CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 27663 of 2013
Customs Miscellaneous Application No.20331 of 2025

(Arising out of Order-in-Original No. 11/2013-Commr. dated 23.05.2013 passed by the Commissioner of Customs, Bangalore.)

M/s. Volvo Group India Private Limited,
Yalachahally, Tavarekere Post,
Hoskote,
Bangalore – 562 122.

Appellant(s)

VERSUS

Commissioner of Customs,
C.R. Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Mr. V. Lakshmi Kumaran, Advocate for the Appellant

Mt. P.R.V. Ramanan, Special Counsel (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20797 /2026

DATE OF HEARING: 16.12.2025
DATE OF DECISION: 06.05.2026

PER : DR. D.M. MISRA

This appeal is filed against Order-in-Original No.11/2013-Commr. Dated 23.05.2013 passed by the Commissioner of Customs, Bangalore. Also, the appellant had filed a miscellaneous application bearing No.20331/2025 on 13.06.2025 to place certain documents mentioned in the said application.

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The learned advocate for the appellant has fairly submitted that these documents are not part of the appeal paper book and also not submitted before the lower authorities; however, these documents are since relevant to the present case and placed for consideration during the course of hearing. Learned Special Counsel for the Revenue, after going through the documents, has not raised any objection for admission and consideration of the same. Consequently, the miscellaneous application is allowed and these additional documents are taken on record.

3. Briefly stated the facts of the case are that the appellant, M/s. Volvo Group India Private Limited (VGIPL), is a 100% subsidiary of M/s. Volvo Truck Corporation, Sweden (hereinafter referred to as 'VTC') which is in turn a subsidiary of M/s. AB Volvo (Publ), Sweden (hereinafter referred to as 'Volvo Sweden'). The appellants are engaged in the manufacture of trucks, bus chassis, construction equipment etc. from 2001 at the factory situated at Hosekote, Bangalore, which are excisable goods and cleared on payment of duty. In addition to the manufacturing activity, the appellant has also a Central Warehouse, known as 'Regional Parts Distribution Centre (hereinafter referred to as 'RPDC') adjacent to the factory in Bangalore. The spare parts imported as well as locally procured for trucks, buses and construction equipment are warehoused in RPDC and thereafter, sold/and or stock transferred to the regional warehouses and service centres in different parts of the country. Based on intelligence, Directorate of Revenue Intelligence (DRI) visited the premises of the appellant on 17.08.2011, records for investigation were retrieved and statements of various persons were recorded. On analysis of the records recovered and the statements recorded, it was found that the appellants paid royalty in respect of transfer of technology, technical know-how @ 5% of the domestic sales and 7% of export sales , lumpsum compensation not exceeding USD

2 million charged for technical information and assistance for services rendered by the group companies and not reflected in their input invoices and also it revealed that the existence of Suggested List Price at Sweden on the basis of which the transaction value declared to the Customs was arrived at by extending a deduction of 62% from the said list price. Further, it was noticed that the discount of 62% remained constant throughout 5 years period even though the price list for the parts and accessories for automobiles might change periodically depending on import factors. On completion of investigation, two show-cause notices dated 28.08.2012 and 27.08.2012 were issued for the imports made through Chennai Port as well as from Bangalore Airport for the period from 01.08.2007 to 31.03.2012, demanding total differential duty of Rs.222,67,26,823/- with interest and penalty. On adjudication, the demand was confirmed with interest with equivalent penalty under Section 114A and Rs.75.00 crores under Section 114AA of the Customs Act, 1962. Hence, the present appeal.

4. At the outset, the learned advocate for the appellant has submitted that they had entered into a Master Agreement dated 01.04.2001 with Volvo Sweden, *inter alia*, for grant of license to manufacture various products (trucks and buses) in India and for undertaking distribution of such manufactured products, as well as distribution of construction equipment and spare parts imported by the appellant. Under the Master Agreement, in consideration of the services received from Volvo Sweden, the appellant was making payments such as royalty, technical fees and management fees. Though the Master Agreement was entered in the year 2001, the appellant was not a profit-making company until Financial Year 2004-2005 and hence, did not remit these payments to Volvo Sweden. The appellant commenced payment by remitting royalty, technical fees and management fees to Volvo Sweden, only from 2004-05 adhering

to the Circular No.5 dated 21.07.2003. He has further submitted that Reserve Bank of India (RBI) has restricted royalty payments at 5% of domestic sales and 8% on export sales which was subsequently removed w.e.f. 13.05.2010. They have amended the Master Agreement by signing an Addendum in 2005. The learned advocate has submitted a detailed comparison of the Master Agreement and the Addendum in advancing the argument that there is no material difference effected to the Master Agreement by the said amendment but certain clauses were clarified to avoid ambiguity. He has further submitted that after removal of the ceiling of payments of royalty of 5% of domestic sales and 8% of export sales w.e.f. 13.05.2010 by RBI, the appellant undertook the transfer pricing benchmarking study for arriving at the arm's length royalty that was payable by it for the technology, know-how and technical information provided by Volvo Sweden under the Master Agreement for manufacturing products in India, as amended by the Addendum to the Master Agreement. On the basis of recommendations of the benchmarking study, the royalty was determined at 1.75% of the gross sales (domestic and export) from Financial Year 2010-2011 onwards.

