
(2024) 04 CESTAT CK 0036

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.41344 Of 2014

M/S. Paschal Form Work India Pvt. Ltd

APPELLANT

Vs

Commissioner Of Customs (Import)

RESPONDENT

Date of Decision : 24-04-2024

Acts Referred:

Customs Valuation (Determination Of Value Of Imported Goods) Rules, 2007 — Rule 3

Citation : (2024) 04 CESTAT CK 0036

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

Bench : Division Bench

Advocate : R.R. Padmanabhan, R. Rajaraman

Final Decision : Disposed Of

Judgement

M. Ajit Kumar, Member (T)

1. This appeal is against Order in Appeal No. 376/2014 dated 10.3.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Brief facts of the case are that Paschal India manufactures and supplies modular panels of different sizes for use in the construction industry. Apart from private sector, the company is an approved vender for DRDO and BEL, having defence applications. They import the required raw materials such as steel angles, sheets and other materials from its parent Paschal Germany. Since both the supplier and importer are related in terms of relationship defined under Customs Valuation Rules, 2007, the import transactions were subjected to investigation by the SVB, Chennai Customs. It was found that Paschal Germany had exported goods to Paschal India by extending 25% discount. There was another discount of 3% towards prompt payment. As per Board's circular, a case was registered in the SVB unit and circular dated 8.7.2010 was issued for provisional duty assessment with 1% Extra Duty Deposit and the Indian company was further directed to furnish necessary documents for finalization of the assessable value. After due process of law, the adjudicating authority found

that a discount of 22% is offered as a special or abnormal discount to the related buyers which were in excess of 3% discount which was offered to all categories of buyers. Hence loading of 22% to the invoice value was ordered by disallowing the discount. In appeal, the Commissioner (Appeals) while upholding the loading of import value by 22%, further directed the adjudicating authority to examine the loading of value at 25%. Hence the appellant is before this Tribunal.

3.1 Shri R.R. Padmanabhan, learned consultant appeared for the appellant and Shri R. Rajaraman, learned Assistant Commissioner (AR) for the respondent.

3.2 The learned consultant submitted that M/s Paschal Formwork (India) Pvt. Ltd. was incorporated on the 2nd May 2008. Their parent company has a policy on discount in its dealings with both subsidiaries and third parties. The said policy is to allow discount of 25 to 40%, in addition cash discount of 3% is allowed if the subsidiary pays the import bills within time. In response to SVB's query whether any contemporaneous imports were available to any independent third parties in India, Paschal India cited the instances of import to M/s. NCC Ltd. before 2.5.2008. Invoices were submitted along with a Table showing discount percentage. But this was not acceptable to the SVB as these supplies were made when M/s Paschal India was not incorporated in India. Further the fact that discounts are available for all its subsidiaries across the world was not accepted by SVB as supplies to Paschal Bahrain consisted of different part nos. But on closer look, it was found that there are cases where same part nos. are available in the invoices of Paschal India and Paschal Bahrain with a similar price as below:

S. No.

Paschal India Inv 208/10051426 (P 73)

Paschal Bahrain Inv 208 / 10041432 (P 46)

1

Lower Bar 75x6x437 E 3.037 per pce

Lower bar 75x6x437 E 3.037 per pce

2

Junction Plate 130x5x25, E 0.375 per pce

Junction Plate 130x5x25, E 0.375 per pce

3

Vertical Bar 175 cm 60x6x1237 E. 7.050/- per Pce

Vertical Bar 175 cm 60x6x1237 E. 7.050/- per Pce

4

Horizontal Bar 45 cm 60x6x487 E. 2.587/- per Pce

Horizontal Bar 45 cm 60x6x487 E. 2.587/- per Pce

5

Upper Bar 45 cm 75x6x412 E 2.925/- Per Pce

Upper Bar 45 cm 75x6x412 E 2.925/- Per Pce

Paschal Germany sent a declaration dated April 24, 2010 confirming that it has a policy of allowing discount of 25 to 40% across the Globe to all its customers including group companies and affiliates. This declaration was not taken into account. Further, since contemporaneous imports were not available, deductive method of valuation of imported components were given by them to the department. The cost construction statement duly certified by the CA listed the finished goods with its profit margin;

