IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 11296 of 2009
With
SPECIAL CIVIL APPLICATION NO. 11366 of 2009
With
SPECIAL CIVIL APPLICATION NO. 436 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MS JUSTICE SONIA GOKANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, DAMAN....Petitioner(s)

Versus

M/S SARLA POLYESTER LTD. (100% EOU) (YARN DYEING DIVISION)....Respondent(s)

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Appearance:
MR YN RAVANI, ADVOCATE for the Petitioner(s) No. 1

MR BL NARASIMHAN, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 8 /05/2015

CAV COMMON JUDGMENT

(PER : HONOURABLE MS JUSTICE SONIA GOKANI)

1. All the three petitions involve identical questions of facts and law and are, therefore, being decided by this common judgment. In the present petitions for the purpose of adjudication, wherever factual matrix deserves consideration, the same shall be drawn from Special Civil Application No.11296 of 2019.

2. The petitioner has challenged the order dated February 29, 2008 rendered by the Settlement Commission in Settlement Application No.227/ CEX/06/SC(MB), alleging *inter alia* that the Settlement Commission has exceeded its jurisdiction in exercise of its function. This Court on January 28, 2010, while admitting these matters had protected the petitioner by way of *ad*

interim relief by staying the impugned order passed by the Settlement Commission and the jurisdictional Commissioner was directed to adjudicate the proceedings. All the three firms, namely, **(i)** M/s.Sarla Polyester Ltd., Vapi (hereinafter referred to as 'the SPL, Vapi'); **(ii)** M/s.Sarla Polyester Ltd., Silvassa (hereinafter referred to as 'the SPL, Silvassa') and **(iii)** M/s.Satidham Industries Ltd., Silvassa (hereinafter referred to as 'the SIL'), are sister concerns and their cases are interconnected.

3. A complaint came to be registered against the SPL, Vapi, a 100% Export Oriented Unit (EOU) and its group of companies i.e. SLP, Silvassa (100% EOU) and SIL (DTA Unit), by D.R.I., Surat on January 16/17, 2004, on having received the intelligence that the duty free polyester/ nylon yarn imported under 100% EOU Scheme by SPL, Silvassa was being diverted to SIL without payment of applicable duties and thereby contravening the provisions of 100% EOU Scheme.

4. SPL, Vapi was engaged in manufacturing of dyed yarn and was granted Letter of Permission (LOP) on June 26, 1996 as amended vide letter dated September 03,2003, by the Development Commissioner, Kandla Special Economic Zone (for short 'KASEZ'), Kandla, subject to its fulfillment of certain conditions. Pursuant to such LOP, the SLP, Vapi has also been granted permission under sections 58 and 65 of the Customs Act, 1962 (hereinafter referred to as 'the Act') for private bonded warehouse vide Registration No.AABCS 1322BXM002 dated June 10, 2003 by the Assistant Commissioner, Central Excise and Customs, Division-I, Vapi, subject to fulfillment of certain conditions. A bond came to be executed with the jurisdictional Deputy Commissioner of Central Excise and Customs to observe all the provisions of Customs Act, 1962 and Central Excise Act, 1944, failing which the customs and central excise duties shall be levied thereon along with interest at the applicable rate on such units on the demand being made.

5. SPL, Silvassa is engaged in manufacturing of texturised/ twisted/ covered yarn and has been granted Letter of Permission dated July 29, 1994 and the same is amended on August 18, 2003 and further amended on August 22, 2003, by the Development Commissioner, SEEPZ, Mumbai. Permission also came to be granted to this unit under sections 58 and 65 of the Act for private bonded warehouse and manufacture under bond. This unit had executed a bond with the jurisdictional Deputy Commissioner of Central Excise and Customs, Silvassa as in the case of SPL, Vapi. SIL, Silvassa, a DTA unit of the Sarla Group of Industries, was engaged in the manufacture of texturised/ twisted yarn of Polyester and nylon yarn. The intelligence revealed that SPL, Vapi had clandestinely removed (a) domestically procured yarn oil and (b) domestically procured packing material, without issuing any invoice and without payment of applicable duty and thereby, contravened Notification No.1/95-CE dated January 01, 1995 and Notification No.22/2003-CE dated

