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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment reserved on: 12.08.2026*
Judgment pronounced on: 21.08.2026
Judgment uploaded on: 21.08.2026

\# **CNR No. DLHC010100452020**

\+ W.P.(C) 976/2020 and CM APPL. 3160/2020

M/S NITCO LTD. AND ANR. .....Petitioners

Through: Mr. Amit Rawal, Sr. Adv., Mr. Devesh Tripathi, Mr. AK Prasad, Mr. Mohd. Faraz Anees, Mr. Mukeshwar Nath Dubey, Mr. Akash Gupta & Mr. Ajay Kumar Advs.

versus

CUSTOMS, CENTRAL EXCISE AND SERVICE TAX SETTLEMENT COMMISSION .....Respondent

Through: Mr. Aditya Singla, SSC with Ms. Arya Suresh Nair, Ms. Shreya, Mr. Dhananjay Gautam, Mr. Akhil and Ms. Sakshi Chandna, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.:

1. By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioners, in substance, seek to assail Clause (e) of Paragraph No.51(ii) of the order dated 14.11.2019 passed by the Customs, Central Excise & Service Tax Settlement Commission, Principal Bench, New Delhi [hereinafter referred to as the ‘Settlement Commission’]. In other words, the Petitioners seek to

sever the aforesaid direction contained in Clause (e) from the remaining part of the order passed by the Settlement Commission and challenge the same in isolation.

2. The controversy raised in the present Writ Petition is confined to the liability of the Petitioners to pay interest on the amount determined as payable pursuant to the order of the Settlement Commission.

FACTUAL MATRIX:

3. Before proceeding to examine the controversy, it would be apposite to notice the relevant factual background leading to the passing of the order dated 14.11.2019 by the Settlement Commission. In the Counter-affidavit, the Respondents have set out the facts in the following manner, which are not disputed by the Petitioners:

> *1. That on the basis of intelligence gathered Directorate of Revenue Intelligence, Mumbai Zonal Unit (hereinafter referred to as 'DRIMZU' or 'DRI') had booked case against M/s NITCO Ltd., Petitioner No. 1 in the year 2009. During the course of investigations, it was seen that Petitioner No. 1 had indulged in various contraventions which are briefly summarised below:*
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> > *(i) **Evasion of Customs duty / Anti-dumping duty in import of Tiles from China by over-valuation and mis-declaration of description** :- After investigation, total nine SCNs for imports from nine different customs jurisdictions demanding total duty of **Rs.338.45 Crores** were issued in the year 2011 /2012. These 9 SCNs have been adjudicated by the Commissioner of Customs (Export-I) after being appointed as a Common Adjudicating Authority by the Board vide Order-in-Original dated 28.04.2017.*
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> > *(ii) Evasion of Customs duty in import of marble from Italy, Turkey and Spain by mis-declaration of description & value:- Total seven SCNs for imports from seven different customs jurisdictions demanding total duty of Rs. 8.35 Crores were issued in the year 2011 / 2012. All the SCNs have been settled by M/s Nitco Ltd. before Principal*

Bench, Settlement Commission, Delhi vide order dated 30.05.2013.

(iii) Evasion of Customs duty on import of capital goods by misuse of EPCG Scheme and attempting to obtain EODC on the basis of non-existent exports:- M/s Nitco Ltd. had obtained 11 EPCG Authorisations for import of capital goods at concessional rate of duty under various EPCG notifications. Out of this, 10 Authorisations were obtained from Office of DGFT, Mumbai and one was obtained from Office of DGFT, New Delhi. During the course of scrutiny of documents and further investigation, certain irregularities were detected in the case of the EPCG Authorisations issued to Petitioner No. 1. Accordingly, investigation was initiated into the merit of availment of such benefits under the said EPCG Authorisations. It was learnt that office of DGFT, Mumbai had initiated proceedings and has recovered duty forgone under one EPCG Authorisation No. 0330004357 dated 22-9-2003 before initiation of DRI investigation. Therefore, the EPCG Authorisation No. 0330004357 dated 22-9-2003 was not part of DRI investigation. Accordingly, DRI initiated investigation in respect of the 10 EPCG Authorisations issued to Petitioner No.1 - nine issued by office of DGFT, Mumbai and one issued by DGFT, New Delhi. Based on the investigation by the DRI, office of DGFT, Mumbai, vide its Order dated 10.11.2010 issued under F. No. 03/02/001/00083/AM 1 0/ECA II, cancelled, ab-initio, the nine EPCG Authorisations issued by them to Petitioner No.1.

