

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 85062 OF 2018  
WITH  
CUSTOMS APPLICATION (MISC) NO: 86098 OF 2022  
(on behalf of respondent)**

[Arising out of Order-in-Original No: 13/KVSS(13)ADG(ADJ.)/DRI, MUMBAI/2017-18 dated 31<sup>st</sup> August 2017 passed by Additional Director General (Adjudication), Directorate of Revenue Intelligence Mumbai).]

**Puma Sports India Pvt Ltd**

59,CMH Road, Indiranagar, Bangalore – 560038.

*... Appellant*

*versus*

**Commissioner of Customs**

New Customs House, Ballard Estate, Mumbai - 400001

*...Respondent*

**APPEARANCE:**

Shri V Raghuraman and Ms Sandhya Raghuraman, Senior Advocates along with Shri Shammi Kapoor, Shri Arnab Roy and Ms Vanshika Jain, Advocates for the appellant

Shri A K Singh, Special Counsel for the respondent

**WITH**

**CUSTOMS APPEAL NO: 85060 OF 2018**

[Arising out of Order-in-Original No: 13/KVSS(13)ADG(ADJ.)/DRI, MUMBAI/2017-18 dated 31<sup>st</sup> August 2017 passed by Additional Director General (Adjudication), Directorate of Revenue Intelligence Mumbai).]

**Dipak Agarwal**

# 114 Jagadish Nagar, New Thippasandra  
Bangalore – 560038.

*... Appellant*

*versus*

**Commissioner of Customs**

New Customs House, Ballard Estate, Mumbai - 400001

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85061 OF 2018**

[Arising out of Order-in-Original No: 13/KVSS(13)ADG(ADJ.)/DRI, MUMBAI/ 2017-18 dated 31<sup>st</sup> August 2017 passed by Additional Director General (Adjudication), Directorate of Revenue Intelligence Mumbai).]

**Amit Prabhu**

# 301 Brigade Harmony, Varthur Kodi,  
Ramagondanahalli, Bangalore – 560066.

*... Appellant*

*versus*

**Commissioner of Customs**

New Customs House, Ballard Estate, Mumbai - 400001

*...Respondent*

**AND**

**CUSTOMS APPEAL NO: 85063 OF 2018**

[Arising out of Order-in-Original No: 13/KVSS(13)ADG(ADJ.)/DRI, MUMBAI/ 2017-18 dated 31<sup>st</sup> August 2017 passed by Additional Director General (Adjudication), Directorate of Revenue Intelligence Mumbai).]

**Rajiv Mehta**

# 7 & 8, 3<sup>rd</sup> Floor, Aqua Fort Apartment,  
12 Kensington Road, Ulsoor, Bangalore – 560066.

*... Appellant*

*versus*

**Commissioner of Customs**

New Customs House, Ballard Estate, Mumbai - 400001

*...Respondent*

**APPEARANCE:**

Shri Shammi Kapoor, Shri Arnab Roy and Ms Vanshika Jain, Advocates for the appellant

Shri A K Singh, Special Counsel for the respondent

**CORAM:**

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

**FINAL ORDER NO: 86154/2024**

|                   |            |
|-------------------|------------|
| DATE OF HEARING:  | 19/02/2024 |
| DATE OF DECISION: | 19/08/2024 |

PER: C J MATHEW

The appellant, M/s Puma Sports India Pvt Ltd, as distributor of footwear, apparel and accessories bearing ‘PUMA’ brand – either of its own or in combination with other iconic ‘eyeball smashers’ – in India, imports goods for retail sale in traditional ‘brick and mortar’ locations as well as on e-commerce platforms. Owing to ‘niched’ operations involving both ‘parent’ and ‘sibling’ entities abroad, their transnational commercial engagements are filtered through investigations of ‘special valuation branch (SVB)’, an institutional mechanism established by the customs administration to ‘normalize’ assessment of ‘related party’ imports in which such relationship may have been a factor in price recording and, possibly, a source of leakage of revenue. The appellant was independently subjected to search and seizure as well as further investigations culminating in the impugned proceedings. Goods valued at \$ 3,951,411 (FOB) seized during search on 25<sup>th</sup> October 2013 were provisionally released under section 110A of Customs Act, 1962 on condition that bond of like value (MRP) backed by bank guarantee for ₹ 2,25,00,000 was furnished. Here we are concerned with challenge to confirmation of demand of ₹ 6,73,74,023, as duties of customs recoverable under section 28 of Customs Act, 1962, in order<sup>1</sup> of Additional Director General (Adjudication), Directorate of Revenue

