Commissioner of Customs Vs. Basf Strenics Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-18-2005

Judge : K Kumar, S T C.

Appellant : Commissioner of Customs

Respondent : Basf Strenics Pvt. Ltd.

Judgement :

1. These three appeals have been filed by Revenue and the cross objection has been filed by the respondent. M/s. BASF Styrenics Pvt.

Ltd., the respondents import Ethyl Benzene from M/s. BASF, Germany. On a reference from Jawahar Custom House, the Deputy Commissioner, GATT Valuation Cell in Mumbai Custom House has passed the order-in-original holding that the respondents and the suppliers are related to each other and he has ordered for loading the value of Ethyl Benzene by 1%.

2. The respondents have also imported Styrene Monomer from M/s. BASF, Singapore. On a reference from Deputy Commissioner of Customs, Surat, the Deputy Commissioner, GATT Valuation Cell has passed a similar order loading the value by 1% as in the case of Ethyl Benzene.

3. The Commissioner (Appeals) has reversed the order of the original authority with the following finding:- The appellants are having a license know how agreement with Licensor of Germany for production of different BASF grades of

polystyrene.

The appellants are getting raw materials i.e. Styrene Monomer from related supplier at Singapore and one Sabic Marketing. As per the finding of the lower authority, the prices in both the cases are comparable. So, it is obvious, that price charged by related supplier is not effected because of the relationship. The appellants are at liberty to buy the raw material from any of them. As per the agreement with licensor of Germany, the appellants intends to make modification of existing plant, including incorporation of an additional pre-polymerization reactor, which will enable them produce all polystyrene grade BASF is actually producing. "Agreement products" has been defined to mean any polystyrene polymers manufactured in whole or in part according to existing technology or improvements. It is not case that there has been import of any capital goods, or raw materials imported are proprietary in nature.

In consideration of license/know-how, the appellants are required to pay Licensor royalty of varied percentages in different year. I find the license agreements and supplies of raw materials from related supplier at Singapore or Sabic Marketing or the Licensor are not related or conditions of sale. As per the agreements royalty of varied percentages shall be paid for all Agreement products sold or used captivity by appellants. Agreement products used by appellant shall bear royalties on an assumed net sales value. From provisions of agreement it is seen that the royalty payment is not related to manufacture of imported raw materials, but concerned with technology for production of finished goods in India. So royalty paid is not includible in value of raw materials.

In the second case relating to import of Ethyl Benzene, the appellants have demonstrated that their invoice price is higher compared to ruling prices per "ICIS Price Report", which has not been disputed by adjudicating authority. In fact price has been ordered to be accepted under Rule 4(3). Regarding payment of royalty, for the reasons given in earlier paras in view of provisions of the agreement, the same is not includible in the invoice price.

(1) Although payment of royalty is made for the goods manufactured in India, the basis on which the royalty is being paid cannot be ignored. Royalty is to be paid on

the sale price of the goods after all deductions except the value of raw materials. In effect it means that the royalty is being paid on the profit/manufacturing costs earned from the sale of the manufactured goods and on the value of the raw materials used.

The sale price in India of the manufactured goods will include the landed cost of raw materials + manufacturing expenses just as it would include the excise duties, discounts, cost of landed components, etc. But, the question here is whether the royalty is being paid on the actual net sales price, the answer is no. The royalty is being paid on the price, which is arrived after deducting the cost of all inputs except cost of imported raw materials.

If the definition of the net sale price had excluded the cost of raw materials it would have meant that the royalty would be payable only on the profits earned /manufacturing costs and the royalty would not be related to the imported goods i.e. raw materials. This is not the case here, the royalty is payable on the cost of the raw materials therefore whenever the Importer uses raw materials imported it means that in addition to the invoice price paid by the Importer, the Importer is also further paying a percentage of the cost of the raw materials to the Collaborator as royalty. Since this royalty paid is not included in the invoice price and since there is no deduction of cost of raw material it follows that the royalty is related to the imported raw materials. The invoice value of the raw material has therefore to include this percentage of royalty paid. It is also not necessary that the royalty paid is addable only if capital goods or goods of propriety nature has been imported as Rule 9(1)(c) does not make any such distinctions.

(2) As per Rule 4(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 the transaction value of the imported goods shall be the price actually paid or payable for the goods sold for export to India, adjusted in accordance with the provisions of Rule 9 of the rules. Thus it can be seen that the transaction value can be accepted only after adjustments under Rule 9. In the present case there is a requirement for adjustment to be made under Rule 9(l)(c) as the royalty paid indirectly on the cost of the raw materials has to be added to the invoice value.

The Commissioner's (Appeal) observation that there is no condition of sale is untenable. The question to be asked is whether the Importer has a right to refuse payment of royalty on the cost of raw materials imported from the Supplier. Whether the Importer can insist on the deduction of the cost of raw materials from the net selling price on the grounds that all other input costs have been paid from the royalty payable. The answer is obviously no. The technology has been granted to the Importer on the condition that they pay royalty of 1% on the profits/manufacturing expenses made from the sale of goods and also on the value of the raw materials used. There definitely exists a condition of sale as the importer is bound to pay royalty of 1% on the value of imported raw materials used.

(3) The Hon'ble Tribunal had examined and passed judgment in the case of Matsushita Television and Audio India Ltd. - 2001 (136) E.L.T. 1093 (Tri.-Del.). The facts and circumstances pertaining to that case is squarely applicable to this case. In the above mentioned case too, Royalty was paid on the finished goods but the royalty payment calculation did not exclude the cost of imported components. It was therefore held by the Hon'ble Tribunal (Delhi) that the royalty paid is to be included to the cost of imported components. The same situation exists in the present case and as held in the case of Matsushita Television and Audio India Ltd. - 2001 (136) E.L.T. 1093 (Tri.-Del) the royalty should be added to the invoice value.

(4) In the present case the value of a part of the proceeds (in the form of royalty) of subsequent resale/use of the imported goods accrues indirectly to the seller. Rule 9(l)(d) of Customs Valuation Rules, 1988 specifies that the value of any part of the proceeds of any subsequent resale or disposal or use of the goods that accrues directly or indirectly to the seller is required to be added to the declared value. Hence the royalty has to be added to the invoice value under Rule 9(l)(d) in addition to being added under Rule 9(l)(c) of Customs Valuation Rules, 1988.

5. The learned D.R. supports the order-in-original for the reasons elaborated in the grounds of appeal. The learned Advocate for the respondents supports the order-in-appeal and relies upon the following case laws: -Indo Gulf Corporation Ltd. v.

CC (16) Ibex Gallegher Ltd. v. CC - Final Order No. 687-691 dated 29-4-2005 2005 (191) E.L.T. 976 (T), 6. We have considered the submissions made from both sides. We find that the original authority has determined the respondents and suppliers to be related to each other. But the price has not been rejected on the ground of relationship. It is also not the department's case that the relationship has influenced the price. On the contrary, as noted by the lower authorities, the prices are comparable between imports from related and unrelated suppliers. As such, this is not a case of discarding the transaction value method and applying another method of valuation. The issue before us is whether any adjustments are required to be made to the declared price in terms of Rule 9(l)(c) and Rule 9(l)(d) of the Customs Valuation Rules, 1988 by making additions for the royalty being paid by the respondents to their related suppliers.

9. Cost and services. - (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, - (c) royalties and licence 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.

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller; 8. We observe that in terms of Rule 9(l)(d), only the value of any part, of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues to the seller directly or indirectly is required to be added to the declared value of the goods. In the present case, there is no subsequent re-sale etc. of the imported goods as such but the imported goods have been used in further manufacture of finished goods, which have been sold by the respondents in the domestic market. In our view, the said Sub-rule (d) has application only where proceeds of resale, disposal or use of the imported goods themselves are received and part of such proceeds goes to the foreign supplier. It cannot have any application where the goods are used by the importer for further manufacture and such manufactured goods are sold subsequently. The said Sub-rule (d) is clearly not intended to cover sale proceeds of goods indigenously manufactured out of imported materials.

9. As regards application of Rule 9(l)(c), we note that only such royalty, payment of which is related to the imported goods and is made as a condition of sale of such goods can be added to the declared price. In the instant case, the payment of royalty is not related to imports of Ethyl Benzene and Styrene Monomer. It appears, the respondents do not have any obligation to import these goods only from their collaborators abroad. It has been noted by the lower authorities that they have in fact imported these goods from non-related suppliers at comparable prices. As such, it cannot be said that the royalties have been paid as a condition of sale of the imported goods. On the other hand, the agreement between the collaborators abroad and the respondents requires payment of royalty on finished goods manufactured and sold in India. The amount of royalty specified under the agreement relates to sale price of the goods less certain deductions. The applicant Commissioner himself has stated in the grounds of appeal that in effect the royalties are being paid on manufacturing cost plus profit plus the value of raw materials. Just because a particular formula has been designed to calculate the royalty amount which also includes the raw material cost, it cannot be said that the royalty payment is related to the imported goods. In fact, the royalty is payable on the "Net Selling Price" of all "Agreement Products" under the agreement and such products have been defined to mean "polystyrene polymers manufactured in whole or in part according to existing technology or improvement." Such payment of royalty is not therefore restricted to polystyrene polymers manufactured using impugned goods imported from the related suppliers only. We find that the impugned agreement provides for payment of running royalty under the know-how agreement and relates to goods manufactured and sold indigenously. Such payment of royalty to BASF, Germany is for using BASF technology and has also been approved by the R.B.I. In view of the foregoing, we are of the view that the amount of royalty in question cannot be added to the declared value under the said Sub-rule (c) either.

10. Revenue's contention seeking addition of royalty under Rule 9(l)(c) and Rule 9(l)(d) fails in view of our findings above. As such, we dismiss the appeals filed by the department. The cross objection filed by the respondents also stands disposed off.