2. As detailed in Para 1 (ii) above, Nitco in the Application No. 3010-3027 dated 09.05.2012 filed before the Hon'ble Principal Bench, Settlement Commission, New Delhi, for settlement of issues relating to the import of Marble covered by 7 Show Cause Notices, which was settled vide order dated 30.05.2013 had also prayed for settlement of the issues pertaining to misuse of EPCG Authorisations for which Show Cause Notice was yet to be issued as investigation was pending. However, the Hon'ble Principal Bench, vide its Final Order dated 30.05.2013, settled the matter in relation to import of marbles and rejected the application in so far as EPCG related issue which was not covered in the said seven SCNs.

3. Petitioner No. 1, i.e. M/s Nitco Ltd., subsequently, filed another Application No. 3743/2013 dated 13.06.2013 before the Hon'ble Principal Bench, Settlement Commission, New Delhi, for settlement of EPCG issue, for which Show-Cause Notice was yet to be issued for want of completion of investigation. The Applicant prayed for settlement of EPCG issue related to 10 EPCG Authorisations- nine Authorisations issued by office of DGFT, Mumbai & one

Authorisation issued from DGFT, Delhi. The Hon'ble Principal Bench vide its Final Order No. F-1897/CUS/14-SC(PB) dated 30.06.2014 settled the matter in so far as it related to nine EPCG Authorisations issued by office of DGFT, Mumbai. However, in respect of the impugned EPCG authorization issued by DGFT, New Delhi the Bench held that after quantification of the duty liability and issuance of SCN in respect of the impugned licence the Bench may consider settlement of the issue if and when the concerned persons approach the Bench.

4. That in respect of the remaining one Authorisation No.01500322/1/13/10/1/01 dated 21.03.96 issued by Delhi DGFT, involving total import duty of Rs. 10.30 Crores, on DRI's request, a Show Cause Notice dated 23.12.2013 under FTDR Act, was issued to Petitioner No.1, which was decided vide Order-in-Original No.18/99/AM-13/EPCG-11 dated 12.06.2015 by the ADGFT, Delhi. The Order-in-Original held that Petitioner No.1 shall pay the duty saved amount on the 58% Export Obligation under default and pay a penalty of Rs. 170 Crores. Petitioner No. 1 preferred an appeal against the Order-in-Original before the DGFT, Delhi, which has been decided by the DGFT, Delhi vide F.No. 11/03/2015-16/ECA-1 dated 25.01.2016. The Order-in-Appeal had remanded the case back to original Adjudicating Authority, which is pending for decision by ADGFT, Delhi. The ADGFT vide Order-in-Original No.18/99/AM-13/EPCG-11 dated 13.04.2016 passed similar order to earlier Order-in-Original dated 12.06.2015. The Petitioner filed an appeal against the $aid Order-in-Original dated 13.04.2016 before DGFT, New Delhi which was upheld by the Appellate Authority vide order dated 24.04.2017.

5. That meanwhile, Petitioner no. 1 had filed another application before the Principal Bench of the Settlement Commission vide application 5195/2016 dated 30.03.2016 for the settlement of dispute arising out the initial SCN dated 23.12.2013 issued by DGFT (which was pending decision before the appellate authority after de novo proceedings) in view of the observations of the Commission in order dated 30.06.2014 mentioned at Paragraph 4 above. However, the Bench in the Final order dated 07.09.2016 held that as per definition of "case" as per sub-section (b) of Section 127 of the Customs Act, 1962, there is no case pending for which an application for settlement can be made under Section 1278 and also that since penalty has earlier been imposed on the M/s Nitco Ltd. by Settlement Commission in Final Order dated 30.06.2014 the applicant is barred from approaching the Commission as provided under Section 127L of the Act.

