CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

Regional Bench COURT-2

Customs Appeal No. 20132 of 2023

[Arising out of the Order-in-Original No.BLR-CUSTOM-COMM-01-2023 dated 05.01.2023 passed by the Commissioner of Customs, Bangalore.]

PAGE INDUSTRIES, ...**Appellant**
7th Floor, Cessna Business Park,
Umiya Business Bay, Tower-1,
Kadubeesanahalli, Varthur Hobli,
Bengaluru – 560 103.

VERSUS

COMMISSIONER OF CUSTOMS,
Bangalore – 560 071 .....**Respondent**

With

(i) Customs Appeal No.20133 of 2023 (M/s. Kemparaju S.G.)

[Arising out of the order-in-Original No. BLR-CUSTOM-COMM-01-2023 dated 05.01.2023 passed by Commissioner of Customs, Bengaluru]

(ii) Customs Appeal No.20134 of 2023 (DeepanjanBandopadhyay)

[Arising out of the Order-in-Original No. BLR-CUSTM-COMM-01-2023 dated 05.01.2023 passed by Commissioner of Customs, Bengaluru]

(iii) Customs Appeal No.20135 of 2023 (M/s. Sunder Genomal)

[Arising out of the Order-in-Original No. BLR-CUSTOM-COMM-01-2023 dated 05.01.2023 passed by Commissioner of Customs, Bengaluru]

Appearance:
Mr. D.B. Shroff, Advocate
Mr. Sanjeev Nair, Advocate ----for the Appellant
Ms. Rukmani Menon, Advocate

Mr. K.A. Jathin, Authorized Representative for the Respondent

Coram:

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

FINAL ORDER No. 20152-20155 of 2024

DATE OF HEARING: 14.09.2023

DATE OF DECISION: 13.03.2024

PER: P.A. AUGUSTIAN

1. The issue in the present appeals is regarding valuation of imported goods. The Appellant is the sole distributer of the brand owned by M/s Jockey International USA and Speedo International, U.K which includes products of both the companies. M/s Page Industries Ltd. is engaged in sole trading of imported goods having exclusive franchise rights. The Appellant entered into Trade Mark License Agreement dated 15.06.2010 with M/s Jockey International, USA for the products manufactured by the Appellant and with Speedo for both licensed and distributed products which are imported and sold by the Appellant. Alleging that the Appellant and the supplier of the goods are related persons, the royalty and the cost of advertisement incurred by the Appellant in India is added to the transaction value of import of finished goods/Distributed products in terms of Rule 10(1)(c) and Rule 10 (1)(e) of the Customs Valuation Rules 2007, demanding Rs. 37,40,81,065/- as differential duty. The Adjudicating

authority vide impugned order confirmed the demand along with interest, redemption fine and penalty. Aggrieved by the order, present appeal is filed.

2. When the appeals came up for hearing, Ld. Counsel for the Appellant submits that the Appellant had paid Integrated Goods & Service Tax (IGST) on Royalty payment made by M/s Jockey International & M/s Speedo International under reverse charge mechanism considering the same to be in nature of consideration of provision of service by Jockey/Speedo to the Appellant. Since the Appellant had already paid tax on the Royalty payments made considering the same to be a service and the same has not been disputed by the Goods and Service Tax department, the Royalty value cannot be added against the value of the goods imported for the purpose of discharging customs duty. It shall lead to double taxation which cannot be an intension of the legislature.

3. Ld. counsel further submits that issue is regarding invoking the provisions of Rule 10 under the Customs Valuation Rules 2007. There is no evidence of any nature whatsoever that is brought on record to show that there were contemporaneous sales/transactions at high price. He further draws our attention to Section 14(1) of the Customs Valuation Rules 2007, the circumstances in which the buyer and seller shall be deemed to be related for consideration of sale. As per Rule 2(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 'related persons' is defined as:

> "2 (2) For the purpose of these rules, persons shall be deemed to be "related" only if -
>
> (i) they are officers or directors of one another's business;
>
> (ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of both of them;

(v) *one of them directly or indirectly controls the other;*

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I - The term “person” also includes legal persons.

Explanation II - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.”

