CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 50589 OF 2018

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-I/Import/NCH/510/ 2017 dated 16/11/2017 passed by Commissioner of Customs (Appeals), New Delhi – 110 037.]

M/s Ranbaxy Laboratories Ltd., ...Appellant
(Presently M/s Sun Pharmaceutical Industries Ltd.)
2nd Floor, Plot No. 77B, Sector 18,
Gurgaon, Haryana – 122 015.

Versus

Commissioner of Customs (Appeals), ...Respondent
ACC Import,
New Delhi.

AND
CUSTOMS APPEAL NO. 51710 OF 2018

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-I/Import/88/2018 dated 20/03/2018 passed by Commissioner of Customs (Appeals), New Delhi – 110 037.]

M/s Schenker India Pvt. Ltd., ...Appellant
DLF Building No. 8C, 12th Floor,
DLF Cyber City, Phase – II,
Gurugram – 122 002, Haryana.

Versus

Commissioner of Customs (Appeals), ...Respondent
New Customs House, Near IGI Airport,
New Delhi – 110 037.

APPEARANCE:

Shri B.L. Narasimhan, Ms. Anjali Singh and Shri Ashwani Bhatia, Advocates for the appellant.
Shri Girijesh Kumar and Shri Rajesh Singh, Authorized Representative for the Department

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO's. 50768-50769/2026

DATE OF HEARING : 16.02.2026
DATE OF DECISION: 24.04.2026

P.V. SUBBA RAO

M/s Sun Pharmaceuticals Industries Ltd. (formerly known as Ranbaxy Industries Ltd.)[1] and its customs broker M/s Schenker India Pvt. Ltd.[2] filed these appeals to assail the orders of the Commissioner of Customs (Appeals), New Delhi as follows :-

Appeal No.	Appellant name	Order-in-Appeal No. and date
50589 OF 2018	M/s Sun Pharmaceutical Industries Ltd.	CC (A) CUS/D-I/Import/ NCH/510/2017 dated 16.11.2017
51710 OF 2018	M/s Schenker India Pvt. Ltd.	CC (A)/CUS/D-I/Import/88/ 2018 dated 20.03.2018

2. The importer is engaged in manufacture and import of various pharmaceuticals and for this purpose it filed 173 Bills of Entry between 06.03.2009 and 29.12.2011 through the customs broker. The goods were imported by air. They were purchased from their overseas supplier on ex-works basis but the ex-works price was indicated in the Bills of Entry as Free on Board[3] value. The appellant also declared the freight incurred by it including the freight incurred for transportation from the factory of the exporter up to the port of export and the freight for transportation of goods up to the place of importation.

1. **importer**
2. **customs broker**
3. **FOB**

3. Duties of customs have to be paid as per the customs tariff based on quantity (specific rate of duty) or value (ad valorem rate of duty). If duty has to be paid on value, the transaction value, i.e., the price paid or payable for delivery of the goods at the time and place of importation should be reckoned. This price is generally referred to as Cost, Insurance and Freight[4] price. Thus, CIF and FOB are two of the International Commercial Terms[5] and so is ex-works price. The INCOTERMS indicate the rights and liabilities of the buyer and seller. If goods are sold on ex-works basis, all costs up to the factory gate are included in it the cost and all costs and risks beyond it are not included in it. If goods are sold on FOB basis, all costs up to placing the goods on board the vessel or aircraft are included in the price. If goods are sold on CIF basis, all costs including the cost of transportation and transit insurance up to the place of importation are included in the price. As per section 14, since the transaction value has to be the price paid or payable for delivery of goods at the time and place of importation, the CIF price should be reckoned as the value.

4. Section 14 also provides for framing of Rules to specify, *interalia*, the conditions under which the transaction value can be rejected. Rejection of transaction value is not relevant to this case. Customs Valuation (Determination of Value of

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4. the CIF
5. INCOTERMS

Imported Goods) Rules, 2007[6] were notified as per section 14 of the Act. Valuation Rule 3 provides for assessment to be done as per the transaction value adjusted in accordance with Rule 10 of the Valuation Rules. Valuation Rule 10 provides for certain costs and services to be included in the transaction value. In other words, if these elements were not already part of the transaction value, they should be added to the transaction value to determine the assessable value. Sub-Rule (2) of Valuation Rule 10 provides that the cost of transport of the imported goods up to the place of importation and the cost of transit insurance should be added, if the transaction value does not include these costs. For instance, if one import goods on FOB basis, the cost of transport and transit insurance must be added to determine the assessable value.

5. The fifth proviso to Valuation Rule 10 (2) states that "provided also that in case of goods imported by air, the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of the FOB value of the goods". The rationale for this proviso is evident. If goods are transported by ship, the cost of transportation will not be much. However, if they transported by air, the cost of transport is likely to be very high. Therefore, in such cases, a cap has been put and even if the actual cost of transport is more, only 20% of the FOB value of the goods should be added towards cost of transport to arrive at the assessable value.