5. Assailing the impugned order confirming the demand of customs duty relating to payments made towards royalty, technical fees and management fees on notional basis in the value of imported parts and components used for manufacturing under Rule 9(1)(c) / 10(1)(c) of CVR 1988 / 2007 respectively, he has submitted that the Rule provides to include royalty and license fees in the transaction value of imported goods, if the royalty or license fees are related to the imported products and required to be paid directly or indirectly by the importer as a condition of sale of the imported goods. It is his contention that the impugned order has not relied on any of the evidences and the Master Agreement, as amended by the Addendum, to

establish that the payments of royalty, technical fees and management fees are either related to imported goods or required to be paid as a condition of sale of such parts and components imported by the appellant for use in manufacture of 'products' during the relevant period. Referring to various clauses of the Master Agreement particularly clause 2 and clause 9 of Appendix-2 and Para 9, he has submitted that neither the said clauses nor any other clause of the Master Agreement links payment of royalty to the transfer of technology, manufacturing, engineering know-how and information with the parts and components imported by the appellant and used in the manufacture of Products imported by the appellant. Therefore, the royalty paid by the appellant pertains to the post-importation activity of manufacturing of products in India and it is not related to sale of parts and components by any stretch of imagination. Also, none of the clause in the Master Agreement even remotely indicate that unless the royalty was paid by the appellant, the parts and components for manufacturing would not be sold by Volvo Sweden, which is evident that the appellant could also purchase such parts and components from 3rd parties. In support of their contention that royalty paid by the appellant to Volvo Sweden cannot be added to the value referring to the following judgements:-

i. CC Vs. Ferodo India Pvt. Ltd. [2008(224) ELT 23 (SC)]
ii. Schunk Metal and Carbon (India) Pvt. Ltd. Vs. CC [2023(11) TMI 225 – CESTAT BANGALORE]
iii. CC Vs. Autliv India Pvt. Ltd. [2024(10) TMI 686 – CESTAT BANGALORE]

6. Further, he has submitted that in the amended Para 9 of the Appendix 2 of the Addendum, the royalty is remitted by the appellant in respect of transfer of technology and technical knowhow which necessarily to be read with the license to manufacture products being granted to the appellant. The said Addendum only provided manner of computation of royalty in

the Master Agreement. The learned Commissioner has observed that the Addendum has diluted the clauses of the Master Agreement by amending the conditions imposed on the appellant for utilisation of the imported goods after import. He has submitted that the finding in the impugned order itself disclosed the fact that royalty is paid for services which pertained to post-importation activities vis-à-vis use of the imported parts and components for manufacture of the products by using the technology and technical know-how transferred under the license to manufacture.

7. Assailing the finding of the learned Commissioner relating to payment of technical fees in respect of services rendered by Volvo Group @5% of the total manufacturing sales and not the cost of the new initiative, he has submitted that Appendix 2 of the Master Agreement, as amended by the Addendum, grants the appellant license to manufacture the products in India by using the technical know-how and technical information provided by Volvo Sweden. Technical information is specifically defined to mean and include technical know-how, information and other relevant data relating to manufacturing, assembly and quality control of the products. In terms of the Addendum, the appellant makes payment of the compensation for technical information received from Volvo Sweden relating to manufacturing, assembly and quality control of the products. This compensation is based on a lump sum payment not exceeding USD 2 million. Only during the period 2007-08 and 2008-09, the appellant had made payment towards technical fees since they had obtained and launched new technology in India in the respective years. No payment was made for the remaining part of the disputed period. Thus, the technical fees being not a condition of sale; hence, not includable in the value of the imported goods under Rule 10(1)(c) of CVR. In support, he has relied upon the following judgments:-

I. Sungwoo Stamping Pvt. Ltd. Vs. CC [2025-VIL-312-CESTAT-CHE-CU]

II. CC Vs. JK Corporation Ltd. [2007-TIOL-15-SC-CUS]

III. CC Vs. Essar Steel [2015-TIOL-63-SC-CUS]

8. Assailing the finding of the learned Commissioner that management fees is flowing back towards the services rendered in the assistance rendered by the Volvo Sweeden in management as there was no provision for providing assistance in the Master Agreement; hence, it is a price actually paid or payable and includable in the transaction value under Rule 10(1)(c) of CVR, he has submitted that management fees was paid by the appellant only during the Financial Years 2004-2005 to 2006-07 for receiving management support service provided by Volvo Sweden under para 6 of the Appendix 3 of the Master Agreement, as amended by the Addendum. These services are defined to mean and include use of brand 'Volvo', various kinds of marketing activities, customer relationship support, use of trademark etc. He has vehemently argued that the said management fees was paid prior to the relevant period only in respect of post-importation activities and not as a consideration for the imported goods. He has submitted that non-payment of management fees after 2007 onwards supported by the Chartered Accountant's certificate dated 12.08.2014 and 14.06.2025 along with affidavit dated 13.06.2025 of Mr. Laxminarayan Hegde, Head Legal & Company Secretary wherein it has been declared that the appellant had made payments only in respect of royalty and technical fees during the relevant period. In support of the submission that management fees cannot be included if not related to imported goods, he has referred to the judgment in the case of Schenck Process India Pvt. Ltd. Vs. CC [2024(9) TMI 190].

9. Further he has submitted that though the learned Commissioner in the impugned order rendered several findings

on acceptability of Addendum as evidence being after thought ; however, the Ld. Commissioner at the same time has accepted and relied upon on various clauses of the agreement contained therein which were not present in the Master Agreement to raise the duty demand by including the technical fees and management fees in the value of the imported goods. He has further submitted that a document/agreement has to be read as a whole to understand its scope and intention of the parties, by not reading few clauses here and there. In support, he referred to the judgment in the case of Naramadaben Maganlal Thakker Vs. Pranjivandas Maganlal Thakker [(1997) 2 SCC 255] and South East Asia Marine Engineering & Constructions Limited Vs. Oil India Limited [(2020) 5 SCC 164]. Therefore, a conjoint reading of the Master Agreement and Addendum, it reveals that royalty, technical fees and management fees are not related to the import of the parts and components for manufacturing in India; also not made as a condition of sale of such imports.

