

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

Date of Hearing: 20.12.2017

Date of Decision: 22.01.2018

Appeal No. C/2954/2012-DB

[Arising out of Order-in-Appeal No.CCA/CUS/I&G/124/2012 dated 12.06.2012
passed by the Commissioner of Customs (Appeals), New Delhi]

Commissioner of Customs (Appeals), New Delhi

Appellant

Vs.

M/s Showa India Private Limited

Respondent

Appearance:

Rep by Shri R.K. Manjhi, AR for the appellant

Rep by Dhruv Malte, Advocate for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No.50281/2018

Per V. Padmanabhan:

The present appeal has been filed by Revenue against the Order-in-Appeal No.124/2012 dated 12.06.2012. The respondent is engaged in the manufacture of electric power steering system for automobiles and is a subsidiary company of M/s Showa Corporation, Japan. The respondent entered into Technical Collaboration Contract (TCC) and other agreements dated 16.10.2016 with their principal in Japan. Since the import made by the respondent from the principal falls within the Rule 2(2) of the Customs Valuation Rules, the transaction value of such imports were examined by the Special Valuation Branch (SVB) regarding the acceptability of transaction value. In their initial SVB order dated 16.07.08, passed after considering the TCC, it was decided to accept the transaction value

of imports by the respondent from their principal. At the time of renewal of such SVB order after three years, the Dy Commissioner (SVB), vide his order dated 09.12.2011 decided to load the invoice value of Master Samples/Utility Models imported from their principal. Further, he also ordered re-assessment of such goods imported for the earlier period i.e. 16.10.2006 to 15.07.2008. Such loading was ordered in terms of Rule 10(1) (e) of the Customs Valuation Rules, 2007. When the SVB order dated 09.12.2011 was challenged before the Commissioner (Appeals), he passed the impugned order in which such loading was set-aside and the appeal allowed. Aggrieved by the said decision, Revenue has filed the present appeal.

2. With the above background, we heard Shri R.K. Majhi, AR representing Revenue and Shri Dhruv Matta, Id Advocate representing the respondent.

3. The Id DR explained the grounds of the appeal as follows:

In terms of Article 19 of the Technical Collaboration Contract (TCC), the respondent is required to pay “Documentation Charges” and “Initial fee” to M/s Showa, Japan to cover a part of the development and documentation cost in relation to specified models imported by the respondent. Such amounts, which have not been included in the invoiced value of Master Sample/Utility Models, are payable to cover the development cost of such products by M/s Showa, Japan and is required to be included in the assessable value of imported goods as per Rule 10(1) (e) of the Customs Valuation Rules. He also justified the re-assessment of earlier bills of entry filed for such goods for the period 16.10.2006 to 15.07.2008 i.e. for the period prior to issue of the initial SVB circular, on the

ground that the respondent has mis-declared the facts in the application made to SVB.

4. The Id Counsel for the respondent argued that the loading of the transaction value in respect of Master Samples/Utility Models is not justified. Such amount is being paid to principal to recover the cost of development and technical assistance. He submitted that in the impugned order, such amounts have been considered to be in the nature of consideration for the right and license to manufacture such products in India. He also relied on various case laws to support his contentions.

5. We heard both sides. The dispute revolves around Article 19 of the Technical Collaboration Contract. For ready reference, the same is copied below:

“Article-19

Consideration:

In consideration for the right and license to manufacture, assemble and sell the products and the parts granted under this contract and the technical assistance provided by LICENSOR to LICENSEE pursuant to ARTICLE 7 hereof, LICENSEE shall pay to LICENSOR the amounts specified below:

- i) Royalty...*
- ii) Documentation charge*

LICENSEE shall pay to LICENSOR the Document Charge in the amount of Ten Million Yen per product model. This Documentation charge covers a part of the development and documentation cost to LICENSOR in relation to the models of Products specified in Annex-I

3) Initial fee

LICENSEE shall pay to LICENSOR the initial fee in the amount of Fifty Million Yen. This Initial Fee covers the models of Products specified in Annex-I here to only."

5. The issue of royalty is not disputed before us. From a cursory perusal of Article 19, as above, it is easy to see that the documentation charge and initial fee payable for the models of products are towards covering a part of the development and documentation cost in relation to such models and not towards royalty. Payment of the models specified in Article 19 is mandatory for procurement of Master Samples/Utility Models which serves as reference model for manufacture of the components by M/s Showa India using the technical assistance provided by M/s Showa Japan. It is obvious that unless such amounts are paid, the respondent will not be entitled to import components on an ongoing basis. Further, such payments are to be made in terms of the TCC and will not be payable as per the invoices issued at the time of import of such models. In view of above, we are of the view that the requirement of Rule 10(1) (e) are satisfied and hence, such payments made are required to be loaded on to the invoice value of Masters Samples/Utility Models. The Commissioner (Appeals) appears to have proceeded on the wrong understanding that such payments are by way of royalty which is paid in consideration for the technical assistance.

6. Next we consider the question whether such loading can be extended to imports already made for the period prior to the renewal of SVB order. Revenue has justified the demand for the past period by alleging that the respondent has

mis-declared the answer to question No.20 of the SVB Questionnaire. Question No.20 is re-produced below:

“20. Question: Is any amount paid or payable, directly or indirectly, to or on behalf of Supplier of the imported goods for engineering, development, art work, design work, plans or sketches undertaken elsewhere than in India and connected with the production of the imported goods? Are any services rendered by or on behalf of the Importer relatable to this?”

Ans: Reply to the above para 20 by the Importer was “NO” in year 2008 and it was “YES” at the time of renewal in the year 2011.”

7. In view of the above, Revenue has justified mis-declaration on the part of the respondent and invoking extended period of limitation.
8. At the time of the original SVB order dated 15.07.2008, a copy of the TCC was submitted along with application and questionnaire. The TCC has not changed even at the time of renewal of the SVB circular after three years. Hence, we find it difficult to comprehend how Revenue can allege suppression of facts on the basis only of the declaration made in the Question 20 of the SVB questionnaire. Since the entire contract was in possession of Revenue at the time of issue of both SVB orders and there is no material change in the contract during the meantime, hence allegation of suppression cannot be upheld. Consequently, we are of the view that there can be no justification for loading the transaction value of models imported for the period prior to the issue of initial SVB circular dated 16.07.2008.

9. In conclusion, we pass the following orders:

- i) The impugned order dated 12.06.2012 is set aside;

- ii) The findings in the Order-in-Original dated 09.12.2011 to the extent of loading the transaction value of Master Samples/Utility Models towards the documentation charges and initial fees is upheld.
 - iii) There will be no loading for the period prior to the date of original SVB circular dated 16.07.2008.
10. In view of above discussions, impugned order is set-aside and appeal of Revenue is partially allowed.

[Order pronounced in the Open Court 22.01.2018]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

PCS