March 31, 2003; and further also imported yarn oil without issuing invoices and without payment of duty and thereby, contravened the provisions of Notification No.53/97-CUS dated June 03, 1997 and Notification No.52/2003-CUS dated March 31, 2003. It was also gathered that SLP, Vapi, cleared the finished goods at the rate lower than the procurement price and they cleared certain consignments of polyester/nylon dyed yarn at undervalued rates and for recovery of such differential rates, the debit notes showing job-work were raised from M/s.SIL, Silvassa, a DTA unit. In the case of SPL, Silvassa, similar *modus operandi* was adopted. In short, the allegations were of illegal removal of goods and undervalued. It is stated that such *modus operandi* was affirmed by Shri Krishna Jhunjhunwala, Managing Director of SPL, Vapi/ Silvassa in his various statements and, therefore, a show cause notice was issued on July 14, 2004 and December 29, 2005 demanding the Central Excise and Customs duty to the tune of Rs.2,49,47,278/-.

6. SLP, Vapi preferred a settlement application on July 31, 2006 being No.227/CEX/2006-SC(MB) before the Settlement Commissioner, Additional Bench, Mumbai. The common admission hearing of the application was held on June 13, 2007 and the Settlement Commissioner passed the admission order on June 20, 2007. While admitting the applications, considering the nature of complexity of the matter and the differences between the applicant and the Revenue, the Commissioner (Investigation) earmarked the case for the purpose of investigation.

7. The report of the investigation dated July 20, 2007 was submitted. It concluded that the impugned quantity of yarn was issued for job-work by SPL, Silvassa and SPL, Vapi to SIL, Silvassa without the cover of valid Central Excise documents. There was no permission to clear the goods for job-work during the relevant period, however, he found that the goods, which were returned from job-work from SIL, Silvassa, were booked for production of finished goods in daily

stock register of SPL, Silvassa and SPL, Vapi. The goods, thus, were cleared in terms of EOU scheme and, therefore, it concluded that there was no sustainable case of diversion of goods against the applicants therein.

8. For non-acceptance of the investigation report dated July 20, 2007, the reasons were put forward by DRI, Ahmedabad vide application dated January 15, 2008. It was alleged that none of the export documents contained any details of export done intentionally to claim benefit of EOU scheme and to camouflage the activity of diversion in respect of the goods diverted to DTA. This has been done.

9. After the final hearing, the Settlement Commission held that there was no case of diversion of duty free material in the raw market. With regard to the number of export products being manufactured out of the substituted material, no material could be adduced and accordingly, it was concluded that

the goods on return from job-work from SIL, Silvassa, were finished goods in the Daily Stock Register of the SPL, Vapi and SPL, Silvassa. Hence, the case of diversion of goods was not found sustainable. It further held that for procedural violations, no duty could be demanded from the applicants therein. However, they could be penalised, according to the Settlement Commissioner, for manipulating the documents. Thus, for undervaluation of goods cleared to DTA and to an extent admitted by the applicants therein, it found the case sustainable. The said order of Settlement Commissioner dated February 29, 2008 concluded thus :

> *"(i) In case of SPL, Vapi, Central Excise Duty was settled at Rs.72,44,071/- as against the demand of Rs.2,49,47,278/-.*
>
> *(ii) Awarded simple interest @ 10% p.a. on the duty settled as above, for the period it was due till the date of payment.*
>
> *(iii) Imposed penalty of Rs.10,00,000/- on M/s.Sarla Polyester Ltd., Silvassa (100%*

EOU) and granted immunity to all other applicants and co-applicants.

(iv) Grant immunity from prosecution to all the applicants and the co-applicants."

