CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4

EXCISE APPEAL NO. 50466 OF 2024

[Arising out of Order-in-Original No. 12-20/2024-CE dated 18.01.2024 passed by the Additional Director General(Adjudication), New Delhi]

SINTERCOM INDIA LTD **.......APPELLANT**
Gat No. 127, At post Mangrul
Tal. Maval (Talegaon), Dabhade,
Pune, Maharasthra-410 507

Vs.

ADDITIONAL DIRECTOR GENERAL (ADJUDICATION)-NEW DELHI **.....RESPONDENT**
Director General of GST Intelligence
(Adjudication Cell) West Block-VIII, Wing 6,
2nd Floor, R.K. Puram, New Delhi

Appearance:

Ms. Soumya Malhotra, Advocate for the Appellant

Shri Shiv Shankar, Authorised Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50301 /2025

Date of Hearing : 14/01/2025
Date of Decision : 11/02/2025

P.V. SUBBA RAO:

1. M/s. Sintercom India Limited[1] is a vendor of M/s. Maruti Suzuki India Limited[2] and manufactures and supplies to Maruti automotive parts and components, viz., synchronizer hubs, belt

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1 Appellant
2 Maruti

pulleys, chain sprockets, sintered components for exhaust systems falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985.

2. The appellant supplied automotive parts to Maruti as per its requirements and for this purpose, Maruti provided drawings and designs of parts and invited quotations. Based on the quotations, Maruti placed orders on the appellant who sold the goods to Maruti after paying excise duty on the transaction value.

3. Maruti had obtained the designs and drawings from its principal M/s. Suzuki Motor Corporation Limited, Japan[3]. **Suzuki** carried out the Research and Development and Maruti paid Suzuki for the specifications, drawings and designs. However, Maruti did not charge its vendors (including the appellant) for the specifications, drawings and designs.

4. A Show Cause Notice dated 19.2.2019[4] was issued to the appellant proposing to include the notional cost of the drawings and designs provided by Maruti to the appellant as "additional consideration for sale" of the goods which the appellant had sold to Maruti. Similar SCNs were also issued to other vendors of Maruti.

5. The proposals in the SCN were confirmed by the order dated 18.01.2024[5] passed by the Additional Director General and

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3 **Suzuki**
4 **SCN**
5 **Impugned order**

demand of duty of Rs. 3,35,610/- covering the period February 2014 to June 2017 was confirmed and an equal amount was imposed as penalty.

6. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records.

7. The issue which falls for consideration in this appeal is whether or not the specifications, drawings and designs supplied by Maruti to the appellant when sending requests for quotations (RFQ) can be considered as 'additional consideration for sale' of the goods which the appellant had manufactured and sold to Maruti. According to Revenue, they form additional consideration for sale and according to the appellant, they do not.

8. It is undisputed that if they form 'additional consideration for sale', then their value must be included in the assessable value as per section 4(1) (b) of the Central Excise Act,1944[6]and Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000[7] and if they do not form 'additional consideration for sale', then they cannot be included and the assessable value will be the transaction value itself as per section 4(1) (a) of the Excise Act.The relevant portion of section 4 of the Excise Act and Valuation Rule 6 are reproduced below:

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6 Excise Act
7 Valuation Rules

"Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and **the price is the sole consideration for the sale**, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

……..

Rule 6.-Where the excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance **where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.**

……….

Explanation 1

For removal of doubts, it is **hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods**, to the extent that such value has not been included in the price actually paid or payable, **shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued** and aggregated accordingly, namely : -

(i) value of materials, components, parts and similar items relatable to such goods;

(ii) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;

(iii) value of material consumed, including packaging materials, in the production of such goods;

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

…………"

9. 'Additional' in the expression 'additional consideration for sale' refers to that which is in addition to the price. The two words central to deciding this issue are 'consideration' and 'sale'. The term 'consideration' is not defined in the Excise Act but the term 'sale' is defined in section 2(h) as follows:

> **"Section 2 Definitions:**
>
> (h) "**sale"** and "purchase", with their grammatical variations and cognate expressions, **mean any transfer of the possession of goods** by one person to another in the ordinary course of trade or business **for cash or deferred payment or other valuable consideration**;"

