# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## BANGALORE

REGIONAL BENCH - COURT NO. 1

**CUSTOMS APPEAL NO. 28567 OF 2013**

[Arising out of Order-in-Appeal No. 50/2013 dated 18.09.2013
passed by the Commissioner of Customs (Appeals) Cochin]

**M/s. Terratile Consortium Pvt. Ltd.**
Mundur P.O  **Appellant(s)**
Thrissur - 680 545

*VERSUS*

**Commissioner of Customs**
**Cochin**  **Respondent(s)**
CR Building, IS Press Road
Ernakulam
Cochin - 682 018

**APPEARANCE:**
Present for the Appellant: Mr. B.S. Jeevan Kumar, Advocate
Present for the Respondent: Mr. K.A. Jathin, Deputy Commissioner (AR)

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**
**HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 20333 / 2025**

DATE OF HEARING: 27.02.2025
DATE OF DECISION: 27.02.2025

**PER : D.M. MISRA**

This is an appeal filed against Order-in-Appeal No. 50/2013 dated 18.09.2013 passed by the Commissioner of Customs (Appeals) Cochin.

2. Briefly stated the facts of the case are that the appellant filed a Bill of Entry No. 212601 dated 29.11.2007 for import of 'One Unit Clay Processing Machine from M/s. Manfredini and Schianchi SRL, Italy declaring its value as Euro 326754 CIF

which worked out to Rs. 1,88,11,228/-. On scrutiny of the proforma invoice, order confirmation etc. it came to the knowledge of the Department that the cost of the composite machine system was Euro 605,325.00 FOB, whereas in the final agreement, the amount was shown as Euro 326754 FOB after allowing a discount of Euro 278,571 which works out to 46.02%. Consequently, letter was issued to the appellant to explain the exorbitant discount allowed by the overseas supplier. After receiving the reply, the adjudicating authority being not satisfied with the same confirmed the differential duty of Rs. 44,31,587/- with applicable interest. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned Advocate for the appellant has submitted that in the year 2007, the Industries Department of Government of Kerala identified the Clay Based Tiles Cluster at Thrissur and Ernakulam Districts under Cluster Development programme as SIDO cluster. In this Cluster Development Programme, there were 20 Clay Based Tiles Industries in Thrissur and Ernakulam Districts and had formed a consortium under the name and style of M/s. Terratile Consortium Pvt. Ltd., the appellant herein. The total project cost was estimated to be Rs. 515 lakhs of which 70% of the project cost i.e. Rs. 360.50 lakhs obtained as grant from the Government of India under Small Industries Cluster Development Programme and 20% of the project cost Rs. 103 lakhs obtained as grant from Kerala State Government and balance 10% i.e. Rs. 51.50 lakhs shared by the consortium. Further he has submitted that a Tender Notice was issued on 25.02.2007 inviting sealed tenders on two bid systems for Technical Bid and Financial Bid invited for purchase of Clay Processing Machinery estimated at a cost of Rs. 288.60 lakhs in newspapers fixing the tender opening date 22.03.2007. As scheduled the tender was opened in the presence of respective authorities on 22.03.2007, where

only one company i.e. M/s. Manfredini and Schianchi SRL, Italy qualified the technical bid and on opening their financial bid it was quoted as Rs. 3,16,79,048/- FOB. Later another meeting was held with Shri Nischal Vora, representative of M/s. Manfredini and Schianchi SRL, Italy for price negotiation at Abad Airport Hotel, Nedumbassery on 04.04.2007, whereby, the revised financial bid was quoted for Rs. 288.60 lakhs. Consequently, a purchase order was issued by the appellant on 02.05.2007 to M/s. Manfredini and Schianchi SRL, Italy quoting the accepted price for Plant and Machinery as Rs. 2,88,60,000/- which later was confirmed by the appellant company on 16.07.2007. He has submitted that after extensive negotiation and keeping in view the project cost, the overseas buyer was persuaded to increase the discount and give a final price in confirming with project cost, which was declared in the bill of entry. Therefore, the discount given by the overseas buyer from the price by the overseas supplier is genuine and hence be considered as the true transaction value. In support they have referred to the judgment of this Tribunal in ***CC, New Delhi Vs. Marble Art, Final Order No. C/A/90/2012-Cus. (PB) dated 14.03.2012*** and ***CC Vs. Shri Gayatri Exports, Final Order Nos. C/470-471/2011 (PB) dated 20.10.2011***.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for consideration is, whether the discount of 46.02% allowed by the overseas supplier to the appellant on import of one unit clay processing machine as declared in the Bill of Entry, from the negotiated quoted price, is correct or otherwise. We find that in the Bill of Entry the value of the imported goods was declared as Euro 326754 against the negotiated quoted price of Euro 605325 FOB after allowing a discount of Euro 278571