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<sup>1</sup> [order-in-original no.13/KVSS(13)ADG(ADJ.)/DRI, MUMBAI/ 2017-18 dated 31<sup>st</sup> August 2017]

Intelligence (DRI), Mumbai and comprising several strands of cause, for having been short-paid on imports effected between 1<sup>st</sup> May 2011 and 13<sup>th</sup> February 2014, along with interest thereon under section 28A of Customs Act, 1962, besides imposition of penalty of like amount under section 114A and of ₹ 2,00,00,000 under section 114AA of Customs Act, 1962 as well as fine of ₹ 5,00,00,000. In addition, three individuals are also before us in separate appeals challenging the imposition of penalties on them. All of these are disposed off by this common order.

2. A portion of the demand, of ₹ 1,11,06,049 and relating to imports effected at ‘inland container depot (ICD)’, was fastened by varying rate of duty on ‘polo shirts with collars’ and on ‘jackets with front openings with zip fasteners’ while another portion, of ₹ 11,76,883, is said to be attributable to ‘loading’ of freight element in proportion to the loading effected by the impugned order under several heads by recourse to rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for which we have been unable to locate any finding in the impugned order. We also note that the elaborate order, comprising over a hundred two pages, has rendered findings under the different strands of proposals in the notice for enhancing of assessable value by resorting to valuation permitted in rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as ₹ 220,23,33,232 instead of ₹ 176,12,54,441 on the whole of the impugned goods as well as

disaggregating the valuation and differential duty in accordance with jurisdictions but without any determination of the additions arising from each of these separately. It would appear that, having rendered finding on applicability of law to the facts as set out, the adjudicating authority adopted the proposals in the show cause notice that were summarized thus

*'1.40 Quantification of Differential Duty*

*The provisional assessments of Bills of Entry filed by M/s PSIPL for the period 2005 till 12.10.2009 were yet to be finalized. The SVB Order in Original No. 9781/2009 was passed on 12.10.2009 for related party transactions. All assessments during the period 13.10.2009 to 12.10.2010 were final. Subsequent to the expiry of SVB order on 13.10.2009, the Bills of Entry pertaining to related party transactions alone were provisional, while for imports from the Third party manufacturers the assessments were final. Further after DRI initiated investigations, all Bills of Entry from 13.02.2014, as per letter from Assistant Commissioner, SVB, Bangalore, both related party and Third party transactions were provisional. This show cause notice covered all imports (both related and Third party) were assessments were final. Thus, the Management Fees in Annexure B2 and Freight in Annexure D2 to this show cause notice were amortized on both provisional and final assessed Bills of Entry. However, in the worksheets for the quantification of differential duty, for the present Show Cause notice, only those Bills of Entry which are finally assessed had been taken. Accordingly, it appeared-that the assessable value (for the respective goods corresponding to Annexure A1/A2, B1/B2, C1/C2 and D1/D2) declared, for all goods imported vide Bills of Entry specified as Rs.*

1,70,08,87,988/- (Rupees One Hundred Seventy Crores Eight Lakhs Eighty Seven Thousand Nine Hundred and Eighty Eight Only) in Annexure 1 including the goods imported as detailed in Annexure II and specified as Rs. 6,03,76,453/-(Rupees Six Crores Three Lakhs Seventy Six Thousand Four Hundred and Fifty Three Only) in Annexure III to this show cause notice should be re-determined as Rs.212,96,93,808/-(Rupees Two Hundred and Twelve Crores Ninety Six Lakhs Ninety Three Thousand Eight Hundred and Eight Only) in Annexure 1 including the goods imported as detailed in Annexure II , and as Rs. 7,26,39,424/- (Rupees Seven Crores Twenty Six Lakhs Thirty Nine Thousand Four Hundred and Twenty Four Only) in Annexure III as per Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 86 Section 14 of the Customs Act, 1962as detailed above. Accordingly, the differential duty to be paid as per the re-determined assessable value which was to paid by M/s PSIPL under Section 28(I)/Section 28(4) along with Interest at applicable rates under Section 28AB/Section 28AA, for goods imported vide Bills of Entry listed in Annexure I is Rs, 5,47,76,716/- (Rupees Five Crore Forty Seven Lakh Seventy Six Thousand Seven Hundred and Sixteen Only), and Rs.14,91,258 /- (Rupees Fourteen Lakh Ninety One Thousand Two Hundred and Fifty Eight Only) in Annexure III, for the imports effected through ICD, Bangalore and ACC, Bangalore, respectively. Further, the Bills of Entry for imported goods of Chapter 61 and 62 of Customs Tariff Act, 1962, for which the tariff value is specified as per Notification No. 20/2001-Central Excise (NT.) dated 30.04.2001 as amended and goods of Chapter 64 of Customs Tariff Act, 1962 for which value to be adopted as a percentage of retail sale price specified as per Notification No. 49/2008-Central Excise (NT.) dated 24.12.2008 read with sub-section (2) of section 4A

