2025 INSC 609

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8028 OF 2010

M/S. COAL INDIA LIMITED **APPELLANT(S)**

VERSUS

COMMISSIONER OF CUSTOMS (PORT), CUSTOMS HOUSE, KOLKATA **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

This is an appeal under Section 130E of the Customs Act, 1962 against the order dated 20.04.2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata in appeal No.CDM-164/2004.

2. Be it stated that appellant had filed appeal No.CDM-164/2004 before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata ('CESTAT' for short

hereinafter) assailing the order dated 21.06.2004 passed by the Commissioner of Customs (Appeals), Kolkata confirming the order of the Assistant Commissioner of Customs and dismissing the appeal filed by the appellant.

3. This Court by order dated 10.09.2010 had condoned the delay and had issued notice.

4. Relevant facts may be briefly noted.

5. Appellant is a Government of India undertaking and has subsidiaries in the country.

6. On 26.02.2000, Central Coalfields Limited, which is a subsidiary of the appellant, had invited sealed tenders for supply of spare parts for P&H Shovel.

7. On 28.03.2000, M/s Harnischfeger Corporation, USA submitted its quotations through its distributor M/s Voltas Limited. In the terms and conditions, towards engineering and technical service fees an amount of 8 percent of the Free on Board (FOB) amount valued on pro-rata basis against each shipment, was to be paid to M/s Voltas Limited,

Kolkata in Indian rupees. Payment to be made to M/s Voltas Limited was not to be deducted from the FOB amount.

8. On 03.04.2000, M/s Voltas Limited submitted detailed quotation on behalf of its principal M/s Harnischfeger Corporation, USA (foreign supplier).

9. Purchase order was placed on 20.12.2000 with the foreign supplier for supply of spares required for P&H Shovel. Clause 5 of the purchase order is relevant and reads thus:

> 5. Terms of payment:
>
> (A) 100% of the FOB value shall be paid in US$ by means of a confirmed, divisible and irrevocable letter of credit which will be established in your favour through the State Bank of India, Corporate Accounts Group Br. 34, J.L. Nehru Road, Calcutta- 700071 (India) or their branch at USA against presentation of the following documents, in three sets as indicated against each:-
>
> | | |
> |---|---|
> | (i) Invoice | Original plus three certified copies. |
> | (ii) Packing List | Original plus three certified copies. |
> | (iii)Shipping Specification | Original plus three certified copies. |
> | (iv) Certificate of Origin | Original plus three certified copies. |

(v)Warranty Certificate — Original plus three certified copies.

(vi) Bill of Lading — Original plus three certified copies.

(vii) Certificate that "No Commission, Rebate, Discount, Margin or Egg. & Technical Service Charge etc. from the net FOB value of the contract or over & above FOB value of the contract is payable by M/s Harnischfeger Corporation, USA to any agent."

Note:-

(1) Documents from sl. no.(i) to (vii) form a complete set.

(2) One copy of packing list & certificate of origin should be inserted inside each package for reference & identification purpose of the items packed in the particular package.

(3) One copy consisting of a set of documents from sl. no. (i) to (vii) should also be sent by courier well in advance along with technical literatures/pamphlets, dimensional drawings, sketch, quality certificate, warranty certificate etc. to avoid delay in effecting clearance of goods and also their proper receipt at ultimate consignee and its accountal etc. to the following:

(a) The Dy. Chief Engineering, C&F Department, Coal India Ltd., 6-Lyons Range, Calcutta- 700001 (India).

(b) The Chief General Manager (Equipment), Central Coalfields Limited, Darbhanga House, Ranchi – 834001 (India).

(c) The Dy. Chief Materials Manager (P), Central Coalfields Limited, 15, Park Street, Calcutta – 700001 (India).

(d) The Dy. Chief Materials Manager (P), Purchase Deptt., Central Coalfields Limited, Darbhanga House, Ranchi – 834001 (India).

(e) The Finance Manager (HQ), Central Coalfields Limited, Darbhanga House, Ranchi – 834001 (India).

