Customs, Central Excise and Service Tax Settlement Commission **Giridhar's**

Excise+ST

Sections 31 to 32P+ FOR ST SEC 83

who can make an application ?
Section 32 E says an assessee

Can a application be with drawn ?
No as per sec 32E(4)

Where is an assessee defined ?
In sec 31(a)
Means

any person who is liable to pay excise duty assessed and includes any manufacturer/producer or a registered person of a private warehouse.

What can be settled ?
A "case"
Where it is defined ?
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 is made

But this is not the situation of pending ?

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.

What cases can be settled as per sec 32E ?
point (a) to (h)
->case relating to him before the adjudication
->has filed returns
showing production, clearance and central excise duty paid
If returns not filed then can he make application ?
Yes. If SC satisifed and by recording reasons.
-> applicant has received a SCN
-> case not pending before CESTAT or court

Customs

Sections 127A to 127N

who can make an application ?
Section 127B says importer/exporter
or any other person in respect of
a case relatinng to him.

Can a application be with drawn ?
No

Full and true disclosure required ?

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
additional amount of customs duty accepted to be payable by him
admits short levy on account of misclassification, undervaluation or inapplicability of exemption notification

Conditions for filing application ?
following conditions need to be satisifed

1. The applicant had filed a BOE or
SB or BOE or made a baggage declaration or
a label or declaration w.r.t good imported/
exported through post or courier as the case
may be + a SCN has been issued to him.

2. additional amount of duty accepted by
the applicant > 3 lakhs

3. paid additional amount of duty + interest
u/s 28AA

4. no case must be pending before CESTAT or
any court.

->dispute does not relate to interpretation of classification **->** Additional amount of duty accepted is **>3Lakhs** **->** while filing application not deposited the additional amount + interest **u/s 11AA** **->** admits short levy in respect of excisable goods	5. no application can be made if sec 123 applies or offence under Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed or for the interpretation of the classification
What is the procedure to be followed by SC ? Section 32F says	**What is the procedure to be followed by SC ?** section 127C says
Issue notice <7 days to applicant from the date of receipt of application **why to issue notice to applicant ?** Because he should explain in writing why the application made.	same
What shall SC do after explanation given ? < 14 days of notice pass an order to allow the app or rejecting the app.	same
If rejection what shall happen ? Proceedings shall abate .	same
Shall the copy of order u/s 32F(1) sent to any other person other than applicant by SC ? Yes to the **PC/C** of the Central excise having jurisdiction	PC/C of customs
If application is proceeded u/s 32F(1) ? SC <7 days from the date of order u/s 32F(1) call a report along with relevant records from the PC/C of CE having jurisdiction.	same
What shall PC/C shall do up on that call ? furnish the report <30 days from the date of receipt of communication from the SC	same
Then if PC/C does not submit the report <30 days ? the SC shall proceed further in the matter without the report	same
Is SC shall examine the report submitted by PC/C ? Yes.	
If SC 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) <15days 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	same

Then what shall Commissioner(investigation) do ?
Should furnish report <90days from the DOR of the communication from SC. — same
If not received then ? - SC doesn't wait may proceed. and pass order u/s 32F(5). — same

Is OBH given to the applicant by SC ?
yes. + SC shall also examine any furthur evidence as may be placed before It or obtained by it before passing the order. — same

What is the time limte to pass order u/s 32F(5) ?
passed <9 months from the last day of the month in which the application was made

What will happen if not passed order < 9months ?
Proceedings before SC shall abate and as if no application u/s 32E has been made by the assessee.

Can a further period is extended ?
Yes by recording reasons in writing and such period shall not exceed 3 months

shall the order going to be passed u/s 32F(5) is subject to any of the provisions ?
Yes. Provisions of sec 32A the materials brought on record before the SC shall be considered by the Members of the concerned Bench. — same
+
Section 32D also shall apply in relation to passing order
what is section 32D?
Decision to be by majority

What shall the order provide passed u/s 32F(5) ?
terms of settlement
any demand by way of duty — same
penalty or interest
due under the settlement shall be paid
+
all other matters to make the settlement effective

Can the settlement order be void ?
yes **u/s 32F(8)** if it is obtained by fraud or misrepresentation of facts — same

Important point :
The amount of settlement shall not be < than the duty liability admitted by the applicant u/s 32E — same u/s 127B

What is the time limit to pay amount settled in order?
<30 days of receipt of a copy of the order by him
If the assessee fails — same

remains unpaid shall be recovered along with interest in accordance with the provisions of section 11

What shall CEO do if order is void u/s 32F(8) ?

The proceedings shall get revived from the stage at which the application is allowed by SC .

same

THE CEO notwith standing anything in any other provision shall complete such proceedings <2 years from the date of receipt of communication that settlement is void.

same

Bar on subsequent application for settlement

Sec 32-O — **sec -127L**

Where an order of the Settlement has been passed which provides for the imposition of a penalty on the applicant under section 32E for settlement, on the ground of concealment of particulars of his duty liability **made from the Central Excise Officer** or	same
Where after the passing of an order of settlement, in relation to a case, such person is convicted of any offence in relation to that case; or	
Where the case of such person is sent back to the Central Excise Officer by the Settlement Commission under section 32L	127-I

Common provisions:

Power to order provisional attachment to protect revenue

Section 127D of customs

Section 32G of the excise

Power to grant immunity from prosecution and penalty

Sec 127H of cus/ sec 32K of the excise.

Power to send a case back to the proper officer/CEO

Section 127-I of customs/ section 32L of the excise

Other powers and procedure of Settlement Commission

Section 127F of customs

Inspection, etc., of reports

Sec 127G of customs / section 32J of excise

Order of settlement to be conclusive

Sec 127J / section 32M of central excise.

Recovery of sums due under order of settlement
Section 127K of customs / section 32N of excise.

Proceedings before Settlement Commission to be judicial proceedings
Section 127M of the customs / section 32P of the excise.