

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: C/87426/2017

Arising out of: Order-in-Appeal No. MUM-CUSTM-SMP-58/2017-18 dated 18/07/2017

Passed by: Commissioner of Customs (Appeals), Mumbai-I

Bosch Chassis Systems India Pvt. Ltd.	<i>Appellants – Represented by:</i> Shri T.Vishwanathan, Advocate
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Versus

Commissioner of Customs, Mumbai-I	<i>Respondent – Represented by:</i> Shri R.Kumar, AC (AR)
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Date of hearing : 01/11/2018
Date of pronouncement : 04/02/2019

CORAM

Hon'ble Shri Ajay Sharma, Member (Judicial)
Hon'ble Shri Sanjiv Srivastava, Member (Technical)

Per: Ajay Sharma

FINAL ORDER NO. A/85181/2025
ORDER NO: IO/ 4/2019

The instant Appeal has been filed from the impugned order dated 18.07.2017 passed by the Commissioner of Customs (Appeals), Mumbai-I. The issue to be decided in the instant Appeal is as to whether the royalty paid by the Appellant to the overseas Licensors/foreign suppliers is includible in the value of imported goods for assessment to duty as per Rule 10(1)(c) of the Customs Valuation Rules, 2007.

2. The case of import by Appellants from their suppliers was initially investigated by GVC/SVB under Customs Valuation Rules, 1988 and vide order dated 1.7.1997, it was ordered to accept the declared value under Rule 4 *ibid*. The Appeal filed by the department against the said order was rejected by the Commissioner (Appeals) vide Order dated 5.2.2002. In periodical review of SVB order dated 1.7.1997, the order of acceptance of value for further three years under Customs Valuation Rules, 1988/2007 was continued vide Order-in-Review dated 10.2.2009. Upon the expiry of the said Order-in-Review in the month of February, 2012, the Appellant vide its letter dated 8.2.2012 applied for periodical renewal of the last order and submitted requisite document.

3. The Adjudicating Authority while passing the Order-in-Original dated 26.6.2014 relied upon clause 8.1.3 of the agreement, and observed that the cost of components has only been excluded for the payment of royalty when the said components does not itself undergo any change, processing or treatment in the factory of the licensee and is physically removable from the assemble final product and therefore since the cost of raw material and the components imported from the related party which are not physically removable from the assemble final product are included in the payment of royalty, therefore the decision of the Hon'ble Apex Court in the matter of Matsushita Television & Audio India Ltd. Vs. CC; reported in 2007 (211) ELT 200(SC) is applicable and therefore the payments made under the agreement is includible in the assessable value of the imported goods under section 10(1)(c) of the Customs Valuation

Rules, 20078. The said finding of the Adjudicating Authority has been upheld by the Commissioner of Customs (Appeals) in the impugned order.

4. Ld. Counsel for the appellant submitted that the authorities below erred in including the onetime royalty paid as well as running royalty in the assessable value of the imported goods. He further submitted that since the Appellants are engaged in the manufacture of automobile components, therefore for this purpose they import various inputs into India apart from procuring components locally i.e. from indigenous sources. According to him, they import about 40% of the inputs for manufacture of automobile component and about 60% of the inputs are sourced locally from indigenous sources. Out of the said 40% imported inputs 45% of imports are from related persons namely M/s. Bosch Corporation, Japan and its associated companies and the remaining 55% are from unrelated suppliers/exporters. He also submitted that the Appellants vide letter dated 12.12.2013 has also submitted the computation of royalty, which was also submitted to the Id. Commissioner (Appeals). According to him, for determination of sale value while computing the royalty, the value of imported goods is deducted and that the royalty has been paid on net value addition occurred into India after importation and not on value of goods imported in India.

5. Ld. Authorised Representative appearing for the revenue reiterated the findings recorded in the impugned order and prayed for the dismissal of Appeal. He cited the law laid down by the Hon'ble Supreme Court in the matter of Matsushita Television and Audio (I)

Limited (supra) in his support and submitted that the payment royalty is includible in the assessable value. According to him the payment on account of technical know-how and royalty is related to imported goods as condition of sale of such goods and therefore this must be included in the value in terms of Rule 9(1)(c) of Customs Valuation Rules, 1988 as well as Rule 10(1)(c) of Customs Valuation Rules, 2007.

6. We have heard Id. Counsel for the appellant and Id. Authorised Representative for the Revenue and carefully considered the rival submissions. The relevant provision of Rule 10(1)(c) of Customs Valuation Rules, 2007 are pari materia to Rule 9(1)(c) of the Customs Violation Rules, 1988. The said Rule 10(1)(c) of Customs Valuation Rules, 2007 is as under:-

Customs Valuation Rules, 2007

Rule 10(1) – In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods,-

(a)

(b)

(c) Royalties and license fees related to the imported goods, that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods being values, to the extent that such royalties and fees are not included in the price actually paid or payable.

Explanation. – Where the royalty, license fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

7. On perusal of Rule 10(1) (c) ibid we find that the following two conditions are required to be satisfied for invoking the said Rule:-

- (i) Royalty is related to the imported goods, and
- (ii) Royalty is paid as a condition of sale of imported goods

If any of the above conditions are not fulfilled, then the aforesaid rule has not application. It is not disputed that royalty has been paid by the appellants for using the know-how to manufacture automotive components in India. In order to appreciate the issue involved in this appeal, we have gone through the '*License and Technical Assistance Agreement*' dated 4.2.2011 between the Appellant as *Licensee and Bosch Corporation, Japan* alongwith two other overseas Parties as *Licensors*. The said agreement do not require the import of materials from the Licensors only. For this purpose reliance is placed on clause 5 of the said agreement which is as under:-

“5. Suppliers, Procurement of Machine Tools, Tools And Similar

5.1 LICENSORS are prepared to supply to LICENSEE, at the request of LICENSEE specific components of Licensed Products within this its delivery conditions. Supplies of such a nature require separate agreement to be entered into from case to case.

5.2 If so requested by LICENSEE, LICENSORS shall name to LICENSEE manufacturers of machine tools, tools, testing equipment etc. required for the manufacture of Licensed Products and which are not obtainable in the required quality in the Licensed Territory. Should LICENSEE find that it is impossible for it to buy such equipment from third parties to the extent necessary and subject to reasonable conditions, then LICENSORS shall supply such equipment to LICENSEE subject to reasonable conditions to be mutually agreed if and insofar as LICENSORS are able to do so.

5.3 LICENSEE is prepared to supply to Bosch, at the request of Bosch, Licensed Products and/or replacement parts thereof for distribution under Bosch's trademarks through its worldwide sales organization. The terms and conditions of such supply shall be mutually agreed upon between Bosch and LICENSEE from case to case.

5.4 LICENSEE is prepared to supply Licensed Products, and/or parts, components, and subassemblies of Licensed Products to RBUS and RBJP and other companies owned or controlled, directly or indirectly, by Bosch by more than 50 % if the voting stock or capital (“Affiliated Companies”) at the request of said companies. The terms and conditions of such supply shall be mutually agreed upon between the concerned parties from case to case.”

As per this clause the Appellants are free to procure the material from *other foreign suppliers or even locally*. Cl. 8 of the said agreement i.e. Compensation clause and in particular clause 8.1.3 which has been relied upon by the authorities below in deciding against the Appellant, is extracted as under:-

“8. COMPENSATION

8.1 LICENSEE shall pay to LICENSORS, in addition to the costs separately invoiced hereunder, the following compensation for the rights granted to it:

8.1.1 A lump sum payment (“entrance fee”) amounting to **EUR 400 000, -**. This amount shall not be credited against royalties payable according to Article 8.1.2.