10. Thus, the term 'sale' in the Excise Act is defined slightly differently from the sale in the Sale of Goods Act, 1930[8] section 4 of which defines sale as transfer of property for a price and the term 'price' is defined under section 2(10) as money consideration. These sections of Sale of Goods Act read as follows:

> **"2. Definitions-**In this Act, unless there is anything repugnant in the subject or context,—
>
> (10) "**price**" means the **money consideration** for a sale of goods;
>
> **4. Sale and agreement to sell**.—
>
> (1) A **contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods** to the buyer **for a price**. There may be a contract of sale between one part-owner and another.
>
> (2) A contract of sale may be absolute or conditional.

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8 Sale of Goods Act

> (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
>
> (4) An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

11. Thus, while the Sale of Goods Act considers **transfer of property** in goods as sale, Excise Act considers **transfer of possession** of goods as sale and while Sale of Goods Act considers as sale **only the transaction for 'price', i.e., money consideration**, Excise Act includes within in the ambit of sale, **transfer of possession for cash or deferred payment or any other valuable consideration**.

12. The question which arises is as to what is 'consideration' and this term is not defined either in the Excise Act or in the Sale of Goods Act but is defined in the Indian Contract Act, 1872[9]–the Act which covers all types of contracts including those of sale. Since every transaction of sale or purchase, is also a contract- whether explicit or implicit- it is appropriate to examine the term 'consideration' under the Contract Act in the absence of any other definition of this term under the Sale of Goods Act or the Excise Act. Section 3 of the Sale of Goods Act makes it explicit that the provisions of the Contract Act would apply to sales and it reads as follows.

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9 **Contract Act**

> **"3. Application of provisions of Act 9 of 1872**.—The unrepealed **provisions of the Indian Contract Act, 1872**, save in so far as they are inconsistent with the express provisions of this Act, **shall continue to apply to contracts for the sale of goods."**

13. Therefore, it is appropriate to apply the definition of 'consideration' under the Contract Act to interpret the expression 'additional consideration for sale' under the Excise Act and the Valuation Rules. The relevant provisions of the Contract Act are as follows:

> **2. Interpretation clause**.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—
>
> **(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;**
>
> (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. **A proposal, when accepted, becomes a promise;**
>
> (c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";
>
> **(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;**
>
> (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;
>
> (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;
>
> (g) An agreement not enforceable by law is said to be void;
>
> (h) An agreement enforceable by law is a contract;

………"

14. Thus, for something to be 'consideration', it must be 'something done' or 'something abstained from doing' at the desire of the promisor. This something could be done or abstained from doing either by the promise himself or by someone else but it must be at the desire of the promisor. For example, if an 18 year old boy buys a motorcycle and his father pays the dealer, or a woman buys jewellery and her husband pays the jeweler, insofar as the sale is concerned, the payment by the father/husband constitutes consideration although the contract was between the son and the dealer or between the wife and the jeweler. Similarly, one could buy a car and the dealer may be paid by the bank providing finance or a company could buy goods or services and its parent or sister company may pay, etc. In all such cases, although the contract is between the promisor(seller) and the promisee (buyer), the consideration flowing from someone else for the sale but at the desire of the promisor (seller) constitutes a consideration.

15. It also needs to be noted that consideration could be in cash or some other valuable or simply something done or abstained from doing under the Contract Act but under Sale of Goods Act, only price can be the consideration. Under the Central Excise Act,consideration has to be for 'cash, deferred payment or some other valuable consideration". Thus, the scope of the consideration under the three Acts varies somewhat, but what

does not vary is that it has to be at the desire of the promisor done either by the promisee or by someone else. The necessary corollary is that it has to relate to the promise. In contracts of sale (either written or implicit), the seller promises to transfer the possession or property of the goods to the buyer and in return, he desires the buyer to pay him the price either by himself or through others.

