LEARNING OUTCOMES

After studying this chapter, you would be able to:

- understand and analyse the manner in which application for settlement of cases is to be made.
- comprehend the procedure on receipt of application.
- identify the powers of Settlement Commission.
- examine the matters in relation to which there is bar on making subsequent application for settlement.
1. INTRODUCTION

Settlement Commission was set up to evolve a mechanism for speedy settlement of cases involving high revenue stakes. This is an alternative channel for resolution of dispute for assessee without going into the prolonged litigation in adjudication/appeals/revisions etc.

Customs, Central Excise and Service Tax Settlement Commission is constituted by Central Government. Section 127A to 127N contained in Chapter XIV A of the Customs Act deals with the provisions relating to settlement of cases. Presently, four Benches in the Settlement Commission have been constituted and are functioning at Delhi, Mumbai, Kolkata and Chennai.

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.

(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 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, Central Excise and Service Tax Settlement Commission constituted under section 32 of the Central Excise Act, 1944.
3. APPLICATION FOR SETTLEMENT OF CASES
[SECTION 127B]

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. Such application shall be made in such form and in such manner as may be specified.

Further, any person, other than an applicant may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified.

(a) Disclosures required in application: 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.

(b) Conditions for filing the application: Following conditions are to be fulfilled for filing an application for settlement of a case. The application shall not be made unless –

(i) the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported/exported through post or courier, as the case may be, and in relation to such document(s), a show cause notice has been issued to him by the proper officer;

(ii) the additional amount of duty accepted by the applicant in his application exceeds ₹ 3,00,000.

(iii) the applicant has paid the additional amount of customs duty accepted
by him along with interest due under section 28AA.

(iv) No application shall be entertained by the Settlement Commission in cases which are pending in the Appellate Tribunal or any Court.

(v) 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.

(c) An application for settlement once made shall not be allowed to be withdrawn by the applicant.

(d) Every application shall be accompanied by such fees as may be specified by rules.

Note: It has been clarified that Settlement Commission has no jurisdiction to entertain the matters in relation to the goods specified under section 123 of the Customs Act, 1962 which include gold in view of the order dated 25.08.2015 of Delhi High court in case of Additional Commissioner of Customs v. Shri Ram Niwas Verma [W.P. (C) No. 7363/2014 & CM 17221/20 L4].

[F. No. 275/46/2015 CX. 8A dated 01.10.2015]

Illustration

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].

4. PROCEDURE ON RECEIPT OF APPLICATION
   [SECTION 127C]

Following procedure is followed on receipt of application for settlement of cases:

(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 Principal Commissioner/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 Principal Commissioner/Commissioner of Customs having jurisdiction. The Principal Commissioner/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 Principal Commissioner/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 Principal Commissioner/Commissioner.

(4) After examination of the report of the Principal Commissioner/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 Principal Commissioner/Commissioner of Customs and Commissioner (Investigation) after examination of the records, the report of the Principal Commissioner/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 Principal Commissioner/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) **The Settlement Commission may, at any time within 3 months from the date of passing of the order, 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/Commissioner of Customs or the applicant.**

*However, no amendment which has the effect of enhancing the liability of the applicant shall be made unless the Settlement Commission has given notice of such intention to the applicant and the jurisdictional Principal Commissioner/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 the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order. The provisions of section 32D of the Central Excise Act, 1944 shall apply in relation to the passing of such order.

(8) The order 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 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, 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.

5. POWERS OF SETTLEMENT COMMISSION

(a) 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 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.

(b) 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.

An immunity granted to a person shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under 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 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.

(c) **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.

For this purpose, 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, 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.

(d) **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 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.

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.

However, 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.
7. ORDER OF SETTLEMENT TO BE CONCLUSIVE [SECTION 127J]

Every order of settlement passed 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.

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

Any sum specified in an order of settlement passed under 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.

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

As per section 127L, a person shall not be entitled to apply for settlement under section 127B in relation to any other matter in the following cases:

(a) Where an order of Settlement has been passed which provides for the imposition of a penalty on applicant under section 127B for settlement, on the ground of concealment of particulars of his duty liability.

Here, concealment of particulars of duty liability relates to any such concealment made from the officer of customs.

(b) 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

(c) Where the case of such person is sent back to the proper officer by the Settlement Commission under section 127-l.
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.

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

The provisions of Chapter V of the Central Excise Act, 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.

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.
13. TEST YOUR KNOWLEDGE

1. ₹ 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 Department disputed the jurisdiction of the Settlement Commission by contending that recovery of drawback did not involve levy, assessment and collection of customs duty as 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.

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

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

4. Settlement Commission passed an order for release of seized goods of Mr. Banerjee. Since the goods were subject to deterioration, the Revenue informed the Commission that the seized goods had already been auctioned. The Commission, therefore, directed the Revenue to refund the amount remaining in balance after the application of sale proceeds as provided under section 150(2) of the Customs Act, 1962. The Revenue refunded the principal amount of the sale proceeds without payment of interest for the delay, on the premise that it did not represent duty or interest as contemplated under section 27 and 27-A of the Customs Act. Reason out the action of the Revenue by supporting with a case law.

