A COMMISSIONER OF CUSTOMS, NEW DELHI

v.

M/S PRODELIN INDIA (P) LTD.

AUGUST 31, 2006

B [DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

Customs Valuation (Determination of Price of Imported Goods) Rules, 1988: Rules 2(2)(i), 2(2)(iv) and 9(1)(c)—Technical services fee—Impact of
C *on valuation of imported goods—Foreign Company having 75% equity shares in a joint venture Indian Company—Indian company assembling VSAT antennas, accessories and other communication equipments, supplied by foreign company, testing, installing and servicing them—Revenue adding 10% in invoice value of goods—Held, there is nothing on record to indicate that foreign company has charged any technical fee for any imported goods*
D *or for pre-import function—It was paid for post-import operations—Revenue not justified in loading of 10% in invoice value.*

Precedent:

Decision of CESTAT—Based on its earlier decisions—Held, it is not
E *open to Revenue to seek reversal of order of CESTAT which is based on its earlier decisions wherein correct view has been taken by it.*

The respondent-Company was set up under an agreement between a foreign company and an individual residing in Delhi for facilitating promotion and selling VSAT Antennas, accessories and other communication
F **equipments. The foreign company owned 75% equity shares of this joint venture in the respondent-company which would assemble and test feed the components provided by the foreign company and would service, test and install these products. A certain amount as technical service fee was to be paid by the foreign company to the respondent company per month. The Deputy**
G **Commissioner of Customs passed an order for loading of 10% in the invoice value of goods imported from the said foreign company. The Revenue was of the opinion that the respondent-company and the foreign company were related persons in terms of Rules 2(2)(i) and 2(2)(iv) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and this relationship influenced the price of the imported goods. The Commissioner of Customs**
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(Appeal) dismissed the appeal of the respondent. However, the Customs, Excise and Service Tax Appellate Tribunal allowed respondent's appeal holding that though the transaction was with related persons, but that by itself would be no ground to make addition to sale price. The CESTAT held that the reference to raw material was for assistance in servicing of supply and a sourcing assistance could be required only when the servicing was from a third party and not when it was from one of the partners. Aggrieved, the Revenue filed the appeal.

It was contended for the appellant that the CESTAT only half interpreted the clause of control of foreign partners regarding source of raw material. The other half of the clause, i.e., price in detail was not discussed at all and the CESTAT failed to appreciate that in the instant case the foreign company had the controlling interest in the Indian company and that the respondent was under obligation to procure components only from the foreign collaborator or from the company with whom the foreign collaborator had an agreement. It was submitted that in the circumstances, the technical fees paid definitely influenced the price of the goods imported.

Dismissing the appeal, the Court

HELD: 1. The plea of the appellant that the CESTAT had only interpreted half of the clause related to pricing detail is neither factually nor legally correct. The CESTAT has in clear terms taken into consideration the various clauses of the joint venture agreement and came to the correct conclusion that the service agreement was mainly manufacturing, design, know-how specifications, drawings and all types of tooling equipment etc. The reference to raw materials is for assistance in sourcing of supply. A sourcing assistance can be required only when the sourcing is from a third party and not when it is from one of the partners. It further held that it would be placing an artificial meaning to assistance for sourcing i.e. locating the best source or supply. Therefore, the CESTAT held in clear terms that such an artificial meaning was not justified. [688-B-E]

2. There is nothing on record, including the joint venture agreement which may reveal that the foreign company has charged any technical fee for any imported goods or pre-import function of the antenna system. The respondent have proved beyond doubt that what they had paid to the foreign company was not in respect of the value of the imported goods but the technical fee for post-import operation. [688-G-H; 690-G-H]

3.1. Besides, there is no denial of the fact that some of the parts/

components of the antenna system were being supplied by the foreign company at the price at which the said parts were supplied at full commercial value without having been influenced by the joint venture agreement. This apart, the Department has not brought any evidence on record to show that the relationship between the respondent and the foreign company has influenced the price or value of the imported goods/components.

