



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.01.2025

+ **W.P.(C) 10505/2024 & CM APPL. 43170/2024**

KBS INDUSTRIES LTD & ANR. Petitioners

versus

**THE CUSTOMS CENTRAL EXCISE AND
SERVICE TAX SETTLEMENT COMMISSION
PRINCIPAL BENCH NEW DELHI & ORS.** Respondents

Advocates who appeared in this case:

For the Petitioners : Ms. Tuhina and Mr. Deep Shah,
Advocates.

For the Respondents : Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Suhani Mathur, Advocate.

CORAM

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

VIBHU BAKHRU, ACJ

1. The petitioners have filed the present petition, *inter alia*, impugning an order dated 28.03.2024 (hereafter *the impugned order*) issued by the Customs, Central Excise and Service Tax Settlement Commission (hereafter *the Settlement Commission*) under Section 127C(5) of the Customs Act, 1962 (hereafter *the Act*), whereby the petitioners' applications for settlement of a case under Section 127B of the Act, were disposed of.



2. The petitioners also impugn the constitutional validity of the Notification No. 18/2015-Cus dated 01.04.2015 (hereafter *the Notification*) as being discriminatory and arbitrary. The petitioners claim that the said notification is beyond the statutory mandate of the Act read with the Customs Tariff Act, 1975 (hereafter *the CT Act*).

3. Additionally, the petitioners impugn the recovery proceedings initiated by the respondents for recovery of dues as determined.

4. Petitioner no.1 is a company named M/s. KBS Industries Limited (hereafter *KBS*) and petitioner no.2 is a director of KBS. The petitioners filed an application under Section 154 of the Act seeking rectification of the impugned order to the extent that it imposed the interest of ₹1,15,13,067/- (Rupees One Crore Fifteen Lacs Thirteen Thousand and Sixty-Seven only), which was rejected. The Settlement Commission held that the rectification of errors under Section 154 of the Act is confined to arithmetical or clerical errors and the petitioners' application was beyond the scope of the Section 154 of the Act. The Settlement Commission found that there was no clerical or arithmetical error which would warrant any rectification of the impugned order. The same was communicated to the petitioners by a letter dated 26.06.2024, which is also impugned in the present petition.

5. The petitioners assail the impugned order to the limited extent that the Settlement Commission has imposed interest computed at ₹1,15,13,067/- on the delayed payment of duty. The Settlement Commission had accepted the report of the Commissioner dated



10.01.2024 filed under Section 127C(4) of the Act, whereby the interest payable by the petitioners was computed at ₹1,15,13,067/-.

6. The petitioners are, essentially, aggrieved by the computation of the interest. According to the petitioners, the same also includes the interest of Countervailing Duty (CVD) imposed under Section 3 of the CT Act as well as the Special Additional Duty (SAD) under Section 3A of the CT Act, which is contrary to the law.

7. The learned counsel appearing for the petitioners advanced the submissions in support of the petitioners claim that the interest levied by the Settlement Commission was without authority of law.

8. The sole question to be addressed is whether the impugned order to the extent that it imposed the interest amounting to ₹1,15,13,067/- warrants any interference in these proceedings.

FACTUAL CONTEXT

9. As noted above, KBS is an incorporated company and petitioner no.2 is one of its directors at the material time. KBS claims that it is, *inter alia*, engaged in the manufacturing of high quality of semi-finished copper and copper alloy products (rods, bus bars, strips, plates, wires, sheet and circles) for a wide range of engineering industries.

10. The Directorate General of Foreign Trade (DGFT) had issued two Advance Authorisations (DGFT Licences) to KBS: Advance Authorisation License No. bearing No. 0510395142 dated 31.07.2015;



and Advance Authorisation License No. bearing No. 0510399488 dated 17.08.2016.

11. KBS imported Continuous Cast Copper Rod 8mm valued at ₹10,85,60,299/- against Advance Authorisation dated 31.07.2015 and Copper Scrap valued at ₹5,43,06,644.30/- against Advance Authorisation dated 17.08.2016. The said goods were imported without payment of duties. Admittedly, KBS failed to discharge its export obligation against the Bill of Entries under Advance Authorisations and it sold the said goods in the local market.

