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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th December, 2025

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W.P.(C) 3434/2017

**EASTERN BROADCAST SOLUTIONS PVT. LTD
& ORS.**

.....Petitioners

Through: Mr. Kamal Sawhney, Ms. Akansha
Wadhwani & Mr. Rishab Mishra, Mr.
Deepak Thackur, Adv.

versus

**THE COMMISSIONER OF CUSTOMS (IMPORT)
& ORS.**

.....Respondents

Through: Mr. Akshay Amritanshu, Senior
Standing Counsel, Ms. Drishti Rawal,
Mr. Abhay Nair, Mr. Mayur Goyal,
Mr. Sarthak Srivastava, Adv.
Mr. Harpreet Singh, SSC with Mr.
Jatin Gaur, Ms. Suhani Mathur, Ms.
Shivani Saxena, Adv.
Ms. Anushree Narain, SSC with Mr.
Yamit Jetley, Adv. for R-2.

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner Firm *i.e.*, Eastern Broadcast Solutions Pvt. Ltd. (hereinafter “*EBSPL / the Petitioner Firm*”) and its directors, *inter alia*, challenging the impugned order dated 23rd March, 2017, passed by the Customs, Central Excise & Service Tax Settlement Commission, Principal Bench, New Delhi (hereinafter “*the*”



Settlement Commission”). The challenge is limited to the extent of the settlement amount and the penalty imposed upon the Petitioners.

3. The brief facts of the case leading to the present petition are that one M/s. Broadcast Solutions Pvt. Ltd. (hereinafter “*BSPL*”), a company incorporated in Singapore, was awarded a contract in 2012 by the Board of Control for Cricket in India (hereinafter “*BCCI*”) for providing broadcast equipment and associated services for covering the Indian Premier League, as also other international and domestic cricket events organised by the BCCI.

4. EBSPL, a company incorporated under the Companies Act, 1956, is stated to be an associate of BSPL, Singapore, was assigned performance of the obligations under the said contract for broadcasting of the cricket events. In order to perform its obligations, EBSPL had to import a substantial amount of broadcasting equipment into India. In respect of the same it had engaged one M/s. Broekman Logistics India Pvt. Ltd., a freight forwarder and logistics agent, for customs clearance, etc., and the broadcasting equipment was imported between the period December, 2012 and March, 2013.

5. It is the case of the Petitioners that as per the advice of the concerned Customs Clearing Agent, the subject imports were imported on a temporary basis and stored in the ‘*Arshiya Free Trade and Warehousing Zone*’ located at Panvel, Mumbai, Maharashtra (hereinafter “*the Free Trade & Warehousing Zone*”), which is a Special Economic Zone (hereinafter “*SEZ*”). Thereafter, the subject equipment were removed from the Free Trade & Warehousing Zone to the domestic tariff area. However, the purpose for temporary removal of the subject imports was declared as



“DEMO” instead of declaring the actual purpose for the import of the equipment *i.e.*, ‘Commercial Purpose’.

6. On the basis of intelligence received by the Directorate of Revenue Intelligence (HQ), New Delhi, (hereinafter “*DRI*”) an investigation was initiated against the Petitioner. It is stated that during the course of investigation, it was realized that the subject imports to the Free Trade and Warehousing Zone was incorrect and the declaration of the purpose for temporary removal as “DEMO” was also incorrect.

7. The investigations continued and various letters were issued to EBSPL, documents were sought and the representatives of EBSPL also appeared before the DRI and recorded their statements. Further, the subject imports were also seized by the DRI, sometime in June, 2013. Pursuant to the same, it is stated that EBSPL had sought provisional release of the subject imports as it had already made a payment of approximately Rs. 8.69 Crores towards the customs duty, *albeit*, under protest.

8. Thereafter, a Show Cause Notice was issued on 18th March, 2015 (hereinafter “*the SCN*”), *inter alia*, demanding differential duty and penalty was also proposed to be imposed. An addendum to the SCN dated 30th December, 2015, was issued on 5th January, 2016, *inter alia*, in respect of the imposition of penalty.

