

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Customs Appeal No.41405 of 2019**

(Arising out of Order-in-Appeal Sea C. Cus. II No. 340/2019 dated 25.4.2019 passed by the Commissioner of Customs (Appeals – II), Chennai)

**M/s. Heidelberg India Pvt. Ltd.**

**Appellant**

No. 333, GST Road  
Jamin Pallavaram, Chrompet  
Chennai – 600 044.

Vs.

**Commissioner of Customs**

**Respondent**

Chennai II Commissionerate  
Custom House  
No. 60, Rajaji Salai  
Chennai – 600001.

**APPEARANCE:**

Shri Harish Bindumadhavan, Advocate for the Appellant  
Shri Harendra Singh Pal, AC (AR) for the Respondent

**CORAM**

**Hon'ble Shri P. Dinesha, Member (Judicial)**  
**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order No. 40780/2023

Date of Hearing : 08.08.2023

Date of Decision: 12.09.2023

**Per M. Ajit Kumar,**

This appeal is filed by the appellant M/s. Heidelberg India Pvt. Ltd. against Order in Appeal No. Sea C. Cus. II No. 340/2019 dated 25.4.2019.

2. Brief facts of the case are that the appellant had registered with Special Valuation Branch for their imports from M/s. Heidelberger Drukmaschinen AG, Germany, that the invoice value was accepted as transaction value by the department since 2001 and the order was

periodically renewed which was valid till 1.4.2016; that the department consequent to a Review Order dated 24.6.2013 filed an appeal before the Commissioner (Appeals) to remand the case back to the lower adjudicating authority to examine the records and evidences; that the Commissioner (Appeals) remanded the case back to the lower adjudicating authority vide Order in Appeal No. 1551/2014 dated 26.8.2014; that the lower adjudicating authority examined the case afresh and passed Order in Original No. 52824/2017 dated 13.1.2017 wherein the declared value was loaded by 20.75%; that the above Order in Original was reviewed by the department and an appeal was filed with a prayer to remand the case back to the lower adjudicating authority for re-examination of records and evidences; that the appellant also filed an appeal against the Order in Original contesting the enhancement of the declared value by 20.75%; that the Commissioner (Appeals) vide Order in Appeal No. C. Cus. No. 384 and 385/2017 dated 28.4.2017 remanded the case back to the lower adjudicating authority for fresh consideration; that the lower adjudicating authority rejected the deduction of employee cost, rent, repairs and maintenance and office and miscellaneous expenses claimed by the appellant while computing the deductive value under Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) and passed an order by loading the declared value of spares @62.5% under Rule of the CVR, 2007. Aggrieved by the order, the appellant filed appeal before Commissioner (Appeals) who vide the impugned order upheld the order passed by

the lower adjudicating authority. Hence the present appeal before the Tribunal.

3. No cross-objections have been filed by the Revenue.

4. We have heard learned counsel Shri Harish Bindumadhavan for the appellant and Shri Harendra Singh Pal, learned AR for the Revenue.

4.1. Shri Harish Bindumadhavan learned counsel for the appellant submitted the transaction value should not have been rejected merely because the Appellant and the exporter are related and that the said goods are imported by third-parties at a higher rate. The onus to prove that the relationship did influence the price of the imported goods by the Appellant is on the Department as held in the case of **M/S Marcus Oils & Chemicals P. Ltd. v. Commissioner of Customs (Port), Kolkata**, [2020 (12) TMI 804 -CESTAT KOLKATA]. The said burden has not been discharged in the instant case. He submitted that the difference in the price of imports by third parties and that of the Appellant is due to the variation in the commercial levels, the line of business carried out by the Appellant and the quantity levels. There is no allegation of any flow-back or payment of any additional consideration by the Appellant to the foreign supplier. In the absence of such positive evidence, the transaction value cannot be rejected. In this regard, he placed reliance on the following cases:

- a. Armstrong World Industries (1) P. Ltd. v. Commissioner of Customs (I),
- b. Mumbai, 2015 (2) TMI 691 - CESTAT MUMBAI Rehau Polymers Pvt. Ltd. v. Commissioner of Cus. 2014 (301) E.LT. 116 (Tri.-Mumbai)

As per Rule 7 of the CVR, 2007, "general expenses" in connection with sales in India are to be deducted from the sale price of imported goods/ identical/similar imported goods while arriving at the deductive value of the goods. In this regard, it is pertinent to refer to Clause 7 of Interpretative Note to Rule 7 of the CVR 2007 which reads that "general expenses" include the direct and indirect costs of marketing the goods in question. In this regard, reference is made to Cost Accounting Standards 11 (Standard on Administrative Overheads) and 15 (Standard on selling and distribution overheads), which show that the above-mentioned expenses are costs/ general expenses incurred by the Appellant in connection with their sale and distribution business. As per proviso to Rule 3(3)(b) of the Valuation Rules, the commercial levels, quantity levels, etc. are to be taken into consideration while comparing values to arrive at the valuation of imported goods. When the transaction value is compared with values transaction with other third-parties as per Rule 3(3)(b) of the Valuation Rules, the commercial level and the quantity level is to be considered and the same has not been done in the instant case. In support of the above submission, reliance is placed on the following cases:

