

OIO No. KDL/ADC/DPB/20/2024-25
DATED 05.09.2024

 <p style="text-align: center;">OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467</p>		
DIN-20240971ML0000666B35		
A	File No.	GEN/ADJ/ADC/1684/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/20/2024-25
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	05.09.2024
E	Date of Issue	05.09.2024
F	SCN NO. & Date	S/20-02/CRA-AUDIT/Gr.II/2011 dated 11.12.2015
G	Noticee / Party / Importer / Exporter	M/s. Indian Farmers Fertilizer Cooperative Ltd., IFFCO Sadan, C-1, Distt Centre, Saket Place, New Delhi-110017

- यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS),
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”

- उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
- उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
(i) उक्त अपील की एक प्रति और
A copy of the appeal, and
(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ब्याज/दण्ड/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:-

M/s. Indian Farmers Fertilizer Cooperative Ltd., IFFCO Sadan, C-1, Distt Centre, Saket Place, New Delhi-110017 (hereinafter referred to as the "IFFCO") a Multistate Co-operative Society, engaged in production and distribution of fertilizers having IEC Code Number-0588034096, have filed following Bills of Entry for clearance of Muriate of Potash (MOP) during the period December-2010 to January-2011:-

Sr.No	Bill of Entry No and Date	Declared Description	Qty (MTs)	Unit Price US\$	Assessable Value
1	2394234/04.12.2010	Muriate of Potash in Bulk	30729.58	358.92	514629993
2	2443611/16.12.2010	Muriate of Potash in Bulk	54205.55	358.92	903367092
3	2547066/07.01.2011	Muriate of Potash in Bulk	36317.50	358.92	600970216
4	2751969/10.02.2011	Muriate of Potash in Bulk	38108.5	358.92	635640114
				Total	265,46,07,415/-

2. Above goods were originally imported by M/s. Indian Potash limited (hereinafter referred to as the "IPL") from various overseas suppliers, namely, M/s. Dead Sea Works Ltd, Israel, M/s. International Potash Company (UK) Ltd, U.K & M/s. Arab Potash Company PLC, Jordan and then were sold to IFFCO on High Seas Sale Basis. On further scrutiny, it appeared that M/s. Indian Potash Limited had purchased goods from overseas on higher value but sold it to IFFCO on lower value.
3. The letter no. KP/UTL/MOP/10-11 dated 08.02.2011 issued by Shri P/G, Verma, Joint General Manager (Utility), IFFCO, Kandla addressed to M/s. OTA Kandla, Gandhidham-Kutch, wherein it was mentioned that "M/s. Indian Potash Limited (IPL) and M/s. Kisan International Trading FZE, Dubai are the related parties to M/s. IFFCO". Hence, the above facts are to be declared whenever necessary while filing of Bills of Entry with the Customs and get the assessment of the consignment with proper disclosure to avoid any legal complication in future". Google browsing at <http://www.indianpotash.org/share-capital-structure.html> also indicates that IFFCO has 33.99% shares holding in IPL.
4. On the basis of the above, it appeared that IFFCO and IPL were related parties in terms of Rule 2(2) of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 but on scrutiny of details, it appeared that these facts have not been declared by the IFFCO while filing of subject Bills of Entry rather they had declared in the GATT Declaration, field of Bs/E in EDI system that importer & supplier are "**Not related**".
5. As regard to valuation of goods, it was very unlikely in the normal course of trade that a party imported goods at higher prices and sold them to another party at lower prices. In the instant case, IPL imported goods from overseas suppliers and sold them to their related buyer, the IFFCO, at lower prices on high sea sale basis which clearly indicated that prices were influenced by the relationship between these parties. Moreover, IFFCO had not

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produced any evidence to show that IPL was selling their goods to other unrelated parties in the same manner i.e. by granting value discount.