5. State the circumstances under which an application will not be entertained by the Settlement Commission.


7. When will a person be not entitled to apply for settlement under section 127B? Discuss with reference to the provisions of section 127L
14. ANSWERS/HINTS

1. 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.

2. 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 or a bill of export, or a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be and issuance of a show cause notice in relation to such such document or documents.

(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 misclassification or otherwise was purely a procedural one and there was no need to decide the same.

**Note:** This ruling has been maintained in *Union of India vs. Bipin H Badani 2015 (326) ELT 25* by the Supreme Court.

3. 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 a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer.

   (ii) the additional duty accepted is more than `3 lakhs.

   (iii) the applicant has paid the additional amount of customs duty accepted by him alongwith interest due under section 28AA.

   (iv) the case is not pending with CESTAT or any Court.

   (v) 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.

   (vi) the application is not for the interpretation of the classification of the goods under the Customs Tariff Act, 1975

Further, application before Settlement Commission can be made only when adjudication is pending.

4. The action of the Revenue is not justified in law. The High Court in a similar case of Vishnu M Harlalka v. Union of India 2013 (294) ELT 5 (Bom) directed the Department to pay interest on the balance of the sale proceeds.
The High Court observed that inordinate delay in payment of balance sale proceeds by the Department is not justifiable. The Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission.

The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund; the Department can wait for an inordinately long period to grant the refund.

5. [Refer Section 127L]
6. [Refer para 5]
7. [Refer section 127L]
SIGNIFICANT SELECT CASES

1. In case of a Settlement Commission’s order, can the assessee be permitted to accept what is favourable to them and reject what is not?

*Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)*

**Supreme Court’s Decision:** The Apex Court held that the application under section 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed. The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty. The Court further opined that having opted to get their customs duty liability settled by the Settlement Commission, the appellant could not be permitted to dissect the Settlement Commission’s order with a view to accept what is favourable to them and reject what is not.

2. Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?

*Saurashtra Cement Ltd. v. CCus. 2013 (292) ELT 486 (Guj.)*

**High Court’s Observation and Decision:** While examining the scope of judicial review in relation to a decision of Settlement Commission, the High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court). The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations.

The Court, however, pronounced that the scope of court’s inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.

*Note:* Apart from the appellate remedies available under the customs law, the Constitution of India also provides remedies in the form of Special Leave
Petitions (SLPs) and Writs. The Supreme Court of India is empowered under Article 136 of the Constitution of India to grant special leave to any of the parties to appeal, aggrieved by any order or judgment passed by any Court or Tribunal in India. The applications under Article 136 are termed as Special Leave Petitions (SLPs) as these can be admitted only with special leave (permission) of Supreme Court. The High Courts, within the territory of its jurisdiction, have powers, vide article 226 of Constitution, to issue orders or writs for enforcement of any fundamental right and for any other purpose. The Supreme Court, under Article 32 of the Constitution of India, is also empowered to issue writs for enforcement of fundamental rights.

3. Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?

**Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)**

**Facts of the Case:** The above question was the issue for consideration in a writ petition filed by the Union of India to challenge an order passed by the Settlement Commission in respect of a proceeding relating to recovery of drawback. The Commission vide its majority order overruled the objection taken by the Revenue challenging jurisdiction of the Commission and vide its final order settled the case. The aforesaid order of the Settlement Commission was the subject matter of challenge in this petition.

The contention of the Revenue was that the recovery of duty drawback does not involve levy, assessment and collection of customs duty as envisaged under section 127A(b) of the Customs Act, 1962. Therefore, the said proceedings could not be treated as a case fit to be applied before the Settlement Commission. However, the contention of the respondent was that the word “duty” appearing in the definition of “case” is required to be given a wide meaning. The Customs Act provides for levy of customs duty as also the refund thereof under section 27. The respondent contended that the provisions relating to refund of duty also extend to drawback as drawback is nothing but the return of the customs duty and thus, the proceedings of recovery of drawback would be a fit case for settlement before the Commission.

**High Court’s Observations:** The High Court noted that the Settlement Commission while considering the aforesaid question of its jurisdiction for taking up the cases relating to drawback had considered the definition of “drawback” as defined in rules relating to drawback as also the definition of
the word “case” as defined in section 127A(b) and after referring to the various judgments of the Tribunal came to the conclusion that the Commission had jurisdiction to deal with the application for settlement. The High Court stated that the reasons given by the Settlement Commission in support of its order are in consonance with the law laid down by the Supreme Court in the case of Liberty India v. Commissioner of Income Tax (2009) 317 ITR 218 (SC) wherein the Supreme Court has observed that drawback is nothing but remission of duty on account of statutory provisions in the Act and Scheme framed by the Government of India.

**High Court’s Decision:** The High Court, thus, concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.