9. While the SCN proceedings were pending, EBSPL approached the Settlement Commission under Section 127A of the Customs Act, 1962 (hereinafter “*the Act*”), for resolving the dispute. In the settlement application, the stand of EBSPL was that a substantial part of the applicable customs duty was already paid and the declaration of the purpose of the subject imports as ‘DEMO’ was nothing but a bonafide mistake. EBSPL



also challenged the valuation of the subject imports and the calculation of the applicable duty which was done by the DRI.

10. The settlement application was filed in both branches of the Settlement Commission, i.e., Bombay and Delhi, and finally the settlement application before the Bombay branch was also transferred to the Principal Bench, at New Delhi. The Settlement Commission had considered the report from the DRI and the final hearing took place before the Settlement Commission. The Settlement Commission then passed the impugned final order dated 23rd March, 2017 as per which the following duties and penalties were imposed upon the Petitioner.

“20. In view of the above, and the facts of the circumstances of the case, the Bench hereby settles the case under Section 127C(5) of the Act on the following terms and condition :-

DUTY :Custom duty in case of imports made through different ports is settled as detailed below:-

Port of import	Jurisdiction Commissioner	Custom duty settled (Rs)
JNPT, NhavaSheva	Pr Commissioner of Customs (General), JNPT NhavaSheva	4,21,75,299/-
Air Cargo(Import), New Delhi	Pr Commissioner of Customs, Air Cargo (Import) New Delhi	5,09,06,191/-
ICD, TKD(Import)	Pr Commissioner of Customs ICD TKD (Import), New Delhi	42,97,195/-
Total		9,73,78,685/-

The amount of Rs.9,67,72,280/- deposited by the applicant is ordered to be appropriated towards the settled amount of duty. The remaining amount of duty i.eRs 6,06,405/- should be deposited within 15 days of receipt of this order under intimation to the Jurisdictional Commissioner and the Settlement Commission.

***Interest:** The applicant has admitted and claimed to have deposited an amount of Rs. 75,186 /- as interest in respect of imports made through JNPT Nhava Sheva. This amount is ordered*



to be appropriated. No interest has been paid by the applicant in respect of imports made through Air Cargo (Import), New Delhi and ICD TKD (Import). The concerned Jurisdictional Commissioners should check the correctness of the interest amount paid by the applicant in respect of imports made through Nhava Sheva and calculate the interest payable in respect of imports made through Air Cargo (Import) New Delhi and ICD TKD (Import) and the applicant should be informed of the details of the same with in 15 days of the receipt of this order. The applicant shall pay the remaining amount within 15 days from the date of receipt of such communication from the jurisdictional Commissioner underintimation to the Jurisdictional Commissioner and the Settlement Commission.

Penalty :*Taking into account the facts and circumstances of the case, the Bench imposes a penalty of Rs. 90,00,000/- (ninety lakhs) in respect of imports made through JNPT Nhava Shava, Rs 100,00,000/- (one crore) in respect of imports made through Air Cargo import), New Delhi and Rs 10,00,000/- (ten lakhs) in respect of imports made through ICD TKD (Import) on the applicant.*

The Bench also imposes a penalty of Rs 10,00,000/- on Shri Sandeep Mehta and Rs 10,00,000/- on Shri Saeed Izadi, co-applicants in respect of imports made through JNPT Nhava Sheva.

The Bench also imposes a penalty of Rs 14,00,000/- on Shri Sandeep Mehta and Rs 14,00,000/- on Shri Saeed Izadi, co-applicants in respect of imports made through Air Cargo (Import), New Delhi.

The Bench also imposes a penalty of Rs 1,00,000/- on Shri Sandeep Mehta and Rs 1,00,000/- on Shri Saeed Izadi, co-applicants in respect of imports made through ICD TKD (Import), New Delhi.

The Bench grants immunity to the applicant and co-applicants from penalty in excess of the above amounts.



The settled amount of duty, penalty and interest should be paid by the applicant with in 30 days of receipt of this order.

