IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. E/1334/2010

(Arising out of Order-in-Appeal No. YDB/203/RGD/2010 dated 20.04.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-II).

M/s Hindustan Organic Chemicals Ltd.	Appellant

Vs.

Commissioner of Central Excise, Raigad	Respondent

Appearance:

None (Adjn Request)	for Appellant
Shri Anil Choudhary, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 26.11.2018

Date of Decision: 26.11.2018

ORDER NO. **A/87980 / 2018**

Per: Dr. D.M. Misra

None present for the appellant despite notice. Heard the learned AR for the Revenue.

2. This is an appeal filed against Order-in-Appeal No. YDB/203/RGD/2010 dated 20.04.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

3. Briefly stated the facts of the case are that the appellants are manufacturer of excisable goods namely, “Aniline and Para Nitro Toluene” falling under Chapter 29 of the Central Excise Tariff Act, 1985. During the period in question, they have cleared excisable goods to customers holding Advance Licenses against Advance Release Orders (ARO), issued in favour of the appellant thereby, enabling the appellant to avail deemed export benefits namely, issue of Advance Intermediate License. Consequently, the appellant sold the excisable goods to these customers at a lower price. Alleging that the appellant had depressed the value of the product to the extent of the value of the Advance Licenses surrendered by the customers, show-cause notice was issued for recovery of the differential duty of Rs.9,64,645/- on the differential value for the period from 1.7.2003 to 30.5.2006 with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. Learned AR for the Revenue submits that the issue of ‘addition of surrendered value of the advance license to the assessable value of manufactured goods sold’ is no more *res integra* and covered by the judgment of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Bhubaneswar-II Vs. IFGL Refractories Ltd. – 2005 (186) ELT 529 (SC)* and *Commissioner of Central Excise, Nagpur-I Vs. Indorama*

Synthetics (I) Ltd. – 2015 (323) ELT 20 (SC). Hence, there is merit in the appeal.

5. We have carefully considered the submissions advanced by the learned AR and perused the records.

6. We find that the issue has been considered by the Hon'ble Supreme Court in the case of *IFGL Refractories Ltd. (supra).* Their Lordships after analyzing the issue at length observed as follows:-

> ***"9.*** *Ultimately it was agreed that M/s. Visakhapatnam will surrender its Advance Licences and in lieu thereof the Respondents get the Advance Intermediate Licences. Thus, without the Advance Licences of M/s. Visakhapatnam Steel Plant, being made available to the Respondents, the prices would have been as were quoted earlier. It is only because of the Advance Licences being surrendered by M/s. Visakhapatnam Steel Plant and in lieu thereof Advance Intermediate Licences being made available to the Respondents that the Respondents could offer lower prices. The surrendering of Licences by M/s. Visakhapatnam Steel Plant and as a result thereof the Respondents getting the Licences had nothing to do with any Import and Export Policy. It was directly a matter of contract between the two parties. This resulted in additional consideration by way of "Advance Intermediate Licence" flowing from M/s. Visakhapatnam Steel Plant to the Respondents. The value received therefrom is includable in the price. The Tribunal was wrong in stating that such an arrangement can never be placed upon the platform of additional consideration. In so stating the Tribunal has ignored and/or lost sight of the fact that it was in pursuance of the contract of sale between Respondents and M/s. Visakhapatnam Steel Plant that the Licences were made available to Respondents. The Export and Import Policy had nothing to do with the arrangement/contract under which the Licences flowed from the buyer to the seller. At the costs of repetition it must be mentioned that had the Respondents had Advance Intermediate Licence on their own i.e. without M/s. Visakhapatnam Steel Plant having to surrender its Licences for the purposes of the contract, then the reasoning of the Tribunal may have been correct. But here, in pursuance of the Contract of Sale, there is directly a flow of additional consideration from the buyer to seller. The value thereof has to be added to the price. We are thus unable to accept the broad submission that where parties take advantage of policies of the Government and the benefits flowing therefrom, then such benefit cannot be said to be an "additional consideration".*
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> ***10.*** *The question then arises as to how the "additional consideration" is to be computed. In this case the benefit accrued to the Respondents is clearly ascertainable by virtue of the two letters of the Respondents. Had this additional benefit not flown to the Respondents, they would have sold the items as per their offer dated 9th September 1992. As the additional consideration was to flow to them, they have sold at the rates mentioned in the letter of 2nd March 1993. The "additional consideration" is the difference in prices between these two. The Commissioner had thus correctly worked out this difference."*

7. The said view was later followed in *Indorama Synthetics' case (supra)*. Thus, following the ratio of the Hon'ble Supreme Court in the above case, we do not find merit in the appeal. Consequently, the impugned order is upheld and the appeal is dismissed.

(Dictated and pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha