



ALO Law Office- IDT Tax / Arbitration / Litigation

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CESTAT Delhi-Customs Cannot Alter FOB Value to Deny Export Incentives

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, allowed six appeals challenging the re-determination of Free on Board (FOB) export values and the resultant denial of export incentives. The judgment strikes at the root of Customs' authority to modify transaction values between exporters and foreign buyers.

Background of the Case

Six appellants, including M/s Mahir Fashions (P) Ltd., Naaz Impex, Almas Creations, and individuals, were issued a common Show Cause Notice dated 27.02.2019 by the Directorate of Revenue Intelligence (DRI) alleging overvaluation of readymade garments exported under Drawback and DEPB schemes.

The Commissioner of Customs, ICD, Tughlakabad passed an Order-in-Original (No. 15/2011 dated 24.03.2011) which:

- Rejected declared FOB invoice values of exports.
- Re-determined lower FOB values.
- Ordered recovery of excess incentives (drawback and DEPB).
- Imposed confiscation of goods and penalties totaling several crores.
- Held the exported goods liable for confiscation under Section 113 of the Customs Act, 1962 and penalties under Section 114.

Key Legal Issues

The core issue was: Can Customs authorities re-determine FOB (transaction) value of export goods, which form the basis for export incentives like Duty Drawback and DEPB?

Tribunal's Observations & Legal Reasoning

On FOB Value:

- FOB (Free on Board) is a transaction value decided mutually between the exporter and overseas buyer.
- It forms part of INCOTERMS and signifies the price up to which the exporter is responsible.
- FOB value cannot be altered by any third party, including Customs officers.

On Section 14 of the Customs Act:

- Section 14 allows Customs to determine “assessable value” for levy of duty, not for altering transaction value (FOB).
- The proper officer can only reject a declared value for duty purposes, but cannot alter FOB for export incentive calculations.

On Export Incentives:

- Drawback and DEPB benefits are notified as a % of FOB under statutory frameworks (Drawback Rules and Foreign Trade Policy).
- Customs authorities have no legal power to recompute incentives based on any alternative value.

On Precedent:

The Tribunal extensively relied on its earlier ruling in:

M/s JBM Apparels Pvt. Ltd. v. Commissioner of Customs (Customs Appeal No. 50127 of 2024, decided on 07.03.2025)

which held:

“Customs officers cannot interfere with transaction value (FOB) nor recompute incentives by substituting their own value judgments.”

Final Decision

- The impugned order was set aside in entirety.
- All six appeals were allowed.
- The penalties, fines, confiscation orders, and demand for recovery of export benefits were quashed.
- The Tribunal held the Commissioner acted without any authority of law.

Legal Provisions Cited

- Section 14 – Valuation of goods for assessment of duty.
- Section 113 & 114 – Confiscation and penalty for export goods liable to misdeclaration.
- Rules under Customs Valuation (Determination of Value of Export Goods) Rules, 2007
- Drawback Rules, 1995

- Foreign Trade (Regulation) Rules, 1993

Key Takeaway

This ruling establishes a critical legal principle:

“Export incentives linked to FOB value cannot be denied or altered by customs authorities through reassessment or revaluation of export goods.”

It also reinforces that contractual freedom between exporter and buyer must be respected and upheld by revenue authorities.

Conclusion

This CESTAT decision provides a massive relief to exporters facing arbitrary denial of incentives and ensures that Customs cannot override contractual values under the guise of valuation. It will have wide ramifications on DRI-initiated overvaluation cases across India and brings much-needed legal clarity for the export community.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Delhi

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Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 | +91-9999005379

www.aadrikaalaw.com

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1**

CUSTOMS APPEAL NO. 332 OF 2011

[Arising out of Order in Original No. 15/2011 dated 24.03.2011 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

M/S MAHIR FASHIONS (P) LTD**APPELLANT**
275/4, Zakir Nagar, New Delhi

Vs.

COMMISSIONER OF CUSTOMS-(ICD) NEW DELHI**RESPONDENT**
ICD, Tughlakabad, New Delhi

WITH

CUSTOMS APPEAL NO. 333 OF 2011

[Arising out of Order in Original No. 15/2011 dated 24.03.2011 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

M/S NAAZ IMPEX**APPELLANT**
275/4, Zakir Nagar, New Delhi

Vs.