*of Central Excise Act, 1944 for are listed in Annexure II to the show cause notice. In respect of polo shirts with collars and Jackets with front openings with zip fasteners of various compositions of Chapter 61 and 62 and which are re-classified as discussed in Para 10 of the SCN, the Duty of Customs under Customs Tariff Act, 1962 was to be calculated as per specific rate as specified in Column BA as "Re-determined Specific Rate" in Annexure II. The total differential duty payable on the re-determined specific rates as detailed in Annexure II for the imports effected through ICD, Bangalore worked out to Rs. 1,11,06,049/- (Rupees One Crore Eleven Lakhs Six Thousand and Forty Nine Only). In respect of all other goods in Annexure II, the duty of customs under Customs Tariff Act, 1962 was calculated on the re-determined assessable values giving the differential duty. The Additional duty of Customs under Section 3(1) of Customs Tariff Act, 1962 remained unchanged. The exemptions from payment of Additional Duty of Customs under Section 3(5) of Customs Tariff Act, 1962 and Education Cess as claimed by the importer in the Bills of Entry had been permitted.'*

in the impugned order to fasten the demand now under challenge. There are two particular aspects of this summation that strike rather forcibly – ‘amortization’ and concatenation of rule 9 with rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 - and which need particular attention to place the impugned findings in perspective.

3. Other than the dispute on classification, the proposal in the notice pertained to certain costs that were allegedly includible under rule 10

of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 but not declared in the value for assessment at the time of import. We also note that 'relationship' between the assessee herein and several of the overseas entities concerned with the disputed contracts has been considered to be relevant enough by the adjudicating authority to be reproduced from the show cause notice as

**'1.36.5 RELATED PARTY TRANSACTIONS**

- *M/s Puma, Austria were holding 99.9999% of the total paid up capital of M/s PSIPL and M/s Puma Middle East FZ LLC, Dubai holds 0.0001%. Further M/s Puma Austria was a subsidiary of M/s Puma AG Rudolf Dassler Sport, Germany. Effectively M/s PSIPL was a subsidiary of M/s Puma AG Rudolf Dassler Sport, Germany. M/s World Cat too is a subsidiary of M/s Puma, Germany.*
- *It appeared that M/s Puma, Germany controlled not only the products design for goods from PUMA entities but also the supply and prices of procurement from third party manufacturers; In return, M/s PSIPL was required to remit/ remitting amounts either directly as Royalty or through its other subsidiaries such as M/s Puma, Austria as Management Fees and M/s World Cat as Buying Commission. It appeared that M/s Puma exercised extensive control, directly or indirectly over M/s PSIPL in all matters of procurement, finance, pricing, local sales, policy issues etc.*
- *M/s PSIPL market PUMA and third party products in India through M/s Puma Retail; M/s Puma Austria owned 51% shares in M/s Puma Retail and the other 49% is held by M/s Knowledge Fire;*



- *M/s Knowledge Fire was formed by members of M/s MohinderPuri and Company, Chartered Accountants of whom M/s PSIPL was also a client; Later, Shri RGN Swamy bought 9999 shares out of the total of 10000 shares for Rs.99,000/- of M/s Knowledge Fire; M/s MohinderPuri and Company was also the auditor of M/s Knowledge Fire;*
- *Subsequently, M/s Knowledge Fire had invested Rs. 49,000 for subscribing to 4900 shares of M/S Puma Retail and had got 49% stake in M/S Puma Retail; The shares were bought from M/s MohinderPuri and Company; Shri RGN Swamy was also appointed as a Director in M/s Puma Retail with a remuneration of Rs.12 Lakhs p/a;*
- *It appeared that M/s Knowledge Fire was created solely as a facade to comply with the existing FDI cap in retail sector and subvert the existing FIPB/RBI regulations; This was also confirmed from the nominal price of Rs 49,000/- at which 49% stake in M/s Puma Retail were sold to M/s Knowledge Fire;*
- *It appeared that M/s Puma and its entities had created a complex web of share holding patterns and agreements to hide the reality of control by M/s PUMA, Germany on all matters of procurement, finance, pricing, policy issues including retail sales for its own interests subverting the law. The amounts remitted to the various entities of PUMA (PUMA, Germany, PUMA, Austria 86 World cat), in connection with the imports are to be included in the Assessable Value.'*

