IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75951 of 2019

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/84/2018 dated 31.12.2018 passed by Commissioner of Customs (Port), Kolkata.

M/s Coal India Ltd, (C & F)
(6, Lyons Range, Kolkata-700001)

...Appellant

VERSUS

Commissioner of Customs (Port), Bhubaneswar,
(Customs House, 15/1, Strand Road, Kolkata-700001.)

.. ...**Respondent**

With

Customs Appeal No. 76046 of 2019

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/84/2018 dated 31.12.2018 passed by Commissioner of Customs (Port), Kolkata.

Commissioner of Customs (Port), Bhubaneswar,
(Customs House, 15/1, Strand Road, Kolkata-700001.)

...Appellant

VERSUS

M/s Coal India Ltd, (C & F)
(6, Lyons Range, Kolkata-700001)

.. ...**Respondent**

APPERANCE :

Ms. Anupa Banerjee & Mr. N. Banerjee, Advocates for the Appellant/Party
Mr. S. Debnath, Authorized Representative for the Respondent/Revenue

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

Final Order No.75244-75245/2026

DATE OF HEARING : 04.02.2026
DATE OF DECISION : 04.02.2026

PER R. Muralhdhar :

The appellant, a reputed Public Sector Undertaking, imported the spare parts for P & H Shovel. The imports were allowed on Provisional Assessment basis in 2001. While finalizing the assessment, the Show Cause Notice was issued on 21.06.2004, seeking to know as to why the value of engineering and technical services, agency commission etc payable to the local agent of the exporter, i.e. Voltas Ltd., should not be added to the FOB to arrive at the Customs Duty payable. The SCN demanded Customs duty of Rs.4,38,68,189. The Adjudicating authority finalized the assessment and confirmed the demand along with interest and penalty. Being aggrieved the appellant filed their appeal before the Kolkata Tribunal. Noting that the basic import documents were not properly provided to the appellant while passing the impugned order, the Tribunal remanded the matter to the Adjudicating authority with a direction to provide them all the documents. The Tribunal also directed the appellant to extend their full cooperation in finalizing the adjudication proceedings. Thereafter, the matter was taken up for de-novo adjudication by the Commissioner of Customs (Port). After considering the factual details, he held that in case of many imports, the Revenue was not in a position to provide the necessary documents to the appellant. He confirmed the demand of Rs.67,59,545 along with interest and equal amount of penalty. Being aggrieved, the appellant [Importer] Coal India Ltd is before the Tribunal. Being aggrieved by the fact that the demand of balance of about Rs.3.71 crores has been dropped by the Adjudicating authority, the Revenue has filed their Appeal before the Tribunal. Since the issue is emanating from the common order, both the appeals have been taken up for disposal together.

2. On going through the appeal papers and case records, we find that on a similar matter in respect of identical transactions in respect of import of spare partsof P & H shovel, imported from Harnischfeger Corporation, through its Indian distributor Voltas Ltd., was a subject matter of litigation. The Final Assessment order was passed by including the value of engineering and technical services, agency commission etc payable to the local agent of the exporter, i.e. Voltas Ltd., to arrive at the Assessable Value. Being agitated, the appellants filed their appeal before the Commissioner (Appeals), who upheld the Final Assessment order and dismissed the appellant's appeal. Being aggrieved, they filed their appeal before the Kolkata Tribunal. The Tribunal vide its Final Order dated 20.04.2010, held that the payments made by appellant to Voltas Ltd was only in connection with the sale of goods and the same had a direct nexus with the value of the goods imported. Accordingly, the appeal filed by the appellant [importer] came to be dismissed by the Tribunal. Being dissatisfied with the order passed by the Tribunal, the appellant importer filed their SLP No.CA 8028 of 2010 before the Supreme Court.

3. During the earlier hearings, the importer appellant's counsel had submitted the issue is before the Hon'ble Supreme Court. Hence, adjournments were granted so as to await the outcome of the Supreme Court's judgement.

4. We find that on 1st May 2025, the Hon'ble Apex Court vide its order has upheld the order passed by the Tribunal and dismissed the appeal filed by the appellant importer. We have gone through the relevant portions of this Order of the Hon'ble Supreme Court, which is reproduced below :

> 25. When this order was appealed against, CESTAT vide the impugned order held:
>
>> 6.1 We have carefully considered the submissions from both sides and closely examined the records produced. It is apparent that there is agency/distributor agreement entered into between Voltas Ltd. and the American based supplier viz. Harnischfeger Corporation, U.S.A. The documents such as purchase order of the appellant, the quotation by the American supplier and documents of M/s Voltas Ltd. relied upon clearly referred M/s Harnischfeger Corporation as the principal and M/s Voltas Ltd. as the agent or distributor. We have not been shown any agreement between M/s Voltas Ltd. and the appellant. The services undertaken by M/s Voltas Ltd., apparently, are only at the instance of the US based supplier as the appellant has no choice in importing the spares without availing the services of Voltas Ltd., who is the agent of the American based supplier. It is also seen that the amounts paid to Voltas Ltd. by the appellant are not linked to any services specifically rendered by them. We are not in agreement with the submissions of the Ld. Sr. Advocate on behalf of the appellant that 8 to 10% value of the imported parts have been adopted only as a measure for payment for services rendered by M/s Voltas Ltd. It is clearly a condition for sale of

the goods to the appellant. If there are no imports, no payments are apparently due to be made to whatever services attributed to M/s Voltas. In other words, the payments have been made only in connection with the sale of goods, apparently due to reason that M/s Voltas Ltd., is an agent/distributor of the US based supplier.