COMMISSIONER OF CUSTOMS-(ICD) NEW DELHI**RESPONDENT**
ICD, Tughlakabad, New Delhi

WITH

CUSTOMS APPEAL NO. 334 OF 2011

[Arising out of Order in Original No. 15/2011 dated 24.03.2011 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

M/S NAWAB AHMED ANSARI**APPELLANT**
577/35, Zakir Nagar,
New Delhi

Vs.

COMMISSIONER OF CUSTOMS-(ICD) NEW DELHI**RESPONDENT**
ICD, Tughlakabad, New Delhi

WITH**CUSTOMS APPEAL NO. 335 OF 2011**

[Arising out of Order in Original No. 15/2011 dated 24.03.2011 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

M/S MEHRUDDIN ANSARI,**APPELLANT**
D-145, Shaheen Cottage,
Street No. 13, Zakir Nagar,
New Delhi

Vs.

COMMISSIONER OF CUSTOMS-(ICD) NEW DELHI**RESPONDENT**
ICD, Tughlakabad, New Delhi

WITH**CUSTOMS APPEAL NO. 336 OF 2011**

[Arising out of Order in Original No. 15/2011 dated 24.03.2011 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

M/S ALMAS CREATIONS,**APPELLANT**
275/4, Zakar Nagar,
New Delhi

Vs.

COMMISSIONER OF CUSTOMS-(ICD) NEW DELHI**RESPONDENT**
ICD, Tughlakabad, New Delhi

AND**CUSTOMS APPEAL NO. 337 OF 2011**

[Arising out of Order in Original No. 15/2011 dated 24.03.2011 passed by the Commissioner of Customs, ICD, TKD, New Delhi]

SARDAR AHMED,**APPELLANT**
781/21, Zakir Nagar,
New Delhi

Vs.

COMMISSIONER OF CUSTOMS-(ICD) NEW DELHI**RESPONDENT**
ICD, Tughlakabad, New Delhi

Appearance:

Shri Prabhat Kumar and Shri Pralabh Mathur, Advocates for the Appellant

Shri Rakesh Kumar, Authorised Representative for the Respondent

CORAM:**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT****HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)****FINAL ORDER NO'S. 51058-51063 /2025****DATE OF HEARING : 21/04/2025****DATE OF DECISION : 22/07/2025****P. V. SUBBA RAO**

1. These six appeals assail the order dated 24.03.2011¹ passed by the Commissioner of Customs, Inland Container Depot, Tughlakabad insofar as it pertains to each of the appellants. The operative part of the impugned order is as follows:

ORDER**(A) In respect of M/s Mahir Fashions (P) Ltd. ICD Tughlakabad**

(I) I reject the declared invoice value of Rs. 8,01,64,223/- (rupees eight crore one lakh sixty four thousand two hundred and twenty three only) of the goods exported under 21 Shipping Bills by M/s Mahir Fashions(P) Ltd. under drawback scheme under section 14 of the Customs Act, 1962 and re-determine the value at Rs. 3,26,34,855/- (rupees three crores twenty six lakhs thirty four thousand eight hundred and fifty five only) as per details contained in Annexure- '1' to the SCN;

(II) I order recovery of excess drawback availed fraudulently by Mis Mahir Fashions (P) Ltd amounting to Rs. 42,72,671/- (rupees forty two lakhs seventy two thousand six hundred and seventy one only) as detailed in Annexure-1 to the SCN under Rules 16 of the Customs and Central Excise Duties (Drawback) Rules, 1995 read with the provisions of Section 75(1) of the Customs Act, 1962 along with interest thereon under Section 75A (2) of the Customs Act, 1962;

(III) I also order for appropriation of the amount of Rs. 31,00,000/- already paid by M/s. Mahir Fashions (P) Ltd. during investigations against the demand confirmed at para (II) above;

(IV) I order to confiscate the goods exported by M/s Mahir Fashions (P) Ltd shown under the shipping bills as detailed in Annexure-1 to the SCN under the provisions of Section 113(i) of the Customs Act, 1962. Since the goods are not

1 Impugned order

available, I impose a fine of Rs 80,00,000/- (Rupees Eighty Lacs only) on M/s Mahir Fashions (P) Ltd.

