CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89013 of 2014

(Arising out of Order-in-Original No. 03/RN/COMMNR/M-II/2014-15 dated 21.07.2014 passed by the Commissioner of Central Excise, Mumbai-II)

Commissioner of Central Excise, Mumbai-II **.... Appellant**
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug
Parel, Mumbai – 400 012.

Versus

Godrej Industries Limited **.... Respondent**
Eastern Express Highway
Pirojshah Nagar, Vikhroli
Mumbai – 400 079.

Appearance:

Shri P.K. Acharya, Authorized Representative for the Appellant
Shri Rajesh Ostwal, a/w Ms Sikha Suman, Advocates for the Respondent

AND

Excise Appeal No. 89471 of 2014

(Arising out of Order-in-Original No. 03/RN/COMMNR/M-II/2014-15 dated 21.07.2014 passed by the Commissioner of Central Excise, Mumbai-II)

Godrej Industries Limited **.... Appellants**
Eastern Express Highway
Pirojshah Nagar, Vikhroli
Mumbai – 400 079.

Versus

Commissioner of Central Excise, Mumbai-II **.... Respondent**
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug
Parel, Mumbai – 400 012.

Appearance:

Shri Rajesh Ostwal, along with Ms. Sikha Suman, Advocates for the Appellants
Shri P.K. Acharya, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86147-86148/2025

Date of Hearing: 26.03.2025
Date of Decision: 25.07.2025

Per: M.M. PARTHIBAN

The appeal being No. E/89471 of 2014 has been filed by M/s Godrej Industries Limited, Mumbai (herein after, referred together as "the appellants", for short) assailing the Order-in-Original No. 03/RN/ COMMNR/M-II/2014-15 dated 21.07.2014 (herein after, referred to as "the impugned order") passed by the Commissioner of Central Excise, Mumbai-II. Further, Revenue has also filed an appeal being No. E/89013 of 2014 assailing the impugned order, to the extent that it had dropped the demand in respect of differential duty payable on account of countervailing duty (CVD), Cess and Special Additional Duties of Customs (SAD) which have been excluded from the computation of value of goods determined in terms of Section 4(1) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2. The appellants herein are engaged *inter alia*, in the manufacture of final products viz., 'Erucic acids, Stearic acid, Oleic acid' etc., falling under Chapter 38 of the First Schedule to the Central Excise Tariff Act, 1985 at their factory premises. The appellants are the registered taxpayers holding Central Excise Registration No. AAACG2953RXM002 for manufacture of aforesaid finished products, payment of central excise duty thereon and for compliance with the central excise statute.

2.3 The appellants were supplying their finished goods/final products to various buyers including M/s Fine Organics Industries Private Limited, M/s Oleofine Organics (India) Private Limited, who in turn were manufacturing organic chemicals and miscellaneous chemical products, and exporting the same on payment of Excise duty or under bond movement without payment of duty. On account of the fact that the buyers were procuring the goods from the appellants domestically, instead of importing such goods against valid advance licences issued by the DGFT to them, such buyers were provided with invalidation letters by DGFT which were used for procuring the inputs from the appellants. The appellants in turn had used such invalidation letters for some of the imports of raw material duty free which are used in manufacture of their final products. Additionally, in case

of supplies made by appellants against Advance Release Orders (AROs), they claimed drawback of Customs duty component in terms of Notification No.92/2012-Customs dated 04.10.2012. The appellants by use of such raw materials/duty free inputs used in the manufacture of final products have supplied such goods to buyers on payment of applicable Excise duty.

2.4 Investigations were conducted by the Department based on a reference received from the jurisdictional Commissionerate in which the buyers of the appellants were located. The Department had viewed that import of intermediate inputs/raw materials by the appellants and used in the manufacture of finished goods supplied to such buyers, without payment of Customs duty against such inputs by using the letters of invalidation provided by those buyers as improper since the said benefit did not reflect the true transaction value of finished goods. The Department had interpreted that this amounted to additional consideration flowing to the appellants directly or indirectly from its buyers, and the same should have formed part of the price of the goods supplied by them to their buyers. Therefore show cause proceedings were initiated for recovery of short payment of Central Excise duty attributable to such duty-free import benefits received from the buyers.

