OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707
तालुका - उरण, जिला - रायगढ़ , महाराष्ट्र 400707

DIN –20251078NX0000888E0D **Date of Orde:24.10.2025**

F. No. S/10-128/2024-25/COMMR/GR-VI/NS-V/CAC/JNCH Date of Issue:24.10.2025

SCN No.: 1151/2024-25/COMMR/GR.VI/NS-V/CAC/JNCH

SCN Date: 27.09.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:241/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. IKEA INDIA PVT. LTD(IEC-0514055472)

ORDER-IN-ORIGINAL
मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी'मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

Time Limit - Within 3 months from the date of communication of this order.
समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee -फीस-

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

(क) एक हजार रुपय जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.

(ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति – क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

Subject: Adjudication of Show Cause Notice No. 1151/2024-25/Commr/ Gr. VI/ NS-V/CAC/JNCH dtd. 27.09.2024 issued to M/s IKEA India Private Limited (IEC-0514055472) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 1151/2024-25/Commr/ Gr. VI/ NS-V/CAC/JNCH dtd. 27.09.2024 that M/s IKEA India Private Limited (hereinafter referred to as "IKEA India" or "IKEA" or the importer or the company) a multi-national company having IEC 0514055472, with registered address at Unit No. 421, DLF Tower-A, Jasola District Centre, New Delhi-110044, is a major home furnishing retailer. IKEA specialises in providing affordable home furnishings solutions. Corporate office of IKEA India Private Limited is located at Survey No.12-13, Yeshwantpur Hobli, Bengaluru North Taluk, Bengaluru-560073. IKEA has its own single brand outlets in Hyderabad, Bangalore & Mumbai, from where it does direct selling to walk-in customers. They also sell their products online all over India through their own websites or other e-commerce platforms. IKEA is majorly into low-priced home furnishing products, sold whenever possible in compact "flat-pack" form, for in-home assembly by the customer. IKEA also provides affordable home furnishings solutions by giving various options of customizations; wherein end-customers have choice to design their furnitures according to their own requirements and needs.

1.2. Intelligence developed by the officers of Directorate of Revenue Intelligence (DRI), indicated that various goods imported by IKEA are being mis-classified by IKEA India and, therefore, an investigation was initiated against them for mis-classification of certain imported goods. During the course of investigation and from scrutiny of documents of IKEA India Private Limited, it was found that IKEA India is paying Franchisee Fee to one of the group companies of their overseas seller and they are not including the Franchisee fee as a part of assessable value in their imports. It appeared that the imported goods were assessed at lower value which resulted in the payment of less customs duty in terms of provisions of Rule 10(1) (c) and Rule 10(1) (e) of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007.

1.2.1 It was found, while developing the intelligence, that IKEA Supply AG, having it's principal office at Grussenweg 15, CH 4133 Pratteln, Switzerland, is supplier of exclusive IKEA products to IKEA India Private Limited, having its principal office in New Delhi and services office in Banglore, Karnataka. IKEA India Private Limited is importing the IKEA products from IKEA Supply AG under an "Agreement for Supply of Products and Services" executed between IKEA Supply AG and IKEA India Private Limited. IKEA India Private Limited has a separate Franchisee Agreement with Inter IKEA Systems B.V. Inter IKEA Systems B.V. is a corporation organized under the laws of the Netherlands, and principal office of Inter IKEA Systems B.V. is located at Ol of Palmestraat 1, 2616 LN Delft, the Netherlands. As per the Franchise Agreement, Inter IKEA System BV is "franchisor" and IKEA India Private Limited is "franchisee". **The franchisee i.e. IKEA India Private Limited is paying 3% of its monthly net sales, net of any taxes, as**

franchise fee to the Franchisor i.e. Inter IKEA Systems B.V. The Franchisee fee, thus paid, is directly linked to the sale of imported goods and this franchise fee has not been included as a part of assessable value for calculation of customs duty on the imported goods by IKEA India Private Limited.

1.2.2 To gather further evidences pertaining to short payment of customs duty due to non-inclusion of the Franchisee fee in the assessable value of imports, a search was conducted at the corporate office of IKEA India Private Limited located at Survey No.12-13, Yeshwantpur Hobli, Bengaluru North Taluk, Bengaluru-560073 under the provisions of Section 105 of the Customs Act, 1962 on 10.01.2024 to 11.01.2024 and Panchnama dated 10-11.01.2024 of the search proceedings was drawn. This search was done in addition to the earlier search dated 12.10.2023 to 14.10.2023 of the aforesaid premises under Panchnama dated 12-14.10.2023 in the matter of misclassification of imported goods by IKEA India.

1.3. During the course of investigation, several documents including supply agreements, franchisee agreements, SVB investigation reports and SVB Orders and letters and emails were retrieved from M/s IKEA India Private Limited.

1.4. "Agreement for supply of Products and Services" between IKEA Supply AG and IKEA India Private Limited:

1.4.1 M/s IKEA Supply AG **(Supplier),** having its registered office at Grussenweg 15, CH 4133 Prattelin, Switezerland, executed an agreement for supply of products and services with M/s IKEA India Private Limited **(Retailer)** having its principal office at Unit No.421, DLF Tower A, Jasola District Center, New Delhi. Both the Supplier and Retailer have agreed to certain terms and conditions for sale of goods supplied by the supplier to the retailer which is franchisee of Inter IKEA Systems BV. The relevant extract of the agreement were reproduced in the SCN, the same is not reproduced in this Order-in-Original for the sake of brevity.

1.4.2. As per the Agreement for Supply of Products and Services, the supplier IKEA Supply AG (ISAG) is defined as *a company specialised in international trade and wholesale activities with consumer goods as well as performance of certain highly qualified and specialised services which have been consolidated and centralised within the Inter IKEA Group of Companies. These highly qualified and specialised services entail i.a. surveillance and performance of trading activities, trading operational methods, planning and managing of distribution services and distributional methods including supply support services, as well as managing finance and administration functions in relation thereto*;

1.4.3. IKEA Supply AG (ISAG) is a company within the Inter IKEA Group of Companies that has been granted the worldwide rights to purchase products developed by IKEA of Sweden AB (or by independent product developers appointed by IKEA of Sweden AB) (hereinafter the "IKEA Products") and is, inter alia, specialised in the sourcing, purchasing, distribution and sale of the

IKEA Products, as well as in the administration of concentrated cash flows, risks and liabilities created thereby;

1.4.4. The IKEA Products are produced by manufacturers (hereinafter referred to as ("Producers") throughout the world and are to be exclusively sold to and purchased by franchisees of Inter IKEA Systems B.V.;

1.4.5. Retailer is a franchisee of Inter IKEA Systems BV and active in the retail sale of IKEA Products as well as in providing related services to customers purchasing IKEA products;

1.4.6. The price for the IKEA Products is determined by Supplier (ISAG) in accordance with Supplier's current pricing policy, which is communicated to Retailer on a regular basis. Supplier undertakes to provide retailer with a fixed price for the period September 1 to August 31 in any year for all articles which are included in the core range of IKEA Products and, for the other IKEA Products, Supplier undertakes to provide Retailer with prices valid for 4 month at a time, starting on September 1, January 1 and May 1 in any year.

1.4.7. The supplier and retailer acknowledge and agree that the IKEA Products and any model and design being part thereof are intended solely for the marketing and sale by authorized franchisees of Inter IKEA Systems BV. The supplier i.e. ISAG undertakes not to sell any products to Retailer that is not an IKEA Product.

1.4.8. Supplier is entitled to terminate this agreement immediately, when the retailer ceases to be the franchisee of Inter IKEA Systems BV. It means that this agreement is valid in the condition when the retailer is a franchisee of Inter IKEA Systems BV.

1.5. "Franchise Agreement No.1619 [Annexure-5] and Franchise Agreement No.2128" between Inter IKEA Systems B.V. and IKEA India Private Limited.

1.5.1. A Franchisee Agreement has been executed between Inter IKEA Systems BV, Netherlands and IKEA India Private Limited, India. As per the said Franchisee Agreement, Inter IKEA Systems BV is "Franchisor" and IKEA India Private Limited is "Franchisee". The relevant extract of the agreement were reproduced in the SCN, the same is not reproduced in this Order-in-Original for the sake of brevity.

1.6. During the course of the investigation, statements of the officials of IKEA India were recorded under the provisions of Section 108 of the Customs Act, 1962. The IKEA India officials, in their respective statements, stated as follows:

1.6.1 The statement of Shri Randhir Puthran, Central Fulfillment Operations Manager cum Wholesale Operations Manager, IKEA India Private Limited (Annexure-7 of the SCN) dated

17.11.2023 was reproduced in the SCN, the same is not reproduced in this Order-in-Original for the sake of brevity.

1.6.2 The statement of Shri P.S. Murali Iyer, Chief Financial Officer (CFO), IKEA India Private Limited (Annexure-8 of the SCN) dated 11.01.2024 was reproduced in the SCN, the same is not reproduced in this Order-in-Original for the sake of brevity.

1.6.3 The statements of Shri Pankaj Gupta, Ex-Country Tax Manager, IKEA India Private Limited dated 27.02.2024 and 29.02.2024 (Annexure- 9 & 14 of the SCN) dated 11.01.2024 was reproduced in the SCN, the same is not reproduced in this Order-in-Original for the sake of brevity.

1.6.4 The statement of Ms. Preet Dhupar, Ex-CFO, IKEA India Private Limited (Annexure-12 of the SCN) dated 28.02.2024 was reproduced in the SCN, the same is not reproduced in this Order-in-Original for the sake of brevity.

1.7. Facts from documents/information collected during the search of the office premises of IKEA India, statements recorded, documents submitted during the course of recording of statements and other relevant official documents/information:

1.7.1 Facts from Statements:

1.7.1.1 The following facts can be concluded from the statement of Shri Randhir Puthran, Central Fulfillment Operations Manager cum Wholesale Operations Manager, IKEA India, dated 17.11.2023, that:

i) IKEA have an exclusive supply agreement with Ikea Supply AG i.e. ***'Agreement for Supply of Products & Services'*** wherein they, as Franchisee, can only purchase goods from Ikea Supply AG and Ikea Supply AG can only sell the goods to Ikea India Private Limited in Indian territory. There weren't any price negotiations with their supplier and ISAG Invoice to them based on fixed price. Prices are fixed by their supplier (ISAG) and IKEA don't negotiate with them and no discussion takes place with them in this regard. IKEA is just a 'franchisor' of Ikea goods and IKEA don't have any control over the pricing. IKEA make payment to them as per the Invoice raised by them.

ii) Ikea India Private Limited sells only 'Ikea products' and their Supplier i.e. Ikea Supply AG also supplies only Ikea products. Ikea India Private Limited is the authorized franchisee of Inter Ikea Systems BV. IKEA pay 'Franchisee Fees' calculated at 3% of Franchisee monthly net sales, net of any taxes, to Inter Ikea Systems BV under a separate 'Franchisee Agreement' with Inter Ikea Systems BV. 'Franchisee Fees' is paid separately by Ikea India Private Limited to Inter Ikea Systems BV (Inter Ikea Group Company).

iii) 'Franchise Fees' is not a part of 'Assessable Value' declared to the Customs for imports of 'Ikea Products' from their overseas Supplier i.e. Ikea Supply AG (Inter Ikea Group company).

IKEA declares 'Invoice Value' as the 'Assessable Value' to the Customs on goods imported from their overseas Supplier i.e. Ikea Supply AG.

1.7.1.2 The following facts can be concluded from the statement of Shri Pankaj Gupta, Ex-Country Tax Manager and Ex-Finance Manager, IKEA India Private Limited, dated 27.02.2024 & 29.02.2024:

(i) IKEA India purchases goods from ISAG (Ikea Supply AG) and its appointed domestic vendors for resale in the Indian market. Under an exclusive supply agreement, IKEA India, as the franchisee, is only permitted to purchase goods from ISAG, and ISAG is restricted to selling goods solely to IKEA India within Indian territory. ISAG determines the prices and publishes a list price, based on which IKEA India decides the quantity of goods to order, without the ability to negotiate prices. All goods imported from ISAG must be sold directly to end consumers through IKEA stores, the IKEA website or the IKEA app.

(ii) IKEA India pays a 'Franchise Fee' calculated at 3% of the franchisee's monthly net sales, excluding taxes, to Inter Ikea Systems BV under a separate 'Franchisee Agreement.' This fee is not included in the 'Assessable Value' declared to Customs for imports of 'Ikea Products' from IKEA's overseas supplier, Ikea Supply AG, a company within the Inter Ikea Group. Instead, IKEA India declares the 'Invoice Value' as the 'Assessable Value' to Customs for these imported goods. Although the 'Franchisee Fee' paid to Inter Ikea Systems BV is directly related to the sale of goods, as per IKEA, it is simply a formula used to determine the payment to the franchisor. For every product sold in IKEA stores, IKEA India is obligated to pay the Franchise Fee. Additionally, all goods imported from ISAG must be sold exclusively in IKEA stores, and once these goods are sold, IKEA India must pay the Franchise Fee to Inter Ikea Systems BV.

(iii) The 'Franchise Fee' paid by IKEA India to the Inter Ikea Group is for the use of the IKEA Concept, the IKEA Retail System and the IKEA Logo used in stores (excluding the logo on products). According to the agreement, the IKEA Concept includes the IKEA Retail System, the products, the food products, and the Proprietary Rights. The IKEA Retail System is a unique retail framework owned and developed by the franchisor for selling products and food items from IKEA stores using these Proprietary Rights. The term 'product' refers to goods available for display and sale in IKEA stores, specifically defined in the agreement as "furniture, furnishings, and related products for interior decorating, distinguished by Design & Quality IKEA of Sweden, and sold under the IKEA Retail System." It means Franchise Fee is linked to products as well.

(iv) IKEA India adds a 10% Withholding Tax to the 3% Franchisee Fee, effectively increasing the fee to 3.33% of net sales. This 3.33% is declared as the franchise fee to Income Tax authorities. If a liability to pay customs duty arises on the franchise fee, it should be calculated based on the 3.33% rate.

(v) In an email and its attachment, Ms. Preet and Mr. Pankaj have proposed several changes to the existing franchise agreements between IKEA BV and Ikea Supply AG. These provisions were suggested to strengthen the contract and mitigate the risk of litigation in India, particularly concerning related party transactions. However, it is important to note that these proposed changes were never accepted by Inter IKEA.

(vi) IKEA Supply AG is a part of the INTER IKEA Group, while IKEA India is a part of the INGKA Group of Companies. The shares of INGKA Holding BV are wholly owned by Stichting INGKA Foundation. In a submission to the Special Valuation Branch (SVB), IKEA India mentioned these facts and provided a certificate issued by Dutch tax authorities stating that the Inter IKEA and INGKA groups are not related. However, this certificate was neither requested by Indian Customs nor specifically issued by the Dutch tax authority for Indian Customs purposes.

(vii) IKEA India obtained the SVB Investigation Report, which was not addressed to IKEA India and marked as highly confidential by Alpesh in his email. This issue of sharing confidential report wasn't raised with higher-ups and it seems it was intentional to get this report from SVB even if it is not marked to IKEA India.

(viii) Certain products were supplied to INGKA Services LLP from IKEA India's bonded warehouse in Pune, despite the Franchisee Agreement not covering such sales outside of stores. IKEA India sought permission from Inter IKEA before proceeding with these sales and paid the Franchisee Fee for that transaction. However, the Franchise Fee should not have been paid for this transaction, as it was not covered under the Franchise Agreement. IKEA India's CFO, Ms. Preet Dhupar, instructed to pay the fee for this sale, whereas Pankaj Gupta advised in an email dated July 8, 2020, that IKEA India should avoid such transactions, as they do not comply with the Franchise Agreement.

1.7.1.3 The following facts can be concluded from the statement dated 28.02.2024 of Ms. Preet Dhupar, Ex-CFO, IKEA India Private Limited:

(i) IKEA India purchases imported goods exclusively from ISAG (Ikea Supply AG). For locally procured goods, IKEA India uses predefined vendors supported by IKEA Services India Private Limited, and payments are made directly to these local vendors based on their invoices. For locally procured goods, payments for products are made to the vendors, while support services are paid to IKEA Services India Pvt. Ltd.

(ii) Approximately 20% of IKEA India's goods are procured domestically, while 80% are imported. IKEA India has a supply agreement with Ikea Supply AG, which stipulates that as a franchisee, IKEA India can only purchase goods from Ikea Supply AG. Conversely, Ikea Supply AG can only sell these goods exclusively to franchisees of Inter IKEA Systems BV, with IKEA India being the franchisee in the Indian territory. There is no negotiation on prices with ISAG; they determine and publish a fixed list price, and IKEA India orders based on this price without the ability to negotiate.

(iii) IKEA India imports goods from ISAG to resell in the Indian market under the IKEA brand. After import, these goods are sent to a warehouse (Distribution Centre), where MRP labeling is applied before distribution to IKEA stores. All imported goods from ISAG must be sold exclusively to end consumers through IKEA stores, the IKEA website, or the IKEA app. IKEA India is required to sell both imported and other IKEA goods only through IKEA retail channels. In a past transaction, IKEA India sold products directly (Without using IKEA retail Channel) to the Ingka Global Business Operations hub office in Bengaluru, which is part of the INGKA group and located in a Special Economic Zone (SEZ).

(iv) The franchise fee is calculated at 3% of the franchisee's monthly net sales of goods, excluding taxes or discounts, and is payable to Inter IKEA Systems BV under the franchise agreement. This fee is paid separately by IKEA India Pvt. Ltd. to Inter IKEA Systems BV (an Inter IKEA Group company) and is not included in the 'Assessable Value' declared to Customs for imports of IKEA products from IKEA India's overseas supplier, Ikea Supply AG (also an Inter IKEA Group company). IKEA India declares the 'Invoice Value' as the 'Assessable Value' to Customs. IKEA India believes that the franchise fee is not related to the product's valuation and that the proprietary rights are already factored into the product cost. Therefore, the franchise fee is not included in the valuation.

(v) According to the Franchise Agreement, the 'Franchise Fee' paid to Inter IKEA Systems BV (the franchisor) is calculated based on the sale of goods and is calculated in the same way for all franchisees. IKEA India is required to pay this fee for every product sold in IKEA stores. All goods imported from ISAG (a subsidiary of Inter IKEA and the only designated supplier for IKEA products) must be sold exclusively through IKEA stores. Once these goods are sold, IKEA India must pay the Franchise Fee to Inter IKEA. The franchise fee applies to both imported and domestically sourced products.

(vi) The IKEA Retail System is designed for the sale of products and food items from IKEA stores. According to the agreement, a 'product' refers to goods displayed and available for sale in IKEA stores, including furniture, furnishings, and related interior decorating items distinguished by Design & Quality IKEA of Sweden, and sold under the IKEA Retail System. The franchise fee covers the right and license to use the proprietary rights and IKEA Retail System exclusively for operating IKEA stores. Franchise fee is only paid when IKEA India makes a sale; if no sale occurs, no franchise fee is due. Although IKEA India can import goods without paying the franchise fee, the fee must be paid on the sale of goods/products. In case of non- payment of Franchise Fee, Ikea India will not be able to use IKEA retail system.

(vii) As per IKEA India, the value of Proprietary Rights (for the brand on the products) is already included in assessable value of goods, based on the letter received from ISAG. The same letter was submitted to SVB during investigation. The cost of the proprietary rights for the logo is included in the cost of product from ISAG. IKEA India pays to ISAG for total cost of product and franchise fee to Inter IKEA Systems for the right to use the IKEA Retail system.

(ix) The franchise fee is 3% of net sales. IKEA India adds a 10% withholding tax to this fee, effectively making the gross franchise fee 3.33% of net sales. Thus, the gross franchise fee, including withholding taxes, is 3.33%, while the net franchise fee, excluding withholding taxes, is 3%.

(x) IKEA India was aware that customs duty on the franchise fee could be a possibility, as there had been internal discussions with mixed opinions on the matter. In 2018, when the SVB investigation began, IKEA India made provisions for this potential liability. In an email dated October 8, 2018, Ms. Preet expressed her belief that customs duty should be payable on the franchise fee, stating, "As far as I know the law is clear that customs duty is payable on franchise fee – then we are not paying it today." She acknowledged that the issue of duty applicability was debated with differing opinions and views, and her own perspective at the time was based on her limited understanding and the advice of tax experts.

1.7.2 Facts from Documents:

1.7.2.1. From the "Agreement for Supply of Products and Services" executed between IKEA Supply AG and IKEA India Private Limited it appears that:

(i) Supplier IKEA Suppy AG has been granted the world-wide rights to purchase products (IKEA Products) developed by IKEA of Sweden AB (or by independent product developers appointed by IKEA of Sweden AB) (herein and after the "IKEA products").

(ii) **IKEA products can be exclusively sold to the franchisees of Inter IKEA System B.V.** The manufactures, who are manufacturing/producing the IKEA products, cannot sell these products to any other entity. These products can be sold to the franchisees of Inter IKEA System B.V. only. It implies that these IKEA products cannot be supplied to any entity other than franchisee of Inter IKEA Systems BV. These goods are solely manufactured/produced for sale in the stores of franchisees of Inter IKEA Systems, BV. It is clear that IKEA Supply AG cannot choose its customer on its own. It is mandatory to supply only the IKEA Goods, only to the franchisees of Inter IKEA BV. It is an obligation of the IKEA Supply AG to supply the goods to the franchisees of Inter IKEA Syatems BV i.e. IKEA India Private Limited in present case.

(iii) As per clause 11.4 of Agreement for Supply of Products and Services (reproduced below):

> *"11.4 Supplier shall be entitled to terminate this Agreement to immediately expire, should Retailer at any time no longer be a franchisee of Inter IKEA Systems B.V."*

It appears that being the franchisee of Inter IKEA BV is the foremost condition for receiving the imported goods from IKEA Supply AG. Therefore, in the present case, it is clear that IKEA India Private Limited can import the goods from IKEA Supply AG only in the condition of it being the franchisee of Inter IKEA Systems BV.

(iv) As per clause 9.1 of Agreement for Supply of Products and Services (reproduced below):

> *"9.1 Supplier and Retailer acknowledge and agree that the IKEA Products and any models and designs being part thereof are intended solely for the exclusive marketing and sale by authorised franchisees of Inter IKEA Systems B.V. Supplier undertakes not to sell any products to Retailer that is not an IKEA Product.*

It is clear that there is a condition of supply of **only IKEA products** as defined in the said agreement of Supply of Products and Services. The supplier cannot supply any other products to the retailer i.e. IKEA India Private Limited. Therefore, it implies that the retailer i.e. IKEA India Private Limited can sell only IKEA Product and only in the condition when the retailer is a franchisee of Inter IKEA Systems BV.

1.7.2.2 From the **Franchise Agreement No.2128** executed between Inter IKEA Systems BV (Franchisor) located in Netherlands and IKEA India Private Limited (Franchisee), India, it is, inter alia, found that:

(i) Inter IKEA Systems BV (herein and after the Franchisor) is the owner of the distinctive and unique IKEA Concept.

(ii) IKEA Concept consists of the IKEA Retail System, the Products, the Food Products and the Proprietary Rights (all defined in the ibid Franchise Agreement).

(iii) The IKEA India Private Limited, the franchisee has been granted the permission to operate the IKEA store to sell the IKEA products.

(iv) Clause 11.2 of the franchise agreement says:

"11.2 The Franchises i.e IKEA India Private Limited shall pay the Franchisor i.e. Inter IKEA Systems BV, during the term of this Agreement, an amount calculated at three per cent (3%) of Franchisee's monthly Net Sales, net of any Taxes (the "Franchise Fee"). The Franchise Fee shall be payable for each four (4) month period by the thirtieth (30th) day of the succeeding calendar month. In case of business interruption of any nature in the IKEA Store operations, Franchisee shall continue to pay the three percent (3%) fee (the payment of which shall be insured in accordance with Section 19 (Insurance)."

From clause11.2 ibid, it is clear that the Franchisee fee being paid by the franchisee to the franchisor is made as a condition of sale of the imported goods/IKEA Products which are imported/ procured from IKEA Supply AG.

(v) In the franchise agreement, the IKEA Concept is defined as:

*"**IKEA Concept** means the IKEA Retail System, the Products, the Food Products and the Proprietary Rights."*

From combined reading of para 1.1, 1.2 and definitions of the IKEA concept in Franchise Agreement it appears that Inter IKEA Systems BV is the actual owner of the IKEA Goods supplied by ISAG.

(vi) As per Clause 3.2 of the ibid Franchise Agreement, Franchisor grants to franchisee, in strict compliance with the terms and conditions of this agreement, **the right and license** to use the necessary Proprietary Rights (including the IKEA secret know-how, the IKEA trademarks, the unique trade dress and the other unique characteristics of the IKEA retail system) solely in connection with the operation of the IKEA Store.

(vii) As per Clause 10.4 of Franchise Agreement, the franchisee has been authorized to use the word "IKEA" in it's corporate name and such authorization would be immediately and automatically withdrawn on the termination of the franchise agreement. It appears that the ultimate right to use the IKEA word rests with the Franchisor i.e. Inter IKEA Systems BV who, by way of agreements, gives the right to use the word "IKEA". Therefore, it appears that the claim of IKEA India Private Limited vide the statement dated 28.02.2024 of Ms. Preet Dhupar and statement dated 27.02.2024 of Shri Pankaj Gupta that the value of proprietary rights are already included in the assessable value appears to be false. It appears that Inter IKEA Systems BV has granted the authorization to IKEA Supply AG to use the word "IKEA" in their corporate name and on the products supplied by IKEA Supply AG. However, Shri Pankaj Gupta in his statement dated 27.02.2024 clarified that ISAG is using IKEA logo on products and for this ISAG is paying franchisee fee to Inter IKEA BV. Therefore, it appears that the value of goods supplied by ISAG to IKEA India contains only the charges of IKEA logo on the IKEA Products and not all the proprietary right. It appears that Inter IKEA BV is collecting franchisee fee from ISAG for IKEA logo on products and the franchise fee paid by IKEA India to Inter IKEA BV is not including the

charges for IKEA logo on the products. Therefore, it appears that the contention of IKEA India that the value of proprietary rights is already included in the assessable value is not correct.

(viii) It is pertinent to mention that the Supply agreement between IKEA Supply AG and IKEA India Private Limited has also been executed as per clause 9.1 of the Franchise Agreement. Clause 9.1 of the franchise agreement states:

"9.1 The supply of Products and Food products shall be governed by separate supply agreement to be made between franchisee and suppliers of the aforementioned products authorized by Franchisor."

From the above, it appears that only the franchisor (IKEA Systems BV) will decide the supplier; the franchisee i.e. IKEA India Private Limited has no stake in deciding the supplier of imported goods.

(vii) As per Clause 15 EARLY TERMINATION which is reproduced below:

15. EARLY TERMINATION

15.1 Franchisor shall have the right, in addition to all other remedies it may have at law or in equity, to terminate this Agreement and the licenses granted hereunder immediately if one or more of the following events of default occur, and such default is not remedied to Franchisor's satisfaction within thirty (30) days after written notice of the default is sent to Franchisee:

(i) the IKEA Store fails in any material manner to comply with standards and specifications for layout and display set by Franchisor;

(ii) the operation of the IKEA Store does not substantially comply with the essentials of the marketing policy as stipulated in Section 5 of this Agreement;

iii) Franchisee fails to pay Franchisor any money, whether franchise fees or payments for services or otherwise when the same is due;

(iv) Franchisee in any manner does not comply with the IKEA Operating Standards set by Franchisor;

(v) there is any change in ownership or financial interest of Franchisee (except as provided for in Section 20.3) which is not first approved by Franchisor,

(vi) Franchisee for any reason no longer occupies or operates the IKEA Store;

(vii) Franchisee directly or indirectly engages in any business similar to the IKEA Concept in breach of Section 12.1;

(viii) Franchisee actively solicits sale of the Products in violation of Section 12.4;

(ix) Franchisee does not comply with local laws and regulations, including, for example, local health, safety, food, planning/building and environmental regulations; or

(x) Franchisee is otherwise in material breach of the terms and conditions of this Agreement.

