

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. IV

CUSTOMS APPEAL NO. 53962 OF 2023

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/ICD/TKD/Export/
1242/2022-23 dated 16/12/2022 passed by Commissioner of Customs
(Appeals), New Delhi.]

**M/s Modak Dyeing & Printing
Co. Pvt. Ltd.,**

863, Industrial Area – I,
Ludhiana – 141 003.

.....Appellant

Versus

Commissioner of Customs,

ICD, Tughlakabad,
New Delhi.

....Respondent

APPEARANCE:

Shri R.K. Hasija, Advocate for the appellant.

Shri Rajesh Singh, Authorized Representative for the Department

CORAM:

HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51081/2025

DATE OF HEARING : 13.03.2025.

DATE OF DECISION : 29.07.2025.

P.V. SUBBA RAO

M/s Modak Dyeing and Printing Co. Pvt. Ltd.¹ filed this appeal to assail the order-in-appeal dated 16.12.2022 passed by the Commissioner of Customs (Appeals), New Delhi whereby he upheld the order dated 08.10.2021 passed by the Joint Commissioner and rejected the appellant's appeal.

1. appellant

2. The facts which relate to the issue of the impugned order are that the appellant filed two shipping bills dated 31.08.2018 for export of Girls Frocks Woven Made of Manmade Fibre. The appellant declared total FOB value of Rs. 4,10,52,321/- in the shipping bills which worked out to about Rs. 274.13 per piece. Receiving intelligence these goods were overvalued in order to claim excess benefits of drawback, Refund Of State Levies (ROSL), Merchandise Exports from India Scheme (MEIS) & IGST refund, the Special Intelligence and Investigation Branch of the Commissionerate (SIIB) examined the goods under a panchnama. A major quantity of the goods was as declared. However, it felt that the value was highly inflated in order avail ineligible export benefits. The goods were however allowed to be exported after obtaining a bond and bank guarantee and they were accordingly exported. The officers conducted a market enquiry to determine the market price of the export goods and came to the conclusion that the market value of the export goods was between Rs. 45/- to Rs. 65/-. A show cause notice dated 14.11.2019 was issued to the appellant proposing to reject the FOB value declared by the appellant in the two shipping bills under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007² and re-determine it at Rs. 45,00,000/- (in respect of shipping bill No. 7293844 dated 31.08.2018) and Rs. 29,88,000/- (in respect of shipping bill No. 7273960 dated 31.08.2018) re-determine under Rule 6 of the Valuation Rules. It was also proposed to confiscate the export

goods under section 113 (i) of the Customs Act, 1962³ and imposed penalties under section 114 (iii) and 114AA of the Act.

3. These proposals were confirmed by the Joint Commissioner in his order dated 08.10.2021. He rejected the declared FOB value of Rs. 4,10,52,321/- under Rule 8 of the Valuation Rules and re-determined the FOB value as Rs. 74,88,000/- under Rule 6 of the Valuation Rules in respect of the two shipping bills. This re-determination effectively reduced the FOB value per piece from Rs. 274.13 and Rs. 50/-. He also confiscated the export goods under section 113 (i) and since they had been provisionally released and were exported, he imposed a redemption fine of Rs. 2 lakhs in lieu of confiscation as per section 125 of the Act. He also imposed penalty of Rs. 1 lakh under section 114 (iii) of the Act and Rs. 1 lakh under section 114AA of the Act. He further ordered that the bank guarantee submitted by the appellant for provisional release as may be enforced and appropriated towards redemption fine/ penalty imposed on them.

4. The Commissioner (Appeals), by the impugned order, upheld the above decision. Aggrieved, the appellant filed this appeal before us on the following grounds :-

- (i) No reasons were given for rejection of the transaction value;
- (ii) The market enquiry was a sham ;
- (iii) The statements recorded during investigation were not relevant as they were not admitted by the Joint

Commissioner after following the procedure under section 138B of the Act ;

- (iv) Section 14 of the Valuation Rules are not applicable to drawback/MEIS benefits ;
- (v) The exported goods were not liable for confiscation ;
- (vi) No penalty was imposable on the appellant.

5. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

6. Learned counsel for the appellant contested the re-determination of the value of the goods and the finding that it had grossly over-valued the goods in order to avail the higher export benefits under MEIS and Drawback Schemes.