which is around 42.06%. The Revenue raised an objection about exorbitant discount of 42.06% as per Rule 12 of the Customs Valuation Rules, 2008. Explaining the circumstances, the appellant has clarified through their letter dated 13.12.2007 that the discount was obtained by the appellant keeping in view the maximum financial assistance allowed by the Central Government of the project cost and the total limit of 288.60 lakhs fixed in the tender quoted by them for purchase of the said imported plant and machinery. We find from the tender document, and the subsequent negotiations by the representative of overseas buyer M/s. Manfredini and Schianchi SRL, Italy who agreed to revise the same to Rs. 288.60 lakhs and consequently a purchase order for that price has been issued.

The minutes of the meeting recorded on 04.04.2007 extracted below:

> "Minutes of the Meeting of S.P.V with Sri. Nischal Vora, Representative of M/s Manfredini & Schianchi regarding price negotiation held at Abad Airport Hotel, Nedumbassery on 04.04.2007 at 12.30 pm
>
> Present
>
> 1. Sri Lambert Joseph, Director of S.I.S.I, Thrissur
> 2. Sri K.K. Abdul Jalee, Managing Director, TTC
> 3. Sri K. Jayaprakash, Manager, D.I.C, Thrissur
> 4. Sri Nischal Vora, Official Representative of Manfredini & Schianchi, Italy
> 5. Sri Ramachandran Pillai, Director, TTC
>
> The Managing Director introduced S.P.V Members to Sri Nischal Vora, The official representative of Manfredini & Schianchi s.r.l, Italy.
>
> The Managing Director Mr. K.K. Abdul Jaleel told that the tender of M/s. Manfredini & Schianchi, Italy has been found technically qualified and the financial bid was also examined. The previous S.P.V meeting decided to negotiate with M/s Manfredini & Schianchi on the quoted price in financial bid. The cost of plant and machinery as per the

project report submitted and approved was Rs. 288.60 lakhs, our tender notice also for the same amount. The financial bid amount is seen as much more than that amount. So the bid amount may be revised as mentioned in the Project report i.e. as Rs. 288.60 lakhs.

The representative of M/s Manfredini & Schianchi told that a discount of 12.5% on basic price has already offered. Hence the cost of plant and machinery quoted is reasonable.

The Director of S.I.S.I Sri Lambert Joseph stated that no additional financial assistance can be granted by the State or Central Government other than the cost approved on the project report. So the maximun discount may be given to avoid indefinite delay in the procurement of the machineries.

After detailed discussion Sri Nischal Vora, Representative of M/s Manfredini and Schianchi finally agreed to revise the financial bid as Rs. 288.60 lakhs. The technical bid will remain as it is.

The meeting agreed the following matters also.

1. The revised financial bid for Rs. 288.60 lakhs will be send from M/s Manfredini & Schianchi at an early date.
2. The performance security to the terms of Bank Guarantee will be furnished by M/s Manfredini & Schianchi. The S.P.V demanded 20% of the bid amount as security. The representative suggested 10% of the cost. The matter will be brought up to M/s. Manfredini & Schianchi by the representative and intimate the percentage of the security amount soon.

The meeting closed at 1.30 pm”

7. Consequent to the said negotiation, purchase order was issued by the appellant to the overseas company quoting the same price. Thus, the discount has been allowed by the overseas company after elaborate communication/negotiation

between the appellant and the said company, therefore rejection of the said discount from the negotiated quoted price in arriving at the declared value cannot be sustained.

8. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative part of this order was pronounced in
Open Court on conclusion of the hearing)

**(D.M. MISRA)**
**MEMBER (JUDICIAL)**

**(PULLELA NAGESWARA RAO)**
**MEMBER (TECHNICAL)**

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