in the impugned order.

4. That the adjudicating authority felt compelled to designate the enhancement of value as 'amortization' over several consignments

imported over a long stretch implies that the addition is not about, or prompted by, incorrectness of the price paid or payable for the goods but that of consideration for ‘services’ rendered in relation to supply of several lots of goods. Not only would it not have been possible, at the time of each import, to ascertain the value of such ‘services’ to be attributed to each such but also that the nature of each service and its inextricable linkage to the goods would need to be established. This difficulty is faced not only by the tax collector but also by the parties to the trade; the law for levy of commodity tax can also afford to permit it only through a special mechanism and not as a matter of course.

5. This necessitates a perusal of the scheme of valuation for customs assessment with the foundation of

*‘14. Valuation of goods.—*

*(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

*Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any*

*amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*

*Provided further that the rules made in this behalf may provide for,—*

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*

*Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.'*

in Customs Act, 1962 over which

### *'3. Determination of the method of valuation.-*

*(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

*(2) Value of imported goods under sub-rule (1) shall be accepted:*

*Provided that -*

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –*
    - (i) are imposed or required by law or by the public authorities in India; or*
    - (ii) limit the geographical area in which the goods may be resold; or*
    - (iii) do not substantially affect the value of the goods;*
  - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*
  - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*
  - (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*
- (3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*
- (b) In a sale between related persons, the transaction value shall be accepted,*

*whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.*

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;*
- (ii) the deductive value for identical goods or similar goods;*
- (iii) the computed value for identical goods or similar goods:*

*Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;*

- (c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.*
- (4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.'*

in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 has been erected to operationalize two contingencies of substitution, viz., upon 'rejection of declared value' and 'price being that contracted for transaction of related persons', under the authority of second *proviso* in section 14(1) of Customs Act, 1962, and a third for addition, i.e., 'cost and services' from the prescription in first *proviso* in section 14(1) of Customs Act, 1962.

6. There are, as can be seen, three critical expressions deployed in section 14 of Customs Act, 1962 – ‘value’, ‘transaction value’ and ‘price actually paid or payable for goods imported’ – with each having contextual relevance in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. ‘Value’ is of essence where the tariff has determined the levy to be *ad valorem* but ‘value’ is too open-ended to be left to casual ascertainment; over the years, international consensus on its scope was also unavoidable to keep the wheels of commerce spinning. From the beginning days, when ‘value’ was deemed to be ‘price’ and, when unascertainable, ‘price’ by recourse to rules to the amendment of 1988 which resolved ‘value’ as ‘price’ but provided for the rules to determine the ‘price’ was one big step. Further amendment in 2007 altering the perception of ‘price’ itself as ‘transaction value’ from ‘transaction value’ as the gold standard of ‘price’ was a giant step. From the evolution of the scheme of valuation, it is apparent that the respective deployment in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 must be scrupulously observed. Likewise, the empowerment, in extraordinary circumstances, to re-determine the assessable value, though tepidly acquiesced with, and well behind the rigour determined by universal consensus, as rule 10A of Customs Valuation (Determination of Value of Goods) Rules, 1988 and of service for close to a decade before ultimately giving way to full conformity thereto as rule 12 of Customs Valuation (Determination of

Value of Goods) Rules, 2007, in assessment, or post-assessment recovery proceedings, has had implications for the valuation regime. This is particularly so as non-conformity with any one of the qualifiers for ‘price actually paid or payable for the goods’ to be the ‘transaction value’ in section 14 of Customs, all of which, but one, being commonly deployed expressions, triggers recourse to ‘surrogate’ value; it is only ‘related’ that suffers from lack of similar clarity necessitating, even if circumscribing in many ways, definition within the appendant Rules.