10. Further, he has submitted that in absence of a mechanism to compute royalty, technical fees and management fees at the time of importation, the methodology adopted by the learned Commissioner to demand customs duty is erroneous in view of the fact that same is not supported by the provisions of Customs law nor any basis provided in the show-cause notice for establishing the correctness of apportioning the above three payments to each imported component in a given Bill of Entry.

11. Referring to the Master Agreement dated 01.04.2001, the learned advocate has submitted that they have also performed distribution services of the products imported from Volvo Sweden. No changes were made to the clauses for distribution methodology by the Addendum during July 2005 to the Master Agreement. He has submitted that the import price for parts declared by the Appellant is in accordance with Section 14 of the Customs Act, 1962 read with Customs Valuation Rules,

1988/2007. He has submitted that in case buyer and seller are related, the transaction value shall be acceptable for customs purposes, if the condition prescribed under provisions of Rule 3(3) of CVR 2007 are satisfied. It is laid down that if the buyer and seller are related, the transaction value is acceptable if on examination of the circumstances surrounding the sale of imported goods it can be shown that the relationship has not influenced the price. He has submitted that the Volvo Group has a group tax policy that holds transfer pricing as the single most important tax issue. The said policy requires that the price charged in connection with intra-group transactions approximate the price which would be resulted in negotiations with unrelated parties. An analysis, viz. Functional Analysis, is drawn up describing what functions are performed by the tested entity. A search for external unrelated entities performing same or similar functions will then take place to determine the appropriate price level applied between 3rd parties and the same level is applied to the transaction between Volvo Group entities. In the present process, a price is defined by a Suggested Retail Price and discount. The price is arrived at after considering several factors like the price at which a part is sold in European market to an end customer, the cost of the product and the expenses related to the product, market price of the comparable product of the competitors, market price of the product realizable in the purchaser Volvo entity's market and the transfer price of the product. These information are collected to arrive at the price which would ensure that the part is sold at a price which is competitive in the purchaser's i.e. Volvo entity's market and also ensures adequate profit to the selling Volvo entity adhering to the policy of arm's length basis. The Suggested Retail Price is the maximum price at which the product is sold to a retail customer in Sweden. If the suggested retail price is adopted for sale to India, the maximum retail price in India after including the post-import expenses like the duties, dealer's margin etc.

would be so high that the Appellants would not be able to sell the product at all in India. Therefore, the endeavour is to arrive at a price which, after including post-import expenses and reasonable profit, would ensure a retail price that is competitive in the market. The result is reflected in a discount on the Suggested Retail Price. Similar discounts to other markets and local entities are extended by Volvo.

12. Further assailing the impugned order, the learned advocate has submitted that the discount of 62% has been disallowed solely on the ground that the suggested list price at Sweden was never disclosed by the appellant to the Special Valuation Branch (SVB) / Customs authorities during the past periods. Further, no finding has been recorded by the learned Commissioner that payments over and above the declared price of spare parts were arrived at by the suppliers. Further, he has submitted that since Department has failed to adduce any evidences to justify application of Rule 12 of CVR 2007, the declared transaction value deserves to be accepted. In support, he has relied on the following judgments:-

i. Eicher Tractors Ltd. Vs. CC [2000(122) ELT 321 (SC)]
ii. Mirah Exports Ltd. Vs. CC [1998(98) ELT 3 (SC)]
iii. Metal Box India Ltd. Vs. CC [1995(75) ELT 449 (SC)]
iv. CC Vs. CMC Ltd [2016(343) ELT 929 (Tri. Bang.)]

13. Further, he has submitted that redetermination of the assessable value on the basis of suggested list price prevailing in Sweden is not in accordance with Rule 9 of CVR 2007. It is specifically prohibited under Rule 9(2)(iii) that price of the goods of the domestic market of the country of exportation cannot be considered for the purpose of determination of value. In support, he has referred to the following judgments:-

i. Naresh Lokumal Serai Vs. CC, Raigad [2006(203) ELT 580 (Tri. Mumbai) – Maintained in 2010(256) ELT A19 (SC).

ii. India Campus Crusade for Christ Vs. CC [2006(206) ELT 342 (Tri. Bang.)]

14. Further referring to the email correspondence by Mr. Michael Andersen, Business manager –Genuine Parts, EMEA Volvo Trucks, Commercial Aftersales and a comparison of the assessable value of import goods by the appellant for spare parts with discounts in Sweden, he has submitted that even from the suggested list price, discounts up to 90+% has been extended in Sweden from the said price. Further, he has submitted that the arbitrary rejection of the discount of 62% from the suggested list price at Sweden in terms of Rule 9 of CVR is incorrect. The appellant submitted that while Rules 4 & 5 of the CVR are not applicable, the rejection of valuation under Rule 7 on the ground that details of contemporaneous imports sold in the greatest aggregate quantity in India is not available cannot be sustained.

