

IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:08.01.2018

Customs Appeal No.136/2011 (DB)

[Arising out of Order-in-Appeal No.CC(A) Cus./I & G/221/2010 dated 29.09.2010 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

M/s. YKK India Pvt. Ltd.

Appellants

Vs.

CC, New Delhi

Respondent

Appearance:

Rep. by Shri Tarun Gulati, Advocate for the appellant.

Rep. by Shri R.K. Majhi, AR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.50123/2018

Per B. Ravichandran:

The appellant is aggrieved by order dated 29.09.2010 passed by the Commissioner of Customs (Appeals), New Delhi. The appellant as an associated company of M/s. YKK India pvt. Ltd. was importing regularly parts and components of zippers. Since the appellant is an associated company, the valuation was looked into by the Special Valuation Branch of Customs House.

2. The present dispute is with reference to addition of royalty charges paid by the appellant to the Japan Company, in the assessable value of parts and components of zippers imported by them. The Original Authority vide his order dated 30.10.2009 held that the said royalty was neither a pre-condition of sale nor related to the imported goods and as such, there is no need to add any amount

attributable to royalty in the valuation of the imported goods. Revenue preferred an appeal against the original order, which resulted in the impugned order.

3. Ld. Counsel contesting the findings of the impugned order submitted that first of all, the said order was passed ex parte without due notice of hearing to them. The impugned order did not examine the contents of the original order before remanding the matter back to the Original Authority for a fresh decision. Reference made to the decision of the Hon'ble Supreme Court in **Matsushita Television & Audio (I) Ltd. – 2007 (211) ELT 200 (SC)** is in fact in favour of the appellant and not against the findings of the Original Authority. Ld. Counsel also brought to our notice a subsequent order dated 27.05.2016 of the very same first Appellate Authority holding that the Department's contention that royalty charges are liable to be added is not legally sustainable.

4. We have heard both the sides and perused the appeal records.

5. The original order recorded the following findings:-

“License Agreement dated 1.4.2008 between YKK Japan and the Importer is for grant of licenses of certain trade marks, patents and know how from YKK Japan for the manufacture, assembly, sale and use of fastening products (slide fasteners and individual parts, components, accessories and materials thereof, hook and loop fasteners, buckles, adjustable fasteners, cord fasteners, snap hooks, connect rings, button, snap buttons etc.) by YKK Japan has granted a non-exclusive and not assignable license without the right to sublicense, to utilize the trademarks, the patents and know how in connection with the design, manufacture, testing, import, marketing, distribution and sale of the production the territory. For the consideration of license granted, the Importer shall pay to YKK Japan royalty @ 4% of the Net Selling Price of SF products, @ 2% of the Net Selling Price of T&P products and @ of the Net Selling Price of S&B products. Net Selling Price has been defined as the selling price on the sale of all products manufactured and then sold by the Importer during the royalty computation period (1st January

to 31st December, less the following items to the extent they are excluded from sales in accordance with generally accepted accounting principle:-

- (a) Commodity, transaction, sales, turn over, value added or any other transfer taxes of similar character (other than taxes on income) on sales invoices
- (b) The cost of parts, components, accessories or materials of the products purchased by the Importer from YKK Japan or from the affiliates as if the Importer were an unaffiliated third party
- (c) Import duties, customs duties, excise duties, sales tax and any other fees and import expenses of the parts, components, accessories or materials of the products purchased by the Importer from YKK Japan or from the affiliates.

Thus, from these provisions of this agreement it is clear that the cost of parts, components, accessories or materials of the products purchased by the Importer from YKK Japan or from the affiliates is not included for the calculation of amount on which royalty is payable/paid by the importer to YKK Japan and therefore, the same is not to be included to the cost of goods imported by the Importer from YKK Japan or from the affiliates. The Importer has also submitted that as per their agreement with YKK Japan, royalty is paid by their company to YKK Japan only on the goods manufactured in India and not on finished goods; that royalty and other payments made by their company to their suppliers are neither a pre-condition of sale nor related to their imports and thus, not to be added to the assessable value of the goods imported by their company. “

6. The Hon’ble Supreme Court in **Matsushita Television &Audio (I) Ltd.** (**supra**) held as under:-

“6. On reading the above agreement, the following features emerge. Under Clause 1.03 the term “Net-factory sale price” has been defined to mean the sale price billed by the appellants for its products to its customers in normal arm’s length transaction

exclusive of taxes, freight and insurance, but including the cost of the bought-out components and the cost of the imported components. Under Clause 1.04 the term “Technical Know-how” was defined to mean technical information required for the manufacture of colour T.V. as specified in Clause 3.01. The technical know-how which was agreed to be furnished to the appellants was to consist of quality control standard and specification of the components to be used in the manufacture of T.V. sets. Further, under Clause 2.01 it was agreed that MEI shall render to the appellants the technical assistance regarding the manufacture of the T.V. sets in the manner provided in the said clause. Under the said Clause 2.02(C), all costs, charges and expenses, incurred by the appellants for technical assistance, was to be paid by the appellants in U.S. Dollars. Further, under Clause 4.01, MEI agreed to grant to the appellants a licence to use the technical assistance and the technical know-how for the manufacture of the colour T.V. at the appellants’ factory in India and also for sale of such products throughout India. Under Clause 6.01, in consideration of the technical assistance to be rendered by MEI and in consideration of the licence to be granted by MEI to the appellants it was agreed that the appellants shall pay to MEI the royalty at the rate of 3% on the net ex-factory sale price of the colour T.V. manufactured and sold. Further, it was agreed that in addition to the technical assistance, MEI would assist the appellants in the manufacturing of the colour T.V. by selling the components to the appellants. Under the Agreement, the parties further agreed that if the appellant desired to make use of bought-out components it can do so provided the said components are forwarded to MEI for inspection and if MEI approves the quality and the specifications of such bought-out components then alone the appellant would be free to use such components in the manufacture of colour T.V.

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. However, in the present case, payment of continuing royalty was payable at the rate of 3% of the net ex-factory sale price of the colour T.V. exclusive of taxes, freight and insurance but including the cost of imported components. In other words, the royalty payment was to be computed not only on the domestic element of the net sale price of the colour T.V. but also on the cost of imported components. A bare reading of the agreement shows that payment under the said agreement related not only to the production of the goods in India but also to imports. In some of the decisions cited on behalf of the assessee, we find that the net ex-factory sale price of the finished products expressly excluded the cost of imported components. On the other hand, in the present case, the cost of imported components was expressly included in the net ex-factory sale price of the colour T.V. Further, when payment to MEI was at the rate of 3% of the sales turn over of the final product, including cost of imported component, it became a condition of sale of the finished goods. Hence, in this case both the conditions of Rule 9(1)(c) of the Valuation Rules, 1988, are satisfied.”

7. Admittedly, in the present case, the cost of imported components and parts are to be excluded to arrive at the net value for computation of royalty charges. In such situation, we note that the factual and legal findings as recorded by the Original Authority cannot be contested. We note that the impugned order did not examine at all the factual finding vis a vis the ratio of the Hon’ble Supreme Court

before arriving at a decision. Though the same is a remand order, we find that there is nothing to re-decide in the present case in the face of the categorical finding recorded by the Original Authority and the ratio as held by the Apex Court. We also note in the same set of arrangements for the subsequent period, the very same first Appellate Authority held in favour of the appellant on this issue.

8. In view of the above discussion and analysis, we find that the impugned order is not sustainable and accordingly, the same is set aside. The appeal is allowed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.