- a. Komet Precision Tolls India Pvt. Ltd. v. Commr. Of Cus., Bangalore, 2009 (245) E.L.T. 737 (Tri.-Bang.)
- b. Rehau Polymers Pvt. Ltd. v. Commissioner of Cus. 2014 (301) E.L.T. 116 (Tri.- Mumbai)
- c. Richemont India Pvt. Ltd. v. Commissioner of Customs, New Delhi, 2016 (343) E.L.T. 209 (Tri.-Del.)

He prayed that the impugned Order be set aside and the Appeal allowed.

4.2 Shri Harendra Singh Pal learned AR for the Revenue. He stated that the appellant is a 100% wholly owned subsidiary of the foreign Company M/s. Heidelberger Drukmaschinen AG, Germany. The Original Authority after examining the Customs Valuation Rules, 2007 (CVR, 2007) had found that the most appropriate rule to determine the transaction value was as per Rule 7 *ibid*. The appellant has also requested that the value be determined under the said Rule. The question is as to which are the deductions permissible from identical / similar goods to arrive at the transaction value. The impugned order had examined the worksheet showing the deductive value of the impugned spare parts and found that the issue to be determined is whether the expenses such as employee cost, rent, repairs and maintenance and office & miscellaneous expenses are deductible as per Rule 7 of CVR, 2007. He stated that the learned Commissioner Appeals had correctly decided that that these post importation expenses which are internal expenses of the importer need not be deducted and hence the value as determined by the lower authority was upheld. He prayed that the appeal may be dismissed.

5. We have heard the rival parties. The following issues are agreed to by them. The appellant is related to their foreign supplier in terms of Rule 2(2) of CVR, 2007. The dispute pertains to the valuation of goods (spare parts) imported by the appellant from their related company. Valuation of the goods are to be done in terms of Rule 7 of CVR, 2007. The worksheet showing the deductive value of the impugned spare parts as prepared by the appellant has been accepted as correct and only the heads for which deduction has to be allowed

from the unit sale price before arriving at the transaction value is disputed. The heads of expenses disputed are employee cost, rent, repairs and maintenance and office & miscellaneous expenses are deductible as per Rule 7 of CVR, 2007. The reason that the said heads are found to be not eligible for deduction in the impugned order is that these are post importation expenses which are internal expenses of the importer and hence cannot be deducted while arriving at the transaction value using the deductive method.

6. Rule 7 of the CVR, 2007 which is relevant to deciding the dispute is extracted below:

7. Deductive value.- (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

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8. The appellant has stated that as per the above Rule, "general expenses" in connection with sales in India are to be deducted from the sale price of imported goods/ identical/similar imported goods while arriving at the deductive value of the goods. Further Clause 7 of Interpretative Note to Rule 7 of the CVR 2007, to support their views

that "general expenses" include the direct and indirect costs of marketing the goods in question. They have also, referred to Cost Accounting Standards 11 (Standard on Administrative Overheads) and 15 (Standard on selling and distribution overheads), which show that the above-mentioned expenses are costs/ general expenses incurred by the Appellant in connection with their sale and distribution business.

9. We find that Rule 7 of CVR 2007, permits deductions of additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind. Note 7 to Rule 7 of The Schedule to CVR 2007 (Interpretative Notes) states as under;

"7. The "general expenses" include the direct and indirect costs of marketing the goods in question"

This legal position sets to naught the stand taken in the impugned order that post importation expenses which are internal expenses of the importer and cannot be deducted from the sale price of the goods while arriving at the deductive value of the goods. Since the disputed expenses viz employee cost, rent, repairs and maintenance and office & miscellaneous expenses are part of 'general expenses' relating to the direct and indirect cost of marketing the goods in question the appeal must succeed. The department is found not to have substantiated their case. We find that from 2001 to 2013 the Department accepted the transaction value of the imports as declared by the appellant. It was only in 2013 that for the first time the Department took a view that the declared value needed to be enhanced. Since the Department were dealing with legal issues which involved costing of the goods among other issues, it may have helped to have done a cost audit so that the

matter could have been examined with reference to the Cost Accounting Standards applicable to the case.

10. Having regard to the discussion above we find that the impugned order has failed to legally substantiate and sustain the rejection on deduction of expenses incurred towards employee cost, rent, repair maintenance and office expenses and miscellaneous expenses from the unit sale price, by holding them as post importation expenses. The impugned order is hence set aside. The appeal succeeds and is disposed off accordingly. The appellant is eligible for consequential relief, if any, as per law.

(Pronounced in open court on 12.09.2023)

**(M. AJIT KUMAR)**  
Member (Technical)

**(P. DINESHA)**  
Member (Judicial)

Rex