4. The Ld. Counsel further submits that in the impugned order, there is no finding that the Appellant and the manufacturer M/s Jockey USA are related persons. The Ld. Counsel draws our attention to the finding of the Hon’ble Supreme Court in the matter of **CC (Imports), Mumbai Vs Bayer Corp Science Ltd (2015 (324) E.L.T 17 (S.C)** where it is held that before rejecting the invoice price, Department should give cogent reason for such rejection. There is no such cogent reason coming forth in the impugned order. He further submits that from the provisions of the Customs Act, 1962 and the Customs Valuation Rules 2007, it can be inferred that the value of royalty would be included in the value of imported goods only if:-

(i) Royalty is directly related to the imported goods

(ii) The royalty is paid by the buyer directly or indirectly to the seller.

(iii) The royalty is payable as conditions of sale of the imported goods.

(iv) The royalty is not included in the value of the imported goods

5. It is further submitted that royalty which is payable directly or indirectly to the seller or to the third party on behalf of the seller, only can

be included in transaction value. Any royalty which is not paid to the seller or on behalf of seller or as an obligation to the seller cannot be included in the transaction value of goods. In this regard reference is made to Commentary on the GATT Customs Valuation Code by Saul L Sherman and Hinrich Glashoff:

> "Art.8.1(c) of the Code provides for the addition of the royalty or license fee whether it is paid directly or indirectly. Therefore, royalties and license fees that are paid to the third parties can also be added to the Transaction value under this provision; however, the payment of the royalty or license fee to the third party will only be a condition of the sale if the seller was obligated to the third party to pay the royalty or license fee and if the importing purchaser effects such payment for the benefit of the seller (and by agreement with the seller)."

6. Ld. Counsel also submits that if the trademark is owned by a third person then the payment for the imported goods and for the trademark used in the country of importation are quite clearly separate, since they go to different persons. The 'condition of sale' test is thus not satisfied, and the royalty should not be added to the price of the goods. He further submits that General Agreement on Tariff & Trade, 1994 (herein after referred to GATT) laid down the basic principles to be adopted for uniform implementation of practices pertaining to international trade. Rule 10(1)(c) of the Customs valuation Rules 2007 covers the situation contemplated under Article 8(1)(c) of the Customs Agreement.

7. Ld. Counsel further draws our attention to the finding in the impugned order where Adjudication authority held that

> "such Licensed/contract manufactures are manufacturing the goods on behalf of M/s Page industries Ltd. subject to conditions as defined and stipulated in the 'Trade Mark License Agreement' between M/s Page Industries & M/s Jockey International , Inc, USA. For such

products, Trade marks are being allowed, manufacturing know how is being shared by the Licensee i.e, M/s Page Industries Ltd and all such contract manufacturers are mandatorily required to adhere to certain conditions as stipulated in the above said agreement agreed upon at the time of grant of license by Licensor, M/s Jockey International, Inc, USA".

It is stated that this finding is factually incorrect and unsustainable since it is made without any admissible evidence.

8. Ld. Counsel further draws our attention to the finding in the impugned order were Respondent held that "though the royalty payment is related to Sale after import to India, the imported goods are sold as such and the Noticee makes payment of royalty on these goods. The Net sale value on which the royalty is paid by the Noticee included the value of such imported 'Licensed Products'. Ld. Counsel submits that such finding also unsustainable since it is drawn without any admissible evidence.

9. Ld. Counsel for the Appellant also draws our attention to the finding of the impugned order where adjudication authority concluded that "the Noticee submitted that the raw materials in the present case are imported from third party manufacturers located across the Globe and not from M/s Jockey and hence, the import of such goods is not conditional upon payment of royalty. It is observed that, the Noticee, importer is not at liberty to import raw material of any quality and from any person as they are bound by the 'License Rights', 'Manufacturing knowhow', 'Quality control', 'Condition of submission of samples' and other conditions specified in the Trade License agreement mutually agreed upon. The entire process of procurement, utilization are obviously due to the fact that the trade mark "JOCKEY" is owned by the licensor, M/s Jockey International Inc, USA and upon import of such raw material, the manufacturer/noticee as per the

agreed upon standard and sale of the goods, is liable to pay royalty. As such, the scheme of the things is not difficult to comprehend and the noticee is trying to move an impossible case that the Royalty is not related to the imported raw material". Ld. Counsel strongly objected to the said finding since it is only for the license to produce and submits that as per cause 5.1 of the agreement, the liability to pay royalty is only on New Sales of Licensed Products invoiced in each Quarter. Thus the demand of royalty for the distributary products is illegal and unsustainable. To support the above, Ld. Counsel draws our attention to the decision of the Tribunal in the matter of **M/s Indo Rubber & Plastics Works Vs CC, New Delhi (2020 (273) E.L.T 250 (Tri.Del).**

10. The Ld. Counsel also draws our attention to the Final order of this Tribunal in the matter of **M/S Kruger Ventilation Indus (North India) Pvt Ltd Vs C.C (Import), New Delhi (2022 (382) E.L.T 541** where it is 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."

