.04.2002. Thereafter, ***an Application under Section 245(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') was filed by the Petitioner seeking recall of the Summons and for his discharge.***



2025:DHC:5154



15. *Learned ACMM vide the impugned Order dated 29.07.2002 observed that the proceedings undertaken before the Settlement Commission established under Customs Act, did not pertain to non-realisation of export proceeds to the tune of Rs.40.6 Crores. Though the issue was raised by the Applicant to which a Reply was given by the Enforcement Department, but considering that it had no concern with GR-1 Form, it cannot be said that the adjudication by the Settlement Commission pertained to this aspect. Instead, it dealt with the DEEC, DEPB and the Drawback Scheme. It was noted that when the export proceeds have not been realised as per the law, Duty Drawback cannot be claimed against it, thereby implying that there was no effective adjudication/settlement on the aspect of non realisation of sale proceeds, before the Settlement Commission. It was, therefore, concluded that the subject matter of the Complaint i.e. non-realisation of export proceeds, was beyond the scope of Settlement Commission and the immunity granted by the Settlement Commission, was void ab initio and the Application of discharge of the Petitioner, was dismissed.*

16. *Aggrieved, the present Revision Petition has been filed.*

17. *The Petitioner has submitted* that he had filed an *Application bearing No. 1/99 dated 05.11.1999*, before the Settlement Commission, a body constituted by the Ministry of Finance under Section 127 of the Customs Act, 1962, for grant of immunity from the prosecution under the Customs Act and other Central Acts. The Application was admitted by the Settlement Commission on 23.12.1999. An amended Application was also filed before the Settlement Commission for grant of immunity from Prosecution under IPC Laws/other Central Acts/FERA, 1973.



2025:DHC:5154



18. It was submitted that the subject matter before the Settlement Commission was in respect of the woollen garments exported to *Russia, Middle East and other countries*. It was explained that since the Russian Economy at that time was in complete dol-drum, the export to Russian Buyer was not feasible as there was a substantial amount outstanding that was yet to be realised. There was a substantial amount of more than Rs.20 Crores, which was to be recovered from the Russian Buyers and because of the non-realisation of the export proceeds, immunity was sought.

19. It was submitted by the Petitioner that during the course of hearing, the Settlement Commission had already observed that the case which was being investigated by Enforcement Directorate FERA was forming the subject matter before the Settlement Commission.

20. It is further asserted that DRI Officials, Officials from Enforcement, Bombay and Mr. I.M. Bhatia, and Mr. S. Mishra, Enforcement Officer, and Mr. V.P. Verma, Assistant Enforcement Officer, ED, New Delhi, also participated in the proceedings. A detailed Reply dated 16.08.2001 was also filed by the Dy. Director before the Settlement Commission. It was brought to the knowledge of the Settlement Commission that an amount of Rs.40.6 Crores is outstanding, which is the subject matter of investigation before the Enforcement Directorate.

21. Petitioner has asserted that the fact of violation of Section 18(2) and 18(3) was in the knowledge of the Settlement Commission and he had sought immunity for the same from prosecution and penalties under Customs Act, Indian Penal Code (*hereinafter referred to as 'IPC'*), FERA, 1973 and other Central Acts, from the Settlement Commission.



2025:DHC:5154



22. After giving a due hearing to the concerned Officers of all the aforesaid Department, the Settlement Commission Passed the Order dated 06.03.2002, settling the amount as Rs.8,63,25,976/- to be deposited, in terms of the Order. The payment of Rs.6.30 Crores towards the liabilities till 06.03.2002, already stands paid by the Petitioner. Another Rs.80 Lakhs have been deposited out of the balance amount of Rs.2,41,31,098/-. The immunity has been granted to the Petitioner under the Customs Act IPC and FERA, 1973, considering the financial hardships and the reported non-realisation of the sale proceeds on account of some export made by the Petitioner, which were duly disclosed before the Settlement Commission, to be in the sum of Rs.40.06 Crores. This amount on account of exports regarding 134GRs, could not be realised due to the crash in the international market.

23. It was asserted by the Petitioner that the provisions of Section 127-H of the Customs Act are similar to the provisions of Section 245-H Income Tax Act, 1961 whereby powers are conferred on the Settlement Commission, to grant immunity from prosecution and penalties for any offences under the Customs Act, 1962, IPC or any other Central Act and such Order of the Settlement Commission is conclusive.