7. Non-conformity with the other qualifiers of ‘price actually paid or payable for goods’ to be ‘transaction value’ in section 14 of Customs Act, 1962 is provisioned for recourse to ‘surrogate value’ for assessment even without enablement by rule 12 of Customs Valuation (Determination of Value of Goods) Rules, 2007 which, provisions that tentative, though specifically bounded, suspicion may shift the onus of dissipation of adverse presumption onto the importer and recourse thereafter to ‘surrogate value’ should such onus not be satisfactorily discharged or even not responded to. Recourse to rule 4 through rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 flows from either of these situations – ‘price actually paid or payable for the goods’ not acceptable as ‘transaction value’ without doubt about its correctness or the ‘price actually paid or payable for the goods’ is doubted for its correctness let alone acceptance as ‘transaction value’ – to bring rule 3(4) of Customs Act, 1962 into play. On the other

hand, while ‘related party’ transactions are not in conformity with the qualifiers for ‘price actually paid or payable for the goods’ to be ‘transaction value’, rule 3(3) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 permits opportunity to establish that price has not been influenced by relationship and recourse to rule 3(4) therein, as in aforesaid circumstances, for ‘surrogate value’ only thereupon. Such provisioning for ‘costs and services’, either from non-conformity with qualifiers of ‘price actually paid or payable for the goods’ or from non-discharge of presumed onus on importer, is clearly absent; it is the first *proviso* in section 14 of Customs Act, 1962, and, that too, without the integrity of ‘price actually paid or payable for the goods’ being impaired, that the additions specified in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which mandates the addition. Rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 does not, for the additions specified in rule 10 therein, provision for recourse to ‘surrogate value’ unless the ‘price actually paid or payable for the goods’ has, keeping ‘costs and services’ aside, been called into question. That is not evident in the impugned order and, instead, the adjudicating authority has, in manner un contemplated by the scheme of valuation, resorted to rule 9 for addition of ‘costs and services’ which suffices to discredit the findings even if such ‘costs and services’ are includible. We park this line of finding for the nonce to ascertain if the



impugned order has determined the includibility.

8. Our evaluation of the adjudicatory exercise on valuation of the impugned goods will be determined by this benchmark just as evaluation of the exercise of re-classification is to be determined by the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 and the decisions of the Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise* [1997 (89) ELT 16 (SC)] thus

*'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'*

and in *HPL Chemicals Ltd v. Commissioner of Central; Excise, Chandigarh* [2006 (197) ELT 324 (SC)]

*'28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.....'*

9. With this backdrop, we turn to the rival contentions on the

classification dispute as well as the challenge to additions to declared value.

10. The appellant had declared tariff item 6109 1000 and tariff item 6109 9010/6109 9090 of First Schedule to Customs Tariff Act, 1975 as appropriate to 'polo knitted shirts' imported by them which, according to the impugned order, is aptly classifiable against tariff item 6105 2010/6106 1020 as these had collars with opening at the neckline to be fastened with buttons and, hence, not 't-shirts' to which the claimed classification applied. Likewise, the classification against tariff item 6103 3200 and tariff item 6103 3300/6103 3990 of First Schedule to Customs Tariff Act, 1975, adopted on import of 'jackets with zip fasteners', was revised to tariff item 6101 3010 as more appropriate to clothing worn over regular clothing for protection against weather. According to Learned Senior Counsel, such revision was not legally valid except through appeal against order of assessment and that, at the time of clearance, the goods were found to have matched the description in the declared tariff line. Reliance was placed by him on the decision of the Tribunal in *Raj Television Network v. Commissioner of Customs* [2007 (215) ELT 71 (Tri-Chennai)], in *Saint Gobain Glass India Ltd v. Commissioner of Customs* [2014 (313) ELT 680 (Tri-Chennai)] and in *BN Exim v. Commissioner of Customs* [2016 (355) ELT 357 (Tri-Ahmd)]. Learned Authorised Representative drew our attention to the respective tariff lines to demonstrate the

appropriateness of the revised classification.

