# M/S. Sanghvi Reconditioners Pvt. Ltd vs Union Of India & Ors on 5 February, 2010

## Equivalent citations: AIR 2010 SUPREME COURT 1089, 2010 (2) SCC 733, 2010 AIR SCW 1334, (2010) 3 BOM CR 56, 2010 (2) SCALE 119, (2010) 2 SCALE 119

## Author: D.K. Jain

## Bench: T.S. Thakur, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1435 OF 2003

M/S SANGHVI RECONDITIONERS PVT. LTD. -- APPELLANT

VERSUS

UNION OF INDIA & ORS. -- RESPONDENTS

JUDGMENT

D.K. JAIN, J.:

1. This appeal, by special leave, is directed against the final judgment and order dated 23rd April, 2002 rendered by the High Court of Judicature at Bombay in Writ Petition No.633 of 2002, whereby the High Court has dismissed the writ petition, affirming the decision of the Settlement Commission, Customs and Central Excise, Mumbai (hereinafter referred to as, "the Settlement Commission").

2. The facts, giving rise to the present appeal, may be summarised thus:

The appellant is an importer and ship repair unit registered with the Director General of Shipping, Government of India. On the basis of the intelligence gathered, premises of the appellant were searched by the officers of the Customs Commissionerate, Mumbai in December, 1997, resulting in the recovery of incriminating documents.

The investigations revealed that the appellant had clandestinely availed of benefit of import duty Exemption Notification No.211/83-Cus dated 23rd July, 1983, as amended, on the import of multiple consignments of engineering cargo as "Ship Spares". Based on the material collected in the course of investigations, two show cause notices dated 29th December, 1997 and 17th June, 1998, were issued to the appellant, demanding customs duty of Rs.3,12,030/- and Rs.65,66,076/- respectively (totalling Rs.68,78,106/-). Upon consideration of the reply furnished by the appellant, the Commissioner of Customs (Preventive), Mumbai by his order dated 26th February, 1999 confirmed the demand of customs duty of Rs.68,78,106/-, besides penalty and interest under Section 28AB of the Customs Act, 1962 (for short "the Act").

3. Aggrieved, the appellant preferred an appeal to the erstwhile Customs, Excise and Gold (Control) Appellate Tribunal. However, the said appeal was withdrawn by the appellant on the ground that they proposed to prefer an application in terms of Section 127MA of the Act before the Settlement Commission, constituted under the Act and have their case settled under Chapter XIVA of the Act. The appeal was permitted to be withdrawn. The appellant, thereafter, on 17th October, 2000, filed an application under Section 127B of the Act with the Settlement Commission, disclosing and admitting a duty liability of Rs.20,98,786/-.

4. On receiving the application, the Settlement Commission called for the statutory report from the Jurisdictional Commissioner in terms of Section 127C of the Act. In his report, it was submitted by the Commissioner that out of 18 consignments, in respect of 10 imports, the appellant had imported spare parts of Caterpillars and while clearing the cargo, they submitted transhipment permit/shipping bills to the Customs Authorities declaring the cargo as `ship spares' meant for repairs of ocean going vessels. However, in the course of investigation, documents, viz., sales bills, account registers, etc. retrieved from the appellant, revealed the sale of these goods to one M/s Mehta Earthmovers. In fact, diversion of these goods was admitted by the appellant during investigation and they voluntarily deposited Rs.15 lakhs towards duty liability against these 10 imports.

As regards the 2nd show cause notice, the stand of the Commissioner was that one M/s Elektronik Lab, a partnership firm dealing in sales and servicing/maintenance of ship spares and navigation equipment, had placed purchase orders on the appellant for import of spare parts to be fitted on ocean going vessels, as they were not registered with the Director General of Shipping as a ship repair unit and were not eligible for duty free imports under the aforementioned Notification. The appellant imported the spare parts and sold the same to M/s Elektronik Lab; in contravention of the exemption notification.

5. Taking into consideration the report of the Commissioner and the case records, the Settlement Commission, vide order dated 8th February, 2001, allowed the application of the appellant to be proceeded with under sub-Section (1) of Section 127C of the Act. The amount of additional duty

determined to be payable under sub- Section (3) of said Section was duly paid by the appellant.