6. In view of the foregoing, it was evident that IFFCO had purchased the subject goods i.e. Muriate of Potash (MOP) from M/s. Indian Potash Limited which was clearly and evidently a related party and declared prices appeared to be influenced by the relationship between these parties as was evidenced from the documents and evidences on record. The fact that the price at which the MOP was purchased from IPL on High Seas Sale basis did not represent the true and correct value of the said product. This was very unlikely in the normal course of international trade that a party Imported goods at higher price and sold it to another party at the price lower than the import price. Therefore, the declared values of MOP imported by M/s. IFFCO Limited through High Seas sale, as detailed in Table at para 2 above, were liable to be rejected in terms of Rule 12 of the CVR, 2007. Rule 3(4) of the CVR, 2007 provides that where the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9.
7. Rule 4 of the CVR, 2007 provides for determination of value on the basis of the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the instant case, the subject goods were originally imported by IPL from various suppliers which were not related to IPL. Thus, price mentioned in the Original Invoices represent the actual transaction value in respect of the subject goods. Therefore, the value of MOP imported by IFFCO through High seas sale are required to be re-determined in terms of Rule 4 of the CVR, 2007 by adopting the transaction value of identical goods (the very same goods in this case) i.e. MOP originally imported by M/s. Indian Potash at the prevailing market prices from the overseas suppliers. For the purpose of assessment, value is required to be taken after adding declared high seas sale load prices in the Original Invoice prices.
8. In terms of Section 46(4) of Customs Act, 1962, the importer was required to make a right declaration in the Bills of Entry submitted for assessment of Customs duty. In the instant case, the subject goods i.e., MOP had been purchased by IFFCO from IPL which appeared to be related parties but this fact had not been declared by IFFCO while filing the subject Bills of Entry. It appeared that M/s. IFFCO Limited had willfully and deliberately suppressed the facts in relation to import of subject goods inasmuch as they had not declared while filing of impugned Bills of Entry that they were related party to the High Seas seller M/s. Indian potash Limited (IPL).
9. It further appeared that the importer knowingly and deliberately indulged in willful mis-declaration of value by declaring the lower prices which did not represent the actual transaction price in respect of the impugned goods with a view to evade the applicable duty. Hence the duty amounting to Rs. 30,74,111/- (as per Annexure-A to SCN) in respect of the goods cleared against the subject 4 B/Es was liable to be recovered from the Importer under Section 28(4) of the Customs Act, 1962 by invoking extended period of demand as the duty short paid was on account of willful mis-declaration and suppression of facts as narrated above. Further, the interest at the prescribed rate as applicable was also liable to be recovered from them in terms of Section 28AA of Customs Act, 1962.

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10. Since, the short levy and short payment of duty of Rs. 30,74,111/- as discussed above was on account of the aforesaid acts of willful mis-declaration and suppression of facts by the importer, they were liable to pay penalty under Section 114A of the Customs Act, 1962 in addition to applicable duty and interest as discussed above.
11. Accordingly, a Show cause notice F.No.S/20-02/CRA-Audit/Gr.II/2011 dated 11.12.2015 was issued to M/s. Indian Farmers Fertilizer Cooperative Limited, asking them as to why:-
 - a. The value of Rs. 265,46,07,415/- declared by them in respect of 159358.11MTS of Muriate of Potash (MOP) cleared by them vide 4 Bills of Entry, should not be rejected and re-determined as Rs. 271,42,98,879/- as detailed in Ann-A under Section 14 of the Customs Act, 1962 read with Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
 - b. The differential Customs Duty amounting to Rs. 30,74,111/- on import of Muriate of Potash as detailed in Annexure-A to the Show Cause notice, should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962.
 - c. Interest should not be recovered from them on the said differential Customs duty as at (ii), under Section 28AA of the Customs Act, 1962.
 - d. Penalty should not be imposed on them under Section 112(a)/114A of the Customs Act, 1962.
12. The Show Cause Notice was adjudicated vide OIO No. KDL/ADC/PMR/38/2016-17 dated 23.08.2016, whereby the adjudicating authority ordered as mentioned below:-
 - a. I reject the value of Rs. 265,46,07,415/- declared by the notice in r/o-159358.11 MTs of Muriate of Potash (MOP) cleared by them vide 4 Bills of Entry and re-determine as Rs. 271,42,98,879/- under Section 14 of the Customs Act, 1962 read with Rule 4 of the Customs Valuation Rules, 2007;
 - b. I confirm the demand of differential Customs duty amounting to Rs. 30,74,111/- on import of Muriate of Potash as detailed in Annexure-A to the SCN, under Section 28(4) of the Customs Act, 1962.
 - c. I order to recover interest from the noticee on the said differential Customs duty as at (ii), under Section 28AA of the Customs Act, 1962.
 - d. I impose penalty of Rs. 30,74,111/- on the noticee under Section 114A of the Customs Act, 1962.
13. Being aggrieved by the Order-in-Original dated 23.08.2016, the noticee preferred an appeal before the Hon'ble Commissioner, Customs (Appeals), Ahmedabad who vide OIA dated 01.05.2017 upheld the OIO dated 23.08.2016.
14. Being aggrieved by the OIA dated 01.05.2017, the noticee preferred an appeal before the Hon'ble CESTAT, Ahmedabad. The Hon'ble Tribunal vide Order No. FO/C/A/11660/2024-CU[DB] dated 16.07.2024 remanded the matter back to the original adjudicating authority for fresh decision after examining the fresh evidences produced before the Hon'ble Tribunal.