(f) Ultimate Consignee: The Dy. Chief Materials Manager (S), Central Coalfields Limited, Regional Stores, Rajrappa, Distt. Hazaribagh (India).

(B) Product support service to be rendered by M/s Voltas Ltd., Calcutta on payment of engineering and technical service charges.

As confirmed earlier product support services shall be rendered by M/s Voltas Ltd. Calcutta in all respect for ensuring optimum availability of P&H shovels.

Some of the product support services which shall be rendered by M/s Voltas Ltd., Calcutta in all respects for ensuring optimum availability of P&H Shovels are as under:

Regular product support visits by Voltas Service Engineers to all the operational mine sites for inspection of the shovels., providing technical updates, guidance on reports and maintenance at 'No Cost' to the projects.

Assist Project Engineers identity actual requirement of spares for planned procurement, scanning of part nos. in the enquiry/tender to ensure that correct parts are quoted, scrutiny of orders and L/C to ensure shipment of the right parts.

Extend assistance by providing technical write-ups for speedy custom clearance.

Assist customer doing insurance survey at docks.

Coordinate with various agencies in regard to the discrepancies in supplies for prompt replacement etc.

In view of the above, payment of engineering & service charges at the rate of 8% (eight percent) of the net FOB value of the order will be made on pro-rata basis to M/s Voltas, Calcutta in equivalent Indian Rupees at the exchange rate (BC selling) prevailing on the date of the bill of lading within 21 days from the date of submission of the following documents.

1) Pre-receipted & stamped bill: original + 2 copies

2) Full set of non-negotiable shipping documents as per (i) to (vii) of clause (5)A.

3) Certificate from the banker certifying the exchange rate prevailing on the date of bill of lading – original + 2 copies.

The above documents for payment of engineering & technical service charges should be submitted to the Finance Manager (HQ), CCL, Ranchi with a copy to this office.

M/s Voltas, Calcutta shall submit documentary evidence disclosing the particulars of engineering & technical service fees as per the agreement between M/s Harnischfeger Corporation, USA and M/s Voltas, Calcutta within 15 days from the date of receipt of payment to the Director of Enforcement, Govt. of India, New Delhi against this order.

10. Foreign supplier supplied the spares on 21.03.2001 which were received by the appellant on provisional assessment of bills of entry made by the customs authority.

11. Assistant Commissioner of Customs passed order-in-original dated 03.03.2004 finalizing provisional assessment of bills of entry covering goods imported by the appellant and its subsidiaries under several purchase orders/contracts. Assistant Commissioner of Customs held that engineering and technical service fees/agency commission/charges paid or payable by the appellant and its subsidiaries to the local agent

of the overseas supplier i.e. M/s Voltas Limited as reflected in the purchase order were includable in the assessable value of the imported goods (spare parts) under Rule 9(1)(a) and Rule 9(1)(e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 read with Section 14(1)(a) of the Customs Act, 1962. Since appellant had failed to include such service fees/agency commission/charges in the assessable value of spare parts so imported, this resulted in short levy of customs duty to the tune of Rs.64,47,244.00. Accordingly, the Assistant Commissioner of Customs ('Assistant Commissioner' for short) directed the appellant to pay Rs.64,47,244.00 within 15 days. He also ordered that in view of the order-in-original, the provisional assessment stood finalized.

12. Aggrieved by the aforesaid order dated 03.03.2004 of the Assistant Commissioner, appellant preferred an appeal before the Commissioner of Customs (Appeals), Kolkata ('Commissioner (Appeals)' hereinafter). By the order dated 21.06.2004, Commissioner (Appeals) held that the present case is squarely covered within the purview of Rule 9(1)(a) and

Rule 9(1)(e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (briefly 'the Customs Valuation Rules' hereinafter). Hence, the engineering and technical service fees/charges were includable in the assessable value of the imported goods. Commissioner (Appeals) confirmed the order passed by the Assistant Commissioner and *vide* the order dated 21.06.2004 dismissed the appeal.