11. It is seen that the adopted heading 6105 and heading 6106 of First Schedule to Customs Tariff Act, 1975 pertain to ‘shirts, knitted or crocheted’ – made of cotton and of manmade fibres – for males and females respectively. As far as the other impugned articles are concerned, it is seen that reference in note 3(a) in chapter 61 in *Explanatory Notes* of the Harmonized System of Nomenclature (HSN) of the said chapter, indicating design, was the basis for revision. The limited, and peremptory, justification offered in the impugned order, viz.,

*‘5.2.5.8 It is a matter of fact and never under dispute that the impugned items imported by M/s PSIPL had collars with opening in the neckline which are fastened by buttons. Accordingly, I hold that the classification claimed M/s PSIPL, i.e. CTH 61091000 for Cotton Poloshirts for men and CTH 61099010/61099090 for synthetic material Polo shirts for men and woman as incorrect.*

xxxxx

*5.2.5.11 In terms of Rule 3(b) of General Interpretative Rules to Import Tariff "Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to (a) shall be classified as if they consisted of the material or component which gives them their essential character, inasofar as this criterion is applicable. Further, as per Note 2(A) of Section XI of the Customs Tariff Act, 1962 "Goods classifiable in Chapters 50 to 55 or in heading 5809*

*or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration." Further, in terms of sub-heading Note2(A) of Section XI of Customs Tariff Act, 1962, Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under Note 2 to this Section for the classification of a product of Chapters 50 to 55 or of heading 5809 consisting of the same textile materials"*

*Accordingly, I hold that in the instant case polo shirts with collars for men/women consisting of more than 50% by weight of cotton in comparison over any other textile materials are rightly classifiable under CTH 6105 1010/61061000.'*

neither portrays the design of the goods in detail that could be ascertained for conformity with description corresponding to revised tariff item nor elaborated the kind of garments intended by the said description.

12. As far as the other goods are concerned, the finding of alternate classification, thus,

*'5.2.6.7 It was never under dispute that the impugned goods imported had opening in the front which were fastened by zip fasteners and are to be worn over clothing for protection against the weather. Thus, it is obvious that the classification claimed by M/s PSIPL for imported knitted garments for men or boys, upper garments worn over other clothing with opening in the front fastened with zip fasteners, under CTH 61033200*

*for cotton knitted upper garments and CTH 61033300/61033990 for knitted upper garments of synthetic materials is incorrect. The knitted garments for men or boys, upper garments worn over other clothing with opening in the front fastened with zip fasteners imported by M/s PSIPL are rightly classifiable under 6101 i.e. CTH 61012000 for 100% cotton and CTH 61013010 for synthetic materials;'*

is not only sketchy but has been determined after recording that

*'5.2.6.2 I find that of Chapter Heading 6103 of Customs Tariff Act, 1975 covers "Men's Or Boys' Suits, Ensembles, Jackets, Blazers, Trousers, Bib and Brace Overalls, Breeches And Shorts (Other Than Swim Wear), Knitted Or Crocheted\*.*

*5.2.6.3 Further, Explanatory Notes to Harmonized Commodity Description and Coding System, 2013, for Chapter Tariff Heading 6103 states: "The jackets or blazers classifiable under the said heading have the same characteristics as the suit coats and suit jackets described in Chapter Note 3(a) of Chapter 61." "For the purposes of Chapter note 3(a) of Chapter 61, it should be noted that the "suit coats or jacket" is designed to cover the upper part of the body has a full front opening without a closure or with a closure other than a slide fastener (zipper). The heading does not include anoraks, wind-cheaters, ski-jackets and similar garments of heading 61.01 or 61.02.*

*5.2.6.4 It is revealed from the product catalogues for "Jackets" imported by M/S PSIPL, that all the "jackets" imported by M/s PSIPL were upper garments worn over other clothing and had opening in the front which were fastened by zip fasteners. Thus, the garments imported by M/s PSIPL were not "Jackets" as declared by them as they had opening in the front which are fastened by zip fasteners, and thus disqualifies to be classified under the said heading. Thus it is abundantly*

*clear that M/s PSIPL had mis-declared such goods as "Jackets" and accordingly they could not be classified as "Jackets" under Chapter heading 6103.'*

Both these sets of findings, one owing to lack of examination of the proposed headings and the other owing to exclusion of declared classification first, run counter to the rules of engagement in classification disputes as set out by the Hon'ble Supreme Court in *re Hindustan Ferodo Ltd* and in *re HPL Chemicals Ltd*.