PERSONAL HEARING-

15. Shri S.R. Bommidi, Jt. General Manager (F&A), IFFCO-Kandla appeared for personal hearing on 02.09.2024 and reiterated the submission made on 20.08.2024. He requested to drop the proceedings considering the same.

DEFENCE SUBMISSION-

16. M/s. IFFCO vide its submission dated 20.08.2024, interalia, submitted the following:-

- a. They entered into an agreement with IPL for supply of MOP in Bulk vide Purchase Order no. IFFCO/MOP/1/2010-11 dated 20.05.2010. The impugned goods were to be supplied over the period from April-2010 to March 2011. They have enclosed the same.
- b. IPL in turn placed purchase orders on overseas suppliers namely M/s. Dead Sea Works Ltd, Israel, M/s. International Potash Company (UK) Ltd, UK & M/s. Arab Potash Company PLC, Jordan for import of fertilisers. The terms of contract entered into with the overseas suppliers is similar to the terms agreed between IFFCO and IPL. The price of goods is fixed at 370 USD PMT and IPL will be given cash rebate of 4.5% in case of upfront payment. The impugned goods so procured were sold to the Appellant on High Seas Sale Basis.
- c. During the year 2010-11, the noticee filed several Bills of Entry for import of Muriate of Potash. In respect of the following 4 Bills of Entry they opted for upfront payment as mentioned in the purchase order thus availing 4.5% cash discount on the invoice value. A detailed calculation sheet of the cash rebate available to the notice has been enclosed as Annexure-3A.
- d. In cases where they opted for upfront payment, the High Sea sale agreement indicated the value of the goods as USD 358.92 PMT at sight, being the value after adjusting the cash discount at 4.5% of USD 367PMT. The High Sea Sale Agreement also indicated that IPL would charge 17 INR as service charge per MT per consignment. In view of the same, the IPL raised invoice for sale of the Bill of Lading quantity of fertilizer after reducing franchise @.5%. The CIF cost of goods is indicated after extending the cash discount for payment at sight and the invoice clearly indicated due date of payment at sight.
- e. They placed a purchase order on IPL for purchase of 10 lakh MT+/- 1 Lakh MT of the impugned goods during the financial year 2010-11 @ USD 367 PMT (USD 370 less discount of USD 3.0 PMT) 180 days credit period. They have indicated that they would make upfront payment for four imports in the period December 14, 2010 to February 2, 2011 thus would avail cash rebate of 4.5%. Hence the same import which had been imported by IPL @ USD 367 PMT with 180 days credit period worked out to USD 358.92 PMT (USD 367PMT minus 2.25% of USD 367) for them as they had made cash payment in all these 4 cases and therefore have got 4.5% cash rebate.