- a. Modular Panel 40 x 125 16%
- b. Modular Panel 60 x 125 13%
- c. Modular Panel 100 x 150 3%
- d. Modular Panel 100 x 75 19%
- e. Outside corner Post 75 cm 7%

On average the profit margin was around 16%. The same was not accepted nor any proper reason given. The lower authority went on to add the trade discount of 25% minus the cash discount of 3% to the value. The Learned Counsel stated that no cash discount was ever availed by the company as the import payments could not be made to the suppliers within time. He stated that the onus is on the department to prove that the declared price did not reflect the true transactional value, however it has not come up with any evidence to substantiate its stand. He referred to the following case laws in their favour:

- a. Protector & Gamble Home Products Ltd. Vs. Commissioner of Customs, Chennai – 2022 (144) ELT 704 (Tri. Chen.)
- b. Collector of Customs Vs. Blue Star Enterprises – 1996 (81) ELT 287
- c. Commissioner of Customs Vs. South India Television – 2007 (214) ELT 3 (SC)
- d. Commissioner of Customs, New Delhi Vs. Prodelin Indian Pvt. Ltd. – 2006 (202) ELT 13 (SC)

3.3 The learned Assistant Commissioner (AR) has take us through the OIO and the impugned order and reiterated the same. He requested that the appeal may be rejected.

4. We have gone through the appeals carefully and have heard the rival parties. We find that Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR) states that the transaction value shall be

accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

4.1 It is seen that the department's case was that Paschal Germany had exported goods to Paschal India by extending a special discount of 25% influencing the price. There was another discount of 3% towards prompt payment. The adjudicating authority after verification found that a discount of 22% is offered as a special or abnormal discount to the related buyers which were in excess of 3% discount which was offered to all categories of buyers. Hence loading of 22% to the invoice value was ordered by disallowing the discount. In appeal, the Commissioner (Appeals) while upholding the loading of import value by 22%, further directed the adjudicating authority to examine loading the value at 25%.

4.2 We find that the Chairman and Managing Director of Paschal Germany has confirmed that their normal trade practice in the course of international trade is to offer discount at the range of 25% to 40% of the normal sale price to all their customers located across the globe including the group companies/ affiliates. The importer has also demonstrated that even at the time that they were not in existence in India their parent company had allowed 25% discounts to buyers like NCC in India. The cash discount of 3% is allowed by the parent company if the subsidiary pays the import bills within the time. No cash discount was ever availed by the Appellant as the import payments could not be made to the suppliers within the time. The cost construction statement duly certified by the CA shows that on average the profit margin was around 16%. None of this was refuted through facts. The OIO at para 16 also mentions that the learned Adjudicating Authority did not find any cash flow back towards Royalty/ Technical Know-How fees/ Licence fee in respect of the imported goods.

4.3 The Appellant has drawn reference to the Apex Courts judgment in Commissioner of Customs, New Delhi Vs Prodelin India Pvt Ltd [2006 (202) ELT 13 (SC)] to state that the onus to prove that the declared price did not reflect the true transaction value is on the department.

4.4 We find that the department at the first instance has not shown any concrete reason to discard the transaction value. Para 14 of the OIO states that 'it appears that the importer is giving 25% discount to their related parties and may be another 3% as per the terms and condition of the price list.' He goes on to opine that 'there can not be mass production of such machinery plant which warrants such huge discount', without any factual substantiation. The whole arguments to discard the transaction value are based on conjectures and surmises. This being so the question of determining a fresh value as per the CVR does not arise. The Commissioner (Appeals) after examining the matter is also unsure about the exclusive nature of the discounts affecting the transaction value on the imported goods and states in conclusion that 'the discount enjoyed by the importer appears to be a special one made only for related importers'. On the other hand he has gone beyond his statutory functions, traversed beyond the scope of the appeal and taken on the role of an investigator directing the lower authority to

examine why the loading of value should not be at 25%. Hence the impugned order must fail both for sustaining the OIO which was based on conjectures and surmises and could not give any concrete reasons to discard the declared transaction value and further for exceeding his statutory functions by ordering a fresh enquiry.

5. For reasons discussed we set aside the impugned order. The appeal succeeds and is disposed of accordingly.