6. At the next hearing before the Settlement Commission, it was asserted on behalf of the appellant that they had fulfilled all the conditions as stipulated in Notification No.211/83 dated 23rd July, 1983 and that no spare parts, so imported, were sold by them to M/s Elektronik Lab. The stand of the appellant was that they had installed the imported equipment on the ocean going vessels with the assistance of M/s Elektronik Lab, who were the authorised agents of the foreign supplier, M/s Kelvin Hughes, in India from whom the appellant had imported the goods. It was argued that the said Notification did not prohibit an importer from taking assistance of a third party in the repair of the ships. It was reiterated that all the "ship spares" imported by the appellant were fitted in the ocean going vessels directly by them with the assistance of M/s Elektronik Lab and, therefore, all the conditions, stipulated in the Notification, were fulfilled. Apparently, the Settlement Commission was not convinced with the explanation offered by the appellant. On the contrary, the Settlement Commission felt that the appellant had transferred/sold the imported goods to M/s Elektronik Lab; as pleaded by the Commissioner. Accordingly, vide order dated 24th September, 2001, the Settlement Commission directed the Commissioner to submit his final report along with the relevant material to establish that the goods imported by the appellant were actually sold to M/s Elektronik Lab.

7. In his final report dated 27th September, 2001, the Commissioner submitted that the appellant had imported navigational equipments, such as, Radar System, SART, NATEX and EPIRB in pursuance of the Purchase Orders placed by M/s Elektronik Lab on them; delivered the cargo on board the ships of M/s Dredging Corporation, M/s Chowgule Steamships Ltd. and M/s Essar Coastal Ltd. and the purchaser, M/s Elektronik Lab, subsequently carried out installation of the said equipments on board the ships owned by the above three shipping companies. The stand of the Commissioner was that since M/s Elektronik Lab, who had purchased the imported spare parts from the appellant for the purpose of fitting on board the ships of the said three shipping companies, was not registered with the Director General of Shipping, they were not eligible to claim benefit of exemption Notification, and, therefore, they routed the imports through the appellant and further, since the "spare parts"

> imported for carrying out repairs of the ships were not actually used by the appellant and had been sold to M/s Elektronik Lab; prior to its usage on ships, the appellant was also not entitled to the benefit of duty exemption under the said Notification. It was also pointed out that the rates of the spare parts charged by M/s Elektronik Lab to the ship owners for the same items were higher than those charged by the appellant from them, which undisputedly showed the value addition.

8. Upon consideration of the information furnished by the Commissioner, particularly the fact that the appellant had given details of the "consignee" as the ship owners, without disclosing the sale of imported "spare parts" to M/s Elektronik Lab, the Settlement Commission was satisfied that there was suppression of facts on the part of the appellant so as to avail of the benefit of duty exemption fraudulently. According to the Settlement Commission, the sale of ship spares/navigational equipments by the appellant to M/s Elektronik Lab was an independent transaction, distinct from

the subsequent sale by the latter to the ship owners, which was in the nature of home consumption. Finally, concluding that the Revenue had been able to produce documentary evidence showing sale of imported "spare parts" by the appellant to M/s Elektronik Lab, who in turn sold the same items to ship owners, the appellant could not claim any benefit under exemption Notification No.211/83, the Settlement Commission sustained the demand of duty of Rs.47,79,320/- in respect of 8 consignments sold by the appellant to M/s Elektronik Lab. The Settlement Commission, thus, confirmed the additional customs duty of Rs.68,78,106/- demanded from the appellant under the order of adjudication by the Commissioner. Inter alia, observing that though the appellant had not made a full and true disclosure of their duty liability but had cooperated with the Settlement Commission, the Settlement Commission waived penalty in excess of Rs.18 lakhs and granted total immunity to the appellant from prosecution. The Settlement Commission also held that since the case of the appellant pertained to a period prior to April, 1995, when Section 28AB of the Act was inserted by the Finance Act, 1996, interest on delayed payment of duty could not be levied on the appellant.