15.2 Franchisor may (at its absolute discretion) immediately terminate this Agreement and the licenses granted hereunder by written notice of default to Franchisee if Franchisee has on more than one occasion been in default as provided in Section 15.1, or if Franchisee:

It appears that the Franchisor i.e. Inter IKEA Systems BV has right to terminate the Franchise Agreement on non-payment of Franchisee Fee.

(vii) As per Clause 16.1 of the franchise agreement:

"16.1 Upon the expiration or termination of this Agreement and the license and franchise granted under it (for any reason, whether by reason of default, lapse of time, or other cause), Franchisee shall immediately:

(i) and permanently discontinue all use of the IKEA Retail System and the Proprietary Rights, including the IKEA Secret Know-How and all signs, structures and form of advertising indicative of the Proprietary Rights or which the public associates or is likely to associate with the IKEA Store or which indicate that the Products or the Food Products are available for sale at the former IKEA Store;

(ii) remove or make such changes in signs, furnishings and fixtures and otherwise, including but not limited to changes in displays and uniforms of personnel, as in Franchisor's judgement are required to distinguish the Property from its former appearance and to eliminate the unique design, layout and style and the other unique characteristics of the IKEA Retail System;

(iii) return to Franchisor all IKEA Retail Standards (including manuals, instructions and specifications) and other IKEA Retail System related materials (including all copies thereof) furnished to Franchisee under and pursuant to this Agreement;

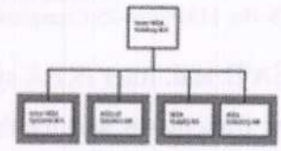
(iv) sell to Franchisor or its appointed nominee, if Franchisor so elects, all of the saleable Products in the possession of Franchisee at the date of such expiration or termination (or such part thereof as Franchisor may require) at landed cost (i.e. invoice price plus transport, duties and other official import related fees and/or taxes). Franchisor shall within thirty (30) days of such expiration or termination inform Franchisee whether it or its appointed nominee elects to exercise this option; and

(v) in accordance with Section 11, report and pay all amounts accrued prior to the expiration or termination."

It is clear that on expiration or termination of the franchise agreement, the franchisee have to immediately and permanently discontinue all the use of IKEA Retail system and IKEA Concept. They have to stop the use of all the proprietary rights including IKEA secret know-how and all signs, structures and form of advertising indicative of the Proprietary rights or they have to refrain from any activity which can show their connection with IKEA brand. Further, after the expiration or termination of Franchise Agreement, the franchisee has to sell to franchisor or to the nominee appointed by the franchisor, all of the saleable products in the possession of the franchisee at the landing cost. Neither Franchisee nor the supplier of goods have any control on the IKEA products

after the expiration or termination of Franchisee Agreement. It is only Inter IKEA BV who has full control on the IKEA Goods imported by IKEA India Private Limited even after the expiration of the Franchise Agreement. From combined reading of ibid clause 15 and clause 16 of Franchise Agreement, it appears that in case of non-payment of franchisee fee by the Franchisee, the Franchise Agreement gets terminated and, on termination of Franchise agreement, IKEA India cannot sell the IKEA Products. For selling the IKEA Products by IKEA India, the existence of Franchise Agreement is inevitable and, for the existence of Franchise Agreement, the payment of Franchisee Fee is compulsory. Thus, it appears that the Franchise Agreement and payment of Franchisee Fee is condition of sale of IKEA Products.

1.7.2.3. A screen shot from Inter IKEA website (www.inter.ikea.com) is reproduced below



Retail Concept

Retail Concept, part of Inter IKEA Systems B.V. continuously develops the IKEA Concept and ensures its successful implementation in new and existing markets. Inter IKEA Systems B.V. is the IKEA franchisor and owner of the IKEA Brand.

In order to be able to deliver the total franchise offer to the franchisees, Inter IKEA Systems B.V. has assigned certain tasks to other legal entities through agreements.

Range

Range includes IKEA of Sweden AB and its subsidiaries. Inter IKEA Systems B.V. assigns IKEA of Sweden AB to maintain, improve and develop the IKEA product offer (including home furnishings and food) according to the IKEA Concept Framework.

Supply

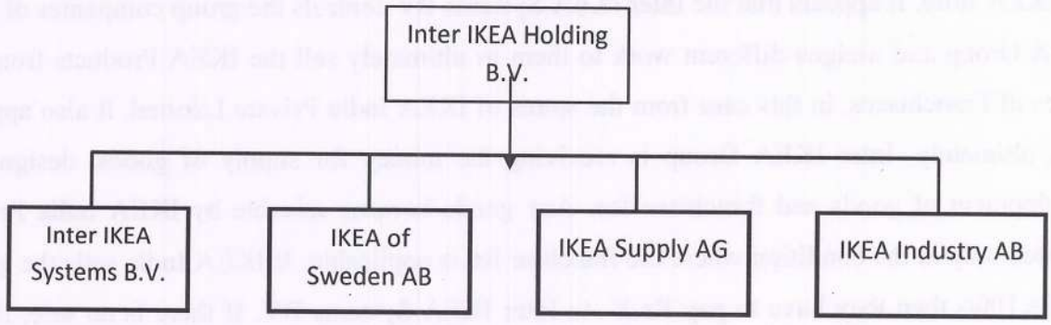
Supply includes IKEA Supply AG, IKEA Industry AB and their subsidiaries. Inter IKEA Systems B.V. assigns IKEA Supply AG to source, supply, sell and distribute IKEA products according to the IKEA Concept Framework. IKEA Industry AB, a strategic IKEA manufacturer owned by Inter IKEA Group, is closely integrated with Core Business Supply.

Other functions

Apart from the companies mentioned above, there are several other subsidiaries directly owned by Inter IKEA Holding B.V. One of them is IKEA Älmhult AB which owns and operates properties (e.g., IKEA Hotel and IKEA Museum) and provides certain intra-group services in Sweden.

To support the businesses, Inter IKEA Group includes enabling functions for Sustainability, Corporate communication, People & Culture, Finance & Navigation, Risk & Compliance and Legal & Governance.

From the website, the structural framework of Inter IKEA Group gets clarified.



From the description above, it appears that Inter IKEA Holding B.V. is the holding company of Inter IKEA Group and it has four group companies viz. Inter IKEA Systems B.V, IKEA of Sweden AB, IKEA Supply AG and Ikea Industry AB. Inter IKEA Systems B.V. is the

IKEA Franchisor and owner of the IKEA Brand. Inter IKEA systems B.V. owns the responsibility to deliver the total franchise offer to the franchisees and for this total franchise offer, Inter IKEA Systems B.V. assigns, through agreements, the tasks to the other subsidiaries of Inter IKEA Group. IKEA Systems BV assigns IKEA of Sweden AB to maintain, improve and develop the IKEA product offer (including home furnishing and food). Inter IKEA Systems B.V. assigns IKEA Supply AG to source, supply, sell and distribute IKEA products according to the IKEA Concept Framework. IKEA Industry A.B., which is a strategic IKEA Manufacturer owned by Inter IKEA Group, is closely integrated with core business supply. From the above description available on the website of IKEA, it appears that Inter IKEA Systems B.V. is involved and is controlling everything from design and development of products to procurement and supply, from proprietary rights of products to the proprietary rights of operations. Inter IKEA Systems B.V. is the owner of the IKEA Brand. The ultimate product received by end customer is IKEA Product which is under ultimate control of Inter IKEA Systems B.V. for which the Franchisee IKEA India Private Limited is paying Franchisee Fee as a condition of sale and eventually the money is flowing back to the same group companies under the guise of franchise fee.

1.7.2.4. After analyzing both the agreements, it appears that the Agreement of Supply of Product and Services, executed between IKEA Supply AG and IKEA India Private limited, is an offshoot of Franchisee Agreement executed between Inter IKEA Systems BV and IKEA India Private Limited. Without franchisee agreement, the Agreement of Supply of Product and Services executed between IKEA Supply AG and IKEA India Private limited cannot exist. The claim of IKEA that they have already paid customs duty on proprietary rights as the value of proprietary rights are already included on the invoice value of the imported goods, doesn't sustain as clause 3.2 of the Franchise Agreement executed between franchisor and franchisee says that the franchisor is granting the right and license (including the IKEA secret know-how, the IKEA trademarks, the unique trade dress and the other unique characteristics of the IKEA retail system) solely in connection with the operation of the IKEA Store. Further, the IKEA India Private Limited has failed to prove that these proprietary rights are already included in the invoice value or assessable value of the import from ISAG. On the contrary, the franchise agreement shows that Franchisor is granting the franchisee the necessary proprietary rights to sell the IKEA products in the IKEA store. It appears that the Inter IKEA Systems BV controls the group companies of Inter IKEA Group and assigns different work to them to ultimately sell the IKEA Products from the stores of Franchisees, in this case from the stores of IKEA India Private Limited. It also appears that, ultimately, Inter IKEA Group is receiving the money for supply of goods, design and development of goods and franchisee fee. Any goods become saleable by IKEA India Private Limited only in the condition where the franchise fee is applicable. If IKEA India sells the goods for Rs.100/- then they have to pay Rs.3/- to Inter IKEA Systems BV. If there is no sale, IKEA India have no need to pay any franchisee fee to Inter IKEA Systems BV. There is an 'Insurance Clause' at para 19 of the Franchise Agreement wherein there is a provision of 'business interruption insurance' which is a fee payable in case of business interruption. It appears that franchise fee is payable in such cases of business interruption which falls in the ambit of insurance.

Thus, decline in sale or no sale, due to the reasons other than those covered under insurance, results in the payment of less franchise fee or no franchise fee respectively.

1.7.2.5. It is also found that IKEA India Private Limited is in unauthorized possession of detailed Investigation Report of SVB issued vide F.No.S/9-125 SVB/2019-20 NCH-MUM dated 09.09.2020 on the subject "Investigation Report in the case of determination of assessable value of goods imported by M/s IKEA India Private Limited from bearing IEC No.0514055472, from M/s IKEA Supply AG, Switzerland including its associates/affiliates under section 14(1) of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The SVB Investigation report dated 09.09.2020 is neither marked to IKEA India Private Limited nor it is in any way supposed to be present with the IKEA or its affiliates/associates. It appears that IKEA India Private Limited has obtained this Investigation Report unethically and discussed the same during their internal conversation. On going through the ibid investigation report of SVB, it appears that IKEA India Private Limited has misled the SVB while representing their case and through their submissions. They have presented wrong and misleading facts before the SVB. IKEA India Private Limited, in the submission to SVB, have submitted a misleading internal communication **[Annexure-15 of the SCN]** of IKEA India Private Limited regarding the franchise fee.

From the scrutiny of the above mentioned letter issued by ISAG to Ms. Preet Dhupar of IKEA India Private Limited, it appears that IKEA Supply AG has not revealed the names and functions of other Inter IKEA Group companies who are contributing towards the IKEA Products coming into existence. They have used the terms 'wholesaler' and 'Franchisee;' however, they have not mentioned the 'Franchisor' in their letter. ISAG have not mentioned the names of IKEA of Sweden AB (who is involved in design and development of IKEA products) and Inter IKEA Systems BV (who is actual owner of the goods having all the control on IKEA Products). It is also hidden that Inter IKEA Systems BV has actually assigned IKEA Supply AG to source, supply, sell and distribute IKEA products to franchisee of Inter IKEA Systems BV. IKEA India Private Limited, in their submission dated 20.08.2020 to SVB, have not mentioned the names and functions of other Inter IKEA Group companies. It appears that they have not disclosed these details to thwart and mislead the SVB investigation.

IKEA India Private Limited, in their submission to SVB, had submitted the old Franchisee Agreement No. 1619 wherein there was no mentioning of IKEA Retail Standard and IKEA Sales Channel. These were added in the franchise agreement No. 2128. The IKEA Sales channel was added as *"IKEA Sales Channel" means all sales channels for selling Products, including but not limited to IKEA store(s) and e-commerce, as authorized by Franchisor in writing"*. IKEA India Private Limited had submitted to SVB the Franchisee Agreement No. 1619. However, they didn't inform SVB regarding updating the clauses and definitions in Franchisee Agreement No. 2128. In the SVB letter dated 24.09.2020, it is mentioned, "*This report shall remain in force, till present method of Invoicing or the conditions of sale etc. remains unchanged. Any Changes affecting the conditions of sale or other circumstances enumerated in CBEC Circular No. 5/2016-Cus dated 9.2.2016 must be informed to the port of import by the importer without delay."* From these wordings of SVB letter, it appears that IKEA India was bound to inform the SVB regarding sales

of goods through the channels other than IKEA Stores as sales of goods through e-commerce was not mentioned in the Franchise Agreement submitted by IKEA India to SVB. It is also mentioned in the SVB letter dated 24.09.2020 that the SVB report may be reviewed as and when information additional or contrary to whatever furnished is brought to the notice of the department.

1.7.2.6. The Franchise Agreement 1619 executed on 20.09.2018 and effective from 01.11.2016 and the Franchise Agreement No. 2128 executed on 10.03.2022 came in effect from 01.06.2019 (as per para 14.1 of respective Franchise Agreements). It is pertinent to mention that Franchise Agreement No. 2128 was effective during the SVB investigation. However, IKEA India Private Limited did not submit the Franchise Agreement No. 2128 to the SVB.

1.7.2.7. The communication issued by the Dutch Authorities regarding relation among INGKA Group, Inter IKEA Systems BV and IKEA India Private Limited, which was submitted to the SVB by IKEA India Private Limited, was neither issued for Indian Customs nor there is any evidence that the SVB authorities had specifically requested for the same from the Dutch Authorities. The last para of the said letter of Dutch Authorities is reproduced below for clarity:

> *"Based on the absence of a majority of voting rights in the period FY 2012 upto now there is formally for Dutch tax purposes no common control or common management exercised over Stichting INGKA Foundation and/or its wholly owned subsidiaries on the one hand and Inter IKEA Systems BV and its direct and indirect shareholding entities (affiliates) on the other hand."*

From the above para, it appears that the Dutch Authority communication, which was submitted to SVB by IKEA India Private Limited, was issued for Dutch Tax purpose and not for submission in the territory other than Dutch Tax territory. It appears that the veracity of Dutch Tax Authority's letter was never verified and, based on this letter only, the SVB concluded its investigation.

1.7.2.8. From the email dated 21.02.2020 sent from Ms. Preet Dhupar to Mr. Krister Mattsson, Mr. Rudolf van Ooijen, Mr. Pankaj Gupta **[Annexure-10 of the SCN]** of IKEA India Private Limited, it appeared that a provision of customs duty on the Franchise Fee was being made. From the said email, it appears that IKEA India Private Limited was well aware of the incidence of Customs Duty on the franchise fee paid to Inter IKEA Systems BV.

1.7.2.9. From the documents retrieved from email dated 24th July 2020, sent from Mr. Pankaj Gupta to Mr. Nahata, Mr. Rohit, Ms. Lavanya etc. a Power Point presentation, submitted by the consultant Lakshmikumaran & Sridharan (LKS) **[Annexure-16 of the SCN]** was found wherein the IKEA Model was discussed. In the body of the email it is mentioned that the said PPT of LKS is confidential. In the said PPT, it is discussed that Franchisor can terminate the Franchise agreement if IKEA India fails to pay the franchise fee; that breach of Franchise agreement (with Inter IKEA Systems BV) shall be deemed breach of supply agreement with any affiliate of franchisor (ISAG); that supply of IKEA products by ISAG is only to franchisees of Inter IKEA Systems BV; that ISAG has the right to terminate the supply agreement if IKEA India no longer

remains as franchisee of Inter IKEA Systems BV; that the payment of Franchise fee is a condition of sale of the products by ISAG to IKEA India.

From the above, it appears that the franchise fee paid by IKEA India Private Limited to Inter IKEA Systems BV is related to the imported goods that IKEA India is required to pay and the payment of Franchise fee is a condition of sale of the products supplied by ISAG to IKEA India Private Limited.

1.7.2.10. Ms. Preet Dhupar, vide email dated 21.02.2020 sent to Mr. Krister Mattsson, Mr. Rudolf van Ooijen, Mr. Pankaj Gupta **[Annexure-10 of the SCN],** has forwarded a pdf file viz. 'Note on Customs Duty on Franchise Fee_revised Aug19.pdf".

(i) In the "Issue" part of said note it is written; that IKEA India has examined the issue of applicability of Customs duty on Franchise fee in light of Indian Customs Law and the business agreements between IKEA India and ISAG and IKEA India and Inter IKEA; that IKEA INDIA has signed the franchise agreement with Inter IKEA Systems BV- this governs the payment of Franchise fee @ 3% of net sales for use of IKEA Concept and retail systems. IKEA India has signed supply agreement with ISAG for purpose of products; that Franchise fee does not include any payment for IKEA logo. For use of IKEA logo on its product, ISAG pays a separate fee to IISBV (Inter IKEA Systems BV); that as per customs law of India, customs duty on franchise fee is applicable if such fee is paid as a condition of sale of the goods; that certain clause of supply agreement makes IKEA India vulnerable to a demand of customs duty on franchise fee.

From the above, it appears that the cost of goods supplied by ISAG to IKEA India do not include all the proprietary rights of IKEA Products. It included only the fee for logo which ISAG pays to Inter IKEA Systems BV and, in the franchise fee paid by IKEA India to Inter IKEA Systems BV, the fee for logo on products is not included. The contention of IKEA India that all the proprietary rights are included in the assessable value appears to be incorrect. In the above note IKEA India Private Limited has accepted that certain clauses in supply agreement make them liable for payment of Customs Duty on franchise fee.

(ii) The IKEA India, in the said Note, has proposed changes in both the Supply Agreement (between ISAG and IKEA India) and Franchise Agreement (between Inter IKEA Systems BV and IKEA India).

2. **Proposal**

We have been discussing this issue with Inter IKEA with support from group tax and group legal and have suggested the following changes in the supply agreement and franchise agreement. These have not been agreed by Inter IKEA.

Supply agreement entered with ISAG

Clause No	Existing clause	Proposed change
Clause C of recitals	(C) The IKEA Products are produced by manufacturers (hereinafter referred to as "Producers") throughout the world and are to be exclusively sold to and purchased by franchisees of Inter IKEA Systems B.V.;	(C) The IKEA Products are produced by manufacturers (hereinafter referred to as "Producers") throughout the world ~~and are to be exclusively sold to and purchased by franchisees of Inter IKEA Systems B.V~~ Retailer wishes to purchase IKEA Products from the Supplier.;
Clause C of recitals	(I) Retailer is a franchisee of Inter IKEA Systems B.V. and active in the retail sale of IKEA Products as well as in providing related services to customers purchasing IKEA Products; and	(I) Retailer is ~~a franchisee of Inter IKEA Systems B.V. and~~ active in the retail sale of IKEA Products as well as in providing related services to customers purchasing IKEA Products; and
Clause 9.1	Supplier and Retailer acknowledge and agree that the IKEA Products and any models and designs being part thereof are intended solely for the exclusive marketing and sale by authorised franchisees of Inter IKEA Systems B.V. Supplier undertakes not to sell any products to Retailer that is not an IKEA Product.	Supplier and Retailer acknowledge and agree that the IKEA Products and any models and designs being part thereof are intended solely for the exclusive marketing and sale by the Retailer ~~authorised franchisees of Inter IKEA Systems B.V.~~ Supplier undertakes not to sell any products to Retailer that is not an IKEA Product.
11.4	Supplier shall be entitled to terminate this Agreement to immediately expire, should Retailer at any time no longer be a Franchisee of Inter IKEA Systems B.V.	To be removed

Franchise agreement with Inter IKEA Systems BV

Clause No	Existing clause	Proposed change
9.1	The supply of Products and Food Products shall be governed by separate supply agreements to be made between Franchisee and suppliers of the aforementioned products authorised by Franchisor.	To be removed
9.3	Franchisee confirms that Franchisor shall not be liable for any claims that may arise as a result of a defective Product or in relation to the quality of the Food Products. All such claims shall be the responsibility of Franchisee who shall indemnify and hold Franchisor harmless from and against all such claims, as further described in Section 17.	To be removed as this should be covered under supply agreement
15.3	Any breach by Franchisee of any other agreement entered into between Franchisor (or its Affiliates) and Franchisee shall be deemed a breach under this Agreement. Any breach by Franchisee of this Agreement shall be deemed a breach by Franchisee under any and all other agreements between Franchisor (or its Affiliates) and Franchisee. If the nature of such breach under any other agreement permits Franchisor (or its Affiliates) to terminate the agreement in question, Franchisor shall have the right to terminate this and all of the other agreements between Franchisor (or its Affiliates) and Franchisee in the same manner as provided for in the agreement under which the breach occurred.	To be removed
16.1(iv)	sell to Franchisor or its appointed nominee, if Franchisor so elects, all of the saleable Products in the possession of Franchisee at the date of such expiration or termina¬tion (or such part thereof as Franchisor may require) at landed cost (i.e. invoice price plus transport, duties and other official import related fees and/or taxes). Franchisor shall within thirty (30) days of such expiration or termination inform Franchisee whether it or its appointed nominee elects to exercise this option; and	subject to Franchisor exercising his option, sell to Franchisor or its appointed nominee, if Franchisor so elects, all of the saleable Products in the possession of Franchisee at the date of such expiration or termina¬tion (or such part thereof as Franchisor may require) at landed cost (i.e. invoice price plus transport, duties and other official import related fees and/or taxes). Franchisor shall within thirty (30) days of such expiration or termination inform Franchisee whether it or its appointed nominee elects to exercise this option; and'
17.3	New insertion	17.3 Franchisee confirms that Franchisor shall not be liable for any claims that may arise as a result of a defective Product or in relation to the quality of the Food Products. All such claims shall be the responsibility of Franchisee who shall indemnify and hold Franchisor harmless from and against all such claims, as further described in this Section

From the above, it appears that IKEA India, to evade the customs duty on Franchise Fee, have suggested changes in Supply agreement as well as Franchise Agreement; however, the same has not been agreed by Inter IKEA as the wholesaler/supplier and franchisor both are Inter IKEA Group Companies.

(iii) The estimation of Customs Duty on franchise fee has been done in the said note which is reproduced below:

3. **Estimated Impact on India P & L if duty is paid on franchise fee**

Particulars	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25
Custom duty Impact (MEUROs)	0.39	1.12	2.89	4.35	6.20	8.43	10.35

From this estimated value of Customs Duty on franchise fee, it appears that IKEA India was well aware of the incident of Customs duty on franchise fee paid to Inter Ikea Systems BV; however, they preferred not to pay the same.

(iv) From para 4 of the aforementioned note, it appears that persons from both Inter IKEA group and INGKA Group are involved in the discussions to change certain clauses of supply and franchise agreement which has not been accepted by Inter IKEA Group. It appears that there is intention of IKEA India to evade the customs duty by changing certain clauses in the agreements.

4. People leading this topic

Following have been involved in the discussion from INGKA and Inter-IKEA group.

Inter-IKEA group	INGKA Group
Magnus Holmquist – Legal	Jenny Petersson Österlind (Group Legal)
Anna Hagg – Legal	Nitika Redhu (Group Legal)
Monica Berg – Customs	Reinier van Rijnsoever (Group Tax)
Jan Maessen – Tax	Rudolf van Ooijen (Group Tax)
Jamie Walton – Tax	Pankaj Gupta (India Tax)

(v) In para 5 of the aforesaid note, the opinions taken by IKEA India and Inter IKEA from their respective tax consultants and attorneys are mentioned.

5. Opinions taken

- By IKEA India – from LKS (LakshmiKumaran & Shridharan, attorneys); based on India customs law issue read with provisions of GATT agreement. Possibility of attracting provisions and duty is high
- By Inter-IKEA – Deloitte Netherlands; based on EU customs law, possibility of attracting duty is rated medium.

From the above, it appears that IKEA India has overlooked the suggestion of its tax consultants and attorneys and have chosen not to pay the customs duty on Franchise Fee.

1.7.2.11. Further, from email dated 08.06.2020 sent from Jenny Peterson Osterlind addressed to Ms. Preet Dhupar, Mr. Pankaj Gupta and Ms. Sandhya Prakash **[Annexure-13 of the SCN]**, it is found that, since February 2020, the IKEA Russia started including the franchise fee for customs duty calculation in Russia. In Korea also the Customs has started charging customs duty on 60% of franchise fee. However, IKEA India, in Indian territory, has chosen not to include franchise fee in assessable value and refrained from paying Customs duty on the same.

1.7.3. From the above discussions, on the basis of statements, emails, notes and documents recorded, obtained and retrieved during the course of investigation, it appears that the Franchisee fee paid by IKEA India Private Limited (the Franchisee) to Inter IKEA Systems BV is actually royalty/license fee paid for the rights to sell the IKEA Products either in IKEA store, or through e-commerce sites or online. The Franchisee fee is directly connected with the sale of IKEA products which are imported/procured from the IKEA Supply AG. One incidence has been discussed above where the IKEA products were sold directly from the warehouse and the Franchise fee was paid on that transaction also. However, as per data "Schedule of Sales and Franchisee Fees for Period September-2019 to August-2020" **[Annexure-17]** there are several other instances, during the period when SVB investigation was going on and e-commerce mode of sale was not mentioned in Franchisee Agreement, where the sale of IKEA Products was made though e-commerce mode and not through IKEA Stores, still the Franchise Fee was paid to Inter

IKEA Systems BV on the sale of goods from the place other than the IKEA Store. From such payment of Franchise Fee on the products sold from e-commerce mode, it appears that the franchise fee paid by IKEA India is not related to the operation of store, rather it appears to be linked with the imported goods/IKEA Products. From the statements and documents discussed, it also appears that this Franchise fee is not included in the price actually paid during the importation of goods. Therefore, it appears that IKEA India Private Limited contravened the provisions of section 46(4) of the Customs Act, 1962 by not declaring the complete and true facts relating to the imported goods. In view of the facts discussed in the foregoing paras and material evidence on record, it appears that the payment of franchisee fee to Inter IKEA Systems BV is directly linked to the sale of the imported goods and it has been paid to Inter IKEA Systems BV as condition of sale and, as such, it has to be added to the assessable value of the imports as per Rule 10(1)(c) & (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. Furthermore, from a simple reading of supply agreement and franchise agreement, it appears that in case of expiration or termination of franchise agreement itself, the IKEA India Private Limited ceases to operate the business or in other words, unable to sell the goods supplied by IKEA Supply AG.

1.7.4. The transaction value, as declared by the importer for the purpose of import of goods, cannot be accepted for the reason that the price is not the sole consideration for the import of goods. In this case the importer has two separate agreements for receiving the goods from supplier. One agreement i.e. supply agreement is directly with the supplier and the other agreement i.e. franchisee agreement is with the entity which is having all the direct and indirect control on the imported goods. It is pertinent to mention that, in the absence of franchisee agreement, neither the supplier can supply the goods nor the importer can import. The importer is paying franchisee fee to Inter IKEA Systems B.V. which is being paid as a condition of the sale of the imported goods. Hence, the valuation of the goods on the transaction value declared by IKEA India Private Limited under Section 14 of the Customs Act, 1962 appears to be incorrect and, therefore, the same appears to be liable for rejection under Rule 12 of the Customs Valuation Rules, 2007 as the Franchisee fee paid by IKEA India to Inter IKEA Systems BV has not been included in the transaction value.

1.8. Relevant Legal Provisions: Further, the extracts of the following relevant provisions of the Customs Act, 1962 for the time being in force relating to import of goods, recovery of duties, liability of the goods to confiscation and the persons concerned to penalty for improper importation, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 14- Valuation of Goods
- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 28AA- Interest on delayed payment of duty

- Section 46 - Entry of goods on importation.
- Section 111(m)- Confiscation of improperly imported goods, etc.
- Section 112(a) & 112(b)- Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Section 114AA- Penalty for use of false and incorrect material
- Section 132- False declaration, false documents etc.
- Section 140- Offences by companies
- Provisions of Customs Valuation (Determination of value of Imported goods) Rules,2007

1.9. Grounds for invoking provisions of Section 28(4) of the Customs Act, 1962:

1.9.1 IKEA India Private Limited is paying 3% of net sales net of any taxes as Franchisee fee to Inter Ikea System BV. IKEA India Private Limited has subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Customs Act, 1962 in respect of all their import declarations, i.e. bills of entry. Further, with the introduction of self-assessment and consequent upon amendments to Section 17, since 8th April, 2011, it is the responsibility of the importer to declare the correct value and pay the applicable duty in respect of goods imported. IKEA India Private Limited have failed to include the Franchisee Fee payable into the assessable value of their imports and thereby mis-declared/suppressed the actual assessable value with malafide intention to evade payment of appropriate Customs duty despite being fully aware that payment of Franchisee Fee is a condition of sale of IKEA Product (Imported as well as domestically procured goods) without which they cannot sell the IKEA Goods imported from IKEA Supply AG. The facts mentioned in paragraphs above clearly show that they were aware, through their own internal assessments as well as through legal opinion, that duty has to be paid by them on the franchise fee.