24. It is submitted that once the matter stands settled by the Order of the Settlement Commission which has become conclusive, it cannot be re-opened in any proceedings under the Customs Act or under any other Law for the time being in force. No proceedings under FERA can be initiated regarding the same subject matter.

25. Reliance has been placed on *M/s Nirmal & Navin (P) Ltd. & Ors. vs. D. Ravindran*, CrI. Appeal No. 439-440/2002, arising out of SLP (CrI.) No. 6884-



2025:DHC:5154



85/2001, decided on 04.04.2002. Further reliance has been placed on the various Judgments of the High Courts as reported in the *Geeta Gupta Case*, 1987 ITR 168 page 222, *Khothari Case*, 1992 ITR Vol. 196 page 82; *Mohan Lal Darshan Case*, 1995 Vol. 214 page 265 and *Mohan Lal Darshan Case*, 1996 Vol. 220 page 593.

26. It was also submitted that the contention that the Order made by the Settlement Commission, is beyond the jurisdiction of the case as defined under Section 127A (b) is untenable in law as the term '*case*' would be used in respect of an Application under Section 127B of the Customs Act, 1962 and the proceedings emerging therefrom. The *second proviso to Section 127B* of the Act, contemplates that no Application thereunder, would be sustainable in cases where any proceeding is pending before a Court. The Complainant/respondent has not indicated any provision in the Customs Act where any proceeding relating to levy assessment or collection of the Customs duty could be said to be pending in the Court.

27. *The third proviso of Section 127B* provides that no Application thereunder shall be made in respect of the goods to which Section 123 applies, which is only applicable to goods seized under the reasonable belief that they are smuggled goods. It does not relate to levy, assessment or collection of duty. The third proviso to Section 127B also provides that no Application thereunder would be entertainable in respect of goods in relation to which any offence under the Narcotic Drugs and Psychotropic substances Act, 1985, has been committed.

28. In any event, *Section 127H* authorises the Settlement Commission to grant the Applicant immunity from prosecution for any offence not only under



2025:DHC:5154



the Customs Act but also under other Acts including Indian Penal Code and Central Acts. It is, therefore, submitted that the Complaint is liable to be quashed and the Order dated 29.07.2002 passed by the Ld. ACMM be set-aside and the Petitioner be discharged.

29. The ***Respondent in its Counter Affidavit*** have submitted that the shipping bills filed before the Settlement Commission, do not relate to GR-1 Form in respect of which the export proceeds to the tune of Rs. 40,06,34,929/- covered under 135 GRs by M/s Beeta Exports, were outstanding. This matter pertaining to realisation of Export proceeds to the tune of 40.6 crores and consequent violation of Section 18(2) and 18(3) of FERA 1973, for which investigation and penal action was initiated by the ED in accordance with Section 56 of FERA, was never agitated before the Settlement Commission. Mere mentioning of facts regarding non-realisation of Export proceeds, did not make it subject matter before the Settlement Commission. It was also not the plea of the accused that non realisation of the sale proceeds was due to availing Custom Duty benefits as per the DEEC/DEPB /Drawback scheme.

30. The **Respondent has further submitted** that though the Settlement Commission had granted immunity from Prosecution for any offence under Customs Act, IPC or other Central Acts, the same was with respect of '**Case**' defined under Section 127A(b) of the Customs Act. As per the definition of '**Case**', it relates to the cases for *levy/assessment/collection* of Customs Duty which means this definition does not include the "case" with regard to non-realisation of Export proceeds which is the subject matter of the present Complaint.



2025:DHC:5154



31. It was therefore contended that the Settlement Commission had kept itself away from passing any Order in respect of the violation of FERA, 1973 and collection of Duties. Therefore, matters pertaining to non-realisation of Export proceeds was beyond the scope of jurisdiction of the Settlement Commission. It was submitted that *Section 127 (H) Customs Act* authorises the Settlement Commission to grant immunity from prosecution of offence only under the Customs Act. Reliance has been placed on the case of *Vinod M Chaithla v. UOI* (2012 SCC Online Bom 476).

32. It was further submitted that FERA is a special Code under which only ED has the power to investigate, as has been held in the case of *CBI v. Mewar*. *Section 61* of the Act provides for *Cognizance of offence* by a Metropolitan Magistrate and authorizes him to pass a sentence of imprisonment or fine to any person convicted under Section 56 FERA. Additionally, there is a separate provision to tender immunity under *Section 60 of FERA, 1973* which is held with the Central Government.