9. Being dissatisfied with the order passed by the Settlement Commission, the appellant took the matter to the High Court by preferring the aforementioned writ petition. Before the High Court, an application was moved by the appellant for amendment of the writ petition, seeking to urge an additional ground to the effect that some of the consignments of "spare parts" having been imported under the procedure to be followed for "Transhipment" or for "warehoused goods for exportation", no customs duty was payable by virtue of the provisions contained in Sections 54 and 69 of the Act. Although, the amendment was allowed by the High Court in order to examine whether the initial stand, based on the exemption notification, could go hand in hand with the case now sought to be pleaded in the amended petition, but, ultimately, the High Court did not permit the appellant to urge the additional ground relating to the applicability of Sections 54 and 69 of the Act. The High Court was of the view that since the ground now sought to be raised was in fact contradictory to the earlier stand, at this belated stage, a fresh ground could not be entertained. As stated above, the High Court has dismissed the writ petition. Aggrieved by the said decision, the appellant is before us in this appeal.

10. Assailing the decisions of the Settlement Commission as also of the High Court, Mr. S.K. Bagaria, learned senior counsel appearing on behalf of the appellant, strenuously urged that the High Court committed a serious illegality in declining to entertain the additional ground regarding applicability of Sections 54 and 69 of the Act in respect of 8 consignments in question, particularly when the point raised was a pure question of law going to the root of the matter and did not involve any investigation of facts. In support of the contention that a pure question of law can be raised for the first time even before this Court, reliance was placed on the decisions of this Court in Tarini Kamal Pandit & Ors. Vs. Prafulla Kumar Chatterjee (Dead) by Legal Representatives1, Ajaib Singh Vs. State of Punjab2, Municipal Corporation of the City of Jabalpur Vs. State of Madhya Pradesh & Anr.3, Collector of Central Excise, Ahmedabad Vs. Pioma Industries and Imperial Soda Factory4. Relying on Jyotendrasinhji Vs. S.I. Tripathi & Ors.5 and Paul Industries (India) Vs. Union of India & Ors.6, it was contended that the finality clause contained in Section 127J of the Act did not bar the jurisdiction of the High Court under Article 226 of the Constitution to interfere with the order passed by the Settlement Commission when it was contrary to the provisions of the Act. It was urged

that instead of outrightly declining to go into the merits of the additional ground (1979) 3 SCC 280 (2000) 4 SCC 510 (1963) 2 SCR 135 (1997) 10 SCC 400 1993 Supp (3) SCC 389 (2004) 13 SCC 340 raised, at best, the High Court could have given an opportunity to the Revenue to meet the stand of the appellant. It was also contended that the expression "clearance of the goods for home consumption"

> under Section 47 of the Act has a definite connotation and meaning under the Act and the imported goods can be cleared for home consumption only when a bill of entry for home consumption is filed; it is assessed; duties assessed are paid and an order is passed by the proper officer for clearance of the goods for home consumption, which is not the case here, as no bill of entry for home consumption was filed. Learned counsel was at pains to explain that the said consignments were correctly released for transhipment and re-export and the conditions as stipulated in Sections 54 and 69 of the Act having been complied with, no customs duty was leviable on the said 8 consignments. It was, thus, pleaded that the matter deserved to be remitted back to the High Court for reconsideration on merits.