Shri Manoj Govindan Nair, Senior Manager, Broekman Logistics India Pvt Ltd and Arshiya Supply Chain Management Pvt Ltd, who have been asked to show cause to Commissioner of Customs (General), JNPT Nhava Sheva, as to why penalty should not be levied upon them under Section 112 (a) & (b) of the Customs Act, 1962 as applicable have not approached Settlement Commission. Therefore, the action as proposed in SCN dated 18.3.15 against Shri Manoj Govindan Nair and Arshiya Supply Chain Management Pvt Ltd should be taken by Jurisdictional Commissioner of Customs (General), JNPT Nhava Sheva.

Prosecution: *Subject to payment of duty, interest if any, penalty, the Bench grants immunity to the applicant and co-applicant from prosecution under the Act and Rules framed there under as applicable in so far as this case is concerned.”*

11. As can be seen from the impugned order extracted above, the applicable customs duty was settled at Rs. 9,73,78,685/- and penalty was imposed in the following terms:

Port of Import	Customs duty settled	Penalty on Company	Penalty on Director 1	Penalty on Director 2	% of penalty imposed
JNPT, Nhava Sheva	4,21,75,299/- [4.21 crore]	90 lakhs	10 lakhs	10 lakhs	26.08%
Air Cargo (Import), New Delhi	5,09,06,191 [5.09 crore]	1 crore	14 lakhs	14 lakhs	25.14%
ICD, TKD (Import)	42,97,195 [42.97 lakhs]	10 lakhs	1 lakh	1 lakh	27.92%
Total	9,73,78,685 [9.73 crores]	2 crores	25 lakhs	25 lakhs	25.67%

12. When the matter was listed initially, vide order dated 21st April, 2017, an interim order was granted in the following terms:

“2. It is pointed out by Mr. Tarun Gulati, learned counsel for the Petitioner, that a sum of Rs. 9,67,72,280 out of total settled



amount of duty of Rs. 9,73,78,685 was paid by the Petitioners even during the course of the investigation. The penalty amount in the aggregate of Rs. 2.5 crores imposed by the impugned order dated 23rd February, 2017 of the Customs, Central Excise and Service Tax Settlement Commission (CCESTSC) on the Petitioners is approximately 25% of the total duty demanded. According to the Petitioners this is excessive and unreasonable considering that the Petitioners had fully cooperated in the proceedings and paid the above duty amount even during investigation and the balance sum of Rs. 6,06,405 after the impugned order. Mr Narula, however, disputes this contention and urges that the penalty amounts were justified.

3. Having considered the above submissions the Court directs that subject to the Petitioner No.1, on behalf of all Petitioners, depositing with the Respondent Department a sum of Rs. 25,00,000 in relation both the show cause notices dated 18th March, 2015 and 5th January, 2016 within a period of four weeks from today, no coercive steps will be taken against the Petitioner as regards the penalty amount as ordered by the CCESTSC.

13. The amount of Rs. 25,00,000/- in terms of the above order stands deposited with the Department. Accordingly, the interim order dated 21st April, 2017 was made absolute during the pendency of the present petition *vide* order dated 16th August, 2017.

14. The submission of Mr. Kamal Sawhney, Id. Counsel for the Petitioners is that EBSPL had temporarily imported the subject equipment, for covering the cricket events organised by the BCCI, including the IPL tournament, and the customs duty itself was not liable to be paid. It was only under professional advice from the Customs Clearinghouse Agent that the subject equipment was imported to the Free Trade & Warehousing Zone and then declared as 'DEMO'.

15. There was no ill intention of the Petitioner Firm to avoid payment of



duty. Infact prior to the issuance of the SCN itself, the applicable customs duty was paid.