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- f. M/s. IPL and M/s. IFFCO are not related persons in terms of Rule 2(2) of CVR, 2007 and the price of the goods have not been influenced by the relationship between the parties as the noticee had received a cash rebate of 4.5% as they had made upfront payment for the impugned goods.
- g. Demand of customs duty at the import price i.e. the price at which the goods are procured by IPL from the supplier is not legally unsustainable. Reliance is placed on Ispat Industries Ltd. v. Commissioner of Customs, Mumbai, 2006 (202) E.L.T. 561 (S.C) and Commissioner of Central Excise, Mangalore v. Mangalore Refinery & Petrochemicals Ltd., 2015 (325) E.L.T. 214 (S.C)
- h. The two way interest between buyer and seller necessary to disregard transactional value based on related person concept. In this regard they have relied upon the decision of Hon'ble Tribunal in the matter of Modi senator (I) Pvt. Ltd v. C.C. (Imports & General), New Delhi, 2009 (247) E.L.T. 313 (Tri.-Delhi).
- i. They have also relied upon the decision of Kolkata Tribunal in the matter of Initiating Explosives Systems (I) Ltd. v. Commissioner of Customs, Kolkata, 2002(150) E.L.T. 195 (Tri.-Kolkata) affirmed by Supreme Court in 2002 (224) E.L.T 343(S.C).
- j. They have also relied upon the decision of Hon'ble Supreme Court in the matter of Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613.
- k. They have also relied upon the decision of Union of India & others v. Atic Industries, reported in 1984 (17) ELT 323 (SC) to deny the mutuality of interest.
- l. Price has not been influenced by the alleged relationship.
- m. They have also relied upon the provisions of Rule 3 of CVR, 2007 in order to argue that transaction value is accepted even in case of imports from related party.
- n. They have relied upon the case of M/s. Essar Steels Ltd. v. Commissioner of Customs, Ahmedabad, 2005 (186) E.L.T 432 (tri.-Mumbai) in order to argue that cash rebate of 4.5% is allowed on prompt/cash payment. In order to emphasise, they have also relied upon the following judgements:-
 - i. Purolator India Ltd. v. Commissioner of Central Excise, Chennai, 2007 (218) E.L.T 451 (Tri.-Chennai)
 - ii. Tribunal-Chennai in the matter of India Pistons Ltd. v. Commissioner of Central Excise, Chennai, 2007 (218) E.L.T.451
 - iii. Union of India v. Bombay Tyres International Pvt. Ltd., 1984 (17) E.L.T.329 (SC)

- o. They pay IPL Rs. 17PMT as handling charges. Upfront payment for cash rebate option is available with IPL also in respect of transactions carried out with foreign supplier. Further IPL had 180 days period before making payment to the foreign supplier, thus, IPL has earned interest on the amount paid by them (IFFCO) and also the amount paid as service charge of Rs. 17/PMT collected by IPL.
- p. Consequently, no interest or penalty is attracted in the instant case.

DISCUSSION AND FINDINGS-

17. I have gone through the SCN dated 11.12.2015, OIO dated 23.08.2016, OIA dated 01.05.2017 and Order dated 16.07.2024 issued by the Hon'ble CESTAT, Ahmedabad and submissions placed on record.
18. I find that the issues to be decide before me are:-
 - a. Whether IPL and IFFCO are “related person” in terms of Rule 2(2) of the Custom Valuation Rules, 2007;
 - b. If yes, whether the transaction value declared by IFFCO has been influenced by such relationship;
 - c. Whether High sea sale price can be lower than the price at which High sea seller purchased goods from the foreign supplier;
19. I find that the IFFCO had filed four Bills of Entry for the import of Muriate of Potash, as given below. The said goods were originally imported by IPL from various overseas suppliers namely, M/s. Dead Sea Works Ltd, Israel, M/s. International Potash Company (UK) Ltd, U.K & M/s. Arab Potash Company PLC, Jordan and then were sold to IFFCO on High Seas Sale Basis. I find that M/s. Indian Potash Limited had purchased goods from overseas on higher value but sold it to IFFCO on lower value. The details of Bills of Entry are given below:-

