CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 541 of 2009

(Arising out of Order-in-Appeal No. 38/2009/MCH/Addl.Commr./GVC/08-09, dated 04.02.2009 passed by Commissioner of Customs (Appeals), Mumbai-I)

M/s Ringspann Elecon (India) Ltd. **.....Appellant**
Post Box No.48,
Anand-Sojitra Road,
Vallabh Vidyanagar-388120

VERSUS

Commissioner of Customs (Import) Mumbai **.....Respondent**
New Custom House, Ballard Estate,
Mumbai-400001

Appearance:

Shri Shailesh Vyas, Advocate for the Appellant
Shri Ramesh Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87686/2019

Date of Hearing: 15.10.2019
Date of Decision: 15.10.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 04.02.2009 passed by the learned Commissioner of Customs (Appeals), Mumbai-I.

2. Briefly stated, the facts of the case are that the appellant herein, is an incorporated joint venture company comprising of M/s Ringspann GMBH, Germany and M/s Elecon Engineering Co. Ltd., India as the constituents. The appellant's joint venture company had entered into the license agreement dated 27.10.1998 with M/s Ringspann GMBH, Germany for import of industrial free wheels and components thereof. The

consideration for the said license agreement was for a lump sum fee of Rs.10 lakhs and royalty of 3% on the net sales of the licensed product. The transaction value declared by the appellant in respect of the imported consignment was loaded by 31.68% in the adjudication order dated 27.03.2008 in terms of Rule 4(3) and Rule 9(1)(c) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The reason for such loading is that the lecense fee and royalty paid by the appellant relates not only to the manufacture of final products, but directly influences the price of imported components sold by the collaborator. The adjudication order dated 27.03.2008 was appealed against before the learned Commissioner of Customs (Appeals), Mumbai, which was rejected vide the impugned order dated 04.02.2009. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

3. The learned Advocate appearing for the appellant submitted that payment of royalty in this case was not in context with importation of equipments from the overseas supplier located in Germany. Thus, he contended that the price actually paid for the equipments as per the invoice should only be considered as transaction value for the purpose of assessment of customs duty. Further, the learned Advocate submitted that the joint venture company is a separate and independent legal entity, having no otherwise interest in the business of overseas entity and as such, are not related to each other. He also contended that since the appellant is not related with the overseas supplier and the price paid to it was not a condition of sale of disputed equipments, the provisions of Rule 9(1)(c) *ibid* should not be applicable for enhancement of the value declared in the import documents. In this context, he has relied upon the judgment of Hon'ble Supreme Court in the case of Commissioner of Cus. (Port), Chennai Vs. Toyota Kirloskar Motor P. Ltd. – 2007 (213) E.L.T. 4 (S.C.).

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order

and further submitted that since the amount of royalty paid by the appellant was a primary requisite for supply of the disputed imported goods, the provisions of Rule 9(1)(c) *ibid* have rightly been invoked for rejecting the declared value and for addition of the amount of royalty for consideration of the actual transaction value. He has relied upon the judgment of Hon'ble Supreme Court in the case of Collector of Customs (Prev.), Ahmedabad Vs. Essar Gujarat Ltd.-1996 (88) E.L.T. 609 (S.C.), to state that since amount of royalty paid by the appellant was towards the condition of sale of the imported goods, the royalty amount should be added to the value of imported goods for the purpose of payment of Customs duty.

5. Heard both sides and perused the records.

6. We have examined the contents of the agreement dated 27.10.1988 entered into between the joint venture company and the other constituents, including the overseas company. The appellant in this case, is a separate and independent legal entity vis-a-vis M/s Ringspan GMBH, Germany and there was no two way interest between such parties. Thus, the fact of mere holding of shares by the German company will not automatically make the appellant as related person for rejection of the declared value. It is a settled position of law that one way interest in the business of other cannot be a defensible ground to reject the declared value and for that purpose, it has to be demonstrated that there is in fact two way interest in the business of each other. We find that this vital aspect has not been discussed in the impugned order. Further, on perusal of the agreement, we find that the royalty paid at a *percentage* of net sales by the appellant was for transfer of technology in respect of post importation activities and not related to the equipments imported from the overseas entity. Since, the royalty paid by the appellant to the overseas collaborator was meant for the post importation activities to be undertaken in India, it cannot be said that such payment made by the appellant had influenced the price of imported goods in question. The authorities below in this

case have not led any evidence to establish that the royalty amount paid by the appellant was related to the imported goods. Thus, we are of the considered view that the provisions of Rule 9(1)(c) *ibid* would not be applicable for loading of such amount in the declared value.

7. The issue decided by Hon'ble Apex Court in the case of Essar Gujarat Ltd. (supra) is different from the facts of the present case inasmuch as condition of obtaining a license was a pre-condition of sale of the plant and accordingly, it was held in the said decided case that process license fees and cost of technical services for transfer of technology paid to third party is includible in the price of the plant, since plant cannot be made operational without them. On the contrary, we find that the issue in hand is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Toyota Kirloskar Motor Pvrt. Ltd. (supra), wherein upon analyzing the judgment in the case of Essar Gujarat Ltd. (supra), the Hon'ble Apex Court have held that the charges levied before the importation of the capital goods were liable to be considered for the purpose of computation of transaction value and not for use in the post importation period. The relevant paragraph in the said judgment is extracted herein below:-

> *"30. The observations made by this Court Essar Gujarat Limited (supra) in Paragraph 18 must be understood in the factual matrix involved therein. The ratio of a decision, as is well-known, must be culled out from the facts involved in a given case. A decision, as is well-known, is an authority for what it decides and not what can logically be deduced therefrom. Even in Essar Gujarat Limited (supra), a clear distinction has been made between the charges required to be made for pre-importation and post-importation. All charges levied before the capital goods were imported were held to be considered for the purpose of computation of transaction value and not the post-importation one. The said decision, therefore, in our opinion, is not an authority for the proposition that irrespective of nature of the contract, licence fee and charges paid for technical know-how, although the same would have*

nothing to do with the charges at the pre-importation stage, would have to be taken into consideration towards computation of transaction value in terms of Rule 9(1)(c) of the Rules."

7. In view of above, we do not find any merits in the impugned passed by the learned Commissioner (Appeals). Accordingly, by setting aside the same, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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