1.9.2. They also hid material facts from the Special Valuation Branch (SVB) to trick the SVB into giving a favourable order. IKEA India Private Limited has submitted to SVB their internal communication dated 10.08.2020 issued by ISAG to the then CFO Smt. Preet Dhupar wherein many crucial facts have not been revealed. It is mentioned in the said letter that *"the price charged by the Wholesaler is inclusive of all costs, including but not limited to development, manufacturing, purchase, storage, logistics, transport costs and any use of any IKEA proprietary rights (including any IKEA trademarks) related to the IKEA product or packaging".* This submission of IKEA India to SVB appears to be incorrect as all the proprietary rights are not included in the price charged by ISAG as discussed in para 7.2.2 and 7.2.10 above. Further, IKEA India, vide their submission dated 20.08.2020**,** have not mentioned the names and functions of other Inter IKEA group companies who are directly involved in designing, development, manufacturing, procurement, supply and ownership of the IKEA products, however the same facts are publicly available on Inter IKEA website. IKEA India Private Limited in their submission to SVB had submitted the old Franchise Agreement No.1619 and did not submit the Franchise Agreement No 2128, thus hid the concept of IKEA retail standard and IKEA sales channel. The IKEA sales channel is not mentioned

in Franchise Agreement No.1619. The IKEA sales channel is defined as all sales channels for selling products and food products, including but not limited to IKEA store(s) and e-commerce, as authorized by Franchisor in writing. The introduction of IKEA sales channel in franchise agreement no. 2128 opens a vast scope for IKEA to explore the different medium of sales in addition to IKEA Stores. From the statements of Ms. Preet Dhupar and Shri Pankaj Gupta, it is found that IKEA has paid franchisee fee on the sale of goods which happened out of the IKEA store. It shows that the franchise fee is not related to the operation of IKEA store but it is directly related to sales of goods through any channel described as IKEA sales channel in Franchise Agreement No. 2128. From these facts, discussed in paras 7.2.1 to 7.2.11 supra, it appears that IKEA India Private Limited tried to mislead the SVB investigation to get the outcome of investigation in their favour.

1.9.3. As per Section 14 of the Customs Act, 1962 read with clause (c) and clause (e) of sub-rule 1 of Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and explanation to Rule 10 (1)(c) to arrive at the transaction value, the payment of Franchisee Fees, Royalty Charges, Management Fees, License Fee etc. to the supplier, directly or indirectly, as a condition of sale of the imported goods are includible in the transaction value. Therefore, the value of the imported goods is not in conformity with Section 14 of the Customs Act, 1962 read with Rule 10(1)(c) & (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

1.10. Official of IKEA responsible for evasion:

1.10.1 Ms. Preet Dhupar: She was the then CFO and overall in-charge of finance and taxation department of IKEA India Private Limited. It appears that she was the final decision maker in the chain of command. During her tenure as CFO, a letter was submitted to SVB from ISAG which apparently misled the SVB investigation. It appears that she was well aware that there is no such agreement where all the proprietary rights were included in the transaction between ISAG and IKEA India. It may be noted that when IKEA India Private Limited received notice from SVB in April 2018 regarding related party transactions between Ikea Supply AG and IKEA India, ISAG issued a letter addressed to Ms. Preet Dhupar wherein it was said that no separate charges were made out to the Franchisee for the use of any IKEA proprietary rights in relation to the IKEA Products. However, from the Franchise agreement, it is clear that all proprietary rights are not included as mentioned in the letter by ISAG, but the said letter received from ISAG, claimed that the value of Proprietary Rights are already included in assessable value of imported goods. The same letter was submitted to SVB during investigation based on which SVB passed an order. It appears that misleading SVB for non-inclusion of franchisee fees in assessable value was the brain child of her and it was executed by her subordinates based on her directions. Thus, it appears that this act of omission committed by Ms. Preet Dhupar makes her liable to be punishable under Sections 112(a) and 114AA of the Customs Act, 1962.

1.10.2. Shri Pankaj Gupta: He was the then Country Tax and Finance Manager of IKEA India Private Limited and looked after finance, transfer pricing and taxation of IKEA India Private Limited. It appears that he had the crucial role in the decision making along with the then CFO Ms Preet Dhupar. He, along with Ms. Preet Dhupar, purposely did not reveal the complete facts before SVB, which led to passing of order by SVB which was not in sync with facts on ground. During his tenure as Country Tax Manager, another letter was submitted to SVB from ISAG which apparently misled the SVB investigation, as that letter too didn't have any factual evidence, and no documents were submitted in support of that letter. It appears that the letter was submitted to mislead the investigation. It appears that he along with his team was well aware that there is no such agreement where all the proprietary rights were included in the transaction between ISAG and IKEA India. It may be noted that when IKEA India Private Limited received notice from SVB in April 2018 regarding related party transactions between Ikea Supply AG and IKEA India, ISAG issued a letter addressed to Ms. Preet Dhupar wherein it was said that there was no separate charge for Franchisee for use of any IKEA proprietary rights. However, from the Franchisee agreement it is clear that all proprietary rights are not included. But, on perusal of the letter received from ISAG, it appears that the value of Proprietary Rights is already included in assessable value of imported goods. The same letter was submitted to SVB during investigation based on which SVB passed an order. It appears that misleading SVB for non-inclusion of franchisee fees in assessable value was the brain child of Shri Pankaj Gupta and Ms Preet Dhupar and it was executed by him based on her directions. Thus, it appears that this act of omission committed by Shri Pankaj Gupta makes him liable to be punishable under Sections 112(a) and 114AA of the Customs Act, 1962.

1.10.3. Shri Randhir Puthran: He is Central Fulfillment Operations Manager cum Wholesale Operations Manager, IKEA India. He was looking after the Customs related matters in IKEA India Private Limited. As Customs Manager/ Expert. He was responsible for incomplete submission of information to SVB to get the favorable outcome of the SVB investigation in the matter of taxability on franchisee fee. He is also responsible for unauthorized possession of confidential SVB investigation report which was not intended to be available with IKEA. Thus, it appears that this act of omission/commission committed by Shri Randhir Puthran makes him liable to be punishable under Section 112(a) of the Customs Act, 1962.

11. Calculation of differential duty/ duty liability:

IKEA India ,vide their e-mail dated 05.02.2024 **[Annexure-18]** and emails dated 07.02.2024 **[Annexure-19]** submitted the franchise fee data along with withholding tax. They have also provided the year-wise ratio of franchise fee paid on imported and domestically procured goods and average rate of customs duty on their imports. On the basis of data provided by IKEA India, the quantification of customs duty applicable on the franchise fee is as below.

Calculation of BCD, SWS and IGST on Franchise Fee
(Amount in Rs.)

Financial year	Franchise Fee on sales	With Holding Tax	Amount including withholding tax	Franchise Fee on Imported goods	Custom Duty (BCD)	SWS @10%	IGST@ 18%	Total Duty
FY 19-20*	8,04,62,716	89,40,302	8,94,03,018	6,60,41,809	1,24,80,350	12,48,035	24,71,109	1,61,99,494
FY 20-21	17,43,68,215	1,93,74,246	19,37,42,461	13,63,64,238	3,00,05,448	30,00,545	59,41,079	3,89,47,072
FY 21-22	30,41,58,607	3,37,95,401	33,79,54,008	25,11,05,901	5,70,82,601	57,08,260	1,13,02,355	7,40,93,216
FY 22-23	48,16,47,885	5,35,16,432	53,51,64,317	39,98,70,188	9,13,47,867	91,34,787	1,80,86,878	11,85,69,531
FY 23-24**	39,04,87,519	4,33,87,502	43,38,75,021	32,24,31,205	7,27,30,491	72,73,049	1,44,00,637	9,44,04,178
Total	**1,43,11,24,943**	**15,90,13,883**	**1,59,01,38,825**	**1,17,58,13,342**	**26,36,46,757**	**2,63,64,676**	**5,22,02,058**	**34,22,13,491**

* from Oct 2019 to Mar 2020

** upto Dec 2023

Total differential Duty = Rs. 34,22,13,491/-

Table 1 : Year wise total duty liability on franchise fee

*The quantification arrived at in the **Table 1** is from 1st October 2019 to 31st December 2023. Accordingly, the last date of issuance of SCN is 30th September 2024.*

Further, the port wise import data is given below:

(Amount in Rs.)

PORT WISE IMPORT DATA		
Port	**Assessable Value**	**Total Duty Paid**
INNSA1	71,21,98,11,074	31,99,54,17,551
INWFD6	2,32,64,84,881	1,00,68,13,240
INBOM4	14,80,58,354	2,11,46,721
INBLR4	39,93,032	14,14,401
INHYD4	62,959	19,505
INMAA1	4,33,481	1,60,414
Total	**73,69,88,43,781**	**33,02,49,71,832**

Table 2: Port wise total duty paid

As per, Section 110AA of the Customs Act, 1962 (read with Notification No. 28/2022-Customs (N.T.) dated 31st March 2022), the Show Cause Issuing authority will be the proper officer of the Customs of the jurisdiction where the import having highest amount of duty have taken place. From the above table 2 it is found that the maximum import is from Nhava Sheva, INNSA1. The duty on franchise fee has been quantified on the franchise fee paid on net sales of the imported goods. Since, the overall import is highest through Nhava Sheva Sea Port, therefore, in light of Section 110AA of the Customs Act, 1962 (read with Notification No. 28/2022-Customs (N.T.) dated 31st March 2022), the investigation report with proposal for issuance of Show Cause Notice to the importer and the responsible officials under section 28(4) of the Customs Act, 1962, was forwarded to the Commissioner, NS-I, JNCH Nhava Sheva, Raigad-400707.

1.12. Payment (Recovery) made during the course of investigation

During the course of investigation, the importer voluntarily deposited Rs.16,05,14,108/- (Rupees Sixteen crore five lakh fourteen thousand one hundred and eight only) against BCD **under protest**. Details of the related T.R. 6 Challan is as follows:

(Amount in Rs)

Customs Location	Challan No.	Challan date	Amount deposited
Nhava Sheva (INNSA1)	377	16-02-2024	16,05,14,108/-
		Total	16,05,14,108/-

Table 3 : Payment made during the course of investigation

1.13. In view of the above, vide Show Cause Notice No. 1151/2024-25/Commissioner/Gr. VI/NS-V/CAC/JNCH dtd. 27.09.2024, M/s IKEA India Private Limited, currently situated at Survey No.12 & 13, Behind Nagasandra Metro Station, Nagasandra Village, Yashwantpur Hobli, North Taluk, Banglore-560073, was called upon to show cause to the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House, Nhava Sheva (the Adjudicating Authority), as to why:

i) The amount of Franchisee Fee of Rs. 1,17,58,13,342/- paid to Inter IKEA Systems BV by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) should not be included in the transaction value of goods imported by M/s IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) and the amount of Franchisee Fee of Rs.1,17,58,13,342/- paid to the Inter IKEA Systems BV should not be included in the assessable value of goods imported by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962;

ii) The total value of import by IKEA India during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) should not be re-determined by adding the franchise fee paid for the same period in terms of Rule 3 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962;

iii) The goods imported during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

iv) Total differential duty amounting to Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only) should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA ibid;

v) Penalty should not be imposed on the importer IKEA India Private Limited under Section 114 A and /or 114AA of the Customs Act, 1962.

vi) Penalty should not be imposed on Ms. Preet Kamal Dhupar the CFO under Section 112(a) and /or 114AA of the Customs Act, 1962.

vii) Penalty should not be imposed on Shri Pankaj Gupta, the Country Tax Manager under Section 112(a) and /or 114AA of the Customs Act, 1962,

viii) Penalty should not be imposed on Shri Randhir Ramesh Puthran, Customs Fulfilment Manager of M/s IKEA India Private Limited, under Section 112(a) and /or 114AA of the Customs Act, 1962.

2. RECORD OF PERSONAL HEARINGS

2.1 There is four Noticee in the subject SCN viz M/s IKEA India Private Limited, Ms. Preet Kamal Dhupar, Shri Pankaj Gupta and Shri Randhir Ramesh Puthran.

2.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticees were granted opportunity of Personal Hearing (PH) on 14.08.2025, 08.09.2025, 16.09.2025, 17.09.2025 and 22.09.2025 and PH intimation letters were issued by speedpost. On 17.09.2025 and 22.09.2025, Mr. V. Lakshmikumaran, Advocate, Ms. Nupur Maheshwari, Advocate, Ms. Keerti Nagpal, Advocate, Mr. Siddhant Indrajit, Advocate, Mr. Aasheesh Modgil, Advocate, Ms. Sandhya Prakash, Authorised Representative, Mr. Evgeny, Authorised Representative and Mr. Ankur Bisariya, Authorised Representative on behalf of M/s IKEA India Private Limited and other attended the hearing through virtual mode. During the hearing they argued the case and reiterated the written submission dated 12.09.2025 and 15.09.2025 and submitted that:

2.2.1. Franchise Fee should not be added in accordance with Rule 10(1)(c) of CVR as the conditions of said rule are not satisfied.

(i) Not "related to imported goods

- **Nature of Franchise Fee: -** Franchise Fee is paid for right to use the IKEA Retail System owned and developed by IISBV, and to use the propriety rights solely in connection with operation of IKEA sales channels. ***Clause 3,*** **Annex-7A, Page 1057.** The IKEA Retail System relates to the trade dress of the sales channels which are post importation activities.
- **World Customs Organization's Advisory Opinion 4.17** held that royalties and license fees paid for "use of brands and system of franchisor" is not includible **under Article 8.1 (c) of the GATT Agreement. [Extract at Para A.197, Page 169 Reply]**
- Franchise Fee is paid as 3% of "Net Sales" of all products sold from IKEA sales channels. This includes imported or domestically procured.

(ii) Sale price of goods from ISAG is inclusive of IPR costs embedded in product

(iii)Not a condition of sale of imported goods

- The franchise fee is not paid per consignment or per unit of imported goods, instead it is on the "net sales" value.

(iv) No reasons provided in the SCN in relation to Rule 10(1)(e) of CVR. Further, the conditions of said rule are not satisfied.

- No reasoning provided in SCN for application of Rule 10(1)(e)
- Both Rule 10(1)(c) and Rule 10(1)(e) of CVR cannot be invoked simultaneously.

2.2.2. Further submitted and explained with the help of diagram that INTER IKEA Group and INGKA Group are both unrelated group of companies and the same has been accepted worldwide.

2.2.3 They further explained the working of IKEA franchise system with the help of Franchise Agreement and Supply Agreement.

2.2.4 Detailed price justification vide letter dated 20.08.2020 was submitted to SVB Authorities where it was also submitted that Franchise fee is not includible in the transaction value of imported goods.

2.2.5. SVB investigation concluded that ISAG and IKEA India are not related under Rule 2(2) of Valuation Rules and no value loading is required under Rule 10(1) of the valuation rules.

2.2.6 Accordingly, all the Bills of Entry has been finalised as per the Investigation Report of SVB wherein the franchise and supplier agreement were investigated and it was concluded that no value loading is required.

2.2.7 Social Welfare Surcharge ('SWS') added twice while computing the differential duty**.** The average duty rate shared by IKEA India during the DRI investigation included the rate of Basic Customs duty ('BCD') and SWS. The department treated such rate as the BCD rate and again calculated SWS on it. Hence, SWS was added twice and while doing so SWS is charged on SWS which is legally incorrect. Consequently, IGST demand also increased. Error in Calculation of IGST amount. Instead of applying the IGST rates product wise as provided by IKEA India, the SCN applied residual rate of 18% across all the goods imported by IKEA India and computed IGST on it resulting in excess demand of IGST. In view of the above, Demand of Rs. 3,48,21,498/- is liable to be set aside on account of calculation errors

2.2.8 They submitted that Section 28(4) of the Customs Act is not invokable in the subject case as all relevant facts brought to the knowledge of the department and hence no suppression.

2.2.9 They submitted that SCN state that the noticee has tricked SVB is baseless as it is discussed in SVB IR that franchise fee is solely for IKEA store and has been discussed and concluded that no value loading is required as per valuation rules. They further requested that the demand against noticee no. 1 be dropped.

2.2.10 W.r.t. Noticee No. 2, 3 and 4 they submitted that the present issue involves complex interpretation of law surrounding the valuation rules. Hence, penalty cannot be imposed merely because there is a difference of the interpretation provided by the stakeholders. Accordingly, the charges against them be dropped.

3. WRITTEN SUBMISSION OF THE NOTICEE

3.1 The Noticee, M/s IKEA India Private Limited (IEC-0514055472) vide their letter gave written reply to the subject SCN, they denied all the allegations made in the SCN and stated interalia as under:

3.2 'FRANCHISE FEE' IS NOT INCLUDIBLE IN THE TRANSACTION VALUE OF IMPUGNED GOODS

3.2.1 Nature of 'franchise fee'

The franchise fee paid by the Noticee to IISBV is compensation for the right to operate IKEA stores under the IKEA Retail System and for using IISBV's proprietary rights such as trademarks, trade dress, business methods, and brand know-how. It is a post-import, sales-based payment unrelated to the cost of imported goods and is not includable in their customs transaction value.

Key Points on Nature of Franchise Fee-

- Paid to IISBV for the right to operate IKEA stores and sales channels under the IKEA Retail System.
- Covers usage of proprietary rights (trademarks, trade dress, secret know-how) solely for store operations, not for embedded IP in products.
- Payment structure includes a one-time non-refundable initial fee and ongoing 3% of net sales (post-tax) calculated every four months.
- Arises only after goods—imported or locally sourced—are sold in stores; not triggered at time of import.
- Import price from ISAG already accounts for embedded IP costs; franchise fee is separate and independent.
- Considered purely a post-import operational expense for maintaining the right to operate IKEA retail business.

3.2.2 'Franchise fee' is not includible in the transaction value of imported goods in terms of Section 14 of Customs Act

The franchise fee paid by the Noticee to IISBV is not includible in the transaction value of imported goods under Section 14 of the Customs Act because it is a post-importation expense unrelated to the "price actually paid or payable" for the imported goods. It is calculated based on retail sales after import, not on the value or quantity of imports, and therefore falls outside the scope of valuation under customs law.

Key Points on Non-inclusion under Section 14-

- Statutory Basis: Section 14 of the Customs Act (aligned with GATT Article VII and Article 8 of the Valuation Agreement) defines transaction value as the price actually paid or payable for imported goods at the time and place of importation.
- Rule 3 and Rule 10 of CVR: Transaction value is to be accepted unless specific rejection criteria apply. Only costs incurred for bringing goods to the place of importation can be added. Post-importation costs are excluded.
- Nature of Franchise Fee: The franchise fee is a percentage of the Noticee's post-import retail sales turnover and not linked to the import transaction or goods value. It arises only after goods are sold through IKEA stores and pertains to using IISBV's retail system and intellectual property, not to obtaining imported goods.
- Legal Position: Judicial precedents (e.g., CC v. Essar Steel Ltd., CC v. NCL Industries Ltd., Toyota Kirloskar, SAIL, Hindalco, HSI Automotive) affirm that any payment referable to post-import activities—such as technical know-how or operational fees—cannot be included in the customs transaction value.
- Interpretative Notes and Rule 13 of CVR: These have statutory force and clarify that only pre-import expenses are includible; post-import expenses are excluded.
- Conclusion: The franchise fee is a post-import, retail-related business expense for operating IKEA stores, not a payment made "to or for the benefit of the seller" of imported goods. Therefore, it falls outside the ambit of Section 14(1) of the Customs Act, and its inclusion in the transaction value is legally untenable.

3.2.3 Without prejudice, the Ld. Commissioner has incorrectly applied CVR. Customs Department is bound to accept "transaction value" when exceptions under proviso to Rule 3(2) of CVR are not met.

The department incorrectly applied the Customs Valuation Rules (CVR) since none of the statutory conditions for rejecting the transaction value under Rule 3(2) were met. The declared price paid to ISAG represents the genuine transaction value under Section 14 of the Customs Act, and there is no legal or factual basis to add the franchise fee or discard this value.

Key Points on Incorrect Application of CVR

- Rule 3 Framework: Rule 3(1) mandates acceptance of the declared transaction value, i.e., the price actually paid or payable, unless specific conditions under Rule 3(2) or Rule 12 are met. Only then can customs authorities reject the declared value and redetermine it through Rules 4–9.
- Conditions for Rejection (Rule 3(2) proviso): Transaction value can be rejected only if:
- There are restrictive conditions on goods' use or resale affecting value.
- Sale price is subject to conditions/considerations that cannot be valued.
- Part of resale proceeds accrue to the seller.
- Buyer and seller are related, and the relationship influences price.
- Supreme Court Precedents: ***Century Metal Recycling Pvt. Ltd. v. UOI, 2019 (3767) ELT 3 (SC)***, ***Eicher Tractors Ltd. v. CC, Mumbai, 2000 (122) E.L.T. 321 (SC)***, and ***Sanjivani***

***Non-Ferrous Trading Pvt. Ltd.*, 2018-VIL-30-SC-CU** confirmed that transaction value must be accepted unless any of the above exceptions are substantiated with evidence; departure from transaction value should be narrowly construed.

- **Commentary on the GATT Customs Valuation Code by Saul L. Sherman** (ISBN 90 6544 321 5 Kluwer) (hereinafter referred to as "**Sherman Commentary**"): GATT Valuation Code allows only minimal and conditional grounds for rejecting transaction value, reinforcing the policy of applying transaction value to the greatest extent possible.
- Application to Present Case:
    - The Noticee faces no resale restrictions; consideration covers all product-related costs including embedded IP.
    - The franchise fee is an independent post-import payment unrelated to imported goods.
    - No resale proceeds flow back to ISAG.
    - The Noticee and ISAG are not related parties, as confirmed by the SVB Order and Dutch tax authority clarification.
    - There is no evidence of any undeclared or additional payment to ISAG.
- Judicial Support: As per ***Commissioner of Customs, Mumbai v. M/s. Tex-Age and Ors.* reported as 2016(340) E.L.T 3 (S.C)**, absent proof of overvaluation or money repatriation, declared transaction value cannot be doubted. In the case of ***CCE & ST, Noida v. Sanjivani Non- Ferrous Trading Pvt. Ltd reported as 2019 (365) E.L.T. 3 (S.C.)*** Hon'ble Supreme Court held that reasons and material evidence are required to reject declared value.
- Conclusion: Since none of the Rule 3(2) conditions apply and no evidence suggests the declared value is influenced or incomplete, the declared price without including the franchise fee must be accepted as the correct transaction value under Section 14 of the Customs Act.

3.2.4 Transaction value declared by the Noticee cannot be rejected in terms of Rule 12 of CVR.

The transaction value declared by the Noticee cannot be rejected under Rule 12 of the Customs Valuation Rules (CVR) because the Department has not provided any reasonable basis or cogent evidence to doubt its accuracy, nor followed the proper procedural requirements for such rejection.

Key Points on Rule 12 Applicability

- Rule 12 Mechanism:
    - Rule 12 is not an independent ground for rejection; it provides the procedure to reject declared value when there is a reasonable doubt about its truth or accuracy.
    - Rejection requires cogent reasons, evidence, and an opportunity for the importer to justify the declared value.
    - If rejection is justified, valuation must proceed sequentially under Rules 4–9, not directly to Rule 10.
- Conditions Under Rule 12:

- Officer must have specific reasons to doubt the declared value.
- Importer must be asked to furnish information or documents.
- Doubt must persist after reviewing the provided information, based on objective grounds.

- Department's Error in Present Case:
  - The SCN presumes franchise fee should be included, without any reasoning or evidence showing it affects the price paid or payable for imported goods.
  - All relevant documents, including franchise and supply agreements, were disclosed, reviewed, and approved earlier by Customs and SVB authorities.
  - Franchise fee is clearly an operational, post-import payment unrelated to the imported goods' transaction value.
  - No deficiencies or missing information were identified by the Department.
- Judicial Support:
  - **Eicher Tractors Ltd.** ***referred supra,*** Hon'ble Supreme Court held that declared value can only be rejected based on cogent examination of evidence and speaking orders.
  - **Sedna Impex India P Ltd. v. CC, Mundra – 2023 (3) TMI 1080 – CESTAT AHMEDABAD-** Hon'ble CESTAT ruled "doubt" under Rule 12 must be supported by evidence; mere price comparison or assumption is insufficient.
- Conclusion:
  - The Department skipped the procedural sequence by jumping from Rule 3 directly to Rule 10 to include franchise fees, without satisfying Rule 12 prerequisites.
  - Absence of legitimate grounds for doubt makes rejection of the declared value unsustainable.
  - On this procedural non-compliance alone, the SCN should be dropped

3.2.5 <u>The SCN incorrectly applied Rule 10 of CVR to include the franchise fee in the assessable value of imported goods</u>

3.2.5.1 'Franchise fee' is not includible in the transaction value in terms of Rule 10(1)(c) of CVR

The franchise fee paid by the Noticee to IISBV is not includible in the transaction value under Rule 10(1)(c) of the Customs Valuation Rules (CVR) because it is unrelated to the imported goods and fails one of the mandatory conditions for inclusion.

Key Points on Rule 10(1)(c) Requirements

- Rule 10(1)(c) Conditions: Addition to transaction value is allowed only if:
- Royalty/licence fee relates to the imported goods.
- It is a condition of sale for those goods.
- It is not already included in the price actually paid or payable. All conditions must be met; failure of any bars inclusion.

Why Franchise Fee Is Not Related to Imported Goods

- Nature of Franchise Fee: Paid to IISBV for rights under the IKEA Retail System—store operation, retail architecture, trade dress, brand usage—not for intellectual property rights embedded in IKEA products.
- Separate Supply Agreement: ISAG supplies products under a separate agreement; its price already includes costs for trademarks and IP rights embedded in goods. This cost is distinct from the franchise fee, which covers retail system rights.
- Independent IP rights Streams:
    - Product-related IP rights: Paid for by ISAG, built into import price.
    - Store-related IP rights: Paid via franchise fee to IISBV, covering layout, marketing, customer experience.
- No Nexus to Imports: Franchise fee applies to sales of both imported and domestically sourced goods; calculated on net sales, not per import or per product unit. No payment is triggered for unsold goods.
- Timing: Franchise Agreement was executed after initial imports and applies regardless of ongoing imports, further confirming no link to specific consignments.
- Judicial Support: In the case of ***M/s Quest Retail Private Limited v. Commissioner of Custom & Excise, Patparganj, 2019 (7) TMI 778,*** Hon'ble CESTAT Delhi held that franchise/royalty fees contingent on post-import retail sales are not includible in customs value as they relate to marketing and operations, not importation.
- Conclusion: The franchise fee in this case is entirely for post-import retail operations under a brand system, unrelated to imported merchandise. Since the first condition under Rule 10(1)(c)—relationship to imported goods—is not met, the provision cannot be invoked, and the fee cannot be added to the transaction value.

3.2.5.2 'Franchise Fee' is not paid as condition of sale of imported goods

The franchise fee paid by the Noticee to IISBV is not a condition of sale of the imported goods, as required under Rule 10(1)(c) of the Customs Valuation Rules (CVR), and therefore cannot be added to the transaction value. The payment is independent of, and separable from, the purchase of imported goods from ISAG.

Legal Context and Tests under Rule 10(1)(c)

- For any royalty or licence fee to be added to the assessable value, it must:
    1. Relate to the imported goods;
    2. Be paid as a condition of sale of those goods;
    3. Not already be included in the price actually paid or payable.
- Payments are includible only when imports would not occur without the corresponding payment — making it a condition pre-requisite for sale.