33. It is therefore submitted that the present petition being devoid of merits is *liable to be dismissed*.

34. *Submissions heard and record perused.*

35. Petitioner has filed the present Petition for setting aside the Order dated 29.07.2002 whereby the Ld. ACMM has dismissed the Application of the Petitioner seeking Discharge under Section 245 CrPC, on account of the immunity granted by the Settlement Commission. It is asserted that the Order passed by the Settlement Commission dated 06.03.2002 *granted clear immunity from Offences under the Customs Act, IPC or any other Central Act*. FERA being a Central Act, immunity was also granted from Prosecution under the said



2025:DHC:5154



Act and thus, the Petitioner cannot be prosecuted under Section 56 FERA for alleged violations of Section 18(2) and 18(3) FERA.

36. From the contentions of the Petitioner, two aspects emerge which need consideration:

- i. Whether any immunity was granted by the Settlement Commissioner from prosecution under Section 56 FERA for alleged violation of Section 18(2) and 18(3)? and*
- ii. Whether the Settlement Commission was competent to grant such immunity for the offence under S.56 FERA?*

I. Whether the Settlement Officer Granted Immunity Under FERA to the Petitioner:

37. The Petitioner who is the sole proprietor of a Trading House engaged in manufacture and export of cotton, acrylic, woollen knitwear, was also trading/exporting various other items like stainless steel utensils, shaving cream, marble, kitchenware etc. to Russia, USA, Middle East and other countries and was having a turnover for last two years of about 65 Crores per annum. He had obtained 60 duty free advance licenses under DEEC Scheme from DGFT against which he was entitled to import various duty-free items such as acrylic fibre, raw wool, wool tops, mohair etc. so that these items could be used in manufacturing process. Out of these 60 duty free advance licenses, the export allegations against 45 licenses have been fulfilled and nothing is pending.

38. The Petitioner came under a financial strain when it became impossible and infeasible for him to continue to export his goods to Russian buyers any further as substantial amount of outstanding exports proceeds were yet to be





2025:DHC:5154



realised from different Russian buyers. A substantial amount of more than 20 crores was held up on account of *non-realisation of export proceeds*.

39. The Petitioner thus, *filed an Application was under Section 127B Customs Act before the Settlement Commissioner* due to his inability to pay the substantial Custom duty amounting to Rs. 6,99,32,447/- due to losses incurred by him on account of non-realisation of export proceeds from export of wool to Russia besides USA, Middle East and other countries, for which the Applicant tried his best, but chances seemed to be remote and delayed.

40. To comprehend the issues decided by the Settlement Commissioner under the Customs Act, it may be considered in some detail. The Petitioner sought the following reliefs before the Settlement Commission:

I. Take this application into consideration under the provision of Section 127 B(1) of the Customs Act, 1962 and

II. settle payment towards Customs duty with regard to duty free import by reducing the duty liability by at least 50% and in appropriate instalments and

III. adjust the sum of Rs.45 lacs paid to DRI, Delhi Zone Unit as acknowledged by them vide their letter dtd. 20th August 1999 and 23.9.99 and grant waiver of fine, penalty and interest and also immunity from prosecution for any offence under the Customs Act, 1962, Indian Penal Code and/or any other Central Act and

IV. direct the authorities concerned including DRI, Delhi Zone, New Delhi not to proceed further with the subject matter till the pendency and final disposal of this application; and



2025:DHC:5154



V. *pass such other further order(s), direction(s) as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case."*

41. The claims of the Petitioner were considered by the Learned Settlement Officer under three segments mentioned hereinbelow:

- a. Violation relating to DEEC;
- b. Violation relating to import and export of DEPB; and
- c. Violation in relation to fraudulent Drawback Schemes.