12. It is stated that the intelligence to the aforesaid effect was gathered by the Officers of the Customs (Preventive) Commissionerate. Accordingly, search operations were carried out at the premises of KBS (Plot No.418, HSIIDC Phase-1, Barhi Industrial Area, Sonapat, Haryana-131001 and Plot No. F-1730, DSIIDC, Narela Industrial Area, Delhi - 110040) on 08.06.2017. It is stated that during the course of search, 1500 Kgs of copper scrap was found at Sonipat premises, however, no stocks of goods imported were found. The search was also conducted at the office premises of KBS.

13. Thereafter, the summons was issued to petitioner no.2 and his premise (House No.24/70, West Punjabi Bagh, New Delhi) was also searched on 15.06.2017. During the search, statement of petitioner no.2 was recorded under Section 108 of the Act. He acknowledged that the goods imported under the Advance Licenses were sold in the local market.



14. The impugned order records that on enquiries, petitioner no.2 claimed that the goods were sold in the local market due to financial crisis and he was ready to pay the custom duty alongwith interest and penalty. After making necessary enquiries, the custom officials ascertained the custom duty involved in respect of the goods imported under the Advance Licenses at Dadri Port and Patli Port was ₹2,35,24,597/- (₹1,15,59,956/- + ₹1,19,64,641/-). The impugned order notes that out of recovery of custom duty of ₹2,35,24,597/-, KBS had discharged its liability to the extent of ₹2.04 Crores (₹1,19,64,641/- against License No.0510395142 dated 31.07.2015 and ₹84,35,359/- against License No.0510399488 dated 17.08.2016).

15. On completion of the investigation, the concerned officer issued the demand-cum-show cause notice No.40/2021-22 dated 16.07.2021. The operative part of the said notice is set out below:-

“20. Now, therefore on the basis of aforementioned facts, evidences and investigations in the case M/s. KBS Industries, 418, HSIIDC Phase-1, Barhi Industrial Area, Sonapat, Haryana are hereby called upon to Show Cause in writing to the Principal Commissioner of Customs (Preventive), New Custom House, Near IGI Airport, New Delhi within 30 days on receipt of this Show Cause Notice, as to why: -

i. the exemption claimed by them under Notification No. 18/2015-Customs dated 1st April, 2015 should not be denied to them;

ii. Customs duty of Rs 2,35,24,597/- (Rupees Two Crore Thirty Five Lakh Twenty Four Thousand Five Hundred Ninety Seven) against the Customs Duty forgone by inadmissible availment of exemption under Notification No. 18/2015-Customs dated 1st April,



2015 should not be demanded, recovered along with interest under Section 142 of the Customs Act, 1962 in terms of Bond and Bank Guarantee executed by the party in terms of Para (iv) of Notification No. 18/2015-Customs dated 1st April, 2015 and the amount of Rs 2,05,00,000/- (Rupees Two Crore Five Lakh) deposited by M/s. KBS Industries Ltd voluntarily during investigations should not be appropriated against the demand of Customs duty of Rs 2,35,24,597/- (Rupees Two Crore Thirty Five Lakh Twenty Four Thousand Five Hundred Ninety Seven) and interest payable;

iii. The goods valued collectively at Rs. 11,17,97,632/- (Rupees Eleven Crore Seventeen Lakh Ninety-Seven thousand Six Hundred Thirty Two) imported vide aforesaid Bills of Entry should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962.

iv. Penalty should not be imposed on M/s. KBS Industries Ltd. under the provisions of Section 112 and/or 114A and 114AA of the Customs Act, 1962.

21. Shri Arjun Anand, Director of M/s. KBS Industries Ltd. is hereby called upon to show cause to the Principal Commissioner of Customs (Preventive), New Custom House, Near IGI Airport, New Delhi within 30 days of the receipt of this notice, as to why penalty should not be imposed on him under Section 112 and/or 114A and 114AA of the Customs Act, 1962, for the acts of omission.”

