

Detailed Study

Report on

Settlement Commission

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Settlement Commission

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Introduction

Chapter XIV A (consisting of 14 sections from Section 127A to 127N) of the Customs Act, 1962 deals with the provisions of Settlement of Cases. The corresponding provisions under Central Excise Act, 1944 are in **Chapter V and consist of 18 sections -from Section 31 to section 32 P)**. *Vide* Finance Act, 2012, the above said provisions of Central Excise Act, 1944 have been made applicable to Service Tax cases by extending the above said provisions of Central Excise Act, 1944 under **Section 83 of the Finance Act, 1994**.

To implement the provisions relating to settlement of cases, Settlement Commission has been constituted under **Section 32** of the Central Excise Act, 1944. It was established in year 1999 *vide* **Notification No.40/99-CE (NT) & 41/99-CE (NT) dated 9.6.99**. The Commission has its Principal Bench at New Delhi and three Additional Benches at Chennai, Kolkata and Mumbai.

The Settlement Commission consists of **one Chairman and two Members in the Principal Bench in New Delhi** and one Vice Chairman and two Members in each of the three Additional Benches.

Objectives

The basic objectives of setting up of the Settlement Commission are:-

- (i) to provide an alternate channel for dispute resolution for the assesses;
- (ii) to expedite payments of Customs, Central Excise duties and service tax involved in disputes by avoiding costly and time consuming litigation process;
- (iii) to provide an opportunity to tax payers to come clean who may have evaded payments of duty;
- (iv) to serve as a forum for the assesses to apply for settlement of their cases, on the basis of true and complete disclosure of their duty liability by them;
- (v) to encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.