(V) I impose a penalty of Rs 42,72,671/- (rupees forty two lacs seventy two thousand six hundred and seventy one only) on M/s Mahir Fashions (P) Ltd under Section 114(1) of the Customs Act, 1962.

(VI) I impose a penalty of Rs 20,00,000/- (rupees twenty lacs only) on Mr Mehruddin Ansari under Section 114(1) of the Customs Act, 1962.

(B) In respect of M/s Almas Creations, ICD, Tughlakabad

(I) I reject the declared invoice value of Rs. 5,75,21,608/- (rupees five crores seventy five lakhs twenty one thousand six hundred and eight only) of the goods exported under 12 Shipping Bills by M/s Almas Creations under Drawback scheme under Section 14 of the Customs Act, 1962 and re-determine the value at Rs. 2,34,17,046/- (rupees two crores thirty four lakhs seventeen thousand and forty six only) as per details contained in Annexure- '2' to the SCN;

(II) I order recovery of excess drawback availed fraudulently by M/s Almas Creations amounting to Rs. 25,13,696/- (rupees twenty five lakhs thirteen thousand six hundred and ninety six only) as detailed in Annexure-2 to the SCN under Rules 16 of the Customs and Central Excise Duties (Drawback) Rules, 1995 read with the provisions of Section 75(1) of the Customs Act, 1962 along with interest thereon under Section 75A (2) of the Customs Act, 1962;

(III) I also order for appropriation of the amount of Rs. 23,00,000/- already paid by M/s. Almas Creations during investigations against the demand confirmed at para (II) above;

(IV) I order to confiscate the goods exported by M/s Almas Creations and as shown under the shipping bills as detailed in Annexure-2 to the SCN under the provisions of Section 113(i) of the Customs Act, 1962. Since the goods are not available, I impose a fine of Rs 60,00,000/- (rupees sixty lacs only) on M/s Almas Creations.

(V) I impose a penalty of Rs 25,13,696/- (rupees twenty five lacs thirteen thousand six hundred and ninety six only) on M/s Almas Creations under Section 114(1) of the Customs Act, 1962.

(VI) I impose a penalty of Rs 13,00,000/- (rupees thirteen lacs only) on Mr Meliruddin Ansari under Section 114(1) of the Customs Act, 1962.

(C) In respect of M/s Almas Creations, ICD, Tughlakabad

(I) I reject the declared invoice value of Rs. 2,58,71,164/- (rupees two crores fifty eight lakhs seventy one thousand one hundred and sixty four only) of the goods exported under 04 Shipping Bills by M/s Almas Creations under DEPB

scheme under Section 14 of the Customs Act, 1962 and re-determine the value at Rs. 1,05,32,151/- (rupees one crore five lakhs thirty two thousand one hundred and fifty one only) as per details contained in Annexure- '2' to the SCN;

(II) I order recovery of custom duty equivalent to the excess DEPB credit availed fraudulently by M/s Almas Creations amounting to Rs. 12,35,605/- (rupees twelve lakhs thirty five thousand six hundred and five only) as detailed in Annexure-2 to the SCN under Section 28(1) of the Customs Act, 1962 read with the relevant provisions of Foreign Trade Policy and Notification No. 34/97-Cus. dated 7.4.1997, along with interest thereon under Section 28AB of the Customs Act, 1962;.

(III) I order to confiscate the goods exported under the DEPB scheme by M/s Almas Creations and shown under the shipping bills as detailed in Annexure-2 to the SCN under the provisions of Section 113(1) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962 and Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. Since the goods are not available I impose a fine of Rs 26,00,000/- (rupees twenty six lacs only) on M/s Almas Creations.

(IV) I impose a penalty of Rs 12,35,605/- (rupees twelve lakhs thirty five thousand six hundred and five only) on M/s Almas Creations under Section 114 of the Customs Act, 1962.

(V) I impose a penalty of Rs 4,00,000/- (rupees four lacs only) on Mr Mekhruddin Ansari under Section 114 of the Customs Act, 1962.