16. In the aforesaid context, the petitioner company filed an application under Section 127B of the Act before the Settlement Commission for settlement of the disputes arising in connection with the show cause notice dated 16.07.2021. KBS was the main applicant and petitioner no.2 was a co-applicant.



17. It is material to note that the petitioners accepted their liability to pay an amount equal to the duty leviable along with the interest at the rate of 15% per annum from the date of clearance of the said materials in terms of the notification dated 01.04.2015. However, the petitioners disputed that the said goods imported were liable for confiscation. The Settlement Commission disposed of the petitioners' application in terms of the impugned order.

18. The impugned order notes that certain discrepancies were noticed in the application filed by the petitioner including that the petitioners had not deposited the interest on the custom duty, as admitted. The petitioners responded by an email dated 17.01.2022, *inter alia*, admitting that the total custom duty liability was ₹2,35,24,597/- out of which, an amount of ₹2,24,61,000/- had been paid and the remaining amount of ₹10,63,597/- was required to be paid. The petitioners also stated that they had been unable to pay the admitted interest liability due to COVID pandemic.

19. The concerned Customs Authority (hereafter *the Commissioner*) furnished the response to the applications filed by the petitioners on 23.06.2023. The Commissioner affirmed the payment of entire duty of ₹2,35,24,597/- as demanded in the show cause notice along with ₹20,00,000/- towards interest liability. The Commissioner also computed the interest liability of ₹1,19,05,337/-.

20. The Settlement Commission afforded the petitioners a hearing on 11.04.2023.



21. The impugned order indicates that the petitioners also submitted the additional submissions disputing the calculation of interest liability. In view of the rival stands regarding the liability to pay interest, the Settlement Commission passed an order dated 11.10.2023 directing the Commissioner to cause further investigation and to submit the report.

22. The Commissioner submitted the report dated 07.12.2023. The copy of said report has not been placed on record. However, the impugned order records the contents of the said report. The relevant extract of the impugned order is set out below: -

“9.0 Report of Commissioner (Inv.), Settlement Commission Report:

9.1 As per the orders of the Hon'ble Bench, Settlement Commission, New Delhi, further investigation was initiated by the Commissioner (Investigation) and necessary inquiry was conducted by the Commissioner (Inv.) with the department and the applicant. Accordingly, vide letter dated 16.10.2023 the applicant and the department were requested to furnish Advance Authorization wise details in a prescribed format which contained particulars such as BE number and date, duty involved, date of payment period of delay, if any, rate of interest, amount of interest, date of payment etc.

9.2 The department submitted its report vide letter 07.12.2023. As per the report the following was reported:

S. N.	Advance Authorisation No./date	Interest payable	Interest paid by Applicant	Balance amount of Interest payable
1	0510399488 /17.08.2016	67,27,232.57	0.00	67,27,232.57
2	0510395142 /31.07.2015	47,85,834.29	20,00,000	27,85,834.29



Total	1,15,13,066.86	20,00,000	95,13,066.86
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9.3 The applicant vide his letter dated 01.01.2024 submitted a duly certified calculation sheet by a chartered accountant and claimed that the total duty saved/foregone against Advance Authorization No. 0510395142 was Rs. 96,24,379/- only and that only balance amount of duty of Rs. 1,69,009/- and interest of Rs. 81,819/- is payable by them. In the calculation sheet in respect of Advance Authorization no 0510395142 dated 31.07.20215 the applicant accepted interest liability of Rs 46,39,280.07 and claimed to have paid Rs.44,70,270.88 of its interest liability. As regards to Advance Authorization no 0510399488 dated 17.08.2016, though no such calculation sheet was provided but the applicant accepted interest liability of Rs. 29,87,477 68/-.

9.4 The Commissioner (Inv.) carefully examined the reports submitted by both sides and submitted as under:

(i) That against Advance Authorization No. 0510395142 dated 31.07.2015, the applicant imported the impugned goods under 6 Bills of Entry but in the calculation, sheet provided to the department, they mentioned only 5 Bills of Entry.

