

Cc (import) Vs. Avery India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-11-2002

Reported in : (2002)(104)LC153Tri(Mum.)bai

Judge : J Balasundaram, S T S.S.

Appellant : Cc (import)

Respondent : Avery India Ltd.

Judgement :

1. The Revenue seeks stay of operation of the order of the Commissioner (Appeals), who has held that royalty and technical know how fees paid by the respondents herein to the foreign supplier are not includable in the assessable value of two components imported by the respondents from M/s. Gilbarco, USA and Avery Hardoll Fluid Management Ltd., in terms of Section 14(1) of the Customs Act 1962 read with Rule 9(1)(c) of the Customs Valuation Rules, 1988, for the reason that there is no material on record to show that the royalty and technical know how fees are related to the goods imported and to show that the payments are pre-condition of sale of the imported goods. It is the contention of the Id. D.R. Shri Jain that royalty and technical know how fees are to be included since the components imported are assembled into manufactured products by using the technical know how without which the Indian Collaborator would not have proceeded to acquire the components and manufactured the final products. It is his further contention that the payment is a condition of the sale since, if there had been no payment, there would be no technical know how and licence to

manufacture and without these, there would be no sale of the components by the foreign technical collaborator. In support of his arguments, he cites the decision of the Apex Court in the case of Essar Gujarat Ltd. .

2. The prayer for stay is opposed by the Id. Counsel Shri T.Viswanathan, who contends that royalty and technical know how fees were being paid for the manufacture of the entire machinery viz, petrol pumps, and not, only for the two components imported by them and that the payment in question are not pre-condition of sale of the imported goods and hence, provisions of Rule 9(1)(c) of the Customs Valuation Rules are not attracted.

3. We have carefully considered the rival submissions. Prima facie there is no evidence on record to establish that the payments are related to the components imported by the respondents and that the payments are a pre-condition of sale of the imported goods. Therefore, prima facie, Rule 9(1)(c) of the Customs Valuation Rules is not attracted in the circumstances of the case. We, therefore, see no reason to exercise our inherent powers to stay in operation of the impugned order and hence reject the stay application.

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