LICENSEE shall pay Forty percent (40%) – **EUR 160 000, -** of the aggregate payment of the foregoing lump sum to **Bosch**, Thirty percent (30%) – **EUR 120 000, -** to **RBJP**.

The lump sum shares shall be paid to each LICENSOR in two installments as follows:

- First installment of EUR 200 000 of the above amount payable after this Agreement has been signed by the parties and
- Second installment of EUR 200 000 next year (within one year from the date of remittance of first installment)

8.1.2 a running royalty amounting to 3% of the net sales price of all Licensed Products manufactured by LICENSEE under this Agreement. LICENSEE shall pay Forty percent (40%) – 1.2% - of the aggregate payment of the foregoing royalty to **Bosch**, Thirty percent (30%) – 0.9% - to **RBUS** and Thirty percent (30%) – 0.9% to **RBJP**.

8.1.3 The term “ net sales price” when used in this Agreement shall mean the gross invoice price of Licensed Products manufactured under this Agreement and sold or otherwise disposed of by LICENSEE in normal, arm’s length, bonafide, commercial transactions exclusive of excise duties, minus the cost of standard bought out components and the landed cost including ocean freight, insurance, customs duties, etc., of the imported components, if any. *Components shall be any part of Licensed Products which does not itself undergo any change, processing, or treatment in the factory of LICENSEE and is physically removable from the assembled final product.”*

8. While going through the agreement we find that the Appellants are free to import the components from any other person and in fact

they did so. It is clear from the data furnished by the Appellants that the relationship has not influenced the price of the goods supplied. According to the Appellant during the period in dispute they have imported only 22% from the Licensor whereas the remaining 78% they have procured from the other suppliers. The following is the table prepared by the appellant, in support of their submission, to show as to how much they have imported from the Licensor and how much imported from the other suppliers during the period in dispute:

Period	Import content	Import content from licensor	Import content other suppliers (Non-Bosch)
Oct.11 to Dec.11	2,73,89,650	-	2,73,89,650
Sub-total	2,73,89,650	-	2,73,89,650
%			
Jan.12 to Mar.12	2,12,33,148	92,61,887	1,19,71,260
Apr.12 to Jun.12	2,02,87,440	37,94,155	1,64,93,285
Jul.12 to Sep.12	1,39,08,992	45,16,936	93,92,056
Oct.12 to Dec.12	2,02,04,355	61,40,847	1,40,63,507
Sub-total	7,56,33,934	2,37,13,826	5,19,20,109
%	100	31.35	68.65
Jan.13 to Mar.13	1,90,95,168	31,67,070	1,59,28,098
Apr.13 to Jun.13	98,67,915	17,76,230	80,91,685
Jul.13 to Sep.13	1,72,74,453	33,11,870	1,39,62,583
Sub-total	4,62,37,536	82,55,170	3,79,82,366
%	100	17.85	82.15
Total	252284904.3	55682852.08	196602052.2
%	100	22.07	77.93

9. According to Appellant, from the very beginning their case is that the royalty is paid only on the value addition achieved, after deducting the cost of imported components, be it imported from related or unrelated persons. Payment of royalty has nothing to do with the supply of components or on the price of the components and

since as the foreign company had no controlling interest in the Indian buyer i.e. the Appellant, the royalty paid cannot form part of the price for the supply of components. In the absence of a specific clause indicating that the payment of royalty was connected with the supply of components, the royalty payment cannot be automatically added to the value of the goods imported. In the following decisions, it has been held that merely because the assessee has obtained the technical know-how from the foreign principal and pays royalty, in the absence of any specific provisions relating such royalty payment with supply of goods, it cannot be held that the transaction price is influenced by the relationship:-

- (a) *Commissioner of Customs v. Ferodo India Pvt. Ltd.* - 2008 (224) E.L.T. 23 (S.C.)
- (b) *Commissioner of Customs (Import), Mumbai v. Bridgestone India Pvt. Ltd.* - 2012-TIOL-166-CESTAT-MUM = 2013 (292) E.L.T. 403 (T).
- (c) *Commissioner of Customs, Mumbai v. BASF Strenics Pvt. Ltd.* - 2006 (195) E.L.T. 206 (Tri.-Mum.).
- (d) *Tribunal's Order No. A/904-905/2012/CSTB/C-I, dated 14-11-2012 in the case of Johnson & Johnson Ltd.* - 2013 (292) E.L.T. 111 (T).
- (e) *Tribunal's Order No. A/766/2012/CSTB/C-I, dated 18-10-2012 in the case of SGL Carbon India Pvt. Ltd.* - 2013 (290) E.L.T. 723 (T).
- (f) *Order No. A/673/2012/CSTB/C-I, dated 30-10-2012 in the case of ABB Ltd.* - 2013 (288) E.L.T. 296 (T).

10. In *Ferodo India Pvt. Ltd.* (*supra*) the Hon'ble Supreme Court has laid down that technical know-how cost and payment of royalty is includible in price of imported goods if said payment constitutes a condition pre-requisite for supply of imported goods by foreign supplier; if such payment has no nexus with working of imported goods, then such payment was not includible in the price of imported

goods. In the matter of M/s. Bridgestone India Pvt. Ltd. case (supra), the appellant therein had procured technical know-how from the foreign raw material supplier and this Tribunal has held that the payment of royalty cannot be treated as a condition of sale for the goods imported and hence, the transaction price cannot be loaded with payment of royalty. The Larger Bench of this Tribunal in the case of *Hoerbiger India Pvt. Ltd. v. Commissioner of Customs - 2003 (156) E.L.T. 62 (T-Larger Bench)* has held that since the licence fee or running royalty is not relatable to the goods imported, therefore they are not includible in the transaction value of the goods.

11. While going through the case *Matsushita Television & Audio (I) Ltd. (supra)*, relied upon by the Revenue, we find that the facts in that matter were different. In that case, it was agreed between the foreign supplier and the Indian importer that the foreign supplier would assist the Indian importer in manufacturing the colour TV by selling the components and Indian importer/manufacturer was not free to procure the components from anybody else. It was also a condition therein that if the Indian manufacturer/importer wanted to buy components from elsewhere, first of all they should take prior approval from the technical know-how supplier and on such approval only, the Indian importer was free to use the components in the manufacture of Colour TV. In view of the facts of that case it was held that the payment of royalty was a condition of sale and therefore, it should be included in the cost of components imported. In the instant matter, no such condition exists in the agreement and, therefore, it can very well be said that the facts of the instant case and

the facts in *Matsushita Television & Audio (I) Ltd. (supra)* are totally different. This Tribunal in the matter of Thyssenkrupp Elevator (I) P.Ltd. vs. ACC (Import & General), New Delhi; 2017(356) ELT 249 (Tri-Del) while deciding the issue about Rule 10(1)(c) *ibid* after taking into consideration the decisions of the Hon'ble Supreme Court in the matters of *Matsushita Television & Audio (I) Ltd. (supra)* and *Ferodo India Pvt. Ltd. (supra)*, has held as under:-

“10. In the impugned order, Commissioner (Appeals) has cited the decision of the Hon'ble Supreme Court in the case of Matsushita Television & Audio (India) Ltd. (supra) to load the invoice value (page 31). However, we find that the Hon'ble Supreme Court in the case of Ferodo India P. Ltd. (supra) has distinguished the case of Matsushita Television & Audio (India) Ltd. (supra) as follows :-

“In the case of Matsushita Television (supra) the pricing arrangement was not produced before the Department. In our view, the consideration clause in such circumstances is of relevance. As stated above, pricing arrangement and TAA are both to be seen by the Department. As stated above, in a given case, if the consideration clause indicates that the importer/buyer had adjusted the price of the imported goods in guise of enhanced royalty or if the Department finds that the buyer had misled the Department by such pricing adjustments then the adjudicating authority would be justified in adding the royalty/licence fees payment to the price of the imported goods. Therefore, it cannot be said that the consideration clause in TAA is not relevant. Ultimately, the test of close approximation of values require all circumstances to be taken into account. It is

keeping in mind the consideration clause along with other surrounding circumstances that the Tribunal in the case of Matsushita Television (supra) had taken the view that royalty payment had to be added to the price of the imported goods. “

In the light of Apex Court’s decision in the case of Ferodo India P. Ltd., we are of the view that the earlier decision of Apex Court stand distinguished. Accordingly, we have no hesitation in setting aside the finding of the Commissioner (Appeals) to load the invoice value with royalty amount.”