11. Mr. H.P. Rawal, learned Additional Solicitor General, appearing on behalf of the Revenue, on the other hand, supporting the decision of the Settlement Commission as also of the High Court strenuously urged that having specifically pleaded before the Commissioner of Customs in adjudication proceedings and also in the application before the Settlement Commission that there was no sale of the imported equipment to M/s Elektronik Lab and that they were brought into the picture for the purpose of installation and regular maintenance of the said equipment and, therefore, there was no impediment in their availing of benefit under the Exemption Notification, the subsequent change in their stance that even sale of these parts to M/s Elektronik Lab for the purpose of installation on ocean going vessels was not prohibited under the said Notification or that 8 consignments were otherwise exempt from payment of customs duty under Sections 54 and 69 of the Act, clearly shows that even before the Settlement Commission, the appellant had not made a full and true disclosure of the duty liability under the Act. It was argued that the Settlement Commission having itself recorded a finding that the appellant had not made a full and true disclosure of their duty liability, their application ought to have been rejected by the Settlement Commission on this ground alone. Referring to the invoices raised by the appellant on M/s Elektronik Lab, learned counsel submitted that the documents on record clearly establish that the transactions between the appellant and M/s Elektronik Lab were purely trading transactions, which not only show the untruthfulness of the appellant's initial stance but also prove the violation of the order passed in favour of the appellant permitting re-export of the consignments in question. As regards the plea of the appellant that these consignments were not exigible to any duty in terms of Sections 54 and 69 of the Act, learned counsel submitted that apart from the fact that it involved determination of disputed questions of fact, an application under Section 127B of the Act for determination of question whether an item is dutiable or not, was not maintainable before the Settlement Commission. In support of the proposition, learned counsel relied on the decision of the Delhi High Court in Commissioner of C. Ex., Visakhapatnam Vs. True Woods Pvt. Ltd.7 Relying heavily on the decision of this Court in Union of India Vs. Anil Chanana8 and a decision of the Bombay High Court in C.I.T. Mumbai City XIV, Mumbai Vs. The Income Tax Settlement

Commission, Mumbai & Ors.9, wherein while explaining the concept of compounding in terms of Rule 6 of the Customs (Compounding of Offences) Rules, 2005, which confers power on the compounding authority to grant immunity from prosecution to a person who has made full and true disclosure of facts relating to the case and has 2006 (199) E.L.T. 388 (Delhi) 2008 (222) E.L.T. 481 (S.C.) 2000 (246) ITR 63 (Bom) cooperated in the proceedings before him, it was held that applications for compounding ought to be disallowed if there are demonstrable contradictions or inconsistencies or incompleteness in the case of the applicant, learned counsel asserted that in the light of the facts found by the Settlement Commission and affirmed by the High Court, the appellant does not deserve any further relief.

12. Before adverting to the merits of the issues raised on behalf of the parties, it would be appropriate to briefly notice the scheme of Chapter XIVA of the Act. The said Chapter was inserted in the Act by the Finance Act, 1998 (Act 21 of 1998) with effect from 1st August, 1998, for setting up of Customs and Central Excise Settlement Commission on lines of similar Commission already functioning under the Income Tax Act, 1961 since its incarnation on the recommendation of Justice Wanchoo Committee. The proceedings under the Chapter commence by an application being made under Section 127B, relevant part whereof reads thus:

> "127B. Application for settlement of cases.- (1) Any importer, exporter or any other person (hereinafter in this Chapter referred to as the applicant) may, at any stage of a case relating to him, make an application in such form and in such manner as may be specified by rules, and containing 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 or otherwise of goods, to the Settlement Commission to have the case settled and such application shall be disposed of in the manner hereinafter provided:....."

13. It is manifest from a bare reading of the provision that in the application filed under Section 127B, an applicant is required to make a full and true disclosure of his duty liability, which he had failed to disclose before the proper officer. He is also required to exhaustively explain to the Settlement Commission the manner in which such liability has been incurred; the additional amount of customs duty accepted to be payable by him as also the price of such dutiable goods in respect of which he admits short levy on account of misclassification or otherwise of goods. In other words, the applicant is supposed to make a clean breast of his affairs in regard to short levy or non payment of customs duty admitted to be payable by him.

14. Section 127C of the Act prescribes the procedure to be followed by the Settlement Commission on receipt of an application under Section 127B of the Act. The section mandates that on receipt of an application under Section 127B, the Settlement Commission shall call for a report from the Commissioner of Customs having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the

investigation involved therein, the Settlement Commission may allow the application to be proceeded with or reject the application.