42. *The first segment was **Duty Entitlement Exemption Certificate** (DEEC), which was the **Advance Licensing Scheme**, introduced in the Foreign Trade Policy in 1976. The Object of the scheme was to provide registered Exporters with the requirement of basic inputs/raw materials at international prices without payment of customs duty in India subject to the conditions of export of manufactured goods with specific percentage of value addition. The name of the scheme was subsequently changed to "**Advance Authorization Scheme**" (AAS) under FTP 2004-2009 effective from 1st September, 2004.*

43. *The second segment was the **Drawback Scheme**, which is the scheme formulated in terms of Section 75 of the Customs Act and Section 37 Central Excise Act, 1944 that empowers the Government of India to provide for repayment of Customs and Excise duty paid by the Assessee. The refund is of the average amount of duty paid on materials of any particular class or description of goods used in the manufacture of export goods of specified class. The Petitioner had produced the Shipping Bills and also the Export Realisation Certificate from the Bank, in relation to all except 19 shipping bills. In relation to these 19 bills, the Applicant in his Letter dated 06.02.2002 had given a calculation and his willingness to an amount of Rs.8,05,122.*



2025:DHC:5154



44. *The third segment was **DEPB (Duty Exemption Remission Scheme)*** which was essentially an Export incentive, the object of which was to neutralise the incidents of Customs Duty payment on the import content of export products. This neutralization is provided for by credit to customs duty against export products. Under DEPB, exporters may apply for credit as a percentage of FOB value of exports made in freely convertible currency. Credit is available only against the export product and at rates specified by DGFT for import of raw materials, components etc., DEPB credit under the Scheme has to be calculated by taking into account the deemed import content of the export product as per basic customs duty and special additional duty payable on such deemed imports. DEPB/Duty Drawback are incentives which flow from the Schemes framed by the Central Government or from Section 75 of the Customs Act, 1962.

45. *The* Petitioner was claimed to have failed to realize the export proceeds under 281 Shipping Bills out of 289 involving Drawback of Rs.2,83,82,777/- in regard to two consignments pertaining to export of *Fountain Pen Nibs of 7.8 and 7.96 gold to Dubai* on the allegations of over Invoicing. The Department asserted that the DEPB benefit has been fraudulently obtained and subsequently utilized. However, the *Settlement Officer* observed that there was no market verification conducted by the Revenue at the time of export of goods. The Settlement Officer thus concluded **that there was no liability under the DEPB Scheme from the Applicant.**

46. The Settlement Officer during the proceedings, had issued Notice to Revenue on various Applications filed by the Petitioner for non-release of freezed bank accounts, non-release of Passport and frequent summoning of the Petitioner by the Revenue to carry out investigation and for examination to find





2025:DHC:5154



out about the incriminating evidence. Various Orders were made directing the Revenue to open the data available in the seized computers of the Petitioner.

47. Further, Notice had been issued to the Directorate of Enforcement which was represented by Shri Johnson K. George, Chief Enforcement Officer before the Settlement Commission, who referred to Report submitted on 24th September, 2001, stating that the investigation and other proceedings including Prosecution proceedings had been initiated by the Enforcement Directorate against the Petitioner relating to non-realization of export proceeds amounting to Rs.40.06 crores and consequent violation of the provisions of Section 18(2) and 18(3) of FERA, 1973. It was also asserted that the matter pertaining to the Enforcement Directorate, was independent of the matter pending consideration before the Settlement Commissioner.

48. The Settlement Commission took note of the financial hardship faced by the Petitioner on account of non-realisation of sale proceeds relating to some exports. The **Settlement Officer thus, settled the payment of 8,71,31,098/- (Rs.8,63,25,976 towards DEEC and Rs.8,05,122 towards Drawback).** The Applicant was also directed to pay an interest of 10% of the DEEC amount of Rs. 8,63,25,976 under the Customs Act, from the date of clearance to the date of final payment. It was noted that the Petitioner had already paid Rs.6.30 crore and a balance of Rs.2,41,31,098/- remained which was directed to be paid in instalments.

49. The Settlement Order dated 06.03.2002, as detailed above, clearly shows that it pertains only to the liability under the Customs Act. A perusal of the Settlement Commission Order shows that neither the violations under the FERA/FEMA were a subject matter nor were they adjudicated by the Settlement



2025:DHC:5154



Commission. Notice was given to the Directorate of Enforcement by the Settlement Commission only because certain Orders on the Applications filed by the Petitioner were required to be complied by the Directorate. It is also evident that the amounts which were the subject matter of FEMA, were only referred to take a lenient view in permitting the Petitioner to deposit the outstanding amount under the Customs Act by way of instalment.

50. *The present Complaint under S.56 FERA* is based on the allegations that the Petitioner had failed to take any steps to realise the Export amount from its buyers in the prescribed manner and in the prescribed period. Further, no requisite permissions were acquired from the RBI, for securing extension of time for realisation of the said proceeds which has also resulted in violation of Section 18(2) of FERA 1973 r/w Central Government Notification No. F.1/67/EC/73-1 and 2, making him liable to be prosecuted under Section 56 FERA.