2.5 The department had issued Show Cause Notice (SCN) dated 06.02.2014 in this regard, demanding short payment of Excise duty for an amount of Rs.93,35,526/- along with interest by invoking extended period under Section 11A(4) of the Central Excise Act, 1944 and seeking for imposition of penalty on the appellants under Section 11AC ibid. The said SCN and was adjudicated by the Commissioner of Central Excise, Mumbai – II vide Order-in-Original dated 21.07.2014, wherein the adjudicating authority had confirmed the duty demands for an amount of Rs.46,86,558/- after giving allowance to reduction of value on account of CVD, Cess, SAD benefits available as credit to the appellants. Besides the above, he had also imposed penalty for an amount equal to the duty demanded on the appellants under Section 11AC ibid. Feeling aggrieved with the impugned order, both the appellants-assessee and the revenue have filed these appeals before the Tribunal.

3.1 Learned Advocate appearing for the appellants-assessee had stated that the Revenue had initiated proceedings against the appellants on the ground that they have undervalued their final products to the extent of

'additional consideration' flowing from the buyers who had provided invalidation letters against Advance License held by them. Department had initiated action against the buyers only on the ground that goods supplied by the appellants is fully exempted and therefore the appellants is not required to pay duty. He claimed that it is evident from the findings of the learned Commissioner at paragraph 20 of the impugned order that the duty paid by the supplier i.e., appellants-assessee is wrong and inconsistent with the EXIM policy. However, the Tribunal in its Final order dated 10.04.2013 in the case M/s Oleofine Organics (India) Private Limited, who is one of the buyer in the present case, have held that in case the benefit of notification under Notification No.44/2001-C.E. (N.T.) dated 26.06.2001, there is no requirement under the extant rules to necessarily clear the goods duty free. Based on the aforesaid, he argued that the Tribunal did not overturn the Commissioner's finding that the disputed supply is exempt from duty. Therefore, he stated that the Revenue's stand that the transaction i.e., deemed export is exempt has not been disturbed by the Tribunal's decision, and the Commissioner's view in the impugned order is not correct and contrary to the above. Therefore, he submitted that the demand of short payment of duty is not sustainable.

3.2 Learned Advocate also stated that merely because the appellants-assessee has paid Excise duty for finished goods which is exempt cannot be a ground to demand further duty on exempted goods. He stated that the demand of duty therefore is liable to be set-aside.

3.3 Learned Advocate further submitted that the demand of duty raised beyond the normal period of limitation of one year is not sustainable, since there is no fraud, collusion or any wilful misstatement or suppression of facts, and there is no contravention of any of the provisions of the Central Excise Act, 1944 or of the rules made thereunder attempted by the appellants with the intent to evade payment of duty. The disputed period of supply is from January,2009 to December, 2011 and the SCN has been issued on 06.02.2014. In this regard, he cited that the Department had initiated show cause proceedings on various buyers of the appellants on 02.06.2011, 09.01.2012 and 30.10.2012, alleging that the buyers and the appellants colluded to avail ineligible CENVAT credit. Furthermore, jurisdictional Superintendent of Central Excise of the buyers have issued the certificate in case of each advance license invalidated by such buyers in favour of the appellants stating that the inputs can be procured from the

appellants by utilising such invalidation letters. In addition to this, the appellants had also referred such invalidation letters on each of the Excise invoices issued in respect of such supplies made to those buyers. Therefore, he stated that the Department was fully aware of the facts from both the side of the appellants and from that of the buyers. Therefore, it is claimed by the Learned Advocate that there are no grounds for invocation of extended period for demand of duty on the part of the appellants.