12. No evidence has been adduced by the Revenue to prove that the technical know-how supply and the payment of royalty is a condition of sale for the goods imported by the appellant from the foreign supplier. Nowhere in the agreement entered into by the appellants with the Licensors, it could be shown or is provided that the appellants have to import the goods from them only. The revenue has also accepted the transaction value in terms of Rule 3(3)(a) *ibid*. The payment of royalty is for the know-how received by the Appellants for manufacture of the finished goods and not related to the inputs imported. The only dispute in the instant case is relating to includibility of royalty in terms of Article 8.1.3 of the Licence and Technical Assistance Agreement dated 4.2.2011. It is the specific stand of the Appellants that while determining the quantum of royalty, value of imported inputs have been deducted from the *Net Sale*. From the records, it is clear that the running royalty and lump sum amount paid to Licensors relate only to the final products being manufactured by the Appellants and it has not relation, whatsoever, with the goods

imported. The payment of running and lump sum amount is not a pre-condition for import of goods and hence the provisions of Rule 10(1)(c) *ibid* has no application. In terms of Rule 10(1)(c) *ibid* royalties can be added to the price of imported goods only if such royalties are related to the imported goods that the buyer is required to pay directly or indirectly, as a condition of the sale of goods being valued, to the extent that such royalties are not included in the price actually paid or payable.

13. Reliance has also been placed on the decision of the Tribunal in the case of Commissioner of Customs, Mumbai v. BASF Strenics Pvt. Ltd. - 2006 (195) E.L.T. 206 (Tri.-Mumbai) in which the Tribunal has held that “the applicant Commissioner himself has stated in the grounds of appeal that in effect the royalties are being paid on manufacturing cost plus profit plus the value of raw materials. Just because a particular formula has been designed to calculate the royalty amount which also includes the raw materials cost, it cannot be said that the royalty payment is related to the imported goods”. Therefore, the Tribunal that in case held that even if royalty is paid on a basis that is inclusive of raw material value, it cannot, be said that the royalty payment is related to the imported goods. The case of BASF (*supra*) was affirmed by the Hon’ble Supreme Court in the case of Ferodo India Pvt. Ltd. (*supra*), in which BASF was also a party.

14. From the reading of the Rule 10(1)(c) *ibid*, it is seen that the royalty is includible in the value of imported goods only in case if the said royalty is related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods

being valued. The term used in Rule 10(1)(c) of Customs Valuation Rules, 2007 is “Condition of Sale”. As per Oxford Dictionary condition means “Stipulation or something on fulfilment of which something else depend”. Meaning thereby things on whose fulfilment or other things are made to depend. The department could not show that the royalty which they wanted to add to the assessable value is a condition pre-requisite for sale and the assessable value is not a true transaction value in terms of Section 14(1)(a) of the Customs Act, 1962. On analyzing the facts, we observe that ingredients of the aforesaid rule does not exist in the import transaction of components by the appellant from the overseas Licensors. From a reading of clauses 8.1, 8.1.1, 8.1.2 & 8.1.3 of the Agreement, it is abundantly clear that royalty is required to be paid only on the sale of the manufactured goods and royalty is not relevant to the import of the components. For arriving the value for calculation of royalty, amongst other elements, cost of standard bought out components and the landed cost of imported components are deducted. The above clauses also makes it clear that this method of deduction is adopted even if the procurement of components are made from any source other than the overseas Licensors or related foreign suppliers. Therefore from the clause referred above, it is amply clear that the royalty is not paid “as a condition of the sale of the goods being valued”. Thus the royalty has nothing to do with the value of the imported raw-materials procured from the overseas Licensors or related foreign supplier or value of the imported components procure irrespective of origin. In the present case there is no finding by

Commissioner that the buyer had adjusted price of imported goods in the guise of enhanced royalty. Nor that the appellant was compelled to import raw material from the overseas Licensors. Nothing in the Agreements indicate any binding to buy raw material from the overseas Licensors or their Associate companies. Rather, the Id. Counsel had submitted a statement showing use of raw material sourced locally as well as from unidentified origin. As regard reliance placed by the Id. Authorised Representative on the case of Matsushita Television & Audio (I) Ltd. (*supra*), it was found that in the said judgment the fact was that the royalty payment to collaborator was 3% of sales turnover of final product, including the cost of imported component by which it became the condition of sale of finished goods. Whereas, in the present case the royalty is paid only on the value addition achieved, after deducting the cost of imported components, be it imported from related or un-related persons. Payment of royalty has nothing to do with the supply of components or on the price of components and since the foreign company had no controlling interest in the Indian buyer, the royalty paid cannot form part of the price for the supply of components. Therefore the ratio of the said decision is not applicable on the facts of the present case. In view of the facts as discussed in earlier paragraphs, the law laid down by the Hon'ble Supreme Court in *Feredo India Pvt. Ltd.* (*supra*) is applicable in the facts of the present case.

15. Therefore, according to us, Rule 10(1)(c) of Customs Valuation Rules, 2007 is not applicable, in the facts of this case, hence the finding of the Id. Commissioner (Appeals) is patently incorrect and

not sustainable. In view of the above, we hold that the invoice value is not required to be loaded by including the royalty. The impugned order is set aside and the Appeal is allowed with consequential relief, if any.

(Pronounced in Court on 04/02/2019)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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I have gone through the order proposed by learned brother Member (Judicial). However even after lot of persuasion I am not in position to agree with the same. The issue under consideration is in respect of inclusion of the royalty paid by the appellants to overseas Licensors/ foreign supplier's for determining the assessable value of goods imported by them.

2.0 Appellants are engaged in the manufacture of automobile components. For manufacture of the said components they procure about 45% of the inputs from their principals namely M/s Bosch Corporation Japan and remaining inputs are sourced indigenously. Undisputedly the inputs procured from the principal are subject to the Custom Duty on the value determined under Section 14 of Customs Act, 1962. Apart from the payments made by the appellant to their principals as a consideration for supply of goods, they also pay, fixed and running royalty to their principal. Issue is in respect of addition of royalty charges to the transaction value for determination of the assessable value.