[688-G-H; 689-A; H; 690-A]

3.2. It is settled law that the onus to prove that the declared price did not reflect the true transaction value is always on the Department. It is also a settled law that the Department is bound to accept the transaction value entered between the two parties. It is not the case of the Department that the foreign company was exporting the identical goods to other importers at higher price. Therefore, in view of the clear position of law about the acceptance of the transaction value, the Customs authorities could not add the technical know-how fee in respect of the post-importation activities to the assessable value of the imported goods. [690-B-C]

4.1. Even assuming that the respondent and the foreign company are related persons, in that case their transaction value is to be accepted provided that examination of the circumstances of sale of the imported goods indicate that the relationship did not influence the price and the importer demonstrates that the declared value of the goods being valued, closely approximates to the value for identical goods or similar goods. In the present case, a perusal of the order-in-original would reveal that the loading was ordered in terms of Rule 9(1)(c) of the Rules. There was no challenge to the value declared by the respondent before the Customs Authorities. There was also no finding in the Order-in-original that the value was not increased with Custom Valuation Rules, 1988 read with Rules 2(2)(i), 2(2)(iv), 4(3)(a) and 4(3)(b).

[691-F-H; 692-A]

4.2. However, in the grounds of appeal, it is not the case of the Department that the value requires to be loaded because of the provisions of Rule 9(1)(c). But the Department is treating the respondent and the foreign company as a related person and straightaway invoked Rule 4(3)(a) or 4(3)(b). The Department cannot adopt such a course unless it is alleged that some evidence is brought on record that the prices at which the foreign company had supplied the imported goods to the respondent was not reflecting the correct transaction value. Therefore, their appeal is contrary to the grounds on which the original authority had ordered loading of the assessable value.

[692-A-B]

5.1. In the joint venture agreement there is nothing which would put the respondent under obligation to procure component from the foreign collaborator or from another company with whom the foreign collaborator had an agreement. The respondent was procuring only one component from the foreign company. Even if respondent was procuring certain components from the aforesaid another company that had no bearing on the price/value of the imported goods. [693-A-C]

5.2. Further, the mere fact that the foreign company had any agreement with another company had nothing to do with the price of the feed horn which was being supplied by the foreign company to the respondent. Therefore, the Department's case that the technical fees had influenced the price of the goods imported is factually incorrect and baseless. [693-B-C]

Daewoo Motors India Ltd. **v.** *Commissioner of Customs, New Delhi,* **(2000) 115 ELT 489 (T)** *NEG Micon (India) Pvt. Ltd.* **v.** *Commissioner of Customs, Chennai* **(2004) 170 ELT 29, referred to.**

6. The Department has not advanced any argument as to how the Tribunal erred in following its earlier judgments on the identical issue. When the law has been laid down by the CESTAT itself in a number of earlier judgments, it only followed the same in the facts and circumstances of the present case. Therefore, now it is not open for the Department to persuade this Court to reverse the order which is based on the earlier judgments of the CESTAT wherein correct view has been taken by it. [693-H; 694-A]

Eicher Tractors Ltd. Haryana **v.** *Commissioner of Customs, Mumbai,* **[2001] 1 SCC 315 and** *Commissioner of Customs, Mumbai* **v.** *Bureau Veritas and Ors.,* **2005] 3 SCC 265, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3813 of 2005.

From the Final Order No. 1425/04-NB/A dated 20.12.2004 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (Bench) in Appeal No. C/396/04-NB(A).

Harish Chandra, Rudreshwar Singh and B. Krishna Prasad for the Appellant.

Shyam Divan, Poli Kataki annd Meenakshi Arora for the Respondent.

The Judgment of the Court was delivered by

A **DR. AR. LAKSHMANAN, J.** This appeal is filed by the Commissioner of Customs (ICDs), Tughlakabad against the final order No. 1425/04-NB-A dated 20.12.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No. C-396/04-NB/A by which the CESTAT has allowed the appeal filed by the respondent.

