

## Settlement Commission

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### Question 1

*Explain with reference to the Customs Act, 1962, the conditions to be fulfilled for filing application to Settlement Commission.*

### Answer

According to section 127B of the Customs Act 1962, the following conditions are to be fulfilled for filing an application for settlement of cases:

- (i) the applicant has filed the bill of entry or the shipping bill in respect of import or export of goods, as the case may be.
- (ii) a show cause notice in respect of such bill of entry or shipping bill has been issued to the applicant by the proper officer.
- (iii) the additional duty accepted is more than Rs 3 lakhs.
- (iv) the applicant has paid the additional amount of customs duty accepted by him alongwith interest due under section 28AB.
- (v) the case is not pending with CESTAT or any Court.
- (vi) the application does not relate 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.
- (vii) the application is not for the interpretation of the classification of the goods under the Customs Tariff Act, 1975

### Question 2

*Can an application for settlement be withdrawn?*

### Answer

Application once made cannot be withdrawn in case of settlement [**Section 127B(4) of the Customs Act, 1962**].

### Question 3

*₹ 50 lakh drawback was paid to M/s. Sun Export Ltd. Subsequently the Commissioner of Customs issued a show cause notice for recovery of the erroneously paid drawback. M/s. Sun Export Ltd. filed an application for settlement of case before the Settlement Commission. The Commissioner disputed the jurisdiction of the Settlement Commission by contending that recovery of drawback did not involve levy, assessment and collection of customs duty as*

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*envisaged under section 127A(b) of the Customs Act. Discuss with the help of decided case whether the stand taken by the Commissioner is correct.*

#### Answer

No, the stand taken by the Commissioner is not correct. The High Court, in case of ***Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)***, has concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Hence, the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

#### Question 4

*Can the Settlement Commission entertain applications involving evasion of duty by fraudulent means and mis-declaration? Discuss*

#### Answer

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
- (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.

### **Exercise**

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.*