

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

REGIONAL BENCH COURT-2

Customs Appeal No 21708 of 2016

[Arising out of Order-in-Appeal No.479/2016 dated 30.06.2016
Passed by the Commissioner of Customs (Appeals), Bangalore.]

**CHEM TREND CHEMICALS CO. PVT.
LTD.**

3rd Floor Silver Jubilee Block 3rd cross,
Mission Road,
Bangalore,
Karnataka – 560 027

.....Appellant

Versus

COMMISSIONER OF CUSTOMS

C.R. Building,
Queens Road,
Bangalore – 560 001

.....Respondent

Appearance:

Mr. G. Shivadass & Ms. Neethu James, Advocate For Appellant
Mr. K.A. Jathin Authorized Representative (AR) FOR Respondent

CORAM:

Hon'ble Mr. P. A. Augustian, Member (Judicial)
Hon'ble Mrs. R. Bhagya Devi, Member (Technical)

FINAL ORDER No. 20103 of 2024

Date of Hearing: 08/09/2023
Date of Decision: 16/02/2024

Per P. A. AUGUSTIAN:

The issue in the present appeal is regarding valuation of imported goods under Rule 9 and 10(1)(c) of the Customs Valuation Rules, 2007. The Appellant herein is engaged in trading of various types of industrial standard mould release agent and dye lubricant. Appellant used to import raw material from M/s. Chem Trend, USA for manufacture of finished goods. Thereafter, Appellant had entered into an agreement dated 01.01.2010 for 5 years for use of trade secrets and other Intellectual Property Rights in connection with the manufacture and sale of specified

products in India by paying royalty @ 3.7% and 4% of net sale volume of the finished goods manufactured and sold to customers. In 2007, Assistant Commissioner of Customs, Special Valuation Branch (SVB) Mumbai passed an ex parte order rejecting the declared invoice value and for loading of declared invoice price by 100% under the provisions of Rule 8 read with Rule 9 of the Customs Valuation Rules, 2007. Thereafter, when the office of the Appellant was shifted to Bangalore on 02.06.2007, the Appellant stopped import from Chem Trend, Singapore and started to import from Chem Trend, USA. The Appellant filed documents before the SVB Chennai which was transferred to SVB Bangalore. Appellant had submitted various documents pertaining to operation and valuation of goods. Appellant had also produced import prices, comparing the import price with transfer price list by way of comparison and submitted that the goods are supplied across the global to the other related parties at the same price as mentioned in the Appellant's price list. However, the Assistant Commissioner, SVB Bangalore passed an order dated 02.02.2016 ordering loading of 100% value on the declared price along with addition of payment made towards royalty under Rule 10(1)(c) of the Customs Valuation Rules, 2007. Aggrieved by this order, an Appeal was filed before the Commissioner (Appeals) and the Commissioner (Appeals) partially allowed the appeal by setting aside the loading of import value by 100% and additional royalty of the assessable value. However, Commissioner (Appeals) upheld the rejection of declared value and remanded the matter for re-determination of the assessable value and to decide the issue of

addition of payment made towards royalty as per Customs Valuation Rules, 2007. Aggrieved by the same, present appeal is filed.

2. When the appeal came up for hearing, Learned Counsel for the Appellant submits that though it is not disputed that overseas supplier and the Appellant are related to each other as the Appellant is 100% subsidiary of foreign supplier, price declared by the Appellant is not influenced by the relationship between the Appellant and the Supplier; therefore, transaction value has to be accepted in the present case. Learned Counsel for the Appellant also drew our attention to the relevant provisions of Section 14 of the Customs Valuation Rules, 2007 and submitted that in Appellant's case, none of the circumstances specified in the Rule 3(3)(a) of the Customs Valuation Rules, 2007 are present except for the fact that the Appellant and the foreign supplier are related. There is no evidence available on record to prove that the relationship between the Appellant and supplier has influenced the price and value declared by the Appellant is closely approximate to the transaction value of identical goods in the case of sales made with unrelated buyers in India and the declared price is purely on the basis of commercial consideration. Learned Counsel for the Appellant also drew our attention to the transfer pricing guidelines, letter from the overseas supplier, transfer pricing report, order passed on the transfer pricing authority wherein no objection has been raised on the pricing between group companies and price has been confirmed as being at arm's length. He further submits that the costing of imported goods clearly show that the

