IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 42516 of 2013

(Arising out of Order-in Appeal C. Cus No.1275/2013 dated 16.09.2013 passed by Commissioner of Customs (Appeals) 60, Rajaji Salai, Custom House, Chennai-600 001.)

The Commissioner of Customs., **: Appellant**
Import Commissionerate,
Custom House, Chennai-600 001.

VERSUS

M/s. GH Induction India Pvt. Ltd., **: Respondent**
No.36 & 37, SIDCO Industrial Estate,
Thirumudivakkam, Chennai – 600 044.

APPEARANCE:

Ms. Anandalakshmi Ganeshram, Superintendent / A.R.for the Appellant

Shri M. Kanan, Advocate. for the Respondent

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40733/ 2023

DATE OF HEARING:25.08.2023

DATE OF DECISION:31.08.2023

Order : [Per Hon'ble Mrs. Sulekha Beevi C.S.]

The appeal is filed by the Department against the order passed by Commissioner (Appeals) who upheld the order of the original authority that technical know how fee or royalty paid by the Respondent to the foreign collaborator is not to be included in the assessable value of the imported goods for discharging the duty.

2. The Ld. Authorised Representative Ms. Anandalakshmi Ganeshram appeared and argued for the Department. It is submitted that an earlier Order-in-Original No. 6585/2006 dated 20.12.2012 in respect of valuation of goods imported by Respondent was initially investigated by SVB and an order was issued accepting the invoice value of the imported goods. Against this order, the Department filed an appeal before the Commissioner (Appeals) and vide order No. CC581/2009, the Commissioner (Appeals), rejected the appeal of the Department. The same was accepted by the Department. The Respondent then filed fresh letter calling for revision of the order with necessary documents. In such periodical review, the adjudicating authority had observed that the relationship between the respondent and the value of the goods imported from their related foreign supplier is already examined and the orders accepting the invoice price of the imported goods as transaction value was accepted by the Department. Since, there was no change in the terms of condition of the existing agreement from the principles, the value of technical know how fee or royalty is not includable to the invoice value. Consequently, order was passed for continuance of the order for a further period of three years upto 20.10.2013. Against such order, the Department filed appeal before the Commissioner (Appeals) who vide order impugned herein upheld the order of the original authority holding that the Royalty/Technical Knowhow Fee is not addable to the value of the imported goods as under Rule 10(1)(c) of the Customs Valuation Rules, 2007.

3. The Ld. Authorized Representative submitted that the Commissioner (Appeals) has erroneously relied upon the order of the Tribunal in the case of *M/s. HIS Automotive Ltd. v. Commissioner of Customs, Chennai [2008 (224) E.L.T. 0439 (Tri. – Chennai)], M/s. Daewoo Motors (India) Ltd. v. Commissioner [2000 (115) E.L.T.*

489 (Tribunal)], Birla Tyres v. Commissioner of Customs, Calcutta [2001 (138) E.L.T. 628 (Tri. – Kol.)] whereas in the case of *Commissioner of Customs v. Ferodo India Pvt. Ltd. [2008 (224) E.L.T. 23 (S.C.)]* it has been held that the Department in every case is not required to look at the Technical / Trade Mark Agreement and is also required to look at the pricing arrangement between the buyer and his foreign collaborator. In the present case, the Commissioner (Appeals) has been misled by the terms in the agreement. The authorities below ought to have looked into the fact that the appellant has incurred the burden of paying the Royalty and Technical know how Fees to the foreign supplier. Therefore, the same has to be included in the assessable value. The Ld. Authorized Representative prayed that the appeal may be allowed.

4.1 The Ld. Counsel for the respondent/importer Shri M. Kannan appeared and argued for the respondent. It is submitted that the issue relates to whether the payment of royalty and lumpsum fee are includable in the assessable value of the imported goods or not. The respondent had imported the components required for the manufacture of Induction heating equipment and subjected themselves to SVB investigation procedure due to their imports being from the related foreign supplier, GH. Electrotermia, Spain.

4.2 The questionnaire provided by the customs was duly completed and filed for further verification. The Asst Commissioner after affording an opportunity to the respondent, passed an Order-in-Original No. 5685/2006 dated 20.12.2006 accepting the invoice price as transaction value.

4.3 The department had filed an appeal against the above said Order- in-Original No.5685/2006 dated 20.12.2006. The Commissioner (Appeals) vide Order-in-Appeal No. 581/2009 dated 29.06.2009 dismissed the

revenue appeal and the same was accepted by the department. In these circumstances, the respondent applied for renewal of the Order-in-Original No.5685/ 2006 dated 20.12.2006.

4.4 While so, the Deputy Commissioner of Customs (SVB), passed an Order-in-Original No.13232/2010 dated 21.10.2010 and held that Order-in-Original No.5685/2006 dated 20.12.2006 shall continue to be followed for a further period of 3 years (upto 20.10.2013) and lumpsum fee & royalty paid by the respondent to their principal, is not includable to the assessable value.

4.5 The department filed an appeal against Order-in-Original No.13232 /2010 dated 21.10.2010 before the Commissioner (Appeals). The department appeal was rejected by the Commissioner (Appeals) in Order-in-Appeal No. 1275/2013 dated 16.09.2013. Aggrieved by the such Order-in-Appeal, the department has now filed the present appeal before this Hon'ble Tribunal.

5.1 The department having not filed any appeal before the Tribunal against Order-in-Appeal No.581/2009 dated 29.06.2009, and having accepted that invoice price will be the value for assessment the department cannot now seek to file an appeal in respect of impugned Order-In-Appeal No.1275/2013 dt.16.09.2013 inasmuch as the impugned order seeks to follow the previous Order in Appeal dated 29.06.2009.

5.2 It is submitted, that the respondent/importer is at liberty to source the components from the approved manufacturers directly and they are not required to procure the components from their principal.

5.3 It is submitted, that the respondent sourced many components directly from the manufacturers or dealers in India or abroad. However, some percentage of

components are procured from their principal. Hence there is no condition that the goods should be purchased from their overseas principal only.

5.4 Again, the price of the components, when bought from their principal is higher than the prices from direct independent sources. (Table in para 13 of 0.1.0 dated 20.12.2006).

5.5 In view of above, it is evident that the transaction value is at arm's length, when they buy from their principal. The advantage they derive is that they could buy only the required quantity instead of the minimum order quantity.

5.6 It is submitted, that the respondent had made available the procurement invoice copies of their principal, which were locally sourced at Spain which will show that invoice value of their principal is higher than their purchase price. (Table in para 15 of O-I-O dated 20.12.2006). Therefore, the issue of pricing is at 'arms length' and hence the invoice value is correctly accepted by the lower authorities.

5.7 The respondent had entered into a technical knowhow and license agreement on 19.08.1998 with their principal. In terms of agreement the respondent has to pay a lumpsum fee of Rs. 15,00,000/- and royalty at 5% on 90% of net sales price of domestic sales and export sales to their principal. All the above will show that the royalty/technical know how fees is not a condition of sale of goods.

5.8 It is submitted, that the payment of lumpsum relates to technical knowhow and the same is for post import activity and not related to the goods imported.

5.9 The payment of royalty at 5% on 90% of net sales price of domestic sales and export sales of the finished products and are not dependent on the imported goods which can be evidenced on the following grounds;

i. The respondent is free to import the components from both their principal and other independent third parties across the world.

ii. There is no influence in pricing between the respondent and their principal.

iii. The technical knowhow is for the post import (manufacturing) activity.

iv. The technical knowhow is not related to the goods imported.

v. There is no condition of sale.

6. In view of above, the payment of royalty and lumpsum fee are not a condition of sale and hence the same are not includable in the invoice value in terms of rule 9(1)(c) of Customs Valuation (Determination of price of imported goods) Rules, 1998. Therefore, the respondent prays that the appeal filed by the department may please be dismissed.

7. Heard both sides.

8. The issue is whether the Royalty or Technical Knowhow fees has to be included in the assessable value. The copy of the agreement has been placed before us. On perusal of the agreement, it is seen that the Royalty or Technical Knowhow Fee based on the net sales price of all domestic sales of the licensed articles. Further, the respondent is permitted to purchase components from other parties also. There is no restriction that the appellant has to procure the raw materials / capital goods only from the foreign supplier. It is very much evident that the Technical Knowhow Fee is not a condition of sale of the imported goods. The issue has been decided by the

Tribunal in the case of *M/s. HIS Automotive Ltd. (supra), M/s. Daewoo Motors India Ltd. (supra).*

9. The Commissioner (Appeals) has relied upon these decisions and also the decision in the case of Toyota Kirloskar Motor Pvt. Ltd. which was upheld by the Hon'ble Apex Court. *CC(Port),Chennai vs. Toyota Kirloskar Motor P. Ltd. [2007 (213) E.L.T. 4(S.C.)].* It has been categorically need that the Royalty paid by the appellant to their foreign collaborator does not satisfy the twin conditions of Rule 9(1)(c) cannot be included in the assessable value of the imported goods.

10. Moreover, it is also brought forth that the Department has not filed any appeal against the orders passed in the earlier round of valuation which has been accepted. For this reason also, the appeal cannot sustain. The impugned order does not call for any interference. The appeal filed by the Department is dismissed.

(Order pronounced in the open court on 31.08.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

RKP