(ii) It was observed that the applicant deviated from his earlier accepted duty liability of Rs.1,19,64641/-and claimed that the duty payable is Rs.96,24,379/-only.

(iii) The applicant wrongly claimed of redemption letter dated 23.11.2020 issued by DGFT respect of Licence No. 0510091142 deed 31.07.2015, there is no question of interest liability.

(iv) As regards to the report dated 23.06.2023 of the department forwarding therewith interest calculation sheet, it was observed that the interest liability worked out earlier was Rs.1,19,05,337 and later it was worked out to Rs.1,15,13,067. The department confirmed that the amount of interest payable by the applicant was Rs.1,15,13,067/- and



since the applicant has already paid interest of Rs.20,00,000/-. The balance amount of Rs.95,13,067/-is yet to be paid.

(v) That Condition (iv) of the Notification No.18/2015-Customs dated 01.04.2015 prescribes date of charging of interest where Export Obligation has not been fulfilled by the importer, which is reproduced below:

“(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials.”

(vi) That the applicant has been consistently changing its stand. Initially, at the time of filing of the application, the applicant accepted the entire duty liability of Rs.2,35,24,597/ in respect of both said licenses [Rs.1,15,59,956/- Rs.1,19,64,641/- in respect of Advance Authorization Licenses Nos. 0510399488 dated 17.08.2016 and 0510395142 dated 31.07.20215 respectively). But now the applicant is asserting duty of Rs.96,24,379/-only in respect of Authorization License No. 0510395142 dated 31.07.2015.



(vii) As per record, there is delay in payment of duty. It is an established fact that duty and interest go together. In the instant case, the applicant has accepted the duty liability and the records show that there was delay in payment of the same therefore the applicant cannot escape from payment of interest thereon.

(viii) In the instant case, the applicant, M/s KBS Industries Ltd. has failed to discharge export obligation and the department has provided date wise details of the interest payable from such relevant date as prescribed under the said Notification. Therefore, the total interest payable by the applicant is Rs. 1,15,13,066.86/ (Rs.67,27,232.57 for Advance Authorization No.0510399488 + Rs.47,85,834.25/- for Advance Authorization No.0510395142) Out of which, the applicant has already paid Rs 20,00,000/- and balance amount of interest Rs.95,13,067/- is yet to be paid by the applicant. The details have been verified as per provisions of the Customs Act, 1962 and found in order.”

23. The petitioners were once again given an opportunity to be heard in the context of the report submitted by the Commissioner under Section 127C(4) of the Act.

24. After hearing the petitioners, the Settlement Commission passed the impugned order. The dispositive part of the impugned order reads as under:-

“ORDER

13.1 The Bench, therefore, settles the case of Applicant and Co- Applicants under section 127C (5) of the Customs Act, 1962 on the following terms and conditions:



i. **DUTY:** The Bench settles the duty liability at Rs 2,35,24,597/- (Rupees Two Crore Thirty Five Lakh Twenty Four Thousand Five Hundred Ninety Seven Only) and as the amount has been already paid by the Applicant the same is appropriated towards such liability.

ii. **INTEREST:** The Bench settles the interest amount on delayed payment of duty at Rs.1,15,13,067/- (Rupees One Crore Fifteen Lakh Thirteen Thousand Sixty Seven Only) and the amount Rs.20,00,000/- already paid by the Applicant is appropriated towards the liability. The applicant is directed to pay the balance interest liability of Rs.95,13,067/- within 15 days of receipt of this order.

iii. **PENALTY**

a. A penalty of Rs.8,00,000/- (Rupees Eight Lakhs only) is imposed on M/s KBS Industries Limited, the Applicant

b. A penalty of Rs.2,00,000/- (Rupees Two Lakh only) is imposed on Shri Arjun Anand. Director, M/s KBS Industries Ltd, the co-applicant

The Bench grants immunity to them from penalty in excess of the above amounts

13.2 Immunity from Prosecution: Subject to the compliance of the above orders, the Bench grants immunity to the applicant/co-applicant from prosecution under the Act in so far as this case is concerned.