51. *It is abundantly clear from the Order of the Settlement Commission that the subject matter of the Complaint under S.56 FERA, was not under consideration before the Settlement Commission. Consequently, no immunity in substance has been granted by the Settlement Commission, vide the Order dated 06.03.2002, in regard to FERA.*

II. Whether the Settlement Commission was Competent to Grant Settlement under FERA/FEMA:

52. *The Second aspect* for consideration is that even though the Settlement Commission observed that the immunity is granted under *FERA and other Central Acts, what is the sanctity of such immunity granted from prosecution*



2025:DHC:5154



under FERA by the Settlement Commission by the Order passed under Section 127C Customs Act?

53. The Petitioner has relied heavily on the conclusion of the Settlement Commission which reads as under:

*“20.5 The Applicant has, however, to pay interest of 1- per cent on the total DEEC amount of Rs.8,63,25,976/- from the date of clearance to the date of final payment. Interest in excess of 10 per cent is waived as partial immunity. **The Applicant is also allowed immunity from prosecution under the Customs Act, 1962, the India Penal Code and Foreign Exchange Regulation Act in relation to the matters covered in this application.**”*

54. However, the respondents have questioned the jurisdiction of the Settlement Commission to grant immunity for offences under FERA and asserted that any immunity granted from prosecution under Section 56 FERA, is void ab initio.

55. It is hereby imperative to discuss ***the scope, jurisdiction and powers of the Settlement Commission***. The object of the Settlement Commission is to provide an effective and a quick remedy in cases involving financial implications, particularly where tax evaders have fair chances of getting out of the mess clean and investigation and prosecution would be a waste of time and energy. With these objectives in mind, the Settlement commission was formed to enable a bonafide buyer who misclassified the goods for the purpose of payment of customs duty to settle the issue.

56. The ***Object of the Settlement Commission*** was discussed by the Apex Court in the case of **Alpesh Navinchandra Shah v. State of Maharashtra** (2007) 2 SCC 777 wherein it was stated that its objective is to settle tax evasion



2025:DHC:5154



issues. By virtue of disclosure by a tax offender, they gain immunity from fine/penalty which is otherwise mandatory under the provisions of tax laws.

57. Similarly, in the case of *Commr. Of Cus. (Air), Chennai vs Cus. & C. Ex. Settlement Commission* 2003(85)ECC215 it was observed that the object of Settlement Commission is to create a machinery to ensure effective and quick disposal of important cases involving far **reaching financial and revenue implications** particularly where complicated issues are involved and the evaders of duty may be intending evaders and should have a chance to come clean from their mess and the department should not waste its energy and manpower in protracted investigation, adjudication and prosecution.

58. With these objects in mind only, the Settlement Commission has been established to enable a bona fide importer who mis-classified the goods for the purpose of payment of customs duty to approach the Settlement Commission to settle the issue. Also, there cannot be a dispute that the powers of the Settlement Commission shall be restricted only to some of those areas enumerated under Chapter XIVA of the Customs Act and not beyond that.

59. The jurisdiction of the Settlement Commission was also discussed in the case of *Union Of India (Uoi) Through The ... vs Hoganas India Ltd. And Ors.* 2006(199) ELT8 (BOM) wherein the High Court of Bombay has observed that since the disputes take longer time to get it resolved, the revenue of the Government suffers. The very object of introducing Chapter XIV-A regarding "Settlement of Cases" in the Act **was to enable the Custom Authorities to recover dues in all the cases as clearly indicated in the object when the amendment was introduced and to resolve all the disputes.** Relying on the similar provisions provided under the Income Tax Act, the Parliament felt it



2025:DHC:5154



necessary to introduce such a remedial measure by way of a Settlement Commission and accordingly Chapter XIV-A was provided.

60. The entire scheme of jurisdiction and power to grant immunity by the Settlement Commission is contained in **Chapter XIV-A** Customs Act. The relevant provisions are reproduced as under:

127A. Definitions.—In this Chapter, unless the context otherwise requires,

(a).....

(b) — ‘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 127B is made: Provided that when any proceeding is referred back 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;

....