(D) In respect of M/s Almas Creations, Air Cargo Exports, IGI Airport, New Delhi

(I) I reject the declared invoice value of Rs. 29,30,234/- (rupees twenty nine lakhs thirty thousand two hundred and thirty four only) of the goods exported under one shipping bill by M/s Almas Creations under DEPB scheme under Section 14 of the Customs Act, 1962 and re-determine the value as Rs. 11,92,898/- (rupees eleven lakhs ninety two thousand eight hundred and ninety eight only) as per details contained in Annexure- '2' to the SCN;

(II) I order recovery of custom duty equivalent to the excess DEPB credit availed fraudulently by M/s Almas Creations amounting to Rs. 1,56,360/- (rupees one lakh fifty six thousand three hundred and sixty only) as detailed in Annexure-2 to the SCN under Section 28(1) of the Customs Act, 1962 read with the relevant provisions of Foreign Trade Policy and Notification No. 34/97-Cus. dated 7.4.1997, along with interest thereon under Section 28AB of the Customs Act, 1962;.

(III) I order to confiscate the goods exported under the DEPB scheme by M/s Almas Creations and shown under the shipping bill as detailed in Annexure-2 to the SCN under the

provisions of Section 113(i) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962 and Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993 Since the goods are not available I impose a fine of Rs 3,00,000/- (rupees three lacs only) on M/s Almas Creations.

(IV) I impose a penalty of Rs 1,56,360/- (rupees one lakh fifty six thousand three hundred and sixty only) on M/s Almas Creations under Section 114 of the Customs Act, 1962

(VI) I impose a penalty of Rs 75,000/- (rupees seventy five thousand only) on Mr Melurudd Ansari under Section 114 of the Customs Act, 1962.

(E) In respect of M/s Naaz Impex, ICD, Tughlakabad

(I) I reject the declared invoice value of Rs. 2,78,45,001/- (rupees two crores seventy eight lakhs forty five thousand and one only) of the goods exported under 05 Shipping Bills by M/s Naaz Impex under Drawback scheme under Section 14 of the Customs Act, 1962 and re-determine the value as Rs. 1,13,35,700/- (rupees one crore thirteen lakhs thirty five thousand and seven hundred only) as per details contained in Annexure- 3 to fac SCN;

(II) I order recovery of excess drawback availed fraudulently by M/s Naaz Impex amounting to Rs. 11,53,995/- (rupees eleven lakhs fifty three thousand nine hundred and ninety five only) as detailed in Annexure-3 to the SCN under Rules 16 of the Customs and Central Excise Duties (Drawback) Rules, 1995 read with the provisions of Section 75(1) of the Customs Act, 1962 along with interest thereon under Section 75A (2) of the Customs Act, 1962;

(III) I order to confiscate the goods exported by M/s Naaz Impex shown under the shipping bills as detailed in Annexure-3 to the SCN under the provisions of Section 113(i) of the Customs Act, 1962. Since the goods are not available I impose a fine of Rs 30,00,000/- (rupees thirty lacs only) on M/s Naaz Impex.

(IV) I impose a penalty of Rs 11,53,995/- (rupees eleven lakhs fifty three thousand nine hundred and ninety five only) on M/s Naaz Impex under Section 114 of the Customs Act, 1962.

(V) I impose a penalty of Rs 6,00,000/- (rupees six lacs only) on Mr Mehruddin Ansari under Section 114 of the Customs Act, 1962.

(F) In respect of M/s Naaz Impex, ICD, Tughlakabad

(I) I reject the declared invoice value of Rs. 5,60,48,881/- (rupees five crores sixty lakhs forty eight thousand eight hundred and eighty one only) of the goods exported under 10 Shipping Bills by M/s Naaz Impex under DEPB scheme under Section 14 of the Customs Act, 1962 and re-determine the value as Rs. 2,28,17,500/- (rupees two crores twenty eight lakhs seventeen thousand and five hundred only) as per details contained in Annexure-'3' to the SCN;

(II) I order recovery of custom duty equivalent to the excess DEPB credit availed fraudulently by M/s Naaz Impex amounting to Rs. 22,11,784/- (rupees twenty two lakhs eleven thousand seven hundred and eighty four only) as detailed in Annexure-3 to the SCN under Section 28(1) of the Customs Act, 1962 read with the relevant provisions of Foreign Trade Policy and Notification No. 34/97-Cus, dated 07.04.1997 along with interest thereon under Section 28AB of the Customs Act, 1962;