3.1 As per the Technical Assistance Agreement dated 04.02.2011 between the appellant and Robert Bosch GmbH (Bosch), Robert Bosch LLC USA (RBUS) and Bosch Corporation Japan (RBJP)-

"2. License Grant

2.1 Licensors hereby grant license to Licensee the non-transferable, non exclusive right.

2.1.1 to manufacture Licensed Products in its own factories in the Licensed Territory by the use of Knowhow of the Licensed Patents, and

2.1.2 to sell the Licensed Products thus manufactured in its Licensed Territory to original equipment manufacturers in India ("OEM") for the installation into their vehicles in the Licensed Territory and for the purpose of OES (sale of Licensed Products by OEM for replacement purpose)

8. Compensation

8.1 Licensee shall pay to Licensors, in addition to the costs separately invoiced hereunder, the following compensation for the rights granted to it:

8.1.1 A lump sum payment ("entrance fee") amounting to EUR 400,000, - This amount shall not be credited against royalties payable according to Article 8.1.2.

Licensee shall pay Forty percent (40%) – EUR 160,000, of the aggregate payment of the foregoing lump sum to Bosch. Thirty percent (30%) – EUR 120,000 to RBUS and Thirty percent (30%) – EUR 120,000 to RBJP.

The lump sum share shall be paid to each Licensor in two installments as follows:

- *First installment of EUR 200,000 of the above amount payable after this agreement has been signed by the parties and*
- *Second installment of EUR 200,000 next year (within one year from the date of remittance of first installment)*

8.1.2 a running royalty amounting to 3% of the net sales price of all licensed products manufactured by Licensee under this agreement. Licensee shall pay Forty percent (40%) – 1.2% of aggregate payment of the foregoing royalty to Bosch. Thirty percent (30%) – 0.9% to RBUS and Thirty percent (30%) – 0.9% to RBJP.

8.1.3 The term "net sale price" when used in this agreement shall mean the gross invoice price of licensed products manufactured under this agreement and sold to or otherwise disposed of by Licensee in normal, arms length, bonafide, commercial transactions exclusive of excise duties, minus the

cost of standard bought out components and the landed cost including ocean freight, custom duties, etc., of the imported components, if any. Components shall be any part of Licensed Products which does not itself undergo any change, processing, or treatment in the factory of Licensee and is physically removable from, the assembled final product.

8.2 Licensee shall not pay royalties for licensed products or parts or components or sub assemblies thereof that are supplied to Bosch according to Article 5.3, and this has to be considered in pricing.

8.3 Licensee shall not pay royalties for licensed products or parts or components or sub assemblies thereof that are supplied to RBUS and RBJP and to other affiliated Companies of Bosch, for the purpose of manufacturing complete products corresponding to Licensed Products under their License Agreements with Bosch or with Licensor, at the request of said companies according to article 5.4. The same applies for the supply of complete Licensed Products to RBUS and to RBJP. However, for the supply of complete Licensed Products to other Affiliated Companies, Licensee shall pay royalties to Licensors as stipulated under this agreement.”

3.2 From the reading of the said agreement adjudicating authority has concluded- “Now as per the present agreement, I find that the cost of components has only been excluded for the payment of royalty when the components suit the following conditions i.e. – when the component does not itself undergo any change, processing or treatment in the factory of the Licensee and is physically removable from the assemble final product. Therefore IO find that the cost of raw material and the components imported from the related party which are not physically removable from the final product are included in the payment of royalty, therefore I find that in the instant case

also, the decision of the Hon'ble Apex Court in Mathushita Televisions & Audio India Ltd {2007 (2110 ELT 200 (SC)} is applicable because the cost of raw material and components imported from the related party which are not physically removable from the assemble final products are included in the payment of royalty. Hence I find that the lump sum and the running royalty paid under the present agreement is related to the imported goods and there is a condition of sale. Hence, I find that thye payments made under the present agreement is includible in the assessable value of the imported goods under Rule 10(1)(c) of the Customs Valuation Rules, 2007."

3.3 On the basis of the above finding, adjudicating Authority ordered for making additions in the CIF value in following manner;-

% addition to the CIP value

$$= \frac{\text{Total royalty payment (lumpsum + running royalty) in the year (in Rs)} \times 100}{\text{Total Assessable value of imported goods (in Rs)}}$$

3.4 Commissioner (Appeal) has concurred with the findings of the adjudicating authority stating-

"9 I further find that the adjudicating authority, in the impugned order has found that the cost of components has only been excluded for the payment of royalty when the said components suit the conditions i.e. when the component does not itself undergo any change, processing or treatment in the factory of License and is physically removable from the assembled final product and therefore the cost of raw material and components imported from the related party which are not physically removable from the assemble final product are included in the payment of royalty and by placing reliance on the case law of Mathushita Televisions & Audio India Ltd

{2007 (2110 ELT 200 (SC))}, it has been held that the payment under the present agreement is related to the imported goods and there is condition of sale. In this context, I find that the appellant has neither contested this specific finding of adjudicating authority nor produced any evidence to dispute the same in present appeal filed by them. Therefore, the lump sum amount and royalty payable on licensed products is directly related to the imported goods (components) as while calculating the amount of royalty the appellant has not excluded the cost of imported components which are not physically removable from the assembled products.

10. The appellants has contended that the royalty and lump sum amount paid to overseas party is for providing technical assistance for manufacture of the final products and not the goods imported. In this regard, from the discussion in the foregoing para it is crystal clear that the net sale price on which 3% royalty is paid by the appellant is without deduction of the cost of components imported from their related party which are not physically removable from the final products. In other words the value of imported goods is included in the net sale price of appellants manufactured goods. I further find that Hon'ble Supreme Court of India in case of Mathushita Televisions & Audio India Ltd {2007 (2110 ELT 200 (SC))} has held that:-

“6. On reading the above agreement, the following features emerge. Under Clause 1.03 the term “Net-factory sale price” has been defined to mean the sale price billed by the appellants for its products to its customers in normal arm's length transaction exclusive of taxes, freight and insurance, but including the cost of the bought-out components and the cost of the imported components. Under Clause 1.04 the term “Technical Know-how” was defined to mean technical information required for the manufacture of colour T.V. as specified in Clause 3.01. The technical know-how which was agreed to be furnished to the appellants was to consist of quality control standard and specification of the components to

be used in the manufacture of T.V. sets. Further, under Clause 2.01 it was agreed that MEI shall render to the appellants the technical assistance regarding the manufacture of the T.V. sets in the manner provided in the said clause. Under the said Clause 2.02(C), all costs, charges and expenses, incurred by the appellants for technical assistance, was to be paid by the appellants in U.S. Dollars. Further, under Clause 4.01, MEI agreed to grant to the appellants a licence to use the technical assistance and the technical know-how for the manufacture of the colour T.V. at the appellants' factory in India and also for sale of such products throughout India. Under Clause 6.01, in consideration of the technical assistance to be rendered by MEI and in consideration of the licence to be granted by MEI to the appellants it was agreed that the appellants shall pay to MEI the royalty at the rate of 3% on the net ex-factory sale price of the colour T.V. manufactured and sold. Further, it was agreed that in addition to the technical assistance, MEI would assist the appellants in the manufacturing of the colour T.V. by selling the components to the appellants. Under the Agreement, the parties further agreed that if the appellant desired to make use of bought-out components it can do so provided the said components are forwarded to MEI for inspection and if MEI approves the quality and the specifications of such bought-out components then alone the appellant would be free to use such components in the manufacture of colour T.V.