127B. 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 6 [or otherwise] and such application shall be disposed of in the manner hereinafter provided:*

.....Provided that no such application shall be made unless, -



2025:DHC:5154



- (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 any 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.



2025:DHC:5154



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

(5) [Any person, other than an applicant referred to in sub-section (1), may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified by rules.] [Inserted by Finance Act, 2017 (Act No. 7 of 2017), dated 31.3.2017.]

127 H. Power of Settlement Commission to grant immunity from prosecution and penalty.—*(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 127B has cooperated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act 1 [and also either wholly or in part from the imposition of any penalty and fine] under this Act, with respect to the case covered by the settlement: Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 127B.”*

61. The entire scheme under Chapter XIV-A as enumerated hereinabove, clearly indicates that the Settlement Commission has been given widest discretionary powers to protect the interests of the Revenue and even with regard to the grant of immunity from prosecution and penalty settle the matter. It also has the power to declare the Settlement to be void and to direct denovo adjudication.

62. The jurisdiction of the Settlement Commissioner is related to “**case**” which is defined under S.127A(b) to *mean any proceeding under this Act or any*





2025:DHC:5154



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 127B is made.

63. The Person seeking immunity, may make the Application under Section 127B of the Customs Act, in such Form and in such manner as may be specified by Rules, containing a full and true disclosure of his duty liability which has not been disclosed before the proper Officer, in respect of which he admits short-levy on account of mis-classification or otherwise of goods.

64. The term '*Case*' as stated in Section 127A(b) was interpreted by the Madras High Court in the case of **Commr. Of Cus. (Air), Chennai (Supra)**, and it was observed that "*Case*" means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty. In order to avail the benefit of filing of an Application under Section 127A of the Act, an importer, exporter or any other person should first establish that the case pleaded before the Commission is *in respect of levy, assessment and collection of customs duty, which may on account of mis-classification or otherwise of goods.*

65. Similar view was taken by the High Court of Bombay in the case of **Vinod M. Chitalia vs. UOI (2012 SCC OnLine Bom 476)**, wherein it was observed that the Settlement Commission under Section 127H of the Customs Act, 1962 has power to grant immunity to any person who has made an application to it for settlement. The immunity is from prosecution under the Customs Act, 1962 and also either wholly or in part from the imposition of a penalty or fine under the Customs Act. *Therefore, the immunity is only from penalty under the Customs Act and not in respect of any other Act including the FEMA.*



2025:DHC:5154



66. In view of the aforesaid, it is abundantly clear that the jurisdiction of the **Settlement Commission applies to only cases involving assessment/levy /collection of Customs Duty and any immunity granted is in respect of Customs Act only and would in no manner, extend to tendering immunity from prosecution under FERA.**

67. FERA being a self-contained Code in itself as observed in the case of **CBI v. State of Rajasthan AIR 1996 SC 2402** contains comprehensive provisions of investigation, inquiry and trial for the offences under that Act. The provisions under FERA gives power to the officers of the Directorate of Enforcement or other officers duly authorized by the Central Government under FERA to search, recover, arrest, record statements of witnesses, etc. FERA contains provisions for trial of the offences under FERA and imposition of punishment for such offences. This further supports the contention of the respondent that FERA being a self-contained Act, the Settlement Commission under Customs Act cannot expand its jurisdiction to grant immunity from offences under FERA.

68. In the present case, the offences under Section 18(2) and (3) FERA, for which a Notice under Section 61 FERA Act was issued to the accused to *Show Cause* whether he has obtained requisite permissions from the RBI in respect of the outstanding proceeds, is punishable under Section 56 FERA.

69. *Section 60 FERA* contains a mechanism for seeking immunity, but was never invoked by the petitioner. No immunity could have been granted by the Settlement Commission constituted under Section 127 H Customs Act for the alleged offences under section 18 (2) and 18(3) FERA; any immunity even if tendered under this Act, is without jurisdiction and void ab initio.





2025:DHC:5154

**Conclusion:**

70. In view of the aforesaid discussion, it is evident that the Settlement Commission neither was competent nor granted any immunity to the Petitioner for the offence punishable under S.56 FERA. The Application for Discharge filed by the Petitioner has been rightly dismissed by the Ld. ACMM. The Petition is devoid of any merit and is hereby, dismissed. Pending Applications are disposed of accordingly.

(NEENA BANSALKRISHNA)
JUDGE

JUNE 28, 2025/RS/PP