15. Learned advocate for the appellant has submitted that the learned Commissioner has confirmed the demand invoking extended period of limitation observing that the appellant has suppressed the existence of the Addendum to the Master Agreement as well as the suggested list price of Sweden which formed the basis for import price of spare parts trading. Rebutting the said finding, he has submitted that there is no positive act on the part of the appellant which shows a mala fide intention to evade payment of duty. He has submitted that the appellant being under the single jurisdiction of LTU did not suppress any information. They have come under the LTU established in Bangalore w.e.f. 01.10.2006 and under a single jurisdiction of LTU for excise, service tax and income tax matters have been administered. Therefore, it cannot be said that the appellant has shared information with one department and suppressed it with others. In the present case, when the Addendum was duly submitted to the Income Tax and Service Tax authorities, it cannot take a stand that they have no

knowledge of the said Addendum and the existence of Addendum has been suppressed from the knowledge of the Department. Referring to the transfer pricing order dated 31.10.2008 passed by the Joint Director of Income Tax, he has submitted that the said order refers to the Addendum and also submitted to the Service Tax Department which proposed service tax demand on royalty under the taxable category of IPR vide show-cause notice dated 12.07.2006 which clearly refers to the Addendum. Also, the order dated 29.06.2007 passed by the Commissioner, LTU, Bangalore makes reference to the Addendum at para 10 of the order. He has submitted that when the appellant has made a complete disclosure before the SVB with respect to payment of royalty, technical fees and management fees which are evident from various documents filed from time to time, there cannot be any allegation of suppression of facts from the knowledge of the Department. In support, he has referred to the following judgments:

i. Calcutta Discount Co. Limited v. Income Tax Officer, Companies District I Calcutta and Anr., (1961) 41 ITR 191
ii. Gemini Leather Stores v. The Income Tax Officer 'B' Ward, Agra and Ors., (1975) 4 SCC 375
iii. Principal Commissioner of Customs v. M/s. Hewlett Packard Sales Pvt. Limited, 2025-VIL-872-CESTAT-DEL-CU

16. Further, he has submitted that interest, penalty and confiscation provisions since not borrowed from Customs Act,1962 in the levy and collection CVD and SAD under he Customs Tariff Act,1975 during the relevant period, interest, penalty and confiscation in relation to CVD and SAD cannot be confirmed as the said provisions have not been borrowed from . In support, he referred to the following judgements:

i. Mahindra & Mahindra Limited v. Union of India, 2022 (10) TMI 2022 – Bombay High Court
ii. Union of India v. Mahindra & Mahindra Ltd. 2023 (386) E.L.T. 11 (S.C.).

iii. Chiripal Poly Films Ltd. v. Commissioner of Customs, 2024 (9) TMI 940-CESTAT AHMEDABAD

iv. Sakar Industries Pvt. Ltd. v. Commissioner of Customs, Ahmedabad -,2024 (10) TMI 1141 - CESTAT AHMEDABAD.

17. *Per contra*, reiterating the findings of the adjudicating authority, the learned Special Counsel on the issue of includability of amounts on account of royalty, technical fees and management fees, has submitted the following:-

(i) The so called 'Addendum' to the Master Agreement was not disclosed/submitted to the SVB till DRI investigation commenced. No reference was made to the Addendum in their correspondence with SVB. The reply to the questionnaire bears testimony to this fact. It was submitted only on 22/10/2012. Thus, prior to this date orders passed by SVB did not consider the provisions of the Addendum.

(ii) Since Addendum is undated it appeared that it never came into effect.

(iii) Addendum seeks to make substantive amendments/alterations without any provision in the Agreement to that effect. It seeks to ratify itself.

(iv) Addendum seeks to change the very nature of the Agreement from one of license to manufacture, distribute and provision of service by VGIPL to that of services agreement by VGIPL with Volvo in which the former is to receive services from the latter and to pay compensation.

(V) While VGIPL submitted the Addendum to IT/Service Tax authorities they chose not to submit it to Customs.

(vi) The amounts paid as royalty, technical fee and management support fee are in the nature of flow-back; Addendum is devised to circumvent exposure to Customs.

(vii) Supply of imported goods, manufacture of products from 'Knocked down' (KD) parts and local parts, distribution of products and provision of services is the mainstay of Agreement. Reading the Agreement and Addendum together, it is clear that royalty and remuneration fee have a bearing on KD parts.

(viii) Addendum requires VGIPL to pay two charges for provision of technical information and technical know-how. It also charges compensation for management support services and assistance provided to VGIPL.

(ix) After discussing various provisions of Appendix 2, the impugned order lays down that VGIPL can use imported goods under the guidance of Volvo only as per the drawings and technical instructions of Volvo. Thus, Volvo has imposed conditions for the use of imported KD parts in manufacture of products. Further, VGIPL has to pay royalty upon such manufacture. Hence, royalty is paid as a condition of the sale.

(x) The definition of 'knocked down parts' indicates that the parts under import were in effect OE assemblies and sub-assemblies each of which bore the IP of VOLVO. VGIPL had no option but to obtain the same from Volvo.

(xi) The Agreement contains several conditions which are in relation to the use of imported goods. Thus, royalty is relatable to the imported goods and is a condition of the sale of imported KD parts.

(xii) Payment of royalty on Gross sales constitutes remittance of royalty to the maximum extent w/o change in the scope of IP services.

(xiii) As regards technical fees, VGIPL have informed SVB that said fees are project specific and were, therefore, paid in respect of services rendered by Volvo group for that particular new initiative. However, it appears that the calculation and payment is made @ 5% on the total manufacture/sales in the financial year and not particularly for the new initiative or introduction of new technology.

(xiv) VGIPL has not produced details of technical information received by them to incur such cost. If the technical fee was a payment towards new technology, unlike royalty, the quantum thereof should be related to cost of new technology and not total sales turnover.

