

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Customs Appeal No. 42239 of 2014

(Arising out of Order-in-Appeal C.Cus.No.1262 & 1263/2014 dated 23.07.2014 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai 600 001)

Commissioner of Customs

Import Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

.... Appellant

VERSUS

M/s.Enfinity Solar Solutions Pvt. Ltd. ... Respondent

New No.60, Old No.79,
Greenway Extension Road,
R.A. Puram,
Chennai 600 028.

APPEARANCE :

Shri Sanjay Kakkar, Authorized Representative for the Appellant
Ms. Manasa Srinivasan, Advocate for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40555/2025

DATE OF HEARING : 05.02.2025
DATE OF DECISION : 29.05.2025

Per: Shri P. Dinesha

We have heard Shri Sanjay Kakkar, Ld. Deputy Commissioner for the Appellant-Revenue and Ms. Shobana Krishnan, Ld. Advocate for the Respondent-Assessee.

2. The Respondent-assessee had imported Solar Panels, Photovoltaic Cables & Solar Power Inverters and their accessories etc. from M/s Enfinity N.V., Belgium & M/s Enfinity Asia Acidic (Trading) Ltd., Hong Kong. Brief relevant facts as could be gathered from the OIA dt. 23.07.2014 are that M/s. Enfinity N.V. Belgium and M/s.Enfinity Asia Pacific (Trading) Ltd., Hong Kong are the foreign suppliers to the Indian company. The transaction between these companies were suspected to be related and hence in terms of Board's Circular No.11/2001 dated 23.02.2001, registration was made at SVB, Custom House, Chennai for examining the transaction between these parties. EDD at 1% to 5% was ordered to be enhanced on the assessable value during the period of this enquiry.

2.1 The Belgium Company was the parent company and they entered into worldwide contracts with various suppliers of these items and indicated price on behalf of all the subsidiary companies worldwide. The trading company at Hong Kong was the real supplier to the Indian company in the sense that the related trading firm at Hong Kong used to in-turn place orders with the original suppliers at China. The Chinese manufacturing company will export the goods directly into India while raising their invoice on trading company at Hong Kong. The trading company at Hong Kong will raise back-to-back invoice on the Indian company.

2.2 There is no difference in value between the invoice raised by the Chinese company on the trading company at Hong Kong and the invoice raised by the trading company at Hong Kong to the Indian company. This lack of margins between the manufacturing company and the trading company led to the suspicion with the lower authority that the transaction cannot be accepted as normal; As a result of this enquiry, impugned Order in Original was issued. The gist of the order is as follows :-

- 1) With regard to importation of P.V. Cable (Photo voltaic Cable), it was ordered that 20% would be loaded to the transaction value to the imports made.
- 2) With respect to importation of Power One Inverters, it was ordered that the assessable value would be loaded at the rate of 15% of the invoice value.
- 3) With respect to import of solar panels, it was ordered that the transaction value may be accepted as assessable value.
- 4) With respect to import of accessories and other parts required for installation of solar power plant, it was ordered that loading may be done at the rate of 15% of the invoice value.

3. The Order-in-Original No.23952/2014 dated 17.02.2014 reveals at para 3 that the assessee denied having made any imports from their related supplier [contrary to their reply to Query 3]; still the Adjudicating Authority records that there were some imports from their related supplier - M/s Enfinity NV, Belgium. Para 7 also records the denial of any import of services during 2011-12.

4. Page 6 of the OIO captures various imports made by the assessee during 2011-12 and the interesting observations have been captured below **Table-D**, the essence of which are that Photovoltaic Cables, Power-one Inverters & Solar Panels were actually supplied by the respective original manufacturers to the assessee; only the invoices were raised by the Associated Company – Enfinity Asia Pacific (Trading) Ltd., at Hong Kong. Further imports have been captured at **Tables E & F** and from nowhere, the Adjudicating Authority records that ‘...the Indian Company imported most of the goods from their related suppliers in the year 2011-12 only’. This is clearly a fact introduced by the Adjudicating Authority since, as observed below **Table-D** at page 6, the suppliers were the actual manufacturers only.

5. There is no other material based on which the Adjudicating Authority could change his observation. The finding below **Table-D** in fact goes to the very root of the issue, to the effect that though parties are related, yet there was no transaction between them except the fact that only the invoices were raised by the Hong Kong entity. That by itself would not make the Hong Kong entity the supplier. No Agreement is referred to in this regard by the Adjudicating

Authority in support, to hold that imports were made from their related suppliers. In that view of the matter, the borrowings and reimbursements to their Group Company at Belgium is of no consequence.

6. Addition made in this case, as observed by the First Appellate Authority in the impugned order at para 'nil' page 5 of OIA, solely based on a ruling of ITAT.

7. The Customs Act, 1962 by itself is a complete code, the disallowances and/or additions could be made only if the respective conditions as prescribed under the Act are not satisfied and certainly not because an officer/Adjudicating Authority feels so.

8. When there is no international transaction between the 2 Group Companies, there remains nothing to analyse the transaction value just in the context of Borrowings and Reimbursements which have nothing to do with any trade as such. Hence, what was relevant was to verify if the amount paid to the actual supplier was at Arm's length provided they are related in terms of the statute. We do not find any findings to the effect that the invoice raised by the Hong Kong entity was not in order and that the said Hong Kong

entity had in turn raised invoice on the Indian Company by adding its mark-up. Therefore, the Transfer Pricing analysis made by the Adjudicating Authority like an IT assessment is redundant and the consequential loading suffers from serious legal infirmity. Revenue has hence not discharged the burden of proof so as to load the value. The First Appellate Authority was thus correct in setting aside the same.

9. In the result, there is no merit in the Department's Appeal and hence, we dismiss the same.

(Order pronounced in open court on 29.05.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)