13. On the valuation facet of the dispute, one part of the demand arises from agreement with M/s Puma Germany to pay licence fee/royalty on sale of 'PUMA' products in India; it has been held in the impugned order that royalty payable, in accordance with agreement and as recorded in the books of accounts of the appellant, had, admittedly, not been included in the assessable value. Consequently, differential duty liability has been fastened by drawing upon the authority of rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. According to Learned Senior Counsel appearing for appellants, such inclusion is without authority of law as royalty, specifically, can be tagged to the costing of goods only if such payment is a condition of sale as set out in rule 10 (1)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Furthermore, he contended that the submission of the appellant, of the agreement itself having been rescinded, was discarded on the finding

that the plea was afterthought and that, provision having been made in the books of account, liability thereon concluded, for the purposes of section 14 of Customs Act, 1962, was without sustenance in law. It was further contended that royalty was contracted to be paid on sale value as a measure and was not a condition of sale. He drew our attention to the provisions of the agreement and further cited the decisions of the Hon'ble Supreme Court in *Commissioner of Customs v. Ferodo India Pvt Ltd* [2008 (224) ELT 23 (SC)], *Commissioner of Customs (Port), Chennai v. Toyota Kirloskar Motor Pvt Ltd* [2007 (213) ELT 4 (SC)], *Tata Iron & Steel Co Ltd v. Commissioner of Central Excise & Customs, Bhubaneswar* [2000 (116) ELT 422 (SC)] and *Commissioner of Customs, Ahmedabad v. Essar Steel Ltd* [2015 319 ELT 202 (SC)]. He further informed that no payment was made towards 'royalty' in view of the restrictions imposed by the Reserve Bank of India (RBI) and, in the absence of any such payment as established by letter dated 20<sup>th</sup> April 2019 addressed to Reserve Bank of India (RBI), provision made for booking of such amount was reversed in December 2019. According to Learned Authorized Representative, the agreement to pay royalty involved import of products as well as marketing and collaboration with other brand owners and that the agreement had come into force immediately on contracting as no steps had been taken for revoking the said agreement. According to him, the booking of royalty suffices to be payment in

accordance with laws of the country. The impugned order has found the contracted payment to be in line with rule 10(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 with all licenced products sold to the appellant, and considered as sold by the appellant, for charging royalty. We find that the factual submission on the royalty never having been paid or accruing owing to remittance restrictions has been discarded. In terms of the provisions of rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, adjustment of transaction value in accordance with prescriptions in rule 10 and the factum of non-payment of royalty on voidable contract are aspects that have been overlooked by the adjudicating authority.

14. The second element of addition as service is the inclusion of 'management fees' payable by the appellant to M/s Puma Austria. According to the appellant, this was intended as compensation for providing certain support services, training, marketing and product design. According to Learned Senior Counsel, this agreement on 'management fee' was intended as contribution for business expansion and not connected to the goods at all. It was his contention that the appellant, in addition to selling goods to customers, also runs an organization for the purpose and the said 'management fee' was consideration for the expertise received for the discharge of its organizational functions. Reliance was placed by him on the



decision of the Tribunal in *SI Group India Ltd v. Commissioner of Customs, Mumbai* [2015 (319) ELT 161 (Tri.-Mumbai)], in *Alcan India Pvt Ltd v. Commissioner of Customs (Import), Mumbai* [2015 (323)ELT 623 (Tri.-Mumbai)], in *Thyssenkrupp Elevator (I) Pvt Ltd v. ACC (Import & General), New Delhi* (2017 (356) ELT 249 (Tri.-Del.)) and *Emitec Emission Control Tech (I) Pvt Ltd v. Commissioner of Customs (Import), Mumbai* [2014 (303) ELT 582 (Tri.-Mumbai)]. Learned Authorized Representative pointed out that a base entitlement fee and an additional payout of 0.25% of net consumer sales was due from the appellant to M/s Puma Austria which did not pertain to manufacture that may have justified organizational support thereof. He pointed out that the remittance has been made periodically implying that such compensation was not for ‘one off’ activities claimed to have been performed for the appellant. Reliance was also placed on the decision of the Tribunal in *Atul Kaushik v. Commissioner of Customs (Export), New Delhi* [2015 (330) ELT 417 (Tri.-Del.)] to contend that claim of the appellant that discharge of service tax on the said amount excluding liability under Customs Act, 1962 is not tenable.

15. In the impugned order, it has been held that the ‘management fee’ was, for the very reasons adduced also by the Learned Authorized Representative, liable to be included in accordance with rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules,

2007.