15. Section 127E empowers the Settlement Commission to reopen the completed proceedings in appropriate cases, while Section 127F confers all the powers upon the Settlement Commission, which are vested in an officer of the Customs under the Act. Section 127H empowers the Settlement Commission to grant immunity from penalty and prosecution, with or without conditions, in cases where it is satisfied that the assessee has made a full and true disclosure of his duty liability. Under Section 127-I, the Settlement Commission can send back the matter to the proper officer where it finds that the applicant is not cooperating with it. Section 127J declares that every order of settlement passed under sub-Section (7) of Section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in Chapter XIVA, be reopened in any proceeding under the Act or under any other law for the time being in force.

16. To appreciate the rival submissions in this behalf, it would be appropriate at this juncture to refer to Exemption Notification No.211/83 dated 23rd July, 1983. In so far as it is relevant for this appeal, the Notification reads as follows:

> "Exemption to capital goods, raw materials and consumables for repairs of ocean-going vessels - In exercise of the powers conferred by sub-Section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts capital goods, components, raw materials and consumables, when imported into India for repairs of Ocean-going vessels by the ship repair unit registered with the Director General of Shipping, Government of India, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions, namely:-
>
> (1) the importer shall maintain a proper account of import, use and consumption of the capital goods, components, raw materials and consumables imported into India for the aforesaid purpose and shall submit such account periodically to the Collector of Customs in such form and in such manner as may be specified by the said Collector;
>
> (2) the importer, by the execution of a bond in such form and for such sum as may be specified by the Collector of Customs, binds himself to pay on demand an amount equal to the duty leviable:-
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> (a) on goods which are capital goods, as are not proved to the satisfaction of the Collector of Customs to have been installed or otherwise used for the aforesaid purpose:

> (b) on goods which are components, raw material and consumables, as are not proved to the satisfaction of the Collector of Customs to have been used or consumed for the aforesaid purpose;

within a period of three months from the date of importation thereof or within such extended period as the Collector of Customs, on being satisfied that there is sufficient cause for not installing, using or consuming them, as the case may be, for the aforesaid purpose within the said period, allow.

..... ....."

17. It is clear from the language of the Notification that in order to avail of the benefit of exemption from whole of the duty of customs leviable under the Customs Tariff Act, 1975, twin conditions, viz., (1) capital goods, components, etc. are required for repairs of ocean going vessels, and (2) the ship repair unit should be registered with the Director General of Shipping, Government of India, are to be fulfilled. Both the conditions are cumulative and admit of no exception. Being the foundation for availing the benefits under the notification, both the conditions have to be strictly complied with. Besides, under the Notification, an importer is also required to maintain a proper account of import, use and consumption of the capital goods, components, etc. imported for the aforesaid purpose in a prescribed form and failure to satisfy the Collector about their installation or consumption for the said purpose makes the importer liable to pay an amount equal to the duty payable on such goods. It is a settled position in law that Exemption Notifications have to be strictly construed. A person claiming the benefit of exemption notification, must show that he satisfies the eligibility criteria. (See: Kartar Rolling Mills Vs. Commissioner of Central Excise, New Delhi10, Eagle Flask Industries Ltd. Vs. Commissioner of Central Excise, Pune11 and Msco. Pvt. Ltd. Vs. Union of India and Ors.12 )

18. With this background, we may now advert to the facts at hand to examine if the findings recorded by the Settlement Commission and the view taken by the High court in the judgment in appeal, (2006) 4 SCC 772 2004 (171) E.L.T. 296 (S.C.) 1985 (19) E.L.T. 15 holding that the appellant could not be permitted to urge additional ground was justified or hit by the contentions to the contrary raised on behalf of the appellant.

19. In so far as the first issue is concerned, we feel that it would be expedient to extract the stand of the appellant before the Settlement Commission, which is as follows:

> "During the hearing the learned Advocate of the applicant gave his written submission. He argued that the applicant has fulfilled the conditions of Notification No.211/83. All the end use bonds have been finalised. The Commission asked the applicant whether he has sold the material to M/s Elektronik Lab. The applicant submitted that he has not sold the goods to M/s Elektronik Lab. He is the importer and he installed the equipment on the vessel with the assistance of M/s Elektronik Lab. M/s Elektronik Lab is the authorised agent in India of the foreign supplier M/s Kelvin Hughes from whom the applicant imported the goods. He argued that the Notification does not say that the imported cannot get the assistance from a third party. The Commission asked him about his argument on the statement of Shri K.D.

