
(2023) 12 CESTAT CK 0038

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Miscellaneous Application Nos.40403, 40404, 40405 Of 2023, Customs Appeal Nos. 42312, 42314, 42315 Of 2013

M/s. Ashok Leyland Ltd

APPELLANT

Vs

Commissioner Of Customs (Import)

RESPONDENT

Date of Decision : 15-12-2023

Acts Referred:

Valuation Rules, 2007 — Rule 10(1)(c)

Citation : (2023) 12 CESTAT CK 0038

Hon'ble Judges : P. Dinesha, Member (J);M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : M. Kannan, R. Rajaraman

Final Decision : Allowed

Judgement

M. Ajit Kumar, Member (T)

1. These appeals are filed by the appellant against Order in Appeal C. Cus. No. 1088 to 1090/2013 dated 8.8.2013 (impugned order).

2. The appellants have also filed miscellaneous applications seeking change of cause title from M/s. Ashok Leyland Nissan Vehicles Ltd., M/s. Nissan Ashok Leyland Power Terrain Pvt. Ltd. and M/s. Nissan Ashok Leyland Technologies Ltd. to M/s. Ashok Leyland Ltd. all of them having been merged vide order dated 17.12.2018 passed by the NCLT, Chennai. We allow the applications for change of cause title. Registry shall amend the cause title of the appellant as Ashok Leyland Ltd. in the records.

3. The appellant was importing goods from group companies of Nissan located in USA, Japan and from other countries. An issue was raised by the Special Valuation Branch of Customs House as to whether the transaction value between the Indian company and the foreign company is influenced by the relationship. M/s. Nissan Ashok Leyland Technology have stated that the invoice price was based on quotation and the scrutiny of invoice does not show any discount or

commission and the goods imported are specific and not supplied to any other third party in India and thus there cannot be any identical or similar contemporaneous imports.

3.1 The adjudicating authority after following the normal procedure passed adjudication order dated 21.12.2010 holding that the royalty paid by the appellant to Nissan Ashok Leyland Technologies Ltd. relate to post importation activities and further has not been paid to the foreign supplier (of imported goods) and hence royalty cannot be part of value. Aggrieved against the aforesaid adjudication order, Department filed appeals before Commissioner (Appeals) on the ground that the very fact that royalty is payable on final products manufactured out of imported materials itself indicates the existence of nexus between imports and the manufacture of final products. Hence the royalty amount becomes addable to the value of imported goods under Rule 10(1)(C) OF Customs Valuation Rules. The Commissioner (Appeals) observed that the payment of royalty can be "certainly said to be of not related to imports" but since the scrutiny of cost structure was done only in cases of one or two facilities without scrutinizing the cost structure of every facility, from where the goods will be imported, the issue requires a thorough revisit by the adjudicating authority and hence remanded the matter to the original authority. Aggrieved against the said decision of the Commissioner (Appeals), the appellants are now before the Tribunal.

3.2 No cross-objection has been filed by the respondent department.

4. The learned counsel Shri M. Kannan appeared for the appellant and learned AR Shri R. Rajaraman appeared for the department.

4.1 Shri M. Kannan, learned counsel submitted that the appeals filed by the department before the Commissioner (Appeals) was only for addition of royalty to value of the imported goods and the Revenue didn't question the sale price of the foreign supplier and as a matter of fact have accepted the sale price as value. Since the Commissioner (Appeals) has accepted that payment of royalty was not related to the imported goods, there could be no further enquiry as regards acceptability of the price as value. Hence the Commissioner (Appeals) has proceeded beyond the appeal grounds/prayer in deciding as to whether the price accepted as value by the Deputy Commissioner is correct or not. In this regard the appellants relied on the following decisions.

? 2007 (214) E.L.T. 304 (Tri- Kolkata) Confederation Overseas Clearing Agent Hall Vs. C.C (Port), Kolkata.

? 2004 (175) E.L.T. 664 (Tri-Del) Shriram Foods & Fertilizer Indus Vs. Commissioner of Customs, Mumbai

In view of the above, the appellants pray that the Hon'ble Tribunal may please set aside the impugned order, allow the above appeals and thus render justice.

4.2 The learned AR Shri R. Rajaraman has reiterated the points given in the

impugned order.

5. We have carefully gone through the appeal records and heard the rival parties. We find that in this case the department was aggrieved by the order of the lower authority for not adding the royalty payment to the value of the imported goods in terms of Rule 10(1)(c) of the Valuation Rules, 2007. The learned Commissioner (Appeals) vide the impugned order has concluded that going by the agreements, the payment of royalty can be certainly said to be not related to imports. Having come to such a conclusion we find that he has erred by still remanding the matter to the lower authority for a decision afresh instead of rejecting the departments appeal. He compounded his error by going on to mention that the scrutiny of cost structure of all the facilities from where the goods were imported was necessary to be done by the lower authority while allowing the appeal of the department.

6. The Commissioner (Appeals) cannot examine and pronounce upon any issue beyond the factum of the appeal. It is imperative that all actions of public functionaries be guided by reason and not by whim or caprice. We hence find that the directions given in the impugned order is improper and travels beyond the appeal. The issue of royalty not being related to the impugned goods during the said period has become final as no cross objections have been filed on the issue by Revenue. Hence, the portion of the impugned order giving directions to the original authority while remanding the matter is set aside.

7. The appeals are allowed, with consequential relief if any as per law.