(III) I also order for appropriation of the amount of Rs. 20,00,000/- already paid by M/s Naaz Impex during investigations against the demand confirmed at para (11) above,

(IV) I order to confiscate the goods exported by M/s Naaz Impex under the DEPB scheme as shown under the shipping bills as detailed in Annexure-3 to the SCN under the provisions of Section 113(i) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962 and Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. Since goods are not available I impose a fine of Rs 55,00,000/- (rupees fifty five lacs only) on M/s Naaz Impex.

(V) I impose a penalty of Rs 22,11,784/- (rupees twenty two lakhs eleven thousand seven hundred and eighty four only) on M/s Naaz Impex under Section 114 of the Customs Act, 1962.

(VI) I impose a penalty of Rs 11,00,000/- (rupees eleven lacs only) on Mr Mehruddin Ansa under Section 114 of the Customs Act, 1962.

(G) In respect of M/s Naaz Impex, Air Cargo Exports, IGI Airport, New Delhi

(I) I reject the declared invoice value of Rs. 59,31,353/- (rupees fifty nine lakhs thirty thousand three hundred and fifty three only) of the goods exported under shipping bill no. 5215524 dt 25.06.2004 by M/s Naaz Impex under DEPB scheme under Section 14 of the Customs Act, 1962 and re-determine the value as Rs. 24,14,654/- (rupees twenty four lakhs fourteen thousand six hundred and fifty four only) as per details contained in Annexure- '3' to the SCN;

(II) I order recovery of custom duty equivalent to the excess DEPB credit availed fraudulently by M/s Naaz Impex amounting to Rs. 3,21,974/- (rupees three lakhs twenty one thousand nine hundred and seventy four only) as detailed in Annexure-3 to the SCN under Section 28(1) of the Customs Act, 1962 read with the relevant provisions of Foreign Trade Policy and Notification No. 34/97-Cus. dated 07.04.1997 along with interest thereon under Section 28AB of the Customs Act, 1962;

(III) I order to confiscate the goods exported under the DEPB scheme by M/s Naaz Impex as shown under the shipping bill no 5215524 dt 25.06.2004 as detailed in Annexure-3 to

the SCN under the provisions of Section 113(1) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962 and Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. Since the goods are not available I impose a fine of Rs 6,00,000/- (rupees six lacs only) on M/s Naaz Impex.

(IV) I impose a penalty of Rs 3,21,974/- (rupees three lakhs twenty one thousand nine hundred and seventy four only) on M/s Naaz. Impex under Section 114 of the Customs Act, 1962

(V) I impose a penalty of Rs 1,50,000/-(rupees one lac and fifty thousand only) on Mr Mehruddin Ansari under Section 114 of the Customs Act, 1962.

(H) I also impose a penalty of Rs 15,00,000/- (rupees fifteen lacs only) on Mr Nawab Alumni Ansari, Partner of M/s Pink Al Shella, Dubai and also proprietor M/s Naaz Impex under Section 114 of the Customs Act, 1962.

(I) I also impose a penalty of Rs. 15,00,000/-(rupees fifteen lacks only) on Mr. Sardar Ahmed authorized Signatory of M/s Mahir Fashions (P) Ltd., M/s Almas Creations and M/s Naaz Impex under Section 114 of the Customs Act, 1962.”

2. We have heard Shri Prabhat Kumar assisted by Shri Pralabh Mathur, learned counsels for the appellants and Shri Rakesh Kumar, learned authorized representative appearing for the department and perused the records.