13. This order of the Commissioner (Appeals) dated 21.06.2004 came to be challenged by the appellant before the CESTAT which was registered as appeal No.CDM-164/2004. CESTAT *vide* the order dated 20.04.2010 ('impugned order' hereinafter) held that payment made by the appellant to M/s Voltas Limited was only in connection with the sale of goods because M/s Voltas Limited was an agent/distributor of the foreign supplier. CESTAT was of the view that payment made by the appellant to M/s Voltas Limited had no nexus to any services rendered by M/s Voltas Limited but was a condition of sale. Holding that payment made to M/s Voltas Limited had

a direct nexus to the value of the goods imported, CESTAT rejected the appeal.

14. Hence, the present appeal.

15. Learned counsel for the appellant submits that engineering and technical service charges paid by the appellant to M/s Voltas Limited could not be included in the assessable value of the imported goods (spare parts). All the authorities below have erroneously held to the contrary.

15.1. View taken by CESTAT that the present case is covered by Rule 9(1)(a) and Rule 9(1)(e) of the Customs Valuation Rules is contradictory. Provision of Rule 9(1)(e) of the Customs Valuation Rules can be invoked only when the payment is not covered by clauses (a) to (d) of Rule 9.

15.2. Learned counsel has referred to the Note to Rule 4 of the Customs Valuation Rules and submits that the same has statutory force. It clearly says that value of imported goods shall not include charges for maintenance or technical assistance undertaken after importation of imported goods.

15.3. CESTAT failed to consider that M/s Voltas Limited was an agent of the foreign supplier. It had rendered maintenance and engineering services to the appellant and its subsidiaries. Such services rendered by it had no direct nexus to the value of the goods imported. Stipulation of 8 percent of FOB payable to M/s Voltas Limited was only for the services rendered by it. He submits that there is no direct nexus of the said payment with the goods imported. Therefore, such payments could not have been included in the assessable value of the imported goods. In support of his submissions, learned counsel has placed reliance on the following decisions:

1. *Collector of Customs (Preventive), Ahmedabad Vs. Essar Gujarat Ltd., Surat*[1]
2. *Tata Iron & Steel Co. Ltd. Vs. Commissioner of Central Excise & Customs, Bhubaneswar*[2]
3. *Commissioner of Customs (Ports), Kolkata Vs. J.K. Corpn. Ltd.*[3]
4. *Commissioner of Customs Vs. Ferodo India (P) Ltd.*[4]

[1] (1997) 9 SCC 738
[2] (2000) 3 SCC 472
[3] (2007) 9 SCC 401

15.4. Learned counsel for the appellant therefore submits that view taken by CESTAT cannot be sustained. Therefore, orders of the Assistant Commissioner dated 03.03.2004, Commissioner (Appeals) dated 29.06.2004 and the impugned order of CESTAT dated 20.04.2010 are liable to be set aside.

16. *Per contra*, learned counsel for the respondent supports the impugned order of CESTAT. Adverting to the purchase order he submits that payment made to the Indian agent was clearly part of the FOB amount payable to the foreign supplier.

16.1. He also adverts to the documents titled as Voltas Limited Terms and Conditions and submits therefrom that it was clearly mentioned therein that prices quoted were exclusive of its engineering and technical service fees. Payment of 8 percent of the FOB price to the Indian agent was a condition of sale of the imported goods. Such payment was made purely as a condition of sale of the imported goods. It was based on an understanding between the foreign supplier

[4] (2008) 4 SCC 563

and M/s Voltas Limited. Various services provided by M/s Voltas Limited were on behalf of the foreign supplier as its agent. The services rendered were to identify the requirement of the spares to be imported and therefore the payments so made had a direct nexus to the imported goods. As the local agent, services provided by M/s Voltas Limited were pre-importation activities and aimed at making the sale of spares by the foreign supplier effective.