7. The question which arises for consideration in this civil appeal is : whether royalty payment was connected with the imported components. Under Rule 9(1)(c) of the Valuation Rules, 1988, only such royalty which is relatable to the imported goods and which is a condition of sale of such goods alone could be added to the declared price. However, in the present case, payment of continuing royalty was payable at the rate of 3% of the net ex-factory sale price of the colour T.V. exclusive of taxes, freight and insurance but including the cost of imported components. In other words, the royalty payment was to be computed not only on the domestic element of the net

sale price of the colour T.V. but also on the cost of imported components. A bare reading of the agreement shows that payment under the said agreement related not only to the production of the goods in India but also to imports. In some of the decisions cited on behalf of the assessee, we find that the net ex-factory sale price of the finished products expressly excluded the cost of imported components. On the other hand, in the present case, the cost of imported components was expressly included in the net ex-factory sale price of the colour T.V. Further, when payment to MEI was at the rate of 3% of the sales turn over of the final product, including cost of imported component, it became a condition of sale of the finished goods. Hence, in this case both the conditions of Rule 9(1)(c) of the Valuation Rules, 1988, are satisfied.””

4.1 Appellants have along with the appeal memo at page 123 of paper book submitted the “*Annexure: Determination of Quantum of Royalty*”. In the said document, they have shown calculation of royalty by deducting the import content. The calculations as provided are reproduced in Table 1 below:

Table 1		Royalty Calculations as per page 123 of Paper Book			Amount ‘Rs
Period		Total Sales	Import Content	Net Sale/ Royalty Bearing Value	Total Royalty
From	To				
Oct-11	Dec-11	14,53,65,008	2,73,89,650	11,79,75,358	35,39,261
Jan-12	Mar-12	12,50,90,638	2,12,33,148	10,38,57,490	31,15,725
Apr-12	Jun-12	13,55,66,826	2,02,87,440	11,52,79,386	34,58,382
Jul-12	Sep-12	7,06,21,892	1,39,08,992	5,67,12,900	17,01,387
Oct-12	Dec-12	12,56,42,730	2,02,04,355	10,54,38,375	31,63,151
Jan-13	Mar-13	17,23,15,515	1,90,95,168	15,32,20,347	45,96,610
Apr-13	Jun-13	14,82,90,377	98,67,915	13,84,22,462	41,52,674
Jul-13	Sep-13	16,18,78,601	1,72,74,453	14,46,04,148	43,38,124

4.2 On the basis of the above calculation appellants have submitted that for determination of sale value while computing the royalty, the value of imported goods is deducted i.e. the royalty has been paid on net value addition occurred in India after importation and not on the value of the goods imported into India. Thus the royalty is not includible in the value of imported goods.

4.3 On the basis of the information furnished by the appellant, (refer para 8) of the order proposed by Ld Member (Judicial) it has been contended that the appellants have been importing the components from persons other than supplier. From the comparison of the table in para 8 with the table as per page 123 of the paper book, appellants have while determining the net sale price deducted the value of entire imported component and not that imported from the licensors.

4.4 The submissions made by the appellant need to be examined in light of the para 8.1.3 of the "License and technical Assistance Agreement" referred to in para 3.1 above. As per the said para of agreement, net sale price has been defined. In terms of definition as incorporated in the agreement,

$$NSP = GIP - (CSBP + LCIC)$$

Where,

NSP is Net Sale Price;

GIP is gross invoice price of licensed products manufactured under this Agreement and sold or otherwise disposed by licensee in normal, arm's length, bonafide, commercial transactions exclusive of excise duties;

CSBP is cost of standard brought out components; and

LCIC is the landed cost including ocean freight, insurance, customs duties, etc., of the imported components, if any.
(Components shall be any part of Licensed Products which does not itself undergo any change, processing, or treatment in the factory of Licensee and is physically removable from the assembled final Product.)

4.5 From the above it is quite clear that the cost of standard brought out items which have been procured indigenously and the landed cost of imported goods is not to be included in the Net Sale Price for computing the royalty to be paid. However a rider has been added, which says that only cost of those components which do not undergo any change, processing or treatment in the factory of licensee and is physically removable from the assembled final product can be excluded. The said condition do not permit deduction of landed cost of each and every imported components.

4.6 Appellants have thus not been able to demonstrate that there is no connection between the imported goods and the royalties being paid.

5.1 From the facts of case in hand, it is quite evident that appellants have entered into "License and Technical

Assistance Agreement” with Bosch, RBUS and RBJP collectively called Licensor. In terms of the agreement the appellants have been licensed by the licensor to manufacture in its factory by the use of know-how and Licensed Patents, and sell in licensed territory (India). Licensed Products as per the agreement shall mean vacuum boosters of the type NOAH and reservoirs and tandem master cylinders of type TMCB.

5.2 As per para 2.2 and 2.3 of the agreement-

“2.2 It is expressly understood that this License does not include the manufacture of

2.2.1 semi-finished goods e.g. castings, forgings, plastic parts,

2.2.2 commercially available parts, e.g. screw, rivets, resistors, seals, springs, ball bearings, cables,

2.2.3 materials and processes that refer to the composition or manufacture of material.

The license includes, however, processes used in the further treatment of materials during the manufacture of Licensed Products.

2.3 Licensee shall manufacture Licensed Products and Parts therefor in its own factories only. The manufacture of parts by suppliers of Licensee requires the prior explicit written consent of Licensors in each individual case. Excluded here from are commercially available parts such as screw, rivets, resistors, seals, springs, ball bearings, cables. In case the Licensors have granted their consent, Licensee shall see to it that the supplier does not supply such parts to any third party without the consent of Licensors and that such supplier is bound to the secrecy obligation to which Licensee is bound (Article 14).”

5.3 From the said clause of the agreement it is quite evident that all the standard brought out items which are commercially available are not the part of the agreement.

Further semi finished goods manufactured in factory of appellant or the materials and processes that refer to the composition or manufacture of materials is also not part of the agreement. In respect of the other items which are part of the agreement, appellants will be required to manufacture the components either themselves or through the suppliers which are explicitly approved by the licensors.

5.4 As per para 5.1 of the agreement-

“5.1 Licensors are prepared to supply to licensee, at the request of Licensee specific components of licensed products within its delivery possibilities, subject always to current delivery conditions, supplies of such a nature require separate agreements to be entered into from case to case.”

5.5 It is in terms of this para that appellants have procured the imported components from the Licensor.

5.6 A combined reading of the above referred paras in the agreement, definitely point towards the connection between the imported goods procured by the appellants from the Licensor and royalty being paid by the Licensee for making use of the technical know-how to manufacture the finished goods using the said goods. In case the same goods are manufactured by the appellant themselves or through their supplier then in that case as per the agreement royalty charges are calculated without deducting the value of such self manufactured components. However when the same are procured from the Licensor the said royalty charges are calculated excluding the same. Thus in case where the

imported components are procured from the Licensor, by the appellants, the cost of imported component in the manufacture of finished goods as per the appellants is {CIF value + Custom Duties} and in case if the same goods are manufactured indigenously using the technical know-how the cost of the same component will be {Landed Cost of the said components + Royalty Paid to the Licensor}. Thus the connection between the royalty paid and the imported components is quite evident.

5.7 In terms of Rule 10(1)(c), those royalty charges which are connected with the imported goods and is a condition for the sale of said goods need to be added for determining the assessable value.

6.1 Appellants have heavily relied upon the decision of the Apex Court in case of Ferodo India [2008 (224) ELT 23 (SC)] while the revenue has relied upon the decision in case of Matsushita Television referred above. In my view Hon'ble Supreme Court has in case of Ferodo India clearly laid down the scope of rule 9(1)(c) and also explained its decision in the case of Matsushita. The relevant excerpts are reproduced below:

“Role of Interpretative Notes to CVR, 1988

13. *At the outset, it may be stated that Rule 9(1)(c) has to be read with the Interpretative Notes and when so read it authorises the Customs to add the royalties/licence fees to the assessable value only in certain conditions, namely, when the royalties/licence fees are related to imported goods; that, when the buyer is required to pay to the seller, directly or indirectly,*

as the condition of the sale of the goods being valued, such royalties and licence fees are not included in the transaction value.