Judicial Interpretation

- ***CC v. Ferodo India Pvt Ltd., 2008 (224) E.L.T 23 (SC)***: Royalty is includible only when it is a prerequisite for supply of the imported goods. If it relates instead to post-import activities, or can be segregated, it is not includible.
- ***Commissioner of Customs, New Delhi v. Luxoticca India Eyewear Pvt. Ltd, 2018 (364) E.L.T. 515 (Tri. - Del.)***: Licence fee for distribution rights payable post-importation is not a condition of sale, as goods could still be imported even without such payment.
- ***Ajinomoto India Pvt. Ltd. v. Commissioner of Customs, Chennai, 2024 (390) E.L.T. 677 (Tri-Chennai)***: Royalty paid to a group company for trademark use, not to the supplier, was unrelated to import and not a condition of sale; no financial flow-back existed.
- Sherman Commentary & EU Jurisprudence (Case C-775/19, 5th Avenue Products): "Condition of sale" exists only when the seller would not have sold the goods without such payment; if the goods can be imported independently of the payment, it is not a condition of sale.

Application to the Present Case

- Timeline Disconnection:
  - Supply Agreement with ISAG was signed in 2016; first imports began same year.
  - Franchise Agreement with IISBV was signed much later in 2018; franchise fees commenced after store operations began in 2019.
  - Imports took place prior to and independent of any franchise fee payment, proving that the ability to import was not contingent on such payment.
- Payment Structure:
  - Franchise fee is paid quarterly, calculated as 3% of net sales (including domestic products).
  - It is not linked to quantity, value, or timing of imports; not charged per consignment or per unit.
  - Even in cases of business interruption, the fee continues under an insurance arrangement—further showing disconnection from import transactions.
- Distinct Intellectual Property Streams:
  - ISAG separately pays IISBV for rights embedded in imported goods; these costs are already reflected in ISAG's sale price to the Noticee.
  - The franchise fee pertains to IISBV's Retail System—store layout, marketing, and brand operations—unrelated to product IP.
- No Flow Back or Influence on Import Price: There is no evidence of any payment from the Noticee to ISAG—or through IISBV—affecting the transaction value of imported goods.

The franchise fee is a payment for post-import commercial rights to operate the IKEA store under IISBV's retail system, not a prerequisite for importing goods. The imported goods can be, and in fact were, procured independently of the franchise arrangement. Hence, the fee does not meet the "condition of sale" test under Rule 10(1)(c).

Accordingly, Rule 10(1)(c) of CVR is not applicable, and the franchise fee cannot be included in the assessable value of imported goods; the Department's contrary conclusion in the SCN is legally unfounded and factually incorrect.

3.2.5.3 'Franchise fee' is not includible in the transaction value in terms of Rule 10(1)(e) of CVR

The franchise fee paid by the Noticee to IISBV is not includible in the transaction value under Rule 10(1)(e) of the Customs Valuation Rules (CVR), as it does not satisfy any of the statutory requirements—particularly the condition that such payment must be made as a condition of sale for the imported goods.

Scope and Conditions under Rule 10(1)(e):

- Rule 10(1)(e) covers only those payments that are:
  - Made by the buyer to the seller (or to a third party to discharge the seller's obligation),
  - In relation to the imported goods, and
  - As a condition of sale of the imported goods.
- The payment must be enforceable under the sale terms; voluntary or independent payments made for post-import activities cannot be added to the transaction value.
- Rule 10(4) expressly prohibits inclusion of any amounts beyond those listed in Rule 10(1).

Judicial Interpretation

- In Reliance Brands Luxury Fashion Pvt. Ltd. v. Principal Commissioner of Customs (2024), the CESTAT Delhi held that only payments made as a condition of sale of imported goods qualify for inclusion.
  - Payments made for marketing, distribution, or brand promotion activities, even if beneficial to the seller, do not meet this test.
  - Payments made by the buyer to a third party are includible only if they discharge an obligation of the seller and form part of the sale condition.

Application to the Present Case

- No Payment to Seller or Seller's Obligation: The franchise fee is paid by the Noticee to IISBV, which is a separate legal entity from ISAG (the supplier of goods). It does not satisfy any obligation of ISAG.
- No Relation to Imported Goods: The fee pertains to operation of the IKEA Retail System—store design, layout, branding, and customer experience—not to the supply or pricing of imported products.
- Not a Condition of Sale:
  - The Noticee can procure goods from ISAG independently of the franchise fee.
  - ISAG's pricing already includes any royalty or IP charges related to trademarks or product design.
  - There is no clause in the supply agreement requiring payment of the franchise fee for sale or export of goods to take place.
  - Even if the franchise fee were not paid, ISAG's ability or willingness to supply would not be affected.

- Supporting Interpretative Notes: The Interpretative Notes to Rule 3 clarify that activities undertaken by the buyer on its own account—such as marketing or retail operations—do not constitute indirect payments to the seller. Hence, spending by the Noticee for operating the IKEA store using the franchise system cannot be considered an addition to the import price.

The franchise fee paid to IISBV neither satisfies ISAG's obligations nor is a precondition to importing goods. It is a post-import, independent commercial payment unrelated to the purchase or value of imported goods. Thus, Rule 10(1)(e) of the CVR is not applicable, and the franchise fee cannot be included in the transaction value under Section 14 of the Customs Act.

3.2.5.4 Payment must be made by the buyer to the seller or a third party to satisfy an obligation of the seller

The franchise fee paid by the Noticee to IISBV does not meet the requirement under Rule 10(1)(e) of the Customs Valuation Rules (CVR) that the payment must be made by the buyer to the seller or to a third party to satisfy an obligation of the seller. The payment arises solely from the Noticee's independent franchise obligations and is unrelated to the seller, ISAG.

Key Points under Rule 10(1)(e)

- Rule 10(1)(e) permits addition to transaction value only when:
  - The payment is made by the buyer to the seller, or
  - The payment is made by the buyer to a third party to discharge an existing obligation of the seller to that party.
- Payments made by the buyer on its own account for independent business obligations, even if connected with post-import activities, cannot be included in the assessable value.

Application to the Present Case

- Independent Obligation:
  - The franchise fee is paid by the Noticee to IISBV under the Franchise Agreement, not under the Supply Agreement with ISAG.
  - The fee covers rights to operate IKEA stores and use IISBV's proprietary systems and trade dress.
  - This obligation belongs exclusively to the Noticee and does not constitute or discharge any obligation of ISAG.
- No Seller Obligation Satisfied:
  - ISAG has its own independent commercial arrangement with IISBV, under which it pays IISBV for rights to use IP embedded in the products it supplies.
  - There is no evidence or contractual link showing that ISAG was obliged to pay IISBV any franchise-related amounts that are being satisfied by the Noticee's payment.
- Not a Payment "for or on behalf of" the Seller: The Noticee's payment to IISBV is neither directly nor indirectly "for the benefit of" ISAG; it accrues no consideration or discharge of debt toward ISAG.

Judicial Support:

- ***Reliance Brands Luxury Fashion Pvt. Ltd*** *supra*:
    - Buyer's independent expenditure for marketing or promotion, even when undertaken under an agreement with the seller, cannot be treated as fulfilling the seller's obligation or as an indirect payment to the seller.
    - Such expenses are post-import in nature and outside Section 14 of the Customs Act.

Because there is no nexus between the franchise fee payment and any obligation of ISAG, and the payment is made by the Noticee purely on its own account to IISBV, the fundamental condition under Rule 10(1)(e)—that payment must be made by the buyer to the seller or to satisfy an obligation of the seller—is not met. Accordingly, the franchise fee is not includible in the transaction value of the imported goods.

3.2.5.5 Payment must be a 'condition of sale' 'in relation' to imported goods

The franchise fee paid by the Noticee to IISBV does not meet the legal requirements under Rule 10(1)(e) of the Customs Valuation Rules (CVR), as it is neither "in relation to" the imported goods nor a "condition of sale" thereof. It is a post-import, operational expense tied to the running of IKEA stores and independent of the purchase of imported goods from ISAG.

Conditions under Rule 10(1)(e):

- For inclusion in the transaction value, a payment must:
    1. Be made by the buyer to the seller or to a third party to satisfy an obligation of the seller;
    2. Be made as a condition of sale; and
    3. Be in relation to the imported goods.

Judicial Interpretation:

- ***Ferodo India Pvt Ltd. (referred supra)*** – The "condition of sale" must be a condition pre-requisite for the supply of imported goods, directly linked with the goods and their import.
- **CC (Port) v. SAIL, 2020 (372) E.L.T. 478 (SC)**– A condition can only be read into a contract when import is dependent upon another obligation; importing goods and separate post-import activities (like design or services) cannot be artificially linked.
- ***Indian Farmers Fertilizers Cooperative Ltd. v. Principal Commissioner of Customs, 2020 (373) ELT 530 (Tri. - Ahmd.)*** – Service charges unrelated to the sale condition are not includible in import value.
- ***Indo Rubber and Plastic Works v. CC, New Delhi*****, 2020 (373) ELT 250 (Tri-Del)** – Advertisement and promotion expenses incurred on the importer's own account are not linked to a seller's obligation or import condition.

Application to the Present Case:

- Independent Agreements:
    - The Supply Agreement governs imports from ISAG (supplier).

- The Franchise Agreement with IISBV covers operation of IKEA stores and brand use. These agreements are commercially distinct and serve different purposes.

- No Import Dependency:
  - The Noticee began importing from ISAG in 2016, years before executing the Franchise Agreement (2018) or paying any franchise fee (2019).
  - The franchise fee is thus not a precondition for import of goods.
- Distinct Payment Basis:
  - The franchise fee is computed as 3% of net sales (covering both imported and local products), payable post-sale, not per import or consignment.
  - No payment obligation arises until after goods are sold, further confirming its post-import nature.
- Separate IP rights Costs:
  - ISAG already pays IISBV for product-related IP rights (trademarks, designs, logos) embedded in imported goods. These are included in the declared transaction value.
  - The franchise fee covers different IP rights elements—store layout, trade dress, and marketing elements—for store operations only.

Since the Noticee's ability to import goods does not depend on paying the franchise fee, and the payment relates exclusively to post-import retail operations, it cannot be deemed a condition of sale in relation to imported goods. ISAG's price already reflects all product-related IP costs.

Accordingly, Rule 10(1)(e) cannot be invoked, and the franchise fee is not includible in the transaction value under Section 14 of the Customs Act read with Rules 10(1)(c) and 10(1)(e) of the CVR. The allegations in the SCN are therefore unsustainable.

3.2.5.6 Without prejudice, the Ld. Commissioner gave no findings as to the application or invocation of Rule 10(1)(e) of CVR

The Ld. Commissioner merely applied Rule 10(1)(e) of CVR in the present case without any factual or legal justification. The Noticee submits that in the present case, the Ld. Commissioner failed to demonstrate how Rule 10(1)(e) of CVR is invocable in the present case. Mere assertion without analysis violates principles of natural justice.

It is submitted that the Department failed to discharge its burden of proof for invocation of Rule 10(1)(e) of CVR. Thus, on this account also Rule 10(1)(e) of CVR is not invocable in the present case.

3.2.6 Rule 10(1)(c) and Rule 10(1)(e) of CVR cannot be made cumulatively applicable

The simultaneous invocation of Rule 10(1)(c) and Rule 10(1)(e) of the Customs Valuation Rules (CVR) for the same transaction is legally incorrect because these provisions are mutually exclusive.A payment already covered under Rule 10(1)(c) cannot be reassessed under Rule 10(1)(e).Using both provisions simultaneously for the same payment violates the structure of Rule 10, where clause (e) is intended only for "all other payments" outside specific clauses.

Judicial Support:

- ***Commissioner v. Ferodo India Pvt. Ltd. - 2008 (224) ELT 23 (SC)***: Revenue cannot resort to Rule 10(1)(e) after failing to prove applicability under Rule 10(1)(c) for the same transaction.
- ***Vairavan Thandal v. Appellate Collector of Customs, Madras - 2000 (125) E.L.T. 94 (Mad.)***: SCNs must clearly set out the precise legal basis; invoking multiple rules without explaining independent applicability makes the SCN vague and unsustainable.

Application to the Present Case:

- The Department's attempt to include the franchise fee under both Rule 10(1)(c) and Rule 10(1)(e) lacks clarity and contradicts the principle that the residuary clause can only apply where specific provisions do not.
- No independent reasoning is provided in the SCN demonstrating separate applicability of each rule; instead, both are invoked for the same payment without meeting their distinct conditions.

The SCN's approach of using Rule 10(1)(c) and Rule 10(1)(e) cumulatively for the same franchise fee is legally flawed. The SCN is vague, uncertain, and liable to be dropped for lack of clarity in establishing an appropriate and exclusive valuation rule.

3.2.7 Without prejudice, manner of computation of franchise fee is not a determinative factor for inclusion of the same in the transaction value

The manner of computing the franchise fee—being linked to sales turnover—does not determine its legal nature or justify its inclusion in the transaction value of imported goods. The deciding factor under Rules 10(1)(c) and 10(1)(e) of the Customs Valuation Rules (CVR) is the nature and purpose of the payment, not the formula chosen for its calculation.

Legal Principle:

- The quality and purpose of the payment, not the method or measure of computation, determine whether it is includible in the assessable value.
- Rule 10 additions depend on whether the payment relates to, or is a condition of sale for, the imported goods—not on the way it is quantified.

Judicial Precedents:

- Senairam Doongarmall v. CIT (SC, 1961): The Supreme Court held that "it is the quality of the payment and not its measure that determines its character." The method of quantifying consideration cannot alter its essential nature.
- BASF Strenics Pvt. Ltd. (CESTAT Mumbai, 2006; affirmed by SC, 2008): Even if a fee is calculated using a formula involving the value of inputs or goods, it cannot be said to relate to imported goods if the royalty is actually linked to finished products or post-import activities.
- Max Atotech Ltd. (CESTAT Mumbai, 2014) and Can-Pack (India) Pvt. Ltd. (2015): Royalties computed as a percentage of sales price for domestic manufacturing were held unrelated to the price of imported goods.

- Bridgestone India Pvt. Ltd. (CESTAT Mumbai, 2013): Payments tied to sales or operations, not to import transactions, were found to be post-importation expenses.

Application to the Present Case

- Purpose of Payment: The franchise fee is for the right to operate IKEA stores under the IKEA Retail System—covering brand use, store design, and business methods. It is a post-import commercial expense, not consideration for the import of products from ISAG.
- Sales-Based Computation: The 3% of net sales formula is merely a commercial mechanism to determine payment quantum. Linking the fee to sales figures does not convert it into a payment "for" imported goods.
- Independent of Imports:
    - Fee applies to both imported and domestically procured products.
    - Franchise fee continues during business interruptions (insured under Clause 19), showing it is payable even without any import occurring.
    - If the fee were tied to imports, it would be charged per shipment or per imported unit, not post-sale on turnover.
- Timing and Basis: Paid every four months on post-import, post-sale turnover; it has no effect on the terms, price, or conditions of import from ISAG.

The computation method—3% of sales—does not make the franchise fee related to imported goods or a condition of their sale. Its nature is operational, not transactional. Hence, the franchise fee cannot be added to the assessable value under Rule 10(1)(c) or Rule 10(1)(e) of the CVR, and the SCN's reliance on the computation formula to justify inclusion is legally unfounded

3.2.8 Without prejudice, even if franchise fee is assumed to be a condition of sale of imported goods, it is not a "consideration" for` import of goods in terms of Section 14 of the Customs Act read with CVR

Even if the franchise fee is hypothetically treated as a condition of sale of imported goods, it still cannot be included in the transaction value under Section 14 of the Customs Act read with Rule 10 of the Customs Valuation Rules (CVR), as it does not constitute consideration for the import of goods.

Legal Distinction: Condition of Sale vs. Consideration for Sale

- A condition of sale is a contractual prerequisite that must be fulfilled for a sale to take place but does not necessarily influence the price or value of goods.
- A consideration for sale is the actual value or payment given in exchange for the goods, directly linked to the transaction of purchase or import.
- For any payment to be added to the transaction value, it must meet both tests:
    - It is a condition of sale for the imported goods; and
    - It also constitutes consideration directly related to the sale price of those goods.

Supporting Authorities:

- ***Chitty on Contracts (Thirty-First Edition- Volume I)*** and ***Thomas v. Thomas, (1842) 2 QB 851*** :

- The motive or reason behind a promise is distinct from consideration.
- Consideration must represent something of value flowing between the contracting parties directly linked to the promise.
- The court differentiated between a condition attached to a promise and consideration that forms the basis of it.

- ***Mohan Bottling Co. (P) Ltd. V. Commissioner of C. Ex, 2013 (295) E.L.T. 260 (Tri-Del)***:
  - Payments can be treated as "additional consideration" only when they are shown to be made for the sale of goods and not for ancillary services or separate transactions.
  - Amounts related to post-sale or post-import activities cannot be treated as additional consideration for goods.

Application to the Present Case:

- Nature of Franchise Fee:
  - Paid for rights to operate the IKEA Store, use IISBV's proprietary retail systems and intellectual property, and maintain the store's brand standards—not for purchasing or importing products from ISAG.
  - The fee relates purely to post-import, store-operation activities.
- No Price Linkage:
  - The payment does not influence the price paid to ISAG for imported goods.
  - ISAG independently factors charges for IP embedded in goods in its supply price; the franchise fee is outside that pricing mechanism.
- Recurring Business Expense:
  - The franchise fee is periodic and calculated as a percentage of retail sales turnover—tied to ongoing store operations, not to import quantities or values.
  - It serves as a commercial charge for continued use of brand systems, independent of any import transaction.

Even under the assumption that the franchise fee forms a condition of sale, it fails the essential test of being consideration for the imported goods. There is no direct nexus between the fee and the import transaction—it is a payment for operating rights, not for procuring products. Accordingly, the franchise fee cannot be added to the transaction value under Section 14 of the Customs Act read with Rule 10 of the CVR.

3.2.9 Goods cease to be imported goods once cleared for home consumption

Once imported goods are cleared for home consumption, they lose their status as "imported goods" under Section 2(25) of the Customs Act, and therefore post-importation payments, such as the franchise fee, cannot be added to their transaction value. The Commissioner's invocation of Rule 12 of the Customs Valuation Rules (CVR) in such circumstances is legally untenable.

Legal Framework:

- Definition of Imported Goods: Under Section 2(25), goods cease to be "imported goods" immediately upon clearance for home consumption.

- Section 14 of the Customs Act: Customs duty is determined on the "price actually paid or payable" for goods at the time and place of importation. Post-import payments fall outside this scope.
- Taxable Event: The taxable event is the import of goods into India; once the import is complete and the goods enter domestic commerce, customs jurisdiction over value determination ends.

Judicial Principles:

- Garden Silk Mills Ltd. v. Union of India (SC, 1993): The "place of importation" is where goods reach the landmass of India and enter a customs area. Post-importation elements are excluded from assessable value.
- Century Metal Recycling Pvt. Ltd. (SC, 2019):
    - Rule 12 of the CVR governs examination of declared value prior to clearance for home consumption.
    - The proper officer must have documented, reasonable doubts before rejecting transactional value at the assessment stage and must provide the importer an opportunity to respond.
    - The rule cannot be used after clearance, as the goods have lost their "imported" character.

Application to the Present Case

- The franchise fee pertains to retail operations conducted after goods have been imported, cleared, and sold.
- SCN's reasoning that the fee relates to imported goods disregards the two separate and independent transactions:
    1. The import and sale of goods by ISAG to the Noticee, completed upon clearance for home consumption.
    2. The payment of franchise fee by the Noticee to IISBV for brand, system, and store-operating rights, which is a post-import business expense.
- Rule 12 Limitation: It applies only at the time of assessment when the goods still have the status of "imported goods." Once cleared, valuation reassessment under Rule 12 is impermissible.

Since the imported goods in question were already cleared for home consumption, they no longer qualify as "imported goods." Therefore, post-importation payments like the franchise fee—made for operational rights and unrelated to the initial import transaction—cannot be added to their assessable value under Section 14 of the Customs Act or Rule 12 of the CVR. Consequently, the Commissioner's rejection of the declared transaction value is legally unsustainable.

3.2.10 Decisions issued across various jurisdictions

In this regard, reference is made to the decisions, rulings, and opinions issued across various jurisdictions pertaining to the inclusion of royalty or franchise fee or license fee in the transaction value of import of goods.

As per the ***World Customs Organization's Advisory Opinion 4.17*** on ***Royalties and license fees under Article 8.1 (c) of the GATT Agreement,*** royalty paid towards the franchisee arrangement and not towards manufacture of goods is not to be added to the price actually paid or payable for the imported goods in terms of Article 8.1(c) of the Agreement. The said Advisory Opinion has been adopted by the Technical Committee on Customs Valuation. The relevant portion of the Advisory Opinion is extracted hereunder:

> "*In this case, the imported goods (inputs) being valued, though necessary and essential to the manufacture of the products and required to be purchased from the franchisor or from a third party authorized by the franchisor to meet the quality requirements, are not branded goods nor are they patented, or manufactured under a patented process, for which a payment is made.*
>
> *The payment of royalties is not related to the imported goods but is related to the use of the brands and system of the franchisor in the manufacture and sale of the products bearing the intellectual property (brand) of the franchisor.*
>
> *The royalties paid by the franchisee are not to be added to the price actually paid or payable for the imported goods under the provisions of Article 8.1(c).*"

In light of the above, it can be seen that the law across various jurisdictions consistently held that the franchise fee or royalty paid for grant of right to use intellectual property, marketing, distribution are not includible in the transaction value of imported goods if such amount paid is not in relation to imported goods or is paid as a condition of sale of imported goods.

As demonstrated in the aforementioned paras, in the present case, the franchise fee is paid in relation to the right granted by IISBV for operation of IKEA store and use of intellectual property solely in connection with the operation of IKEA store. It is neither a condition of sale of imported goods, nor is paid in relation to the imported goods. The franchise fee does not constitute consideration paid towards the imported goods. Thus, such franchise fee is not includable in the transaction value of the imported goods.

3.2.11 Specific rebuttals against allegations made in the Show Cause Notice

3.2.11.1 The Noticee submits that the franchise fee paid to IISBV is not includible in the transaction value of goods imported from ISAG under Section 14 of the Customs Act read with the Customs Valuation Rules (CVR) for the following reasons:

- Clause 11.2 of the Bangalore Franchise Agreement, which stipulates payment of 3% franchise fee based on monthly net sales, is merely a contractual method to calculate payment and does not establish that the fee relates to imported goods. The Commissioner's understanding that it is a condition of sale for imported goods is incorrect.
- The assignment arrangement between IISBV and ISAG grants ISAG rights to use IKEA intellectual property (IP) worldwide solely for fulfilling its assignment. The price charged by ISAG to the Noticee includes all costs, including use of IKEA IP rights, as confirmed by the letter from ISAG and the assignment arrangement itself. Therefore, ISAG has no obligation to pay IISBV amounts satisfied by the Noticee's franchise fee.

- Intellectual property rights associated with operating IKEA stores and sales channels are distinct from the trademark and proprietary rights embedded in IKEA products supplied by ISAG. The franchise fee pays for the former, not the latter. The SCN fails to acknowledge this essential distinction, and there is no direct or indirect link between the franchise fee and imported goods.
- Imports from ISAG commenced in 2016, but franchise fee payments began only in 2019 after store operations started, demonstrating import ability was never contingent on franchise fees.
- Clause 16 of the Franchise Agreements gives IISBV a first right of refusal to purchase saleable products upon termination but does not obligate IISBV to buy. This disproves the Commissioner's assertion that IISBV collects franchise fees from ISAG via the franchise fee paid by the Noticee.
- The franchise fee is paid solely for rights to operate IKEA stores, including use of trade dress and trademarks, and is unrelated to imported goods or any condition of their supply.
- Even if assumed a condition of sale, the franchise fee is not the consideration for importing goods under Section 14 of the Customs Act read with CVR.
- Accordingly, the franchise fee should not be included in the assessable value of imported goods from ISAG, and SCN's contrary allegations are grossly misplaced and incorrect.

3.2.11.2 The Noticee respectfully submits that IISBV (franchisor) and ISAG (supplier) are separate legal entities operating independently, and payments made to one do not equate to payments made to the other, despite belonging to the same group. The franchise fee paid to IISBV under the Franchise Agreement and amounts paid to ISAG for imported goods under the Supply Agreement are payments for distinct transactions. The Commissioner's interpretation that franchise fees paid to IISBV flow back as payments to ISAG's group companies, thereby justifying inclusion in the customs transaction value, is incorrect and not supported by the Customs Valuation Rules (CVR) or Section 14 of the Customs Act.

The franchise fee pertains exclusively to trade dress and operations of IKEA stores and sales channels, whereas all product-related costs—including intellectual property embedded in products—are included in the price charged by ISAG. This is supported by the assignment arrangement between IISBV and ISAG, the letter submitted by ISAG to SVB authorities, and relevant franchise agreement clauses.

Moreover, there is no legal basis under Section 14 of the Customs Act or CVR for adding the franchise fee to the transaction value simply because it is paid to a group company of the supplier. Additions to transaction value are governed by specific conditions under Rule 10(1)(c) and Rule 10(1)(e) of the CVR, which, as detailed earlier, are not met in this case.
Therefore, the franchise fee paid to IISBV cannot be included in the transaction value of goods imported from ISAG.

3.2.11.3 Further, the Noticee reiterates that there are two distinct transactions i.e., one entered with IISBV and the other with ISAG. The Noticee pays franchise fee to IISBV for franchisee rights

and pays consideration towards procurement of goods to ISAG. Franchise fee is not paid towards the intellectual property rights embedded in the product but is paid towards the rights granted by IISBV to operate the IKEA store and other sales channels and to use Intellectual property used in the IKEA products solely in connection with operation of the IKEA store and other sales channels. ISAG separately pays IISBV for intellectual property owned by IISBV that are used in respect to imported goods. Further, this can also be corroborated with letter dated 10.08.2020 issued by ISAG. Thus, it is submitted that the Noticee already discharged duty on the intellectual property embedded on the products sold by ISAG to the Noticee. Furthermore, the mere fact that IISBV and ISAG belong to the same group companies does not imply that payments made to one entity are, in substance, payments to the other. Thus, the observations of the SCN are incorrect.

3.2.11.4 In this regard, the Noticee submits that the computation of franchise fee as a percentage of net sales is merely a mechanism to determine the amount of franchisee paid to the Noticee. Merely because the quantum of franchise fee paid is directly proportionate to the amount of sales, it cannot mean that the franchise fee paid is directly linked to the imported goods. Further, even in case of any business interruption when no imports are made, franchise fee is paid with insurance to the Noticee, this also makes it evident that franchise fee is not linked to the import of goods. Thus, the observations of the SCN are incorrect.

3.2.11.5 The Noticee responds to the Commissioner's allegations in the Show Cause Notice by stating that the SVB Order dated 24.09.2020, which favored the Noticee, was a concise conclusion document, and access to the Investigation Report was granted as part of routine transparency, not with any mala fide intent. The SCN itself acknowledges that details of Inter IKEA group companies are publicly available, negating any claim of concealment.

A letter from ISAG dated 10.08.2020 confirms that costs related to trademarks on products are included in the purchase price paid to ISAG, supporting the submission that all intellectual property costs are accounted for in the transaction value, eliminating the basis for adding franchise fees to imported goods. The Department's view that this letter only covers the IKEA logo is rejected, as the Noticee has demonstrated that the value of all proprietary rights is included in the ISAG price.

The Department's demand for further details about the franchisor or group companies in the letter is irrelevant since IISBV's franchisor role and the corporate structure are publicly documented and well known. The letter clarifies pricing under existing agreements and should be read in that context, not isolation.

The Bangalore Franchise Agreement, executed in 2022 but effective retrospectively from 2019, could not have been submitted before the SVB investigation. Its provisions are legally similar to the Hyderabad Franchise Agreement, with revisions aligned to evolving business needs but without changing the fundamental supply transaction with ISAG. Therefore, the Noticee did not deem it necessary to furnish the Bangalore Agreement before SVB. Overall, these points support the Noticee's position that there is no valid ground for including franchise fee in the transaction value, and the SCN should be dismissed.