16. We now proceed to examine the nature of the drawings, designs and specifications in dispute. It is not disputed that they were provided by Maruti to the appellant and that they were valuable inasmuch as they were developed by its parent company Suzuki, Japan after much effort and they were given to Maruti for a monetary consideration. Therefore, Revenue was correct in its submission that the specifications and drawings are of value. Insofar as the transaction between Suzuki Japan and Maruti is concerned, the specifications, drawings and desgins are 'the consideration' which Maruti had received in exchange for 'the licence fee' which it paid to Suzuki Japan.

17. The question, however, is whether these specifications, drawings and designs of value are 'consideration' in the transactions between Maruti and the appellant. As discussed, for something to be a consideration, it must be at provided at the desire of the promisor by either 'the promisee' or someone else.

18. For a promise to come into existence, there must be a proposal (or offer) from the seller and its acceptance by the buyer. Until the proposal is made and accepted, there is no promise. Once the offer is made and accepted, the promise makes the seller the promisor and the buyer the promisee. Before the offer is made and accepted, there is neither any promise nor any promisor-promisee relationship between them as they were only prospective seller and prospective buyer. When the appellant submitted its quotations and Maruti accepted them, Maruti became the promisee and the appellant the promisor.

19. To design a new car, all its parts will also have be designed to a great detail and this design of parts requires expenditure and such designs were acquired by Maruti from Suzuki for a cost but were provided free of cost to all the bidders including the appellant when inviting quotations when they had no promisor-promisee relationship.

19. We have also considered the specific provisions in Rule 6 of the Valuation Rules and if it would make a difference to the above proposition. The relevant portion of the explanation to Rule 6 reads as follows:

> "Explanation 1
>
> For removal of doubts, it is **hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods**, to

> the extent that such value has not been included in the price actually paid or payable, **shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued** and aggregated accordingly, namely : -
>
> ………..
>
> **(iv) value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.”**

20. Maruti had supplied to the appellant the specifications, designs and drawings not for use in connection with the production or sale of goods but in connection with the RFQ inviting bids/proposals. They helped the appellant in formulating its proposals/bids and submitting them to the Maruti. They were not meant for production or sale of such goods. Of course, once the proposals/bids of the appellants were accepted, the goods produced and sold have to conform to the specifications, drawings and designs provided by Maruti to ensure that the goods conform to them. These specifications, drawings and designs were result of an assessment and formulation of its own requirements by Maruti and their articulation while sending requests to the appellant for a quotation.

21. **To sum up, for something to be an additional consideration for sale as per Section 4(1) (b) of the Central Excise Act and Rule 6 of the Valuation Rules, it has to be ‘consideration’ in the first place which, as defined under the Indian Contract Act, has to flow to the promisor**

from the promisee or anyone else at the desire of the promisor. Before the proposal of the appellant and its acceptance by Maruti, there was no promise, no promisor and no promisee. The specifications or drawings and designs supplied while inviting bids- regardless of its value- cannot be called 'consideration' but can only be called articulation of the needs of Maruti. They were also not provided at the desire of the promisor(the appellant) but by Maruti (the promisee) on its own accord to elicit proposals (quotations).

21. In a batch of appeals decided by this Tribunal by Final Order no. 55140-55337/2024 dated 12.03.2024, in **Denso India Private Limited vs Additional Director General (Adjudication),** appeals in respect of other vendors of Maruti were decided in favour of the appellants on an identical issue. The relevant extract of the Final Order is reproduced below:

> "50. The inevitable conclusion, therefore, that follows from the aforesaid discussion is that the notional cost of drawings and designs supplied free of cost by Maruti to the vendors cannot be included in the assessable value of the parts and components manufactured by vendors and cleared to Maruti for the purpose of payment of central excise duty.
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> 51. In this view of the matter, it would not be necessary to examine the contention that has been raised by the learned counsel for the appellants that the extended period of limitation could not have been invoked in the facts and circumstances of the present case."

22. **Denso India** was followed in **Jay Nikki Industries vs Additional Director General** in Final Order No. 58858-

58860/2024 dated 14.10.2024. It was also followed in **KK Abhishek Safety Systems Private Limited vs Principal Additional Director General** in Final Order No. 55512-55513/2024 dated 10.4.2024.

23. In view of the above, we find that the impugned order cannot be sustained. The impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

[Order pronounced on **11.02.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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