3.4 Learned Advocate also submitted that the decision of the Hon'ble Supreme Court in the case of *Commissioner of C. Ex. Vs. IFGL Refractories Limited* - 2005 (186) E.L.T. 529 (S.C.) is not applicable in the present case, since unlike the referred case in which IFGL Refractories had agreed to sell the goods at a price lower than the normally quoted price, by taking into consideration the benefit derived from advance intermediate license obtained by IFGL consequent to the invalidation of advance license provided by the customer, the appellants-assessee do not have different two sale prices depending upon whether the customer has an advance license are not. Further, he claimed that there were no two set of sale prices for a single customer, and therefore he stated that the ratio of the aforesaid judgement of the Apex Court is not applicable in their Case.

4. Learned Authorised Representative (AR) appearing for the department, on the other hand, reiterated the findings made in the impugned order and submitted that the demands are sustainable in view of the facts mentioned therein. Further, he submitted that in an identical set of facts, the Hon'ble Supreme Court in the Case of *Commissioner of Central Excise, Nagpur-I Vs. Indorama Synthetics (I) Ltd.* – 2015 (323) E.L.T. 20 (S.C) by relying on the judgement in the case of IFGL Refractories (supra) have held that transfer of the benefits of advance license through invalidation letters in favour of the seller, enabling the seller of the goods to effect duty free import of raw materials and bringing down the cost of production is a consideration, the monetary value of which has to be considered under the provision of Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In view of the above, learned AR submitted that the appeal filed by the appellants assessee is liable to be dismissed. Further, he claimed that the appeal filed by the Department against dropping of demand on incorrect computation of value is on strong grounds, as submitted in their appeal papers and therefore he prayed that the same shall be entertained.

5. Heard both sides and perused the records of the case. We have perused the additional written submissions in the form of paper books submitted by both sides.

6. The disputed issues involved in this case has been categorised in the impugned order as follows:

> (i) whether the value paid by the customers to the appellants-assessee in the form of benefits of duty-free imports and drawback on deemed exports of the appellants, as a result of advance authorisation/advance license, transferred in favour of the appellants by issue of 'letter of invalidation' and 'Advance Release Order (ARO)', can be treated as 'additional consideration' for the sales made by the appellants to their customers, who had provided them such benefits; or otherwise?
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> (ii) whether the computation of additional consideration in the impugned order, by excluding the benefits of input duty credit on countervailing duty (CVD), Cess and Special Additional Duties of Customs (SAD) paid by them in arriving at the differential duty payable for determination of value of goods in terms of Section 4(1) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, is correct or not?

and whether the adjudged demands confirmed in the impugned order is legally sustainable. The disputed period in the present case is From January, 2009 to January, 2013.

7. On perusal of the records of the case, it transpires that the appellants are manufacturing the finished goods/final products upon payment of Central Excise duty. In respect of certain buyers of the finished goods, they had received 'Letter of Invalidation (LoI)/Advance Release Order (ARO)' which they have used for import of duty-free raw materials and have also received duty drawback benefits. Thus, in respect of sales of finished goods made to those buyers, from whom such LoI/ARO were received, it is necessary to establish that there were certain benefits accrued to the appellants, directly or indirectly, which could be considered as additional consideration. The learned advocate claimed that the appellants did not charge two set of sale prices for a single customer, meaning that the appellants did not charge different prices in respect of the buyers who

provided LoI/ARO as compared to those who did not provide such benefits. However, the comparative chart provided in paragraph 8 of the impugned order show that the unit price of goods supplied by the appellants, in respect of the buyers who did not supply LoI/ARO were always higher, as opposed to those buyers who supplied LoI/ARO to the appellants. In other words, the Department had provided specific cases of sale transactions in July 2010, October 2010, January 2011, April 2011, August 2011, Nov. 2011 and February 2012 to show that Per Metric Tonne sale price of finished goods to the buyers who did not supply LoI/ARO were higher than the comparable prices charged for those buyers who had supplied LoI/ARO. Further, in the statement given by Shri Shekhar Rajaram Surve, Associate Vice President, Sales and Marketing wing of the appellants-assessee had admitted that the local DTA sale prices were higher than the transaction value of suppliers who made under deemed export. Therefore, we do not find any evidence in the claim made by the learned advocate in support of their stand that there is no additional consideration involved in such transactions and that the judgement of the Hon'ble Supreme Court in the case of IFGL Refractories (supra) is not applicable in their case.