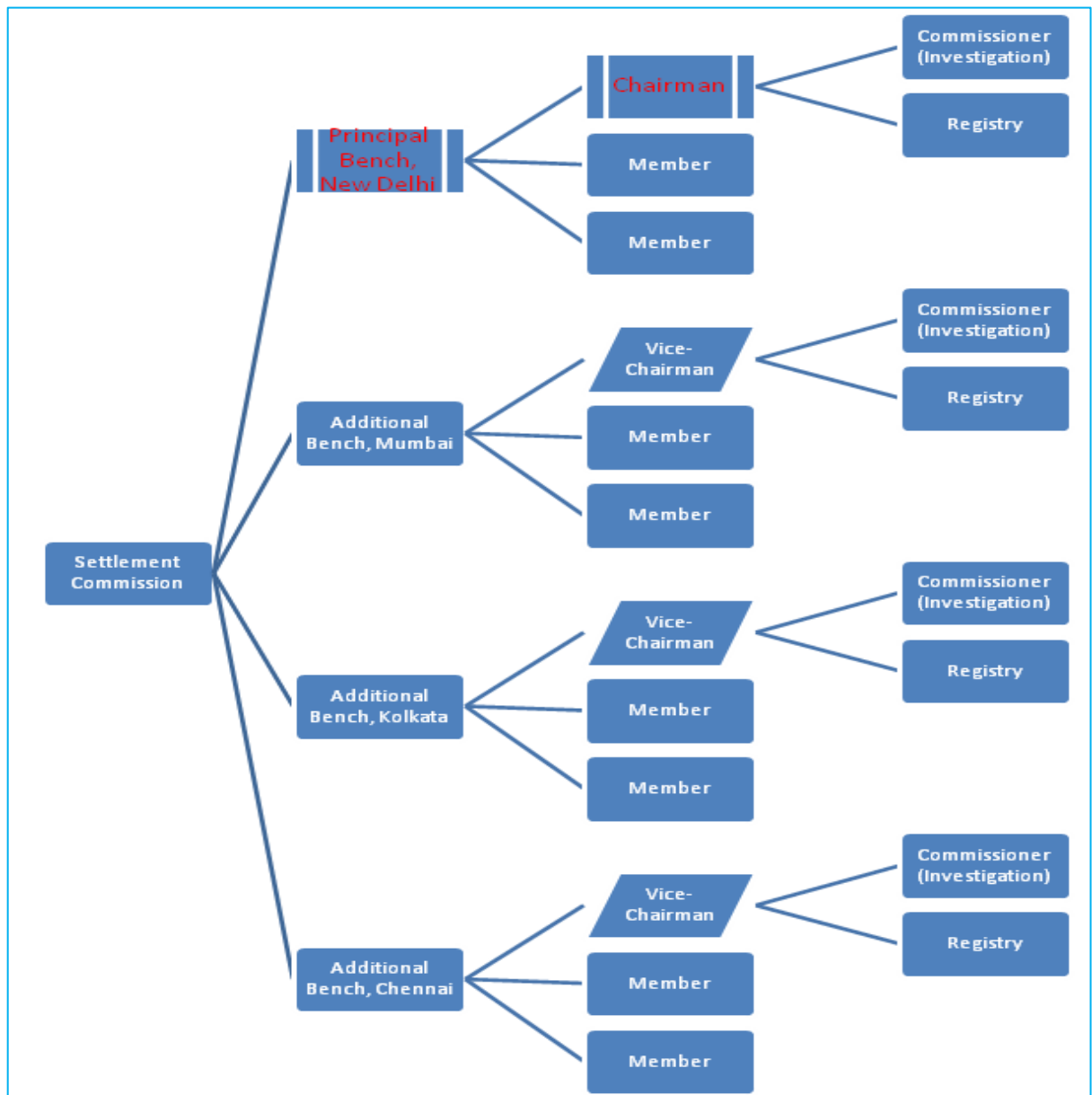
Settlement Commission

The proceedings before the Settlement Commission are declared “judicial proceedings” within the meaning of Sections 193 & 228 of the IPC and for the purposes of Section 196 of the Indian Penal Code.

Organisational Structure

The various Benches of Settlement Commission and their jurisdiction are as under:-

Figure 1



Jurisdiction of various Benches

The settlement applications made by the applicants falling within the jurisdiction of the Commissioner with headquarter located in the States specified in column (3), are processed and disposed of by the Benches specified in column 2 of the table given below:

Sl. No.	Name of the Bench	States
1.	Principal Bench at Delhi	All States and Union Territories other than those mentioned against Sl. No. 2, 3 & 4 below
2.	Additional Bench at Mumbai	Goa, Gujarat, Maharashtra, and the Union Territories of Daman, Diu and Dadar&Nager Haveli
3.	Additional Bench at Kolkata	Assam, Arunachal Pradesh, Bihar, Jharkhand, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, West Bengal and the Union Territory of Andaman & Nicobar Islands
4.	Additional Bench at Chennai	Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshadweep

Explanation: Ordinary jurisdiction of a Bench is determined not by the place of business or residence of the applicant but by the location of the headquarters of the Commissioner of Central Excise, the Commissioner of Service Tax or the Commissioner of Customs having jurisdiction over such applicant.

Legal Provisions at a Glance

Heading of section	Relevant Section		
	Custom Act, 1962	Central Excise Act, 1944	Finance Act, 1994 *
Definitions	127A	31	*means that Central Excise sections 31, 32, 32A to 32P have been made applicable to Service tax <i>vide</i> section 83 of Finance Act, 1994.
Customs and Central Excise Settlement Commission	-	32	
Jurisdiction and powers of Settlement Commission	-	32 A	
Vice-Chairman to Act as Chairman or to discharge his functions in certain circumstances	-	32B	
Power of Chairman to transfer cases from one Bench to another	-	32C	
Decision to be by majority	-	32D	
Application for settlement of cases	127B	32E	
Procedure on receipt of application under Section 127B	127C	32F	
Power of Settlement Commission to order provisional attachment to protect revenue	127D	32G	
Power of SC to reopen completed proceedings	127E	32H	
Power and procedure of SC	127F	32I	
Inspection etc. of reports	127G	32J	
Power of SC to grant immunity from prosecution and penalty	127 H	32K	

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Power of SC to send a case back to the proper officer	127 I	32L	
Order of settlement to be conclusive	127J	32M	
Recovery of sums due under order of settlement	127 K	32N	
Bar on subsequent application for settlement in certain cases	127L	32O	
Proceeding before SC to be judicial proceedings	127M	32P	
Application of certain provisions of Central Excise Act	127N	-	
Rules	Customs (Settlement of Cases) Rules, 2007 [notified <i>vide</i> notification No. 54/2007-Custom (NT), dated 28/5/2007]	Central Excise (Settlement of Cases) Rules, 2007 [notified <i>vide</i> notification No. 28/2007-CE (N.T.), dated 28/5/2007]	Service Tax (Settlement of Cases) Rules, 2012 [notified <i>vide</i> notification No. /2007-CE (N.T.), dated 28/5/2007]
Settlement Commission Procedure Rules	Customs and Central Excise Settlement Commission Procedure, 2007 [Notified <i>vide</i> notification No. 1/2007-S.C. (PB), dated 31/5/2007 effective from 1.6.2007]		
Forms	Form SC(C)-1	Form SC(E)-1	Form SC(ST)-1

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Important Terms defined	<p>“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 :</p> <p><i>Provided</i> that 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.</p>
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Who can apply:-

Any importer, exporter or any other person, who has been issued Show Cause notice under Customs Act, 1962, can make an application for settlement in respect of a case for adjudication to the commission. His/her application should contain full and true disclosure of :

- i. Duty Liability which has not be disclosed to proper officer
- ii. Manner of occurrence of such duty
- iii. Addition duty which he/she agrees to pay
- iv. Other particulars such as misclassification, exemption notification because of which, he admits to have made short levy.

