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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-30-2004

Reported in : (2005)(98)ECC293

Judge : J Balasundaram, A T V.K.

Appellant : Barbour Vardhman Thread Ltd.

Respondent : Cc

Judgement :

1. The issues, involved in this appeal filed by M/s. Barbour Vardhman Thread Ltd., are whether the appellants and M/s. Barbour Campbell Group Limited, who have supplied the imported goods, are related persons and whether Rs. 30 lakh, paid by them for technical know-how, has to be included in the assessable value of the goods imported by them.

2. Shri Balbir Singh, learned Advocate, submitted that the appellant Company is outcome of joint venture between M/s. Mahavir Spinning Mills Ltd. and M/s. Barbour Campbell Group Ltd.; that in appellant Company, both M/s. Mahavir Spinning Mills Ltd. and M/s. Barbour Campbell Group Ltd. have equal holding of 50% each; that the appellant Company has been formed for carrying out manufacture of sewing thread, twines and braids; that the appellants have imported some dyeing machines from M/s. Barbour; that the Revenue has treated the appellants and M/s.

Barbour Campbell Group Ltd. as related persons in terms of Rule 2(2)(iv) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988; that the Revenue has loaded the declared assessable value by 10% on this count; that the Revenue has also added the technical know-how fee paid by the appellants to M/s. Barbour Campbell Group Ltd. on the ground that they had imported all the goods required for the commencement of production including capital goods, raw-material and technology from Barbour and it was not possible for them to manufacture the goods without technical knowledge. The learned Advocate, further, submitted that Rule 2(2)(iv) of the Customs Valuation Rules, is not applicable as, according to this sub-rule, the person shall be deemed to be related only if any person, directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; that, therefore, the impugned order is contrary to basic premise of law, so as to treat them related persons.

He also relied upon the decision in the case of C.C., Mumbai v. Modi GBC Ltd., 1999(114) ELT 931(Tri), wherein it has been held that for invoking the clause (iv) of Rule 2(2) of Customs Valuation Rules, the presence of third person owning stock in each of them, is required. He also mentioned that the Civil Appeal, filed by the Revenue against the said decision, has been dismissed by the Supreme Court reported in 2000 (120) ELT A70 (S.C.).

3. Regarding inclusion of technical know-how fee in the assessable value, the learned Advocate, submitted that as per the technical collaboration agreement, the knowledge/information refers to manufacturing process of thread in India. The technical know-how has no relation with the import of dyeing machine in question; that further supply of technical know-how was not linked; that import of capital goods, technical know-how was not a pre-condition for sale of capital goods and vice versa. He emphasised that technical collaboration agreement is an independent agreement which has no bearing on import of capital goods; that this aspect can be seen from the factual position as they had imported only four machines, namely, dyeing machine, printer, dye spring which is less than 4-5 per cent of total capital goods import made by them; that in other words, plant and machinery for manufacturing thread was primarily procured from independent sources other than M/s. Barbour.

4. Countering the arguments, Shri S.M. Tata, learned SDR, reiterated the findings as contained in both the orders passed by the lower authorities.

5. We have considered the submissions of both the sides. As per Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export in India.

Sub-rule (2) of Rule 4 provides that the transaction value of imported goods shall be accepted, provided, inter alia, buyers and sellers are not related persons. Sub-rule (2) of Rule 2 of the Customs Valuation Rules defines the term 'related'. As per sub-clause (iv), person shall be deemed to be related only if "any person, directly and indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them." There is no mention in the Order-in-Original as well as in the impugned Order-in-Appeal regarding identity of the person, who directly or indirectly, owns, controls or holds 5 per cent or more of the outstanding stock or shares of both the appellant company and the supplier company. In absence of any such information, the mischief of sub-clause (iv) of Rule 2(2) of Customs Valuation Rules, will not be applicable to the appellants and the foreign supplier cannot be deemed to be related persons. Similar view has been taken by the Tribunal in the case of Modi GBC Ltd. (supra) where M/s, General Binding Corporation (GBC, a U.S. firm), was holding 40% share in M/s Modi GBC Ltd. The Tribunal has held that the fact that GBC was owning 40% of the respondent company, would not itself give it control over the respondent as it would be out-voted in any decision making by the remaining shareholders. The Tribunal has also held that in respect of ownership of the respondents shares to the extent of 40% of the equity does not attract the provisions of clause (iv) of Rule 2(2) of the Rules since both the persons considered to be related must be owned or controlled by another person. Accordingly, we hold that both the appellants and the foreign supplier are not related persons in terms of clause (iv) of Rule 2(2) of the Customs Valuation Rules.

6. Rule 9 of the Customs Valuation Rules provides that for the purpose of determining the transaction value, cost of royalties and license fee relating to the

imported goods that the buyer is required to pay directly or indirectly as a condition of the sale is to be included in the price of the imported goods. The learned Advocate has drawn our attention to Technical Collaboration Agreement between M/s. Barbour Campbell Ltd. and the appellants, according to which technical know-how shall mean and made all inventions, processes, formulations, patents, engineering and manufacturing skills and other technical information relating to the licensed product. The licensed product means only sewing threads, twines and braids, thus, the price paid by them for technical know-how relates to the manufacture of licensed products, namely, sewing threads, twins and braids. There is no material adduced by the Revenue to show that the payment made towards technical know-how was a condition pre-requisite for supply of capital goods by the foreign supplier. Under Rule 9(1)(c) of the Customs Valuation Rules, the cost of technical know-how is includible if the same is to be paid directly or indirectly as a condition of the sale of the goods. The Revenue has not adduced any evidence in this regard. The Appellate Tribunal has also held in the case of Daewoo Motors India Ltd. v. CC, 2000 (115) ELT 489 (Tri), relied upon by the learned Advocate that the payment for the licensed information and patent has nothing to do with the working of the plant and, therefore, lumpsum payment made by the appellants had no connection, whatsoever, in the working of the capital goods imported. In absence of any material/evidence, we hold that the amount paid for technical know-how is not to be included in the price of the imported goods. We, therefore, set aside the impugned order and allow the appeal.