8.1 On the issue of invoking extended period of time/limitation, learned Commissioner in the impugned order at paragraph 31 has given the finding as follows:

> *"31…. I find that duty-free import of the intermediate inputs were imported and cleared, duty-free, from the Dahej port in Gujarat and subsequently in-bonded/received and consumed at its Valia, Gujarat plant and not at its Vikhroli plant from where the deemed export supplies were made. Thus the jurisdictional Central Excise Office from where the deemed export supplies were made were kept totally in the dark of the said transaction. The aforesaid metrics of arrangement of the said deemed export supplies from its Vikhroli plant and availing of the benefits accruing there from at the Valia, Gujarat plant has been resorted to by M/a Godrej Industries Ltd. through wilful suppression of actual facts and circumstances with an ulterior motive to avail of benefits of the additional consideration consequently received by them against their deemed export supplies so manufacture and cleared by them.*
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> *xxx xxx xxx xxx*
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> *33. … Thus, I find that the onus to determine the tax liability and discharge the same was not done by the noticee and further full and complete information about duty self assessed was not provided by noticee. This amounts to suppression of facts."*

The facts about modus adopted by the appellants-assessee, following different practices in different jurisdictions, goes on to prove that they have not come with clean hands before the Department, to claim that there was no element of suppression of facts, willful mis-statement etc., on their side. Therefore, we are unable to agree with the appellants-assessee in view of the specific findings given by the learned Commissioner as above, in the impugned order.

8.2 In respect of the determination of transaction value of goods in terms of Section 4(1) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the learned Commissioner in the impugned order had dealt in detail about the computation of additional consideration. In the impugned order, he had given a specific finding that even CVD, Cess thereon & SAD payable/paid was available as benefit (credit) to the appellants-assessee. The statutory provisions governing the CENVAT credit of duty paid on inputs, allows the duty paid on the goods to be taken as CENVAT credit, provided such inputs are received in the factory of manufacture of final product and are used so in or in relation to manufacture of final products. The facts of the case indicate that the appellants are eligible for taking credit paid on the inputs thereon, and therefore such computation by the learned adjudicating authority cannot be found fault with. Accordingly, we are of the considered view that the grounds on which the appeal was filed by the Revenue does not stand the scrutiny of law.

9.1 We further find that the above issue was examined by the Co-ordinate Bench of this Tribunal in the case of *IFGL Refractories* (supra), wherein it was held that the statutory benefits allowed by the statutory authorities cannot be considered as additional consideration flowing to manufacture from the buyer; the drawback was received from the government and not from the buyer's end, and therefore, such drawback could not be treated as additional consideration for the purpose of arriving at 'transaction value' as per the definition thereof provided under Section 4 of the Central Excise Act, 1944. Therefore, the Tribunal had decided the issue in favour of the appellants therein.

9.2 However, the Department being aggrieved against the aforesaid order of the Tribunal had filed Civil Appeal No. 1834 of 2006 before the

Hon'ble Supreme Court. In the said case, after considering the judgement delivered in the case of *IFGL Refractories* (supra), the Hon'ble Supreme Court have held that the source from where the benefit of invalidation of the advance license held by the buyers which has ultimately reached the appellants– assessee, is the advance licences which were held by the buyers and the act of invalidation made it possible to flow down the benefit so as to reach the stream of the appellants–assessee. The value of such benefits, therefore has to be added to the price for determination of transaction value. The relevant paragraphs of the said judgement dated 21.08.2015 are extracted and given below:

> *"3. Pertinently, the decision of the Tribunal in IFGL's case stands overruled by this Court in Commissioner of Central Excise, Bhubaneswar-II v. IFGL Refractories Ltd. - (2005) 6 SCC 713 = 2005 (186) E.L.T. 529 (S.C.). In the said case, this Court has held such a consideration, namely, duty drawback, to be the 'additional consideration' inasmuch as the benefit of duty drawback accruing to the seller was the result of surrender of advance licence by the buyers. The discussion and the rationale which goes into forming the aforesaid opinion is contained in para 9 of the judgment, which reads as under :*
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> > *"9. Ultimately it was agreed that M/s. Visakhapatnam will surrender its advance licences and in lieu thereof the respondents will get the advance intermediate licences. Thus, without the advance licences of M/s. Visakhapatnam Steel Plant, being made available to the respondents, the prices would have been as were quoted earlier. It is only because of the advance licences being surrendered by M/s. Visakhapatnam Steel Plant and in lieu thereof advance intermediate licences being made available to the respondents that the respondents could offer lower prices. The surrendering of licences by M/s. Visakhapatnam Steel Plant and as a result thereof the respondents getting the licences had nothing to do with any Import and Export Policy. It was directly a matter of contract between the two parties. This resulted in additional consideration by way of "advance intermediate licence" flowing from M/s. Visakhapatnam Steel Plant to the respondents. The value received therefrom is includible in the price. The Tribunal was wrong in stating that such an arrangement can never be placed upon the platform of additional consideration. In so stating the Tribunal has ignored and/or lost sight of the fact that it was in pursuance of the contract of sale between the respondents and M/s. Visakhapatnam Steel Plant that the licences were made available to the respondents. The Export and Import Policy had nothing to do with the arrangements/contract under which the licences flowed from the buyer to the seller. At the cost of repetition it must be mentioned that had the respondents had advance intermediate licence on their own i.e. without M/s. Visakhapatnam Steel Plant having to surrender its licences for the purposes of the contract, then the reasoning of the Tribunal may have been correct. But here, in pursuance of the contract of sale, there is directly a flow of additional consideration from the buyer to the seller. The value thereof has to be added to the price. We are thus unable to accept the broad submission that where parties take advantage of policies of the Government and the benefits flowing therefrom, then such benefit cannot be said to be an "additional consideration".*

4. In a matter like this, this Court could simply follow the aforesaid judgment and set aside the order of the Tribunal, allowing this appeal. However, Mr. V. Lakshmikumaran, learned counsel appearing for the assessee, made a fervent and passionate plea that the aforesaid judgment of this Court in IFGL's case needs re-consideration. He, thus, pleaded for referring the matter to a larger Bench. Detailed and elaborate submissions were made in this direction which were stoutly refuted by the learned counsel for the Revenue. We may immediately record that the assessee's counsel has not succeeded in persuading us to refer the matter to a larger Bench. Hereinafter, we record our reasons for taking this view. For this purpose, we may first state at this stage the mechanism that goes into getting the benefit of duty drawback in the kitty of the assessee.

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6. Advance licence is issued under the EXIM Policy. The holder of the advance licence could procure imported raw material against the said licence for manufacture of finished goods. However, as per para 7.7 of the EXIM Policy 1997-2002, the advance licence holder intending to source the materials from indigenous source in lieu of direct import had the option to source them against advance release orders denominated in foreign exchange/Indian rupees. In such a case, the licence was to be invalidated for direct import and permission in the form of ARO was to be issued entitling the supplier of the goods the benefits of deemed export. Para 10.2 of the EXIM Policy laid down the categories of supply which would be recorded as 'deemed exports' under the policy. The first such clause (a) was 'supply of goods against advance licence/DFRC under the duty exemption/ remission scheme. Under para 10.3, benefits for deemed exports were specified. Advance licence for intermediate supply/deemed export was specified as one of the benefits for deemed exports.