7. Learned Authorized Representative for the Revenue submitted that the market value of the goods exported were only about Rs. 50/- per piece, whereas the price declared in the shipping bills were Rs. 274.13. Rule 8 of the Valuation Rules provides for rejection of the declared value and accordingly it was rejected and re-determined under Rule 6 of the Valuation Rules. He also submitted that the appellant did not cooperate with the investigation. He never provided a valid cost list or any supporting documents to substantiate the inflated price despite being offered multiple opportunities. He also did not participate in the market enquiry. During adjudicating, the appellant's counsel sought gross-examination of the witnesses of market enquiry. However, when summoned, they did not appear before the

adjudicating authority and, hence, no cross-examination could be held. In the light of the above, the impugned order is correct and proper and calls for no interference and the appeal may be dismissed.

8. We have considered the submissions on both sides and perused the records.

9. Before going into the details of this case what needs to be examined is the scope of "value" under section 14 of the Customs Act and the Valuation Rules and of the FOB value. Section 14 of the Customs Act is meant for the purpose of Customs Tariff Act or any other law for the time being in force. It shall be the transaction value of such goods, i.e., to say the price paid or payable for goods for export from India at the time and place of exportation. The Valuation Rules provide for conditions under which the transaction value can be rejected and the value can be determined by the officer following some other method.

10. The term FOB value is not defined in the Customs Act. It refers to the Free On Board value, i.e., the transaction value where the exporter is "free" once the goods are put on board the vessel or aircraft. All costs and risks associated with the goods thereafter, are on the buyer's account. In other words, FOB value is the transaction value.

11. The question which arises is what will happen if the transaction value is rejected by the officer under the Valuation Rules and the value is re-determined under the Valuation Rules.

In rejecting the transaction value under the Valuation Rules, the proper officer does not change the transaction value, but only refuses to accept the transaction value as the assessable value under section 14 of the Act and the Valuation Rules. Thereafter, he determines the value following some other method under the Valuation Rules. The value so determined by the officer will be the assessable value on which the export duty has to be paid. Similarly, on imported goods if the transaction value is rejected and the value is re-determined, the value so re-determined by the proper officer will be the assessable value on which the duty should be paid. Neither in the export nor in the import can the proper officer, or anybody else, vary the transaction value. The transaction value is the product of negotiation and the subject of contract between the buyer and the seller. No stranger to the contract including any customs officer can change it.

12. An illustration will make this legal position here. A, an exporter, declares his transaction value as FOB US \$ 10,000. The proper officer rejects this transaction value and re-determines value as US \$ 5,000. Export duty, if payable on the goods, has to be paid on US \$ 5,000. On the other hand, if the proper officer re-determines the export value as US \$ 20,000, duty has to be paid on US \$ 20,000. In neither case, the mutual obligations between the buyer and seller will change. The exporter will still be entitled to receive consideration of US \$ 10,000 from the overseas buyer. He cannot claim US \$ 20,000 from the overseas buyer if the proper officer determines the assessable value as US

\$ 20,000. Similarly, the overseas importer cannot fulfil his obligation by paying only US \$ 5,000 even if the proper officer determines the value as US \$ 5,000. Thus, while the transaction value (FOB value) will continue to be US \$ 10,000 as agreed to between the buyer and the seller, the assessable value will change if the proper officer re-determines it.

13. Undisputedly, in this case, there is no export duty on the goods which have been exported. Unlike the customs duty which is to be determined on the assessable value, export benefits under drawback and MEIS are given as a percentage of the FOB value and not a percentage of the assessable value. Therefore, it is inconsequential whether the assessable value is re-determined by the proper officer or not when no export duty is to be paid. The export benefits will continue to be available as a percentage of the FOB value which is the transaction value.

14. The proposal in the show cause notice in this case was to reject the FOB value under Rule 8 of the Valuation Rules and re-determine it under Rule 6 of the Valuation Rules. The Joint Commissioner, in his order-in-original, ordered inter-alia, as follows :-

"I reject the collective declared value of Rs. 4,10,52,321/- (Rs. 2,46,71,006/- in r/o SB No. 7273844 dated 31.08.2018 + Rs. 1,63,81,315/- in r/o SB No. 7273960 dated 31.08.2018), valued @ Rs. 274.13/- per piece, of the goods attempted to be exported by M/s Modak dyeing & Printing Co. Pvt. Ltd. (IEC 3010002289), 863, Industrial Area-I, Ludhiana, Punjab - 141003; under Rule 8 of the Customs Valuation (Determination of Value of Exported Goods), Rules, 2007 read

with Section 14 of the Customs Act, 1962 and re-determine the value as Rs. 74,88,000/- (Rs. 45,00,000/- in r/o SB No. 7273844 dated 31.08.2018 + Rs. 29,88,000/- in r/o SB No. 7273960 dated 31.08.2018), valued @ Rs. 50/- per piece, of such goods under Rule 6 of the Rules *ibid* read with Section 14 of the Act *ibid*”.