13.3 The concerned Jurisdictional Commissioner is directed to verify the amount deposited by the applicant from the original challans within 30 days of the receipt of this order under intimation to the Commission.

14. This Order is made and immunities are granted subject to the provisions of the Customs Act, 1962, as



applicable to these proceedings and section 127 C and section 127 H of the said Act, in particular.

15. This Order shall be void and immunities withdrawn if at any point of time, the Bench finds that the Applicant/Co-Applicant have failed to comply with order or had concealed any particular material to the Settlement or had given false evidence or had obtained this order by fraud or mis-representation of facts.”

REASONS AND CONCLUSION

25. As noted at the outset, the petitioners’ principal challenge to the impugned order is founded on the premise that no interest payable on CVD levied under Section 3 of the CT Act or on SAD levied under Section 3A of the CT Act. It is contended that since there is no statutory provision for payment of interest on the said duties, interest as imposed by the impugned order – which is stated to include interest on the said duties – is erroneous and contrary to law. It is submitted that although an order passed under Section 127C(5) of the Act cannot be challenged on merits, the same is untenable if it is not in accordance with the provisions of the Act.

26. The learned counsel for the petitioners rested her submissions on the decision of the Bombay High Court in *Mahindra & Mahindra Ltd. vs. Union of India*¹. She also pointed out that the Special Leave Petition (SLP) preferred by the Revenue against the said decision [SLP(C) Diary No.18824/2023] was dismissed as the Supreme Court had found no merit in the said petition².

¹ 2022 SCC OnLine Bom 3155

² Union of India and Others v. Mahindra & Mahindra Ltd. 2023 SCC OnLine SC 1435



27. At the outset, it is relevant to bear in mind the Scheme of Chapter XIV-A of the Act which contains provisions regarding Settlement of Cases. In terms of Section 127B of the Act any importer, exporter or any other person may in respect of a case relating to him make an application before the Settlement Commission to have the case settled prior to its adjudication.

28. The expression “case” is defined in Section 127A(b) of the Act to mean proceedings under the 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 is made under Sub-section (1) of Section 127B of the Act. The proviso to Section 127A(b) of the Act also clarifies that any proceedings referred by any Court, Appellate Tribunal or any other authority for a fresh adjudication or decision, would not fall within the scope of proceedings within the meaning of the said Section and thus cannot be considered as a case.

29. Section 127C of the Act provides for procedure to be followed on receipt of an application under Section 127B of the Act. In terms of Section 127C(1) of the Act, the Settlement Commission is required to issue a notice to the applicant to explain why its application should be allowed. After taking into consideration the said explanation, the Settlement Commission is required to pass an order either to proceed with the application or reject the same. A copy of the said order is required to be sent to the Principal Commissioner of Customs or Commissioner of Customs having the jurisdiction. The Principal



Commissioner of Customs or the Commissioner of Customs, as the case may be, is required to furnish a report within thirty days on receipt of communication from the Settlement Commission. Sub-section (4) of Section 127C of the Act empowers the Settlement Commission to direct further enquiry or investigation if it considers apposite and records the reasons in writing.

30. Sections 127D, 127E, 127H and 127-I of the Act contain provisions which delineate the powers of the Settlement Commission to direct provisional attachment; to reopen completed proceedings; to grant immunity from prosecution and penalty; and to send back the case to the proper officer.

31. After examination of the records and report(s) furnished by the concerned authority, the Settlement Commission is required to pass *“such order as it thinks fit on 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 Principal Commissioner of Customs or Commissioner of Customs and Commissioner (Investigation) under Sub-section (3) or Sub-section 4”* of Section 127C of the Act.

32. Section 127J of the Act expressly provides that an order of settlement shall be conclusive as to the matters stated therein. Section 127C of the Act and Section 127J of the Act are set out below for ready reference:

127C.Procedure on receipt of an application under Section 127B.—(1) On receipt of an application under section 127B, the Settlement Commission shall, within seven



days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with or reject the application, as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection:

Provided that 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 Principal Commissioner of Customs or 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 seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission: Provided that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the



Settlement Commission, on the matters covered by the application and any other matter relating to the case:

Provided that 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) After examination of the records and the report of the Principal Commissioner of Customs or Commissioner of Customs received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, 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 Principal Commissioner of Customs or Commissioner of Customs and Commissioner (Investigation) under sub-section (3) or sub-section (4).