3.2.11.6 The Ld. Commissioner at Para 7.2.6 of the SCN states that the Bangalore Franchise Agreement was effective during SVB investigation. However, Noticee did not submit the same. In this regard, the Noticee reiterates that although Bangalore Franchise Agreement came into effect from 01.06.2019, it was executed on 28.03.2022. The Noticee could not have submitted Bangalore Franchise Agreement before the SVB during the investigation before the issuance of SVB Order dated 24.09.2020. Further, Bangalore Franchise Agreement did not affect the transaction between the Noticee and ISAG for the Noticee to disclose this agreement during the SVB investigation.

3.2.11.7 The Noticee most humbly submits that during the SVB investigation, the SVB authorities orally requested evidence to establish that ISAG and the Noticee are not related parties. In response to the same, the Noticee submitted letter dated 30.01.2018 from the Dutch Tax Authorities. The letter discusses the structure and relationship between the INGKA group and IISBV. It states that from the financial year 2012 till the issuance of this letter, there is no common control or management exercised between INGKA Foundation and its wholly owned subsidiaries on the one hand and IISBV and its direct and indirect shareholding entities (affiliates) on the other hand. This letter was submitted purely based on the request of the Customs authorities. Even if it is not regarded as a conclusive proof to treat Noticee and ISAG as unrelated parties for Indian Customs law purposes, it serves as a relevant document supporting the position that ISAG and the Noticee are not related parties in terms of Rule 2(2) of CVR.

3.2.11.8 In this regard, it is submitted that a provision of customs duty on the Franchise Fee was being made as a matter of abundant caution This in any way does not reflect that the Noticee was aware of the duty incidence and did not pay the same. In fact, provision was made in the internal books of the Noticee but was reversed during finalization of books in accordance with the applicable taxation laws.The practice of creating a provision in the internal books was also discontinued subsequent to the issuance of the SVB Order.

3.2.11.9 Any communication between the Noticee and its legal counsel is a confidential communication and cannot be used as evidence against the Noticee. The department obtained such communications during the investigation and relied on the same to arrive at conclusions which are against the interests of the Noticee. Such reliance of the Department is legally questionable and any conclusions arrived at by the department based on such privileged communications without any corroborative evidence or basis is grossly incorrect.

3.2.11.10 In this regard, it is submitted that the present issue pertains to valuation of imported goods which is a matter of interpretation. The opinions obtained from the consultants and attorneys represent their views based on their interpretation of law. It does not represent a final, conclusive and correct view to be adopted in the matter. The mere existence of an opinion suggesting inclusion of franchise fee or higher possibility of duty incidence on franchise fee does not automatically translate into an attempt to evade payment. Further, it is submitted that the opinions, presentations and communications between the Noticee and its legal consultants/attorneys would be protected by attorney – client privilege. It is well settled law that confidential legal communication cannot

be used as evidence against a party, as doing so would undermine the fundamental right to legal counsel and a fair defense. Thus, the reliance placed by the Ld. Commissioner to arrive at conclusions that the Noticee was well aware of duty incidence on franchise fee and the Noticee still choose not pay duty on franchise fee is blatantly incorrect.

3.2.11.11 It is submitted that the fact in dispute in Russia is different from the one under the dispute. In Russia, as per the information shared with the Noticee, the retailer (IKEA DOM) pays the franchise fee to IISBV against the franchise agreement. The franchise agreement is similar to one under consideration in the present case. However, the importer-on-record is wholesaler (IKEA TORG). Similar to the case at hand, IKEA TORG (wholesaler) would purchase the goods from ISAG. This consideration paid by IKEA TORG (wholesaler) to ISAG is inclusive of IPR rights embedded in the imported goods. Hence, being the importer-on-record, IKEA TORG (wholesaler) would discharge the customs duty on the wholesale value of goods (inclusive of price paid towards IPR rights embedded on the goods). However, the franchise fee is being paid qua the retail sale value of the goods by the retailer (IKEA DOM). Thus, the dispute in Russia is completely different from the issue under consideration as there is additional supply chain company under consideration (i.e., IKEA TORG). In India, there is no wholesaler of IKEA products, instead IKEA India is the importer-on-record as well as the retailer of such goods in addition to other products being sold from the IKEA Store.

Therefore, the Noticee submits that the facts before Russia is different from the one under dispute in the present case. Hence, the dispute/ outcome of litigation from Russia cannot be applied to the present case. In fact, it cannot impugn any intention to evade duty.

As regards the dispute in Korea, although the arrangements between the parties are identical to the present case, the matter remains unresolved and is currently pending before the relevant authorities.

3.2.11.12 As submitted in detail above, the cost incurred by ISAG in respect of any intellectual property pertaining to the imported goods is already included in the price at which the imported goods are sold. The declared transaction value already account such cost incurred in respect of the imported goods. The franchise fee paid to IISBV is towards operation of IKEA store and other sales channel and use of intellectual property solely in connection with the operation of IKEA store. It is neither a payment made in relation to the imported goods nor is a payment made towards intellectual property rights embedded in the products. It serves a separate purpose. The SCN fails to recognize or address this difference between the intellectual property used in the products for which ISAG pays an amount to IISBV and the intellectual property for operating the IKEA store. Further, the formula used for calculating the franchise fee is merely a contractual arrangement and a commercial decision between the Noticee and IISBV and cannot be a determinative factor to include it in the transaction value of imported goods. If the franchise fee were truly related to imports, it would be paid per consignment or per unit of imported goods. Furthermore, the Franchise Agreement was executed between the Noticee and IISBV much after the initial import of the goods in the year 2016. This also strengthens the fact that the franchise fee is not linked to specific imports. Thus, since franchise fee is not related to imported goods, the same is not

includible in the transaction value of imported goods under Section 14 of the Customs Act read with provisions of CVR.

3.2.11.13 In this regard, it is submitted that the Noticee correctly declared the value of goods at the time of import in line with the provisions under CVR read with Section 14 of the Customs Act. Payment of franchise fee and import of goods from ISAG are completely different transactions. franchise fee is not paid as a condition of sale of imported goods or has nexus with the imported goods. Franchise fee cannot be included in the transaction value in terms of Rule 10(1)(c) and Rule 10(1)(e) of the Customs Act.

3.2.11.14 In this regard, the Noticee reiterates that in the instant case, price is the sole consideration of imported goods. The Noticee disclosed all documents and information including agreements, letters, clarifications, etc. as and when required by the Department during investigation. This information/ documents supplied clearly indicate that franchise fee is incurred solely in respect of operation of an IKEA store and for the right to use necessary proprietary rights solely in connection with operation of IKEA store. Further, it is neither paid to IISBV as a condition of sale of imported goods nor paid in relation to the imported goods. Thus, franchise fee is not includible in the transaction value of imported goods and the Noticee correctly declared the transaction value in terms of Section 14 of the Customs Act. Therefore, it is submitted that the Ld. Commissioner mechanically rejected the declared value without providing any reasonable basis for doubt or demonstrating reasonable deficiencies in disclosures or documentation provided by the Noticee during investigation. Hence, the rejection of transaction value under Rule 12 of CVR is uncalled for in the instant case.

3.3 SCN SUFFERS FROM PROCEDURAL INFRACTION, HENCE IT IS LIABLE TO BE SET ASIDE

3.3.1 Section 28(4) SCN cannot be issued and thereafter adjudicated when the present case does not fall within the scope of duties 'not levied', 'not paid', 'short-levied' or 'short-paid' or 'erroneously refunded'

The Noticee submits that the Show Cause Notice (SCN) issued under Section 28(4) of the Customs Act is unsustainable because this section applies only to recovery of duties that are "not levied," "not paid," "short levied," or "short paid," which is not the case here.

Key Points

- Section 28(4) Context:
    - It deals with recovery of unpaid or short-paid duties due to suppression, misstatement, or collusion.
    - The Hon'ble Supreme Court in ***CCE v. Cotspun Ltd., 1999 (113) ELT 353 (SC)*** ruled that if customs authorities have previously approved the duty through thorough examination and a favorable SVB order, it cannot later be termed as short levy.

- Precedents Followed:
    - Similar interpretations have been followed in ***Rainbow Industries (P) Ltd. v. Collector of Central Excise, Vadodara, 1994 (74) E.L.T. 3 (S.C.)***, ***Addl. CCE v. Mahindra & Mahindra Ltd. 2000 (120) ELT 290 (SC)***, ***ITW Signode India Ltd. v. CCEx, 2003 (153) E.L.T. 501 (S.C)***, and ***Mohan Fibre Products Ltd. v. Collector of CEx, 2000 (115) E.L.T. 762 (Tri)***.
    - These decisions on erstwhile Section 11A of the Central Excise Act apply equally to Section 28 of the Customs Act, given their similar legislative intent.
- Examination Before Clearance:
    - Each consignment imported by the Noticee was thoroughly examined, and bills of entry were assessed with opportunity for queries and clarifications prior to clearance.
    - The Customs authorities knew about the valuation issue at the time and granted out-of-charge orders accordingly.
- Favorable SVB Order:
    - The SVB conducted an independent investigation and issued a favorable order dated 24.09.2020 confirming correctness of transaction value and rejecting inclusion of franchise fees.
- No Short Levy Alleged:
    - There is no evidence of unpaid or short-paid duty since the import model was consistent and accepted by Customs.
- Proper Legal Recourse:
    - According to ***ITC Limited v. CCE, Kolkata- IV, 2019 (368) E.L.T. 216 (S.C.)***, individual Bills of Entry are appealable orders under Section 128 of the Customs Act.
    - Customs must appeal through the prescribed appellate process instead of issuing SCNs under Section 28(4) after clearance.

Given these submissions and judicial precedents, the issuance of the SCN under Section 28(4) is procedurally and substantively flawed. The Noticee urges that the SCN be set aside for non-compliance with statutory procedures and lack of ground for alleging short levy or non-payment of duty. The Noticee submits that the Show Cause Notice (SCN) under Section 28(4) of the Customs Act is unsustainable as the section applies only to recover duties that are 'not levied', 'not paid', 'short-levied', or 'short-paid', none of which apply here. The transaction value and duty were approved by Customs authorities following thorough examination and a favorable SVB Order dated 24.09.2020. Judicial precedents including the Supreme Court's ruling in CCE v. Cotspun Ltd. confirm that once duty is approved and goods cleared, subsequent allegations of short levy are impermissible. In the present case, all consignments were duly examined and cleared after due process, with Customs aware of valuation issues and providing out-of-charge orders. The appropriate recourse for challenging final Bills of Entry is appeal under Section 128 of the Customs Act, not reopening by SCN after clearance. Therefore, the SCN issued under Section 28(4) is procedurally flawed and liable to be set aside.

3.3.2 Statements recorded during the investigation cannot be relied upon without following the procedure prescribed under Section 138B of the Customs Act

The Noticee submits that statements recorded during the investigation, relied upon in the Show Cause Notice (SCN) to allege willful misstatement or suppression related to import transactions, cannot be admitted as evidence unless the procedural requirements of Section 138B of the Customs Act are strictly followed.

Key Points on Section 138B Compliance

- Statements recorded before a gazetted customs officer are relevant only if the person making the statement is examined as a witness before the adjudicating authority or court.
- Upon such examination, the adjudicating authority must be satisfied that admitting the statement is in the interests of justice.
- The person against whom the statement is used must be given a fair opportunity to cross-examine the witness.
- Section 138B(2) mandates that these procedural safeguards apply in Customs proceedings just as in court trials.

Relevance to the Present Case

- The SCN heavily relies on statements of Noticee's officials recorded during investigation under Section 108 of the Customs Act, which does not prescribe evidence admissibility procedures nor guarantee cross-examination rights.
- Section 138B sets out a separate and mandatory procedure for statements to be treated as evidence in adjudication, including recording before the adjudicating authority and allowing cross-examination.
- Since this procedure has not been complied with, the statements used in the SCN have no binding evidentiary value against the Noticee.
- If Section 138B procedure is not followed, it implies the Department does not intend to rely on the statements, and no cross-examination is required.

Judicial Precedents Supporting Non-Admissibility

i. ***Him Logistics Pvt. Ltd. v. Principal Commissioner of Customs, 2016 (336) E.L.T. 15 (Del.);***

ii. ***Basudev Garg v. Commissioner, 2013 (294) E.L.T. 353 (Del.);***

iii. ***J & K Cigarettes Ltd. v. Commissioner, 2009 (242) E.L.T. 189 (Del.);*** *and*

iv. ***Ambika International v. Union of India, 2018 (361) ELT 90 (P&H)***

Hence, the Noticee submits that statements of officials recorded during investigation cannot be relied upon as evidence in adjudication unless Section 138B procedural safeguards, including cross-examination, are fulfilled. In the absence of this, such statements have no evidentiary value against the Noticee in the present proceedings.

3.3.3 The SCN relies on internal email communications, letters and other documents to make allegations against the Noticee. Such electronic evidence relied upon in the SCN cannot be admitted as evidence since it lacks the statutory conditions & certificate requirement prescribed under Section 138C (2) & (4) of the Customs Act.

The Noticee submits that the internal email communications, documents, and computer printouts relied upon in the Show Cause Notice (SCN) by the Directorate of Revenue Intelligence (DRI) are inadmissible as evidence under the Customs Act due to non-compliance with the statutory conditions prescribed under Section 138C(2) and (4) of the Act.

Key Legal Requirements under Section 138C:

- Section 138C(2): Computer-generated documents are admissible only if:
  - The computer was regularly used to store or process the relevant information during the relevant period,
  - The information was regularly supplied in the ordinary course of such activities, and
  - The computer-generated printout accurately represents the stored data.
- Section 138C(4): A certificate signed by a responsible official confirming various details about the document's production—such as identity of the document, manner of production, and device particulars—is mandatory for admissibility.

Non-Compliance in the Present Case:

- The Department has not furnished the required certificate under Section 138C(4) certifying the authenticity and reliability of the electronic documents and data used in the SCN.
- No explanations or evidence clarifying the exact locations, folders, or sources of the retrieved emails and documents, nor independent steps to verify their authenticity, have been provided.
- Hence, the electronic evidence including emails (referenced as RUD-9, RUD-10, RUD-12, RUD-13, RUD-14, RUD-16) is inadmissible due to failure to fulfill legal requirements.

Judicial Precedents Supporting Non-Admissibility:

- ***Junaid Kudia and Ors. vs. Commissioner of Customs Mumbai Import-II 2023 (9) TMI 22 - CESTAT MUMBAI***, and
- ***Anvar P.V. vs. P.K. Basheer, 2017 (352) ELT 416 (SC)***, both held that evidence/data produced from computers is inadmissible without compliance with Section 138C(2) and the mandatory certificate under Section 138C(4), rendering penalties based on such data unsustainable.

Since the procedural and certificate requirements of Section 138C have not been met, the electronic evidence relied on in the SCN cannot be admitted for adjudication or penalty purposes. Consequently, no reliance can be placed on the internally sourced emails or related documents presented by the DRI, rendering such allegations in the SCN legally flawed and unenforceable.

3.4 The SCN is hit by res judicata since the SVB orders have attained finality. There is no new materials on record to reopen assessments.

The Noticee submits that the Show Cause Notice (SCN) is barred by the principle of res judicata because the SVB Order dated 24.09.2020, which accepted the transaction value of imported goods from ISAG and found no related-party issues, has attained finality. No new materials exist to justify reopening the settled assessments.

Key Points on Res Judicata:

- Consistency and Finality: Law demands stability and consistency; once a matter is finally adjudicated, it should not be reopened without new facts or legal changes.
- SVB Order:
    - The SVB Order conclusively accepted the declared value of imported goods and held the Noticee and ISAG as unrelated parties under Section 14 of the Customs Act.
    - The bills of entry filed based on this were finally assessed and cleared by Customs.
    - The order has not been challenged and is final.
- Doctrine Application:
    - The Department (DRI) cannot take a diametrically opposite stance now and seek to reopen settled assessments or add franchise fees to transaction value.
    - This constitutes res judicata, barring DRI from reopening or unsettling assessments post-April 2016 without new evidence.
- Judicial Precedents:
    - **Cotspun's case (referred *supra*)**: Once duty is levied based on an approved classification or valuation, it cannot be reopened unless the approval is challenged.
    - ***Radhaswami Satsang v. CIT, (1992) 193 ITR 321 (SC)***: A settled factual or legal position sustained across years cannot be changed without compelling reasons.

The settled SVB Order and final assessments preclude re-opening the valuation issue. Without any new facts or change in law, the SCN for differential customs duty is unsustainable and must be dropped under the bar of res judicata.

3.5 REJECTION OF THE VALUE OF THE IMPUGNED GOODS ON THE BASIS OF STATEMENTS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 IS NOT SUSTAINABLE

3.5.1 Statements were obtained under duress

It is submitted that the two individuals namely Mr. Pankaj Gupta and Ms. Preet Dhupar whose statements were recorded, were at that time located outside India. The Department issued summons on such personnel located outside India to record their statements under Section 108 of the Customs Act. Further, the personnel were also asked to submit their passports. This indirectly created a threat in the minds of the personnel and infused fear of seizure of passports. In fact the statements of Mr. Randhir, Mr. Pankaj and Ms, Dhupar were recorded till midnight. The threat of

personal liberty looms large when the statements are being recorded in this manner. This is the mindset in which the personnel recorded their statements under Section 108 of the Customs Act.

It is submitted that such coercive action of the department vitiates the credibility of the statements recorded. Thus, it is submitted that his statements were recorded under duress, coercion and not voluntary.

3.5.2 In the absence of any independent evidence to reject the declared transaction value, Department cannot reject the declared transaction value

The rejection of valuation based on coerced statements violates principles of natural justice. The Noticee has fully complied with all the requirements under the Customs law including furnishing the relevant documents and making all the required declarations.

The Department has failed to produce any independent evidence to corroborate the statements to justify the rejection of the declared transaction value of the goods. In absence of collaborative evidence, enhancement of value based on statement is totally incorrect and illegal as held by the Hon'ble Tribunal, Mumbai Bench in ***Gopalji Heavy Lifters v. CC – 2017 (357) ELT 537, para 11 and 16.***

Further, even under Rule 12 of CVR, transaction value can only be rejected if there is substantive evidence indicating that the declared value is incorrect.

Therefore, the rejection of valuation adopted by the Noticee in respect of the imported goods based on statement recorded under Section 108 of the Customs Act is grossly incorrect and the SCN is liable to be dropped for this reason alone.

3.5.3 Statement of an individual cannot be attributed to the Company. Thus, reliance placed on statements of personnel is incorrect.

The reliance placed on an individual's statement to attribute intent, pricing, or contractual obligations to the company is flawed. An individual's understanding or interpretation of law, including valuation, is not determinative of the Noticee's legal position. Liability under the Customs law must be established based on objective legal provisions, agreements and other relevant documents and not personal views or assumptions.

Thus, the reliance placed on such an individual's statement that franchise fee paid by the Noticee to IISBV is directly linked to the imports made by Noticee form ISAG is incorrect.

3.6 THE LD. COMMISSIONER INCORRECTLY COMPUTED THE DIFFERENTIAL DUTY AND TAXES PROPOSED TO BE DEMANDED FROM THE NOTICEE

3.6.1 Improper application of Social Welfare Surcharge

The Noticee submits that the Department improperly applied the Social Welfare Surcharge (SWS) resulting in double charging. Under Section 110 of the Finance Act, 2018, SWS is calculated at 10% on the aggregate duties, taxes, and cess under the Customs Act. The average duty rate shared by the Noticee during investigation already included SWS. However, the

Department treated this inclusive average duty rate as basic customs duty and then separately added 10% SWS on top of it. This led to duplication—for example, applying 10% SWS again on a duty rate already inclusive of SWS. Consequently, the "Custom Duty (BCD)" amount in the SCN already contains the 10% SWS, and the additional SWS calculated by the Department is incorrect, inflating the duty recovery proposal.

3.6.2 Incorrect IGST Calculation

The Noticee submits that the SCN incorrectly calculated Integrated Goods and Services Tax (IGST) on imported IKEA products from ISAG, which led to an inflated demand.

Key Points:

- The Noticee provided year-wise average IGST rates based on actual product classifications reflecting varying rates across different product categories.
- The Commissioner ignored these averages and applied a uniform IGST rate of 18% across all products, resulting in overstated IGST demand by INR 84,56,822/-.
- Additionally, the SCN has
    - Incorrectly applied Social Welfare Surcharge (SWS) twice,
    - Used an inflated flat 18% IGST rate instead of actual average rates, and
    - Summed these erroneous components to compute a grossly inflated total demand of INR 34,22,13,491/-.

The Noticee submits that the demand of INR 34,22,13,491/- proposed in the SCN is significantly inflated due to these errors and should be dropped.

3.7 ENTIRE EXERCISE OF DEMANDING IGST NOW IS REVENUE NEUTRAL

The Noticee submits that the demand for Integrated Goods and Services Tax (IGST) of INR 5,22,02,058/- in the SCN is revenue-neutral because the Noticee is entitled to avail Input Tax Credit (ITC) for the IGST paid, effectively nullifying any actual revenue impact on the government.

Supporting Submissions:

- The principle of revenue neutrality means that if the duty demanded is fully recoverable as input credit or set-off, it does not result in any net fiscal gain for the revenue, rendering the demand unsustainable.
- The Noticee relies on the recent Hon'ble CESTAT, Ahmedabad decision in ***Himadri Speciality Chemical v. CC – 2024 (4) TMI 383***, where the Tribunal held that where IGST paid on inputs used for export is eligible for credit, and the government does not intend to export taxes, such demands under extended limitation are not maintainable, especially in the absence of malafide.
- Several Supreme Court decisions also affirm this principle, including:
    - ***CCE & C (Appeals) v. Narayan Polyplast – 2005 (179) ELT 20 (SC);***
    - ***CCE v. Narmada Chematur Pharmaceuticals – 2005 (179) ELT 276 (SC);***

- ***CCE v. Textile Corporation – 2008 (231) ELT 195 (SC);***
- ***CCE v. Jamshedpur Beverages – 2007 (214) ELT 321 (SC);***
- ***CCE v. Coca Cola India (Pvt.) Ltd – 2007 (213) ELT 490 (SC).***

- Further, CESTAT decisions such as ***Accurate Chemicals Industries v. CCE – 2014 (300) ELT 451 (Tri. - Del.)*** and ***Suntex Mercantiles v. CCE – 2014 (313) ELT 809 (Tri. - Mumbai)*** have held that where the assessee is a manufacturer entitled to credit of duty paid, the demand is liable to be set aside as the duty is revenue neutral.

Given these judicial precedents and the principle of revenue neutrality, the Noticee urges that the SCN demanding IGST payment, which the Noticee can fully credit against its output tax liability, is unsustainable and should be set aside forthwith.

3.8 EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4) OF THE CUSTOMS ACT CANNOT BE INVOKED

3.8.1 The Noticee submits that the Show Cause Notice (SCN) issued under Section 28(4) of the Customs Act is unsustainable because the essential elements of willful misstatement, suppression, or collusion required to invoke the extended limitation period are not established.

Key Legal Points

- Limitation Period:
  - Section 28(1) mandates notice for short levy or non-payment of duty within two years from the relevant date, barring older claims.
  - Extended five-year limitation under Section 28(4) applies only if duty escape is due to collusion, willful misstatement, or suppression with intent to evade duty.
- Requirements for Willful Misstatement/Suppression:
  - Following ***Padmini Products v. Collector of Central Excise, 1989 (43) E.L.T. 195 (S.C.)***, suppression or misstatement must be positive, deliberate, and with intent to evade duty—not mere omission or mistake.
  - As per ***Collector of Central Excise v. Chemphar Drugs and Liniments, 1989 (40) E.L.T. 276 (S.C.),*** Knowledge, belief, and deliberate withholding of material information by the assessee must be demonstrated.
- Fraud and Collusion:
  - As per ***Cosmic Dye Chemical v. Collector of Central Excise, Bombay, 1995 (75) E.L.T. 721 (S.C.)*** and ***Dass Photo Electronics v. Collector of Customs, New Delhi, 1987 (30) E.L.T. 988 (Tribunal)***, collusion requires a deceitful agreement with intent to defraud.
  - No evidence of such agreement or fraudulent intent exists against the Noticee here.
- Procedural Requirements:
  - The SCN must clearly specify which omission or commission triggers the extended limitation period, giving the assessee fair notice to respond.

- Absence of such specific allegations or evidence negates grounds for extended period invocation (***Aban Lloyd Chiles Offshore Ltd. v. Commissioner of Customs, 2006 (200) E.L.T 370 (SC)***).

- No Malafide Alleged:
  - In the present case, the Noticee has correctly declared transaction values under Section 14 read with CVR.
  - There is no evidence proving deliberate evasion or concealment to justify extended limitation.

Given judicial precedents and the lack of clear, cogent evidence of willful misstatement, suppression, or collusion, the SCN under Section 28(4) is barred by limitation and lacks merit. The demand must be rejected as the facts do not meet the stringent conditions required for invoking the extended period.

3.8.2 Burden of proof under Self-Assessment regime.

The Noticee submits that under the self-assessment regime introduced by the Finance Act, 2011, the importer is responsible for declaring correct value and duty, but this does not amount to automatic misdeclaration or suppression if the importer makes an honest error in classification or valuation. The burden lies on the department to prove conscious or intentional misstatement or suppression to invoke extended limitation under Section 28(4) of the Customs Act.

Key Points

- Self-Assessment Explained:
  - Self-assessment occurs through the Bill of Entry filed by the importer, including classification, valuation, and exemptions. These are considered "views" rather than absolute facts.
  - The department can reassess these views, but honest mistakes or differences of opinion do not equate to misdeclaration or suppression.
- Judicial Support:
  - ***Midas Fertchem Impex v. Principal CC – 2023 (1) TMI 998,*** ruled that wrong classification or valuation by importer during self-assessment is not misstatement or suppression.
  - ***Challenger Cargo Carriers v. Principal CC – 2022 (12) TMI 621*** reaffirmed that classification and exemptions are matters of self-assessment and differing views don't amount to fraud.
- No Evidence of Intent:
  - The Noticee declared correct particulars in the Bill of Entry believing franchise fee was not includible in customs value.
  - SCN does not demonstrate conscious collusion, willful misstatement, or suppression by the Noticee.
  - The Noticee voluntarily paid INR 16,05,14,108/- under protest during the investigation, showing no mala fide intent.

- Burden on Department: It is incumbent on the Department to prove misdeclaration or suppression at the time of importation, regardless of whether the entry was self-assessed or not.
- Limitation:Without proof of willful misstatement or suppression, extended limitation cannot be invoked, making SCN covering period beyond two years barred by limitation.

The Noticee acted in good faith under self-assessment, with no deliberate misstatement. The Department has failed to discharge its burden of proving willful misstatement or collusion, thus the SCN and demand beyond two years are unsustainable and time-barred.

3.8.3 <u>SCN is based on submissions by the authorized representative, hence wilful misstatement or suppression cannot be alleged</u>

The Noticee submits that the Show Cause Notice (SCN) relies entirely on documents and submissions provided by its authorized representatives during the Directorate of Revenue Intelligence (DRI) investigation and the SVB inquiry, negating any allegation of willful misstatement or suppression of facts.

Key Arguments

- The Noticee provided all relevant documents related to import transactions, including Supply Agreement, Franchise Agreements, and Tax Authority Certificates, during the SVB investigation.
- Judicial precedents establish that for invoking the extended limitation period due to suppression or misstatement, there must be a positive, deliberate act to withhold facts unknown to the department.
- In ***Amway India Enterprises Pvt. Ltd. v. CC Ex, New Delhi, 2017 (3) G.S.T.L. 69 (Tri-Del)***, it was held that suppression does not exist where material facts forming the basis of demand were already known to the department, and extended limitation cannot be applied.
- Similarly, ***Same Deutz- Fahr India Pvt. Ltd. vs Commissioner of GST & C. Ex, Chennai, 2023 (386) E.L.T. 624 (Tri-Chennai)*** held that when exemption-related documents were submitted and no concealed documents were found through further investigation, charges of suppression fail and extended limitation does not apply.
- Additional supporting decisions include ***Shriram Chits Pvt. Ltd. v. CCEx, Cus & ST, Hyderabad, (2023) 3 CENTAX 7 (Tri-Hyd),*** and ***Compark E- Services Pvt. Ltd. v. CC Ex & ST, Ghaziabad, 2019 (24) GSTL 634 (Tri-All)***

Since the SCN is based on known documents submitted by the Noticee without any new undisclosed information, the allegation of willful suppression is unfounded and the extended period of limitation cannot be invoked. Therefore, the entire demand is liable to be dropped.