6. Meanwhile, investigations were conducted by DRI, MZU pertaining to exports purported to be effected by M/s Nitco Ltd. against the impugned licence and a SCN dated 18.06.2018 was issued demanding a duty of Rs. 10,29,81,146/- along with interest from them. The said SCN was adjudicated by the Commissioner of Customs (Export), *Mumbai Customs Zone - I vide order-in-original dated 13.03.2019 which was dispatched on 22.03.2019. Meanwhile, the Petitioner filed application for settlement of the impugned SCN before the Hon'ble Settlement Commission, Principal Bench, New Delhi on 13.03.2019. After hearing the Applicants i.e. Nitco and co-applicants, the Hon'ble Commission vide order dated 14.11.2019 settled the duty liability at Rs. 6,69,57,333/- out of which an amount of Rs. 1,41,49,366/- was already paid by the Petitioner. Therefore, the final duty liability was arrived at Rs. 5,28,07,967/-. The Petitioner themselves had quantified an interest component at Rs.1,10,04,634/- before the Hon'ble Commission which directed the jurisdictional Commissioner to quantify the interest liability and intimate details of the same to the Petitioner in case there is any further amount to be paid other than what was quantified by the party. A penalty of Rs. 50,00,000/- was imposed on the Petitioner and Rs. 10,00,000/- was imposed on Petitioner No.2, Vivek Talwar, the Managing Director of the company.*

7. The interest liability submitted by the Petitioner on the differential duty was found to be incorrect and the same was re-calculated at Rs. 15,16,65,821/-. The same was intimated to the Petitioner by the jurisdictional Commissioner vide letter dated 02.01.2020. The subject Writ Petition has been filed by the Petitioners against the order dated 14.11.2019 of the Hon'ble Settlement Commission and demand notice dated 02.01.2020 issued by the jurisdictional Commissionerate towards the interest component of Rs.15,16,65,821/-.

4. The aforesaid facts set out the background in which the proceedings arising from the SCN dated 18.06.2018 came to be placed before the Settlement Commission and culminated in the order dated 14.11.2019. It is in the backdrop of these facts that the rival submissions advanced by learned counsel for the parties fall for consideration.

CONTENTIONS OF THE PARTIES:

5. Heard learned senior counsel representing the Petitioner and learned SSC representing the Respondent at length. With their able assistance, perused the paper book as well as the written submissions placed on record.

6. Learned senior counsel representing the Petitioners has raised the following submissions:

i. The Show Cause Notice [hereinafter referred to as 'SCN'] dated 18.06.2018 was issued beyond the period of limitation prescribed under Section 28 of the Customs Act, 1962 [hereinafter referred to as 'the Act'], particularly since, *vide* order dated 30.06.2014, liberty had been granted to the Directorate of Revenue Intelligence [hereinafter referred to as 'DRI'] to issue the SCN within the statutory period.

ii. The 'relevant date' contemplated under Clause (d) of Explanation 1 to Section 28 of the Act, for computing the period of five years prescribed under Section 28(4), ought to be reckoned from 06.11.2006, when the duty was paid. Alternatively, the period ought to be reckoned from the year 2009, when the alleged short-payment and fraud came to the knowledge of the DRI.

iii. In the alternative, even where no specific period of limitation is prescribed, the statutory authority is required to exercise its jurisdiction within a reasonable period.

7. *Per contra*, learned SSC representing the Respondent submits that the order passed by the Settlement Commission is conclusive by virtue of Section 127J of the Act. It is contended that the Petitioners, instead of pursuing the adjudication proceedings arising from the SCN, voluntarily invoked the jurisdiction of the Settlement Commission and subjected the dispute to settlement. Having elected to pursue such remedy and having obtained an order of settlement, the

Petitioners cannot now be permitted to reopen or challenge the very SCN which formed the subject matter of the settlement proceedings.

