

Chapter 12: Appeals to the Settlement Commission

12.0 Appeals to the Settlement Commission under Section 127B Customs Act, 1962:

The Settlement Commission called as Customs, Central Excise and Service Tax Settlement Commission w.e.f. 6-8-2014:

1. The additional amount accepted by applicant as payable shall be more than ₹3 lakhs.
2. Application can be made only when a case is pending before central excise/customs officers.
w.e.f. 14.05.2015, All proceedings referred back to the adjudicating authority for a fresh adjudication and not just the proceedings referred back in any appeal or revision ineligible for settlement (amendment has been made in the Customs Act, 1962 in section 127A(b).
It means when any proceeding is referred back by any Court, Appellate Tribunal or any other authority, to the adjudicating authority for a **fresh adjudication or decision**, then such proceeding shall not be deemed to be a proceeding pending.
3. Cases pending in court or tribunal cannot be taken up.
4. Cases involving classification or valuation cannot be taken up by settlement commission
5. If goods or books of account or other documents have been seized, application can be made after expiry of 180 days from the date of seizure. **Application for settlement can be made even if excisable goods or documents are seized, without waiting for 180 days (w.e.f. 6-8-2014).**
6. Application to settlement commission should be filed in Form SC(C)-1 in case of Customs disputes.
7. The Settlement Commission can accept application for settlement, even if excise returns were not filed, if there were sufficient reasons for not filing the return.

12.1 Appeals to Settlement Commission step by step approach [Section 127B Customs Act, 1962]

Step 1: Applicant should file an application by disclosing true and full information in Form SC(E)-1 or Form SC(C)

Step 2: Application should be accompanied by a fee of ₹1,000 (by way of GAR-7 challan only)

Step 3: Settlement Commission will issue NOTICE to the applicant within 7 days from the date of receipt of application.

Step 4: Thereafter, based on the applicant's reply, pass orders of admission or rejection within 14 days of notice. Hence, prescribed period for issue of orders is 7 days + 14 days = 21 days.

Step 5: Copy of orders under section 32F will be sent to applicant and jurisdictional Commissioner Customs u/s127C of the Customs Act, 1962).

Step 6: Within 7 days of admission orders, the Settlement Commission shall call for the report of the jurisdictional Commissioner.

Step 7: The Commissioner should send report within 30 days. Settlement Commission will proceed further, even in the absence of any report from the jurisdictional Commissioner.

Step 8: The Settlement Commission can order Commissioner (Investigation) to make further enquiries and submit his report within 90 days. Settlement Commission will proceed further, even in the absence of any report from the Commissioner (Investigation).

Step 9: The Settlement Commission after hearing must pass order within 9 months (further 3 months allowed) from last day of month in which application was made

Step 10: If final order not passed within 9 months or 12 months, as the case may be, the case will go back to adjudicating authority.

12.2 Powers of Settlement Commission to grant immunity from prosecution and penalty:

The Settlement Commission can grant immunity from prosecution for any offence under the Act and either wholly or in part from the imposition of penalty if it is satisfied that the applicant has made full and true disclosure and co-operated with the Commission.

If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity can be withdrawn.

If prosecution has already been launched before submission of application for settlement, the immunity against such prosecution cannot be granted.

Case Law:

CCus. v Ashok Kumar Jain 2013 (292) ELT 32 (Del)

Department contended: The Settlement Commission lacks the jurisdiction to entertain the baggage cases.

Decision: The High Court opined that the provisions that conferred jurisdiction on the Settlement Commission (Section 127B) cannot be construed as narrowly as it sought to be urged by the Revenue. A plain reading of the provisions of sections 127A and 127B reveals that there is no bar/express or implied on the Settlement Commission - in respect of entertaining applications by the passengers which brought in goods through their baggage.

Therefore, Settlement Commission has jurisdiction over baggage cases.

Case Law:

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

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

Decision: 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.

Case Law:

Additional Commissioner of Customs v Shri Ram Niwas Verma [W.P. (C) No. 7363/2014 & CM 17221/ 2014]:

Decision: Hon'ble Delhi High court held that Settlement Commission has no jurisdiction to decide cases in relation to smuggling of the goods specified under section 123 of the Customs Act, 1962.

In view of the said order of the Delhi High Court, 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 [*F. No. 275/46/2015-CX.8A, dated 01.10.2015*].