> Motta, Manager of M/s Sanghvi Reconditioners that the signature of representatives of M/s Shipping Corpn. of India were forged by him. The applicant submitted that he is admitting it and he is guilty of that. The Commission further asked him on not admitting the duty of Rs.47,79,320/-. The applicant submitted that the ship spares were imported and fitted in the ocean going vessels directly by him with the assistance of M/s Elektronik Lab. and, therefore, he fulfilled the conditions of Notification No.211/83. The Commission drew his attention to some of the invoices issued by M/s Sanghvi Reconditioners to M/s Elektronik Lab which showed that the goods were cleared from Customs and delivered to M/s Elektronik Lab. If it is so, it appears that the applicant has transferred/sold the goods to M/s Elektronik Lab. To this query of the Commission, the applicant submitted that it is only a language mistake and all the bills do not show this and these invoices are issued only for collecting the money."

20. It is evident from the afore-extracted paragraph that the unequivocal stand of the appellant was that the material imported by them was installed/used for repairs of ocean going vessels directly by them with the assistance of M/s Elektronik Lab, an authorised agent in India of the foreign supplier from whom the appellant had imported the goods. It was pleaded that the Exemption Notification did not bar the importer getting assistance from a third party for installation of the equipment on the vessels. The appellant stood its ground even when they were confronted by the Settlement Commission with some invoices, showing that the goods imported were got cleared from Customs and delivered to M/s Elektronik Lab. When the Settlement Commission asked the Revenue to submit further report to establish their case that the goods imported by the appellant were actually sold by them to M/s Elektronik Lab, the Revenue produced sale invoices and delivery challans, showing sale of imported cargo by the appellant to M/s Elektronik Lab, who in turn, sold these goods to the ship owners for which necessary documents, such as, bills were raised. Taking into consideration the documents on record and the sale pattern of the goods and not the value addition, the Settlement Commission came to the conclusion that in the first instance, the goods in question were sold by the appellant to M/s Elektronik Lab and then by the latter to the ship owners under the cover of their own sales invoices and, therefore, the appellant was not entitled to duty exemption under the said Notification. Similarly, M/s Elektronik Lab were also not eligible for duty exemption under the said Notification because they were not registered with the Director General of Shipping, Government of India, as required under the Exemption Notification. As stated above, before the High Court an unsuccessful attempt was made to lay more emphasis on exemption from payment of customs duty on eight consignments in terms of Sections 54 and 69 of the Act and not under the Exemption Notification No.211/83- CUS dated 23rd July, 1983. Thus, there was a shift in the stand of the appellant before the High Court when sale of the imported components by them to a third party stood proved on the basis of overwhelming documentary evidence on record, disentitling them to the benefit of the exemption notification. In the final analysis, the High court came to the conclusion, and in our opinion correctly, that in the light of the material available on record, the order of the Settlement Commission did not suffer from any error warranting its interference.

21. In so far as the second issue with regard to the applicability of Sections 54 and 69 of the Act is concerned, in our view, it was too late in the day for the appellant to raise such a plea. In the first