8. No other submissions have been made by the learned senior counsel and learned SSC representing the respective parties.

ANALYSIS AND FINDINGS:

9. At the outset, it would be appropriate to examine the scope of interference by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, with an order passed by the Settlement Commission in exercise of its statutory and discretionary jurisdiction.

10. The Supreme Court, in ***Jyotendrasinhji v. S.I. Tripathi***[1], has delineated the parameters within which an order of the Settlement Commission may be subjected to judicial review. It has been held that although the jurisdiction of the High Court under Articles 226 and 227 of the Constitution is wide, an order of the Settlement Commission is not open to interference merely because another view may be possible on the material placed before the Commission. Judicial intervention is warranted only on limited grounds, including where the order is contrary to the provisions of the statute or results in prejudice, or where the decision is vitiated by fraud, bias or malice.

11. The aforesaid principle has subsequently been reiterated by the Supreme Court in ***Kotak Mahindra Bank Limited v. Commissioner of Income Tax, Bangalore & Ors.***[2]**,** wherein the Court, after referring to

[1] 1993 Supp (3) SCC 389
[2] MANU/SC/1052/2023

Jyotendrasinhji *(supra)*, emphasised that the sufficiency of the material placed before the Settlement Commission and the conclusions drawn by it on such material ordinarily fall outside the scope of judicial review. The relevant observations of the Supreme Court, which succinctly set out the aforesaid principle, are reproduced hereinbelow for ready reference:

> *"10. We are fortified in our view by the judgment of this Court in Jyotendrasinhji v. S.I. Tripathi, 1993 Supp (3) SCC 389, wherein it was observed that* ***a Court, while exercising powers under Articles 32, 226 or 136 of the Constitution of India, as the case may be, may not interfere with an order of the Commission, passed in exercise of its discretionary powers, except on the ground that the order contravenes provisions of the Act or has caused prejudice to the opposite party. Interference may also be open on the grounds of fraud, bias or malice. Therefore, this Court has carved out a very narrow scope for judicial review of the Commission's orders, passed in the exercise of its discretionary powers.*** *Hence, we hold that sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act, are beyond the scope of judicial review, except under the circumstances set out in Jyotendrasinhji v. S.I. Tripathi (supra)."*

(Emphasis supplied.)

12. The Supreme Court further cautioned, in Paragraph No.13 of ***Kotak Mahindra*** *(supra)*, as under:

> *13. Before parting with the record, we may add that having regard to* ***the legislative intent, frequent interference with the orders or proceedings of the Settlement Commission should be avoided.*** *We have already indicated the limited grounds on which an order or proceeding of the Settlement Commission can be judicially reviewed.* ***The High Court should not scrutinize an order or proceeding of a Settlement Commission as an appellate court.*** *Unsettling reasoned orders of the Settlement Commission may erode the confidence of the bonafide Assessees, thereby leading to multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind."*

(Emphasis supplied.)

13. The aforesaid principles are of particular relevance in the present case. The jurisdiction of this Court under Article 226 of the Constitution is undoubtedly wide. However, while examining an order of the Settlement Commission, this Court is not called upon to reassess the material before the Commission or substitute its own view for that of the Commission. The enquiry is confined to whether the impugned order suffers from any jurisdictional or statutory infirmity, or is otherwise vitiated on any of the recognised grounds warranting judicial review.

14. In the present case, the SCN dated 18.06.2018 was issued demanding duty of Rs.10,29,81,146/- along with interest. The Commissioner of Customs (Export), Mumbai Customs Zone-I, adjudicated the said SCN *vide* order dated 13.03.2019. Significantly, the Petitioners did not challenge the said adjudication order by way of an appeal. Instead, the Petitioners consciously elected to invoke the jurisdiction of the Settlement Commission and filed an application seeking settlement of the proceedings arising from the said SCN.