price of the goods is as per the transfer price list of Chem Trend, USA and the declared value corresponds to the computed value. To substantiate the above, Learned Counsel drew our attention to the cost certification obtained from M/s. Chem Trend, USA and stated that even if the deductive method is adopted in terms of Rule 7 of the Customs Valuation Rules, 2007, the import price of the imported goods is closely approximate to the deductive value. To substantiate the same, he produced the following details of profit and weighted profit for various years.

Year	Net Profit Margin	Traded goods		Manufacture goods	
		Sales Turnover	Net profit margin	Sales Turnover	Net Profit margin
2014-15	14.43%	41.26%	9.48%	58.74%	24.96%
2013-14	9.89%	44.85%	6.78%	55.15%	25.16%
2012-13	10.31%	39.96%	6.32%	60.04%	22.59%
2011-12	11.18%	38.73%	17.68%	61.27%	20.67%
2010.11	9.9%	58.56%	12.02%	41.44%	33.98%

2.1 The Learned Counsel further submits that if at all the Respondent resort to residuary method of valuation of goods under Rule 9 of the Customs Valuation Rules, 2007, it has to be done by reasonable means. The declared price of the goods may still be adopted as such identical goods are exported at the same price to countries other than India by M/s Chem Trend, USA. Though the Appellate authority has set aside the loading of 100% and addition of in the assessable value, upheld the rejection of declared value and remanded for redetermination of the value. Learned Counsel submits that royalty is payable only in cases where the goods are manufactured from the raw materials by using the trade secrets licensed under the license agreement. The Royalty is not payable in instances of trading of imported products

and on goods repacked in India but only for use of technology to produce the products in India. It is also claimed that the law is well settled that where royalty is paid for grant of license to manufacture goods in India, the said royalty is not related to the imported goods and it is not a condition of sale of the imported goods and is therefore not to be included in the assessable value of imported goods and relied on the following judgment/decisions to support his submissions.

- (i) Commissioner of Customs (Port), Kolkata v. Steel Authority of India, 2020-TIOL-88-SC-CUS
- (ii) Commissioner of Customs, New Delhi v. Prodelin India(P) Ltd.,2006(202) E.L.T. 13(S.C.)
- (iii) Commissioner of Customs v. Toyota Kirloskar,2007-TIOL-94-SC-CUS
- (iv) Commissioner of Customs v. Ferodo India (P.) Ltd., 2008-TIOL-28-SC-CUS
- (v) Krunger Ventilation Indus (North India) Pvt. Ltd. V. Commissioner of Customs, New Delhi: 2022 (382) E.L.T. 541(Tri.-Del.)
- (vi) Commissioner of Customs, Chennai v. M/s. Remy Electricals India Ltd.,2017(6) TMI 32-CESTAT CHENNAI
- (vii) Kimberly Clark Lever Ltd. V. CC, Mumbai, 2016(3) TMI 255-CESTAT CHENNAI
- (viii) Procter & Gamble Home Products Ltd. v. CC, Chennai, 2002(144) E.L.T. 704(Tri.-Chennai)
- (ix) Volvo India Private Limited v. CC, 2005(180)E.L.T. 489 (Tri.-Bang.)
- (x) Komet Precision Tolls India Pvt. Ltd. v. CC(A), 2009(245) E.L.T. 375(Tri.-Bang.)
- (xi) M/s. Merck Life Science Private Limited v. CC, Bangalore,2019(9) TMI 1165 -CESTAT BANGALORE
- (xii) OIO dated 31.08.2007
- (xiii) Comparison of Import Invoices with Price List and Sales Invoice
- (xiv) Details of comparison of Import Invoice and Sales Invoice
- (xv) GMR Energy Ltd Vs Commissioner of Customs, Bangalore (2015 (325) E.L.t 445 (SC)
- (xvi) PNP Polytex Pvt Ltd Vs Commissioner of Customs, Nhava Sheva (2015 (318) E.L.T 649 (Tri. Mumbai)
- (xvii) CC Vs Ferodo India Pvt Ltd (2008 (224) E.L.T 23 (SC)
- (xviii) CC, Chennai Vs Toyota Kirloskar Motor Private Ltd (2007 (213) E.L.T 4 (SC)
- (xix) CC, Ahmedabad Vs Essar Steel Ltd (2015 (319) E.L.T 202 (SC)
- (xx) M/s Wep Pheripherals India Ltd Vs CC, Chennai (2008 (224) E.L.T 30 (SC)
- (xxi) M/s Syngenta India Ltd Vs CC (Imports), Mumbai (2014 (314) E.L.T 473 (Tri. Mumbai)
- (xxii) SI George India Ltd Vs CC, Mumbai (2015 (319) E.L.T 161 (Tri. Mumbai)
- (xxiii) Commr. of Cus, Chennai Vs Yapp India Automotive Systems Pvt Ltd (2016 (342) E.L.T 146 (Tri. Chennai)