10. On various terms raised in this petition i.e. Special Civil Application No.11296 of 2009, the challenge is made to the order of the Settlement Commission with the following prayers:

"(A) This Hon'ble Court may be pleased to admit and allow this Special Civil Application;

(B) This Honourable Court may be pleased to issue a writ of certiorari and or any other appropriate writ, order or direction in the nature of certiorari and be pleased to quash and set aside the order No.66/FINAL ORDER/CEX/KNA/2008 dated 29.2.2008 passed by Settlement Commission in Settlement Application No.227/CEX/06/SC (MB), which is shown at Annexure-A to present petition.

(C) Pending admission, hearing and final disposal of the petition, this Honourable Court may be pleased to stay execution, implementation and operation of order

No.66/FINAL ORDER/CEX/KNA/2008 dated 29.2.2008 of the Settlement Commission passed in Settlement Application No.227/CEX/06/SC (MB), shown at Annexure-A to present petition;

(D) This Hon'ble Court may be pleased to pass such other and further order in the interest of justice that may be deemed fit in the facts and circumstances of the case."

11. The Manager of the respondent filed an affidavit-in-reply urging that this Court has no jurisdiction to try and dispose of the present petition as the applications pertain to unit at Silvassa and such unit will be within the territorial jurisdiction of the Bombay High Court. It is further contended that the petitioner being guilty of delay and laches in filing the said petition, the same deserves dismissal. After 15 months of communication of the impugned order, these petitions have been filed.

12. It is the say of the respondent that the dispute arises on account of understanding of the

petitioner that in view of the amendment of the EXIM policy, the respondent was not entitled to remove the inputs for job-work to a unit located in DTA, which the respondent was removing based on the permission granted by the authorities since the year 1995. The respondent is 100% EOU, which as been granted permission by the authorities to remove the polyester yarn to SIL, Silvassa on job-work basis. The permissions were granted subsequent to the date of application giving effect from the date of application and at no stage duty was demanded on the yarn so removed from the said SIL, Silvassa.

13. It is further contended that the petitioner-Department has overlooked the fact that the yarn (POY) was imported under notification, which was eventually used in production of texturised/ twisted, both undyed/ dyed yarn for export and it was exported. As the final product has been exported, no demand of duty is leviable.

14. It is the say of the respondent that the Settlement Commissioner has not waived any duty but determined the duty payable within the powers granted by the statute. In respect of the duty demanded on account of undervaluation of the goods cleared in DTA, the Settlement Commission has waived interest in excess of 10%, inasmuch as the differential duty was demanded on account of undervaluation under section 11A of the Act and interest was demanded under section 11AB of the Act.

15. It is also the say of the respondent that the interest on the said duty was not based on any bond, but a statutory interest under the provisions of the Central Excise Act, 1944. Therefore, the Settlement Commissioner would have powers to waive the interest. The entire order of the Settlement Commission is based on the evidence produced before it on the strength of which it concluded that the inputs procured by the respondent were used for manufacture of

products and, therefore, no duty was held to be payable.

16. Mr.Y.N. Ravani, learned Standing Counsel appearing for the petitioner-Department, has vehemently urged that mainly on two issues, namely, illicit removal of goods and undervaluation, the intelligence was received and on the strength of the report, the parties had argued before the Settlement Commission. He has further urged that the challenge in these petitions is the order of the Settlement Commission, which has exceeded its jurisdiction, not only of waiving the duty demanded by way of show cause notice, but also in reducing the interest and also by granting immunity to the respondent from the prosecution. He further submitted that the report furnished also had revealed that there was an undervaluation and a clear evidence of illicit removal of goods. Certain portion of the report also came to be challenged by the learned counsel, who challenged the very jurisdiction of the Settlement

Commission in reducing the duty, interest and penalty. He has further urged that the Settlement Commission after having noted the manner in which undervaluation writ large on record and yet has chosen to hold in favour of the respondent and, therefore, the order being *ex facie* contrary to law, requires indulgence of this Court. He has urged that the bond has been executed in the form B-17 and it prescribes 15% interest *per annum*. It is also his submission that ordinarily the Court may not interfere but wherever the Court is of the opinion that irrelevant facts or considerations which are contrary to law have gone into consideration in decision making, the Court would have wide powers under the writ jurisdiction.