15. Thus, it is not explicit from the order of the Joint Commissioner, if he re-determined the assessable value under Section 14 and the Export Valuation Rules or if he re-determined the FOB value. The proposal in the show cause notice was to re-determine the FOB value and, therefore, it would be reasonable to conclude that the Joint Commissioner re-determined the FOB value (transaction value). Such an interpretation of the order of the Joint Commissioner would be reasonable because of the proposal in the show cause notice and also because of the fact that having such re-determination the assessable value would have been otherwise inconsequential because there is no export duty on the disputed goods.

16. The second part of the Joint Commissioner's order is confiscation of the goods under Section 113 (i) of the Act which reads as follows :-

113. Confiscation of goods attempted to be improperly exported, etc.

The following export goods shall be liable to confiscation:

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular

with the entry made under this Act or in the case of baggage with the declaration made under section 77;

17. Export goods are liable to confiscation if they do not correspond in value to the entry made under the Act, i.e., the shipping Bill. The question which arises is as to what value should be declared by the exporter in the shipping bill filed under Section 50 of the Act. While the exporter can declare the transaction value which is the assessable value under Section 14, the proper officer has right to reject the transaction value and re-determine it following some other method. The exporter has no right to reject his own transaction value or to re-determine the value following some other method. The exporter also has no obligation to anticipate if the proper officer would reject the transaction value and if so what value he will re-determine. Therefore, the only value which an exporter can reasonably be expected to declare in his shipping bill is his transaction value. Section 113 (i) would apply insofar as it pertains to the value of the goods only if the value declared in the shipping bill is different from the transaction value which is not the case here. It is impossible for the exporter to predict what value the proper officer would fix under the Valuation Rules and, accordingly, file the shipping bill. In this case, the goods were not liable for confiscation under Section 113 (i) because there is no assertion in the show cause notice or finding in the order-in-original or in the impugned order that the value declared in the shipping bill was not the transaction value. Consequently, the redemption fine

imposed under Section 125 in lieu of confiscation also cannot be sustained.

18. We find that the Commissioner (Appeals) placed reliance on the judgment of the Supreme Court in **Om Prakash Bhatia versus Commissioner of Customs, Delhi**⁴. However, the facts of **Om Prakash Bhatia** were different from this case. In **Om Prakash Bhatia**, the export goods were found to be overvalued by the department and the appellant had agreed to not getting any drawback. Therefore, the question of re-determination of FOB value was not before the Supreme Court and neither was the question of eligibility of drawback. The appellant therein had contested confiscation of the goods under section 113 (d) of the Customs Act. The Supreme Court found that the appellant had an obligation to declare the correct value under the then section 14 of the Customs Act and since the appellant failed to do so, the goods were liable for confiscation under section 113(d).

19. Section 14 of the Customs Act, as it stood during the relevant time, defined value as 'the price at which such goods are ordinarily sold in the course of international trade'. The value which had to be declared in the Shipping Bill was the price at which such goods are ordinarily sold and not the transaction value of the exporter. Relevant portion of the judgment is pasted below:

"5. At the outset, we would state that the learned Counsel for the appellant has not pressed for the drawback in view of specific provision of Section 76 which *inter alia* provides that no drawback shall be allowed "(b) in respect of any goods the

⁴2003 (155) E.L.T. 423 (S.C.)

market-price of which is less than the amount of drawback due thereon". Therefore, for the purpose of getting drawback, relevant consideration is the market price of the goods prevailing in the country and not the price of the goods which the exporter expects to receive from the overseas purchaser.

6. Next - as the order for confiscation of goods is passed by referring to Section 113(d) of the Act, we would refer to the same. It reads as under:-

"113 Confiscation of goods attempted to be improperly exported etc. - The following export goods shall be liable to confiscation:-

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, **contrary to any prohibition imposed by or under this Act or any other law for the time being in force."**

7. The aforesaid Section empowers the authority to confiscate any goods attempted to be exported contrary to any 'prohibition' imposed by or under the Act or any other law for the time being in force. Hence, for application of the said provision, it is required to be established that attempt to export the goods was contrary to any prohibition imposed under any law for the time being in force.

8. Further, Section 2(33) of the Act defines "prohibited goods" as under:-

"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in *Shekih Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does

not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negatived the said contention and held thus:-

‘...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to “any prohibition imposed by any law for the time being in force in this country” is liable to be confiscated. “Any prohibition” referred to in that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression “any prohibition” in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions “prohibiting”, “restricting” or “otherwise controlling”, we cannot cut down the amplitude of the word “any prohibition” in Section 111(d) of the Act. “Any prohibition” means every prohibition. In other words all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues.”