7. The advance licence holder category buyers got their licences invalidated/surrendered. Thereafter, DGFT issued licence in favour of the assessee herein permitting it to procure the goods duty free from indigenous manufacturers and on the supply of this material to such buyers, treating the same as 'deemed exports', thereby earning the benefits of duty drawback. Para 7.11 of the EXIM Policy facilitated this process and it reads as under :

> *"7.11 Advance Licence for Intermediate Supplies - The Advance Licence for intermediate supply shall be considered by the licensing authority concerned. The Advance Licence for intermediate supply shall be issued after making the licence invalid for direct import of items to be supplied by the intermediate manufacture. In such cases, a copy of the invalidation letter will be given to the licence holder and copy thereof will be sent to the intermediate supplier as well as the licensing authority of the intermediate supplier. The licencee in such case has an option either to supply the intermediate product to holder of Advance Licence for physical exports/ deemed exports or to export directly."*

8. The aforesaid narratives would demonstrate that the assessee could get the duty drawback and it could happen when advance licence holder category of buyers got their advance licences invalidated thereby

surrendering the benefits accrued under such advance licence. Issue for consideration is as to whether it would constitute 'additional consideration' received by the assessee as per the definition of 'transaction value' contained in Section 4 of the Act read with Rule 6 of the Rules. We, therefore, shall reproduce the relevant portion of the provisions of Section 4 which existed at the material time, which read as under :

> ***"4. Valuation of excisable goods for purposes of charging of duty of excise. -*** *(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -*
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> *(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.*
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> *xx xx xx*
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> *(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."*

9. As is clear from the reading of the aforesaid provision, the duty of excise is chargeable on the excisable goods with reference to the value of such goods. Generally, the price of the goods, i.e. the price at which such goods are ordinarily sold by the assessee to a buyer is to be the value of the goods. This value is called the 'transaction value'. The Central Government has also framed the Rules which, inter alia, lay down the provisions for determination of value. Rule 6 thereof, with which we are specifically concerned, reads as under :

> *"**RULE 6.** Where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.*
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> *Explanation. - For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely :*
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> *(i) value of materials, components, parts and similar items relatable to such goods;*
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> *(ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;*
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> *(iii) value of material consumed, including packaging materials, in the production of such goods;*

(iv) value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods."

10. Even when these goods are sold by the assessee at different prices to different classes of buyers (not being related persons), each such price is to be deemed to be the normal price of such goods in relation to each class of buyers. However, as per the definition of 'transaction value' contained in this very section, i.e. Section 4(3)(d), certain charges can be added to the price at which the goods are actually sold, under certain circumstances. These include the provision for advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty commission etc. In the present case, we are not concerned with this aspect. However, Rule 6 of the Rules specifies that if the goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4, then the value of such goods shall be deemed to be the aggregate of such transaction value plus the 'amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee'. The implication of this Rule is that any form of additional consideration which flows from the buyer to the assessee, monitory value thereof is to be included while arriving at the transaction value. It is not necessary that such an additional consideration is to flow directly and even indirect consideration is includible. It is in this context we have to examine as to whether the consideration in the form of drawback, which accrued in favour of the assessee, could be connected with the buyer. To put it otherwise, though the immediate source of the duty drawback is the Government, whether its flow can be traced back to the buyer? If it is so, it may become a case of indirect consideration coming from the buyer and can be added to the transaction value.

***11.** In the case of IFGL, this Court has given the answer in the affirmative to the aforesaid issue. It is also conceded by the learned counsel appearing for the assessee that the said judgment was rendered on almost identical fact situation. That is why the endeavour of Mr. Lakshmikumaran is to impress upon us to take a different view. He sought to discredit the opinion of the Court in the said case by arguing that the advance licence for intermediate supply was granted by the DGFT to the assessee under the EXIM Policy and it had nothing to do with the buyer. He conceded that it could happen only after buyers got their advance licences invalidated. But his explanation was that it was not necessary that such a licence could be issued to the assessee merely because the advance licence in favour of the buyer was invalidated. He emphasized that DGFT could still refuse to issue the advance licence for intermediate supply to the assessee.*