(xv) Payment is said to be in terms of Addendum but the Addendum lays down no requirement of new technology for payment of this fee.

(xvi) From the conditions of the Agreement and Addendum, payment of technical know-how is a pre-requisite for granting the license to VGIPL to manufacture, distribute, perform certain services including supply of components, materials and production equipments required for manufacture and sale by VGIPL. VGIPL are the exclusive and sole licensee of the technical know-how for the assembly and manufacture of the products and therefore the amount remitted by VGIPL to VOLVO on account of technical know-how fees is in the nature of a flow-back and is required to be added to the declared Assessable Value for the parts & components imported by VGIPL from VOLVO for the manufacture of Trucks and Bus chassis.

(xvii) As regards Management Fees for the manufacturing & construction equipment division, VGIPL have informed that the said fees are paid or payable in terms of the Addendum. Before SVB and during investigation, they averred that the said fee was for logistic services and material requirement planning etc. It is to be noted here that VGIPL have informed that the payment of Management Fees is for being part of the VOLVO group and utilization of the brand name including all other benefits VGIPL would receive for being part of VOLVO. Management Fees has been calculated @ 4% on the total manufacturing sales for the particular year. VGIPL are still receiving the management services from VOLVO, but the payment towards the management services has not been made since 2007, The various employees of VGIPL vide their statements and letters submitted to the DRI informed that the services are still being rendered by VOLVO and received by VGIPL till date and the payment for the services would have to be made.

(xviii) Payment of 'Management fee' constitutes a flow-back and is to be added to the declared values.

(xix) In terms of the provisions of Rule 10(1)(c), the criteria for holding that royalty fee paid by the importer is to be added to the declared transaction value are, (1) Royalty Fee should be related to the imported goods, (ii) the payment should be as a condition of the sale of the goods being valued and (iii) the buyer may pay the same, directly or indirectly.

(xx) The explanation relating to the above expressions as found in the 'Commentary on the GATT Customs Valuation Code by Mr Saul. L Sherman and Mr. Hinrich Glashoff provides a useful guide and the Commentary has been

cited in several Customs valuation cases before judicial fora. The appellant has also referred to the said Commentary in their Appeal.

(xxi) As stated in Para 296 of the Commentary, the most essential point in assessing the relationship of goods (the tangible) to the payment for the right, information or service (the intangible) is whether the importer could have purchased the tangible without the purchase of the intangible.

(xxii) The second requirement is that the payment should be as a condition of the sale of goods being valued. It may be seen from of the Commentary, that the test to be applied is whether the goods would have been sold without the payment of royalty and licence fee. In the instant case, undoubtedly, there is an implicit requirement of having to pay the royalty fee for the sale of parts and components to the manufacturers, because the said sale would not have taken place if the Master Agreement has not been entered into.

(xxiii) On the question of payment of Royalty & License fee directly or indirectly observations in Para 300 of the Commentary are relevant. Where the royalty fee is paid to third parties, it is covered by virtue of the third party requirement as above. In the instant case, the payment of royalty fee becomes an essential requirement as the Technology provided by Volvo is very much used. For the first condition to be satisfied, it has to be seen whether VGIPL could have imported the goods without the license to manufacture. In terms of the Agreement the answer has to be in the negative. For the second condition to be satisfied, it has to be seen whether VGIPL could have imported the goods according to their choice or from other

sources or replaced imported goods with local parts. On both counts, VGIPL did not have any other alternative but to go by the directions of Volvo. In sum, therefore, the requirements under Rule 10 (1) (c) are fully satisfied in the present case.

(xxiv) In regard to goods meant for trading, an examination of the circumstances surrounding the sale show that the declared prices were influenced by the relationship between VGIPL and Volvo. Wilful default in disclosing material particulars such as the existence of a basic Price list and availing of huge discounts supports the conclusion that the actions of VGIPL were not *bona fide.*

(xxv) It was argued that Rule 10 extends the scope of section 14 and hence, it should be interpreted strictly as per Ferodo judgment. In this context the observations of the three- judge decision in Century Metal Recycling case is relevant. In this context, Paras 7 and 9 may be referred to. The provisions of Rules 3 and 10 are to be read together harmoniously.

18. Learned Special Counsel, on the issue of rejection of transaction value by disallowing discounts and redetermination of the assessable, has submitted the following:-

(i) Verification of the records, statements recorded of various employees of Volvo, etc. revealed the existence of a Suggested Retail List Price on the basis of which the transaction value to be declared to the Customs Authorities was arrived at. Suggested Retail List price is purportedly arrived at after loading all the costs including the cost of intangibles like brand together with profit margin is the price expected to be realised by Volvo, Sweden on its sales to trade customers.

(ii) In principle, the transaction value or the customs value of imports into India is arrived at starting with the said List Price for sales at Sweden.

(iii) VGIPL have suppressed the existence of the said List Price, which is the basis of arriving at the Transaction Value for the Parts and Accessories for Automobiles/ Construction Equipment imported for trading purposes, to SVB/ Customs Authorities.

(iv) The parts, accessories and components imported for trade (Distribution) are all pre-packed in retail packing, displaying the brand name, etc and the same are sold as such.

(v) The non- disclosure of the said Price List to the SVB and the declaration to the Customs in the column meant for 'Discount' in the B/E as 'D' was deliberately done to evade payment of appropriate Customs duties.

(vi) VGIPL have suppressed to Customs / SVB that a discount of 62% to 94% on the Suggested Retail List Price was being extended to VGIPL for the parts and accessories of automobiles imported for trade (Distribution).

