CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 691 OF 2005

[Arising out of Order-in-Appeal No: 102/2005 (JNCH) dated 28th March 2005 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Commissioner of Customs (Import)
New Customs House, Ballard Estate, Mumbai - 40001 … ***Appellant***

versus

Guala Closures India Pvt Ltd
D-1 Sesa Ghor, Patto PO Box Box 101
Panjim, Goa – 403 001 ***…Respondent***

APPEARANCE:

Shri Ashwini Kumar, Additional Commissioner (AR) for the appellant

Shri C S Biradar, Advocate for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86072/2023

DATE OF HEARING: 25/04/2023
DATE OF DECISION: 25/04/2023

PER: C J MATHEW

This appeal has been filed by the Commissioner of Customs

(Import), Mumbai against order[1] of Commissioner of Customs (Appeals), Jawaharlal Nehru Customs House, Nhava Sheva, Mumbai – II rejecting the appeal of Revenue in challenge to order of the original authority upholding the value declared by M/s Guala Closures India Pvt Ltd at the time of import of the impugned goods.

2. The proceedings against the respondent herein were initiated on the basis of their contract with M/s Guala Patents BV for supply of machinery to be used in the manufacture of 'non-refillable closures' at declared value that did not include 'royalty', of 5% and 8% of net sale price, on domestic sale and exports, respectively, of manufactured goods that was payable to overseas collaborator on the ground that this consideration for 'technical know-how' and 'technical information' provided by the collaborator was of such essence that, without it, the respondent could not have deployed the imported goods. Consequently, proposal for inclusion of the consideration, under rule 9(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, in assessable value which was rejected by both lower authorities is sought to be implemented though, except for reiterating the ground of non-viability of the project but for the services for which lumpsum fee and royalty was consideration, no justification has been offered in the grounds of appeal.

3. Learned Authorised Representative contends that the decision

[1] [order-in-appeal no. 102/2005 (JNCH) dated 28th March 2005]

of the Hon'ble Supreme Court in *Collector of Customs (Preventive), Ahmedabad v. Essar Gujarat Ltd [1996 (88) ELT 609 (SC)]* and in *Matsushita Television & Audio (I) Ltd v. Commissioner of Customs [2007 (211) ELT 200 (SC)]* are precedents in accordance which the order, impugned in the appeal, deserve to be set aside.

4. Learned Counsel for the respondent submits that the conditions of sale of both the machines as well as raw materials by the overseas entity did not include royalty or lumpsum payment as a condition of sale but is linked to the production. It is pointed out that the decision of the Hon'ble Supreme Court in *Union of India v. Mahindra & Mahindra Ltd [1995) (76) ELT 481 (SC)]*, in relation to the very same rule in Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, had settled the issue thus

> *'8. On an evaluation of the relevant clauses in the collaboration agreements and the attendant circumstances, we are of the view that the concurrent Judgments of the High Court at Bombay do not merit interference in this appeal. The crucial aspects appearing in the case are that the parties were dealing at arm's length, that the seller and the buyer have no interest in the business of each other, that, ordinarily, the technical know-how of the machine can take in `the assembly' thereof, that the CKD packs and spares were supplied to the respondents by the collaborator not at a concessional price but at the price at which they were sold to others, that, as agreed to by the respondents, the option was entirely with the respondents to order the parts as per their requirements, that there was no obligation on the respondents*

to purchase CKD packs at all, that long before the supply of the CKD packs and spares, the royalty due to the collaborators was paid, that there is no material to show that the supply of the CKD packs or spares weighed with the parties in fixing the payments under the collaboration agreement but, on the other hand, the collaboration agreement for the technical know-how and the supply of CKD packs and spares are independent commercial transactions; in other words, there existed no nexus between the lumpsum payment under the agreement for the technical know-how and the determination of the price for supply of CKD packs or spares. It is by highlighting the above aspects that the learned Single Judge and the Division Bench concluded that "the contention that the price quoted in the invoices tendered by Mahindra & Mahindra (respondents) does not reflect the correct price because a part of the value of imported packs and components was already received by foreign collaborator while determining the consideration of 15 million French Francs cannot be accepted", and "the collaboration agreement does not support the claim nor was there any material available to the Assistant Collector to warrant such a conclusion", and, therefore, resort to section 14(1)(b) of the Act and Rule 8 of the Customs Valuation Rules is clearly incorrect and unsustainable and the "Assistant Collector was bound to accept the price mentioned in the invoices for the purpose of assessing the customs duty".

9. We are of the view that the reasoning and conclusion of the learned Judges of the High Court are justified and valid in the facts and circumstances of the case. The collaboration agreement entered into between the parties is clear and it is not open to the revenue to construe it differently by reading into it something which is not there. In the result, we hold that the Judgment appealed against does

> *not merit interference and this appeal deserves to be and is hereby dismissed with costs, which we quantify at Rs. 10,000/-.'*

5. It is abundantly clear from the decision of the first appellate authority, placing reliance on the decision of the Hon'ble Supreme Court in *re Mahindra & Mahindra Ltd*, that it is only in the specific circumstances of condition appendant to procurement of goods from an overseas collaborator without which the seller would not make the goods available that rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 could be invoked. The original authority too had come to the conclusion of non-includibility after perusal of the collaboration agreement despite which the reviewing authority considered it fit to take recourse to appellate remedies. The principal foundation for adding back any additional amounts, towards royalty and other fees referred to in rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, to the assessable value is that the imports of goods would not have been possible without paying royalty/fees. This implies that the service rendered, for which royalty and fee is paid, is a component of the sale price. On facts, the lower authorities have held to the contrary. The judicial decisions cited by the Learned Authorised Representative had been rendered in a particular context and, consequently, relevant only to those disputes. It is, thus, necessary for every such proposal for recovery of duties, short-levied or not levied,

attributed to ‘royalty’ and ‘fees’ to be based upon clear finding as condition of sale. That is lacking here and Revenue has not placed any material records before us to evince that inclusion of the said values for the purpose of recovery of duty is mandated. Despite clear citation of precedent in the impugned order, the appellant-Commissioner has not been able to discountenance the decision in *re Mahindra & Mahindra Ltd* or to place reliance on any other judgment that would negate the finding of the first appellate authority. Accordingly, we find no merit in this appeal which is, therefore, dismissed.

(Operative Part of the Order pronounced in the open court on 25th April 2023)

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(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*