15. It was in the aforesaid backdrop that the Settlement Commission, *vide* order dated 14.11.2019, determined the duty liability at Rs.6,69,57,333/-. After giving credit for the amount of Rs.1,41,49,366/- already deposited by the Petitioners, the balance duty liability was determined at Rs.5,28,07,967/-. More importantly, the Petitioners had themselves placed before the Settlement Commission a quantified interest liability of Rs.1,10,04,634/-. The Settlement Commission, while accepting the settlement, merely directed the jurisdictional Commissioner to verify and quantify the interest liability

and to intimate the Petitioners if any further amount was found payable.

16. Having consciously invoked the jurisdiction of the Settlement Commission, instead of pursuing the statutory appellate remedy against the adjudication order dated 13.03.2019, and having themselves placed their computation of interest before the Settlement Commission, the Petitioners cannot now seek to reopen the validity of the SCN dated 18.06.2018 in proceedings under Article 226 of the Constitution. Such a challenge would, in substance, amount to permitting the Petitioners to circumvent the settlement proceedings and reopen the very proceedings which they had elected to have settled before the Settlement Commission.

17. The Petitioners cannot, therefore, seek to isolate Clause (e) of Paragraph No.51(ii) of the order dated 14.11.2019 and, under the guise of challenging the consequential determination of interest, reopen the validity of the underlying SCN on the ground of limitation. At the same time, the question as to whether the jurisdictional Commissioner has correctly quantified the interest liability pursuant to the said direction is a distinct issue and would have to be examined independently, if otherwise maintainable. The challenge to the validity of the SCN, however, cannot be permitted to be indirectly raised by isolating the direction relating to quantification of interest from the order of settlement as a whole.

18. This Court may now turn to the submissions advanced on behalf of the Petitioners with regard to the alleged limitation of the SCN dated 18.06.2018. The first submission of learned senior counsel for

the Petitioners is that the said SCN was issued beyond the period prescribed under Section 28 of the Act. It is contended that, in terms of Clause (d) of Explanation 1 to Section 28, the relevant date for computation of the period prescribed under Section 28(4) ought to be reckoned from 06.11.2006, when the duty was paid. Alternatively, it is contended that the period ought to be reckoned from the year 2009, when the alleged short-payment and fraud came to the knowledge of the DRI.

19. In the considered view of this Court, the aforesaid submissions cannot be examined in the present proceedings in the manner sought by the Petitioners. The SCN dated 18.06.2018 was not merely at the stage of initiation of proceedings when the Petitioners approached the Settlement Commission. The said SCN had already been adjudicated by the Commissioner of Customs (Export), Mumbai Customs Zone-I, *vide* order dated 13.03.2019. The Petitioners did not avail of the statutory appellate remedy against the said adjudication order. Instead, they consciously chose to approach the Settlement Commission for settlement of the very proceedings arising out of the said SCN.

20. The Settlement Commission, thereafter, passed the order dated 14.11.2019 in exercise of its statutory jurisdiction and settled the duty liability. The Petitioners accepted the said course of proceedings and did not seek to have the SCN adjudicated in the ordinary appellate hierarchy. Having adopted the statutory mechanism of settlement and obtained an order thereunder, the Petitioners cannot, in proceedings under Article 226 of the Constitution, seek to reopen the validity of the very SCN which constituted the foundation of the proceedings before the Settlement Commission, particularly when no challenge is

laid to the jurisdiction of the Settlement Commission itself or to any statutory infirmity in the exercise of such jurisdiction.

21. The submission regarding the computation of limitation from 06.11.2006 or, alternatively, from the year 2009, would necessarily require this Court to examine the validity of the SCN dated 18.06.2018 and determine whether the proceedings initiated thereunder were within the period prescribed under Section 28 of the Act. Such an exercise, in the facts of the present case, would amount to examining the correctness of the underlying proceedings as an appellate court, which is precisely what the Supreme Court has cautioned against while delineating the scope of judicial review over orders passed by the Settlement Commission.