(vii) VGIPL were also unable to give details of how the average 62% discount on the Suggested List Price was being arrived at for the goods being imported in India for Trading Purposes. VGIPL were not able to explain satisfactorily the various components taken into consideration for arriving at the said discount being provided by Volvo, for the imports effected by VIPL.

19. Further supporting the finding of the Commissioner that extended period of limitation is rightly invoked, learned Special Counsel has submitted the following:-

(i) VGIPL did not produce before SVB/Customs a very critical document, namely the 'Addendum', though the copy of the document produced is undated and its validity is questionable. Through submission of additional documents, it is sought to substantiate that the Addendum was signed in July, 2005. If this was true, answer to the Questionnaire at Page 1088 of Vol. IV tells a different story.

(ii) In explaining the nature of various payments, VGIPL have contradicted themselves and have suppressed the basic fact that these payments were made to compensate for lowering of invoice values.

(iii) VGIPL did not disclose several material particulars relevant for assessment of Customs duty on parts and accessories imported for trading, notably, the existence of a Price List and availment of heavy discounts. viz.80% in 2009-2010, 61.2% in 2012-2013. On the Bs/E, discount declared was 'Nil'.

(iv) Purported alterations/ amendments made through the Addendum and its non-disclosure to SVB and the assessing officers, were deliberately intended to avoid exposure to Customs.

(v) Payment of Service tax on royalty, technical fee and management fee does not constitute disclosure to the Proper Officer of Customs in terms of sections 17 and 28 of CA, 1962.

(vi) The argument that the disclosure to LTU for IT and Service Tax purposes indicated that VGIPL did not indulge in suppression has no force. It may be noted that the SVB was located in Chennai and any disclosure to LTU cannot constitute true disclosure to SVB. This also evident from the reply to the Questionnaire.

20. Heard both sides and perused the records.

21. The principal issues involved in the present appeal for consideration are whether:

i. the transaction value of parts imported for sale/distribution by the appellant be accepted or the Value be determined under Rule 8/9 of CVR,1988/2007;

ii. cost of royalty, technical know-how fees/ and management fees be added to the value of the imported parts, components etc. used in the manufacture of products in India by the appellant during the relevant period 01.08.2007 to 31.03.2012.

22. Undisputed facts of the case are that the Appellant have entered into a Master Agreement dated 01.04.2001 with M/s. AB Volvo (Publ), Sweden for grant of licence to manufacture the products viz. vehicles, trucks, buses, construction equipments, engines for aircraft, marine, industrial applications and related after-market service parts as mentioned under the said Agreement. An Addendum to the said Agreement was executed in the year 2005. Under Clause 9 of the Appendix 2 of the said Agreement, it has been stipulated for remittance of royalty by the appellant in respect of transfer of technologies as per regulations prescribed by the Government of India. The Department proposed to add the royalty to the import of parts, assemblies, components etc. used in the manufacture of products viz. trucks, buses etc. during the relevant period by the manufacturing unit. As per the Addendum, the appellant also paid lumpsum technical fees of USD 2 million during 2007-08 and 2008-09 and management fees was paid before the disputed period, the Department proposed to add the same to the transaction value.

23. In relation to the distribution of parts imported for resale, the Department's allegation is that though there was a Suggested List Price maintained by the exporter M/s. AB Volvo at Sweden for sale in the European market, from which 62% has been deducted in arriving at the import price, the Department was of the view that the transaction value arrived at from the Suggested List Price after deduction of 62% is liable for rejection under Rule 10A / 12 and the assessable value be determined under Rule 8 /9 of the CVR 1988 /2007.

24. Before proceeding to address both the issues relating to determination of assessable value of parts meant for distribution and the parts used in the manufacture of products, it is necessary to refer to the relevant provisions of Customs Act, 1962 and Customs Valuation Rules, 1988 /2007 as were in force during the relevant time.

Customs Act, 1962

Provisions of the Customs Act, 1962 (prior to amendment in 2007)

SECTION 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 his behalf.]

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 3[Board], or

(ii) ascertained in such manner as the Board may 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);.

Provisions of the Customs Act, 1962 (post amendment in 2007)

SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-
(i) the circumstances in which the buyer and the seller shall be deemed to be related;
(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller

are related, or price is not the sole consideration for the sale or in any other case;
(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:
Provided also 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 of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), 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.

Explanation. --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 may 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).

A Plain reading of the aforesaid provisions reveal that Section 14(1) of the Customs Act, 1962, till it is amended, laid down emphasis on a 'deemed value' stating to be a 'price' at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation in the course of international trade; and one of the conditions is that the seller and the buyer are not to be related persons. The said provision has been amended w.e.f. 10.10.2007 which instead of deemed value, concept of 'transaction value' has been introduced in Section 14; it lays down that the imported goods shall be the 'transaction value' of such goods i.e. to say, the price actually paid or payable for the goods when sold for export to India for delivery, at the time of importation where the buyer and seller of the goods are not related and the price is the sole consideration

for sale.