3. The facts of the case, in brief, are that the appellants had exported garments claiming export benefits under Drawback and Duty Exemption Passbook Scheme². Both drawback and DEPB entitled the appellants to benefits as a percentage of the Free on Board³ value of the exported goods. The Directorate General of Revenue Intelligence⁴ received intelligence that the appellants were over-valuing the readymade garments in order to avail ineligible and excess drawback and DEPB benefits. Acting on this intelligence, officers of DRI examined the consignments of goods

2 **DEPB**
3 **FOB**
4 **DRI**

to be exported for which shipping bills were already filed. On examination, they felt that the values of the goods shown in the Shipping Bills were exorbitantly high. After completing the investigation, show cause notice dated 27.02.2019⁵ was issued to the appellants by the Additional Director General, DRI. The proposals in this SCN were confirmed in the impugned order. This impugned order rejected the declared FOB values and re-determined the FOB values under section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Export Goods) 2007⁶. Consequently, it ordered recovery of excess drawback and DEPB benefits said to have been availed by over-valuation of exports. It also held that the exported goods were liable for confiscation under section 113 of the Act and imposed redemption fine in lieu of confiscation and further imposed penalties under section 114 of the Act.

4. Several submissions were made by the learned counsel for the appellants and the learned authorized representative appearing for the Revenue. Before going into those submissions, it must first be examined if the Commissioner or any other customs officer has the power to re-determine the FOB value of exported goods since the entire case of the department is based on such re-determination.

5. In order to decide if the FOB value could be re-determined by the officer, the meaning of FOB value must be examined. FOB

5 **SCN**
6 **Valuation Rules**

value has not been defined under Customs Act,1962⁷ or under Foreign Trade (Development and Regulations) Act 1992⁸. However, it is universally understood because it is one of the INCOTERMS. INCOTERMS are used in international commerce and they indicate the mutual rights and liabilities of the buyers and sellers in any transaction. If goods are bought and sold on the FOB basis, the seller is free once the goods are put on board on the vessel or aircraft. All costs and risks associated with transporting the goods to the destination port rests with the buyer. If the goods, are sold on C & F basis, in addition to the FOB value, the seller is also responsible to bear the costs of transporting the goods up to the port of importation. If the goods are sold on CIF basis, the seller is responsible to bear both the costs and risks associated with transportation, i.e., the seller has to pay for the transportation of goods to the destination and also for the transit insurance. While CIF , C&F and FOB are the most common INCOTERMS, there are also some other INCOTERMS. In a nutshell, the FOB value is the transaction value of the goods agreed to between the buyer and the seller as per which the responsibility of the seller ends with putting the goods on board the vessel/aircraft.

6. Since FOB value is the transaction value of the goods, it can only be decided by the parties to the contract of sale, namely, the buyer and the seller. No stranger to the contract,

7 Customs Act
8 FTDR Act

including any customs officer has any role in determining the FOB value or changing it.

7. On the other hand, section 14 of the Act provides for determination of the 'value' of the imported or export goods. Value under section shall be 'the transaction value' but it can be rejected in certain cases and the value can be re-determined by the proper officer following some other methods such as value of contemporaneous import of identical goods, similar goods, etc., as per the Customs Valuation (Determination of Value of Export Goods) Rules, 2007⁹. The value determined under section 14 and the Valuation Rules is meant for assessment of duty. Section 14 reads as follows:

"14. Valuation of goods.

(1)For the purposes of the Customs Tariff Act, 1975 (51 of 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;

(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 ([42 of 1999](#))."

8. Section 2(2) of the Act defines 'assessment' as follows:

"Section 2(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to -

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;”

9. A combined reading of section 14 and section 2(2) of the Act shows that the proper officer can reject the transaction value as the assessable value and re-determine it following certain other methods as per the Valuation Rules.

10. What needs to be noted is that there is a clear distinction between the transaction value (which cannot be altered by any stranger to the contract) and the value under section 14 and the Valuation Rules (which can be determined by the proper officer). If the proper officer rejects the transaction value and determines the assessable value through some other methods such as, the value of contemporaneous export goods of similar market assessment, etc., he refuses to accept the transaction value as the assessable value. He does not change the transaction value.

11. An illustration would make this distinction clear. 'A', a person living in UK sells his luxury car to his friend 'B' living in India for £1,000/-. 'B' is only required to remit the £1,000/- to 'A' as consideration for the car. The proper officer, finding the car is worth much more, re-determines its assessable value as say, £

5,000/-. Since the assessable value is £5,000/-, the duty has to be paid on £5,000. The transaction value (FOB, CIF or C & F) will continue to be £1,000/-. Neither can 'A' claim more nor 'B' is obliged to remit more £1,000.