Sr.No	Bill of Entry No and Date	Declared Description	Qty (MTs)	Unit Price US\$	Assessable Value
1	2394234/04.12.2010	Muriate of Potash in Bulk	30729.58	358.92	514629993
2	2443611/16.12.2010	Muriate of Potash in Bulk	54205.55	358.92	903367092
3	2547066/07.01.2011	Muriate of Potash in Bulk	36317.50	358.92	600970216
4	2751969/10.02.2011	Muriate of Potash in Bulk	38108.5	358.92	635640114
				Total	265,46,07,415/-

Whether IPL and IFFCO are “related person” in terms of Rule 2(2) of the Custom Valuation Rules, 2007-

20. In order to examine the issue of “related persons”, it is pertinent to reproduce the Rule 2(2) of the CVR, 2007, as given below:-

Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 explains as below:

Rule 2 (2) For the purpose of these rules, persons shall be deemed to be "related" only if -

- (i) ***they are officers or directors of one another's businesses;***
- (ii) they are legally recognised partners in business;
- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

21. On perusal of the sub rule (i) of Rule 2(2) of CVR, 2007, it is clear that if there are common directors in two firms/companies then the said firms/companies are related. It is amply clear that Explanation I to the said Rule clearly states that person includes legal persons. Therefore, the argument of the noticee that this Rule is only for natural or biological persons doesn't sustain.

22. On going through the List of Directors of IPL and IFFCO given in Annual report of the relevant time, as given in Para 3.5 of the OIO dated 23.08.2016 and not contested by IFFCO, I find that in both the Companies, Shri Prem Chandra Munshi and Dr. Uday Shankar Awasthi were Director and Managing Director respectively. Further on perusal of Section 179(3) of the Companies Act, 1956, I find that the Board of Directors of a company exercise various prominent powers on behalf of the company by means of resolutions passed at meetings of the Board, viz.,-

"(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:--

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise buy-back of securities under section 68;
- (c) to issue securities, including debentures, whether in or outside India;
- (d) to borrow monies;
- (e) to invest the funds of the company;
- (f) to grant loans or give guarantee or provide security in respect of loans;
- (g) to approve financial statement and the Boards report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;

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- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed:

23. It is clear that the Directors of a company are vested with certain powers by the corporate legislation. I further find that Shri P.G. Verma, Jt. General Manager vide letter no. KP/UTL/MOP/10-11 dated 08.02.2011, addressed to M/s. OTA Kandla, Gandhidam-Kutch categorically mentioned that M/s. Indian Potash Limited and M/s. IFFCO are related parties. On perusal of the same, I also find that the said letter dtd. 08.02.2011 emphasized that the fact of M/s. IFFCO and IPL being related parties was to be declared with proper disclosures before the authorities of Customs, Kandla while filing Bill of Entry for the purpose of assessment. The letter dated 08.02.2011 had been retracted by the noticee on 04.04.2016 after a gap of nearly five years. It is a settled law that retraction after a long gap is only an afterthought to derail the investigations and adjudication proceedings. In this regard, I rely on the following judgements:-

- a. The Hon'ble Supreme Court in the judgement in the case of Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar-1997 (96) E.L.T 211(S.C)
- b. The Hon'ble Supreme Court has observed in the case of Naresh J. Sukhwani Vs Union of India reported as 1996 (83) E.L.T 258
- c. Hon'ble CESTAT, Mumbai in the case of M/s. S.M. Steel Ropes reported as 2014 (304) E.L.T.591 (Tri. Mumbai)

24. I find that the noticee has relied upon various case laws. However, the facts and circumstances in the referred cases are distinct from the case in hand.

25. In view of the above discussion and findings, I find that M/s. IFFCO and M/s. IPL are related parties in terms of Rule 2(2)(i) of the Customs Valuation Rules, 2007.

