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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-17-2004

Reported in : (2005)(98)ECC538

Judge : S Kang, Vice, A T V.K.

Appellant : Jay UshIn Ltd.

Respondent : C.C. (import)

Judgement :

1. The issue involved in this appeal, filed by M/s. Jay Ushin Ltd, is whether the technical information and know-how fee is to be added in the assessable value of the gods imported by them.

2. Shri R.P. Singh, learned Advocate, mentioned that the Appellants manufacture Key sets and multifunction switches for use in automobiles; that the Appellant Company is a joint venture of M/s. Yushin Co. Ltd., Japan M/s. Jay Industries, Delhi; that with the object of obtaining the necessary know-how for manufacturing key sets and multi-functions switches, they entered into a Technical assistance Agreement with M/s.

Shinghchong electric Co. Ltd., Korea on 27.10.1997 whereby the Korean Company granted to them exclusive right and license to manufacture, use and sell these items in India, on payment of Technical Information and know-how fees of one lakh U.S. dollars in three installments; that the Appellants were also obliged to

pay the foreign company equal to 3% of the sale of these items to be manufactured in india by the Appellants; that after the matter having been remanded by the Tribunal vide Final Order No.627/2002 dated 28.5.2002, the commissioner (Appeals), under the impugned Order has held that the Appellants are related to M/s.

Yushin under Rule 2(2)(ii) and 2(2)(v) of the Customs Valuation rules, M/s. Shing Change Electric Co. Ltd. is either a parent company or subsidiary company and is deemed to be related to the Appellants and that one lakh U.S.$ shall be added to the value under Rule 9(1)(c) of the Customs Valuation Rules.

3. The learned Consultant submitted that as the goods have been imported by the Appellants from M/s. Shing Change and not from M/s.

Yushin, relationship between Yushin and the Appellants has no bearing on valuation of the goods; that the finding of the Commissioner (Appeals) that M/s. Shingchang is either a parent company or subsidiary company is not correct as o benefit of joint venture agreement has been transferred to M/s. Shingchang nor the Commissioner (Appeals) has identified as to which of benefits had been transferred; that further the joint venture agreement nowhere bar sourcing of technology by the Appellants from some other source; that as per Article 7 of the Joint Venture Agreement, 'Parent Company' or 'Subsidary Company' mean a company which owns, controls or is owned or controlled the majority voting stocks of or by the either party; that there is nothing on record to show that this condition is fulfilled, i.e. M/s. Shing Change Electric Co. Ltd. owned, controlled majority voting stock or such stock was owned or controlled by the Appellants; that moreover there is no relationship whatsoever between Shing Chang and Yushin; that there had been no business dealing between the two companies; that thus Shing Chang is neither a parent company nor a subsidairy company; that the impugned Order is based on assumption and presumption which is not sustainable in law; that as there is no mutual interest in the business of each other, they cannot be treated as related person.

4. Finally he submitted that Rule 9(1)(c) of the Customs Valuation Rules is not applicable; that for applying rule 9(1)(c), the two essential elements required to be

satisfied are (i) royalties and license fee should be related to the imported goods; and (ii) the buyer is required to pay the said fees as a condition of the sale of the goods being valued that in the present matter the payment of lump sum amount by the Appellants is for transfer of technical information and know-how to manufacture key sets and multifunction switches; that what is imported by the Appellants from know-how provider are components of key sets and multifunction switches; that the lump sum payment is not in respect to the imported goods and therefore the said payment cannot be added to the assessable value. He relied upon the following decisions:-S.D. Technical Service v. C.C, New Delhi- 2003 (56) RLT 970 (CEGAT-LB) 5. Countering the arguments, Shri S.M. Tata, learned SDR, reiterated the findings as contained in the impugned Order.

6. We have considered the submissions of both the sides. As per provisions of Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, the value of imported goods shall be the transaction value which as per Rule 4 means the price actually paid or payable for the goods adjusted in accordance with the provisions of Rule 9 of the Rules. Sub-rule (2) of Rule 4 provides that the transaction value shall be accepted provided that, inter alia, the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below. The concept of related person has been defined in Rule 2(2) of the Customs Valuation Rules.

There is nothing on record to show that M/s. Shingchang Electric Co.

Ltd, Korea is related to the Appellants as no material has been adduced by Revenue to show that either of them directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them (as mentioned in Rule 2(2)(iv)) or both of them are directly or indirectly controlled by a third person as mentioned in Rule 2(2) (vi) of the Customs Valuation Rules. Merely an agreement for Technical Assistance between the Appellants and M/s. Shingchang electric Co. Ltd. will not mean that both are controlled by M/s. Yushin or M/s. Jay. Thus it has not been shown by the Revenue that the Appellants and M/s. Chinchang electric Co. Ltd. are related persons and as such transaction value

has to be accepted for the purpose of assessment of customs duty adjusted in accordance with the provisions of Rule 9. Rule 9(1)(c) of the Customs Valuation Rules provides that "9(1). In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods,- (d) royalties and license fees 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, to the extent that such royalties and fees are not included in the price actually paid or payable." 7. The Appellants have entered into a Technical Assistance Agreement with M/s. Shingchang Electric Co. Ltd. by which foreign company has granted the Appellants exclusive right and license to manufacture, use and sell the products and to furnish to the Appellants Technical Information. The term Technical Information as per Clause 1.2 of the Agreement means 'technical design drawings, specification, processes and any other technical-information, relating to the manufacture of the PRODUCTS, owned by the foreign company in the natural course of business. Thus the payment of lump sum amount was in respect of providing technical information relating to technical designs, drawings, specifications, processes, etc. There is nothing in the Technical Assistance Agreement to show that the technical information will be provided to the Appellants only when they buy the components or raw material from the foreign supplier. Clause (4) of the agreement also makes this position very clear as it provides that whenever the Appellants' requests at each time during the terms of the agreement, the foreign company shall supply parts, materials, dies, jigs, etc.

Clause (4) further mentions that both parties can enter into special supply contract faithfully on each occasion about relevant supplying parts. Thus it cannot be claimed by the Revenue that the fees paid by the Appellants related to the imported goods or that the appellants are required to pay the said fees as a condition of the sale of the gods being valued. Unless this aspect i.e. license fee is related to the imported goods and the Appellants are required to pay this said fee as a condition of the sale of the goods are satisfied, the provisions of Rule 9(1)(c) of the Customs Valuation Rules will not be attracted. This was the view taken by the Larger Bench of the Tribunal in the case of S.D. Technical Services (supra) wherein it has been held that know-how relates to manufacture of the license equipment in India and has no relation whatsoever to the goods imported under

the bills of entry. The Tribunal, therefore, set aside the Order by which the Department had included know-how fees in the assessable value. Similar view had been taken by the Tribunal in the case of Mando Break System India Ltd. (supra) where the Tribunal has held that license fee is not includible in the assessable value of the imported gods as the fee was directly connected with the manufacture of specified goods in India and had no relationship whatsoever with the that imported goods. Following the ratio of these decisions we set aside the impugned Order and hold that license fee paid by the Appellants is not includible in the assessable value of the imported goods.

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