11. Ld. Counsel also draw our attention to the Final order of this Tribunal in the matter of **M/s Sandvik Asia Pvt Ltd Vs C.C (Import), Mumbai (2015 (329) E.L.T 493 (Tri.Mumbai)** where it is held that to invoke Rule 10(1)(c) of the Customs Valuation Rules, 2007, two conditions required to be satisfied are :-

(i) Royalty is related to the imported goods; and

(ii) Royalty is paid as a condition of sale of imported goods.

12. Thus Royalty paid should have nexus to the imported goods. Regarding M/s Jockey International branded goods, the Appellant purchases raw materials domestically as well as import from suppliers who have no relationship with M/s Jockey International. No raw material is imported from M/s Jockey International. As regard the Royalty on net sale of licensed product, appellant is also required to achieve minimum sale of licensed product and distributed product. Only Royalty which is accrued or paid directly or indirectly to the foreign supplier can be included in the assessable value of imported goods and not the amount paid to third person who is not connected to the supplier of imported goods.

13. As regards the demand against the agreement entered with M/s Speedo International, U.K, Ld. Counsel draws our attention to the details of the agreement where distributed products means such of the products listed in Schedule 1 under 'Distributed Products', bearing the Trade Marks as are purchased by the Licensee from the Licensor (or any other source approved under clause 7.1(b). Licensed Products means such of the products listed in Schedule 1 under 'Licensed Products' bearing the Trade Marks as approved by the Licensor from time to time for manufacture by the Licensee and which have been manufactured by or on behalf of the Licensee. He further submits that as per relevant clause 5 of the agreement

> "5.1 The Licensee shall pay the Licensor each Quarter a royalty equal to the product of the Percentage Royalty and the amount of New Sales of Licensed Products invoiced in each Quarter.

5.6 In each Contract Year and for the entire duration of the Term of the Agreement the Licensee undertakes to pay and guarantees payment of the following minimum royalties ("Minimum Royalty").

Contact Year	**Minimum Royalty**
1 July 2011-31 December 2012	Nil
1 January 2013 – 31 December 2013	6.5% of 60% of the Target Net Sales of the Licensed Products
January 2015 – 31 December 2015	7.5% of 80% of the Target Net Sales of the Licensed Products
January 2016-31 December 2016	7.5% of 80% of the Target Net Sales of the Licensed Products

14. Regarding transfer of technical knowhow, the Ld. Counsel draws our attention to the letter dated 09.03.2023 where M/s Jockey International, USA confirmed that they have not actually transferred any knowhow under the license agreement since the said condition is only formal condition and the Appellant became one of the largest Jockey license in terms of Net Sale of Jockey brand products and successfully sophisticated manufacturer and seller of apparent products. Based on the strong track record, the Jockey has granted Appellant one of the longest extension of terms under the Trade mark license and which is valid up to 2030. The Appellant has achieved this growth and success without Jockey's transfer of knowhow.

15. Thus the demand of royalty for the distributary products is illegal and unsustainable as it is only for the licensed products to be produced by the Appellant. To support the above, Ld. Counsel draws our attention to the decision of the Tribunal in the matter of M/s Indo Rubber & Plastics Works

Vs CC, New Delhi (2020 (273) E.L.T 250 (Tri.Del) and decision of the Tribunal in the matter of CC Patparganj, New Delhi Vs M/s Adidas India Marketing Pvt Ltd (2020 (373) E.L.T 394 (Tri. Del) Para 12,15,19-23).

16. Regarding demand of differential duty on the raw material, major supplier of the raw material are not approved supplier of M/s Jockey International and for that reason no royalty amount cannot be added to the import price. To support the above finding, the Ld. Counsel draws our attention to the judgment of Hon'ble Supreme Court in the matter of C.C Vs M/s Ferodo India Pvt Ltd (2008 (224) E.L.T 23 (S.C).

