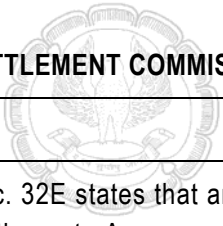


SETTLEMENT COMMISSION

18.1 INTRODUCTION

Chapter V was inserted in the Central Excise Act, 1944 by Finance (No. 2) Act, 1998 to evolve a mechanism for speedy settlement of cases involving high revenue stakes. This Chapter contains sections 31 to 32P. While these provisions came into effect from 1-8-1998, the Settlement Commission was constituted vide *Notification 40/99-CX (NT)* dated 9-6-1999.

18.2 SALIENT FEATURES OF SETTLEMENT COMMISSION

Questions	Answers
1. Who can make an application for settlement? Can it be withdrawn?	 Sec. 32E states that an assessee may make a case for settlement. An assessee is defined in Sec. 31(a) as any person who is liable to pay excise duty assessed and includes, manufacturer/producer or a registered person of a private warehouse. An application once made cannot be withdrawn [Sec. 32E(4)]
2. What is it that can be settled?	A case can be settled. With effect from 01.06.2007, case is defined in section 31(c) as any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made.

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	However, 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. Thus, with effect from 01.06.07, Settlement Commission can only be approached when original adjudication is pending.
3. What categories of cases cannot be settled?	See para 18.3 for such cases.
4. What is the procedure to be followed by the Settlement Commission on receipt of application?	See Procedure below for details.
5. Can Settlement Commission grant immunity from prosecution and penalty/ interest/ fine?	With effect from 01.06.2007, the Commission can grant immunity under section 32K from prosecution only for any offence under the Central Excise Act and either wholly or in part from the imposition of penalty and fine if it is satisfied that the applicant has made full and true disclosure and co-operated with the Commission. However, in respect of applications filed on or before 31.05.2007 the Commission can also grant immunity from prosecution for any offence under the India Penal Code or under any other Central Act and either wholly or in part from the imposition of interest. It may be noted that if prosecution is launched before receipt of application, immunity against such prosecution cannot be granted.
6. Can such immunity be withdrawn?	Immunity can be withdrawn under section 32K only if the person fails to pay the sums due within the time specified in the settlement order or where the applicant has concealed any material to the settlement or given

	false evidence relating to the settlement.
7. Can the case be sent back by the Settlement Commission to the Central Excise officer?	Under Sec. 32L, this can be done only where the Commission is satisfied that the person has not co-operated. The consequences of this are that it would be deemed that no application has been made before the Commission.
8. Can the Central Excise officer who received the case back use the materials produced before the Commission?	Yes as per Sec. 32L.
9. Is the order of settlement final?	As per section 32M, except as provided in Chapter V, the order is final and conclusive and shall not be re-opened in any proceeding under this Act or under any other law. For example, section 32F(8) provides that if the order was obtained by fraud or misrepresentation, it would become void.
10. What is the time limit for payment of amounts ordered by Settlement Commission?	Under section 32F(9), the duty, interest, fine and penalty payable in pursuance of the order under subsection (5) shall be paid by the assessee within 30 days of receipt of a copy of the order by him. If the assessee fails to do so the amount which remains unpaid shall be recovered along with interest due thereon as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.
11. Can a completed proceeding be re-opened?	Settlement Commission has been disempowered to reopen the proceedings in cases where applications under section 32E are made on or after the 1st day of June, 2007. However, in respect of application made before 01.06.2007, Settlement Commission can reopen completed proceedings.

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12. Is the proceeding before the Settlement Commission a judicial proceeding?	Section 32P deems that the proceeding is a judicial proceeding within the meaning of Sec. 193 and 228 of the IPC.
13. Where are the Benches of the Settlement Commission located?	The principal Bench is at New Delhi with other Benches at Chennai, Calcutta and Mumbai. The jurisdiction of the Bench is decided not by the place of business of the applicant but by the location of the headquarters of the Commissionerate passing the order.
14. What is the procedure to make an application and what are the fees?	See Procedure below.
15. Can the applicant take legal assistance?	Under section 32F(5), assistance of authorised representative can be taken.
16. Can the property of the applicant be attached?	Provisional attachment by Settlement Commission is possible under section 32G. See procedure to be followed by Commission below for details.

