

**S.D. Technical Service Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-28-2003

**Reported in :** (2003)(88)ECC236

**Judge :** K Usha, S Kang, N T C.N.B.

**Appellant :** S.D. Technical Service

**Respondent :** Cc

**Judgement :**

1. In this appeal at the instance of the importer the issue that is coming up for consideration is whether the amount of UK Pound 50,000 payable as technical know-how fees by the importer is liable to be included in the assessable value of the goods imported.

2. M/s. S.D. Technical Services Pvt. Ltd. was permitted by the Ministry of Industry to have a foreign collaboration with M/s. Westing House Brake & Signal Company Ltd. U.K. (for short, WBS) for the manufacture of Air Brake Distributors and pneumatic Door Closers. Under the agreement between the appellants and WBS an amount of U.K. Pound 50,000 is to be paid by the appellant to WBS in lieu of disclosure of technical know-how. As per agreement the appellants are given the right to manufacture and assemble in India licensed equipment for use in railway locomotives and rolling stock with the technical know-how supplied by the WBS. Agreement also provided for training by WBS to employees of the appellants. Appellants were to manufacture licensed equipment strictly in accordance with the

manufacturing information and specifications supplied by WBS and the appellants are to mark the Licensed Equipment with a clear indication that it has been manufactured under licence from WBS. The agreement further provided that the appellant shall give to WBS technical know-how fees of fifty thousand pounds in three installments. In addition to the above, the appellants were to pay 5% in respect of sales in India and 8% in respect of sales outside India.

3. Appellants imported under Bill of Entry No. 42993 dated 22.11.82 the first consignment of 200 sets of complete air brake distributors. The goods were assessed to duty after loading the invoice value by 10% pending examination of the collaboration agreement. Subsequently the appellant imported 150 distributors in CKD condition under Bill of Entry No. 4695 dated 31.1.83, 300 sets of casting, spring, rubber, circlips and delrine components under Bill of Entry No. 11441 dated 16.3.83 and 200 sets of casting and other parts under Bill of Entry No.39184 dated 1.10.83. The Assistant Collector finalised the provisional assessment by loading of the value by 10% and also including in the assessable value technical knowhow fees of UK pounds 50,000. Aggrieved by the above, the importer filed an appeal. Commissioner (Appeals) took the view that loading of 10% was not justified as there was no evidence whatsoever to suggest influence of relationship on the price of imported goods but at the same time he upheld the inclusion of technical-know-how fees to the value of the imported goods. While taking such a view he has observed in his order as follows:- "Technical-know-how fee payable in this case is for import of specific components for manufacturing specific parts as per design of WBS in India." It is the case of the appellant that above observation is factually incorrect going by the terms of the agreement. He also contended that technical know-how fee has no relation whatsoever with the goods imported. In support of the above submission the Learned Counsel for the assessee referred to the following clauses in the agreement. Clause (B) in the Preamble reads as follows: "S.D. is desirous of manufacturing the railway brake control equipment and door operating equipment hereinafter mentioned for use on India Railways and WBS has agreed to grant the rights and licences hereinafter mentioned upon and subject to the terms and conditions hereinafter appearing." "Licensed Equipment" shall mean brake control equipment and door operating equipment of WBS's design suitable for use in railway locomotives and rolling stock of the kinds more

particularly mentioned below and identified by reference to their piece numbers as follows" "Technical Know-how" shall mean the knowledge of the processes and methods of working all of a secret or confidential or proprietary nature (whether patented or not) and which have been developed by WBS and appertain or relate to or are necessary for the proper and efficient manufacture of the Licensed Equipment including.

"WBS in so far as it is in a position and is free to do so and in so far as it lawfully may hereby grant and agree to grant S.D. (a) the full but non-exclusive right licence and authority to manufacture and assemble in the Republic of India the Licensed Equipment including spare and replacement parts using the technical know-how furnished and to be furnished hereunder." Under Article VIII reference is made to fee for technical know-how. It is as follows: "8.1 S.D. hereby agrees to pay to WBS in consideration of WBS making complete disclosure to S.D. of the Technical know-how relating to the Licensed Equipment the sum of fifty thousand pounds (50,000) Sterling payable in three equal installments of Sixteen thousand six hundred and sixty six pounds sixty-seven pence (16,666.67) Sterling each the first to be paid within thirty (30) days of the effective date the second to be paid within thirty (30) days of WBS notifying S.D. of its readiness to dispatch the Technical know-how and the third to be paid within thirty (30) days of S.D. commencing commercial production if the Licensed Equipment (but in any event by not later than three years from the Effective Date)".

The appellant would contend that know-how was being provided for the domestic manufacture of the licensed equipment. It cannot, in any manner, be related to the goods imported or assembled of air brake distributor, of door closer by utilising the goods imported under Bills of Entry dated 22.11.82, 31.1.83, 16.3.83 and 1.10.83. The appellant drew support for the above proposition from the decision of this Tribunal in Collector of Customs, Bombay Vs. Maruti Udyog Limited, Gurgaon 1987 (28) ELT 390 which was affirmed by the Supreme Court in 1989 (41) ELT A61. In the above decision the Tribunal had interpreted the terms of the collaboration agreement between Maruti Udyog Limited and Suzuki Motor Company Limited, Japan, Under the licence agreement Maruti acquired the right and technical know-how to manufacture cars and their components in India to the

patents, designs and specifications of Suzuki on payment of lumpsum royalty and also running royalty. When Maruti imported from Suzuki SKD/CKD packs and complete vehicles, the Customs authorities proposed to load the invoice price with their royalty payment. The Tribunal accepted the contention taken by Maruti that payment of royalty/fee under the licence agreement was relatable directly to indigenous manufacture of components and vehicles. It has no relation to the import of components, assemblies and vehicles from Japan. It is therefore not correct to load the import price on account of payment of royalties for local manufacture. As mentioned earlier this view was upheld by the Apex Court. Same view was taken by the Tribunal in Eicher Motors Ltd. Vs. CC, Bombay 1994(74) ELT357.

4. We heard the Learned Departmental Representative. He submitted that the ratio of the decision of the Supreme Court in Collector of Customs Vs. Essar Gujarat Ltd. 1996 (88) ELT 609 (SC) is to be applied in the present case. It has been held therein that the value of the plant will comprise not only price paid for the plant but also price payable for the operation licence and technical know-how. Reliance was also placed on the decision of the Supreme Court in Associated Cement Companies Ltd. Vs. CC 2001 (128) ELT 21 (SC) where it has been held that engineering, development, at work, design work and plant will form part of the price of the goods for the purpose of determination of transaction value in view of the provisions contained under Ruel 9(1)(c)(4) of the Valuation Rules.

5. We find merit in the contention raised by the appellant. On going through the terms of the agreement it is clear that know-how relates to manufacture of the licensed equipment in India. The above has no relation whatsoever to the goods imported under the four bills of entry referred above. Even if the brake distributors and door closer could be assembled with the goods thus imported under the above mentioned bills of entry such assembly will not come within the provisions of manufacture of the licensed equipment in respect of which technical know-how has been granted. As held in Maruti Udyog Ltd. such know-how relates only to the indigenous manufacture of the licensed equipment.

The licence granted is to manufacture and assemble brake control equipment, door operating equipment in the Republic of India including its parts by using technical-know-how furnished by WBS.6. In the light of the above discussion, we set aside the order impugned to the extent it is challenged in this appeal and allow the appeal.

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