- (xxiv) General Motors India Pvt Ltd Vs Commissioner of Customs (Import), Mumbai (2009 (235) E.L.T 364 (Tri. Mumbai)
- (xxv) HSI Automative Ltd Vs Commissioner of Customs, Chennai (2008 (224) E.L.T 439 (Tri. Chennai)

3. Learned Authorized Representative reiterated the findings in the impugned order wherein the appellate authority upheld the rejection of invoice value and remanded the matter for redetermination of the assessable value. He also relied on the decision of Apex court in the matter of **Matsushita Television & Audio (I) Ltd Vs CC (2007 (211) ELT 200 (SC).**

4. Heard both sides. In the present case, appellant had filed petition before the SVB Chennai by producing sufficient documents to substantiate the transactional value declared by them at the time of import. However, the Assistant Commissioner, SVB Bangalore ordered loading of 100% value on the declared price along with addition of payment made towards royalty. The Original Authority rejects the transaction value only on the ground that related suppliers are giving variable discounts which is in the nature of special discount and therefore, the invoice price is not at arm's length and hence rejects the transaction value. The comparative chart produced by the appellant with regard to the pricelist with the invoice price admittedly shows an average difference of 2%. Similar is the case when compared with the import prices of another related party. On appeal before the Commissioner (A), he set aside the loading of import value by 100% and additional royalty of the assessable value but upheld

the rejection of declared value and remanded the matter for redetermination of the assessable value and to decide the issue of addition of payment made towards royalty. In this particular case, the appellant has produced enormous documents to show that the pricing has been uniform worldwide in respect of transaction between affiliates. Let's examine the relevant Rules. Rule 3 of Customs Valuation Rules 2007 reads as -

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

As seen from above, the 2% variation in the prices demonstrated by the appellant in the tables given below do not reflect as abnormal discounts to reject the transaction value. The Department has also not produced any evidence to show any financial flow back on account of the relationship. Thus, there is no reason to reject the transaction value in the present case.

“4.1 Rule 12 of the Customs valuation Rules reads as:

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-

(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not

represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

As seen above, cogent reasons with evidence needs to be produced to prove that the declared value is not acceptable and in the present case revenue has failed to prove. Further in the case of **Procter & Gamble Home Products Ltd (Supra)** the Tribunal held that "On a careful consideration of the submissions made by both the sides, we are required to examine as to whether any mutuality of interest between the supplier and the importer in terms of flow back and profits and whether the transaction value can be rejected. It is now well settled that merely because the importer and the appellant is a related person and that by itself will not call for rejection of transaction value unless it is shown that the transaction is not at arm's length and there is flow back of funds. In this particular case, the appellant has produced enormous documents to show that the pricing has been uniform worldwide in respect of transaction between affiliates. The price at which the goods are bought and sold