Cases where application can be filed before Settlement Commission

In any case, where any proceeding under Customs Act, 1962/ Central Excise Act, 1944 / Finance Act, 1994, for the levy, assessment and collection of Customs duty/ Central Excise duty/service tax is pending before an adjudicating authority on the date on which an application, applicant can be filed before Settlement Commission.

However, when any proceeding is referred back in any appeal/ revision, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication/ decision, then application of settlement of such proceeding cannot be filed before Settlement Commission.

In following cases, **application cannot be filed** before Settlement Commission:-

Customs:- The following categories of cases cannot be taken up for settlement before the Settlement Commission:-

- (i) Where the applicant has not filed any Customs documents or where no show cause notice has been issued;
- ii) The additional amount of duty accepted by the applicant in his application is less than Rs. 3 lakh;
- iii) The case of the applicant is pending before the Appellate Tribunal (CESTAT) or any court;
- (iv) The goods relating to the dispute is good as specified under Section 123 of the Customs Act;
- (v) The goods in relation to the dispute are covered under the Narcotic Drugs and Psychotropic Substances Act, 1985;
- (vi) The case involves interpretation of the classification of any goods under the Customs Tariff Act, 1975;
- (vii) Where any dutiable goods, books of accounts, other documents or any sale proceeds of the goods have been seized and period of one

hundred and eighty days from the date of seizure is not yet complete.

Central Excise

The following categories of cases cannot be taken up for settlement before the Settlement Commission:-

- (i) If the applicant has not filed any monthly return showing production, clearance and Central Excise duty paid in the prescribed manner. It does not necessarily imply that such monthly return should be in relation to all excisable goods produced or cleared by such applicant.
- (ii) Where the applicant has not received any Show Cause Notice.
- (iii) Where the case of the applicant is pending with Tribunal or any Court;
- (iv) Where the dispute relates to interpretation of classification of excisable goods under the Central Excise Tariff.
- (v) Where any excisable goods, books of accounts or other documents have been seized by the Central Excise Officers, the applicant cannot file any application till the expiry of one hundred and eighty days from the date of seizure.

Service tax

The following categories of cases cannot be taken up for settlement before the Settlement Commission:-

- i) If the applicant has not filed any half yearly return showing services rendered and Service Tax paid in the prescribed manner. It does not necessarily imply that such return should be in relation to all services provided by such applicant.
- ii) Where the applicant has not received any Show Cause Notice.
- iii) Where the case of the applicant is pending with Tribunal or any Court;
- iv) Where the dispute relates to interpretation of classification of service under Finance Act, 1994.

- v) Where any books of accounts or other documents have been seized by the Central Excise Officers, the applicant cannot file any application till the expiry of one hundred and eighty days from the date of seizure.

Withdrawal of Application:

An application made is not allowed to be withdrawn by the applicant.

Procedure on Receipt of an Application:

Procedure to be followed on receipt of application has been prescribed in Section 127 C of Customs Act, 1962/ 32F of the Central Excise Act, 1944 and is as under:-

- The application and the all the relevant document should be properly signed by the applicant.
- Application should be filed in prescribed format in quintuplicate along with fees of Rs. 1000.
- The additional amount of service tax accepted along with interest should be duly deposited and the particulars should be disclosed in the Form.
- On receipt of an application, within 7 days, Settlement Commission issue notice to the applicant to explain the reason as to why the application made by him should not be allowed to be proceeded with,
- On the basis of explanation provided by the applicant, Settlement Commission decides the allowability of the application and the copy of order allowing or rejecting the application should be sent to the applicant.
- The Settlement Commission is required to call for a report from the CCE within seven days from the date of order (of admitting the application), which is required to be furnished by the CCE with a period of 30 days of the receipt of communication from the settlement commission.
- If not satisfied with the report of CCE, within 15 days of receipt of report, the Settlement Commission directs the Commissioner (Investigation) for further enquiry, report of which is required to be furnished within 90 days of the receipt of communication from the Settlement Commission.