10. The next question is - Is there any prohibition imposed under other law which is for the time being in force?

For this purpose, reliance is placed upon Section 18 of the Foreign Exchange Regulation Act, 1973 relevant part of which reads thus :-

18. Payment for exported goods. - (1)(a) The Central Government may, by *notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereafter in this section referred to as export) of all goods or of any goods or class or goods specified in the notification form India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing :-*

(i) the full export value of the goods; or

(ii) If the full export value of the goods is not ascertainable at the time of export the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market, and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner.

11. This Section contemplates that exporter is required to furnish to the prescribed authority in prescribed form declaration of true material particulars which include:-

(a) the amount representing the full market export value of the goods; or in the alternative,

(b) if the full export value of the goods is not ascertainable, the value which the exporter expects to

receive on the sale of the goods in the overseas market,
and
(c) the exporter has to affirm that full export value
of goods will be received.

12. These two clauses of Section 18 leave no doubt that exporter is not concerned with the prevailing market price in India of the goods sought to be exported, but he is required to disclose true export value of goods. That is to say, exporter has to disclose full and true sale consideration - export value of the goods. The notification issued in exercise of the power under Section 18 also *inter alia* provides that Central Government prohibits the export of all goods unless exporter furnishes to the prescribed authority a declaration in the prescribed form of material particulars including the full export value of the goods or in the alternative the value of the goods which he expects to receive on their sale in overseas market. Hence, importance is given to the value of goods which exporter is to receive. It also provides that the exporter shall affirm in the declaration that full export value of the goods has been or will within prescribed period be paid in the prescribed manner. Further, the learned Additional Solicitor General referred to the notification issued under the said Section, relevant part of which reads thus :-

"GSR. 78 - In exercise of the powers conferred by sub-section (1) of Section 18 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs) No. GSR 2641, dated the 14th November, 1969, the Central Government hereby *prohibits the export* otherwise than by post, of all goods, either directly or indirectly, to any place outside India. Other than Nepal and Bhutan, *unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars* which, among others, shall include the amount representing :-

(i) the full export value of the goods, or
(ii) if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions express to receive on the sale of the goods in the overseas market,
and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner".

13. Apart from the aforesaid provision, for finding out the true export value of the goods, Section 14 of the Act provides relevant procedure. Section 14 is to be read along with Section 2(41), which defines the word 'value'. Section 2 (41) reads as under :-

'S.2(41) - "value", *in relation to any goods*, means the value thereof determined in accordance with the provisions of sub-section (1) of section 14."
Thereafter, relevant part of Section 14 reads thus :-

"14. Valuation of goods for purposes of assessment. –

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be -
the price at which such or like goods are ordinarily sold, or offered for sale; for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale :

16. From the aforesaid provisions, mainly, Section 2(41) read with Section 14 of the Act and Section 18 of the Foreign Exchange Regulation Act, 1973, it is crystal clear that :-

- (a) Exporter has to declare full export value of the goods (sale consideration for the goods exported).
- (b) Exporter has to affirm that the full export value of the goods will be received in the prescribed manner.
- (c) If the full export value of the goods is not ascertainable, the value which the exporter expects to receive on the sale of the goods in the overseas market.
- (d) Exporter has to declare true or correct export value of the goods, that is to say, correct sale consideration of the goods. Criterion under Section 14 of the Act is the price at which such or other goods are ordinarily sold or offered for sale in the course of international trade where the seller and buyer have no interest in the business of each other and the price is the sole consideration for sale or offer for sale.**

17. To the same effect Rule 11 of the Foreign Trade (Development and Regulation) Rules, 1993 provides. This Rule is to be read along with Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, which *inter alia* provides that no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and the orders made thereunder and the export and import policy for the time being in force. Rule 11 reads thus :-

“11. Declaration as to value and quality of imported goods. - On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the bill of entry or the shipping bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe to a declaration of the truth of such statement at the foot of such bill of entry or shipping bill or any other documents.”

18. Hence, in cases where the export value is not correctly stated but there is international over-invoicing for some other purpose, that is to say not mentioning true sale consideration of the goods, then it would amount to violation of the conditions for import/export of the goods. The purpose may be money laundering or some other purpose, but it would certainly amount to illegal/unauthorized money transaction. In any case, over-invoicing of the export goods would result in illegal/irregular transactions in foreign currency.