Whether the transaction value declared by IFFCO has been influenced by such relationship-

26. As per Rule 3(3)(d) of Customs Valuation Rules, in case of related parties, the transaction value is accepted if the examination of the circumstances of the sale of imported goods indicate that the relationship did not influence the price. Further the Rule 3(3)(b) lays down the criteria for determining such values from unrelated buyers. The relevant extracts is given below:-

3. Determination of the method of valuation.-

- (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;
- (2) Value of imported goods under sub-rule (1) shall be accepted:
Provided that -(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -
 - (i) are imposed or required by law or by the public authorities in India; or

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- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;
- (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
- (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

27. In this regard, I find that the noticee has supplied a certificate issued by M/s. Indian Potash Limited as Annexure-II to the submission dated 20.08.2024, wherein the issuer has categorically certified that during the period F.Y.2010-11 they had imported MOP from various foreign suppliers. They had purchased MOP with credit facility of 180 days with discounting at 4.5% and the said goods were sold on HSS to various importers into India. Further, on perusal of the submission dated 20.08.2024, I find that M/s. IPL has supplied MOP to M/s. Zuari Industries Limited vide BoE No. 3099439 dated 01.04.2011 at USD\$ 368.15 PMT. Similarly, they have provided details of other Bills of Entry wherein the value per PMT is around USD\$360 and 370. I find that M/s. Zuari Industries Ltd. are unrelated to M/s. IFFCO as the Annual report of 2010-11 of M/s. Zuari Industries Ltd. list out all the Directors of the company, as given below:-

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ZUARI INDUSTRIES LIMITED



DIRECTORS

: Saroj Kumar Poddar, Chairman
H. S. Bawa, Managing Director
Shyam Bhartia
Arun Duggal
D. B. Engineer
J. N. Godbole
Jyotsna Poddar
S. P. Tyagi
Marco Wadia

GENERAL MANAGER

LEGAL AFFAIRS & COMPANY SECRETARY : R. Y. Patil

EXECUTIVE PRESIDENT

: Suresh Krishnan

VICE PRESIDENTS

: L. M. Chandrasekaran
Naveen Kapoor
Binayak Datta
V. K. Sinha

BANKERS

: State Bank of India
HDFC Bank Limited
Corporation Bank
Canara Bank
ICICI Bank
IDBI Bank

LEGAL ADVISERS

: Crawford Bayley & Co., Mumbai
Khaitan & Co., Kolkata

AUDITORS

: S. R. Batliboi & Co.
Chartered Accountants, Gurgaon

REGISTERED OFFICE

: Jai Kisan Bhawan
Zuarinagar, Goa 403 726.

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28. Clearly there were no common Directors in M/s. IPL and M/s. Zuari Industries during the relevant time as IPL had following Directors during the relevant time-

- Dr. U.S. Awasthi, M.D
- Shri Balwinder Singh, Independent Director
- Shri N.P Patel, Chairman
- Shri Prem Chand Munshi, Director

29. Further on perusal of Purchase order dated 20.05.2010, I find that the order was for supply of 1 Million MT+/-10% MOP for the period of April-2010 to March-2011 i.e. it was a long term contract between the High Sea Seller (IPL) and IFFCO for a large quantity of goods. Further the Net C& F Price as given in Para 9 of the Purchase order dated 20.05.2010, it is clearly mentioned that the initial invoicing would be done at USD 370PMT (excluding

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discount of USD 3 PMT) on 180 days credit basis. However, in case of sight payment, cash rebate of 4.5% shall be applicable. This shows that the High Sea Seller had made an arrangement of a long term contract with IFFCO to give discount of 3PMT only with a 180 days credit basis. However, considering the sight payment upfront, cash rebate of 4.5% was allowed.

30. On conjoint reading of Rule 3(3)(a) and 3(3)(b) (alongwith its proviso) of CVR, 2007 and on perusal of the transaction value of similar goods to unrelated buyer in India, I find that the relationship between IFFCO and IPL has not influenced the transaction value declared in four Bills of Entry in the instant case. Therefore, I hold that the transaction values declared by IFFCO in the said four Bills of Entry are correct in terms of Section 14 of the Customs Act, 1962 read with Rule 3(3) of CVR, 2007.

