

Commissioner of Cus. Vs. Rockland Building Materials Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-12-1999

Reported in : (2000)LC503Tri(Mum.)bai

Appellant : Commissioner of Cus.

Respondent : Rockland Building Materials Ltd.

Judgement :

1. This appeal from the revenue was argued by Shri Deepak Kumar, SDR. The respondents were not available although due notices were issued to them. We have taken into account the submissions made by them in their memorandum of cross objection.

2. The dispute centers, around the valuation of certain machinery imported by the respondents M/s. Rockland Building Materials Ltd. The Asstt. Commissioner added to the declared price of DM 10,72,820/- the value of documentation of DM 2,00,000/- and also know-how fee of DM 3,01,000/-. The Collector (Appeals) upheld the addition of a sum of DM 2 lakhs but observed that barring a sum of DM 9,400/- the rest of the fees were not addable to the assessable value. In doing so, he had accepted a sum of DM 301.000 as given by exporters who were also collaborators of the importer. The observation of the Collector (Appeals) is as under: "The next major point of dispute was focussed on the quantum of the cost of supply of documents and services, as per the Collaboration Agreement, which had been agreed, at DM 2 Lakhs. This was prior to the Collaborator, linking up the purchase of the second-hand machinery, with his sister concern, namely M/s.

Brink Hege Engineering GmbH. Shri Chavan, Appraiser, Appeal Unit, pointed out that one of the Directors of the Collaborator's Concern was the sole owner of the supplier of the secondhand machinery, namely, M/s.

Anton Brinks Kalksandsteinwerke, of Germany. Therefore, the two companies, were related companies, legally speaking and this would have an impact, on the valuation.

Shri Chavan, Appraiser, Appeal Unit, also pointed out that consequent to this purchase of equipment, from M/s. Brink Hege Engg.

GmbH, W. Germany, the Collaboration Agreement, was amended specifically with reference to Clauses 5.5 and 5.6 of the Collaboration Agreement between the foreign collaborator and the Appellants. Thereafter, due to amendment, of these clauses, the said amount of DM 2 Lakhs, for supply of documents and services, was merged, with the supply price of machinery, for a total amount of DM 12/72/820 specifically, for machinery and drawings. In this regard, Shri Naqvi, Managing Director, stated that, this amendment was necessary to record an amendment of a fact, which had taken place and did not amount to merging of the two prices but only amounted to quantification of the total liability of the Appellants, vis-a-vis, the foreign supplier, on two counts, namely machinery, and the second count being supply of documents and services." 3. In this appeal it is claimed that the entire quantum of fees paid is required to be added. We shall take each article for determination separately: BRINKHEGE's know how and documentation as available as defined in article 1.3 above will be delivered to RBML in India within 120 days of receiving the first instalment of agreed lumpsum payment on the terms of payment of this agreement and it shall be to the extent possible in English language and metric system, in one reproducible transparency plus 2 copies." Know how and Documentation shall mean all technical information made available in writing, orally or otherwise by Brinkhege to RBML on the manufacture, quality control and testing of the Products, including process information, flow diagrams and text, production processing description, indicative layout of factory and arrangement of machinery, indicative specifications of the plant and equipment to be bought by RBML in India. The know-how and documentation shall in no case

mean detailed engineering drawings by Brinkhege for RBML." 4. In their judgment in the case of CC v. Essar Gujarat Ltd., 1996 (88) E.L.T. 609 (S.C.), the Supreme Court had observed that the plant would be of no value unless it is made functional and that in the absence of technical know-how the plant would not be made functional. In this circumstances, the Supreme Court ordered that the fees for technical know-how to be added for determining the valuation of the plant. In view of this finding, a sum of DM 45,000 becomes addable.

5. Article 3.1 speaks of deputation of RBML personnel for imparting training to the staff of importers in the techniques of production and maintenance of machinery. This expenditure is related to an activity which is subsequent to the importation and installation of the plant and also subsequent to the commencement of the production. This component of fees is clearly not addable.

6. Article 4.1 relates to deputation of personnel for commissioning of the plant. The Supreme Court in their judgment in the case of Bombay Dyeing & Manufacturing Co. Ltd. v. CC, 1997 (90) E.L.T. 276 (S.C.) had held that fees and charges for services to be rendered for installation of the plant in India is not includible in the assessable value.

7. Article 5.1 relates to charges for conducting tests on raw materials and finished products. This is a post commencement of production and therefore the charges are clearly not includible.

8. Article 5.2 speaks of supply of information on latest improvements and developments without specifying the subject matter. On the face of the wording of this article, nothing can be imparted therefrom as to the includibility of the charges paid. However, the working is not suggestive of any improvement or development prior to the installation and therefore these charges also have, to be held as not addable.

9. Article 5.3 relates to know-how for installation. In terms of the Bombay Dyeing judgment cited above, this payment is also not includible.

10. Article 5.4 relates to setting up of an R&D facility which is not connected with the import of the plant. The fees towards this also not includible.

"RBML shall not be entitled to produce at any time, the products of any other manufacturer similar to any of the said products, nor shall sell or otherwise deal in such products without the prior written permission of Brinkhege, which may not be denied without justified reason. Brinkhege, likewise agrees that it shall not deal with any other party, in any way, in 'THE TERRITORY' with regard to the said Products during the validity of this agreement, without the prior written permission of RBML, which may not be denied without justified reason. This article shall not be taken as a restriction on the growth and spread of other sand-lime brick factories in India, but rather as a covenant of RBML and Brinkhege to undertake these projects for any other Indian individuals/companies jointly." 7.1: Brinkhege hereby guarantees that the KNOW-HOW supplied by it, if properly used by RBML; And if the raw materials are those as specified in annexure V to this agreement, will enable RBML to manufacture Products at it's factory to the extent of 80% of INSATLLED CAPACITY to the quality of Products and consumption norms as specified in annexures II, III and IV." 12. Article 7.1 above relates to part of the supply charges as guarantee. Its admissibility, therefore, stands established. The fees charged under article 6.1 is in the nature of condition for sale, the consideration of which is includible in terms of Rule 9 of the Customs Valuation Rules.

13. We thus find that the fees allotted towards articles 2, 3.1, 6.1 & 7.1 are includible in the assessable value of the plant. To this extent, the order of the Commissioner is set aside. As regards the admissibility of other articles, the appeal stands dismissed.

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