14. *One more significance of the Interpretative Notes is that it has placed the burden on the importer/buyer to prove the correctness of the price of the imported goods in terms of the means prescribed in Rule 4(3)(a) and Rule 4(3)(b). In other words, the CVR mandates the hierarchy of valuation methods to be applied in the event of the transfer price being rejected.*

Analysis of Rule 9(1)(c)

15. *Rule 9(1)(c) extends the quantum of levy under Rule 4. Rule 9(4) mandates that there can be addition to the transaction value except as provided in Rule 9(1) and (2). Hence, addition for cost can only be made in situations coming under Rule 9(1) and (2). Rule 9(1) and (2) is based on the principle of attribution. Under Customs law, valuation is done on pricing whereas in the case of transfer pricing under Income-tax Act, 1961, valuation is profit based. The principle of attribution of certain costs (including royalty and licence fee payments) to the price of the imported goods is provided for in Rule 9 under situations mentioned in Rule 9(1) and (2). In transfer pricing, the arm's length price is inferred from various methods to avoid profit-shift from one jurisdiction to another and it is here that principle of allocation of profits comes in (i.e. in the case of transfer pricing).*

16. *Under Rule 9(1)(c), the cost of technical know-how and payment of royalty is includible in the price of the imported goods if the said payment constitutes a condition pre-requisite for the supply of the imported goods by the foreign supplier. If such a condition exists then the payment made towards technical know-how and royalties has to be included in the price of the imported goods. On the other hand, if such payment has no nexus with the wording of the imported goods then such payment was not includible in the price of the imported goods.*

17. *In the case of Essar Gujarat Ltd. (supra) the condition pre-requisite, referred to above, had direct nexus with the functioning of the imported plant and, therefore, it had to be loaded to the price thereof.*

18. *Royalties and licence fees related to the imported goods is the cost which is incurred by the buyer in addition to the price which the buyer has to pay as consideration for the purchase of the imported goods. In other words, in addition to the price for the imported goods the buyer incurs costs on account of royalty and licence fee which the buyer pays to the foreign supplier for using information, patent, trade mark and know-how in the manufacture of the licensed product in India. Therefore, there are two concepts which operate simultaneously, namely, price for the imported goods and the royalties/licence fees which are also paid to the foreign supplier. Rule 9(1)(c) stipulates that payments made towards technical know-how must be a condition pre-requisite for the supply of imported goods by the foreign supplier and if such condition exists then such royalties and fees have to be included in the price of the imported goods. Under Rule 9(1)(c) the cost of technical know-how is included if the same is to be paid, directly or indirectly, as a condition of the sale of imported goods. At this stage, we would like to emphasis the word indirectly in Rule 9(1)(c). As stated above, the buyer/importer makes payment of the price of the imported goods. He also incurs the cost of technical know-how. Therefore, the Department in every case is not only required to look at TAA, it is also required to look at the pricing arrangement/agreement between the buyer and his foreign collaborator. For example if on examination of the pricing arrangement in juxtaposition with the TAA, the Department finds that the importer/buyer has misled the Department by adjusting the price of the imported item in guise of increased royalty/licence fees then the adjudicating authority would be right in including the cost of royalty/licence fees payment in the price of the imported goods. In such cases the principle of*

attribution of royalty/licence fees to the price of imported goods would apply. This is because every importer/buyer is obliged to pay not only the price for the imported goods but he also incurs the cost of technical know-how which is paid to the foreign supplier. Therefore, such adjustments would certainly attract Rule 9(l)(c).

Application of Rule 9(l)(c) to the facts of the present case

19. *Applying the above tests to the facts of the present case, we find that the adjudicating authority had not examined the pricing arrangement between the foreign collaborator and the buyer. It has only examined the royalty/TAA.*

20. *Be that as it may, in the present case, on reading TAA we find that the payments of royalty/licence fees was entirely relatable to the manufacture of brake liners and brake pads (licensed products). The said payments were in no way related to the imported items. In the present case, no effort was made by the Department to examine the pricing arrangement. No effort was made by the Department to ascertain whether there exists a price adjustment between cost incurred by the buyer on account of royalty/licence fees payments and the price paid for imported items. No effort was made by the Department to ascertain enhancement of royalty/licence fees by reducing the price of the imported items. In the circumstances, we find no infirmity in the impugned judgment of the Tribunal. In this case, the Department has gone by TAA alone. On reading TAA in entirety, we are of the view that there was no nexus between royalty/licence fees payable for the know-how and the goods imported for the manufacture of licensed products. The Department itself has invoked Rule 9(l)(c).*

21. *In the alternate, it has invoked Rule 9(1)(e). This Rule 9(e) cannot stand alone. It is a corollary to Rule 4. There is no finding in the present case that what was termed as royalty/licence fee was in fact not such royalty/licence fee but some other payment made or to be made as a condition pre-requisite to the sale of the imported goods. It is important to*

bear in mind that Rule 9 refer to cost and services. Under Rule 9(1), the price for the imported goods had to be enhanced/loaded by adding certain costs, royalties and licence fees and values mentioned in sub-rule 9(1)(a) to 9(1)(d). It refers to “all other payments actually made or to be made as a condition of sale of the imported goods.” In the present case, the Department invoked Rule 9(1)(c) on the ground that royalty was related to the imported goods, having failed it cannot fall back upon Rule 9(1)(e) because essentially we are concerned with the addition of royalty etc. to the price of the imported goods. Further, in the present case, the Department has accepted the transaction value of the imported goods.

22. *In the case of Essar Gujarat Ltd. (supra), the buyer had entered into a contract with TIL for purchase of Direct Reduction Iron Plant (“the plant”). The entire agreement was for import of the plant. The agreement was subject to two conditions- (a) approval of G.O.I. and (b) obtaining transfer of licence from M/s. Midrex, USA. Without the licence from Midrex, the imported plant was of no use to the buyer. Therefore, it was essential to have the licence from Midrex to operate the plant. Therefore, it was held by this Court that procurement of licence from Midrex was a pre-condition of sale which was specifically recorded in the agreement itself. In view of specific terms and conditions to that effect in the agreement, this Court held that payments made to Midrex by way of licence fees had to be added to the price paid to TIL for purchase of the plant. There is no such stipulations in the TAA in the present case. Therefore, in our view, the adjudicating authority erred in placing reliance on the judgment of this Court in Essar Gujarat Ltd. (supra).*

23. *In the case of Matsushita Television & Audio India Ltd. v. CoC reported in 2007 (211) E.L.T. 200 (S.C.) the question which arose for determination was whether royalty amount was attributable to the price of the imported goods. In that case, the appellant was a joint venture company of MEI, Japan and SIL for obtaining technical assistance and know-how. Under the*

agreement, the appellants were to pay MEI a royalty @ 3% on net ex-factory sale price of the colour TV receivers manufactured by the appellants for the technical assistance rendered by MEI. The appellants were to pay a lump-sum amount of U.S. \$ 2 lakhs to MEI for transfer of technical know-how. It was the case of the appellant that payment of royalty was not related to imported goods as the said payment was made for supply of technical assistance and not as a condition pre-requisite for the sale of the components.

