M/S. WEP PERIPHERALS LTD.
v.
COMMISSIONER OF CUSTOMS, CHENNAI
(Civil Appeal No. 2757 of 2006)

FEBRUARY 21, 2008

(S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.)

Customs Valuation (Determination of Price of Imported Goods) Rules, 1988; r.9(1)(c) and 9(1)(e):

Import of shuttles used in manufacture of printers – Authorities loading royalty/licence fee on price of imported goods – Correctness of – Held: Incorrect – Assessee received order for bulk supply of the goods in question, thus, giving discount by lowering price of the goods – Material in support thereof not considered by adjudicating authority – Royalty payment was not condition pre-requisite to the sale of the goods in question – View of the authority erroneously affirmed by the Tribunal – Hence, impugned judgment set aside.

The question which arose for determination in this appeal was as to whether the adjudicating authority was entitled to load the royalty/licence fee payment on the price of the imported goods, viz, the shuttle(s) by taking only its peak price and not the price negotiated between the parties.

Allowing the appeals, the Court

HELD: 1.1 Since the importer received an order for bulk supply, there was lowering of price of the goods in question. This factor was not at all considered by the adjudicating authority under rule 9(1)(c) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. (Para – 3) [145-D, E]

1.2 There is nothing to indicate that royalty payment

A **was a condition pre-requisite to the sale of the goods in question, the shuttle. The only ground on which the adjudicating authority has held against the appellant is that the shuttle is an integral part of the printer. This view has been accepted by the Tribunal, erroneously. The**
B **Tribunal also failed to consider that the appellant had received a bulk order for which it gave a price discount. The correspondence between the foreign seller and the importer was placed before the adjudicating authority before conclusion of the enquiry. There exists no reason**
C **to reject the said correspondence, particularly when it was placed before the arguments stood concluded. (Para – 3) [145-F, G; 146-A]**

Commissioner of Customs vs. M/s. Ferodo India Pvt. Ltd. **– decided by the Supreme Court on February 21, 2008 in**
D **C.A.No. 8426 of 2002 – relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2757 of 2006

From the final Order No. 103/2006 dated 24/1/2006 of
E the CESTAT, South Zonal Bench, Bangalore in Appeal No. C/276/2004.

WITH

Civil Appeal Nos. 4519 of 2006 and 3679 of 2005

F V. Lakshmi Kumaran, Alok Yadav and M.P. Devanath for the Appellant.

Brijender Chahar, Abhinav Jain, Jyoti Chahar, J.S. Malik, Deepak Thakur and B. Krishna Prasad for the Respondent.

G The Judgment of the Court was delivered by

KAPADIA, J. Civil Appeal No. 2757/06:

This civil appeal is filed by the assessee against order dated 24.1.2006 in appeal No. C/276/04 delivered by the
H Customs, Excise and Service Tax Appellate Tribunal

("CESTAT"). A

2. This matter is a sequel to the decision just delivered in the case of **Commissioner of Customs v. M/s Ferodo India Pvt. Ltd.** (Civil Appeal No. 8426/02). Appellant is the manufacturer of Printers. The integral part of a printer is what is called as a shuttle. In the present case, we are concerned with Technical Assistance Agreement ("TAA"). Appellant imports shuttles which are used in the manufacture of printers. Unlike **M/s Ferodo India Pvt. Ltd.** case (supra) there is no related party transaction in the present case. In the present case, the parties are at arm's length. The adjudicating authority has accepted the transaction value. B C

3. The only question which arises for determination in this civil appeal is whether the adjudicating authority was entitled to load the royalty/licence fee payment on to the price of the imported goods, viz, the shuttle(s) by taking its peak price. In the present case, the importer/buyer used to negotiate with the foreign supplier on quarterly basis. During the period under consideration, the importer received an order for bulk supply. Therefore, there was lowering of price. This factor was not at all considered by the adjudicating authority under rule 9(1)(c). In fact, during the enquiry before the adjudicating authority, the appellant-importer placed correspondence between it and the foreign supplier which indicated that the appellant had received a bulk order for printers and, therefore, it had to lower its price which fact had not at all been considered by the adjudicating authority while invoking rule 9(1)(c). In the present case, there is nothing to indicate that royalty payment was a condition pre-requisite to the sale of shuttle. The only ground on which the adjudicating authority has held against the appellant herein is that the shuttle is an integral part of the printer. This view has been accepted also by the Tribunal, erroneously. The Tribunal also failed to consider that the appellant had received a bulk order for which it gave a price discount. The correspondence between the foreign seller and the importer was placed before the adjudicating authority before conclusion of the enquiry. There D E F G H

A was no reason to reject the said correspondence, particularly when it was placed before the arguments stood concluded. Moreover, in the present case, the royalty payment was not based on value. The royalty was payable at the rate of $ 50/70 per piece. In view of the law laid down by us in **M/s Ferodo**
B **India Pvt. Ltd.** (supra), the appellant succeeds.

4. For the aforestated reasons, and particularly in the light of the law discussed in the earlier judgment in the case of **M/s Ferodo India Pvt. Ltd.** (supra), we set aside the impugned judgment of the Tribunal as erroneous.

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5. Accordingly, Civil Appeal No. 2757/06 filed by the assessee is allowed with no order as to costs.

Civil Appeal No. 4519/06:

D 6. This appeal is filed by the assessee-importer against order dated 26.4.2006 by the CEGAT in Application for rectification of mistake in Appeal No. C/276/04 (Final Order No. 103/06). Since we have set aside the impugned order of the Tribunal in Civil Appeal No. 2757/06 as erroneous, the
E present appeal is also allowed with no order as to costs.

Civil Appeal No. 3679/05:

7. This appeal is filed by the assessee, M/s Daikin Airconditioning India Pvt. Ltd., against order dated 21.3.2005 by the CESTAT. In the light of our judgment in the case of **CoC**
F **v. M/s Ferodo India Pvt. Ltd.** (Civil Appeal No. 8426/02) this appeal is allowed with no order as to costs.

S.K.S. Appeals allowed.