25. The relevant provisions of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988/2007 are reproduced below:-

> **Customs Valuation (Determination of Price of Imported Goods) Rules, 1988**
>
> **1. Short title, commencement and application. ... ...**
>
> **2. Definitions.**
> (1) In these rules, unless the context otherwise requires,–
> (a) "computed value" means the value of imported goods determined in accordance with rule 7A of these rules;
>
> (aa) "deductive value" means the value determined in accordance with rule 7 of these rules;]
>
> (b) to (e) … …
>
> (f) "transaction value" means the value determined in accordance with Rule 4 of these rules.
>
> (2) … … …
>
> **3. Determination of the method of valuation.**
> For the purpose of these rules,–
> (i) subject to rules 9 and 10A, the value of imported goods shall be the transaction value;
> (ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.]
>
> **4. Transaction value.**
> (1) The transaction value of 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 these rules.
>
> (2) The transaction value of imported goods under sub-rule (1) above shall be accepted:
> **Provided** that–
> (a) the sale is in the ordinary course of trade under fully competitive conditions;
> (b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;
> (c) the sale does not involve special discounts limited to exclusive agents;

(d) objective and quantifiable data exist with regard to the adjustments re- quired to be made, under the provisions of rule 9, to the transaction value;
(e) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(f) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(g) no part of the proceeds of any subsequently resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

(h) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(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.

(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 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.]

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related;
(c) substitute value shall not be established under the provisions of clause (b) of this sub-rule.

5. Transaction value of identical goods…. … …

6. Transaction value of similar goods. … … …

6A. Determination of value when transaction value is not available. ... ...

7. Deductive value. .....

7A. Computed value. ... .

8. Residual method. –(1) Subject to the provisions of Rule 3 of these rules, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962) and on the basis of data available in India.

(2) No value shall be determined under the provisions of this rule on the basis of–

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iiia) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 7A.

(iv) the price of the goods for the export to a country other than India;

(v) minimum customs values; or

(vi) arbitrary or fictitious values.

9. Cost and services. ... ...

10. Declaration by the importer. ... .

10A. Rejection of declared value. --- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 4.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

11. ... .

12. ....

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 1. Short title, commencement and application.-
… … …
Rule 2. Definitions.-
(1) In these rules, unless the context otherwise requires, -
(a) "computed value" means the value of imported goods determined in accordance with rule 8.
(b) "deductive value" means the value determined in accordance with rule 7.
(c) to (f) … … ….

(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;
… …. …
… … …
Explanation I. - The term "person" also includes legal persons.
Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole
distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Rule 3. Determination of the method of valuation.-
(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;
(2) Value of imported goods under sub-rule (1) shall be accepted:
Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions
which -
(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;
(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(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.

(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:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Rule 4. Transaction value of identical goods. - ... ...

Rule 5. Transaction value of similar goods.- ... .

Rule 6. Determination of value where value can not be determined under rules 3, 4 and 5.- ... ...

Rule 7. Deductive value.- ... ...

Rule 8. Computed value.- ... ...

Rule 9. Residual method.- (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of -

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

Rule 10.Cost and services. -... ... .

Rule 11. Declaration by the importer. - ... ...

Rule 12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be
deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
(c) the sale involves special discounts limited to exclusive agents;
(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
(f) the fraudulent or manipulated documents.

Rule 13. Interpretative notes.- … … …

26. Under the CVR, 1988, Rule 3 lays down that the value of the imported goods be the 'transaction value' and in the event the transaction value cannot be determined, the value shall be determined proceeding sequentially from Rule 5 to 8 of the said Rules. Rule 4(2)(h) prescribes that the transaction value shall be accepted if the buyer and seller are not related; where the buyer and seller are related, the transaction value is acceptable for Customs purposes under the provisions of sub-rule (3) of the said Rules. Clause (a) of sub-rule(3) prescribed that where 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. Clause (b) of sub-rule(3) further lays down that 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 values ascertained at or about the same time; (i) the transaction value of identical or of similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods and (iii) the computed value for identical goods or similar goods. It further prescribes that while applying comparative method, due account should be given to difference in commercial levels, quantity levels, adjustments and in accordance with provisions of Rule 9 of CVR and cost incurred by the seller in sales in which he and the buyer

are not related.

27. The new Customs Valuation Rules, 2007 made effective from 10.10.2007 defines transaction value at Rule 2(g) as referred to in Section 14 of the Customs Act, 1962. Rule 3 of the said Rules prescribes that value of imported goods shall be the transaction value adjusted in accordance with sub-section (1) with provisions of Rule 10; however, it is made subject to Rule 12 of the said Rules. Sub-rule (2) prescribes the circumstances where a transaction value shall be accepted. Under Clause (iii) of the said sub-rule says that the transaction value shall be accepted where the buyer and seller are not related, for Customs purposes under provisions of sub-rule (3) of the said Rules Clause (a) of sub-rule (3) prescribes that 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; clause (b) of the said sub-rule(3) lays down that 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 values ascertained at or about the same time narrated under the said sub-rule viz. (i), the transaction value of identical goods or similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods and (iii) the computed value for identical goods or similar goods. The proviso lays down that in determining the values by comparative methods, due account should be taken of the difference in commercial levels, quantity levels etc. in accordance with provisions of Rule 10 and cost incurred by the seller in sales in which the buyer and seller are not related.

28. The learned advocate for the appellant, in relation to rejection of transaction value of imported parts meant for

distribution in India, has submitted that the basis on which the learned Commissioner rejected the transaction value and then proceeded to redetermine the value adopting the residuary method under Rule 8/9 of the CVR 1988/2007 is a method prohibited under the CVR. Further, it is their contention that without any basis, the learned Commissioner has rejected the transaction value solely on the ground that the Suggested List Price maintained at the exporter's level in Sweden i.e. M/s. AB Volvo Sweden was not disclosed to SVB and known to the department, but retrieved during the course of investigation by DRI. Transaction value was not rejected holding that 62% discount extended by the supplier has in any way influenced the price of the goods, nor it is recorded that the discount rate is artificial or excess or that the transfer price is not at arm's length. Thus, rejection of the transaction value is unsustainable in law.