17. Regarding the demand against cost of advertisement, the Ld. Counsel draws our attention to the letter dated 18.12.2014 where the overseas M/s Jockey USA has clarified that "Since 2005, Page has become one of the largest Jockey licensees in terms of net sales of Jockey brand products. In return, Jockey has granted Page one of the longest extensions of term under a trade mark license. The current agreement runs through 2030". Specifically, Jockey has not applied since 2005 the second paragraph of clause 18 under which 25 percent of advertising fund may be spent on the cost of co-operative advertisement programmes in the territory paid for by the licensee. Likewise, given the scale of Page's business and the amount of spend it makes voluntarily on advertising, Jockey has no longer applied and has consistently since 2005 waived compliance with the mandatory minimum advertising expenditure of 5 percent per each license year. The purpose of these clauses is to ensure that smaller licensees do not overlook brand development as part of their

business strategy. Again, given the size of Page's business, since 2005 is has become unnecessary to apply these type of controls to Page.

18. Regarding the cost of advertisement, the Ld. Counsel also draw our attention to the Final order of the Tribunal in the matter of M/s Indo Rubber & Plastics Works Vs CC, New Delhi (2020 (273) E.L.T 250 (Tri.Del).

> **16.** Having considered the rival contentions, we find that in the facts and circumstances of the present case there is nothing in the agreement that a fixed amount or fixed percentage of the invoice value of the imported goods, is obliged to be spent by the appellant as a condition of sale/import. As per the stipulation in the agreement, the appellant is obliged to or responsible for sales and distribution in its territory of distribution and further to make such expenditure in consultation with the seller, does not attract the provisions of Rule 10(1)(e) of CV Rules. The said Rule 10(1)(e) provides for addition of 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 and obligation of the seller, to the extent that such payments are not included in the price actually paid (transaction value). We find that there is total absence of the prescribed condition precedent as the appellant is not obliged to incur any particular amount or percentage of invoice value towards sales promotion/advertisement. Further, we find that the activity of advertisement and sales promotion is a post-import activity incurred by the appellant on its own account and not for discharge for any obligation of the seller under the terms of sale. The ruling of this Tribunal in the case of *Reebok India Company* (supra) is not applicable, as the facts in the present case are totally different and unlike Reebok India Company, nowhere provides for any fixed expenditure towards sales and promotion as a pre-condition of sale. Further, in the instant case, the parties are not related to each other. Further, the appellant importer is not obliged to give any account of expenditure incurred by it to M/s. Sunlight Sports, incurred by them, unless such expenditure is incurred at the instance of M/s. Sunlight Sports under stipulation of reimbursement. Further, we find that the interpretative note to Rule 3(b) provides, that activity undertaken by the buyer on its own account, even though by agreement, are not considered as direct payment, even though they might be regarded as benefit to the seller also. Further, in the facts of the present case, appellant has not paid any amount on behalf of M/s. Sunlight Sports-seller.

19. Regarding invoking the penal provision by alleging willful suppression, Ld. Counsel submits that as per the impugned order, it is held that the Appellant failed to make declaration while filing the B/E for home consumption about the goods being imported from related parties. In this regard, Ld. Counsel submits that the Appellant was not required to make any such declaration while filing the B/E for home consumption since M/s Jockey International & M/s Speedo International are not related parties of the Appellant as per Rule 2(2) of the Valuation Rules, 2007. Merely because Appellant is a sole distributor in India, it will not ipso facto mean that the parties are related and substantiates his claim by relying on the decision of the Apex Court in the matter of CC (Imports), Mumbai Vs Bayer Corp Science Ltd (2015 (324) E.L.T 17 (S.C) and submits that there is no reason or justification to invoke the penal provisions, since there is no suppression of facts at the time of import.

20. Ld. AR appearing for the Revenue reiterated the finding and also draw our attention to the following conditions in the agreement entered by the Appellant. The Learned relying on the section 14 of the Customs Act 1962 read with the Customs Valuation Rules 2007 argues that from the terms of the agreement reproduced below they are liable to pay the duties on the royalty and the advertisement expenses.

a. JOCKEY shall from time to time, and to such extent that it shall consider to be necessary for the performance of this Agreement, furnish LICENSEE with Manufacturing knowhow and Merchandising and Marketing Know How and information as to any improvement or inventions that may be patentable or subject to industrial model or designs protection. JOCKEY shall have the sole right to determine whether such protection should be sought and to seek such protection in its own name. Should

JOCKEY obtain any such protection in the Territory, JOCKEY shall grant LICENSEE the right to use such protected rights, subject to the terms and conditions of this Agreement, and LICENSEE shall not be required to pay any additional Royalty for such use.

b. To impose the level of mutual cooperation and support under the Agreement, LICENSEE agrees that it will invite a representative of JOCKEY to serve on its Board of Directors and to participate in its regularly scheduled board meetings.

