

SETTLEMENT COMMISSION

13.1 INTRODUCTION

Chapter XIV A deals with the provisions relating to Settlement of cases. This Chapter was inserted to evolve a mechanism for speedy settlement of cases involving high revenue stakes. This is an alternative channel for resolution of dispute for assesseees without going into the prolonged litigation in adjudication/appeals/revisions etc.

The Settlement Commission has been created by constituting Customs & Central Excise Settlement Commission. (Provisions of section 127A to 127N of the Customs Act). Presently, three Benches in the Settlement Commission have been constituted and they are functioning at Delhi, Mumbai and Chennai . The fourth bench at Kolkata will be constituted in due course.

13.2 DEFINITIONS [SECTION 127A]

In this Chapter, unless the context otherwise requires, -

- (a) "Bench" means a Bench of the Settlement Commission;
- (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.

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. This definition has come into effect from 01.06.2007.

Thus, with effect from 01.06.07, Settlement Commission can only be approached when original adjudication is pending.

- (c) "Chairman" means the Chairman of the Settlement Commission.
- (d) "Commissioner (Investigation)" means an officer of the customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the

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purposes of this Chapter.

- (e) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman.
- (f) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under section 32 of the Central Excise Act, 1944.

13.3 APPLICATION FOR SETTLEMENT OF CASES [SECTION 127B]

13.3.1 Statutory Provisions: This section states that any importer, exporter or any other person may make an application for settlement in respect of a case, relating to him, before adjudication to the Settlement Commission.

Further, the section states that the application shall be made in such form and in such manner as may be specified.

The application shall contain 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, undervaluation or inapplicability of exemption notification but excluding the goods not included in the entry (bill of entry or shipping bill) made under this Act. [Sub-section (1)]

13.3.2 Conditions : Two conditions are to be fulfilled for filing an application for settlement of a case. The application shall not be made unless –

- (a) the applicant has filed a bill of entry, or a shipping bill, in respect of import or export of 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 Rs.3,00,000.
- (c) the applicant has paid the additional amount of customs duty accepted by him along with interest due under section 28AB. [Proviso to sub-section (1)] (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)

13.3.3 Exceptions: 1. No application shall be entertained by the Settlement Commission in cases which are pending in the Appellate Tribunal or any Court.

2. 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 has been committed:
- for the interpretation of the classification of the goods under the Customs Tariff Act, 1975. [Sub-section (1)].

13.3.4 Time limit for filing a “case” in case of seizure u/s 110: 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 and eighty days from the date of the seizure. Every application shall be accompanied by such fees as may be specified by rules. [Sub-section (2) and (3)]

13.3.5 Withdrawal of an application: An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant. [Sub-section (4)]

13.4 PROCEDURE ON RECEIPT OF APPLICATION [SECTION 127C]

- (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 Customs 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 Customs 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 Customs and Commissioner (Investigation) after examination of the records, the report of the Commissioner of Customs 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 Customs 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 127B had been made.
- (7) Subject to the provisions of section 32A of the Central Excise Act, 1944 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). The provisions of section 32D of the Central Excise Act, 1944 shall apply in relation to the passing of such order.
- (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 127B.

- (9) The duty, interest, fine and penalty payable in pursuance of the order under sub-section (5) shall be paid by the applicant within 30 days of receipt of a copy of the order by him. If the applicant 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 proper Officer having jurisdiction over the applicant in accordance with the provisions of section 142.
- (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 proper 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.

13.5 POWERS OF SETTLEMENT COMMISSION

13.5.1 Power to order provisional attachment to protect revenue [Section 127D]: The Settlement Commission may, by order, attach provisionally any property belonging to the applicant in such manner as may be specified by rules. Such attachment can be made during the pendency of any proceeding before it, and for protecting the interests of the revenue.

Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

13.5.2 Power to reopen completed proceedings [Section 127E]: If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 127B was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also.

However, that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application under sub-section (1) of section 127B.

It may be noted that Settlement Commission has been disempowered to reopen the

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proceedings under this section in a case where an application under section 127B is made on or after 01.06.2007.

13.5.3 Power to grant immunity from prosecution and penalty [Section 127H]: The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 127B has co-operated 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 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.

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.

However, it may be noted that 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.

An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-section (5) of section 127C within the time specified in such order or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars, material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

13.5.4 Power to send a case back to the proper officer [Section 127-I]: The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 127B has not cooperated with the Settlement Commission in the proceedings before it, send the case back to the proper officer who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 127B had been made [Sub-section (1)].

For the purpose of sub-section (1), the proper officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such proper officer or held or recorded by him in the course of the proceedings before him.

For the purposes of the time limit under section 28 and for the purposes of interest under section 28AA, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 127B and ending with the date of receipt by the officer of customs of the order of the Settlement Commission sending the case back to the officer of customs shall be excluded.

13.5.5 Other powers and procedure of Settlement Commission [Section 127F]: In addition to the powers conferred on the Settlement Commission under Chapter V of the Central Excise Act, 1944, it shall have all the powers which are vested in an officer of the customs under this Act or the rules made thereunder.