B The brief facts leading to the filing of the present appeal are as under:

The respondent-Company i.e., M/s Prodelin India (P) Ltd. (for short "M/s PIPL") was set up under an agreement between M/s Prodelin Corporation U.S.A. (for short "M/s PC USA") and one Mr. Ashok Mago of New Delhi for C marketing facility for promotion and selling VSAT Antennas, accessories and other communication equipments, assembly of equipments, testing, servicing etc.

As per the joint venture agreement M/s PC USA owns 75% of equity shares in M/s PIPL which shall assemble and test feed components provided D by M/s PC USA and will service, test and install these products. Technical service fee was also to be paid by M/s PIPL to M/s PC USA for the period 1.10.1997 to 30.9.1998 @ US $ 25,000 per month in terms of technical service agreement between the two companies. A copy of the joint venture agreement dated 1.9.1997 has been filed and marked as annexure P-1.

E On the basis of the documents and information provided by the respondent, the Dy. Commissioner of Customs, ICD, passed an order on 11.1.2001 for loading of 10% in the invoice value of the goods imported from M/s PC, USA. As per the Department, M/s PIPL, India and M/s PC, USA are related persons in terms of Rules 2(2)(i) and 2(2)(iv) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (for short "the Rules") F and this relationship had influenced the price of the imported goods.

Vide order dated 17.3.2004, the Commissioner of Customs (Appeal) Delhi-II passed in Appeal No. CCA/CST/74/D-II/2004 dismissed the appeal preferred by the respondents upholding the order dated 11.1.2001 passed by G the Dy. Commissioner, ICD, TKD. The Commissioner held that as regards the relationship between the respondents and its foreign collaborator, it is manifestly clear that they had a complex and interwoven relation in which the latter did not only have 75% of the equity shares but also had their own three of the four Directors in the Board of Directors of the respondent, therefore, it is correctly held by the Adjudicating Authority that their foreign collaborator H are related persons covered by Rules 2(2)(i) and 2(2)(iv) of the Rules. It also

held that the foreign company had a controlling interest in the activities of the company. It was further held that it is not a case which is covered by Rules 4(3)(b) and 4(3)(a) of the Rules and it is clear that the relations between the two companies would have a bearing on the value of the goods imported.

The respondent preferred an appeal against the said order of the Commissioner of customs (Appeals), Delhi-II before the Customs, Excise and Service Tax Appellate Tribunal, R.K. Puram, New Delhi (for short 'CESTAT'). The CESTAT vide its impugned judgment and final order dated 20.12.2004 had allowed the appeal and set aside the impugned order on the ground that though the authorities were right in holding that the transaction was between related person inasmuch as the importer was a joint venture in which the foreign supplier was the partner, however, that by itself, was no ground to make addition to sale price. The CESTAT has held that the reference to raw material is for assistance in sourcing of supply. A sourcing assistance can be required only when the sourcing is from a third party and not when it is from one of the partners. It was submitted that the CESTAT has only half interpreted the clause of control of foreign partner regarding source of raw material from where the raw material was to be procured. The other half of the clause i.e. price in details has not been discussed at all and that the CESTAT has failed to appreciate that in this case, the foreign company has the controlling interest in the Indian Company and that the respondent was under obligation to procure components only from the foreign collaborator or M/s Tata Advance Material Ltd. with whom the foreign collaborator has an agreement. Therefore, the technical fees paid, have definitely influenced the price of the goods imported. Aggrieved by the order dated 21.12.2004, the Commissioner of Customs has come up before this Court.

We have heard Mr. Harish Chandra, learned senior counsel, appearing for the appellant and Mr. Shyam Divan, learned senior counsel, appearing for the respondent.

Mr. Harish Chandra, learned senior counsel appearing for the appellant invited our attention to the orders passed by the Dy. Commissioner of Customs, Commissioner of Appeals and by the CESTAT. He also invited our attention to the 1988 Rules and submitted as under:

(a) The impugned final order is not sustainable since the CESTAT has only interpreted half of the clause of control of foreign partner regarding the source of raw material from where the raw material was to be procured. The other half of the clause related

A to the pricing details i.e. the price of procurement has not been discussed much less adjudicated upon.

