

2014 (302) E.L.T. 551 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

[COURT NO. II]

S/Shri Ashok Jindal, Member (J) and S.K. Gaule, Member (T)

BREMBO BRAKE INDIA PVT. LTD.*Versus***COMMR. OF CUS. (IMPORTS), MUMBAI***Final Order No. A/1943/2013-WZB/C-I(CSTB), dated 8-8-2013 in Appeal No. C/1160/2012-Mum*

Valuation (Customs) - Royalty, whether includible in assessable value - Royalty or technical know-how paid only for manufacture of sub-assembly of Dis Brake Systems - Payment of royalty and other charges not for imported goods and not a condition of sale of goods - Consequently, royalty and other charges not includible in assessable value - Rule 10(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 - Section 14 of Customs Act, 1962. [para 7]

Appeal allowed**CASE CITED**General Motors India Pvt. Ltd. v. Commissioner — [2009 \(235\) E.L.T. 364](#) (Tribunal) — *Referred* [Para 6]

REPRESENTED BY : Shri T. Vishwanathan, Advocate, for the Appellant.

Shri D. Nagvenkar, Addl. Commissioner (AR), for the Respondent.

[Order per : Ashok Jindal, Member (J)]. - Heard both sides.

2. The appellant filed this appeal against Order-in-Appeal No. 722-723/MCH/ADC/GVC/ NCH/2012, dated 16-8-2012 whereby the learned Commissioner (Appeals) has upheld the lower adjudicating authority's order.

3. Briefly stated facts of the case are that the appellants have imported components raw material and capital goods for manufacture of Dis Brake Systems for two wheelers from M/s. Brembro, Italy. The appellants are subsidiary of M/s. Brembro, Italy, therefore, the case was registered with SVB for valuation purpose. The lower adjudicating authority loaded the assessable value that the element of royalty @ 4% in 2008 and 1.5% on value of sales being paid in addition as an additional consideration for the imported goods in terms of Rule 10 of the CVR, 2007. Aggrieved by the same the appellant filed appeal before the learned Commissioner (Appeals) who in turn upheld the lower adjudicating authority's order. Hence the appeal.

4. The contention of the appellant is that they are manufacturers of Dis Brake Systems for two wheelers and they are importing raw material components and capital goods for manufacture of Dis Brake Systems. The learned Advocate appearing for the appellant taken us through the relevant clauses of the agreement and submitted that royalty for technical know-how is for the manufacture of sub-assembly and not for the goods and components imported for the manufacture of finished products. The contention is that they are paying royalty for the operation of element of technical know-how and not on the value of the imported goods.

5. The contention of the learned A.R appearing for the department is that after addition of explanation to Rule 10(1) (c). The situation had undergone change even if the goods are processed then the royalty/additional consideration/other charges referred in Clause (c) and (e) of the Explanation of the Rule 10(1) they are to be included in the assessable value, not-with-standing the fact that such goods may be subjected to the said powers after importation of such goods.

6. The learned Advocate in his counter submitted that even after the addition of explanation the hurdle of 'condition of sale' has to be crossed. The contention is that as regard the royalty and licence fees related to imported goods, condition of sale has to be crossed before element of royalty or any other charges has to be included in the assessable value. They placed reliance on this Tribunal's decision in the case of *General Motors India Pvt. Ltd. v. Commissioner of Customs* (Imports), Mumbai - [2009 \(235\) E.L.T. 364](#) (Tri. - Mumbai).

7. We have carefully considered the submissions and perused the records. The department has sought to load royalty relating to the technical know-how as per Rule 10(I)(c). Undisputedly the appellants have imported components for the manufacture of Dis Brake Systems for two wheelers. The department has sought to load the assessable value as per Rule 10 (I)(c) which is reproduced for convenience of the reference :-

Rule 10(1)(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;

The following explanation has been added to Rule 10(I)(c).

"Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e) such charges shall be added to the price actually paid or payable for the imported good,

notwithstanding the fact that such goods may be subjected to the said process after importation of such goods”.

From the above it is clear that the royalty and the other charges can be included :

- (i) In case of imported goods
- (ii) As condition sale of goods

And the explanation only added that such royalty would be includable' in the case even if the imported goods have undergone the said process after importation of such goods. The department could not show that the royalty and other charges were for the to the imported goods and they were as a condition of sale of such imported goods. Undisputedly the royalty on technical know-how was paid only for the manufacture sub-assembly of Dis Brake Systems. Therefore the royalty and other charges are not includible and the impugned order is not sustainable and is set aside. The appeal is allowed.

(Dictated in open Court)