24. One of the questions which arises for determination in this civil appeal is whether reliance could be placed by the Department only on the Consideration Clause in the TAA for arriving at the conclusion that payment for royalty was includible in the price of the important components.

25. Rule 4(3)(b) of the CVR, 1988 provides for an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value. A number of factors, therefore, have to be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the difference in values etc. As stated above, Rule 4(3)(a) and Rule 4(3)(b) of the CVR, 1988 provides for different means of establishing the acceptability of a transaction value. In the case of Matsushita Television (*supra*) the pricing arrangement was not produced before the Department. In our view, the Consideration Clause in such circumstances is of relevance. As stated above, pricing arrangement and TAA are both to be seen by the Department. As stated above, in a given case, if the Consideration Clause indicates that the importer/buyer had adjusted the price of the imported goods in guise of enhanced royalty or if the Department finds that the buyer had misled the Department by such pricing adjustments then the adjudicating authority would be justified in adding the royalty/licence fees payment to the price of the imported goods. Therefore, it cannot be said that the Consideration Clause in TAA is not relevant. Ultimately, the

test of close approximation of values require all circumstances to be taken into account. It is keeping in mind the Consideration Clause along with other surrounding circumstances that the Tribunal in the case of Matsushita Television (supra) had taken the view that royalty payment had to be added to the price of the imported goods.”

6.2 In case of Husco Hydraulics Pvt Ltd [2016 (341) ELT 113 (T-MUM)] in has after taking into account both the decisions in case of Matsushita and Ferodo concluded in favour of addition of royalty paid. The relevant excerpts are reproduced below:

“4.5 Now we examine the various case laws cited by both the sides. Revenue has heavily relied on the decision of the Hon’ble Apex Court in the case of Matsushita Television & Audio Ltd. (supra). In the said case the Hon’ble Apex Court has observed as follows :

7. The question which arises for consideration in this civil appeal is : whether royalty payment was connected with the imported components? Under Rule 9(1)(c) of the Valuation Rules, 1988, only such royalty which is relatable to the imported goods and which is a condition of sale of such goods alone could be added to the declared price. However, in the present case, payment of continuing royalty was payable at the rate of 3% of the net ex-factory sale price of the colour T.V. exclusive of taxes, freight and insurance but including the cost of imported components. In other words, the royalty payment was to be computed not only on the domestic element of the net sale price of the colour T.V. but also on the cost of imported components. A bare reading of the agreement shows that payment under the said agreement related not only to the production of the goods in India but also to imports. In some of the decisions cited on behalf of the assessee, we find that the net ex-factory sale price of the finished products expressly

excluded the cost of imported components. On the other hand, in the present case, the cost of imported components was expressly included in the net ex-factory sale price of the colour T.V. Further, when payment to MEI was at the rate of 3% of the sales turn over of the final product, including cost of imported component, it became a condition of sale of the finished goods. Hence, in this case both the conditions of Rule 9(1)(c) of the Valuation Rules, 1988, are satisfied.

4.6 It is clear that the Hon'ble Apex Court has considered that if royalty is paid on the value inclusive of the value of imported goods then it becomes a condition of sale. The learned Counsel has relied on the decision of the Hon'ble Apex Court in the case of Ferodo India (supra). However, it is seen that Hon'ble Apex Court has not differed with the decision in the case of Matsushita Television & Audio Ltd. Further there was no assertion by the Revenue in that case to the effect that royalty is collected on the price inclusive of the value of imported goods.

4.7 The decision of the Hon'ble Apex Court in the case of J.K. Corporation - 2007 (208) E.L.T. 485, is not relevant as in that case the one time know-how fee was paid for the installation of plant and machinery. The facts were substantially different from the facts in the case of Matsushita Television & Audio Ltd. (supra).

4.8 In the instant case it is undisputed that the royalty is paid on a value inclusive of the value of the imported goods. Clause 5 of the Article of definition section of the licence agreement defines net sale as follows :

"This agreement is made and entered into as of this first day of April, 2007, by and between Husco International, Inc. a Delaware Corporation having offices in Waukesha, Wisconsin, USA (hereafter called "HUSCO") and HUSCO Hydraulics Private Ltd. Having its registered office at MIDC, Talegaon, Pune, Maharashtra, India (hereinafter called "the Licensee").

1. *Licensed Products shall be defined as all control valves, components and accessories manufactured or designed by HUSCO.*
 2. *Patents shall be defined as any and all patents owned by HUSCO covering the Licensed Products in any of the countries of the Territory as hereinafter defined.*
 3. *Trademarks shall be "HUSCO".*
 4. *Territory shall be worldwide (non-exclusive) except for North America and Europe, unless exempted by HUSCO for special applications.*
 5. *Net Sale shall be defined as the actual or invoice selling price EXWORKS, less any shipping, insurance, packing or excise taxes thereon, but without deduction for components purchased from HUSCO, for bad debts, nor for any alleged incompleteness or failure of the Technical Information.*
2. *Payments by the Licensee: The licensee agrees and undertakes to pay the following royalty to HUSCO based upon the currency exchange rate in effect on the last day of the covered period. The licensee agrees to pay to HUSCO a quarterly payment for royalty and technical assistance at a rate equal to three per cent (3%) of the licensee's Selling Price for any and all the Licensed Products made or assembled, and used, sold, or shipped by the Licensee coming within the definition of the Licensed Products or equivalents or improvements thereof, and/or merchandised in association with any of the Trademarks and/or coming within any of the patents, or copyrights, and/or utilizing any of the said Technical Information. The obligation to make payments shall accrue upon sale, invoice, or first date of internal use of shipment, whichever is earlier and shall be due regardless of the fact that the receipt of payment by the Licensee from the Licensee's customer may be at a later date and shall be paid within a period of thirty (30) days from the month end of the date of accrual."*

5. From the above Clause 5 of the agreement, it is crystal clear that the net sale price on which 3% royalty is paid by the appellant is without deduction for components imported from HUSCO, in other words the value of imported goods is included in the net sale price of appellant's manufactured goods. In view of this undisputed fact, it is apparent that the decision of the Hon'ble Apex Court in the case of Matsushita Television & Audio Ltd. (supra) is squarely applicable to the present case. Relying on the same, the Revenue's appeals are allowed. Cross-objections are disposed of."

7.0 In view of discussions as above and finding that there is nexus between the payment of royalty and imported goods I am of the view that there is no merit in the appeal, and same is dismissed.

(Sanjiv Srivastava)
Member (Technical)

POINTS OF DIFFERENCE

In view of the orders as above, matter is referred to Hon'ble President, to refer the matter to Third Member to determine,-

Whether the appeal should be allowed as held by Member (Judicial) or it should be dismissed as held by Member (Technical).