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6. Valuation Rules

6. In this case, invoices were not issued on CIF or FOB basis but were issued on ex-works basis. The importer filed Bills of Entry declaring the ex-works values shown in their invoices as FOB values and the cost of local transport up to the port of export as well as the cost of transport up to the place of port of import and transit insurance were added and transaction values were determined. The Bills of Entry were assessed accordingly.

7. In view of the cap on the amount of freight which can be included in the assessable value in case of air freight, the assessment were computed reckoning 20% of the ex-works price towards the cost of freight instead of 20% of the FOB value. The cost of transport from the factory up to the port of import should have been added to the ex-works price to determine the FOB value and the freight should have been reckoned as 20% of such FOB value instead of taking 20% of the ex-works value only. Thus there was short assessment and short payment of duty in the Bills of Entry. Directorate General of Revenue Intelligence[7] investigated the matter and issued a show cause notice dated 30.05.2014 which was decided by the Additional Commissioner by an order dated 30.06.2015. Both the importer and the customs broker appealed against this order and the Commissioner (Appeals) passed two separate orders which are impugned in these appeals.

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7. DRI

8. Through the impugned orders, confirmation of differential duty of Rs. 10,02,468/- has been upheld under section 28 (4) of the Act invoking extended period of limitation from the importer and so was an equal amount was imposed on the importer as penalty under section 114A of the Act. Further, an amount of Rs. 10,00,000/- was imposed on the importer as penalty under section 114AA of the Act. The penalty of Rs. 1,00,000/- was imposed under section 112 of the Act and the penalty of Rs. 1,00,000/- was imposed under section 114AA of the Act on the customs broker. Hence these appeals.

Submissions of the learned counsel for the appellant

9. Learned counsel for the appellant made the following submissions :-

(i) Extended period of limitation under proviso to section 28 of Customs Act is not applicable in the present case as all import documents with all the details were duly submitted by the appellants at the time of import. The case does not involve any wilful mis-declaration, suppression or collusion.

(ii) Calculation of assessable value from ex-works/FCA price is incorrect. No situation contemplated in the Valuation Rules provides for calculating assessable value from ex-works/FCA price. A perusal of section 14 of the Customs Act and Rule 10 of Valuation Rules

clearly indicates the types of additions to be made while calculating the assessable value. In Rule 10 (2), certain costs are required to be included to calculate the CIF price and determine duty liability. In this case, the cost of transportation is to be calculated as provided. However, the law remains silent on the aspect of ex-works/FCA price based assessment. Thus, the appellants can in no way be held liable where no method exists to arrive at the CIF value from ex-works price.

(iii) The Valuation Rules do not define freight and also do not categorically list out what would be in the nature of freight charges. Further, it is not the case of the department that the charges were excluded from the calculation but were placed in the wrong column. Therefore, when the law itself is not clear on how to treat ex-works charges and calculate assessable value from ex-works price, the appellants cannot be held liable for its bona fide actions.

(iv) Fiscal status are to be construed strictly. If Valuation Rules have not prescribed a specified method, then calculation for the purposes of determining duty liability cannot rest on a method for a different term of payment/nature of value. Thus, in the present case, the method used to calculate assessable value is incorrect wherein the CIF value is determined from

ex-works price using a valuation method based on FOB price.

(v) Interest and penalties are not liable to be imposed on the appellants.

Submissions on behalf of the Revenue

10. Learned authorized representative for the Revenue made the following submissions :-

(i) Wilful mis-declaration and suppression of facts justify demand under section 28 (4). The appellants intentionally mis-declared the nature of their imports in two significant ways: they declared ex-works/FCA prices as FOB in the Bills of Entry, and declared lesser freight amounts than those actually charged and paid and failed to amend the Bills of Entry even after clearance. These mis-declarations led to exclusion of various charges (transportation, pickup, handling) from the assessable value, resulting in a wilful evasion of duty. As per section 28 (4) of the Customs Act, 1962, extended period of five years has been rightly invoked. The department has clearly demonstrated wilful suppression, and hence section 28 (4) squarely applies. It is a settled legal position that mere payment of duty does not negate the element of suppression.

(ii) Payment of duty and interest does not preclude show cause notice or penalty. The appellants have contended that duty and interest were paid voluntarily. However, the record shows that interest was paid only after issuance of the show cause notice. In terms of section 28 (2) of the Customs Act, both duty and interest must be paid prior to issuance of SCN in order to avoid further proceedings. That not being the case here, proceedings under section 28 (4) and the imposition of penalty are legally valid and justified.

(iii) Penalty under sections 114A and 114AA of the Act were correctly imposed. Penalty under section 114A of the Act is justified as the duty short-payment was a direct result of wilful misstatement and suppression. Penalty under section 114AA of the Act is also independently sustainable, as the company knowingly signed and submitted false declarations in the EDI Bill of Entry. The misuse of the "freight" field to conceal other charges was deliberate and materially significant. The contention that section 114AA of the Act applies only to individuals is legally incorrect; as per the General Clauses Act, the term "person" includes companies. Hence, both penalties are well supported by law and facts.

(iv) The goods in question were not confiscated solely because they were not available for seizure under section 110 of the Customs Act. However, this does not detract from the fact that mis-declaration was fully established. Accordingly, the non-confiscation has no bearing on the liability for penalty under relevant provisions.

(v) Under section 17 of the Customs Act read with the Self-Assessment Regulations, the primary obligation to make truthful and complete declarations lies with the importer. In this case, the exhaustive checklist built into the EDI system was consciously bypassed. The false declaration of INCOTERMS and charges effectively defeated the self-assessment mechanism, thereby justifying invocation of penalty provisions.

(vi) The use of the word "shall" in section 46 of the Customs Act imposes a mandatory obligation. Failure to declare accurate assessable value invites consequences statutorily prescribed, including penalties and extended limitation under section 28 (4).

11. We have considered submissions advanced by both sides and perused the records.

12. The facts of the case are not in dispute. Revenue was correct in asserting that the cost of air freight that was to be

included in the assessable value should have been 20% of the FOB value and not 20% of the ex-works price. This legal position is not in dispute.

13. The contention of the learned counsel that the value cannot be determined from ex-works price under the Valuation Rules is incorrect. As per Rule 10 (2) of the Valuation Rules, the cost of transportation upto the place of import has to be included in the assessable value. It certainly means not only the cost of transport from port of export but also the cost of transport upto the port of export. Learned counsel's submissions that FOB value cannot be determined from ex-works price is also not correct. FOB value includes all costs upto placing the goods on board the vessel/aircraft i.e., the costs of transport from the factory have to be included to arrive at the FOB value.

14. Next is the question of limitation. The remedy available to the department to recover duty not paid, short paid under section 28 can be exercised within the normal period of limitation. Show cause notice can be issued within extended period of 5 years if the duty was not paid or short paid by reason of any collusion or wilful mis-statement or suppression of facts. The grounds on which the penalty under section 114A of the Act can be imposed are also the same, i.e., duty being short paid by reason of collusion or any wilful mis-statement or suppression of facts. The ground for invoking extended period

of limitation recorded by the Commissioner (Appeals) in the impugned order is in paragraph 6.2 which is reproduced below :-

> "6.2 In the era of self assessment, importers are required to declare the correct description, value, classification, notification number, if any, and themselves assess the customs duty leviable, if any, on the imported goods in terms of section 17 and section 46 of the Customs Act, 1962 and also in terms of the Bill of Entry (Electronic Declaration) Regulations, 2011. Further, there is an exhaustive checklist for importers/CHA for filing EDI Bill of Entry and correctness of the declarations made while filing Bill of Entry has to be certified by the importer in the form of declaration at its foot and any mis-declaration/incorrect details has legal consequences. In view of the appellant's acts of omission and commission as stated in the preceding para i.e. a) not declaring the expenses viz. – transportation, pick up and other handling charges which were incurred by the appellant for transporting the goods from seller's factory/warehouse to the port of shipment, at the appropriate field in EDI Bill of Entry; b) by not amending the lesser freight amount declared in the Bill of Entry by the appellant as against the actual freight charged in the invoices and c) by adding these miscellaneous and other charges in the freight amount which was more than 20% and thus was restricted to 20% of FOB, a result of their wrong and `illegal exclusion from the assessable value, I find that the adjudicating authority was legally right to hold that the appellant failed to make a correct and truthful statement with regard to the miscellaneous expenses and validated the wrong declaration made as true, correct and complete while filing EDI Bill of Entry. Thus the suppression of facts was made willfully and deliberately with an intent to evade duty. Hence, the extended period has correctly been invoked. Reliance is placed on judgment of Tribunal **2014 (310) E.L.T. 593 (T)** wherein extended period was held to be invokable due to mis-declaration in Bill of Entry".

15. Evidently, the Commissioner (Appeals) held that there was suppression of facts by the importer willfully and deliberately with intent to evade duty. The reason is that the importer failed to make a correct and truthful statement with regard to the miscellaneous expenses while signing the declaration in the Bills of Entry. The fact that the importer had wrongly declared the ex-works price as the FOB value in the Bills of Entry is not in dispute. The reason for this, according to the importer, was that there was no provision to declare ex-works price in the Bill of Entry and therefore the appellant declared it as FOB value.

16. It is certainly an oversight on the part of the appellant in NOT adding the cost of local transport upto the port of export to the ex-works price and declaring it as the FOB value. It must also be noted that for major portion of the period from 03.06.2009 up to 08.04.2011, there was no provision for self-assessment. As per section 17 all assessments were to be done by the officers. Therefore, if there was an oversight by the importer, there was also an oversight by the officers who did not correct the declaration and assess the Bills of Entry correctly during this period. There is nothing on record to show that either the importer or the officers or the customs broker had any intention to evade duty or reduce the liability of duty. Since the entire period of demand was within the extended period of limitation it needs to be set aside. Consequently, the penalty also needs to be set aside.

14. Both appeals are allowed and the impugned orders are set aside with consequential relief to both the appellants.

(Order pronounced in open court on 24/04/2026.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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