17. Mr.Anand Nainavati, learned counsel appearing for the respondent-Assessees has fervently urged that the scope of judicial review is very limited. It is apparent from the order of the Settlement Commission that the report of intelligence also amply made it clear that there

was no illegal removal of any goods. It is only a matter of irregularity in the manner that the job-work done on each machine is not properly recorded. However, on holistic view when it was noticed that the entire material which was used as input has been exported, the Settlement Commission committed no mistake in concluding that the base of the show cause notice was very hollow. He further urged that ordinarily the Court would not interfere with the decision of the Settlement Commission and scope of judicial review is extremely limited. He relied on the following decisions :

(i) Jyotendrasinhji v. S.I. Tripathi and others, reported in 1993 Supp. (3) SCC 389.

(ii) Union of India v. Ind-Swift Laboratories Ltd., reported in 2011 (265) ELT 3 (SC).

(iii) Saurashtra Cement Ltd. v. Commissioner of Customs, reported in 2013 (292) ELT 486 (Guj.).

18. Before adverting to the facts in the present case, the law on the issue of judicial review requires discussion at the outset.

19. The Apex Court in the case of ***Jyotendrasinhji (supra)***, was considering the issue of judicial review in the case of order of Settlement Commission under the Income-tax Act, where the Court has held that interference of the Court with the order of the Commission can be done only on the ground that the order contravened the provisions of statute and such contravention caused prejudice to the appellant. Interference is also permissible on the ground of bias, fraudulent and malice, however, on incorrect interpretation of deed of settlement, no interference is desirable.

20. This decision, thus, decides the scope of inquiry under Article 226 of the Constitution of India to emphasise that if the order of the Settlement Commission is contrary to any provision of the Act, it can be looked into and

if the answer is in affirmative, corollary is whether the same has prejudiced the petitioner apart from the existence of grounds of fraud, bias and malice, which otherwise constitute a separate and independent category.

21. The Apex Court in the case of ***Ind-Swift Laboratories Ltd. (supra***) has also examined the scope and extent of power of judicial review under Article 226 of the Constitution of India in the case of order passed by the Settlement Commission to hold that such order could be interfered with if it is contrary to the statutory provisions.

22. This Court in the case of ***Saurashtra Cement Ltd. (supra***) was required to examine the scope and extent of judicial review in relation to the decision of the Settlement Commission. Noting that the Settlement Commission is set up under the statute for settlement of revenue claims and its decision is given finality and the same has power to grant immunity from prosecution subject

to satisfaction of certain conditions, it has been held that inquiry against the decision of the Settlement Commission is confined to a narrow scope, however, the jurisdiction under Article 226 of the Constitution of India is not totally ousted. It is held that in a given circumstances, the Settlement Commission has taken into consideration the irrelevant facts and such consideration has gone into its decision making process resulting into grave injustice and prejudice to the party, then within the narrow confines of the judicial review, interference would be permissible. It would be profitable to reproduce relevant paragraphs of the said decision as under :

> *"15. It is well settled that no finality clause in a statute would oust the jurisdiction of the High Court under Article 226 of the Constitution or that of the Supreme court under Article 32 or 136 of the Constitution. Nevertheless, the parameters of judicial intervention in a decision rendered by an administrative tribunal are well recognised and well laid down.*

Ordinarily, the court would interfere if the Tribunal has acted without jurisdiction or failed to exercise jurisdiction vested in it or the decision of the Tribunal is wholly arbitrary or perverse or malafide 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.

16. When examining the scope of judicial review in relation to a decision of Settlement Commission, we must further bear in mind that the Settlement Commission is set up under the statute for settlement of revenue claims. Its decision is given finality and it also has power to grant immunity from prosecution, of course, subject to satisfaction of certain conditions. The scope of court's inquiry against the decision of the Settlement Commission, therefore, is necessarily very narrow. The Apex Court in the case of State of U.P. and Another vs. Johri Mal reported in (2004) 4 SCC 714 observed that the scope and extent of power of judicial review of the High Court under Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also other relevant factors including the nature of power

exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. It was observed that the power of judicial review is not intended to assume a supervisory role. The power is not intended either to review governance under the rule of law nor for the courts to step into the areas exclusively reserved by the suprema lex to the other organs of the State. The court observed that the limited scope of judicial review is

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited

to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies. (See Ira Munn v. State of Illinois.)

