

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

Excise Appeal No. 87049 of 2018

(Arising out of Order-in-Original No. PLG-GST-COM-06/17-18 dated 28.02.2018 passed by the Commissioner of CGST & CEx, Palghar Commissionerate)

Responsive Industries Pvt. Ltd.

.....Appellant

Mahagaon Raod, Betegaon Village,
Boisar East, Taluka Palghar

VERSUS

**Commissioner of Central Excise &
Service Tax, Palghar**

.....Respondent

Utpad Shulk Bhavan, 5th Floor,
BKC, Bandra East, Mumbai

APPEARANCE:

Shri Prakash Shah, Sr. Advocate a/w Shri Mihir Mehta,
Advocate for the appellant

Shri AK Shrivastava, AR for the respondent

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI M M PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER No: 85763/2026

DATE OF HEARING : 29.04.2026

DATE OF DECISION : 23.06.2026

Per: AJAY SHARMA

The present appeal has been filed by the Appellant challenging the impugned Order-in-Original dated 28.2.2018 passed by the Commissioner, CGST & Central Excise, Palghar

Commissionerate. By the impugned order, the learned Commissioner confirmed a demand of Central Excise duty amounting to Rs.7,67,01,773/- (Rupees Seven Crores Sixty-Seven Lakhs One Thousand Seven Hundred and Seventy-Three only), together with interest thereon and an equal penalty under the relevant provisions of the Central Excise Act, 1944.

2. The sole question requiring determination in this appeal is whether the Industrial Promotion Subsidy (hereinafter referred to as "IPS") disbursed under the Package Scheme of Incentives 2001/2007 (hereinafter referred to as "PSI-2001/2007") of the Government of Maharashtra constitutes "additional consideration" and therefore forms part of the "assessable value" as defined under Section 4(3)(d) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000?

3. The appellants are engaged in manufacture of excisable goods viz. Vinyl Floorings, CCF/PVC leather cloth etc. and are paying central excise duty on the transaction value of the finished goods. The Government of Maharashtra had announced a *Package Scheme of Incentives 2001/2007 [PSI-2001/2007]* pursuant to its Industrial Policy, 2006 which envisages grant of customized package of incentives to New Mega Projects as well as for expansion projects. The quantum of incentives within the approved limit was to be decided by a *High Power Committee* under the chairmanship of Chief/Principal Secretary, Government

of Maharashtra. Such incentives are, mostly in the form of refund of VAT/CST which were collected by the manufacturing units from its customers and paid to the state exchequer. Under PSI-2001/2006, the following categories of incentives were made available to the eligible units:-

(i) Electricity duty exemption for a period of 7 years from the date of production.

(ii) 50% exemption from payment of stamp duty for the first conveyance in accordance with the dispensation in this regard under Government Notification dated 12.6.2007.

(iii) Industrial Promotion Subsidy (IPS) equivalent to 50% of the '*eligible investments*' made by the eligible unit, subject to the investment limit of Rs.520.88 crores (*less the amount of benefits by way of electricity duty exemption and stamp duty exemption*) made within the period from 1.4.2007 to 31.3.2012, to be availed over a period of 7 years counted from 1.4.2010 or to the extent of taxes paid to the State Government, within a period of 7 years, whichever is lower.

4. The quantum of IPS receivable by the Appellant was governed by a Memorandum of Understanding (MOU) dated 28.09.2011 executed between the Appellant and the Government of Maharashtra. The computation mechanism under the MOU takes into account VAT/CST paid by the Appellant as one of several components for determining the IPS amount.

5. Revenue, upon receiving intelligence that the Appellant was obtaining refunds of VAT/CST under the incentive scheme without including those amounts in the transaction value for Central Excise purposes, initiated an investigation. Statements of the Director and the General Manager of the Appellant were recorded, and documents were called for. Upon scrutiny of the records and the statements, a show cause notice dated 29.6.2017 was issued invoking the extended period of limitation for the period from June, 2012 to March, 2017, demanding Central Excise duty of Rs. 7,67,01,773/- alleged to have been short-paid, along with applicable interest and penalty. The said notice culminated in the impugned order confirming the demand in its entirety.

6. Mr. Prakash Shah, learned Senior Counsel appearing for the appellant advanced the following submissions:-

(a) The IPS incentives, which are substantially in the form of refund of VAT/CST, are firstly collected by the appellants from its customers and remitted in full to the state exchequer. Section 4(3)(d) *ibid* expressly mandates the exclusion of sales tax and other taxes "actually paid or payable" while determining the transaction value. Once such taxes have been paid to the exchequer, they are correctly deducted from the transaction value and a subsequent refund in the form of State incentive, in the form of incentive/subsidy cannot retroactively render the

Appellant liable to include the said amount as additional consideration in the transaction value.

(b) The point of time for determining the excise duty liability is the moment of removal of goods from the factory, at which juncture the taxes are "actually paid". Any subsequent refund or incentive received from the State Government does not alter the liability already crystallised at the time of removal.

(c) The amounts received by way of IPS do not flow, directly or indirectly, from the buyer of goods, which is a *sine qua non* for inclusion in the transaction value under Section 4(3)(d) of the Act. IPS is a State subsidy linked to eligible capital investment and regional industrial promotion and bears no nexus to any individual sale transaction.

