

Pillar Induction India Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-10-2005

Reported in : (2005)(184)ELT363Tri(Chennai)

Judge : P Chacko, J T T.K.

Appellant : Pillar Induction India Ltd.

Respondent : Commissioner of Customs

Judgement :

1. This appeal is against the Order-in-Appeal C. Cus., 258/2003, dated 30-5-2003 passed by Commissioner of Customs (Appeals), Chennai. The appellants during January 2001 to March 2001 imported parts of power supply from M/s. Pillar Industries, USA. These parts are for use in the manufacture of furnace and heating equipment. The transaction value was not accepted initially. The Deputy Commissioner (SVB) passed an order holding that technical know-how fees should be added to the transaction value. Against the order of the Deputy Commissioner (SVB) the appellants appealed to the Commissioner (Appeals) who set aside the Order-in-Original and held that technical know-how fees is not includible in the assessable value in terms of Rule 9(1)(c) of the Customs Valuation Rules, 1988, The Revenue filed an appeal to CEGAT. CEGAT passed Final Order dated 18-3-2002 remanding the matter for de novo consideration. The Commissioner (Appeals) held that the technical know-how package provided by the foreign supplier is all encompassing in the form of detailed designs, drawings and assistance in selection and procurement of material, plant, machinery, etc.

Therefore, the technical know-how could be the basic blue-print to generate the licenced product from the imported components/machinery/raw materials.

On the above reasoning, the Commissioner (Appeals) held that the technical know-how fee is addable as per provision of 9(1)(c) of the Customs Valuation Rules, 1988. Aggrieved over the order of the Commissioner (Appeals), the appellants have come before this Tribunal for relief.

2. Shri C. Sarvanan, Id. Advocate appeared on behalf of the appellants and Shri B.L. Meena, Id. SDR for the Revenue.

3. Ld. Counsel submitted that the appellants entered into an agreement with the foreign collaboration supplier in 1985. The first agreement was in existence only for a period of five years. Later the agreement was renewed for five more years. The said agreement has also since expired. The Technical Collaboration Agreement came to an end in the year 1995. The appellants entered into a fresh Technical Collaboration Agreement with its collaborator for the new range of products vide agreement dated 26-11-1996. The technical know-how fee was payable by the appellants not for importing the goods but for importing technology from M/s. Pillar Corporation, USA, for manufacturing 'Medium frequency Furnace'. The technical know-how fee of Rs. Four lacs was paid to M/s.

Pillar Corporation, USA in 1985 with reference to transfer of technical know-how for a medium frequency induction furnace. The said agreement has since expired and the appellant is free to manufacture without further payment of royalty. The order of the Commissioner (Appeals) is contrary to well settled principles of law wherein it is held that technical know-how fee relatable to indigenous manufacture of licenced equipments and not to the imported goods are not to be added to the value of the imported goods. Ld. Counsel relied on the following case laws : (i) Polar Marmo Agglomerates Ltd. v. CC -- 2003 (155) E.L.T. 283 (Tribunal-LB) = 2003 (56) RLT 967.S.D. Technical Service v. CC - 2003 (155) E.L.T. 274 (Tribunal-LB) = 2003 (56) RLT 970 4. Ld. SDR reiterated the findings recorded by the Commissioner (Appeals).

5. We have heard the rival contentions. The goods which are parts of furnace and heating equipment were imported during the period from January 2001 to March 2001. No doubt the technical know-how fee was paid to the foreign collaborator as per the agreement in 1985. However, Id. Advocate urged that at the time of import of these goods there is no longer any agreement as the earlier agreements had already expired.

In other words, he made the point that at present they are free to manufacture the items without paying any royalty to the foreign collaborator. Under these circumstances the findings of the lower authorities that the technical know-how fee is relatable to the imported goods is not in order. We find that the items imported are only parts of furnace. Finished product to be manufactured in India is "Medium Frequency Induction Furnace". Revenue is not in a position to show that the technical know-how fee is relatable to the imported goods. There is no clause in the agreement which says that the payment of technical know-how fee is a condition of sale of the imported goods.

The case laws relied on by the Id. Counsel are also very relevant.

Under these circumstances we do not find any merit in Revenue's contentions. Therefore, we allow the appeal filed by the appellants with consequential relief, if any.

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