inter se affiliates of P & G is cost of raw materials and packing materials (including wastage), manufacture, overheads, logistic cost and uniform profit of 5% which the appellant refer it as Inter Company Billing Policy (ICBP). In support of this they have produced certificate issued by P&G (USA) and certificates of the Chartered Accountants who is internationally reputed and who has examined independently. Therefore, as the Department has not produced any evidence to say that the transaction value cannot be rejected for any criteria there is no reason to reject the transaction value in the present case. We have gone through the impugned orders passed by both the authorities and both the orders are not speaking orders and do not analyse the evidence produced by the appellant including the judgment which are well settled on this issue. Therefore, while upholding, the transaction value in the present case cannot be rejected in view of the enormous evidence produced. We also accept the plea that in terms of Rule 6A in case of rejection of transaction value if it is not available then the proviso clearly lays down that at the request of the importer with the approval of the proper officer, the order of application of Rules 7 and 7A shall be reversed. Both the authorities have overlooked these provisions especially Commissioner (Appeals) and has directed that it does not apply which is not as per law. This very question was gone into in the case of *CC v. Hewlett Packard* on an identical issue with similar facts and the Tribunal has clearly upheld the

importer's contention and rejected the Revenue appeal. The facts being identical were required to follow its ratio". Therefore, the question of rejecting the declared value as transaction value is not sustainable. As seen from the Rules the Original Authority has after rejected all other methods has arrived at the loaded value as per Rule 9 which is last in the sequence. The Commissioner having rejected this method of enhancement of value cannot remand the case for redetermination under any other method as it has already attained finality and there is no appeal on that method of valuation. Hence the remand to redetermine is not sustainable and hence set aside.

4.1 Regarding addition of payment made towards royalty under Rule 10(1)(c) of the Customs Valuation Rules, 2007, law is well settled that addition of payment made towards royalty can be made only in cases where the goods have been manufactured from the raw material imported by using the trade secret license under License agreement. The Royalty is not payable in instances of trading of imported finished goods and on goods repacked in India and it is only for use of technology to produce the products in India. The facts as stated above, there is no justification to remand the matter for redetermination of the assessable value.

4.2 The Hon'ble Supreme Court in the case of **CC Vs Ferodo India Pvt Ltd (Supra)** observed that:

"Rule 4(3)(b) of the CVR, 1988 provides for an opportunity for the importer to demonstrate that the transaction value

closely approximates to a “test” value. A number of factors, therefore, have to be taken into consideration in determining whether one value “closely approximates” to another value. These factors include the nature of the imported goods, the nature of the industry itself, *the difference in values etc.* As stated above, Rule 4(3)(a) and Rule 4(3)(b) of the CVR, 1988 provides for different *means* of establishing the acceptability of a transaction value. In the case of *Matsushita Television* (supra) the pricing arrangement was not produced before the Department. In our view, the Consideration Clause in such circumstances is of relevance. As stated above, pricing arrangement and TAA are both to be seen by the Department. As stated above, in a given case, if the Consideration Clause indicates that the importer/buyer had adjusted the price of the imported goods in guise of enhanced royalty or if the Department finds that the buyer had misled the Department by such pricing adjustments then the adjudicating authority would be justified in adding the royalty/licence fees payment to the price of the imported goods. Therefore, it cannot be said that the Consideration Clause in TAA is not relevant. Ultimately, the test of close approximation of values require all circumstances to be taken into account. It is keeping in mind the Consideration Clause along with other surrounding circumstances that the Tribunal in the case of *Matsushita Television* (supra) had taken the view that royalty payment had to be added to the price of the imported goods”.

4.3 In the present case, admittedly the royalty has been paid for use of technology to produce the products and it is payable on the net value of the goods manufactured in India and therefore, royalty cannot be added to the finished goods imported by the appellant for trading purpose.

5. Based on our observations and as discussed above, in view of the settled principles of Valuation, we find the impugned order devoid of merits. Accordingly, the appeal is

allowed with consequential relief if any, in accordance with law.

(Order pronounced in Open Court on 16.02.2024.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Ganesh