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- The Settlement Commission is required to pass such order as it think fit after examining the reports of the CCE, Commissioner (Investigation) and any further evidences, after giving opportunity of being heard to the applicant.
- The Settlement Commission is required to pass an order providing the terms of settlement, manner in which any sum dues shall be paid and all other matters to make the settlement effective.
- The amount of duty liability shall not be less than the duty liability admitted by the applicant.
- If the order of the Settlement Commission is not be complied within 30 days of receipt of a copy of the order, the amount is recovered along with interest due thereon.
- If it has been found that the settlement have been obtained by fraud and misrepresentation, the settlement becomes void and proceedings for matters covered are be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission.
- The Central Excise Officer having jurisdiction may complete such proceedings at any time before the expiry or two years from the date of the receipt of communication that the settlement became void.

Disclosure and Dismissal:

- The Settlement Commission has the power to reject or dismiss the application for settlement if it is of the opinion that complete disclosure has not been made by the applicant.
- Power to decide and dismiss an application can be made by commission at any stage of the proceedings before it.
- There may be cases where commission is sure that full disclosure is not made and it can reject the application. However, in some cases where the commission is not sure, it is not legally permissible to reject the applicant at initial stage itself, but commission is justified in rejecting the application at a later stage if it finds that complete disclosure was not made at the submission of the application. Power to dismiss is not normally interfered with unless the rejection is contrary to law.

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- The opinion of the Commission has to be on the basis of the material contained in the report and other circumstantial evidence. However the applicant is fully empowered to appeal against the order of dismissal of application by the Settlement Commission in the higher courts/judiciary.

Powers of Settlement Commission:

The powers of settlement Commission are as follows :-

A. Power to order provisional attachment to protect revenue [Section 127D]:

- The Settlement Commission may order for provisional attachment of any property belonging to the applicant.
- 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 cease to have effect from the date on which the sums due to the Central Government are paid by the applicant and evidence to that effect is submitted to the Settlement Commission.

B. Power to reopen completed proceedings [Section 127E]:

- If the Settlement Commission is of the opinion that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 127B was made, it may, with the concurrence of the applicant, reopen such proceeding.
- After reopening the proceeding, It may pass appropriate order as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also.
- However, that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application under sub-section (1) of section 127B.

C. Power to grant immunity from prosecution and penalty [Section 127H]:

The Settlement Commission may grant 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. However, 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.

D. Withdrawal of Immunity Granted to Applicant

Immunity granted to a person is withdrawn,-

- (i) if such person fails to pay any sum specified in the order of the settlement passed within the time specified in such order or fails to comply with any other condition subject to which the immunity was granted.
- (ii) if Settlement Commission 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.

E. Power to send a case back to the proper officer [Section 127-I]:

The Settlement Commission may send the case back to the proper officer if it is of opinion that any person who made an application for settlement has not cooperated with the Settlement Commission in the proceedings before it.

In such case, the proper officer shall be entitled to use all the materials and other information produced by the applicant 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.

F. Other powers and procedure of Settlement Commission [Section 127F):-

The Settlement Commission also have all the powers which are vested in an officer of the customs under the Customs Act, 1962 or the rules made there under.

Where an application has been allowed to be proceeded, the Settlement Commission shall, until an order is passed, 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 has 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 will hold their sittings.

G. Recovery of sums due under order of settlement (Section 127K) :

Any sum specified in an order of settlement passed, 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.

H. Bar on Subsequent Application for Settlement in Certain Cases: -

Where,

- (i) An order of settlement passed provides for the imposition of a penalty on the applicant for settlement, on the ground of concealment of particulars of his duty liability; or
- (ii) after the passing of an order of settlement in relation to a case, such person is convicted of any offence under this Act in relation to that case; or
- (iii) The case of such person is sent back to the proper officer by the Settlement Commission,

then such person is not entitled to apply for settlement under section 127B in relation to any other matter.

Changes Relating to Settlement Commission announced in Budget, 2014* [* to be effective from the date of enactment of Finance Act, 2014]

In the Finance Bill, 2014, the following changes have been proposed with regard to Scheme of Settlement Commission:-

(a) Name of Settlement Commission is proposed to be changed from "*Customs and Central Excise Settlement Commission*" to the "**Customs, Central Excise and Service Tax Settlement Commission**".

(b) Now, an application for settlement of case is proposed to be allowed to be filed in following cases:-

(i) in Customs, in cases where a Bill of Export, Baggage Declaration, Label or Declaration accompanying the goods effected through Post or Courier have been filed.

(ii) in Central Excise, in cases where an applicant, who had not filed returns showing production, clearance and central excise duty paid in the prescribed manner, it is proposed to allow filing of applications of settlement after recording of reasons for the same.

(iii) Further, the provision which prevented an assessee /importer/exporter from opting for settlement after seizure of his excisable goods/ import or export goods, books of account etc. unless a period of 180 days was over from the date of seizure is proposed to be omitted.

For detailed study in the matter, website of Settlement Commission: www.settlementcommission-cest.gov.in may kindly be referred.