16.2. He finally submits that there is no merit in the appeal and the same should be dismissed.

17. Submissions made by learned counsel for the parties have received the due consideration of the Court.

18. We have already extracted Clause 5 of the purchase order issued by Central Coal Fields Limited, a subsidiary of the appellant. In so far terms of payment is concerned, 100 percent of FOB value had to be paid in U.S. Dollars. It was also mentioned therein that product support service would be rendered by M/s Voltas Limited on payment of engineering

and technical service charges. After referring to instances of product support service, it was stipulated that payment of engineering and service charges at the rate of 8 percent of the net FOB value would be made on pro-rata basis to M/s Voltas Limited in equivalent Indian currency at the exchange rate prevailing on the date of the bill of lading. Product support services included determination of actual requirement of spares, to assist in speedy customs clearance including insurance survey, prompt replacement in case of discrepancies in supplies etc.

19. We may also refer to the relevant extract of the quotation of the foreign supply which reads as under:

> You are to pay an additional eight (8) percent of the total FOB amount on a pro-rata against each shipment to our Indian distributor M/s. Voltas Ltd., Calcutta in Indian rupees at the exchange rate prevalent on the date of the consignment note/bill of lading within 21 days from the date of submission of their invoice along-with a set of non - negotiable copies of the shipping documents. This payment is to be made to Voltas and is not to be

deducted from the FOB amount payable to us against the Letter of Credit.

20. The foreign supply had made it clear that the appellant had to pay an additional 8 percent of the total FOB amount on a pro-rata basis against each shipment to M/s Voltas Limited in Indian currency. It was clarified that this payment was to be made to Voltas Limited and was not to be deducted from the FOB amount payable to the foreign supplier.

21. All the imported goods were initially cleared on the basis of provisional assessment. Thereafter, the Assistant Commissioner passed the order-in-original dated 03.03.2004 finalising the provisional assessment. On scrutiny of documents, Assistant Commissioner observed that Voltas Limited was the local agent of the foreign supplier. The product support services i.e. engineering and technical services provided by M/s Voltas Limited were primarily related to the type and quantum of spare parts required to be supplied by the foreign supplier. Duty of M/s Voltas Limited was also to assist the appellant during insurance survey at the

port after importation of the identified spares. Such services were related to procurement of spares by the appellant and for the smooth sale of spares by the foreign supplier.

21.1. Appellant and its subsidiaries had no contract with M/s Voltas Limited for providing such services. The charges amounting to 8 percent of net FOB value were paid to M/s Voltas Limited as engineering and technical service charges for smooth importation of the goods.

21.2. Engineering and technical service charges paid to the local agent M/s Voltas Limited were 8 to 10 percent of the transactions of the appellant with the principal i.e. the foreign supplier. Such charges were paid as a recompense for the services rendered towards making the sale effective. Hence, engineering and technical service charges were nothing but commission.

21.3. Observing that the sale had become conditional in view of the conditions posed in quotation by the foreign supplier, the consequential engineering and technical service

charges were fully covered by Rule 9(1)(e) of the Customs Valuation Rules. Assistant Commissioner referred to the Note to Rule 4 of the Customs Valuation Rules and observed that engineering and technical service charges were not being paid for maintenance of any industrial plant, machinery or equipment. It was nobody's case that these charges were being paid under a contract for maintenance, erection, commissioning of an industrial plant, equipment or machinery.

22. From a perusal of the order-in-original, it is seen that appellant was granted personal hearing in which representative of the appellant stated that it will pay any short levy of duty as per law after considering the facts.

23. On the basis of the above, Assistant Commissioner *vide* the order-in-original dated 03.03.2004 held that engineering and technical service fees/agency commission/charges paid by the appellant and its subsidiaries to the local agent of the foreign supplier were includible in the assessment value of the imported goods. Therefore, there was short levy of customs duty to the tune of Rs. 64,47,244.00. Accordingly, appellant

was directed to pay the said amount within 15 days. This finalized the provisional assessment.