25.1. CESTAT had carefully analysed the relevant documents and thereafter came to the conclusion that the services rendered were such that appellant faced no inconvenience at the time of importation. Amounts paid to Voltas Limited by the appellant were not linked to any services specifically rendered by it. Payments were made only in connection with the sale of the goods presumably because M/s Voltas Limited was an agent of the foreign supplier. Thus, payments made to M/s Voltas Limited were only as a condition of sale and not for any services rendered. Therefore, it had a direct nexus to the value of the goods imported.

26.1. Thus, what Section 14(1)(a) provides for is that for the purpose of the Customs Tariff Act, 1975 or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time or place of importation or exportation, as the case may be, in the course of international trade where the seller or buyer had no interest in the business of each other or one had no interest in the business of the other. As per sub-section (1A), subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of the imported goods shall be determined in accordance with the rules made in this behalf.

32. This position was also explained by this Court in Ferodo India (P) Ltd. (supra). Relevant portion of the aforesaid decision reads as follows:

> 7. Under Section 14 of the Customs Act, 1962, the assessable value of imported goods is deemed to be the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer of sale.

> 8. The CVR, 1988 recognises the fundamental principle of arm's length price while dealing with transaction value. The Rules provide for the determination of the correct price of goods that are imported in the country or exported out of the country uninfluenced by relationship between the transacting parties.
>
> 9. Transaction value, deductive value, computed value and residual value methods are the methods prescribed in the Rules, to be followed sequentially in that order in the matter of determination of arm's length pricing.
>
> 10. To determine the assessable value for the levy of customs duty on imported goods, Section 14 of the 1962 Act has to be read with the provisions of the CVR, 1988 because under Section 14(1) there is reference to a deemed price of goods imported and under Section 14(1-A) such deemed price is to be determined in accordance with the CVR, 1988.

33. Applying the above ratio to the facts of the present case, we find that the services rendered by the Indian agent were not post-importation activities. The services provided were directly relatable to the import of the goods by way of product support service which is covered by Sections 14(1) and 14(1A) of the Customs Act read with Rule 9(1)(e) of the Customs Valuation Rules.

5. We find that after this judgement clear on the very subject by the Supreme Court, the appellant importer has not case on merits. Applying the ratio of the above decision of the Apex Court, in respect of the same appellant importer, we uphold the Customs Duty and interest confirmed thereon by the Adjudicating authority.

6. At this juncture, the Ld Counsel appearing on behalf of the appellant importer submits that the appellant is a reputed Public Sector Undertaking, working under the Ministry of Coal. They would not have any ulterior motive to evade the Customs Duty. The very fact that the earlier issue was being contested by them upto the Supreme Court level, shows that they carried Bonafide belief that the amounts paid to Voltas Ltd., are not includible in the Assessable Value for arriving at the Customs Duty component. Thus, it is a case of interpretation and not a case of attempt to evade Customs Duty payment. She prays for complete waiver of the Penalty imposed by the Adjudicating authority.

7. We have considered these pleadings and find that indeed that the appellant was contesting the issue till Supreme Court. Therefore, the submission that no malafides can be attributed to them, being a reputed Public Sector Undertaking also has weighed in our minds. However, we find that setting aside of the penalty imposed under Section 114A of the Customs Act 1962, may indirectly give rise to a conclusion that we have accepted the submissions that the extended period provisions are not applicable even for the Customs Duty. We are not privy to the full details of the period involved in the earlier proceedings. We also have considered the fact that just because the appellant importer is a PSU, their omissions and commissions cannot go unpunished. Considering all the aspects, particularly, the submission of the appellant that they are not pleading for setting aside of the confirmed Customs Duty and Interest portion in view of the Supreme

Court's order dated 1st May 2025, we take a slightly sympathetic view and reduce the Penalty to Rs.5,00,000 as against Rs.67,59,545 imposed by the Adjudicating authority.

8. Thus the appellant importer's appeal is partly allowed.

9. Coming to the appeal filed by the Revenue, it is seen that the Adjudicating authority has gone through the factual details, the directions of the Tribunal and has come to a conclusion that in the absence of providing all the necessary documents to the appellant importer, the demands cannot be sustained. In the present appeal, the Revenue has not brought in any specifics as to how such fact finding order of the Adjudicating authority is being viewed as erroneous. No fresh evidence has been brought in to show that the existing facts and evidence have not been considered by the Adjudicating authority while setting aside part of the demand. Therefore, we do not find any necessity to interfere with the order passed by the Adjudicating authority by setting aside part of the demand. Accordingly, the Appeal filed by the Revenue stands dismissed.

10. To summarize :

(a) The Customs Duty confirmed along with interest thereon as given under the OIO is affirmed. The appellant importer is required to discharge these liabilities.

(b) The Penalty of Rs.67,59,545 stands reduced to Rs.5,00,000, which is required to be paid by the appellant importer

(c) On the above terms given at (a) and (b) above, the appellant importer's appeal stands allowed partly.

(d) The Appeal filed by Revenue is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.