instance, if the appellant felt that these 8 consignments were intended for transhipment and were cleared from the warehouse for exportation and, therefore, no import duty was payable, there was no occasion for them to withdraw their appeal before the Tribunal and prefer an application before the Settlement Commission, more so when in respect of the remaining consignment, they had accepted and paid the customs duty. We feel that when according to the appellant, no customs duty was payable in respect of the 8 consignments, then on the plain language of Section 127B of the Act, appellant's application before the Settlement Commission was not maintainable. In our view, an application under Section 127B of the Act would be maintainable only if it discloses duty liability, which had not been disclosed to the proper officer. Obviously, a disclosure contemplated by the said Section is in the nature of voluntary disclosure of the concealed additional customs duty. Secondly, indubitably, such a plea was neither raised before the adjudicating authority in response to the show cause notices issued to the appellant nor before the Tribunal as also before the Settlement Commission. Even before the High Court, in the original writ petition, such a plea was not raised and it was only by way of an amendment application, that an additional ground was sought to be raised. Though it is true that there is no bar in the High court and for that matter this Court entertaining an additional ground, involving a pure question of law, but on facts at hand, in the light of the findings of the Settlement Commission, based on documentary evidence that the goods in question imported by the appellant were actually sold by them to M/s Elektronik Lab, before these were used for repair of ocean going ships, it cannot be held that the additional ground did not involve any investigation into facts. Documents on record show that the bills of transhipment as also bills of export were filed by the appellant before the proper officer after the property in the said goods had passed to M/s Elektronik Lab. It is clear that since M/s Elektronik Lab. was not registered with the Director General of Shipping, they were not eligible to avail of duty exemption under the said notification, they entered into an arrangement with the appellant, a registered ship repairing unit, to import the goods for repair of ocean going vessels without payment of import duty under the Exemption Notification. Thus, the sole object of the transactions was to avail of duty exemption under the said notification. Additionally, in order to claim the benefit of the Exemption Notification, the components, consumables etc. had to be used by the importer himself for repair of the vessels and not through someone else, who incidentally was not even named in the shipping bills. Moreover, proper accounts of imports, use and consumption of such goods was to be maintained by the importer, and in the event of failure to render the account for such consumption, the importer was liable to pay the customs duty as may be demanded by the Commissioner of Customs. However, once the imported goods were sold to a third party, the appellant was incapacitated from maintaining and rendering the account to the Commissioner in terms of the notification. All these factors go to show that the additional ground sought to be raised before the High Court was not only an after thought, adjudication thereon did involve investigation into facts and, therefore, the decision of the High court in not entertaining the additional ground did not suffer from any infirmity.

22. We also find substance in the contention of learned counsel for the Revenue that having observed that the appellant had not made a full and true disclosure, their application should have been rejected by the Settlement Commission on that count itself and no relief should have been granted to the appellant. However, in view of the fact that order dated 8th February, 2001 passed by the Settlement Commission allowing the application of the appellant to be proceeded was not

challenged by the Commissioner nor such a plea was urged by the Revenue before the High Court or in their reply to the present appeal, we find it difficult to reject the application at this stage, though, having perused some of the documents available on record, we are convinced that the appellant had not made a full and true disclosure of its affairs before the Settlement Commission. Be that as it may, we are of the opinion that having opted to get their customs duty liability settled by the Settlement Commission, under Chapter XIVA of the Act, the appellant cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not. As observed by Krishna Iyer, J. in CIT Vs. B.N. Bhattacharjee13, the recommendation of Wanchoo Committee was a compromise measure of a statutory settlement machinery, where a big evader could make a disclosure, disgorge what the Commission fixes and thus buy quittance for himself and accelerate recovery of taxes in arrears by the State, although less than what may be fixed after long protracted litigation and recovery proceedings. It is manifest from the procedure laid down in Section 127C of the Act that interim order under sub-Section (1) of Section 127C as also the final order under sub-Section (7) of the said Section are to be made by the Settlement Commission after examination of the reports of the Commissioner of Customs or its Commissioner (Investigation). Obviously, these reports are submitted on the disclosures made in the application under Section 127B of the Act and, therefore, the applicant cannot be permitted to resile from his pleadings in the application at any stage of proceedings before the Settlement Commission or set up a new case before the higher Fora.

23. Having considered the rival submissions with reference to the pleadings, the provisions of Section 127B of the Act and exemption (1979) 4 SCC 121 notification No.211/83 dated 23rd July, 1983, we are of the opinion that the order of the Settlement Commission did not suffer from any error, legal or factual, and, therefore, the High Court was fully justified in dismissing the writ petition.

24. In view of the foregoing discussion, we see no merit in this appeal. The appeal is dismissed accordingly with costs, quantified at Rs.50,000/-.

.....J. (D.K. JAIN) .....J. (T.S. THAKUR) NEW DELHI;

FEBRUARY 5, 2010