16. Further, reliance is placed upon the following decisions:

- a. ***Jaswant Rai and Ors. vs. Central Board of Direct Taxes and Revenue and Ors. [1998 (5) SCC 77]***
- b. ***In re: Yamaha Motors Pvt. Ltd [2007 (214) ELT 129 (Set Comm.)]***
- c. ***In re: Kitex Garments Ltd. [2007 (212) ELT 254 (Set Comm)]***
- d. ***In re: Chandra Industries [2004 (177) ELT 775 (Set Comm)]***
- e. ***In re: Pee Jay International Ltd. [2004 (178) ELT 1069 (Set Comm)]***
- f. ***In re: Kansal Industries [2007 (220) ELT 619 (Set Comm)]***

17. It is further argued that the EBSPL had imported similar subject equipment even in the past and since the said equipment was to be re-exported, infact, no duty was payable by EBSPL. In the normal course, if the imports were made, even if the duty was deposited, EBSPL would have been entitled to drawback of the said duty. Thus, EBSPL has suffered immensely already and the penalty ought to be waived/quashed.

18. On behalf of the Respondent Department, Mr. Harpreet Singh, Id. SSC has made his submissions and has taken the Court through the impugned order, wherein, there are specific findings of the Settlement Commission that there was a deliberate attempt to evade customs duty. It is his further argument that EBSPL is a well-established broadcasting equipment and service provider. Thus, it was fully aware of the customs duty that would be imposed and in order to avoid payment of the duty, this *modus operandi* was adopted by EBSPL.



19. The Id. SSC submits that the statements of the Customs Clearinghouse Agents, etc., which are recorded by the Settlement Commissioner in the impugned order would infact show that there was a deliberate attempt to evade duty by mis-declaration. He relies upon the following decisions:

- a. *Chawla Enterprises Ltd. v. Commissioner of Customs (Acc), New Delhi 2004 (175) E.L.T. 61 (Del.)*
- b. *Chawla Enterprises Ltd. v. Commissioner of Customs & Ors. Review Petition No. 1578/2023 in SLP (C) No. 14263/2003.*
- c. *Ashwani Tobacco Co. Pvt. Ltd. v. Union of India 2010 (251) E.L.T. 162 (Del)*
- d. *Ashwani Tobacco Co. Pvt. Ltd. v. Union of India Special Leave to Appeal (Civil) No. 8902/2010*
- e. *Union of India v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.)*
- f. *Viva Herba Pvt. Ltd. v. Union of India 2023 (383) E.L.T. 423 (Bom.)*

20. The Court has considered the matter. The Settlement Commission has in the impugned order, disagreed with the Petitioners on both counts of arguments raised by them. Firstly, it holds that there was a mis-declaration and even on the value, the Settlement Commission does not agree with the value proffered by the Petitioners. Some of the findings of the Settlement Commission are relevant and are set out below:

“19. We find that the applicant made an incorrect declaration at the time of removal of goods from SEZ showing the purpose of removal as "DEMO", whereas the goods were in fact removed from SEZ for commercial purposes and thus in correctly availed



benefit under Rule 50(1)(b) of SEZ Rules for Custom duty exemption. In this manner, the applicant evaded payment of appropriate Custom duty. The applicant has admitted this lapse during investigation and in his Settlement application. As a consequence, the applicants are liable to penalty and the goods in question are liable to confiscation.

[...]

In the instant case, the applicant has not submitted any report from overseas chartered engineer or equivalent agencies in India notified by DGFT, or locally empaneled chartered engineers, but has claimed that duty should be calculated on the book value of the goods. This is not the prescribed procedure for arriving at the value of the goods in view of the conditions laid down in Customs Circular No 25/2015-Cus dated 15.10.2015. In the absence of any of the reports laid down in Custom Circular No 25/2015-Cus dated 15.10.2015, detailed above, the Department had no alternative but to resort to apply the depreciation rates as laid down in CBEC Circular No 493/124/86-Cus VI dated 19.11.1987 on the invoice value of the goods which was furnished by the applicant himself during the course of investigations. Further, though the applicant has claimed that the rates of depreciation as laid down in CBEC Circular No 493/124/86-Cus VI dated 19.11.1987 ought not to be applied in the case of high end broadcasting equipment's which depreciate very fast due to change in technology, but he has failed to produce any instructions in circular, or notification to support his claim. On the contrary, we find that Authority for Advance Rulings in its order dated 5.8.2016 in case of M/s First Concept Production Services Pvt Ltd, Gurgaon, has held that: 'determination of value of the second-hand Broadcasting Equipment proposed to be imported shall also be as per said Circular' i.e. Circular No 25/2015-Cus dated 15.10.2015.