22. Considering the aforesaid facts and also the fact that this was the second case belonging to the same exporter, the authorities arrived at the conclusion that it was an organized racket to claim fraudulent drawback or an act of deliberate over-invoicing the readymade garments. Hence, the authority imposed redemption fine as well as levied penalty. In our view, this finding arrived at by the authorities below cannot be said to be, in any way, unreasonable which would call for interference by this Court in this appeal.

23. In the result, the appeal is dismissed. There shall be no order as to costs.

20. Later, from 10.10.2007, the entire section 14 was substituted and the value under section 14 was changed to the transaction value. Relevant portion of the Finance Bill 2007 is pasted below:

95. For section 14 of the Customs Act, the following section shall be substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:—

'14. (1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,—

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
 - (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
 - (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section: Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.
- (2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation.—For the purposes of this section—

- (a) “rate of exchange” means the rate of exchange—
- (i) determined by the Board, or
 - (ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency; 42 of 1999.
- (b) “foreign currency” and “Indian currency” have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.’.

(emphasis supplied)

21. The change in valuation after 2007 may be summarised as follows:

	Before 10.10.2007	After 10.10.2007
Value under section 14(1)	Price at which such goods are ordinarily sold	Transaction value
Section 14 (1A)	Subject to the above, the government can make valuation Rules	--
Second proviso to section 14 (1)	--	Government may make Rules prescribing the

		manner of acceptance or rejection of value declared by the importer and its re-determination.
Section 14(2)	Notwithstanding section 14(1), the Central Government can fix tariff values for any class of goods by notification	Notwithstanding section 14(1), the Board can fix tariff values for any class of goods by notification

22. From 10.10.2007, the Valuation Rules provided for rejection of transaction value and it’s re-determination of value through some other methods by the proper officer. If the proper officer so re-determines the value, it shall be the value, otherwise, the value shall be the transaction value. At the time the exporter filed the shipping bills, the only value available was the transaction value. This is the only value which is humanly possible to declare in the Shipping Bills. If the transaction value is ‘X’ as can be seen from the records, but the exporter declares it as ‘Y’, the goods will be liable to confiscation under section 113(i) of the Act. They will not be liable to confiscation under section 113 (i) if the exporter declares ‘X’ in the Shipping Bill and thereafter, the proper officer re-determines the value as, say, ‘Z’.

23. It also needs to be noted that the transaction value of the export goods need not be the market value of such goods in the domestic market as is evident from section 76(1) (b). Section 76 of the Act reads as follows:

76. Prohibition and regulation of drawback in certain cases.

(1) Notwithstanding anything hereinbefore contained, no drawback shall be allowed

(a) omitted by Act 11 of 1983, Section 53 (w.e.f. 13-5-1983).]

(b) in respect of any goods the market-price of which is less than the amount of drawback due thereon;

(c) where the drawback due in respect of any goods is less than fifty rupees

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

24. Needless to say that drawback is usually a percentage of the transaction value (FOB value) depending on the type of goods. Let's take it as say, 15%, for example. If the market price of the goods is say, Rs. 100/- and the FOB value (transaction value) is Rs. 200/-, drawback will be available @ 15% of Rs. 200/- (the FOB value) or Rs. 30/- and not 15% of Rs. 100/- (the market value) or Rs. 15/-.

25. However, if the transaction value (FOB value) is so high, that the drawback due on the goods exceeds the market value of the goods, then, as per section 76(1) (b), no drawback shall be allowed. In this example, if the FOB value (transaction value) is, say, Rs. 660/- the drawback @15% thereon will be Rs. 99/- which will be allowed because it is less than the market price of Rs. 100/. However, if the FOB value (transaction value) is Rs. 700/-, drawback due thereon @ 15% shall be Rs. 105/- and the

market price of the goods is only Rs. 100/- which is less than the drawback due (Rs. 105/-). Therefore, as per section 76(1) (b), no drawback shall be allowed.

26. Evident from this section is that no drawback will be allowed unless the amount of drawback which will be due on the goods itself is more than the market value of the goods. As long as the drawback due is less than the market value, it is payable. It is equally evident that the transaction value (FOB value) on which drawback has to be paid need not be the same as the market value of the goods.

27. For the above reasons, the re-determination of the FOB value of the goods, confiscation of the goods under Section 113 (i), the redemption fine imposed under Section 125 and the penalty imposed under Section 114A cannot be sustained and need to be set aside.

28. The appeal is allowed and the impugned order is set aside.

(Order pronounced in open court on 29/07/2025.)

**(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)**

**(P.V. SUBBA RAO)
MEMBER (TECHNICAL)**