(5A) The Settlement Commission may, at any time within three months from the date of passing of the order under sub-section (5), amend such order to rectify any error apparent on the face of record, either suo motu or when such error is brought to its notice by the jurisdictional Principal Commissioner of Customs or Commissioner of Customs or the applicant:

Provided that no amendment which has the effect of enhancing the liability of the applicant shall be made under this sub-section, unless the Settlement Commission has given notice of such intention to the applicant and the jurisdictional Principal Commissioner of Customs or Commissioner of Customs as the case may be, and has given them a reasonable opportunity of being heard.



(7) Subject to the provisions of section 32A of the Central Excise Act, 1944 (1 of 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) and, in relation to the passing of such order, the provisions of section 32D of the Central Excise Act, 1944 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 and in case of rejection contain the reasons therefor and it 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:

Provided that 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) Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the applicant within thirty days of receipt of a copy of the order by him, 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 and 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 two years from the date of the receipt of communication that the settlement became void.



127J. Order of settlement to be conclusive.—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.

33. It is clear from the Scheme of Chapter XIV-A of the Act that the provisions contained therein are for settlement of cases and not for adjudication of disputes. In the circumstances, it is not open for an applicant to dissect the order passed by the Settlement Commission or to seek merit review of the such an order. Since the nature of the order passed under Section 127C of the Act is that of a settlement of a case, the applicant is required to accept the same in its entirety.

34. Sub-section (8) of Section 127C of the Act also expressly provides that an order passed under Sub-section (5) of Section 127C of the Act shall provide for terms of settlement including payment by way of duty, penalty or interest and the manner in which the sums shall be paid.

35. In the present case, the impugned order expressly provides that the order would be void and immunities granted would be withdrawn if the petitioners fail to comply with the order.

36. Given the nature of the order passed under Section 127C of the Act – which is in the nature of a settlement – it would not be permissible to dissect the same and accept that parts of the order which are favourable to the applicant while rejecting the other



directions which are not. The order of Settlement Commission must be accepted in entirety.

37. In *Sanghvi Reconditioners (P) Ltd. v. Union of India: (2010) 2 SCC 733*, the Supreme Court had observed as under:

“36. We also find substance in the contention of the learned counsel for the Revenue that having observed that the appellant had not made a full and true disclosure, their application should have been rejected by the Settlement Commission on that count itself and no relief should have been granted to the appellant. However, in view of the fact that order dated 8-2-2001 passed by the Settlement Commission allowing the application of the appellant to be proceeded was not challenged by the Commissioner nor such a plea was urged by the Revenue before the High Court or in their reply to the present appeal, we find it difficult to reject the application at this stage, though, having perused some of the documents available on record, we are convinced that the appellant had not made a full and true disclosure of its affairs before the Settlement Commission. Be that as it may, we are of the opinion that having opted to get their customs duty liability settled by the Settlement Commission, under Chapter XIV-A of the Act, the appellant cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.

37. As observed by Krishna Iyer, J. in *CIT v. B.N. Bhattacharjee* [(1979) 4 SCC 121 : 1979 SCC (Tax) 297], the recommendation of the Wanchoo Committee was: (SCC p. 128, para 20)

“20. ... a compromise measure of a statutory settlement machinery where [a] big evader could make a disclosure, disgorge what the Commission fixes and thus buy quittance for himself and accelerate recovery of taxes in arrears by the State, although less than what may be fixed after long protracted litigation and recovery proceedings.”

[Emphasis supplied]



38. Having stated the above, it is also necessary to note that Sub-section (5) of Section 127C of the Act expressly provides that the Settlement Commission would make an order as contemplated therein “in accordance with the provisions of the Act”. Therefore, it is not permissible that the Settlement Commission make an order contrary to the provisions of the Act.