16. The consequence of the introduction of tax services imported from abroad and, while not excluding the leviability on services rendered in connection with goods from the scope of valuation under Customs Act, 1962, also delineates the additions under rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to such as are specifically enumerated in the said rule without any scope for any stretching that would have the effect of encroaching on another taxable event concerned with import of services. The impugned order has fallen back on rule 10(1)(e) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which prescribes condition of sale as a necessary pre-requisite for inclusion. We find that the impugned order is bereft of any ascertainment of the provisions of the contract whereby the supplier of the impugned goods had made it a condition that such payment should be made to M/s Puma Austria for the shipment of the impugned goods to be undertaken. In the absence of a clear finding on the existence of such terms in the contract, said inclusion is not acceptable. Doubtlessly, the appellant has been unable to show that such payments are clearly delinked from condition of sale. Such onus, however, devolves on the appellant only upon discharge of the obligation on the part of the adjudicating authority to establish to the contrary, therefore, this deficiency in the impugned order would need to be corrected from a fresh ascertainment

of the terms of the contract.

17. The third element of the demand pertaining to inclusion of cost of services is the 'buying commission' payable to M/s World Cat Ltd, Hong Kong. Learned Senior Counsel for the appellant submitted that they had been paying 'buying commission' for various services rendered by M/s World Cat Ltd for which invoices was being raised by the latter and payment made directly to them. Learned Senior Counsel submitted that 'buying commission' is specifically excluded from the enumerations specified in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. He further contended that, at no stage, had any evidence been adduced to suggest that this was actually commission and brokerage pertaining to the goods imported by the appellant. He relied upon the decision of the Tribunal in *Tata Iron & Steel Co Ltd v. Collector of Customs* [1993 (66) ELT 622 (Tribunal)], in *Collector of Customs v. Kunal Engineering Co Ltd* [1992 (62) ELT 44 (Tribunal)], on the decision of the Hon'ble High Court of Bombay in *Cadbury Fry (India) Private Limited v. Union of India* [1990 (46) ELT 7 (Bom)] and of the Hon'ble Supreme Court in *Apollo Tyres Ltd v. Collector of Customs* [1997 (89) ELT 7 (SC)]. Learned Authorized Representative submitted that the orders, having been booked online, did not require support of any person for procurement and that the transaction between third party and manufacturers of the appellant is

controlled by M/s Puma Austria, on which the appellant acts, with no role for M/s World Cat. This, according to him, suffices to establish that an intermediary had been set up merely for making remittance overseas and, in effect, rendering payments to the supplier. The provisions relating to addition of 'cost and services' is abundantly clear about applicability to such services as are attributable to goods as condition of sale and that which pertains to activities rendered on behalf of the importer outside the country as well as activities undertaken by the importer subsequent to import, merit exclusion. The entire demand in the impugned order is based on the superfluity of M/s World Cat in the transactions. We do not consider it to be within the legal empowerment of customs authorities to be competent to dictate the manner in which a business model should be designed and worked. Effectively, the adjudication order does not fall back on rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for the addition but, in effect, suggests that the amount remitted to M/s World Cat was payment made to M/s Puma Austria for goods supplied. That such an 'offline payment' was made as consideration remains an allegation unless established that the remittance did finally end up with M/s Puma Austria and was payable towards the goods imported by the appellant. In the absence of such evidence, addition would stretch the limits that rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

as prescribed. It was necessary for the adjudicating authority to ascertain the details and the extent to which such details could lead to such conclusion. That requires a fresh look at the allegation in the show cause notice in relation to the 'buying commission'; above all that it was not 'buying commission ' has to be established beyond doubt for the addition to fall within the purview of rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

18. From the above we have noticed that several additions on account of rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have not been properly arrived at with reference to the evidences set out in the show cause notice. We have also noted that the inclusion of the value is without any examination of the circumstances in which such additions could have been effected in terms of rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. We have also noted that the decisions of the Hon'ble Supreme Court setting out the manner in which the revision of classification can be followed has been ignored by the adjudicating authority.

19. In these circumstances the show cause notice requires to be adjudicated afresh for which purpose we set aside the impugned order and remand the matter back to the original authority for a fresh decision keeping in mind the allegations in the show cause notice, the response

accorded by the noticee and circumscribing the effect of the scheme of valuation as set out *supra*.

20. The appeals are allowed by way of remand keeping all issues open.

*(Order pronounced in the open court on 19/08/2024)*

**(AJAY SHARMA)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***

*\*/as*