Where an application made under section 127B has been allowed to be proceeded with under section 127C, the Settlement Commission shall, until an order is passed under sub-section (5) of section 127C, have exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs or Central Excise Officer as the case may be, under this Act or in the Central Excise Act, 1944, in relation to the case.

In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matter other than those before the Settlement Commission.

The Settlement Commission shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings, subject to the provisions of Chapter V of the Central Excise Act, 1944 and this Chapter.

13.6 INSPECTION, ETC., OF REPORTS [SECTION 127G]

No person shall be entitled to inspect, or obtain copies of, any report made by any officer of the Customs to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of such fee as may be specified by rules.

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment by such person of such fee as may be specified by rules, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

13.7 ORDER OF SETTLEMENT TO BE CONCLUSIVE [SECTION 127J]

Every order of settlement passed under sub-section (5) of section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

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13.8 RECOVERY OF SUMS DUE UNDER ORDER OF SETTLEMENT [SECTION 127K]

Any sum specified in an order of settlement passed under sub-section (5) of section 127C may, subject to such conditions, if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions of section 142, by the proper officer having jurisdiction over the applicant.

13.9 BAR ON SUBSEQUENT APPLICATION FOR SETTLEMENT IN CERTAIN CASES [SECTION 127L]

Before 01.06.2007, in the following circumstances, a person shall not be entitled to apply for settlement under section 127B in relation to any other matter:

1. Where an order of settlement passed under sub-section (7) 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
2. Where after the passing of an order of settlement under said sub-section (7) in relation to a case, such person is convicted of any offence under this Act in relation to that case; or
3. Where the case of such person is sent back to the proper officer by the Settlement Commission under section 127-I.

Where an applicant has made an application under sub-section (1) of section 127B, on or after 01.06.2007 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. Thus, with effect from 01.06.07, an applicant 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.

13.10 PROCEEDINGS BEFORE SETTLEMENT COMMISSION TO BE JUDICIAL PROCEEDINGS [SECTION 127M]

Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860).

13.11 APPLICATIONS OF CERTAIN PROVISIONS OF CENTRAL EXCISE ACT [SECTION 127N]

The provisions of Chapter V of the Central Excise Act, 1944 (1 of 1944) in so far as it is not

inconsistent with the provisions of this Chapter shall apply in relation to proceedings before the Settlement Commission under this Chapter.

13.12 CUSTOMS (SETTLEMENT OF CASES) RULES, 2007

In exercise of the powers conferred by Section 156 of the Customs Act, the Central Government has notified Customs (Settlement of Cases) Rules, 2007.

Self-examination questions

1. State the circumstances under which an application will not be entertained by the Settlement Commission.
2. What is the time limit for filing a "case" in case of seizure under section 110 of the Customs Act, 1962?
3. Briefly explain the powers of the Settlement Commission under the Customs Act, 1962.
4. When will a person be not entitled to apply for settlement under section 127B? Discuss with reference to the provisions of section 127L.
5. Can the Settlement Commission entertain applications involving evasion of duty by fraudulent means and mis-declaration? Discuss

Answer

5. This issue has been addressed to by the High Court in the case of *Tata Teleservices (Maharashtra) Ltd. v. Union of India* 2006 (201) ELT 529 (Bom.). In this case the assessee had evaded duty and had applied for settlement in the Settlement Commission. The contention of the department was that the companies or the persons, who evaded the customs duty fraudulently, could not avail of the benefit of approaching the Settlement Commission. It was submitted by the department that the Settlement Commission had a limited jurisdiction of accepting only the cases of short levy on account of misclassification or otherwise and not other cases.

The High Court observed that the Settlement Commission had wide jurisdiction to entertain all kinds of settlement claim applications, with liberty to reject the same even at preliminary stage, depending upon the nature, circumstances and complexity of a case. However, a case would be accepted by the Settlement Commission only if the mandatory requirements of:

- (i) filing Bill of Entry/Shipping Bill and issuance of a show cause notice in relation to such a Bill of Entry/Shipping Bill
- (ii) making a full and true disclosure of duty liability which was not disclosed earlier before the proper officer and the manner in which such liability had been incurred and additional amount of customs duty accepted to be payable by the assessee and

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- (iii) furnishing such other particulars as may be specified by the rules including the particulars of such dutiable goods in respect of which the assessee admits short levy on account of misclassification or otherwise of goods

have been fulfilled.

The High Court observed that the jurisdiction of the Settlement Commission was not restricted only to cases of short levy on account of misclassification or otherwise. The object of introducing Chapter XIVA to the Customs Act, 1962 was to resolve all disputes so as to collect revenue for the department. The High Court held that if interpretation of section 127B was restricted to mean only bona fide cases, then there would be no scope of unearthing revenue. It was pointed out by the High Court that earlier part of section 127B ibid laid down the jurisdiction and only the latter part dealt with the rules whereby certain details were to be provided. Therefore, it was held by the High Court that the argument with regard to short levy due to mis-classification or otherwise was purely a procedural one and there was no need to decide the same.

