

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Custom Appeal No. 176 of 2012

(Arising out of Order-in-Original No. CC/MAK/17/2011-12 Adj.AAC
(I) dated 31.10.2011 passed by the Commissioner of Customs (Imports),
Mumbai)

M/s. Voith Turbo Pvt Ltd
P.O. Indl. Estate, Nacharam, Hyderabad,
Andhra Pradesh

.....Appellant

Vs.

Commissioner of Customs (Imports),
Mumbai
Air Cargo Complex, Sahar,
Andheri (East), Mumbai

.....Respondent

APPEARANCE:

Shri Shankar Bala, CA for the appellant
Shri Dharmendar Singh, Supdt(AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/86581 / 2019

DATE OF HEARING : 11.03.2019
DATE OF DECISION : 11.09.2019

PER: C J MATHEW

In this appeal of M/s Voith Turbo Pvt Ltd against the demand of ₹2,05,908/- as duties of customs on imports effected between May 2006 and March 2007 and in 2007-08, the holding of goods valued at ₹9,53,860/- as liable for confiscation under section 111 (m) of

Customs Act, 1962 and imposition of penalty of ₹2,05,908/- under section 114A of Customs Act, 1962 in order in-original no. CC/MAK/17/2011-12/ADJ/ACC (I) dated 31st October 2011 of Commissioner of Customs (Import), Air Cargo Complex, Mumbai, the issue pertains to re-determination of assessable value on the ground that the substantial markup in the supply of these goods, as such, to their customers is a pre-arrangement with the supplier, M/s Voith Vertriebsgesellschaft Antriebstechnik GmbH, Germany, to enable undervaluation with intent to evade duties.

2. We have heard Learned Chartered Accountant appearing for the appellant and Learned Authorised Representative at length.

3. According to the appellant, the adjudicating authority had failed to notice that there is no evidence of any interest on their part in the business of the supplier and the importer, notwithstanding both being subsidiaries of the same holding company situated in Germany, that there is no additional consideration envisaged in the transaction or that the conditions of sale had, in any manner, compromised with acceptability of the declared value. Learned Chartered Accountant submits that it is in these enumerated circumstances alone that the declared value would be rejected under law. It is his further contention that Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, and the successor Rules, 2007, does require recourse to

rule 7 therein for determination of assessable value of goods supplied by a related person within the meaning of section 14 of Customs Act, 1962 whereas the adjudicating authority has erroneously invoked rule 9 of the said Rules. Moreover, he submits that patently unfounded allegations of non-declaration of relationship with supplier and of inordinate markup of retail price with intent to enrich the parent company appear to have formed the basis for the detriment to them in the impugned order.

4. Learned Authorised Representative points out that the impugned order has categorically placed on record the relationship between the supplier and the importer with the re-determination of assessable value being the unavoidable consequence.

5. It is an admitted fact that the shipper and the appellant are connected through a common holding company. That, however, does not suffice to accord approval to the rejection of the declared value. In *Commissioner of Customs, Mumbai v. Clariant (India) Limited [2007 (210) ELT 481 (SC)]* the Hon'ble Supreme Court while noting the admission on the part of the respondent therein before the Tribunal that three agreements, including that for supply of technical know-how, which ran counter to the findings of the original authority therein of absence of relationship, did caution that

‘11. In the present case that is not so. The respondent here had conceded before the appellate authority that the two companies are related. We make it clear that merely because the two parties are related to each other will not amount to undervaluation per se. It will depend on the facts and circumstances of each individual case.’

and thus laid down the principle that, though the foundation of the order, held initially in favour of the respondent therein, stood obliterated by the admission, the relationship between the buyer and the seller was yet required to be scrutinised as a pre-requisite.

6. We find no evidence of the relationship having impacted the conditions of sale or that the relationship itself had been suppressed to mislead the assessing authority. There is no evidence of any comparable sales effected by the same supplier to other importers in India. On the contrary, we observe a patent contradiction in the impugned order; while one of the grounds for re-determination is that a direct sale by the overseas supplier was made at higher prices, the recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, and the successor Rules, 2007, proceeded on the finding of lack of such comparable prices.

7. The appellant is in the business of maintenance and overhauling of specialised parts of equipment supplied to Indian Railways. From

the impugned order, it is apparent that the process of bid acceptance for such work is long drawn and cumbersome. It also involves the deployment of personnel of the appellant on such work. Considering that these overheads are bound to influence the price at which the imported goods are sold to Indian Railways, difference between the declared price at the time of import and the selling price cannot be designated as profit accruing to the appellant. Indeed, against the claim of the appellant that the margins are a mere 15%-20%, it would appear that no effort has been undertaken to establish the contrary. Hence, even the suspected 'enrichment' that was found objectionable in the impugned order is without basis.

8. Considering all of the above, we find no reason to sustain the impugned order which is set aside and appeal allowed.

(Order pronounced in open court on 11.09.2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)