(Pronounced in court on 04.02.2019)

(Ajay Sharma)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

ORDER ON DIFFERENCE OF OPINION

INTERIM ORDER NO. 27/2024

Date of Hearing: 11.09.2023

Date of decision: 08.03.2024

PER: S.K. MOHANTY

Brief facts of the case are that the appellants herein are engaged, *inter alia*, in the manufacture of automobile components. For carrying out such manufacturing activities, they import various inputs into India, apart from procuring components from indigenous sources. In the case in hand, the appellants had imported about 40% of the inputs and the remaining 60% were procured from the indigenous sources. Out of the total quantum of imports made, about 45% were procured from the related persons, viz., M/s Bosch Corporation, Japan and their associated companies; and balance 55% were sourced from the un-related suppliers/exporters. Since the transactions were made between the related persons, the matter was referred to the Special Valuation Branch (SVB) and in finalisation of the value of imports, the proper officer had accepted the transaction value in the SVB Order dated 10.02.2009. During the periodical review of the SVB imports, the Assistant Commissioner vide order dated 26.06.2014, though had accepted the declared invoice value as the transaction value at which the appellants had imported the components from related persons, but had held that the amount of lumpsum payment and running royalty paid by the appellants pursuant to the Licence and Technical Assistance Agreement dated 04.02.2011 are includible in the value of the imported goods, in terms of Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (for short, referred to as 'the Rules of 2007'). On appeal against the said original order dated 26.06.2014, the learned Commissioner of Customs (Appeals), Mumbai-I vide the Order-in-Appeal dated 18.07.2017 (for short, referred to as 'the impugned order') has upheld the original order and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. The appeal was placed before the Division Bench of this Tribunal, comprising of Shri Ajay Sharma, learned Member (Judicial) and Shri Sanjiv Srivastava, learned Member (Technical). Upon hearing both sides, the learned

Members in the Bench had differed in their opinion on the issue whether the royalty amount is includable in the value of components imported by the appellants into India, in terms of Rule 10(1)(c) of the Rules of 2007 or otherwise. Accordingly, the matter was placed before the Third Member to determine, '*whether the appeal should be allowed as held by the Member (Judicial) or it should be dismissed as held by the Member (Technical)*'.

3. Heard both sides and examined the case records.

4. It is an admitted fact on record that both the authorities below have accepted the transaction value under Rule 3(3)(a) of the Rules of 2007. In other words, there is no dispute with respect to the declared value of the goods imported into India by the appellants from the related persons. However, the issue involved in the present appeal relates to includability of royalty in the value of parts/components imported into India, in terms of Rule 10(1)(c) of the Rules of 2007. The said statutory provision is extracted herein below:

"Rule 10(1) – In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) & (b)

(c) Royalties and license fees related to the imported goods, that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods being values, to the extent that such royalties and fees are not included in the price actually paid or payable."

5. On reading of the above valuation provisions, it would reveal that Rule 10(1)(c) *ibid* can only be invoked, if the conditions viz., (i) royalty is relatable to the imported goods; and (ii) royalty is paid as a condition of the sale of the imported goods, are satisfied cumulatively and simultaneously. In other words, if any one of the above conditions is not fulfilled, then Rule 10(1)(c) *ibid* cannot be invoked. Consequently, the royalty paid by the importer-buyer cannot be included in the value of the imported goods.

6. In the present case, running royalty @3% of net sales had been paid by the appellants to three numbers of licence holders, as per the Licence and Technical Assistance Agreement. Further, while determining the net sales, value of all components (imported from related as well as unrelated persons) had been deducted. This fact is evident from the Annexure to the Appeal Memorandum, under title 'Determination of Quantum of Royalty'. The said chart is reproduced below:

Period	Total Sales (in INR)	Import Content (AE & Non AE in INR)	Net sale/Royalty Bearing Value (in INR)	Total Royalty (in INR)	Germany (amt. of royalty in INR)	USA (amt. of royalty in INR)	Japan (amt. of royalty in INR)
Oct.11 to Dec.11	145,365,008	27,389,650	117,975,358	3,539,260	1,415,704	1,061,778	1,061,778
Jan.12 to March.12	125,090,638	21,233,148	103,857,491	3,115,724	1,246,290	934,717	934,717
Apr.12 to Jun.12	135,566,826	20,287,440	115,279,386	3,458,381	1,383,353	1,037,514	1,037,514
Jul.12 to Sep. 12	70,621,892	13,908,992	56,712,900	1,701,387	680,555	510,416	510,416
Oct.12 to Dec.12	125,642,730	20,204,355	105,438,376	3,163,151	1,265,261	948,945	948,945
Jan.13 to Mar.13	172,315,515	19,095,168	153,220,346	4,596,610	1,838,644	1,378,983	1,378,983
Apr.13 to Jun.13	148,290,377	9,867,915	138,422,462	4,152,674	1,661,070	1,245,802	1,245,802
Jul.13 to Sep.13	161,878,601	17,274,453	144,604,148	4,338,124	1,735,250	1,301,437	1,301,437

On examination of the contents in the above chart, it reveals that Column (2) therein captures the Gross Sales Value of the licensed goods/goods manufactured using the know-how. Column (3) has provided the value of the imported goods (raw materials) sourced from both related and un-related suppliers. The quantity of imports from un-related suppliers is more than the imports made from related suppliers. The said facts are also been explained by the appellants to the Original Authority, as recorded by him in the Order dated 26.06.2014 at paragraph 14(iv). From the figures provided in the table, it can be concluded that the royalty paid as indicated in column (5) is only on the value of the finished goods, excluding the value of the imported goods (whether imported from related or un-related persons). For example, if the figures mentioned in the above table for the period October, 2011 to December, 2011 is considered, then it depicts that value of sales of Rs.145,365,008/-, after exclusion of value of imported goods of Rs.27,389,650/- is Rs.117,975,358/- and 3% royalty on such net value comes to Rs. 3,539,260/-. Thus, it transpires from the above table that the actual running royalty amount paid at 3% is only on the value of sales, after excluding the value of imported goods.

7. On reading of the findings recorded by the learned Member (Technical) in the interim order dated 04.02.2019, I find that such factual aspect has been incorrectly recorded therein that while determining the net sale, value of all the components has not been deducted. Since, the royalty paid is not in relation to, or in connection with the sale of imported goods, and it is paid by the appellants for using the know-how in manufacture automotive components in India, the condition laid down under clause (c) of Rule 10(1) *ibid*, shall not

be applicable for addition of royalty in the transaction value of imported goods for the purpose of levy of customs duty. Further, on examination of the License Agreement dated 04.02.2011 available in the case file, I find that no conditions have been prescribed for sale of the imported components. Further, the technical license agreement does not stipulate import of goods from related person only.

8. The issue arising out of the present dispute has been dealt with by the Co-ordinate Bench of this Tribunal in the case of *Kruger Ventilation Indus. (North India) Pvt. Ltd. Vs. Commr. Of Customs (Import), New Delhi*, reported at 2022 (382) ELT 541 (Tri. Del.). It has been held that if the importer is free to procure the inputs from any source, then it does not constitute as a condition for sale of the imported goods and does not warrant inclusion of royalty in the assessable value. The issue decided by the Hon'ble Supreme Court in the case of *Matsushita Television & Audio India Ltd. Vs. Commissioner of Customs* - 2007 (211) E.L.T. 200 (SC), relied upon in the impugned order as well as in the interim order dated 04.02.2019 by the learned Member (Technical) is distinguishable from the facts of the present case. In the said decided case, in addition to providing technical know-how, M/s Matsushita had also provided several other services in connection with the imported goods, on the basis of which, the Hon'ble Supreme Court have held that payment of royalty was a condition of sale of the imported goods. Whereas, in the present case, there is no such testing or other services being provided to the appellants by the know-how providers or by the supplier of imported inputs.

9. In view of the foregoing discussions, I am in agreement with the learned Member (Judicial) that the impugned order is required to be set aside and consequently, the appeal is to be allowed in favour of the appellants.

10. Registry is directed to place this Order before the Regular Bench for recording of the majority order.

(Order pronounced in open court on 08.03.2024)

(S.K. Mohanty)
Member (Judicial)

MAJORITY ORDER

PER : CORAM

11. In view of the majority opinion, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court on 17.02.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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