(b) The Tribunal failed to appreciate that in this case the foreign company i.e. M/s PC USA has the controlling interest in the respondent-Company since 75% of the equity shares are controlled B by the foreign company and that it has its three of the four Directors in the Board of Directors of the respondent. Therefore, the respondent and their foreign collaborators are related persons in terms of Rule 2(2)(i) and Rule 2(2)(iv) of the Rules. The Tribunal completely failed to appreciate that this relationship had influenced the price of the goods imported and the adjudicating authority C was justified in loading 10% in the invoice value of the goods imported.

(c) The Tribunal failed to consider that admittedly, during the period from 1.10.1997 to 30.9.1998 an amount @ US $ 25000 was paid as technical fee by the respondent to the foreign collaborator. In the D whole, the total value of import during the period 1997-98 to 2000-2001 (up to 25.9.2000) was US $ 25,78,837 and the total amount of technical service paid by the respondents was US $ 2,58,000 thus the loading factor was 10% and adjudicating authority was correct in directing the same to be added in the valuation of the E goods imported.

(d) The Tribunal failed to appreciate that the technical fee as mentioned above was paid not only for post operative function but it was also for pre-operative function such as supply of design, drawing, fabrication drawing, detailed drawing design for F manufacture of dyes, assembly testing and alignment of feed etc. The Tribunal failed to consider that the imports made by the respondent were of finished goods and component of different sizes of VSAT Antennas do not require any post operative function.

G (e) The Tribunal failed to consider that the respondent had not submitted any documentary proof at any level to substantiate their claim that the value of the imported goods is more than the indigenously procured goods. The impugned final order is silent on this crucial point while accepting the declared value as full commercial value.

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(f) The Tribunal failed to consider that the respondent was under obligation to procure components from the foreign collaborator or from M/s Tata Advance Material Ltd. with whom the foreign collaborator M/s PC USA had an agreement. Therefore, the technical fee, admittedly paid, has definitely influenced the price of the goods imported.

Our attention was also drawn to the joint venture agreement entered into between the parties and the salient features contained therein and in particular, the purpose of agreement between the parties, financial participation, Management, Obligations of the first party and of the second party, Marketing, Competition, voting and arbitration etc.

Per contra, Mr. Shyam Divan, learned senior counsel appearing for the respondent drew our attention to the various clauses in the technical service agreement and submitted that the Customs Department was of the view that the respondent appeared to be a related person of the first party that is PC USA in terms of Rules 2(2)(i) and 2(2)(iv) of the Rules and that as per Rule 4(3)(a) of the Rules where the buyer and seller were related, the transaction value shall be accepted provided that the circumstances of the sale of imported goods indicate that the relationship did not influence the price. Hence, according to them the declared price could not be accepted as transaction value. Therefore, the appellant started enquiries in respect of the amount of US $ 2,58,000 paid in two instalments by the respondent PC USA. It was submitted that as per Article 11 para 2.1 of the Technical Service Agreement, the respondent had to pay a sum of US $ 25000 per month to M/s PC USA. The appellant sought clarification from the respondent on this aspect. It is useful to refer to the letter of respondent dated 18.10.2000 that this fee was paid to the first party for the following considerations:

(a) free training, technical, mechanical and in the field of electronic communication to PIPL, India staff;

(b) frequent visit of M/s PC USA's technical experts to India to guide the PIPL staff and solve customer technical problems;

(c) supply of specialized fixtures free of cost for quality assurance of the material fabricated in India;

(d) supply of electronic test gear free of cost for assembly, testing and alignment of feeds in India;

(e) design drawings, fabrication drawings, assistance to modify

A design and fabrication drawings to suit the material available in India;

(f) approval of products manufactured in India in the initial stage;

(g) respond to day-to-day technical queries raised by M/s PIPL, India and

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(h) providing detail design drawings for manufacture of dyes in India for on-going indigenisation program and future exports.