24. Commissioner (Appeals) *vide* the order dated 21.06.2004 adverted to Clause 5(B) of the purchase order which mandated that product support service would be provided by M/s Voltas Limited in all respects for ensuring optimum availability of P&H Shovels. Thereafter, Commissioner (Appeals) held as under:

> In the present case, quotation by the foreign supplier was received by the appellant along with offer of M/s. Voltas Ltd., Calcutta. Thus together, those formed the basis of contract and set out the conditions of sale. In the present case, payment of engineering & technical service charges constituted an integral/inseparable condition of sale of imported goods. Since the payment of service charges to M/s. Voltas was dictated by the condition of sale to satisfy the obligation of the seller/foreign supplier, the inclusion of the said charges in the assessable value by the lower authority under the provisions of Rule 9(1)(e) clearly prescribes for inclusion of all other payments actually made or to be made as a condition of sale

> of the imported goods, by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable. The present case is squarely covered within the ambit of Rule 9(1)(e) of CVR'88 and accordingly, the aforesaid charges shall be added/includible in the transaction under Section 14 of the Act read with provisions of CVR'88.

24.1. Looking into the nature of imports, Commissioner (Appeals) held that services provided by the Indian agent was on behalf of the foreign seller and was directly related to the sale of imported goods. Provision for such service and payment of service charges constituted a condition of sale. In such circumstances, the first appellate authority upholding the view taken by the Assistant Commissioner held that engineering and technical service charges were includible in the assessable value of the imported goods.

25. When this order was appealed against, CESTAT *vide* the impugned order held:

6.1 We have carefully considered the submissions from both sides and closely examined the records produced. It is apparent that there is agency/distributor agreement entered into between Voltas Ltd. and the American based supplier viz. Harnischfeger Corporation, U.S.A. The documents such as purchase order of the appellant, the quotation by the American supplier and documents of M/s Voltas Ltd. relied upon clearly referred M/s Harnischfeger Corporation as the principal and M/s Voltas Ltd. as the agent or distributor. We have not been shown any agreement between M/s Voltas Ltd. and the appellant. The services undertaken by M/s Voltas Ltd., apparently, are only at the instance of the US based supplier as the appellant has no choice in importing the spares without availing the services of Voltas Ltd., who is the agent of the American based supplier. It is also seen that the amounts paid to Voltas Ltd. by the appellant are not linked to any services specifically rendered by them. We are not in agreement with the submissions of the Ld. Sr. Advocate on behalf of the appellant that 8 to 10% value of the imported parts have been adopted only as a measure for payment for services rendered by M/s Voltas Ltd. It is clearly a condition for sale of the goods to the

> appellant. If there are no imports, no payments are apparently due to be made to whatever services attributed to M/s Voltas. In other words, the payments have been made only in connection with the sale of goods, apparently due to reason that M/s Voltas Ltd., is an agent/distributor of the US based supplier.

25.1. CESTAT had carefully analysed the relevant documents and thereafter came to the conclusion that the services rendered were such that appellant faced no inconvenience at the time of importation. Amounts paid to Voltas Limited by the appellant were not linked to any services specifically rendered by it. Payments were made only in connection with the sale of the goods presumably because M/s Voltas Limited was an agent of the foreign supplier. Thus, payments made to M/s Voltas Limited were only as a condition of sale and not for any services rendered. Therefore, it had a direct nexus to the value of the goods imported.

26. We may now have a look at Section 14 of the Customs Act, 1962 ('Customs Act' hereinafter) as it stood at the relevant point of time which is as follows.

> **14. Valuation of goods for purposes of assessment** – (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be-
>
> the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where-
>
> (a) the seller and the buyer have no interest in the business of each other; or
>
> (b) one of them has no interest in the business of the other,
>
> and the price is the sole consideration for the sale or offer for sale:
>
> Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of

export, as the case may be, is presented under Section 50;

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A) if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this section-

(a) "rate of exchange" means the rate of exchange-

(i) determined by the Board, or

(ii) ascertained in such manner as the Board my direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

> (b) 'foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)."

26.1. Thus, what Section 14(1)(a) provides for is that for the purpose of the Customs Tariff Act, 1975 or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time or place of importation or exportation, as the case may be, in the course of international trade where the seller or buyer had no interest in the business of each other or one had no interest in the business of the other. As per sub-section (1A), subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of the imported goods shall be determined in accordance with the rules made in this behalf.

27. In exercise of the powers conferred by Section 156 of the Customs Act read with Section 22 of the General Clauses Act, 1897, the Customs Valuation Rules have been framed. Rule 4 deals with transaction value. The transaction value of the imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of the Customs Valuation Rules.

28. Rule 9 deals with cost and services. In this case, we are concerned with sub-rule (a) and sub-rule (e). We extract Rule 9 as under:

> **Rule 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,-
>
> (a) the following cost and services, to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely-
>
> (i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

* * * * *

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

29. Rule 12 of the Customs Valuation Rules says that the interpretative notes specified in the schedule shall apply for the interpretation of the rules. In the Note to Rule 4, it is stated:

> The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
>
> (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation

on imported goods such as industrial plant, machinery or equipment;

(b) The cost of transport after importation;

(c) Duties and taxes in India.

30. In *J.K. Corporation Limited* (supra), this Court considered the question as to whether customs duty would be payable on the purchase price of the goods by adding the value of the license and technical knowhow to the value of the imported goods. It was in that context, this Court held as under:

> **9.** The basic principle of levy of customs duty, in view of the aforementioned provisions, is that the value of the imported goods has to be determined at the time and place of importation. The value to be determined for the imported goods would be the payment required to be made as a condition of sale. Assessment of customs duty must have a direct nexus with the value of goods which was payable at the time of importation. If any amount is to be paid after the importation of the goods is complete, inter alia, by way of transfer of licence or technical know-how for the purpose of setting up of a plant from the machinery imported or running thereof, the same would not be

> computed for the said purpose. Any amount paid for post-importation service or activity, would not, therefore, come within the purview of determination of assessable value of the imported goods so as to enable the authorities to levy customs duty or otherwise. The Rules have been framed for the purpose of carrying out the provisions of the Act. The wordings of Sections 14 and 14(1-A) are clear and explicit. The Rules and the Act, therefore, must be construed, having regard to the basic principles of interpretation in mind.

31. Note to Rule 4 has been explained by this Court in *J.K. Corporation Limited* (supra). This Court after adverting to the relevant portion of the Note to Rule 4 held that what would be excluded for computing the assessable value for the purpose of levy of customs duty is any amount paid for post-importation activities including any amount paid for post-importation technical assistance.

32. This position was also explained by this Court in *Ferodo India (P) Ltd.* (supra). Relevant portion of the aforesaid decision reads as follows:

7. Under Section 14 of the Customs Act, 1962, the assessable value of imported goods is deemed to be the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer of sale.

8. The CVR, 1988 recognises the fundamental principle of arm's length price while dealing with transaction value. The Rules provide for the determination of the correct price of goods that are imported in the country or exported out of the country uninfluenced by relationship between the transacting parties.

9. Transaction value, deductive value, computed value and residual value methods are the methods prescribed in the Rules, *to be followed sequentially* in that order in the matter of determination of arm's length pricing.

10. To determine the assessable value for the levy of customs duty on imported goods, Section 14 of the 1962 Act has to be read with the provisions of the CVR, 1988 because under Section 14(1) there is reference to a *deemed price of goods*

imported and under Section 14(1-A) such deemed price is to be determined in accordance with the CVR, 1988.

33. Applying the above ratio to the facts of the present case, we find that the services rendered by the Indian agent were not post-importation activities. The services provided were directly relatable to the import of the goods by way of product support service which is covered by Sections 14(1) and 14(1A) of the Customs Act read with Rule 9(1)(e) of the Customs Valuation Rules.

34. Thus on thorough consideration of all aspects of the matter, we are of the considered opinion that the view taken by all the lower authorities is correct and no interference is warranted. There is no merit in the appeal. Accordingly, the appeal is dismissed.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
MAY 01, 2025.