18.3 CATEGORIES OF CASES THAT CANNOT BE SETTLED

The following categories of cases cannot be settled as per section 32E :

- Where the assessee has filed the application for settlement in respect of a case relating to him after the adjudication thereof;
- If the applicant has not filed returns showing production, clearance and central excise duty paid;
- Where the applicant has not received a show cause notice;
- Where the case is pending before the Appellate Tribunal or any Court;
- Where the dispute relates to interpretation of classification;
- Where excisable goods/books/documents are seized, the applicant cannot prefer an application for 180 days from the date of such seizure;

- g. The amount in the application should be at least Rs.3,00,000 or more. In other words, cases less than Rs.3,00,000 cannot be settled;
- h. Where the applicant, while filing the application, has not deposited the additional amount of excise duty accepted by him along with interest due under section 11AB (This condition is effective from 01.06.2007 but even in respect of an application filed before 01.06.2007, pending issuance of an order by the Commission, the application shall be rejected if the accepted duty has not been paid by 30.06.2007);
- i. Where the assessee admits short levy on the goods for reasons other than misclassification, undervaluation, inapplicability of exemption notification or CENVAT credit. However, even if the short levy is on account of misclassification, undervaluation, inapplicability of exemption notification or CENVAT credit the application for settlement cannot be filed if proper record has not been maintained by the assessee in his daily stock register.

18.4 PROCEDURE TO BE FOLLOWED BY THE SETTLEMENT COMMISSION [SECTION 32F]

- (1) The Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application, to explain in writing as to why the application made by him should be allowed to be proceeded with. After taking into consideration the explanation provided by the applicant, the Settlement Commission shall, within a period of 14 days from the date of the notice, pass an order either allowing the application to be proceeded with, or rejecting the same. The proceedings before the Settlement Commission shall abate on the date of rejection.

However, where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

- (2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.
- (3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within 7 days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction. The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.

However, where the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

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- (4) After examination of the report of the Commissioner submitted within time, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct, for reasons to be recorded in writing, the Commissioner (Investigation) within 15 days of the receipt of the report, to make such further enquiry or investigation on the matters covered by the application and any other matter relating to the case. The Commissioner (Investigation) should furnish the report of such enquiry within a period of 90 days from the date of the receipt of the communication from the Settlement Commission.

However, where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

- (5) The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) after examination of the records, the report of the Commissioner of Central Excise and the report, if any, of the Commissioner (Investigation) of the Settlement Commission. An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Central Excise having jurisdiction before passing of such order. The Commission shall also examine any further evidence as may be placed before it or obtained by it before passing the order.
- (6) In respect of the applications filed on or before 31.05.2007, the order under sub-section (5) shall be passed by 29.02.2008 and in respect of the applications made on or after the 01.06.2007, the order shall be passed within 9 months from the last day of the month in which the application was made. However, if the order is not passed within the stipulated time, the settlement proceedings shall abate and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.
- (7) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5). In relation to the passing of such order, the provisions of section 32D shall apply.
- (8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective. However, in case of rejection the order shall contain the reasons therefor. The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud

or misrepresentation of facts.

The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

- (9) The duty, interest, fine and penalty payable in pursuance of the order under sub-section (5) shall be paid by the assessee within 30 days of receipt of a copy of the order by him. If the assessee fails to do so the amount which remains unpaid shall be recovered along with interest due thereon as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.
- (10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. The Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void.

18.5 APPLICATION FOR SETTLEMENT PERMISSIBLE ONLY ONCE DURING THE LIFETIME OF THE ASSESSEE [SECTION 32-O]

Section 32-O specifies the grounds under which an assessee is barred from making any subsequent application for settlement under section 32E. If an assessee has made an application under sub-section (1) of section 32E, on or after 1.06.2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 32F, such assessee shall not be entitled to apply for settlement under section 32E in relation to any other matter. Thus with effect from 01.06.07, an assessee can apply for settlement only once during his lifetime so that the scheme of settlement is not treated as a permanent amnesty scheme by the tax evaders.

However, in respect of cases involving identical recurring issue, but for the period of dispute and amount, the assessee can file application for settlement provided his earlier application is pending before the Settlement Commission.

It may be noted that if a person has filed an application before 01.06.2007 and if:-

- (i) an order of the Commission imposes penalty for concealment of particulars of his duty liability; or
- (ii) after the passing of an order of settlement such person is convicted of any offence in relation to that case; or
- (iii) the case of such person is sent back to the Central Excise Officer by the Settlement Commission under section 32L,

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then, he shall not be entitled to apply for settlement under section 32E in relation to any other matter.

Kindly refer to the Chapter on Settlement Commission in the Customs section as additional reading.

Self-examination questions

1. Who can make an application for settlement? Can such an application be withdrawn?
2. Can all cases of disputed excise duty be settled in a Settlement Commission? If no, then enlist the exceptions?
3. Describe the procedure to make an application before the Settlement Commission.
4. Explain whether the Settlement Commission can grant immunity from prosecution and penalty/interest/fine?
5. Can a case be sent back by the Settlement Commission to the Central Excise Officer? Discuss.