He further submitted that despite a categorical reply by the respondent, which clearly shows that the technical fee of US $ 2,58,000 was paid towards C the operation of different type to be performed in India and has nothing to do with the price of the imported goods, the original authority took the view that the technical assistance provided by PC, USA to the respondent is not merely for marketing or management of imported goods but was essential for assembly/production of the end product by using imported goods. It was further held that the supply of electronic test gears and specialized fixtures D has been stated to be free of cost whereas the technical service fee was paid for these items also. Further M/s PC USA and Tata Advance Material Ltd., Bangalore were having collaboration agreement and M/s Tata Advance Material Ltd. which further shows indirect control over M/s PIPL India by M/s PC USA. It was held by the original authority that the amount paid as E technical service fee, being the consideration for technical know-how and was includible in the value of the imported goods in terms of Rule 9(1)(c) of the Rules. Since according to the adjudicating authority no separate break-up for consultation or training had been given by the respondent, the appellant was loaded to the import value worked out to 10% of the invoice value of the goods imported by the respondent from M/s PC USA.

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Aggrieved by the said order, the respondent filed appeal before the Commissioner of Customs(Appeals), New Delhi and canvassed many submissions. However, it was held that the respondent was under obligation to procure components only from the foreign collaborator or from TAML with whom the foreign collaborator had an agreement. Therefore, according to the G appellate authority, the relation between the two would had definitely influenced the price of the imported goods.

Learned senior counsel appearing for the respondent invited our attention to the concluding portion of the order passed by the CESTAT which H has held in clear terms as under:

"We have perused the records and considered the submissions made by both sides. True, the authorities are right in holding that transaction is between related persons inasmuch as the importer is a joint venture in which the foreign supplier is a partner. However, that by itself is no ground to make addition to sale price. A perusal of the service agreement makes it clear that its area of coverage is mainly manufacturing, design, know-how specifications, drawings and all types of tooling equipment etc. The reference to raw materials is for assistance in sourcing of supply. A sourcing assistance can be required only when the sourcing is from a third party and not when it is from one of the partners. It would be placing an artificial meaning to assistance for sourcing, if sale to each other is also treated as requiring assistance in sourcing i.e. locating the best source or supply. We are of the view that such an artificial meaning is not justified. There is no other material on record to indicate that the sale price in the present case is not a full commercial price. In these circumstances, we are of the opinion that the transaction value between the parties cannot be treated as anything other than a commercial price. Such a price commends itself as assessable value. The impugned order is not sustainable. Accordingly, it is set aside and the appeal is allowed with consequential relief, if any, to the appellant."

Elaborating his submissions, learned senior counsel appearing for the respondent, submitted the following points:

(a) that the order of CESTAT has taken into consideration and correctly interpreted the joint venture agreement;

(b) that the technical fee was only in respect of the assistance given by M/s PC USA i.e. the first party in design and assembly of antenna system in India;

(c) that no evidence is brought on record to show that value of imported finished goods does not reflect the full commercial value;

(d) that the department did not bring any evidence to controvert the contents of their letter dated 18.10.2000;

(e) that the procurement of some parts from TATA Advance Material Ltd. had no bearing on the price of the imported goods; and

(f) that the CESTAT has followed their earlier judgments.

A Learned senior counsel appearing for the respondent has also invited our attention to the various findings rendered by the Tribunal and of the CESTAT with reference to the agreement and other documents.

We have given our careful consideration to the arguments advanced by the learned senior counsel appearing for the appellant and countered by the B learned senior counsel appearing for the respondent.

It was argued by the learned senior counsel appearing for the appellant that the CESTAT has interpreted only half of the clause of control of foreign partner regarding the source of raw material from where the raw material was C to be produced. According to him, the other half of the clause related to the pricing details i.e. the price of procurement has not been discussed much less adjudicated upon.

The above submission, in our view, is factually as well as legally untenable.

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The CESTAT has in clear terms taken into consideration the various clauses of the joint venture agreement and came to the correct conclusion that the service agreement was mainly manufacturing, design, know-how specifications, drawings and all types of tooling equipment etc. The reference to raw materials is for assistance in sourcing of supply. A sourcing assistance E can be required only when the sourcing is from a third party and not when it is from one of the partners. It further held that it would be placing an artificial meaning to assistance for sourcing i.e. locating the best source or supply. Therefore, the CESTAT held in clear terms that such an artificial meaning was not justified. Therefore, the contention of the appellant that the F CESTAT had only interpreted half of the clause related to pricing detail is neither factually nor legally correct.

Learned senior counsel appearing for the Department contended that the technical fee was paid not only for post operative function but it was also for pre-operative function such as supply of design, drawing, fabrication G drawing, detailed drawing design for manufacture of dyes, assembly testing and alignment of feed etc. This submission, in our view, has no force. There is nothing in the joint venture agreement which may reveal that M/s PC USA has charged any technical fee for any pre-operative function of the antenna system. There is no denial of the fact that some of the parts/components of H the antenna system were being supplied by M/s PC USA the price at which the said parts were supplied at full commercial value without having been

influenced by the joint venture agreement. A

(i) A perusal of the joint venture agreement would clearly reveal that all the activities for which the technical fee was being paid by the respondent was for various functions which were to be carried out in India. It is wrong on the part of the appellant to link the design, drawing, fabrication drawing, manufacture of dyes, B assembly testing and alignment of feed etc. with the imported parts being supplied by M/s PC USA. The appellant has totally confused the issue and has wrongly linked the price of the parts of antenna with that of the various functions which lead to the assembly/manufacture of complete antenna for which M/s PC C USA was to provide assistance to the respondent-Company. There is nothing on record to show that any technical fee was paid in respect of the goods being manufactured and supplied by PC USA to the respondent.

A perusal of the details given in the letter dated 18.10.2000 and referred D to in paras supra would clearly set the whole controversy at rest inasmuch as there is nothing in this break up or the various consideration which could lead to prove the department that the said technical fee related to the price of the imported goods. In our view, the Department has wrongly interpreted these clauses and wrongly attributed design, drawing, fabrication etc. to the imported goods whereas a perusal of this break up clearly reveals that the E technical fee is in respect of the various jobs/consideration which M/s PC USA was to perform in respect of the manufacture of the antennas system in India. It would also be evident by the findings given by the lower authorities and various grounds raised by the appellant before this Court that they are drawing unwarranted inferences and trying to relate to the various activities F which M/s PC USA was to perform in terms of the joint venture agreement and trying to relate the same to the imported good. Such a course on the part of the appellant cannot be countenanced.

Further the appellant in their appeal itself have admitted at Para 2(c) about the scope of the services which M/s PC USA was to provide to the G respondent. A perusal of their own appeal would reveal that there is nothing on record to show that any technical fee was being charged in respect of the imported goods or pre-import function. Therefore, various contentions raised by the Department, in the present appeal, are wholly devoid of any merit.

This apart, the Department has not brought any evidence on record to H

A show that the relationship between the respondent and M/s PC USA has influenced the price or value of the imported goods. There is no evidence brought by the appellant that their relationship did influence the price of the imported components.

It is settled law that the onus to prove that the declared price did not B reflect the true transaction value is always on the Department. It is also a settled law that the Department is bound to accept the transaction value entered between the two parties. It is not the case of the Department that M/s PC USA were exporting the identical goods to other importers at higher price and that the Department has not made any effort to bring on record any C evidence that identical or similar goods were imported by other importers at higher price. Therefore, in view of the clear position of law about the acceptance of the transaction value, the Customs authorities could not add the technical know-how fee in respect of the post-importation activities to the assessable value of the imported goods.

D Our attention was also drawn to Rule 9(1)(c) of the Rules which reads as under:

> "9. Cost and Services- (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -
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> (a) .....
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> (b) .....
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> (c) royalities and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the
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> sale of the goods being valued, to the extent that such royalities and fees are not included in the price actually paid or payable."