Whether High sea sale price can be lower than the price at which High sea seller purchased goods from the foreign supplier-

31. The show cause notice dated 11.12.2015 and the findings in OIO dated 23.08.2016 has categorically emphasized on the fact that a party imports goods at higher price and sells them to another party at lower price.

32. In this regard, I find that the noticee has argued that they pay IPL Rs. 17PMT as handling charges. Upfront payment for cash rebate option is available with IPL also in respect of transactions carried out with foreign supplier. Further IPL had 180 days period before making payment to the foreign supplier, thus, IPL has earned interest on the amount paid by them (IFFCO) and also the amount paid as service charge of Rs. 17/PMT collected by IPL. I find the argument sustainable as such arrangement allows the High Sea Seller to earn profit even by selling at lower price. In this regard, the following judgements are squarely applicable in the instant case:-

- i. Purolator India Ltd. v. Commissioner of Central Excise, Chennai, 2007 (218) E.L.T 451 (Tri.-Chennai)
- ii. Tribunal-Chennai in the matter of India Pistons Ltd. v. Commissioner of Central Excise, Chennai, 2007 (218) E.L.T.451
- iii. Union of India v. Bombay Tyres International Pvt. Ltd., 1984 (17) E.L.T.329 (SC)

PRICE AT HIGH SEA SALE-

33. Price relevant for customs valuation u/s 14(1) is the price for delivery at time and place of importation. In case of high sea sale, price charged by IPL to IFFCO would form the assessable value and not the invoice issued to the importer by foreign supplier. In this regard, reliance is placed on the following grounds:-

- a. National Wire v.CC 2000(122) ELT 810 (CEGAT) *
- b. Godavari Fertilizers v. CC (1996) 81 ELT 535 (CEGAT).

34. If the purchase is on high seas, the selling price will be naturally higher than the price at which the original buyer imported the goods. However, even if price is lower, the duty will be payable on price at which goods are sold on high seas basis to final importer. Original price

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at which original buyer purchased the goods cannot be basis for valuation. In this regard, reliance is placed on Excel Glasses Ltd. v. CC 2004 (166) ELT 496 (CESTAT).

35. I further rely on CBIC circular No. 32/2004-Cus dated 11-5-2004 wherein it has been clarified that the valuation should be on basis of last sale price. Even if there are more than one high sea sales, the last sale price should be taken for purpose of valuation, as that is the price at which final importation has been caused. If importer is unable to produce original invoice, high sea sale (HSS) contract etc. to establish link, valuation can be done on basis of Valuation Rules.

36. In view of the above discussion and findings, it is amply clear that the value of goods at which IPL purchased from foreign suppliers can't be taken as transaction value for the purpose of import of goods into India as the place and time of importation is port of import where Bills of Entry have been filed. Further, it is crystal clear from the Circular that value at High Sea Sale shall be taken as transaction value even if the value is less than the value at which High Sea Seller purchased goods from the foreign supplier.

37. In view of the above discussion and findings, I find that the charges of undervaluation are not proved and hence the demand of differential duty is not sustainable in the instant matter. Consequently, the demand of interest and penalty are also not sustainable in the instant case.

38. In view of the same, I hereby pass the following order:-

I drop the proceedings initiated vide SCN S/20-02/CRA-AUDIT/Gr.II/2011 dated 11.12.2015.

39. This order is issued without prejudice to any other action that may be taken against the noticee under the Customs Act, 1962 or any other law for the time being in force.

Additional Commissioner of
Customs
Custom House, Kandla

DIN- 20240971ML0000666B35

To,

M/s. Indian Farmers Fertilizer Cooperative Ltd., IFFCO Sadan, C-1,
Distt Centre, Saket Place, New Delhi-110017

Copy submitted to:-

1. The Deputy/Assistant Commissioner of Customs, Review, Kandla Customs House, Kandla for the purpose of Review.
2. The Superintendent (EDI/TRC) for necessary action at their end.
3. Guard File.