As a result, and in view of specific procedure having being laid down for allowing depreciation in value of imported goods, we do not agree with the contention of the applicants and hold that DRI



has correctly reassessed the value of the imported goods in accordance with CBEC Circular No 493/124/86-Cus VI dated 19.11.1987.

21. The Settlement Commission thus came to the conclusion that there was a lapse by EBSPL in mis-declaration of the purpose for which the subject equipment was imported, which was also admitted by EBSPL, for which it is liable to penalty and confiscation. Thereafter, the Settlement Commission also holds that the value assessed by the DRI was the correct value.

22. The Settlement Commission also came to the finding that both the Directors of EBSPL were well aware of the mis-declaration of the purpose of removal of the goods and therefore, even the attribution of the blame to the Customs Clearing house Agent would not absolve themselves from the liability. The relevant paragraph from the impugned order is set out below:

“We also find from the statement dated 1.4.13 of Shri Saeed Izadi that he himself and Shri Sandeep Mehtawere well aware of the mis-declaration of the purpose of removal of goods, which led to evasion of Custom duty. Both of them are therefore liable to penal action. Their contention that the entire work relating to clearance of impugned goods was outsourced to Brokeman Logistics India Pvt Ltd is of no consequence since they cannot absolve themselves of the liability in terms of the provisions of Section 147 of the Customs Act, 1962.”

23. The Petitioner had obviously imported the subject broadcasting equipment for the purposes of covering the IPL tournament and other cricket events organised by the BCCI, which was in the nature of a temporary import. The equipment were not being sold or disposed of in India. Thus,



under normal circumstances, no duty would have been liable to be paid if the declaration was properly made by the EBSPL. EBSPL would have been entitled to claim duty drawback on the subject imports, as per applicable norms.

24. However, for whatever reasons, may be under incorrect advice from the Customs Clearinghouse Agent or otherwise, EBSPL resorted to import the subject equipment through the Free Trade & Warehousing Zone by wrongly declaring the same to be DEMO equipment. This misdeclaration was clearly investigated by the DRI and thereafter, EBSPL had paid the applicable customs duty for release of the subject equipment, *albeit*, prior to the issuance of the SCN.

25. The Settlement Commission has considered the entire matter and has imposed a substantial amount of penalty on the Petitioners. The Penalty has also been imposed on the Directors to the tune of Rs. 10,00,000/- each. The applicable customs duty which has already been paid by EBSPL to the tune of approximately Rs. 9.73 crores, which in this case is a substantial amount.

26. Under normal circumstances, this duty would have been liable to be refunded to the Petitioner if there was no misdeclaration, as the import was merely temporary in nature.

27. Further, the total penalty imposed upon the Petitioner is to the tune of Rs. 2 crores. Both the Directors were also well aware of misdeclaration. Under such circumstances, in view of the findings of the Settlement Commission and the fact that the misdeclaration was intentional, may be not at the behest of the Petitioner but at the behest of the Customs Clearing Agents, a benefit was sought to be gained by the Petitioner.

28. In these overall circumstances, the benefit that the Petitioner has



obtained despite the misdeclaration is the immunity from the prosecution and penalty under Section 127H of the Act.

29. In the opinion of the Court, the Settlement Commission cannot be faulted for having imposed the penalty as was done.

30. However, in the overall facts, this Court is of the opinion that the penalty upon the individual Directors deserves to be quashed, as the benefit was sought to be obtained by the Company and not the Directors in their individual capacity.

31. Bearing in mind the substantial customs duty that has already been deposited to the tune of Rs.9.73 crore (approx), insofar as penalty on EBSPL is concerned, the penalty is restricted to Rs. 50,00,000/-, out of which Rs. 25,00,000/- has already been deposited.

32. Let the remaining Rs. 25,00,000/- be deposited within a period of three months with the Department. Subject to payment of the same, all remaining penalties shall remain quashed.

33. The present petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

DECEMBER 8, 2025/tg/msh