The original authority has ordered for loading of their value of the imports by 10% in terms of the said Rules which provide that they shall be added to the price actually paid or payable for the imported goods royalities G and license 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 royalities and fees are not included in the price actually paid or payable. However, the respondent have proved beyond doubt that what they had paid to M/s PC USA was not in respect of the value of the H imported goods but the technical fee for post-importation operation.

The Department, in their grounds of appeal, before this Court relied upon the provisions of Rules 2(2)(i) and 2(2)(iv) and also Rules 4(3)(a) and 4(3)(b) of the Rules. For the sake of convenience, the Rules on which the Department is relying upon are reproduced hereinbelow:

"Rule 2(2)(i) : they are officers or directors of one another's businesses;

Rule 2(2)(ii). .....

Rule 2(2)(iii). .....

Rule 2(2)(iv) : any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;"

"Rule 4(3)(a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

Rule 4(3)(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time -

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods."

Even assuming for argument's sake that the respondent and M/s PC USA are related persons even in that case their transaction value is to be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price and the importer demonstrates that the declared value of the goods being valued, closely approximates to the value for identical goods or similar goods. In the present case, a perusal of the order-in-original would reveal that the loading was ordered in terms of Rule 9(1)(c) of the Rules. There was no challenge to the value declared by the respondent before the Customs Authorities. There was also no finding in the Order-in-original that the value was not increased with Custom Valuation Rules, 1988 read with Rules 2(2)(i),

A 2(2)(iv), 4(3)(a) and 4(3)(b).

However, in the grounds of appeal, it is not the case of the Department that the value requires to be loaded because of the provisions of Rule 9(1)(c). But the Department is treating the respondent and M/s PC USA as a related person and straightaway invoked Rule 4(3)(a) or 4(3)(b). The Department, in
B our view, cannot adopt such a course unless it is alleged that some evidence is brought on record that the prices at which M/s PC USA had supplied the imported goods to the respondent was not reflecting the correct transaction value. Therefore, their appeal is contrary to the grounds on which the original authority had ordered loading of the assessable value. The appellate authority
C also held that the loading was required in view of rule 9(1)(c) of the Rules. The appellate authority, in fact went beyond the scope of the Order-in-Original and gave findings which were contrary to the Order-in-original. He entered into the issue of share holding and held that it was not a case which was covered by Rule 4(3)(a) and (b). Some of the findings rendered by the appellate authority is unwarranted and that the first appellate authority could
D not have given unsubstantiated findings and could not upheld the order of the original authority on the ground different from the findings of the adjudicating authority. Therefore, viewed from any angle, the appeal filed by the Department is wholly misconceived.

In the instant case, the appellant had reproduced the contents of their
E letter dated 18.10.2000 wherein they had brought on record the considerations for which they had paid fee to M/s PC USA and had nothing to do with the imported goods and M/s PC USA was only supplying the parts of antenna systems and not a complete antenna. This letter has been reproduced in the order of the Deputy Commissioner. However, he did not controvert the
F contentions raised by the respondent before him but went on to load the assessable value by 10% in terms of rule 9(1)(c). When the respondent had taken a categorical stand about the nature of technical fee to be paid to M/s PC USA and it was clearly contended that it was for post-importation activity, it was obligatory on the part of the original authority to have controverted the contents of the said letter. He simply ignored the same and
G went on to pass an adverse order. In the appeal also, the Department have accepted the same. Therefore, in the absence of anything brought on record contrary to the submissions of the respondent, the nature of technical fee, it is not open for the appellant to justify the loading of 10% in the invoice value ordered by the original authority.