39. In *Mahindra & Mahindra Ltd. v. Union of India*¹, the Bombay High Court, after examining the order passed by the Settlement Commission in that case, concluded that it was contrary to law inasmuch as it had directed payment of interest in respect of countervailing duty and special additional duty levied under Sections 3 and 3A of the CT Act. The court found that there was no statutory provision enabling levying of interest on such duties and therefore the same was impermissible. However, it is necessary to note that the case settled by the order of the Settlement Commission in that case pertained to four show cause notices alleging that the petitioner had not declared the entire amount payable in connection with the goods imported, which amounted to misdeclaration with an intent to avoid payment of custom duty. In the given facts, the court found that no interest was payable on the countervailing duty or the special additional duty. However, the present case is clearly distinguishable on facts from the case in *Mahindra & Mahindra Ltd. v. Union of India* (*supra*). The petitioners’ case is not based on any misdeclaration



of the duty payable on goods; it arises on account of failure on the part of the petitioners to satisfy the export obligations.

40. The petitioners had availed of a scheme, which enabled the importer to import material against advance authorization without payment of any custom duty, special additional duty, safeguard duty and anti-dumping duty. The said scheme expressly provided for levy of interest at the rate of 15% per annum from the date of clearance of the goods if the conditions for availing such exemption – which included obligations to export – were not complied with. The exemptions as availed by the petitioners were extended in terms of the Notification No.18/2015-Cus dated 01.04.2015 issued under Section 25 of the Act. The relevant extract of the said Notification is set out below:

“In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely:-

(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with



such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials;”

41. As is apparent from the above, the exemption notification was issued by the Central Government in exercise of powers under Section 25(1) of the Act. The said Section is set out below:

“25. Power to grant exemption from duty.—(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.”

42. Section 25(1) of the Act expressly empowers the Central Government to impose such conditions as may be specified in the notification, for exempting goods of any specified description from the whole or any part of duty of customs leviable thereon. In the present case, admittedly, KBS had imported goods for the purpose of export without payment of custom duty, additional duty, safeguard duty and anti-dumping duty, subject to the conditions as stipulated in the Notification dated 01.04.2015. The petitioners had availed the benefit of the said Notification and had bound themselves to comply with the conditions as stipulated in the said Notification.



43. As noted above, one of the conditions required the importer to execute bond with such security or surety in such form as may be specified binding the importer to pay on demand an equal amount to the duty leviable on the imported material along with interest at the rate of 15% per annum from the date of clearance of the said material, if the conditions stipulated were not satisfied.

44. Admittedly, the petitioners had not satisfied the conditions subject to which import of material had been permitted without payment of duties. Thus, interest on such duties was payable as was stipulated in terms of the Notification dated 01.04.2015.

45. It is apparent that present case is not one where there is no statutory provision for levy of interest. On the contrary, in the present case, Section 25(1) of the Act empowers the Central Government to impose conditions for exemption from payment of specified duties. And, the Central Government had stipulated payment of interest from the date of clearance of the material if the importer had failed to discharge their export obligations, as one such condition.

46. Admittedly, the petitioners had bound themselves to the said conditions and had availed the benefit of the said Notification. In this view, we are unable to accept that the impugned order imposing interest on delayed payment of duties is contrary to law.

47. The petitioners had also challenged the constitutional vires of the Notification dated 01.04.2015. However, as noted at the outset, the learned counsel for the petitioners did not seriously contest the



same and in our view rightly so. The petitioners' challenge to the Notification is insubstantial. The exemption was granted subject to the importer satisfying its export obligations. The petitioners do not challenge the grant of advance authorizations and permission to import the goods in question without payment of duties on the condition of fulfilling the export obligations. Clearly, if the conditions were not satisfied, the petitioner would be liable to pay the duties on the material imported.

48. Admittedly, such duties would be payable on the date of clearance of the goods and therefore stipulating that the interest would be payable on such dates if the conditions are not satisfied cannot by any stretch be stated to be arbitrary or unreasonable.

49. In view of the above, we find no merit in the petition, the same is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, ACJ

SWARANA KANTA SHARMA, J

JANUARY 13, 2025

M/ 'gsr'