(d) The definition of *transaction value* u/s. 4(3)(d) *ibid* is exhaustive in character. Revenue cannot travel beyond the plain language of the statute to include amounts not contemplated therein.

(e) IPS is granted as per the provisions of PSI 2001/2007 and is computed as per the mechanism prescribed in the MOU dated 28.9.2011 entered into between the Appellant and the Government of Maharashtra. Payment of VAT/Sales Tax is one of the several components referred to in computation of IPS amount.

(f) The issue involved herein is no more *res integra*, in view of a recent decision of this Tribunal in *Bosch Limited vs. Commissioner, Central GST & Central Excise, Nashik; 2026(2) TMI 602 – CESTAT MUMBAI*.

7. Per contra learned Authorised Representative appearing for revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal.

8. We have heard rival submissions and have perused the case records including the written submissions/synopsis and the case laws placed on record. "*Package Scheme of Incentives 2001/2007*" were Government of Maharashtra's flagship industrial incentive schemes under which eligible industries setting up or expanding units in specified areas received benefits such as Industrial Promotion Subsidy, sales tax/VAT-related incentives, and electricity duty exemption. The quantum generally being linked to the unit's fixed capital investment and location. In order to appreciate the issue herein, both the relevant provisions namely Section 4(3)(d) of Central Excise Act, 1944 and Rule 6 of Central Excise Valuation Rules, 2000 are extracted as under:-

"Section 4(3)(d) – "*transaction value*" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make

provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

"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."*

9. The incentives are to be paid only when the fixed capital investment is made by the Units set up in Maharashtra State in terms of PSI-2001/2007. It is clear that the incentive is linked to eligible fixed capital investment and regional industrial development and is disbursed after scrutiny of claims and the issuance of the Eligibility Certificate by the Government of Maharashtra. Such incentive is not part of the price paid by the buyer and is independent of the sale transaction. The incentives received under PSI is a State subsidy for industrial promotion and cannot be treated as an additional consideration flowing from the buyer.

10. The starting point for the analysis must be Section 4(3)(d) *ibid*, which defines "transaction value" to mean the price actually paid or payable for the goods, including any amount that the buyer is liable to pay to, or on behalf of, the assessee, but

excluding the amount of duty of excise, sales tax, and other taxes, if any, actually paid or payable on such goods. The exclusion of sales tax and other taxes from the transaction value is therefore expressly provided for in the statute and operates at the point of removal.

11. The phrase "actually paid" in Section 4(3)(d) must be read in its temporal context. The excise duty liability arises at the time of removal of goods from the place of manufacture. At that point of time, the Appellant collected VAT/Sales Tax from its customers and remitted the same in full to the State exchequer. The said amounts were accordingly excluded from the transaction value in compliance with Section 4(3)(d) *ibid*. The statutory obligation was thus discharged at the time of removal, and the transaction value was lawfully determined on that basis.

12. The subsequent receipt of IPS from the Government of Maharashtra does not, and cannot, alter the transaction value as it stood at the time of removal. The scheme of Section 4 does not permit a post-facto revision of the transaction value on account of events occurring after the point of removal. To accept Revenue's contention would effectively require the transaction value to be re-determined at a date subsequent to removal – a proposition that finds no support in the statutory framework.

13. Equally crucial is the question whether IPS can be characterised as an amount received "*by reason of*" or "*in connection with*" the sale of goods so as to attract inclusion in

the transaction value. The answer is plainly in the negative. IPS is disbursed by the Government of Maharashtra as a State incentive to promote industrial investment and regional development. Its disbursement is conditional upon the Appellant having made qualifying fixed capital investments within the prescribed period, having obtained an Eligibility Certificate from the State Government, and the computation being governed by the MOU dated 28.9.2011. The IPS is linked to eligible capital investment, not to any individual sale transaction. It is neither paid by nor on behalf of the buyer of goods. The mere circumstance that the computation mechanism under the MOU takes into account VAT/CST paid by the Appellant as one component does not transform IPS into an amount payable by the buyer or received in connection with a sale transaction.

14. In *Bosch Limited (supra)*, this Tribunal, on identical facts, held that IPS received under PSI-2001/2007 does not constitute additional consideration and cannot be included in the assessable value under Section 4(3)(d) of the Act. We respectfully concur with and adopt the reasoning in *Bosch Limited* and hold that the same conclusion is warranted in the present case.

15. In a nutshell, IPS under PSI-2001/2007 is a post-sale State incentive linked to eligible capital investment and regional industrial development. It is not part of the price actually paid or payable by the buyer, nor is it an amount the buyer is liable to pay in connection with the sale of goods. It does not flow directly

or indirectly from the buyer. Consequently, it falls outside the scope of "*transaction value*" as defined under Section 4(3)(d) *ibid* r/w Rule 6 of the Valuation Rules, and cannot be included in the assessable value for the levy of Central Excise duty.

16. In view of the aforesaid, since on merits itself the demand is not sustainable, we are not inclined to decide about the invocation of the extended period of limitation u/s.11A (4) *ibid*.

17. For the reasons stated above the impugned order dated 28.2.2018 is hereby set aside. The appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 23.06.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M. M. PARTHIBAN)
MEMBER (TECHNICAL)

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