17. Despite such narrow confines of judicial review of the decision of the Settlement Commission, it is undeniable that the jurisdiction under Article 226 of the Constitution is not totally ousted. In a given situation if the Settlement Commission has taken into consideration irrelevant facts and such consideration has gone into its decision-making process resulting into grave injustice and prejudice to the party then within the narrow confines of the judicial review, interference would still be open."

23. On the basis of these decisions, it can be said that the scope of jurisdiction under Article

226 of the Constitution of India has been well-defined when it comes to question of decision of the Settlement Commission. The scope being narrow, whenever action of the Settlement Commission is contrary to the provision of law and if the decision arrived at is on the strength of the irrelevant facts and consideration resulting into prejudice and grave injustice to the parties concerned, the Court can interfere with such decision.

24. In light of the above discussion, the facts of the present case if are examined, two aspects are emphasised, namely, (i) illegal removal and (ii) undervaluation. It is the say of the petitioner that without working out the liability that may arise, the Settlement Commission has accepted the plea of the respondent-assessees and thereby it has acted contrary to the provision of law being contrary to the amendment made under section 32H of the Act.

25. On thus hearing both the sides and on due consideration of the material on record, what emerges is that the case of the Revenue is that the respondent-assessees had diverted the yarn for job-work, which violated the condition of excise as well as custom notification, which made the respondents liable for payment of duty. The duty liability would be raised in the case of failure by the 100% EOU to prove utilisation of the raw material as per the scheme.

26. For the utilisation of the raw material, conditions are set out in the notification bearing No.53/97-CUS dated June 03, 1997 and Notification No.52/2003-CUS dated March 31, 2003. In other words, when the duty-free raw material procured if eventually is accounted for and utilised 100% as provided under the EOU scheme, such condition would not create any liability and, therefore, the question that was needed to be addressed was as to whether the respondent-assessees had furnished a complete account of utilisation of raw material and its 100% export

under the EOU scheme and whether there exists sufficient corroborative material to that effect.

27. The report made by the Commissioner (Investigation) observed the accountability of transaction as per the provision of law in question in accordance with 100% EOU scheme. The Revenue emphasises on the issue of diversion and undervaluation of goods sent to the DTA. It was also alleged that the respondents had not used the raw material in the finished products and they were diverted to the open market.

28. In such circumstances, when the report of the investigation came, the Settlement Commission noted that a complete record existed indicating the despatch of raw material by the respondent-assessees. The production register/ record maintained by SIL, Silvassa, was produced separately, but of course, the cumulative production was negative. With regard to the disparity when the same was questioned, the Commissioner (Investigation) admitted that one to

one correlation of the goods is not physically established because the said goods were never processed in the factory at Silvassa. The type of yarn used in the finished products is not being reflected in the export record. The Settlement Commission after hearing both the sides at length had noted thus :

> *"9.1 The Bench has gone through the records of the case relating to all the three applicants. The Bench during the course of final hearing had specifically asked the representative of the Revenue as to whether they had any proof of diversion of duty free raw material into the market and as to whether they were contesting the fact of exports of goods, to which the representative replied in negative. The Bench further queried as to whether the Revenue had any proof of export products being manufactured out of substituted material, to which the Revenue replied in negative. These facts have also been highlighted in the report of Commissioner (Investigation) wherein he has observed that though the applicants did not have the permission to clear the goods for jobwork during the relevant period. He has also*

concluded that the goods on return from jobwork from the applicant No.3 were booked for production of finished goods in the Daily Stock Register of the applicant no.1 and applicant no.2. Accordingly there is no sustainable case of diversion of goods, which was confirmed during final hearing by representative of Revenue. Thus, for procedural violations no duty can be demanded from the applicants though they should be penalised for manipulating documents to show production of goods in the applicant no.3. Thus the case against the applicants is sustainable in respect of under-valuation of goods cleared to DTA and this issue of undervaluation is admitted by the applicants. The case of diversion of goods does not stand in view of the report of Commissioner (Investigation) and the findings (supra). Keeping in view of the judgment of Hon'ble Supreme Court in the case of M/s.Maruti Udyog Ltd. and amended provisions as applicable, the duty liability is accepted with benefit of cum duty benefit."

(emphasis supplied)

29. It, thus, appears clearly that on a specific query raised to the representative of the

respondent, with regard to the case of proof of diversion of duty-free raw material in the domestic market and also whether the factum of export of goods was under challenge, the Revenue's reply was in negation. Resultantly, due awarded of Central Excise to the tune of Rs.84,44,039/- in case of SIL, Silvassa and in the case of SPL, Vapi, the amount is Rs.72,44,071/-. The fine and penalty also have been provided granting immunity from prosecution.

30. As is apparent from the record, when a specific query was raised by the Settlement Commission asking them to furnish the proof of diversion of duty-free raw material in the market, as also with regard to the export of goods not having been done, the reply was in negative. It appears to be a case where the material having been sent to the unit at SIL, Silvassa, however, detailed record of each machine is not maintained, but on cumulative examination, the Settlement Commission felt that

this is not a case of either undervaluation or illicit removal.

31. What has been emphasised by the learned Senior Standing Counsel Mr.Ravani is as to why the authorised signatories of the respondent-assessees and the co-applicant should have been sufficient ground which have not been taken into account and, therefore, the conclusion arrived at by the Settlement Commission avoiding the material, where there was a clear admission, the interference would be necessary. We notice that essentially and pre-dominantly on the basis of the investigation report the Settlement Commissioner has chosen to act upon. This investigation report nowhere indicates such diversion establishing illicit removal or undervaluation or either of the same. At the most, the absence of material and machine-wise report could be termed as regulatory in the given facts and circumstances of the case, however, that *ipso facto* could not be a ground for this Court to intervene in a writ jurisdiction.

32. It is also to be noted that duty settled by the Settlement Commission waiving interest in respect of differential duty on the basis of undervaluation of finished goods removed under the DTA. Essentially the findings of fact on the basis of material before it, whereby the Settlement Commission concluded that the inputs imported by the respondent-assessees were used for manufacture of final products. On the strength of the discussion made hereinabove, it cannot be said that the present petitions give rise to interference in the decision of the Settlement Commission in absence of any breach of statutory provisions, nor is this a case where conclusion is deduced on the basis of irrelevant material or neglecting relevant material.

33. Yet another issue raised on the part of the petitioner is to the effect that the rate of interest prescribed under the statute is 15% which cannot be reduced by the Settlement Commission and grant of 10% interest on the duty

in the order of the Settlement Commission would give rise to interference for having acted contrary to the provisions of law, is also considered duly and thoroughly, but the same deserves no entertainment.

34. It is once again required to be remembered that the Yarn POY imported under the notification or procured duty free, was ultimately held to be used in production of texturised yarn for export and the entire quantity, according to the Settlement Commission, was eventually exported. In such a background, the determination of the duty payable by the respondent has been examined by the Commission.

35. With regard to the interest, the Settlement Commissioner waived interest in excess of 10% in respect of duty demanded on account of undervaluation of the goods cleared in DTA. As mentioned hereinabove, the differential duty is demanded on account of undervaluation under section 11A of the Act, whereas the interest is demanded under section 11AB of the Act. The

demand of the duty was not based on the bond executed by the respondent for excise duty payable on the furnished product.

36. For the foregoing reasons, the present petitions fail and are, accordingly, dismissed. Rule is discharged with no order as to costs.

(HARSHA DEVANI, J.)

(MS SONIA GOKANI, J.)

Aakar