

Cc Vs. T

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

Decided On : Jan-06-1996

Reported in : (1996)(65)LC322Tri(Chennai)

Judge : S Kalyanam, Vice-, R T Lajja

Appellant : Cc

Respondent : T

Judgement :

1. The above appeals are filed by the Revenue being aggrieved with the Order-in-Appeal dated 20.6.1995 passed by the Collector of Customs (Appeals), Madras.
2. The matter relates to the loading of the invoice to the extent of the royalty paid by the Indian manufacturer to the foreign collaborator. The Collector of Customs (Appeals) in the impugned order has held that the royalty had no connection with the goods imported and as such the royalty under consideration was not includible in the assessable value.
3. We have heard Shri Venkataraman, the Id. Counsel and Shri Murugandi, the Id. DR.4. We find that in the brief history of the case, the Revenue had stated that there was no compulsion for the Indian manufacturer M/s. TVS Berg Ltd. for buying capital goods, machines, equipments, raw materials, components, etc. from the foreign collaborator, namely M/s.

Berg Holdings, U.S. It is also mentioned that most of the purchases were being effected based on the purchase orders released and the invoices reflected the prices of the purchase orders and that it was seen that the purchase order prices were based on the quotations received from the suppliers.

5. The Id. DR drew our attention to para 7 of the grounds of their appeal wherein it had been mentioned that the buyers were supplied the material in such a way as to improve the sale of the finished product so that the buyer could get the royalty amount in that proportion. It was also mentioned that the seller will solicit orders from others so as to improve the amount of commission payable by the seller in that proportion. We note that these are commercial considerations and do not establish the case of the revenue that the prices charged for the raw materials were not genuine price and that they have been depressed and that they should be loaded by the royalty amount which were payable by the Indian manufacturer on the production of their finished goods.

6. The Id. Counsel had referred to the tribunal's decision in the case of Collector of Customs, Bombay v. Birla Yamaha Ltd. where it had been held that the technical know-how fees and royalty being payable for right to produce finished products in India were not to be added to assessable value. Reference was also made to the Supreme Court decision in the case of Union of India v. Mahendra and Mahendra Ltd., wherein the Supreme Court had held that in the absence of any nexus between the payment for know-how transfer and that for the goods imported in that case the value of the CKD packs was not loadable. In the case before us, goods imported are in the nature of a raw material and as we find that there was no obligation to purchase them exclusively from the collaborator, in our view there is no ground for loading the invoice and we find no infirmity in the order passed by the Collector of Customs (Appeals) in this regard. We confirm the same and reject the appeals.