***12.** This argument does not convince us at all. Fact remains that the issuance of advance licence for intermediate supply to the assessee was facilitated as a result of surrender of advance licence in favour or the buyer by the buyer. Thus, getting the licence invalidated for direct import of items in favour of the buyer was the trigger point for issuance of the advance licence for intermediate supply in favour of the assessee. Possibility of refusal on the part of DGFT to issue licence in favour of the assessee is only in the realm of conjecture. Fact is that the assessee got*

the licence and it became possible only on account of sacrifice made by the buyers. Further, what is important is that the buyers got their advance licences for direct import in their favour invalidated with the sole purpose of purchasing the polyester staple fiber from the assessee at lesser price, i.e. Rs 37.50 per kg. Therefore, the argument of the assessee that benefit in the form of imports without payment of duty flows to the assessee only pursuant to and based on licence issued by DGFT to the assessee and does not flow from the invalidation letter received by the customer from DGFT is too ingenuous an argument to be accepted.

13. *Another argument which was advanced by the learned counsel for the assessee was that discounted price is charged from the advance licence holder category of buyers by the assessee because of saving in customs duty on inputs due to statutory notification with consequent reduction in cost of production and, therefore, it is not a consideration flowing from a buyer. In this behalf, the submission was that the customs duty, otherwise leviable on the inputs going into the manufacture of polyester staple fiber, is exempted by the statutory notification issued by the Central Government, being Notification No. 31/1997-CUS, and it is because of the benefit availed by the assessee under this Notification that it is able to effect supply of polyester staple fiber on discounted price to an ultimate exporter holding advance licence. Therefore, the additional discount offered to a customer, who is the exporter, is never an additional consideration.*

14. *The aforesaid argument of the learned counsel for the assessee may appear to be impressive, when taken in isolation i.e. without having regard to all the attending facts. However, when the argument is tested keeping in view the entirety of the circumstances, as already taken note of above, the hollowness of this argument stands exposed, inasmuch as, this argument glosses over the fundamental fact that the assessee had been able to get the benefit of Notification No. 31/1997-CUS based on licence issued by DGFT in its favour and the raison d'etre for issuance of said licence by the DGFT to the assessee was invalidation of the advance licence by the buyers. Therefore, the source or gangotri from where the benefit has ultimately reached the assessee is the advance licences which were held by the buyers and their act of invalidation made it possible to flow down the benefit so as to reach the stream of the assessee.*

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18. *At this stage, we would like to recall the following findings arrived at by the Commissioner, which are not upset by the Tribunal in the impugned decision or even disputed by the assessee :*

(a) The assessee had supplied goods to a particular type of buyers at much lower price than the price charged from the general buyers in the normal course of trade as it had obtained the facility of invalidating of advance licences from such buyers and procured imported raw material (duty free) against such licences for manufacturing of finished goods. It is, therefore, alleged that the assessee and the buyers had mutuality of interest in the business of each other and there was a flow back and the

price was not the sole consideration for sale in these cases in accordance with the provisions of Section 4(1)(a) of the Act.

(b) Therefore, they were related persons in terms of provisions of the erstwhile Section 4(4)(c), presently Section 4(3)(b)(iv) of the Act.

(c) It is observed that para 7.7 of the EXIM Policy on Advance Release Order speaks of mutuality of interest as the assessee had procured duty free imported raw materials against invalidation of advance licence of the consignees and in turn it sold the finished goods to the said consignees at lower prices as compared to other normal buyers. Thus, the price was not the only consideration.

(d) Once the advance licence is invalidated, the said clearance to the buyers who were earlier holding the said licences need not be treated as deemed export and rightly the assessee had cleared the said goods to such buyers on payment of excise duty, but at lower value than the clearance made to the normal buyers. Thus, the assessee appeared to have derived double benefits in these transactions, i.e. (i) enhanced sale and paid less duty on lower value; and (ii) imported duty free raw materials.