3.8.4 <u>No positive action done by the Noticees to wilfully mis-state, supress facts to evade payment of duty.</u>

The Noticee submits that there is no evidence of conscious or intentional misstatement, collusion, or suppression of facts to invoke the extended limitation period under Section 28(4) of the Customs Act.

Key Submissions

- The Customs department has not demonstrated any positive act by the Noticee amounting to wilful misdeclaration or suppression.
- The department was fully aware of the two separate transactions: the franchise arrangement with IISBV and the imports from ISAG. Several imports were physically examined and valuations approved, indicating no concealment or undervaluation.
- The proceedings appear to be an attempt to improperly re-determine assessable value by including franchise fees, which is not justified.
- Judicial precedents such as ***Continental Jt. Venture Foundation v. CCE – 2007 (216) ELT 177 (SC)*** mandate a strict construction of suppression, requiring more than mere omission to supply information.
- ***Chemphar Drugs & Liniments (referred above)*** case affirms that positive, deliberate withholding of known information is necessary to extend limitations; mere inaction is insufficient.

In the absence of any positive, willful act to evade duty, the extended limitation cannot be invoked, making the SCN legally unsustainable and liable to be dismissed on this ground alone.

3.8.5 <u>The bills of entry were examined by the Customs Authorities at the time of importation</u>.

The Noticee submits that the bills of entry filed for imports from ISAG were thoroughly examined and accepted by Customs Authorities before clearance, with related documents like invoices submitted and reviewed. As a result, the department was fully aware of the facts, negating any allegation of willful misstatement or suppression.

Judicial precedents such as ***Cadila Pharmaceutical Ltd. vs CCEx, 2017 (349) E.L.T. 694 (Guj.)***, ***Guardian Plasticote Ltd. vs CCEx, Daman, 2009 (241) E.L.T. 149 (Tri-Ahmd), Grewal Industries vs CCEx, Chandigarh, 2005 (186) E.L.T. 378 (Tri-Del)***, ***Suraj Lamps & Industries Pvt. Ltd. v. CCEx, Delhi-IV, 2004 (178) E.L.T. 967 (Tri-Del)***, and ***CCEx, Chandigarh vs Silence Auto Ltd., 2004 (177) ELT 917 (Tri-Del)*** have held that once documents are examined, the department cannot claim suppression. Additionally, rulings like ***PR Rolling Mills Pvt. Ltd. vs CCEx, Tirupathi, 2010 (249) ELT 232 (Tri-Bang)*** *[Maintained in **2010 (260) ELT A84 (SC)**]*, ***Canon India Pvt. Ltd. vs CC, 2021 (376) ELT 3 (SC)*** and **KMS Medisurgi Pvt. Ltd. vs CC (Import), 2022 (382) E.L.T. 394 (Tri-Mum)** confirm that if imports were regularly made and assessments accepted, extended limitation cannot be invoked for alleged suppression.

Since the franchise fee paid to IISBV is a separate transaction not related to the imported goods or their valuation, the Noticee acted in bona fide belief it was not includible in customs value. Given the department had complete knowledge of transactions and consistent practice since

2016 excluding franchise fees from transaction value, no mala fide intent exists and invocation of extended period under Section 28(4) is unjustified. Therefore, the SCN is unsustainable.

3.8.6 Extended period of limitation is not invokable in case of disclosure of primary facts

The Noticee submits that the extended period of limitation under Section 28(4) of the Customs Act cannot be invoked when the primary facts relating to the imported goods have been fully disclosed in the bills of entry. The assessee's obligation is to declare essential facts such as description, classification, and relationships, which the Noticee duly complied with.

Key Arguments:

- Judicial precedents establish that when basic facts are known to the department through proper disclosure, invoking extended limitation for misdeclaration or suppression is not justified.
- ***Maruti Udyog Limited v. CCE, Delhi – 2002 (147) ELT 881 (Tri. – Del.)***, held that disclosure of primary facts negates any claim of wilful suppression, even if the revenue later disputes valuation or price aspects.
- ***G. C. Jain v. CC Calcutta, 2003 (162) E.L.T. 733 (Tri. - Kolkata) [Affirmed in 2011 (269) E.L.T 307 (Supreme Court)]*** ruled that departmental failure to verify declared product nature prevents allegations of misdeclaration for extended limitation.
- ***Sirthai Superware India Ltd. v. CC, Nhava Sheva – III – 2020 (371) ELT 324 (Tri – Mum)*** confirmed that correct product description in bills of entry discharges the burden, so classification errors do not amount to suppression warranting extended limitation.

Conclusion: Since the Noticee declared all primary facts such as product description, classification, and related party status, no wilful misstatement or suppression exists. Without malintent, the extended period of limitation cannot be invoked. Thus, the allegation of intentional wrongful exemption claim or duty evasion is legally unfounded and must be rejected.

3.8.7 Tax planning does not constitute intention to evade duty

As submitted earlier, the internal communications of the employees of the Noticee mentioned in the SCN purely demonstrate the intention to efficiently model the import of goods into India. It does not demonstrate any intention to evade duty. Therefore, the Noticee humbly submits that in the absence of positive action or inaction, extended period cannot be invoked basis presumptions and conjectures with corroborating documentary evidence.

3.8.8 The Issue is of interpretation of law

The Noticee submits that the extended period of limitation under Section 28(4) of the Customs Act cannot be invoked because the issue raised pertains to a bona fide interpretation of law regarding the inclusion of franchise fee in the assessable value of imported goods—specifically whether the fee is paid as a condition of sale and directly related to the imported goods.

Key Arguments

- The question involves legal interpretation, not deliberate evasion or suppression of facts.
- In ***G.T. Cargo Fitting India Pvt. Ltd. v. Commissioner of Central Excise, Noida-II, 2019 (370) E.L.T 1181 (Tribunal - Allahabad)***, the Tribunal held that where the issue is a bona fide dispute over legal provisions without evidence of mala fide, extended limitation does not apply.
- Additional precedents supporting this principle include:
    - ***Singh Brothers v. CCE – 2009 (14) STR 552;***
    - ***Steelcast Ltd. v. CCE – 2009 (14) STR 129;***
    - ***P.T. Education & Training Services Ltd. V. CCE, 2009 (14) STR 34;***
    - ***K.K. Appachan v. CCE – 2007 (7) STR 230***

Since no mala fide intent can be attributed to the Noticee and the dispute hinges on genuine legal interpretation, the invocation of the extended period of limitation by the department is erroneous. Consequently, the SCN is liable to be dismissed on this ground alone.

3.8.9 Statement of employees is not relevant to decide case against the Noticee

The Noticee submits that statements of its employees recorded under Section 108 of the Customs Act cannot by themselves justify a conclusion of over-valuation or rejection of declared transaction value in the absence of supporting evidence.

Key Points:

- Statements made by employees who are not customs experts or directly involved in assessment are insufficient to challenge the correctness of declared values.
- Reliance on such statements without corroborative evidence violates principles of fair adjudication and has been held illegal by the Hon'ble Tribunal in **Gopalji Heavy Lifters *v.* CC – 2017 (357) ELT 537**.
- The Supreme Court-affirmed decision in ***PSL Ltd. vs CC, Kandla, 2015 (328) E.L.T. 177 (Tri-Ahmd)*** *[Affirmed by Supreme Court in* ***Commissioner v. Man Industries India Ltd. - 2016 (331) E.L.T. A90 (S.C.)]*** held that assessments confirmed by Customs cannot be re-opened solely on changed opinions or employee statements lacking relevant expertise or material facts.
- Inclusion of payments under Rule 10 of CVR involves subjective discretion but does not amount to misdeclaration of classification or value by the importer.

Therefore, the Commissioner erred in basing the SCN and extended limitation invocation solely on employee statements recorded under Section 108. Such statements lacking corroboration are not sufficient evidence to reject the declared transaction value or invoke extended limitation against the Noticee. The Noticee submits that statements by employees recorded under Section 108 of the Customs Act cannot alone justify rejecting the declared transaction value, especially without corroborative evidence. Employees are not customs experts, and such statements lack the necessary expertise to challenge assessments. Judicial decisions, including the Supreme Court-affirmed PSL Ltd. case, hold that reassessment cannot be based

solely on such statements without supporting material facts. Inclusion of payments under Rule 10 of CVR involves discretion and different viewpoints, but this does not prove misdeclaration. Thus, relying on these employee statements for invoking extended limitation and rejecting valuation is incorrect and unsustainable.

3.8.10 Extended period cannot be invoked as there is a substantial delay in initiation of investigation and issuance of the present SCN

The Noticee submits that the extended period of limitation under Section 28(4) of the Customs Act cannot be invoked due to a substantial delay in initiating investigation and issuing the Show Cause Notice (SCN).

Key Submissions

- Bills of entry for imports from ISAG were examined, and a favorable SVB Order accepting declared values was passed.
- The Customs Department delayed initiating the DRI investigation, which was started years after imports began, with the SCN covering imports as far back as 2019.
- Relevant documents were with the Department since 2019 and scrutinized during the SVB investigation; hence, no concealment or suppression can be alleged.
- Extended limitation cannot be invoked when the Department had knowledge of the facts but delayed issuing the SCN by several years.
- Judicial precedents support this position:
    - ***Birla Corporation Ltd. vs Commissioner, CGST & Central Excise, Jabalpur (MP), - 2023 (3) TMI 1067 – CESTAT NEW DELHI*** held that failure of officers to timely detect issues does not imply suppression by the assessee or justify extended limitation.
    - ***Onkyo Sight & Sound India Pvt. Ltd. v. CC, Chennai, 2019 (368) E.L.T. 683 (Tri.-Chennai)*** held that investigations long after imports without evidence of malafide intent negate invocation of extended limitation.
    - **Orissa Bridge & Construction Corp. *v.* CCE, Bhubaneshwar -- 2011 (264) ELT 14 (SC)** confirmed extended limitation is not applicable where SCN is issued well after detection of alleged irregularities.

Given the delayed action by Customs despite having full knowledge and documents, the invocation of extended limitation is unjustified and the SCN should be dismissed on this ground.

3.8.11 Extended period of limitation ought not be invoked when the dispute on inclusion of franchise fee in the assessable value of goods is an industry wide issue.

The Noticee submits that the extended period of limitation under Section 28(4) of the Customs Act cannot be invoked because the issue of including the franchise fee in the assessable value of imported goods is an industry-wide dispute involving genuine legal interpretation.

Key Points:

- Where two reasonable views exist and the assessee acts under bona fide belief favoring one view, there is no suppression or wilful misstatement to invoke extended limitation.
- Judicial precedents such as ***Patel Air Freight v. Commissioner of Service Tax, Delhi, 2017 (51) S.T.R. 61 (Tri.-Del.)*** and ***Infrasofttech India Ltd. v. Commr. Of C. Ex., Mumbai-II, 2021 (46) G.S.T.L. 141 (Tri. - Mumbai)*** hold that disputes on taxability or valuation involving different practices or legal interpretations do not justify extended limitation.
- The inclusion of franchise/royalty/license fees has been litigated extensively, with courts often ruling in favor of the assessee (e.g., ***Quest Retail Private Limited (referred above)*** and ***Ajinomoto India Pvt. Ltd (referred above)***), reflecting a legitimate difference of opinion.
- Further decisions supporting this position include ***Coastal Energy Pvt. Ltd. v. Commr. of Cus., C. Ex. & S.T., Guntur, 2014 (310) E.L.T. 97 (Tri. - Bang.)***, ***Haldia Petrochemicals Ltd. v. Commr. of Cus. (Port), Kolkata, 2012 (285) E.L.T. 49 (Tri. - Kolkata)***, ***Malu Electronics Pvt. Ltd. v. Commr. of Cus. (NS-I), Nhava Sheva, 2018 (364) E.L.T. 1023 (Tri. - Mumbai)***, ***Vishal G. Trivedi v. C.C., Ahmedabad, 2019 (367) E.L.T. 660 (Tri.-Ahmd.), Steelcast Ltd. v. Commissioner of Central Excise, Bhavnagar, [2009 (14) STR 129 (Tribunal-Delhi)] [Approved in 2011 (21) STR 500 (Gujarat High Court)]***, ***K.K. Appachan v. Commissioner of Central Excise, Palakkad, [2007 (7) STR 230 (Tribunal-Bangalore)]***, ***Madras Cements Ltd. v. Commr. of Central Excise, Chennai-IV, 2018 (362) E.L.T. 822 (Tri. - Chennai)***, and ***Sah Petroleums Ltd. v. CC. (Import) JNCH v. Nhava Sheva, 2017 (358) E.L.T. 483 (Tri. - Mumbai)***, many affirmed by High Courts or Supreme Court.

Given the bona fide dispute across the industry and varied judicial views, the present case is a legitimate question of legal interpretation without malafide. Therefore, the extended period of limitation cannot be invoked to demand inclusion of franchise fees in the assessable value of imported goods, and the SCN is liable to be dismissed.

3.8.12 <u>The alleged intention to obtain a favorable SVB Ruling cannot impute connivance on the part of the Noticee.</u>

The Noticee submits that the allegation in the Show Cause Notice (SCN) claiming it tricked the SVB to obtain a favorable order is baseless and incorrect.

Key Submissions:

- The SCN's assertion that the Noticee hid material facts, such as important details missing from a letter dated 10.08.2020 from ISAG and omission of other Inter IKEA group company details, is unfounded because these details are publicly available and were disclosed during investigation.
- The Noticee accurately represented the relationship between ISAG (wholesaler) and itself (retailer), supported by the Supply Agreement and corroborated by the ISAG letter submitted to SVB.

- The allegation that franchise fees relate to sales through various channels beyond IKEA stores (per Bangalore Franchise Agreement) is immaterial since the Bangalore Franchise Agreement came into effect retrospectively only after the SVB order, and the Noticee was under bona fide belief that it did not affect import transactions.
- The Noticee fully cooperated with the SVB, submitting all documents requested; the SVB's favorable order was reached after careful examination without any deception.
- The Noticee strongly denies any intentions of collusion, wilful misstatement, or suppression of facts. Attempts to cast legitimate actions as mala fide are unfounded and legally unsound.
- The Department has been aware of the separate transactions: franchise rights with IISBV and import of products from ISAG. The SCN's issuance under extended limitation is motivated by procedural time bars and does not reflect any real wrongdoing.

The Noticee's actions were in good faith, and there was no intent or act to mislead or deceive SVB or authorities. The serious allegations of trickery and mala fide in the SCN lack basis and should be dismissed outright. The Noticee submits that the allegation in the SCN that it tricked the SVB into giving a favorable order is baseless. The Noticee provided all relevant documents, including the letter from ISAG and supply agreements, which accurately depict the relationship between the parties. The Bangalore Franchise Agreement, which came into effect retrospectively after the SVB order, was not submitted earlier in good faith belief it did not impact import transactions. The Noticee fully cooperated with the SVB, which carefully examined the submissions before issuing its order. The allegation of deliberate concealment, collusion, or mala fide intention is incorrect and unjustified. The Department was aware of the separate transactions—franchise rights and import of products—and the SCN, issued under extended limitation, is motivated by procedural time bars rather than genuine wrongdoing. The Noticee acted bona fide and requests dismissal of these unfounded allegations.

3.8.13 No mala fide intent can be attributed to the Noticee when access to Investigation Report was in line with customary practice

The Noticee submits that the allegation of unauthorized possession of the SVB Investigation Report is unfounded and baseless.

Key Submissions:

- Access to the Investigation Report was not malicious or illegal but part of a customary practice wherein parties seek clarity on issues impacting their business operations.
- The SVB Order itself was a concise summary of conclusions; the Investigation Report detailed the basis of the decision and was provided to Mr. Alpesh Vyas, the Customs Manager of the Noticee, during legitimate interactions with Customs Authorities.
- It is common for Customs Authorities to share such reports with concerned parties upon request for clarity, and the Noticee acted in good faith under IKEA's strict compliance policies emphasizing transparency and legal adherence.

- The Report was used internally by the Noticee to understand and resolve issues raised by the SVB investigation, not for any improper purpose.

Therefore, the allegation by the Commissioner that the Noticee accessed the Investigation Report illegally or unethically is entirely without merit and should be dismissed.

3.8.14 Opinions by consultants is not determinative of tax liability

The Noticee submits that reliance on internal assessments and legal opinions obtained from consultants to allege awareness of duty liability on franchise fees is misplaced and legally unsustainable.

Key Points:

- Internal communications, presentations, legal notes, and reports are tools for evaluating legal positions and ensuring regulatory compliance but do not carry legal authority.
- Such documents are preliminary assessments and do not amount to admissions of tax liability by the Noticee.
- The Commissioner cannot shift its burden of proof by depending on these internal opinions, especially when statutory law and binding judicial precedents do not support the claimed inclusion of franchise fees in assessable value.
- Therefore, alleging mala fide or invoking extended limitation based solely on the Noticee's internal assessments or consultant opinions is incorrect and unfounded.

The Noticee requests that the SCN's reliance on these internal documents for proving tax liability or mala fide intention be rejected as they do not establish legal liability or justify extended limitation.

3.9 NO INTEREST CAN BE DEMANDED WHEN DUTY DEMAND IS NOT SUSTAINABLE.

The SCN proposes to demand interest on the differential duty under Section 28AA of Customs Act. It is submitted that in a case where the duty itself is not liable to be paid, then in those cases the levy of interest by the department cannot be sustained in the eyes of law. Reliance in this regard has been placed on the following cases

- ***Prathibha Processors v. Union of India, 1996 (88) E.L.T 12 (SC)***
- ***Collector of Customs, Chennai v. Jayathi Krishna & Co., 2000 (119) E.L.T 4 SC***
- ***Prathibha Processors case (supra)***
- ***Arcelor Mittal Dhamm Processing P. Ltd. v. CC, Chennai 2017 (347) E.L.T. 481 (Tri.-Chennai); and***
- ***CC (Import), Chennai v. CESTAT, Chennai 2017 (353) E.L.T. 398 (Mad.)***
- ***Magnetix India Ltd. v. CC, Bhubaneshwar, 2001 (131) E.L.T 444 (Tri. - Kolkata)***
- ***Blue Star Limited v. U.O.I., 2010 (250) E.L.T. 179 (Bom.)***

3.10 GOODS IMPORTED BY THE NOTICEE ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(m) OF THE CUSTOMS ACT

The Noticee submits that the proposal for confiscation of goods under Section 111(m) of the Customs Act is unsustainable on multiple grounds.

Key Arguments:

- No Misdeclaration or Suppression:
  - Section 111(m) applies only if goods do not correspond in value or other particulars to declared entries. The Noticee correctly declared goods' value and particulars, including that franchise fees are not part of assessable value.
  - Judicial precedent (***Kirti Sales v. Commissioner of Customs, reported as 2008 (232) ELT 151***) holds that misdeclaration must be intentional to attract confiscation.
- Examination and Validation by Authorities:
  - Multiple bills of entry for imports from ISAG were physically examined and values accepted by Customs. Hence, there was no wilful misstatement or suppression.
  - ***CC (Import), Mumbai v. Vidhi Dyestuff Manufacturing Ltd., 2015 (327) E.L.T 500 (Tri.-Mumbai)*** case supports that confiscation is not justified when the department validated declared value and did not notice any discrepancy.
- Goods Cleared for Home Consumption:
  - Once goods are cleared for home consumption, they cease to be "imported goods" as per Section 2(25), and thus cannot be confiscated under Section 111.
  - Authority: ***Bussa Overseas & Properties P. Ltd. v. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) E.L.T 304 (Bom)*** emphasized that confiscation power exists only until clearance for home consumption.
- Bona Fide Conduct:
  - The Noticee acted in bona fide belief and complied fully with customs laws.
  - Courts have consistently held no confiscation where genuine bona fide conduct is demonstrated (***P. Ripakumar and Company v. Union of India,1991 (54) E.L.T 67***, ***Porcelain Crafts and Components Exim Ltd. v. Commissioner of Customs, Calcutta, 2001 (138) E.L.T 471***).

Given that the Noticee declared proper values, the goods were examined and accepted by Customs, were cleared for home consumption, and the Noticee acted bona fide without intent to evade duty, the proposal for confiscation under Section 111(m) is unjustified and must be rejected.

3.11 NO PENALTY IS IMPOSABLE ON THE NOTICEE IN THE INSTANT CASE

The Noticee submits that no penalty is imposable under Sections 114A and 114AA of the Customs Act in the present case for several reasons.

Key Submissions:

- Penalty Dependent on Sustainable Duty Demand:

- The total demand of INR 34,22,13,491/- is unsustainable as the Noticee correctly assessed and paid customs duty on imported goods.
- Supreme Court rulings (***Collector of Central Excise v. H.M.M. Limited, 1995 (76) E.L.T 497 (SC)*** and ***Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) E.L.T 325 (SC)***) affirm that penalty arises only if duty demand is upheld.

- Absence of Mens Rea (Intent):
  - Penalty cannot be imposed without proof of intentional evasion or mens rea.
  - The Supreme Court in ***Hindustan Steel Ltd. v. State of Orissa, 1978 (2) E.L.T (J159)*** held penalties apply only for deliberate, dishonest, or contumacious conduct, not for technical or bona fide breaches.
  - ***Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) E.L.T 161*** case reiterated that mens rea is essential for penalty under Customs law.
  - The Noticee acted bona fide, believing franchise fee is not includible, and Customs authorities approved the declared value via SVB Order.
- Disagreement with Departmental Assessment Not Sufficient for Penalty:
  - Even if the Noticee erred in excluding the franchise fee, differing views between importer and Customs do not justify penalty.
  - Judicial precedents like **Midas Fertchem Impex Pvt. Ltd. vs Pr. CC, ACC (Import), New Delhi, 2023 (384) E.L.T. 397 (Tri-Del)** and **Samsung India Electronics Pvt. Ltd. vs Pr. CC, ACC (Import), NCH Delhi, 2023 (12) TMI 1155 - CESTAT New Delhi (Confirmed by Supreme Court in 2024 (7) TMI 1220-SC Order)** confirm that penalty should not be imposed for assessment disputes without intent to evade duty.

In light of the above, penalty proposed against the Noticee is legally unsustainable due to absence of sustainable demand, lack of mens rea, and bona fide belief. The Noticee respectfully requests that the penalty be dropped.

3.12 PENALTY UNDER SECTION 114A & 114AA OF THE CUSTOMS ACT IS NOT IMPOSABLE

The Noticee submits that penalty under Sections 114A and 114AA of the Customs Act is not imposable in the present case for the following reasons:

Penalty under Section 114A

- Legal Requirements: Penalty under Section 114A is applicable only if duty is short-levied or not paid due to collusion, wilful misstatement, or suppression of facts. The same legal standards as for invoking the extended limitation under Section 28(4) apply.
- No Mala Fide Established: There is no evidence of mala fide or willful misstatement by the Noticee. The differential duty demand is unsustainable.
- Judicial Precedents: Decisions such as ***CC v. Videomax Electronics, 2011 (264) E.L.T 0466 (Tri.-Bom.)*** *[Maintained in* ***2011 (270) E.L.T A90 (Supreme Court)****]*, ***Wind World***

(I) Ltd. v. CC, (I) Nhava Sheva, 2016 (340) E.L.T. 540 (Tri.-Mumbai.) and ***UOI v. Rajasthan Spinning & Weaving Mills, 2009 (238) E.L.T. 3 (S.C.)*** clarify that penalty requires proven deliberate wrongdoing or conscious evasion, absent here.

- Department's Knowledge: The Customs department had full knowledge of facts due to the favorable SVB order and prior examinations; thus, no suppression occurred, and penalty is not justified.

Penalty under Section 114AA

- Mens Rea Essential: Section 114AA applies only where a person knowingly or intentionally makes or uses false or incorrect documents.
- Legislative Intent: Section 114AA was introduced to target serious frauds like paper exports that evade tax benefits, not ordinary import errors or bona fide disputes.
- Judicial Authority:
- ***Naam Exports v. CC, Tuticorn, 2022 (382) E.L.T. 251 (Tri. - Chennai)*** set aside penalties due to absence of intent.
- ***CC (Import) v. M/S. Trinetra Impex Pvt. Ltd., 2019 (11) TMI 72 - Delhi High Court*** emphasized mens rea as a prerequisite.
- ***Interglobe Aviation Ltd. v. Pr. CC, Bangalore, 2022 (379) E.L.T. 235 (Tri. - Bang.), CC, Sea Chennai-II v. Sri Krishna Sounda & Lightings, 2019 (370) E.L.T. 594 (Tri. - Chennai)*** confirm Section 114AA targets fraudulent exports, not genuine imports.
- Not Applicable to Companies: The provision applies to individuals, not companies; the Noticee being a company cannot be penalized under Section 114AA as held in ***T.R. Venkatadari v. CST-I, Mumbai, 2018 (10) G.S.T.L. 483 (Tri. - Mumbai)***.

Given the absence of deliberate wrongdoing, mala fide intent, or fraudulent export scenarios, no penalty can be imposed on the Noticee under Sections 114A or 114AA of the Customs Act. The Noticee respectfully requests dismissal of the penalty demands.

3.13 SECTION 3(12) OF THE TARIFF ACT DOES NOT BORROW INTEREST AND PENALTY PROVISION FROM CUSTOMS ACT. IN ABSENCE OF ANY MACHINERY PROVISION, INTEREST CANNOT BE RECOVERED AND PENALTY CANNOT BE IMPOSED ON THE NOTICEES IN RESPECT OF THE IGST DEMAND.

The Noticee submits that penalty and interest recovery under Sections 28 and 114A of the Customs Act are not applicable to the Integrated Goods and Services Tax (IGST) demanded, as IGST is governed by the Integrated Goods and Services Tax Act, 2017 (IGST Act), not the Customs Act or Customs Tariff Act (CTA).

Key Submissions:

- IGST Levy and Legal Provisions:
    - IGST is levied under Section 5 of the IGST Act and collected under Section 3(7) of the Customs Tariff Act, 1975.
    - Section 3(12) of CTA, the borrowing provision for IGST, does not extend penalty or interest provisions from the Customs Act to IGST.

- Legislative history shows selective borrowing of Customs Act provisions for various duties, with explicit penalty provisions included where intended, but omitted for IGST under Section 3(12).

- Judicial Precedents:
  - The Supreme Court in **India Carbon Ltd. v. State of Assam - (1997) 6 SCC 479** and subsequent cases held that interest or penalty can be levied only if expressly provided by the statute imposing the tax.
  - **Pioneer Silk Mills Pvt. Ltd. v. UOI - 1995 (80) ELT 507 (Del.)** and **Bajaj Health & Nutrition Pvt. Ltd. v. CC, Chennai - 2004 (166) ELT 189** confirmed that penalty and interest provisions are not borrowed unless expressly mentioned.
  - Recent rulings including **Mahindra and Mahindra Ltd. v. UOI – 2022 VIL 690 BOM CU**, **Philips India Limited v. CC (Import) – Final Order No. A/86879/2024**, **Interglobe Aviation Ltd. Vs. CC - 2020 (43) GSTL 410 (Tri. - Del.)**, and **Vedanta Limited Vs. UOI - 2018 (19) GSTL 637 (Mad.)** hold that IGST is not "duty of customs" and levy/recovery including penalties must follow provisions under the IGST Act, not Customs Act.

- Practical Implication:
  - Since IGST demand falls under the IGST Act, the Department cannot recover IGST, interest, or penalty under Customs Act Sections 28 or 114A.
  - The SCN's proposal to recover interest and penalty under Customs Act is legally incorrect.

- Furthermore, SCN erred by applying a flat 18% IGST rate instead of the average IGST rates provided by the Noticee, inflating the demand by INR 84,56,822/-.

In absence of explicit machinery provisions under the Customs Act for IGST recovery including interest and penalty, such amounts cannot be charged under the Customs Act. The SCN demanding IGST, interest, and penalty under Customs Act is legally unsustainable and should be dropped. Additionally, the IGST demand based on erroneous flat rate calculation must also be reduced accordingly.

3.14 PRESENT DEMAND IS INVALID IN ABSENCE OF AN APPEAL AGAINST THE OUT OF CHARGE ORDER / BILLS OF ENTRY.

The Noticee submits that the present demand and proceedings are invalid due to the absence of any appeal challenging the duly assessed and cleared bills of entry and out-of-charge orders passed under Sections 17 and 47 of the Customs Act.

Key Arguments:

- Finality of Out-of-Charge Orders: Bills of entry were examined and accepted by Customs before clearance of goods for home consumption. Out-of-charge orders, being quasi-judicial, can only be set aside by appellate orders, not by issuing a show cause notice (SCN).

- Judicial Precedents:

- ***CCE Kanpur v. Flock (India) – 2000 (120) ELT 285 (SC)*** held that unchallenged adjudication orders attain finality and cannot be reopened in separate proceedings.
- ***Priya Blue Industries v. CC (Preventive) – 2004 (172) ELT 145 (SC)*** upheld finality of assessment orders and denial of reopening without appeal.
- ***ITC Limited v. CCE, Kolkata IV – 2019 (368) ELT 216 (SC)*** confirmed self-assessment orders are appealable and final unless properly challenged.
- **Jairath International *v.* UOI – 2019 (10) TMI 642** and ***Vittesse Export Import v. CC (EP), Mumbai – 2008 (224) ELT 241 (Tri. -Mumbai)*** assert no reassessment or recovery possible without challenging original assessment.
- Ashok Khetrapal v. CC reiterates the finality of bills of entry after assessment.
- Collector of Customs, Cochin v. Arvind Export observes that out-of-charge orders carry legal rights and obligations binding on both parties and cannot be administratively reviewed without specific power.

- Legal Principle:
  - Absence of any appeal against the bills of entry or out-of-charge orders means these orders are final, barring later demands or confiscation.
  - This principle applies equally under Customs law and parallely under Central Excise law as per ***CCE v. Cotspun – 1999 (113) ELT 353*** and ***Addl. CCE v. Mahindra & Mahindra – 2000 (120) ELT 290 (SC)*** rulings.

Unless the Department challenges the assessed bills of entry and out-of-charge orders through proper appeal channels, the demand raised through the present SCN is invalid and liable to be set aside. The settled legal position of finality protects the Noticee from reopening of assessments by mere issuance of a show cause notice.

3.15 PRAYER

In view of the foregoing submissions, the Noticee respectfully prays that the Ld. Adjudicating Authority may be pleased to hold that -

(i) The proceedings initiated vide the SCN dated 27.09.2024 along with the various proposals and allegations therein be dropped and discharged forthwith;

(ii) The SCN proposing to demand Customs duty amounting to INR 34,22,13,491/- by invoking the extended period of limitation should be dropped;

(iii) The SCN proposing to demand interest under Section 28AA of the Customs Act should be dropped.

(iv) The imported goods should not be held liable for confiscation under Section 111 (m) of the Customs Act;

(v) Penalty should not be invoked under Section 114A and Section 114AA of the Customs Act;

3.16 The Noticee, Ms. Preet Kamal Dhupar, CFO, M/s Ikea India Private Limited, Shri Pankaj Gupta, Country Tax Manager, M/s Ikea India Private Limited and Shri Randhir Ramesh Putharan,

Customs Fulfilment Manager, M/s Ikea India Private Limited submitted letters dated 06.09.2025 wherein they made submissions *interalia* as under

3.16.1 THE NOTICEE PLACES RELIANCE ON THE GROUNDS OF THE REPLY AS FILED BY IKEA INDIA AGAINST THE SCN

- The Noticee places reliance on the submissions of the Reply filed by IKEA India
- The Noticee fully cooperated in the investigation which established beyond doubt that there is no intention to evade duty

3.16.2 SCN SUFFERS FROM PROCEDURAL INFRACTION; HENCE IT IS LIABLE TO BE SET ASIDE

- In the absence of compliance with the procedural requirements, the Noticee is bereaved of the right to redact, retract, modify and/ or amend the statements
- Section 28(4) SCN cannot be invoked when the present case does not fall within the scope of duties 'not levied', 'not paid', 'short-levied' or 'short-paid' or 'erroneously refunded'
- Non-inclusion of franchise fee is purely a question of interpretation of law
- Statements recorded during the investigation cannot be relied upon without following the procedure prescribed under Section 138B of the Customs Act
- Without prejudice, the evidence on record is not admissible evidence in law in terms of Section 138C of the Customs Act
- The statement recorded has been conveniently ignored
- Procedure for recording of statements has not been complied with by the investigating agency (DRI)
    a. Statement of top management cannot be recorded in routine manner
    b. Statement was recorded till late hours and thus, in violation of the guidelines issued by Court
    c. Statements were not recorded in accordance with the guidelines of the Hon'ble Supreme Court

3.16.3 THE NOTICEE ACTED UNDER A *BONA FIDE* BELIEF THAT FRANCHISE FEE PAID TO INTER IKEA IS NOT INCLUDIBLE IN THE ASSESSABLE VALUE OF GOODS IMPORTED FROM ISAG. CONSEQUENTLY, PENALTY UNDER SECTION 112(A) OF THE CUSTOMS ACT IS NOT IMPOSABLE.

- No penalty can be imposed when the goods imported by IKEA India are not liable for confiscation under Section 111 of the Customs Act.
- Allegations of mis-declaration or suppression cannot sustain when SVB has undertaken an investigation into the price of imported goods and consignments of the imported goods were duly examined by the Customs Authorities.

- Section 111 is not invokable as the goods under consideration have already been cleared for home consumption.
- No penalty is imposable on the Noticee in the present case.
    - Actions of the Noticee cannot be construed as 'misleading'
    - Penalty cannot be imposed on the Noticee as there was no intention to evade duty by IKEA India
- Assessable value declared have already been accepted by the SVB, intent to evade cannot be alleged.
- Penalty cannot be imposed merely because the self-assessment did not match with the views of the Customs Authorities.
- No penalty can be imposed where the imported goods are not liable to be confiscated under Section 111 of the Customs Act.
- Penalty cannot be imposed on the ground that the Noticee has abetted in the wrongful act.
- Penalty under Section 112(a) cannot be imposed in absence of mens rea.
- Penalty cannot be imposed when issue pertains to interpretation of law.
- Without prejudice, a penalty cannot be imposed on the Noticee when the duty demand is not sustainable.
- Penalty cannot be imposed when the goods have been examined
- Without prejudice, the Noticee should not be penalized automatically due to imposition of penalty on the Principal Noticee (IKEA India), if any
- No penalty can be imposed on the Noticee as no benefit accrued to her from the alleged wrongful act
- Penalty should not be imposed wherein required information was duly provided by the Noticee
- Penalty not imposable on the Noticee when she has merely acted in her official capacity.
- Tax planning cannot be construed as intention to evade tax.

3.16.4 PENALTY IS NOT IMPOSABLE UNDER SECTION 114AA OF THE CUSTOMS ACT

- Penalty cannot be imposed under Section 114AA of the Customs Act
- Without prejudice, penalty cannot be imposed on the Noticee when she has not herself make any declaration before the Customs Authorities
- Intention of the Legislature to introduce Section 114AA of the Customs Act
- The burden of proof is on the Revenue to establish the mala fides for imposing penalty under Section 114AA of the Customs Act

3.16.5 NO PENALTY CAN BE IMPOSED ON INDIVIDUALS WHEN PENALTY IS IMPOSED ON THE COMPANY, IF ANY

3.16.6 PRAYER: In view of the foregoing submissions, the Noticee respectfully prays that the Ld. Adjudicating Authority may be pleased to:

- Drop the proceedings initiated vide the impugned SCN against the Noticee;
- Hold that no penalty is imposable on the Noticee under Section 112(a) and Section 114AA of the Customs Act;
- Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case;

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN), material on record and facts of the case, as well as written and oral submissions made by the Noticee.

4.2 The Chief Commissioner of Customs, Mumbai Zone-II has granted extension of time limit to adjudicate the SCN up to 26.10.2025 as provided under Section 28(9) of the Customs Act, 1962, and the same was intimated to the noticee vide letter dated 23.09.2025, therefore, the case has been taken up for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962

4.3 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the Noticee on 14.08.2025, 08.09.2025, 16.09.2025, 17.09.2025 and 22.09.2025. Availing the said opportunity, the Noticee attended the PH on 17.09.2025 and 22.09.2025. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.4 It is alleged in the Show Cause Notice that the Noticee, M/s IKEA India Private Limited is paying Franchisee Fee to one of the group companies of their overseas seller and they are not including the Franchisee fee as a part of assessable value in their imports. SCN alleges that the imported goods were assessed at lower value which resulted in the payment of less customs duty in terms of provisions of Rule 10(1) (c) and Rule 10(1) (e) of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007. Thus, the differential duty amounting to **Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only)** short paid by the importer is proposed to be recovered under Section 28(4) of the Customs, 1962, along with applicable interest. Further, the SCN proposes confiscation of the impugned goods and imposition of penalty on the Noticee under Section 112(a) and / or 114A of the Customs, 1962.

4.5 I find that the notice have submitted that the Show Cause Notice (SCN) is barred by the principle of res judicata because the SVB Order dated 24.09.2020, which accepted the transaction

value of imported goods from ISAG and found no related-party issues, has attained finality. I find that the noticee has came into a fresh franchisee agreement Franchise Agreement No.2128 dated 10.03.2022 with M/s. Inter IKEA Systems B.V. Relevant portion of CBEC Circular No. 05/2016-Cus. Dated 09.02.2016 are reproduced below:

Change in circumstances surrounding the sale

10. In any case where, the circumstances of sale or terms and conditions of the agreement between the buyer and related seller change, or any other payments of the kind referred under Rule 10 (1) (c), (d) & (e) of the CVR, 2007 become payable, the importers shall be required to declare the same at the place of import in the prescribed format at Annexure C. In all such cases, the proper officer shall examine the transactions as per procedures laid out above in this circular and the jurisdictional Commissioner shall refer the matter to the jurisdictional SVB, where required.

10.1 In view of the above, it may be noted that the system of renewal of SVB orders has been discontinued with immediate effect.

As per para 10 of the CBEC Circular No. 05/2016- Cus. Dated 09.02.2016, it is the responsibility of the importer to intimate the department when the circumstances of sale or terms and condition of the agreement between the buyer and related seller change. Importer is required to declare the same at the place of import in the prescribed format at Annexure C. I find that, the importer has signed a new franchise agreement no. 2128 dated 10.03.2022 with M/s Inter Ikea Systems B.V. and has not informed the department about the same.

4.5.1 I find that in the case of COMMISSIONER OF CUSTOMS, CHENNAI Versus HEWLETT PACKARD LTD [1998 (7) TMI 282 - CEGAT, MADRAS], hon'ble tribunal has held that

"25. This leaves us to consider the last ground on which the revenue based their appeal viz., that since the appellant had accepted the earlier SVB Circular for a number of years, it is not open in law for them to now appeal against the loading of the assessable value after a passage of some time. We are not in a position to accept this contention at all because it is very clear that the principle of res judicata normally does not apply in taxation matters in such cases. This has been laid down in the case of West Coast Paper Mills as reported in 1984 (16) E.L.T. 91 as also in the case of Swaraj Mazda reported in 1995 (77) E.L.T. 505. Therefore, we are of the view that merely because the appellants did not appeal against the Assistant Commissioner's Order dated 11-2-1992, their right to come-up in appeal against a subsequent order dated 5-8-1996 is not in any way blocked, particularly because it is nobody's case that the appeal is not in time or that there is a lack of jurisdiction. The order dated 11-2-1992 which they had not contested was based under a different set of circumstances. The order currently under dispute is on different set of circumstances, and one of them is that the quantum of shareholding has changed between

HP USA and HPI. In view of these discussions, we cannot accept this ground of appeal also."

4.5.2 As the importer has not followed the due course prescribed for the SVB proceedings and taking into consideration the above mentioned judgement, I hold that the subject case is not barred by the principle of res judicata.

4.6 I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided:

i) Whether the amount of Franchisee Fee of Rs. 1,17,58,13,342/- paid to Inter IKEA Systems BV by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) should not be included in the transaction value of goods imported by M/s IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) and the amount of Franchisee Fee of Rs.1,17,58,13,342/- paid to the Inter IKEA Systems BV should not be included in the assessable value of goods imported by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962;

ii) Whether the total differential duty amounting to Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only) should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA ibid;

iii) Whether the goods imported during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

iv) Whether penalty should not be imposed on the importer IKEA India Private Limited under Section 114 A and /or 114AA of the Customs Act, 1962.

v) Whether penalty should not be imposed on Ms. Preet Kamal Dhupar the CFO under Section 112(a) and /or 114AA of the Customs Act, 1962.

vi) Whether penalty should not be imposed on Shri Pankaj Gupta, the Country Tax Manager under Section 112(a) and /or 114AA of the Customs Act, 1962,

vii) Whether penalty should not be imposed on Shri Randhir Ramesh Puthran, Customs Fulfilment Manager of M/s IKEA India Private Limited, under Section 112(a) and /or 114AA of the Customs Act, 1962.

4.7 After having identified and framed the main issues to be decided, I now proceed to decide the substantive issues raised in the SCN by examining each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

4.8 Whether the amount of Franchisee Fee of Rs. 1,17,58,13,342/- paid to Inter IKEA Systems BV by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) should not be included in the transaction value of goods imported by M/s IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) and the amount of Franchisee Fee of Rs.1,17,58,13,342/- paid to the Inter IKEA Systems BV should not be included in the assessable value of goods imported by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962;

4.8.1 I note that the Noticee, M/s IKEA India Private Limited is paying Franchisee Fee to one of the group companies of their overseas seller and they are not including the Franchisee fee as a part of assessable value in their imports. As per the SCN, the imported goods were assessed at lower value which resulted in the payment of less customs duty in terms of provisions of Rule 10(1) (c) and Rule 10(1) (e) of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007.

4.8.2 Rule 3, Rule 10(1) (c) and Rule 10(1) (e) of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced below:

> ***"Rule 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;*
> ***Rule 10. Cost and services.*** *–*
> *(1) In determining the* ***transaction value****, there shall be added to the price actually paid or payable for the imported goods, -*
> ……..

(c) royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

……..

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation .- Where the royalty, license fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods."

4.8.3 Further, transactional value has been defined in Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 as-

"*(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;"*

Section 14(1) of the Customs Act,1962 is also reproduced below:

[***Section 14. Valuation of goods. -***

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided *that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*

Provided *further that the rules made in this behalf may provide for,-*

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

[2][(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]

***Provided** also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.*

4.8.4 On conjoint reading of para 4.7.2 and 4.7.3, I find that the value of the goods shall be the transaction value adjusted in accordance with provisions of rule 10 of the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007. It is evident from the said rule that to arrive at the actual transaction value of the goods, value of commissions, brokerage, royalties and license fees will be added to the transaction value if the same has not been added to arrive at the actual transaction value. SCN alleges that the value of the imported goods is not in conformity with Section 14 of the Customs Act, 1962 read with Rule 10(1)(c) & (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. SCN also alleges that Franchisee fee paid by IKEA India Private Limited (the Franchisee) to Inter IKEA Systems BV is actually royalty/license fee paid for the rights to sell the IKEA Products either in IKEA store, or through e-commerce sites or online. The Franchisee fee is directly connected with the sale of IKEA products which are imported/procured from the IKEA Supply AG and hence, as per the SCN, the said franchisee fees is liable to be added to the declared value in terms of Rule 10(1)(c) & (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the actual transaction value of the goods.

4.8.5 In this regard, Noticee has submitted that Franchise fee' is the payment made by the franchisee/ Noticee to the franchisor/ IISBV as consideration for the right to use the IKEA Retail System owned and developed by Franchisor/ IISBV as defined in Clause 2 of the Franchise Agreement No. 1619 and to use the propriety rights solely in connection with operation of IKEA sales channels. Noticee further submitted that vide the Franchise Agreement, it can be seen that it is purely in relation to the operation of the IKEA Store and other sales channel. In fact, the proprietary rights being discussed herein are purely in relation to the operations of the store (IKEA Retail System) and not in relation to the rights embedded on the IKEA products. This fact is supported by arrangement between IISBV, ISAG and IOS as explained in facts above, and Clause 9.2 of the Franchise Agreement 2128. Thus, the cost incurred by ISAG pertaining to use of intellectual property rights embedded in the imported goods is already accounted for in the transaction value declared by the Noticee. The import price of goods from ISAG is determined based on all costs incurred plus reasonable profits independent of any franchise-related payments. Thus, the payment of franchise fee to IISBV by the Noticee is an independent payment unrelated

to the goods imported by the Noticee and is not includable in the transaction value of imported goods.

4.8.5.1 Since the benefits flowing from the Franchise Agreement are utilised by the Noticee post-imports and is purely towards the trade dress that customers feel while interacting with IKEA as a brand, the franchise fee is clearly a retail cost and not related to the purchase of goods from ISAG. Thus, franchise fee paid by the Noticee to IISBV is purely a 'post-import charge' incurred by the Noticee. Therefore, it is most humbly submitted that the franchise fee is not includible in the transaction value of the subject goods under Section 14(1) of Customs Act.

Reliance in this regard is being placed on the decision of Hon'ble Supreme Court in the case of **CC, *Ahmedabad v. Essar Steel Ltd., 2015 (319) E.L.T. 202 (S.C.)*** whereunder on perusal of Section 14 of Customs Act, the Hon'ble Supreme Court held that "*any amount referable to the imported goods post-importation has necessarily to be excluded.*" Relying upon the aforementioned decision, the Hon'ble Supreme Court in the case of ***Commissioner v. NCL Industries Ltd., 2015 (322) E.L.T. A91 (SC)*** dismissed the appeal filed by the Customs Department in respect of inclusion of technical know-how fees in the transaction value of goods.

In the present case, the Noticee submited that any amount referrable to the post-importation activities are not includible in the transaction value in terms of Section 14(1) of Customs Act.

4.8.5.2 Rules 10(1)(c) of the CVR relates to payment of royalty and license fees. As per Rule 10(1)(c) of CVR, the royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable are to be added to the transaction value of imported goods.

From a bare reading of Rule 10(1)(c), it becomes clear that additions to the assessable value, under Rule 10(1)(c), can be made in the following cases:

i. When the royalty or license fee are relatable to the imported goods;
ii. When the royalty or license fee are a condition of sale of imported goods
iii. When the royalty or license fee are not included in the price actually paid or payable for the imported goods

4.8.6 I find that the noticee M/s IKEA India Private Limited has signed two agreements *viz.* Agreement for Supply of Products and Services" with M/s IKEA Supply AG and **Franchise Agreement No. 2128 dated 10.03.2022** with M/s Inter IKEA Systems BV (Franchisor) located in Netherlands. Findings from these agreements are as under:

4.8.6.1 From the "Agreement for Supply of Products and Services" executed between M/s. IKEA Supply AG and M/s. IKEA India Private Limited, it is evident that:

(i) Supplier M/s. IKEA Supply AG has been granted the world-wide rights to purchase products (IKEA Products) developed by IKEA of Sweden AB (or by independent product developers appointed by IKEA of Sweden AB) (herein and after the "IKEA products").

(ii) **IKEA products can be exclusively sold to the franchisees of M/s. Inter IKEA System B.V.:** The manufacturers, who are manufacturing/producing the IKEA products, cannot sell these products to any other entity. These products can be sold to the franchisees of M/s. Inter IKEA System B.V. only. It implies that these IKEA products cannot be supplied to any entity other than franchisee of Inter IKEA Systems BV. These goods are solely manufactured/produced for sale in the stores of franchisees of M/s. Inter IKEA Systems B.V. It is clear that M/s. IKEA Supply AG cannot choose its customer on its own. It is mandatory to supply the IKEA Goods, only to the franchisees of M/s. Inter IKEA Systems B.V. It is an obligation of the M/s. IKEA Supply AG to supply the goods to the franchisees of M/s. Inter IKEA Syatems BV i.e. M/s. IKEA India Private Limited in present case.

(iii) As per clause 11.4 of Agreement for Supply of Products and Services (reproduced below):

> *"11.4 Supplier shall be entitled to terminate this Agreement to immediately expire, should Retailer at any time no longer be a franchisee of Inter IKEA Systems B.V."*

It appears that being the franchisee of Inter IKEA BV is the foremost condition for receiving the imported goods from M/s. IKEA Supply AG. Therefore, in the present case, it is clear that IKEA India Private Limited can import the goods from M/s. IKEA Supply AG only in the condition of it being the franchisee of M/s Inter IKEA Systems BV.

(iv) As per clause 9.1 of Agreement for Supply of Products and Services (reproduced below):

> *"9.1 Supplier and Retailer acknowledge and agree that the IKEA Products and any models and designs being part thereof are intended solely for the exclusive marketing and sale by authorised franchisees of Inter IKEA Systems B.V. Supplier undertakes not to sell any products to Retailer that is not an IKEA Product.*

It is clear that there is a condition of supply of **only IKEA products** as defined in the said agreement of Supply of Products and Services. The supplier cannot supply any other products to the retailer i.e. M/s. IKEA India Private Limited. Therefore, it implies that the retailer i.e. M/s. IKEA India Private Limited can sell only IKEA Product and only in the condition when the retailer is a franchisee of M/s. Inter IKEA Systems BV.

4.8.6.2 From the **Franchise Agreement No.2128** executed between M/s. Inter IKEA Systems BV (Franchisor) located in Netherlands and M/s. IKEA India Private Limited (Franchisee), India, it is, inter alia, found that:

(i) M/s. Inter IKEA Systems BV (herein and after the Franchisor) is the owner of the distinctive and unique IKEA Concept.

(ii) IKEA Concept consists of the IKEA Retail System, the Products, the Food Products and the Proprietary Rights (all defined in the ibid Franchise Agreement).

(iii) The M/s. IKEA India Private Limited, the franchisee has been granted the permission to operate the IKEA store to sell the IKEA products.

(iv) Clause 11.2 of the franchise agreement says:

> *"11.2 The Franchises i.e IKEA India Private Limited shall pay the Franchisor i.e. Inter IKEA Systems BV, during the term of this Agreement, an amount calculated at three per cent (3%) of Franchisee's monthly Net Sales, net of any Taxes (the "Franchise Fee"). The Franchise Fee shall be payable for each four (4) month period by the thirtieth (30th) day of the succeeding calendar month. In case of business interruption of any nature in the IKEA Store operations, Franchisee shall continue to pay the three percent (3%) fee (the payment of which shall be insured in accordance with Section 19 (Insurance)."*

From clause11.2 ibid, it is clear that the Franchisee fee being paid by the franchisee to the franchisor is made as a condition of sale of the imported goods/IKEA Products which are imported/ procured from M/s. IKEA Supply AG.

(v) In the franchise agreement, the IKEA Concept is defined as:

> *"**IKEA Concept** means the IKEA Retail System, the Products, the Food Products and the Proprietary Rights."*

From combined reading of para 1.1, 1.2 and definitions of the IKEA concept in Franchise Agreement, it appears that M/s. Inter IKEA Systems BV is the actual owner of the IKEA Goods supplied by ISAG.

(vi) As per Clause 3.2 of the ibid Franchise Agreement, Franchisor grants to franchisee, in strict compliance with the terms and conditions of this agreement, **the right and license** to use the necessary Proprietary Rights (including the IKEA secret know-how, the IKEA trademarks, the unique trade dress and the other unique characteristics of the IKEA retail system) solely in connection with the operation of the IKEA Store.

(vii) It is pertinent to mention that the Supply agreement between IKEA Supply AG and IKEA India Private Limited has also been executed as per clause 9.1 of the Franchise Agreement. Clause 9.1 of the franchise agreement states:

"9.1 The supply of Products and Food products shall be governed by separate supply agreement to be made between franchisee and suppliers of the aforementioned products authorized by Franchisor."

From the above, it appears that only the franchisor (M/s. IKEA Systems BV) can decide the supplier; the franchisee i.e. M/s.IKEA India Private Limited has no stake in deciding the supplier of imported goods.

(viii) As per Clause 15 EARLY TERMINATION which is reproduced below:

15. EARLY TERMINATION

15.1 Franchisor shall have the right, in addition to all other remedies it may have at law or in equity, to terminate this Agreement and the licenses granted hereunder immediately if one or more of the following events of default occur, and such default is not remedied to Franchisor's satisfaction within thirty (30) days after written notice of the default is sent to Franchisee:

(i) the IKEA Store fails in any material manner to comply with standards and specifications for layout and display set by Franchisor;

(ii) the operation of the IKEA Store does not substantially comply with the essentials of the marketing policy as stipulated in Section 5 of this Agreement;

iii) Franchisee fails to pay Franchisor any money, whether franchise fees or payments for services or otherwise when the same is due;

(iv) Franchisee in any manner does not comply with the IKEA Operating Standards set by Franchisor;

(v) there is any change in ownership or financial interest of Franchisee (except as provided for in Section 20.3) which is not first approved by Franchisor,

(vi) Franchisee for any reason no longer occupies or operates the IKEA Store;

(vii) Franchisee directly or indirectly engages in any business similar to the IKEA Concept in breach of Section 12.1;

(viii) Franchisee actively solicits sale of the Products in violation of Section 12.4;

(ix) Franchisee does not comply with local laws and regulations, including, for example, local health, safety, food, planning/building and environmental regulations; or

(x) Franchisee is otherwise in material breach of the terms and conditions of this Agreement.

15.2 Franchisor may (at its absolute discretion) immediately terminate this Agreement and the licenses granted hereunder by written notice of default to

Franchisee if Franchisee has on more than one occasion been in default as provided in Section 15.1, or if Franchisee:

.....

It appears that the Franchisor i.e. M/s. Inter IKEA Systems BV has right to terminate the Franchise Agreement on non-payment of Franchisee Fee.

(ix) As per Clause 16.1 of the franchise agreement:

"16.1 Upon the expiration or termination of this Agreement and the license and franchise granted under it (for any reason, whether by reason of default, lapse of time, or other cause), Franchisee shall immediately:

(i) and permanently discontinue all use of the IKEA Retail System and the Proprietary Rights, including the IKEA Secret Know-How and all signs, structures and form of advertising indicative of the Proprietary Rights or which the public associates or is likely to associate with the IKEA Store or which indicate that the Products or the Food Products are available for sale at the former IKEA Store;

(ii) remove or make such changes in signs, furnishings and fixtures and otherwise, including but not limited to changes in displays and uniforms of personnel, as in Franchisor's judgement are required to distinguish the Property from its former appearance and to eliminate the unique design, layout and style and the other unique characteristics of the IKEA Retail System;

(iii) return to Franchisor all IKEA Retail Standards (including manuals, instructions and specifications) and other IKEA Retail System related materials (including all copies thereof) furnished to Franchisee under and pursuant to this Agreement;

(iv) sell to Franchisor or its appointed nominee, if Franchisor so elects, all of the saleable Products in the possession of Franchisee at the date of such expiration or termination (or such part thereof as Franchisor may require) at landed cost (i.e. invoice price plus transport, duties and other official import related fees and/or taxes). Franchisor shall within thirty (30) days of such expiration or termination inform Franchisee whether it or its appointed nominee elects to exercise this option; and

(v) in accordance with Section 11, report and pay all amounts accrued prior to the expiration or termination."

It is clear that on expiration or termination of the franchise agreement, the franchisee have to immediately and permanently discontinue all the use of IKEA Retail system and IKEA Concept.

They have to stop the use of all the proprietary rights including IKEA secret know-how and all signs, structures and form of advertising indicative of the Proprietary rights or they have to refrain from any activity which can show their connection with IKEA brand. Further, after the expiration or termination of Franchise Agreement, the franchisee has to sell to franchisor or to the nominee appointed by the franchisor, all of the saleable products in the possession of the franchisee at the landing cost. Neither Franchisee nor the supplier of goods have any control on the IKEA products after the expiration or termination of Franchisee Agreement. It is only Inter IKEA BV who has full control on the IKEA Goods imported by IKEA India Private Limited even after the expiration of the Franchise Agreement.

4.8.7 It is evident from clause 15 and clause 16 of Franchise Agreement, that in case of non-payment of franchisee fee by the Franchisee, the Franchise Agreement gets terminated and, on termination of Franchise agreement, IKEA India cannot sell the IKEA Products. For selling the IKEA Products by IKEA India, the existence of Franchise Agreement is inevitable and, for the existence of Franchise Agreement, the payment of Franchisee Fee is compulsory.

4.8.8 Para 15.3 of the Franchise Agreement No. 2128 states that any breach by Franchisee of any other agreement entered into between Franchisor (or its affiliates) and Franchisee shall be deemed a breach under this agreement and any breach by franchisee of this agreement shall be deemed a breach by Franchisee under any and all other agreements between Franchisor (or its affiliates) and Franchisee. Further, as the noticee has signed a supply agreement with M/s. IKEA Supply AG (an affiliate of M/s. Inter IKEA Systems BV 'Franchisor') which states that M/s. IKEA Supply AG will supply IKEA products to only franchisees of M/s. Inter IKEA Systems BV. Also, as per the terms of the Supply agreement, M/s. IKEA Supply AG has the right to terminate the agreement, if M/s IKEA India Private Limited ceases to be a franchisee of M/s. Inter IKEA Systems BV.

4.8.9 From the foregone paras, I conclude that payment of Franchisee Fee by the noticee to M/s. Inter IKEA Systems BV is a 'condition of sale' payment. Further, in the case of M/s MATSUSHITA TELEVISION & AUDIO (I) LTD. Versus COMMISSIONER OF CUSTOMS 2007 (4) TMI 5 - Supreme Court, Hon'ble Supreme Court held that-

> *7.The question which arises for consideration in this civil appeal is : whether royalty payment was connected with the imported components. Under Rule 9(1)(c) of the Valuation Rules, 1988, only such royalty which is relatable to the imported goods and which is a condition of sale of such goods alone could be added to the declared price. However, in the present case, payment of continuing royalty was payable at the rate of 3% of the net ex-factory sale price of the colour T.V. exclusive of taxes, freight and insurance but including the cost of imported components. In other words, the royalty payment was to be computed not only on the domestic element of the net sale price of the colour T.V. but also on the cost of imported components. A bare reading of the agreement shows that payment under the said agreement related not only to the production of the goods in India but also*

to imports. In some of the decisions cited on behalf of the assessee, we find that the net ex-factory sale price of the finished products expressly excluded the cost of imported components. On the other hand, in the present case, the cost of imported components was expressly included in the net ex-factory sale price of the colour T.V. Further, when payment to MEI was at the rate of 3% of the sales turn over of the final product, including cost of imported component, it became a condition of sale of the finished goods. Hence, in this case both the conditions of Rule 9(1)(c) of the Valuation Rules, 1988, are satisfied.

Hon'ble Supreme court in the judgment *supra* has held that when payment of royalty at the rate of 3% of the sales turn over of the final product, including cost of imported component, it became a condition of sale of the finished goods. Hence, in this case both the conditions of Rule 9(1)(c) of the valuation Rules,1988 are satisfied.

4.8.10 I hold that the transaction value, as declared by the importer for the purpose of import of goods, cannot be accepted for the reason that the price is not the sole consideration for the import of goods. In this case the importer has two separate agreements for receiving the goods from supplier. One agreement i.e. supply agreement is directly with the supplier and the other agreement i.e. franchisee agreement is with the entity which is having all the direct and indirect control on the imported goods. It is pertinent to mention that, in the absence of franchisee agreement, neither the supplier can supply the goods nor the importer can import. The importer is paying franchisee fee to Inter IKEA Systems B.V. which is being paid as a condition of the sale of the imported goods. Hence, the valuation of the goods on the transaction value declared by M/s. IKEA India Private Limited under Section 14 of the Customs Act, 1962 appears to be incorrect and, therefore, the same appears to be liable for rejection under Rule 12 of the Customs Valuation Rules, 2007 as the Franchisee fee paid by IKEA India to Inter IKEA Systems BV has not been included in the transaction value.

4.8.11 Accordingly, the amount of Franchisee Fee of Rs.1,17,58,13,342/- paid to the M/s. Inter IKEA Systems BV should be included in the assessable value of goods imported by M/s. IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962.

4.9 Whether the total differential duty amounting to Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only) should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA ibid;

4.9.1 After having determined that the franchisee fees paid by the notice is liable to be added in the assessable value of the goods to arrive at the actual transactional value of the goods terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962 for the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st

December 2023), it is imperative to determine whether the demand of differential/short paid duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. In this regard, the relevant legal provision is as under:

> ***SECTION 28(4) of the Customs Act, 1962.***
>
> ***Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded.*** –
>
> *(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*
>
> *(a) collusion; or*
>
> *(b)* ***any wilful mis-statement****; or*
>
> *(c)* ***suppression of facts****,*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

4.9.2 The Noticee has submitted that they had correctly declared the imported goods in the import documents, thus, there was no mis-statement or suppression of facts on their part. The Noticee has further argued that larger period of limitation is not attracted in the case as there is no suppression of facts or wilful mis-statement by them.

4.9.3 I have determined in the preceding paras that the franchisee fees paid by the notice is liable to be added in the assessable value of the goods to arrive at the actual transactional value of the goods terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962 for the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023). I find that being a reputed importer, the Noticee must be well aware of the legal principle of import and valuation rules thereon. It is also evident from the statements of Shri Pankaj Gupta and Ms. Preet Dhupar that the management personnel of noticee were aware that IKEA India pays a 'Franchise Fee' calculated at 3% of the franchisee's monthly net sales, excluding taxes, to Inter Ikea Systems BV under a separate 'Franchisee Agreement.' This fee is not included in the 'Assessable Value' declared to Customs for imports of 'Ikea Products' from IKEA's overseas supplier, Ikea Supply AG, a company within the Inter Ikea Group. Further, from the email dated 21.02.2020 sent from Ms. Preet Dhupar to Mr. Krister Mattsson, Mr. Rudolf van Ooijen and Mr. Pankaj Gupta of IKEA India Private Limited, it appeared that a provision of customs duty on the Franchise Fee was being made. From the said email, it appears that M/s. IKEA India Private Limited was well aware of the incidence of Customs Duty on the franchise fee paid to M/s. Inter IKEA Systems BV. Accordingly, it is evident that, in the instant case, the importer has not declared actual transaction value of the goods at the time of import. I find that the Noticee was well aware of the correct value of the goods and leviability of duty thereon. However, in the

instant case, the Noticee undervalued the goods and did not declare the correct value of the imported goods in the Bills of Entry. Had the department not raised the issue and initiated procedure under the Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The Noticee has paid less duty by suppression of material facts and wilful mis-statement. The Noticee under-valued the goods and suppressed the correct value of the goods to evade duty. This shows wilful suppression, mis-statement and malafide intention of the Noticee to evade payment of legitimately payable duty. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable duty on the subject goods, hence, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962, by invoking extended period.

4.9.4 I have determined in the preceding paras that M/s IKEA India Private Limited, had evaded correctly payable Customs duty by intentionally suppressing the actual value of the imported goods by not declaring the same at the time of filing of the Bills of Entry. They deliberately suppressed the actual value of the goods before Customs and undervalued the same. By resorting to this deliberate suppression of value, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. This willful and deliberate act was done with the fraudulent intention to pay lower rate of duty. Thus, it is evident that the importer deliberately mis-declared the goods with an intention to evade Customs duty by declaring the lower value in order to get financial benefits. Thus, the importer indulged in wilful mis-statement and suppressed the facts with intention to evade duties of customs. Therefore, the matter falls under the purview of Section 28(4) of the Customs Act, 1962

4.9.5 Regarding the Noticee's argument that larger period of limitation is not attracted in this case, I find that in the instant case, as elaborated in the foregoing paras, to evade payment of correctly leviable duty, the Noticee has undervalued the impugned goods, and also fraudulently claimed lower rate of duty at the time of filing of the Bills of Entry. Therefore, I find that in the instant case there is an element of 'mens rea' involved. I find that in the instant case, it is evident that with malafide intention the importer had been evading Customs Duty causing loss to Government Revenue which the importer had been doing knowingly and wilfully so as to maximize monetary gains by evading customs duty

4.9.6 Further, I find that the Noticee has contended that the issue of demanding IGST is entirely revenue neutral as they can take Input Tax Credit (ITC) on payment of IGST paid. In this regard, I find that the argument of revenue neutrality, if accepted as a defence, the entire scheme of payment of taxes on reverse charge basis will become futile. In the instant case, I rely upon the following case laws & rulings:

Shreenath Polyplast Pvt. Ltd. ((2019 (24) G.S.T.L. 133 (App. A.A.R. - GST)), wherein the Hon'ble Bench has held at Para 61 of their Order that:

> *"Further, with respect to the plea of applicant to consider the transaction as Revenue Neutral', it is submitted that this plea is not legal and tenable in the eyes of law, as the whole indirect tax administration run on the principle of credit flow and value addition.*

Such utilization of ITC should not be treated as Revenue Neutral'. Further, by the logic of 'Revenue Neutrality', almost every Business-to-Business transaction transfer the credit and cannot be taken as revenue neutral as it is against the basic principle of indirect taxation."

4.9.6.1 Further in the case of *ICICI Econet Internet & Technology Fund V/s Commr. of Central Tax, Bangalore North 2021 (51) G.S.T.L. 36 (Tri. - Bang.)* wherein the Hon'ble Tribunal has held at Para 50 of their Order that:

"50. Regarding the submissions of the appellants on revenue neutrality, we find that payment of service tax by one entity and availment of Cenvat credit by another entity on the basis of such payment is not a criteria to determine the eligibility of a particular service rendered. The argument goes against the general scheme of service tax and Cenvat credit. If one entity has to pay service tax, it has to pay the same notwithstanding the fact that credit will be availed by a subsequent user. The scheme of Cenvat credit is to lessen the cascading effect of taxation and cannot be a reason for not paying taxes. We find that the appellant's submissions on revenue neutrality are not convincing."

4.9.6.2 I do not find merit in the aforesaid argument of the Noticee as the availability of Input Tax Credit is not related to payment of GST under reverse charge mechanism. The provisions of payment of GST under reverse charge mechanism are different from the provisions of Input Tax Credit as both are different and are governed by different Sections of GST Act, 2017. The eligibility of the tax payer to avail the ITC and utilization thereof is governed by the provision of Act related to ITC. Hence, it cannot be construed that the payment of GST under reverse charge mechanism is not required if they are eligible for ITC. In view of this, the plea of the Noticee regarding revenue neutrality cannot be accepted as it is not supported by any provision of the GST Act, 2017.

4.9.7 In view of the foregoing, I find that, due to deliberate / wilful mis-classification of goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

(a) 2013(294)E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified

(b) 2013(290)E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in

such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;

4.9.8 I note that the Noticee has wilfully not added the amount of Franchisee Fee of Rs.1,17,58,13,342/- paid to the M/s. Inter IKEA Systems BV in the assessable value of goods imported by M/s. IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962. Accordingly, the total differential duty amounting to Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only) resulting from re-determination of value of goods as proposed in the subject SCN, is recoverable from M/s IKEA India Private Limited the in terms of the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period.

4.9.9 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*. In *Directorate of Revenue Intelligence, Mumbai Vs. Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

4.9.10 I have already held in the above paras that the differential/short paid duty amounting to Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only) should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential/short paid duty is also liable to be recovered from M/s IKEA India Private Limited

4.10 Whether the goods imported during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

4.10.1 The SCN proposes confiscation of goods imported during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) under the provisions of Section 111(m) of the Customs Act, 1962 having total assessable value of Rs. **73,69,88,43,781/-**.

4.10.2 Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

(m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;

4.10.3 Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the declaration of the importer herein by under-valuation of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation.

4.10.4 I have already held in foregoing paras that the amount of Franchisee Fee of Rs. 1,17,58,13,342/- paid to the M/s. Inter IKEA Systems BV in the assessable value of goods imported by M/s. IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962. The Noticee was very well aware of the fact that the said franchisee fees paid by them needs to be added in the invoice value to arrive at the actual transactional value of the goods. However, they deliberately ignored the same in the Bills of Entry to claim lower rate of duty, the same is clearly evident from the e-mail communications dated 21.02.2020 of Ms. Preet Dhupar. This deliberate suppression of facts and willful under-valuation by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.10.5 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of under-valuation of the goods. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

4.10.6 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods

as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.10.7 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

4.10.8 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 ibid means as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,

f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

4.10.9 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions alongwith the correct value of the goods. From the facts of the case as detailed above, it is evident that M/s IKEA India Private Limited has deliberately failed to discharge this statutory responsibility cast upon them.

4.10.10 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts and willful under-valuation to claim lower rate of duty. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption. Therefore, I find

that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer willfully did not pay the applicable duty on the impugned goods.

4.10.11 In view of the foregoing discussion, I hold that the impugned imported goods declared in the Bills of Entry filed by M/s IKEA India Private Limited having total assessable value of **Rs.73,69,88,43,781/-** should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-classification of the imported goods.

4.10.12 As the importer, through wilful mis-statement and suppression of facts, had under-valued the goods while filing the Bills of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

> *"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

4.10.12.1 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

4.10.12.2 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of

Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

4.10.12.3 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bill of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962.

4.10.12.4 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, since the impugned goods are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

4.11 Whether penalty should be imposed on M/s IKEA India Private Limited under Section 114A and/or 114AA of the Customs Act, 1962.

4.11.1 I find that in the era of self-assessment, the Noticee had wrongly self-assessed the Bills of Entry and evaded the payment of correctly leviable duty in respect of the impugned imported goods. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable IGST on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.11.2 In this regard, I observe that self-assessment has been introduced on 08.04.2011 vide Finance Act, 2011 wherein under Section 17(1) of the Customs Act, 1962, an importer is required to do self-assessment, thus, placing more reliance on the importers. Further, as per the provisions of Section 46(4) of the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry before the proper officer mentioning therein the true and correct quality, quantity and value of the goods imported and subscribe to a declaration as to the truth and accuracy of the contents of such Bill of Entry. It is an admitted fact that the benefit of less duty on account of mis-declaring the value accrued to the importer.

4.11.3 As discussed above, I find that the subject Bills of Entry were self-assessed by the importer M/s IKEA India Private Limited. They were having knowledge of correct value of the imported goods. However, still they willfully suppressed the correct value and undervalued the same before Customs authorities. By resorting to the aforesaid undervaluation, they paid lower rate of duty and

thereby evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importers to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct value of the goods to claim the undue duty benefit at the time of clearance of the said imported goods.

4.11.4 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]* has followed the same principle and observed:

> "*Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions.*" (para 10).

Hon'ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: "*A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency....*" [2011 (265) ELT 3 (SC)].

Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai*, in which it has been held:

> *Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.*

4.11.5 As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s IKEA India Private Limited, in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

4.11.6 I find that the importer has mis-declared the subject goods by way of gross undervaluation. I find that the importer has furnished documents such as Bills of Entry and its invoices containing false or incorrect material particular with the purpose of clearance of the imported goods by undervaluing the goods. In the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. I find that the importer was actively and knowingly involved in evading

Customs duty by resorting to undervaluation and mis-declaration of imported goods before Customs authorities which rendered the goods liable for confiscation under 111(m) of Customs Act, 1962. The importer cleared the undervalued impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration, statement and documents. In view of the above facts and credible evidences, I find that M/s IKEA India Private Limited, has deliberately and intentionally committed the contraventions as discussed supra covered under the ambit and scope of Section 114AA of the Customs Act, 1962 and accordingly, has rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

4.12 Whether penalty should not be imposed on Ms. Preet Kamal Dhupar the CFO under Section 112(a) and /or 114AA of the Customs Act, 1962.

4.12.1 Ms. Preet Kamal Dhupar was the then CFO and overall in-charge of finance and taxation department of IKEA India Private Limited. She was the final decision maker in the chain of command. During her tenure as CFO, a letter was submitted to SVB from ISAG which apparently misled the SVB investigation. It is evident that she was well aware that there is no agreement which shows that all the proprietary rights were included in the transaction between ISAG and IKEA India. It may be noted that when IKEA India Private Limited received notice from SVB in April, 2018 regarding related party transactions between M/s. Ikea Supply AG and IKEA India, M/s. Ikea Supply AG issued a letter addressed to Ms. Preet Dhupar wherein it was said that no separate charges were made out to the Franchisee for the use of any IKEA proprietary rights in relation to the IKEA Products. However, from the Franchise agreement, it is clear that all proprietary rights are not included as mentioned in the letter by M/s. Ikea Supply AG. The same letter was submitted to SVB during investigation based on which SVB investigation was concluded.

4.12.2 It is evident from the statements and the documents found during the investigation, that Ms. Preet Kamal Dhupar was well aware that the Franchisee Fee paid to M/s. Inter IKEA Systems BV should be included in the assessable value of goods imported by M/s. IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962. I find that Ms. Preet Kamal Dhupar, being a final authority with regard to the financial decisions of the company, was one of the conspirators of this whole fraud involving under-valuation of the goods to evade payment of correct duty.

4.12.3 Thus, I find that Ms. Preet Kamal Dhupar was fully aware that the Franchisee Fee being paid to M/s Inter IKEA Systems BV should be included in the assessable value of the goods and this act of non-inclusion of franchisee fee in assessable value of the goods would lead to evasion of Customs duty. Her willful and deliberate acts have rendered the impugned goods liable to confiscation under the provision of Section 111(m) of the Customs Act,1962. These actions of Ms. Preet Kamal Dhupar helping M/s IKEA India Private Limited in willful and deliberate

undervaluation of the goods have rendered her liable for penalty under the provision of 112(a) of the Customs Act,1962.

4.12.4 Further, as observed by me above, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Ms. Preet Kamal Dhupar being a final authority with regard to the financial decisions of the company was well aware of its operation and was having control over its affairs. I find that Ms. Preet Kamal Dhupar was actively and knowingly involved in evading Customs duty by resorting to under-valuation of the imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. Ms. Preet Kamal Dhupar helped the Noticee to clear the under-valued impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of Ms. Preet Kamal Dhupar, resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, I find that she is also liable for penal action under Section 114AA, ibid.

4.13 Whether penalty should not be imposed on Shri Pankaj Gupta, the Country Tax Manager under Section 112(a) and /or 114AA of the Customs Act, 1962.

4.13.1 Shri Pankaj Gupta was the then Country Tax and Finance Manager of IKEA India Private Limited and looked after finance, transfer pricing and taxation of IKEA India Private Limited. I find that he a the crucial role in the decision making along with the then CFO, Ms Preet Dhupar. He, along with Ms. Preet Dhupar, purposely did not reveal the complete facts before SVB, which led to passing of order by SVB which was not in sync with facts on ground. During his tenure as Country Tax Manager, another letter was submitted to SVB from ISAG which apparently misled the SVB investigation, as that letter too didn't have any factual evidence, and no documents were submitted in support of that letter. It appears that the letter was submitted to mislead the investigation. It appears that he along with his team was well aware that there is no such agreement where all the proprietary rights were included in the transaction between ISAG and IKEA India. It may be noted that when IKEA India Private Limited received notice from SVB in April 2018 regarding related party transactions between Ikea Supply AG and IKEA India, ISAG issued a letter addressed to Ms. Preet Dhupar wherein it was said that there was no separate charge for Franchisee for use of any IKEA proprietary rights. However, from the Franchisee agreement it is clear that all proprietary rights are not included. But, on perusal of the letter received from ISAG, it appears that the value of Proprietary Rights is already included in assessable value of imported goods. The same letter was submitted to SVB during investigation based on which SVB passed an order. It appears that misleading SVB for non-inclusion of franchisee fees in assessable value was the brain child of Shri Pankaj Gupta and Ms Preet Dhupar and it was executed by him based on her directions.

4.13.2 It is evident from the statements and the documents found during the investigation, that Shri Pankaj Gupta was well aware that the Franchisee Fee paid to the M/s. Inter IKEA Systems BV should be included in the assessable value of goods imported by M/s. IKEA India Private

Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962. I find that Shri Pankaj Gupta, being one of the final authority with regard to the financial and taxation decisions of the company, was one of the conspirators of this whole fraud involving under-valuation of the goods to evade payment of correct duty.

4.13.3 Thus I find that Shri Pankaj Gupta was fully aware that the Franchisee Fee being paid to M/s Inter IKEA Systems BV should be included in the assessable value of the goods and this act of non-inclusion of franchisee fee in assessable value of the goods would lead to evasion of Customs duty. His willful and deliberate acts have rendered the impugned goods liable to confiscation under the provision of Section 111(m) of the Customs Act,1962. These actions of Shri Pankaj Gupta helping M/s IKEA India Private Limited in willful and deliberate undervaluation of the goods have rendered her liable for penalty under the provision of 112(a) of the Customs Act,1962.

4.13.4 Further, as observed by me above, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Shri Pankaj Gupta being a final authority with regard to the financial decisions of the company was well aware of its operation and was having control over its affairs. I find that Shri Pankaj Gupta was actively and knowingly involved in evading Customs duty by resorting to under-valuation of the imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. Shri Pankaj Gupta helped the Noticee to clear the under-valued impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of Shri Pankaj Gupta, resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, I find that he is also liable for penal action under Section 114AA, ibid.

4.14 Whether penalty should not be imposed on Shri Randhir Puthran, the Central Fulfilment Operations Manager under Section 112(a) and /or 114AA of the Customs Act, 1962.

4.14.1 I find that on thorough review of the SCN, the submissions made, the surrounding circumstances, and the nature of the case reveals that no material evidence has been presented to establish Shri Randhir Putharan's direct or indirect involvement in the alleged offense. Further, there is nothing in the SCN to point that Shri Randhir Putharan knowingly made the false declaration or signed any such document. From the reading of the Section 114AA of the Customs Act, 1962, it is observed that if the person knowingly makes the false declaration or signed any document than only he will be liable for penalty under section 114AA of the said Act. In the present case, there is no case that Shri Randhir Putharan of the importer company has done any act specified under Section 114AA. Further, there is also no such evidence as to the act of any commission or omission by Shri Randhir Putharan which may render him liable for penalty under section 112(a) of the Customs Act, 1962. The absence of any conclusive facts indicating his

personal role in misdeclaration or fraudulent intent necessitates a reconsideration of the proposed penalty.

4.14.2 It is well settled in various judicial pronouncements that liability for penalties under customs laws must be based on actual participation in the misdeclaration. Mere holding of an executive position within a company, without specific evidence of personal involvement or decision-making authority related to the customs compliance, does not automatically warrant the imposition of penalties under Section 112(a) and/or Section 114AA. Moreover, given the self-assessment regime introduced under Section 17 of the Customs Act, 1962, the importer itself bears the primary responsibility for ensuring compliance with classification, duty payment, and notification applicability. The role of corporate executives, unless explicitly established as directly influencing such transactions, does not necessarily invite penal action.

4.14.3 Therefore, in light of the lack of concrete evidence, the principles of natural justice, and judicial precedents, it is justified to drop the proposed penalty against Shri Randhir Putharan. The facts presented do not support a finding of culpability beyond mere assumption, and thus, Shri Randhir Putharan cannot be held liable for the penalty under Section 112(a) and/or Section 114AA of the Customs Act,1962.

5. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

ORDER

i) I order to include the Franchisee Fee of Rs. 1,17,58,13,342/- paid to Inter IKEA Systems BV by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in the transaction value of goods imported by M/s IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) and also to include the amount of Franchisee Fee of Rs.1,17,58,13,342/- paid to the M/s. Inter IKEA Systems BV in the assessable value of goods imported by IKEA India Private Limited during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) in terms of Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, read with section 14 of the Customs Act, 1962;

ii) I order to redetermine the total value of import by IKEA India during the period 2019-20 (From 1st October 2019) to 2023-24 (up to 31st December 2023) by adding the franchise fee paid for the same period in terms of Rule 3 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962;

iii) I order to confiscate the subject imported goods having assessable value of **Rs.73,69,88,43,781/-** under Section 111(m) of the Custom Act, 1962. Further, I impose a redemption fine of **Rs 3,50,00,00,000/- (Rs. Three Hundred Fifty Crores Only)** on M/s.

IKEA India Private Limited in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

iv) I confirm the differential/short paid duty amounting to **Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only)** for the subject imported goods under Section 28(4) of the Custom Act, 1962 along with applicable interest under Section 28AA of the Custom Act, 1962.

v) I impose a penalty equivalent to differential duty of **Rs. 34,22,13,491/- (Rupees Thirty four crore twenty-two lakh thirteen thousand four hundred and ninety-one only) and applicable interest** under Section 28AA of the Customs Act, 1962, on M/s. IKEA India Private Limited under Section 114A of the Customs Act, 1962. In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid **within the period of thirty days** of communication of this order.

vi) I impose a penalty equivalent to differential duty of **Rs. 10,00,00,000/- (Rupees Ten Crores only),** on M/s. IKEA India Private Limited under Section 114AA of the Customs Act, 1962.

vii) I impose a penalty equivalent to differential duty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only),** on Ms. Preet Kamal Dhupar under Section 112(a) of the Customs Act, 1962.

viii) I impose a penalty equivalent to differential duty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only),** on Ms. Preet Kamal Dhupar under Section 114AA of the Customs Act, 1962.

ix) I impose a penalty equivalent to differential duty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only),** on Shri Pankaj Gupta under Section 112(a) of the Customs Act, 1962

x) I impose a penalty equivalent to differential duty of **Rs. 25,00,000/- (Rupees Twenty Five Lakhs only),** on Shri Pankaj Gupta under Section 114AA of the Customs Act, 1962

xi) I do not impose any penalty on Shri Randhir Ramesh Puthran for reasons deliberated above.

6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show

cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

24/9/25

(अनिल रामटेके / **ANIL RAMTEKE**)
सीमा शुल्क आयुक्त / Commissioner of Customs
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. M/s IKEA India Private Limited,
Survey No.12 & 13, Behind Nagasandra Metro Station,
Nagasandra Village, Yashwantpur Hobli, North Taluk,
Banglore-560073.

2. Ms. Preet Kamal Dhupar,
Survey No.12 & 13, Behind Nagasandra Metro Station,
Nagasandra Village, Yashwantpur Hobli, North Taluk,
Banglore-560073.

3. Shri Pankaj Gupta,
Survey No.12 & 13, Behind Nagasandra Metro Station,
Nagasandra Village, Yashwantpur Hobli, North Taluk,
Banglore-560073.

4. Shri Randhir Ramesh Puthran,
Survey No.12 & 13, Behind Nagasandra Metro Station,
Nagasandra Village, Yashwantpur Hobli, North Taluk,
Banglore-560073.

Copy to:

1. The Pr. ADG, DRI , MZU,
   13, Sir Vithaldas Thakery Marg, New Marine Lines,
   Mumbai-400020.
2. The Joint Director, Directorate of Revenue Intelligence,
   Goa Regional Unit, 'Monte Carlo', House No. 21/207, Plot No. E - 4,
   La Citadel Colony, Dona Paula, Tiswadi, North Goa, Goa - 403 004
3. Commissioner of Customs, NS-V, JNCH.
4. The Commissioner of Customs, Import, INWFD6,
   Kadugodi, Bengaluru, Karnataka 560067.
5. The Commissioner of Customs, Import, (INBOM4)
   Air Cargo Complex Sahar Andheri(E). Mumbai – 99
6. The Commissioner of Customs ,Import, (INBLR4),
   Kempegowda Int'l Airport Rd, Devanahalli, Bengaluru,
   Karnataka 560300.
7. The Commissioner of Customs, Import, (INHYD4)
   ACC SHAMSHABAD AIRPORT DIST RANGA REDDY, HYDERABAD

8. The Commissioner of Customs, Import, INMAA1
   CUSTOMS HOUSE 60,RAJAJISALAI,CHENNAI-600001
9. The Addl. Commissioner of Customs, Group V, JNCH
10. AC/DC, Chief Commissioner's Office, JNCH
11. AC/DC, Centralized Revenue Recovery Cell, JNCH
12. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
13. EDI Section.
14. Office copy.