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We shall now consider the arguments advanced by learned counsel appearing for the respondent that the procurement of some parts from M/s Tata Advance Material Ltd. had no bearing on the price of the imported goods. In this connection, we have perused the joint venture agreement which would reveal that there is nothing in that agreement which would put the respondent under obligation to procure component from the foreign collaborator or from M/s Tata Advance Material Ltd. with whom the foreign collaborator had an agreement. It has already been stated in paragraphs supra that the respondent was procuring only one component from M/s PC USA. Even if respondent was procuring certain components from M/s Tata Advance Material Ltd. that had no bearing on the price/value of the imported goods. M/s Tata Advance Material Ltd. were manufacturing the components indigenously and had nothing to do with the imported material. Further, the mere fact that M/s PC USA had any agreement with M/s Tata Advance Material Ltd. had nothing to do with the price of the feed horn which was being supplied by M/s PC USA to the respondent. M/s Tata Advance Material Ltd. were manufacturing some components indigenously, namely, reflector and metal structure. Therefore, the Department's case that the technical fees had influenced the price of the goods imported is factually incorrect and baseless.

Mr. Shyam Divan, learned senior counsel, cited some decisions. He also relied on two decisions cited by the respondent before the CESTAT which are:

1. *Daewoo Motors India Ltd.* v. *Commissioner of Customs. New Delhi,* (2000) 115 ELT 489 (T) and

2. *NEG Micon (India) Pvt. Ltd.* v. *Commissioner of Customs, Chennai,* (2004) 170 ELT 29

We have perused these two judgments. In these two judgments, it was clearly held that the technical know-how fee and service fee if paid by the importer if it related to manufacture of wind turbine generator in India and service thereof and not in respect of parts/components imported by them - license fee not payable as a condition of sale of imported goods License fee not satisfy the required conditions under Rule 9(1)(c) of the Rules for being added to the assessable value of the imported goods.

This apart, the Department has not advanced any argument as to how the Tribunal erred in following their earlier judgments on the identical issue.

A When the law has been laid down by the CESTAT itself in a number of earlier judgments, it only followed the same in the facts and circumstances of the present case. Therefore, now it is not open for the Department to persuade this Court to reverse the order which is based on the earlier judgments of the CESTAT wherein correct view has been taken by it.

B He also cited some judgments on Rule 9(1)(c) of 1988 Rules and on Section 14 of the Customs Act, 1962.

In *Eicher Tractors Ltd. Haryana* v. *Commissioner of Customs, Mumbai,* [2001] 1 SCC 315, this Court, in paragraph 6, held as under:

C "6. Under the Act customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Governmnt under Section 14(2). Where the value is not so fixed, the value has to be determined under section 14(1). The value, according, to Section 14(1), shall be deemed to be the price at which such or like D goods are *ordinarily sold*, or offered for sale, for delivery at the *time* and *place of importation*-in the course of international trade. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller E and the buyer have no interest in the business of each other and the price is the sole consideration for the sale.....". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1-A) in accordance with the Rules framed in this behalf."

F

In *Commissioner of Customs, Mumbai* v. *Bureau Veritas and Ors.,* [2005] 3 SCC 265, this Court in paragraphs 17, 18, 20 and 21 held as under:

"17. It is true that the Rules are framed under Section 14(1-A) and are subject to the conditions in Section 14(1). Rule 4 is in fact directly G relatable to Section 14(1). Both Section 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2).

H

18. Rule 4(1) speaks of the transaction value. Utilization of the definite article indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.

20. It is only when the transaction value under Rule 4 is rejected, that under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely, if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent rules.

21. The scope for interference with findings recorded by the Tribunal if it has kept in view the correct legal position, has been dealt with by this Court in many cases. The position was illumina .igly stated by this Court in *Collector of Customs, Bombay* v. *Swastic Woollens (P) Ltd. and Ors,* [1988] Supp SCC 796."

Learned counsel for the Department cited some decisions. However, the judgments cited by learned counsel for the appellant are not applicable to the facts and circumstances of the case and are distinguishable on facts and on law and those cases have been decided on the peculiar facts of those cases.

In the instant case, we have elaborately considered the entire facts and circumstances of the case with reference to the agreement entered into between the parties and also decided the case on the provisions of the Rules.

In our opinion, the various contentions raised by the Department, in the present case, are wholly devoid of any merit. In the result, the appeal stands dismissed. However, there shall be no order as to costs.

R.P. Appeal dismissed.