12. Duty has to be paid on the assessable value determined as per section 14 of the Act and the Valuation Rules. Drawback, DEPB and other export benefits on the other hand, are generally notified as a percentage of the FOB value and are not notified as percentage of assessable value. The reason for this distinction is evident. Export incentives are given to encourage exporters to export goods and to realize foreign exchange. The exporter's obligation to realize foreign exchange is based on the transaction value and so are the export incentives. If the proper officer of Customs rejects the transaction value and re-determines the value under section 14 and Valuation Rules, the transaction value (FOB value) will not change. The exporter still has to receive remittance as per his transaction value and will be entitled to export incentives as a percentage of the transaction value.

13. In these investigations, DRI examined the goods, investigated and came to the conclusion that the FOB value of the export goods was much lower than what was declared. This conclusion was based on the officers' assessment and the market surveys. What needs to be noted is that market survey can indicate the local market price of such goods in India but it cannot change the transaction value (FOB value) agreed to between the overseas buyer and exporter. Nothing in the Act

requires the exporter to export goods at domestic market prices or the overseas buyers to buy at such prices.

14. This issue was discussion at length by a Bench of this Tribunal in **M/s JBM Apparels Pvt Ltd. in Customs Appeal No. 50127 of 2024 decided on 07.03.2025.** The relevant portions of this order are as follows:

"17. We find that the dispute in this case is regarding export incentives in the form of drawback, MEIS and ROSL. The suspicion of the department is that the exporters had overvalued their goods so as to claim excess export benefits. The department wants the FOB values to be re-determined and accordingly the export incentives to be recomputed.

18. *De hors* the facts of the case, the fundamental questions which need to be examined and answered are:

- a) What is the meaning of FOB value of the goods and who decides it?
- b) Does the Joint Commissioner, Commissioner (Appeals) or any other officer of Customs have the power to re-determine the FOB value of the goods and if so, under what legal provisions?
- c) If the assessable value of the export goods is re-determined under the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 by the proper officer, will it also change the FOB value?
- d) If the export incentives are based on FOB value, does any Customs officer have the power under the law to order that the export benefits shall instead be paid on the basis of some other value determined by the officer?

34. To sum up:

- (i) FOB value is the transaction value, i.e., the price paid or to be paid for the goods as decided between the exporter and the overseas buyer.
- (ii) No stranger to the contract, including any Customs officer has any right to interfere with the FOB value of the goods.
- (iii) The Customs Act does not empower any officer to modify the FOB value of goods.

- (iv) Even if the transaction value is rejected under the Valuation Rules and the assessable value is determined following some other method, such re-determination of assessable value does not change the FOB value.
- (v) The power to notify rates of drawback is vested with the Central Government and if the rates of drawback are as a percentage of FOB value, drawback should be paid accordingly and no Customs officer has the power to ignore the FOB value and determine drawback based on any other value determined by him.
- (vi) The incentives under MEIS and ROSL are part of the FTP framed by the Central Government under section 5 of the FT(D&R) Act, 1992 and all officers are bound to follow the FTP. No Customs officer has the power to defy the FTP and say that MEIS and ROSL benefits should be paid, instead of FOB, based on some other values determined by him.
- (vii) Thus the entire investigation and the subsequent SCN and the adjudication proceedings were on the wrong impression that the Customs officers have the right to modify the FOB value or that drawback, MEIS and ROSL which, as per the drawback schedule and the FTP which have to be paid as a percentage of FOB could, instead, be paid on some other value determined by the officers."

15. **JBM Apparels** was followed in many other decisions by this Tribunal. We find no reason to take a different view in these cases.

16. We, accordingly, find that the Commissioner passed the impugned order under the wrong presumption that he had power to re-determine the FOB value of the export goods. No such power is conferred on the Commissioner or any officer under the Act. A stranger to any contract, including any Customs officer cannot change the FOB value of the goods. The order of recovery of drawback and DEPB benefits, confiscation of goods and imposition of penalties all flow from the re-determination of the

FOB value of the exported goods and, therefore, also cannot be sustained.

17. Since the impugned order has been passed without any authority of law, it is not necessary to go into the other submissions made by both sides.

18. The impugned order is set aside and all the six appeals are allowed with consequential relief to the appellants.

[Order pronounced on **22.07.2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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