21. The Ld. AR further submits that as per the Customs Valuation (Determination of Valuation of Imported Goods), 2007 r/w Section 14 of the Customs Act, 1962, Royalty paid by the importer to their foreign partner supplier namely M/s Speedo International Ltd and M/s Jockey International Ltd. is to be added to the assessable value of the imported goods. The Royalty as well as mandatory advertisement expenses paid by the Appellant in relation to the imported goods will be part of transaction value. Further it is submitted that payment of Royalty/advertisement cost is a condition for sale of imported goods. The Ld. AR also draws our attention to the judgment of Hon'ble Supreme Court in the matter of **M/s Matsushita Television & Audio (I) Ltd Vs CC (2007 (211) E.L.T 200 (SC), Reebock India Company Vs Cc, Patoarganj (2018 (364) ELT 581 (Tri Del), Giorgio Armani India(P) Ltd. Vs. CC, New Delhi**.

22. Heard both sides. The issues before us are

1. whether the royalty paid by the appellant to M/s Jockey and to M/s. Speedo needs to be added to the transaction value of the imported goods during the relevant period.

2. whether the advertisement expenses incurred by the appellant in India will be part of the transaction value of the imported products.

23. The Adjudicating authority in the impugned order extremely relied on the terms of License and Distribution Agreement held that "agreement between M/s Speedo International Ltd, England Ltd and M/s Page Industries Ltd clearly brings out what amounts to purchase and sale of distributed products. Relying on Para 7.1 and 24.4 reproduced below of the above agreement holds that the appellant cannot import or sell the imported goods if he fails to pay the royalty and other marketing expenses. He further holds that the net sale value on which royalty is paid by the appellant includes the value of the imported goods.

> "7. Purchase and sale of distributed products
>
> 7.1 the licensee shell purchase the distributor products readily packed only from the
>
> a) licensor or
>
> b) any other supplier has may be authorised from time to time in writing by the licensor; and the licensee shall not repackage any distributed products nor alter amend or modify any package packaging in which any distributed products r supplied nor remove, nor deface…… alter or modify any trademarks, brand names…... Of the distributed products or there packaging without the prior written consent of the licensor."
>
> Para 24 of the agreement states as follows
>
> 24.1: the licensor Mein terminate this agreement 4th with by giving notice of termination to the licensee upon any of the following events:
>
> a) if any sum payable to the licensor or to any authorised supplier of any distributor products here under is not paid by the due date for payment
>
> b) if the licensee commits any breach of any provisions of class 5 (royalties)----clause 7 (purchase and sale of distributor products) clause 8(marketing of the products)

The license and distribution agreement entered by the appellant with the Speedo international Ltd; defines royalty as follows:

> Para 5.1 "The licensee shall pay the licensor each quarter royalty equal to the product of the percentage royalty and the amount of net sales of licensed products invoice in each quarter"

Distributed products is defined as "distributed products means such of the products Listed in schedule 1 under distributed products Being the trademarks as are purchased by the license from the licensor or any other source approved under clause 7.1 (b)".

Licensed products are defined "such of the products listed under schedule 1 under licensed products bearing the trademarks as approved by the licensor from time to time for manufacture by the licensee and which have been manufactured by or on behalf of the licensee".

24. Thus, there is a clear distinction between the licensed products and the distributed products while the licensed products are those that are manufactured by the appellant while the distributed products are those that are purchased by the appellant from the licensor. As rightly claimed by the appellant the royalty is being paid on the licensed products that is on the products manufactured by them and therefore the question of adding royalty to the distributed products because of the restrictions laid down at paras 7.1 and 24.4 cannot be sustained. Though the Adjudicating authority relied on the said condition as a restriction imposed on the Appellant to import the goods, it is applicable only for the sale of distributed products and not for the products licensed to manufacture. Moreover, Apex court in the matter of **CC (Imports), Mumbai Vs Bayer Corp Science Ltd(supra)** held that Explanation-II which is appended to Rule 2(2) would make a 'related person' as a sole distributor only if it falls within the criteria of this sub-rule. Therefore, mere sole distributorship is not the conclusive consideration. It has also to be demonstrated that the case falls

in one of the clauses mentioned in Rule 2(2) out of clauses stipulated therein. In the impugned order, other than considering the sole distributorship, there is no admissible evidence relied by adjudication authority to conclude that the appellant and supplier of goods are related person.