(e) In this case, the right to procure duty free imported raw material is being transferred to supplier by the buyer. This indicates the flow back of additional considerations from the buyer of the said goods to the seller, which is the assessee.

19. *On the facts of this case, we are of the opinion that the Commissioner has rightly come to the conclusion with regard to the fact that additional monetary consideration, in addition to the price being paid for the goods, i.e. transfer of advance import licence in favour of the seller by the buyer enabling the seller of the goods to effect duty free import of the raw materials and bringing down the cost of production/procurement, is a consideration, the monetary value of which has to be considered under the provisions of the Rules, i.e. Rule 6 thereof.*

20. *Thus, we do not see any reason to deviate from the decision rendered by this Court in IFGL's case.*

21. *Before we part with, one more aspect to which our attention was drawn by Mr. Lakshmikumaran needs to be addressed. Referring to another judgment of this Court in Commissioner of Central Excise, Bangalore v. Mazagon Dock Ltd. - 2005 (187) E.L.T. 3 (S.C.) = 2005 (127) ECR 268 (SC), a vain attempt was made to show that this judgment was contrary to the decision rendered by this Court in IFGL's case. We do not find it to be so. Interestingly, the Hon'ble Judges {S.N. Variava and Dr. AR Lakshmanan, JJ.} who comprised the Bench that decided IFGL's case were the same who rendered the judgment in Mazagon Dock Ltd.'s case. Another pertinent factor which is to be taken note of is that the two decisions were rendered within a short gap of a fortnight. The decision in Mazagon Dock Ltd. was rendered on July 28, 2005 whereas IFGL's case was decided on August 09, 2005. Thus, at the time of pronouncing of the judgment*

in IFGL's case, the same very Bench was conscious of its judgment given immediately before in Mazagon Dock Ltd.

22. *A reading of the judgment in Mazagon Dock Ltd.'s case would reveal that in the said case subsidy of 20% was received by the assessee therein from the Government, which was sought to be included by the Revenue as 'additional consideration' to arrive at the transaction value for the purpose of central excise. The Court held that this subsidy was not received from the buyer either directly or indirectly and, therefore, could not be included in the price of goods qua purpose of excise. On the facts of that case, the Court found that the respondent in the said case had entered into contract with Oil & Natural Gas Corporation Limited (ONGC) for manufacture and supply of jack-up rigs. For such a contract, as per the policy of the Government, 20% subsidy was to be received from the Government and 10% from ONGC. As far as 10% subsidy received from ONGC is concerned, the same was also to be includible in the transaction value as additional consideration flowing from the buyer. However, 20% subsidy from the Government was under the Government's own scheme with no role of ONGC (buyer in the said case). Obviously, it could not be said that this subsidy had any flow from the ONGC either directly or indirectly. The said judgment, therefore, has no bearing on the present matter.*

23. *In view of the foregoing, we are of the considered opinion that this case is squarely covered by the judgment of this Court in IFGL's case. We, thus, allow this appeal, set aside the decision of the Tribunal and restore the order passed by the Commissioner. In the facts and circumstances of this case, there shall be no order as to costs."*

10. In view of the foregoing discussions and analysis, and on the basis of the judgement delivered by the Hon'ble Supreme Court in the case of *Commissioner of C. Ex. Vs. IFGL Refractories Limited* (supra), we are of the considered view that the impugned order dated 21.07.2014 in confirmation of the adjudged demands and consequent imposition of penalties on the appellants is legally sustainable. Accordingly, the appeal filed by the appellants-assessee seeking for setting aside the confirmation of adjudged demands is liable to be dismissed. Secondly, the appeal filed by Revenue, seeking for setting aside the dropping of demand to the extent of extending the duty benefits in computation of value in terms of the Section 4(1) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, does not stand the scrutiny of law, and therefore such appeal is also liable to be set aside.

11. In the result, the impugned order dated 21.07.2014 passed by the learned adjudicating authority is upheld and the appeals filed both by the appellants-assessee and the Revenue, are dismissed.

(Order pronounced in open court on 25.07.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha