Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10523 of 2015
(Arising out of OIO-34-COMMR-O&A-2014 passed by Commissioner of (Appeals) Commissioner of CUSTOMS-AHMEDABAD)

M/s. Sandvik Asia Pvt Ltd **........Appellant**
Village Rajpur Taluka Kadi,
Mehsana,Gujarat-382740

VERSUS

C.C.-Ahmedabad **.......Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,Gujarat

APPEARANCE:
Shri. T. Vishwanathan, Shri Manish Jain, Advocate for the Appellant
Shri. T.G. Rathod Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10315 /2020

DATE OF HEARING: 16.01.2020
DATE OF DECISION: 28.01.2020

RAMESH NAIR

The issue involved is the inclusion of royalty in the transaction value under Rule 10 (c) of Custom Valuation Rules, 2007in respect of imports made by the appellant.

2. Shri. T. Vishvanathan Learned Counsel along with Shri. Manish Jain, Advocate appearing on behalf of the appellant at the outset submits that the proceedings in the present case for loading of Royalty in the transaction value was initiated on the basis of order in Review No. 228/DC/SVB/AK/2012-2013 dated 18.05.2012, where by the Deputy Commissioner of Customs, GATT valuation Cell, Mumbai ordered for loading of percentage in respect of Royalty in the years 2008-2009 to 2011-2012. He submits that the said order was challenged before the Commissioner of Customs (Appeals)-Mumbai-i, who dismiss the appeal. The appellant being aggrieved by the order of the Commissioner (Appeal) Mumbai-I filed an appeal before the CESTAT-Mumbai and appeal was allowed and the said order was accepted by the Department as no further appeal was filed. Therefore, the issue involved in the present case has been settled. Accordingly, he prayed for allowing the appeal.

3. Shri. T.G. Rathod, Learned Joint Commissioner (AR) appearing on behalf of the Revenue fairly concedes that the issue in the present case is a consequential to order of SVB for loading of Royalty Amount.

4. We have heard both sides and perused the records. We find that in the present case the issue involved is that whether the Royalty charges needs to be included in the transaction value declared as per the invoice sale value under Rule 10(c) of Customs Valuation Rules, 2007. From the perusal of the impugned order and the order in original, it is clear that the proceedings in the present case was initiated consequent to the order in review No. 228/DC/SVB/AK/2012-13 dated 18.05.2012 passed by the Deputy Commissioner of Customs GATT Valuation Cell, Mumbai, whereby the Deputy Commissioner ordered for loading of Royalty Amount in the transaction value declared by the appellant. The Said order was appealed against before the Commissioner of Customs (Appeals)-Mumbai-I, who vide order in appeal No. 247-248/MCH/DC/SVB/2013 dated 28.03.2013 upheld the order of the Deputy Commissioner and dismissed the appellant's appeal. Being aggrieved by the said order-in-appeal, the appellant filed an appeal before the CESTAT-Mumbai which was registered as an appeal No. C/87161/2013-Mumbai-I. The CESTAT Mumbai disposed of the appeal vide order No. A/837/15/CB dated 01.05.2015, where by the appellant's appeal was allowed by holding that the invoice value is not required to be loaded by including the Royalty and the order of the Deputy Commissioner GATT valuation Cell was set aside. In a report dated 26.02.2019 given by Joint Commissioner Custom House, Ahmedabad submitted by Learned AR CESTAT-Mumbai, Tribunal's order dated 01.05.2015 reported in 2015(329) ELT 493 (Tribunal-Mumbai) has been accepted by the department. In view of this position, we find that the issue in the present case stand settled as per the Tribunal CESTAT-Mumbai's order dated 01.05.2015. Therefore, the impugned order is not sustainable, hence we set aside the same and allow the appeal filed by the appellant.

(Pronounced in the open court on 28.01.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Kamakshi