22. The Petitioners' alternative submission that, even where no specific period of limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period, also does not advance their case. This submission too is directed against the initiation of the proceedings culminating in the SCN dated 18.06.2018 and not against any infirmity in the order passed by the Settlement Commission. The Petitioners have not demonstrated as to how the order dated 14.11.2019, whereby the Settlement Commission exercised its statutory jurisdiction and settled the dispute, suffers from any jurisdictional error, contravention of the statutory provisions, prejudice, fraud, bias or malice so as to warrant interference within the limited parameters of judicial review.

23. There is yet another circumstance which assumes significance. The Petitioners themselves had placed before the Settlement

Commission their computation of the interest liability at Rs.1,10,04,634/-. The Settlement Commission did not finally accept the said computation as the definitive amount of interest payable. Instead, it directed the jurisdictional Commissioner to quantify the interest liability and intimate the Petitioners if any further amount was found payable. The direction contained in Clause (e) of Paragraph No.51(ii), therefore, was in the nature of a consequential direction for determination of the interest liability and did not revive or reopen the adjudication of the underlying duty liability.

24. The subsequent determination of interest by the jurisdictional Commissioner at Rs.15,16,65,821/- is, therefore, required to be viewed separately from the Petitioners' challenge to the validity of the SCN. If the Petitioners contend that the aforesaid quantification of interest is contrary to the statutory provision governing levy or computation of interest, that question would have to be examined with reference to the relevant provision governing such liability. However, such a challenge cannot be enlarged into an indirect challenge to the validity of the SCN itself, which had already been adjudicated and thereafter subjected to settlement at the instance of the Petitioners.

25. This Court is, therefore, unable to accept the submission of learned senior counsel for the Petitioners that the alleged limitation of the SCN dated 18.06.2018 furnishes a ground for interference with the order dated 14.11.2019 passed by the Settlement Commission. The challenge, in substance, seeks to reopen the proceedings which the Petitioners had consciously elected to have settled and, consequently, falls outside the limited scope of judicial review available against an order of the Settlement Commission.

26. The Petitioners have also contended that the direction contained in Clause (e) of Paragraph No.51(ii) could not have resulted in the interest liability being enhanced from the amount of Rs.1,10,04,634/- quantified by them to Rs.15,16,65,821/-. This contention, however, does not merit interference with the order passed by the Settlement Commission. The Settlement Commission had not accepted the computation furnished by the Petitioners as the final interest liability. It had specifically directed the jurisdictional Commissioner to verify and quantify the interest payable and intimate the Petitioners in case any further amount was found payable.

27. The liability to pay interest is a statutory consequence of the liability to pay duty and does not stand extinguished merely because the quantum of duty is settled by the Settlement Commission. The Petitioners have also not demonstrated any infirmity in the direction issued by the Settlement Commission requiring the jurisdictional Commissioner to undertake the exercise of quantifying the interest liability. The mere fact that the amount ultimately quantified is higher than the amount initially computed by the Petitioners cannot, by itself, constitute a ground for interference with the order of the Settlement Commission.

28. As noticed hereinabove, the Petitioners had themselves placed their computation of interest before the Settlement Commission. The Settlement Commission, instead of mechanically accepting the said computation, directed verification and quantification by the jurisdictional Commissioner. The subsequent determination of Rs.15,16,65,821/- is thus referable to the said direction and cannot be

treated as an independent adjudication reopening the settlement of the underlying duty liability.

29. In any event, no material has been placed before this Court to demonstrate that the direction contained in Clause (e) of Paragraph No.51(ii) is contrary to any provision of the Act, or that the Settlement Commission acted beyond the jurisdiction conferred upon it. The Petitioners have also not established any prejudice of the nature contemplated in the decisions of the Supreme Court governing judicial review of orders passed by the Settlement Commission.

CONCLUSION:

30. For the aforesaid reasons, this Court finds no ground to interfere with the order dated 14.11.2019 passed by the Settlement Commission. The challenge to the SCN dated 18.06.2018 on the ground of limitation cannot be reopened in the present proceedings, and no infirmity has been demonstrated in the consequential direction for quantification of interest contained in Clause (e) of Paragraph No.51(ii).

31. Consequently, the present Writ Petition, along with the pending application, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 21, 2026
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