25. As per section 10(1)(C) of the Customs Valuation Rules 2007 royalties and licence fee 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 a royalties and fees are not included in the price actually paid or payable; As per the above provisions royalty can be added to the transaction value of the imported goods if the following conditions are satisfied :

--Royalty is directly related to the imported goods

--Royalties paid directly or indirectly by the buyer to the seller

--Royalty speed as a condition of sale of the imported goods

--Royalty not included in the value of the imported goods

26. The trademark license agreement between Jockey International INC. and Page Industries (the appellant) and as per this agreement royalties are paid on the net invoiced shipments specified in paragraph S.8 of schedule A and schedule B that is payable to M/s. Jockey for the rights granted to the licensee. The schedule A and B lists out the licensed products namely underwear tops and bottoms for men, women, boys, girls; sportswear for men and women; socks for men and women. From the list it is clear that royalty is being paid on the final products which are manufactured and cleared by the appellant under the brand name of jockey. And what is

imported by the appellant is raw materials that are used in the manufacture of these final products so the royalty has nothing to do with the products being imported and hence the claim of the appellant that royalty cannot be added to the products imported by them is justified based on the various decisions relied upon by them. Moreover from the facts it is clear that the royalty is not related to the imported raw material. Royalty is related to the finished goods. Only because imported goods are contained in the finished goods, it cannot be said that royalty is related to the imported goods as has been held by the Hon'ble Supreme Court in the matter of C.C Vs M/s Ferodo India Pvt Ltd (2008 (224) E.L.T 23 (S.C)) wherein it was observed as follows:

> **20.** Be that as it may, in the present case, on reading TAA we find that the payments of royalty/licence fees was entirely relatable to the manufacture of brake liners and brake pads (licensed products). The said payments were in no way related to the imported items. In the present case, no effort was made by the Department to examine the pricing arrangement. No effort was made by the Department to ascertain whether there exists a price adjustment between cost incurred by the buyer on account of royalty/licence fees payments and the price paid for imported items. No effort was made by the Department to ascertain enhancement of royalty/licence fees by reducing the price of the imported items. In the circumstances, we find no infirmity in the impugned judgment of the Tribunal. In this case, the Department has gone by TAA alone. On reading TAA in entirety, we are of the view that there was no nexus between royalty/licence fees payable for the know-how and the goods imported for the manufacture of licensed products".

27. With regard to advertisement expenses Commissioner in the impugned order held that the advertisement expenses incurred by the appellant to increase the sale of the imported goods and to achieve the desired donor appears to be an obligation and the part of the appellant and

as per the agreement minimum advertisement spent has to be incurred by the appellant as part of a marketing strategy of the final products. Since the global marketing contribution has been incurred by the appellant towards the global brand development advertising marketing promotional sponsorship and related costs incurred by the supplier to promote and develop the products of the supplier worldwide these expenses cannot be considered as post sale event and therefore they become part of the transaction value.

28. Rule 10(1)(e) 0f the Customs Valuation Rules 2007 provides for addition of 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 and obligation of the seller, to the extent that such payments are not included in the price actually paid (transaction value). We find that there is total absence of the prescribed condition present as the appellant is not obliged to incur any particular amount or percentage of invoice value towards sales promotion/ advertisement. Further, we find that the activity of advertisement and sales promotion is a post-import activity incurred by the appellant on its own account and not for discharge for any obligation of the seller under the terms of sale. Moreover, as held by Tribunal in the matter of **INDO RUBBER AND PLASTIC WORKS (Supra)** there is nothing in the agreement that a fixed amount or fixed percentage of the invoice value of the imported goods, is obliged to be spent by the appellant as a condition of sale/import. As per the stipulation in the agreement, the appellant is obliged to be responsible for sales and distribution in its territory of distribution and further to make such

expenditure in consultation with the seller, does not attract the provisions of Rule 10(1)(e) of CV Rules.

29. Further as discussed above the appellant and M/s. Speedo or M/s. Jockey International are no way related parties as their relationship is principal to principal basis and the fact they are sole distributor in no way makes them related parties as per the Customs Act or the Valuation Rules. Moreover, they have imported from unrelated suppliers who have nothing to do with Jockey International and the distributed products have nothing to do with the licensed products as far as royalty is concerned. The issue being one of interpretation of what should be the value there is nothing brought on record to prove any wilful suppression of facts and therefore invocation of extended period is not justified. For the reasons discussed above we find no reason to uphold the impugned order and hence we set aside the impugned order.

30. The Appeals are allowed with consequential reliefs if any in accordance with Law.

(Order Pronounced in Open court on 13.03.2024)

(P.A. Augustian)
Member (Judicial)

(R. Bhagya Devi)
Member (Technical)

Ganesh