29. The principle relating to rejection of the transaction value has been laid down by the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd. (supra). Their Lordships observed as:

> **14.** Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (iii) of Explanation to Rule 12 states that the proper officer can on 'certain reasons' raise doubts about the truth or accuracy of declared value. 'Certain reasons' would include conditions specified in clauses (a) to (f) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of

manufacture or production, non-declaration of parameters such as brand and grade etc. and fraudulent or manipulated documents. Grounds mentioned in (a) to (f) however are not exhaustive of 'certain reasons' to raise doubt about the truth or accuracy of the declared value. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

15. The requirements of Rule 12, therefore, can be summarised as under :

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.
(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;
(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.
(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.
(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.
(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.
(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.
(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

16. Proper officer can therefore reject the declared transactional value based on 'certain reasons' to doubt the truth

> or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the 'reason to doubt' exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.
>
> **17.** The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'

30. We find that the Ld. Commissioner in the impugned Order rejected the declared value on the ground that the Appellant has not disclosed the existence of the suggested list price to the department. Applying the above principle, the ground on which the transaction value has been rejected cannot be sustained. There is no evidence referred to in the Order doubting the correctness of the Transaction value declared, which is explained to have been arrived at from the Suggested List Price meant for sale in the Country of exportation by the supplier. It is brought on record by the Appellant that from the said suggested List price discount upto 90+% is allowed in the country of exportation, hence, there is no abnormality in the said discount. The Appellant also demonstrated applying deductive method principle prescribed under Rule 7 of CVR that the discount from the import price allowed in India to the buyers is around 22% which is normal to the trade. But, no contrary evidence has been placed on record by the Revenue to rebut the said claim of the appellant.

31. From the impugned order, we find that adopting the Suggested List Price as the basis and resorting to Rule 9 of CVR, the Ld. Commissioner has observed as under:-

> 20.3 Now coming to the issue of express prohibition in Rule 9 that value shall not be determined with reference to the price of goods in the domestic market of the country of exportation, I find that as per noticee's own submission the Suggested Price List is the basis of deciding the prices for sale by the parent company to them. In this light, it would not be incorrect to say that the Suggested Price List does not merely represent the price of goods in the domestic market of the country of exportation but it also represents the price at which the goods are sold for export in the country of exportation. Therefore, the prohibition contained in Rule 9(2) would not apply in the facts of this case.

32. Scrutiny of the said finding of the learned Commissioner reveals that since the Suggested List Price maintained by the exporter has become the basis for the determination of the transaction value by the appellant; therefore, it can be adopted for the purpose of assessment under Rule 8 / 9 of the CVR 1988 / 2007. We do not find merit in the said reasoning of the learned Commissioner inasmuch as reading the principle laid down by the Hon'ble Supreme Court in the cases of Century Metal Recycling Pvt. Ltd. Vs. UOI (supra) and Eicher Tractors Ltd. Vs. CC (supra), it is clear that on rejection of the transaction value, the value needs to be redetermined sequentially following the principles of Rules 4 to 8 of the said Rules. Thus, in determining the assessable value under the residuary method prescribed under Rule 9 of the CVR 2007 the principles enshrined in Rule 4 to 8 need to be followed. Under the said Rules 4 to 8, nowhere it is prescribed that the Suggested List Price maintained by the exporter for sale of the goods in their domestic market be considered as the basis for assessment to duty. The deductive method under Rule 7 of the CVR, 2007, prescribes the price at which goods are sold in the country of import as the basis, not the price at which the goods

are sold in the domestic market of the exporter. Adoption of the price of the goods at which the goods are sold in the domestic market of the exporter is specifically prohibited under Rule 9(2)(iii) of CVR. Therefore, rejection of the transaction value and also adoption of residuary method under Rule 9 of CVR, in our considered opinion, is bad in law, hence cannot be sustained.

33. On the second issue of loading the value of the imported goods under Rule 9/10 of CVR 1988/2007 to the extent of Royalty, Technical fees paid during the period August 2007 to March 2012 and notional management fees, which was paid prior to the said period, to the imported price of the goods, we find that the learned Commissioner has resorted to Rule 9(1)(c) / 10(1)(c) of CVR 1988 /2007 to add these costs and service to the transaction value. The said rules are more or less similarly worded and are reproduced below:-

CVR, 1998

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) .. …

(b) … ..

(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;

(d) … ….

CVR, 2007

Rule 10 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) .. …

(b) … ..

(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;

(d) … ….

34. Analysing the Master Agreement and the Addendum, the learned Commissioner has arrived at the conclusion that royalty, technical fees paid during the said period and the Management fees even though not paid during the disputed period are to be added to the value of imported goods. Since the entire discussion in the impugned Order is mainly focussed and revolved around the Master Agreement dated 01.4.2001 and the addendum, it is necessary to reproduce the relevant clauses of the said agreements.

Master Agreement:

MASTER AGREEMENT

THIS AGREEMENT it by and between Ali Volvo (Publ), a corporation organized and existing wider the laws of Sweden and having its corporate offices in Gutenburg, Sweden, along with and represented by all its group companies/Corporations (hereinafter referred in as "VOLVO") and Volvo India Private Lid, a company incorporated under the Companies Act, 1956, with us head office located at Yalachahally, Tavarekere Post, Hosakote, Bangalore 562 122. Karnataka State, India (hereinafter referred to as "VIPL"), entered into on the First day of April Two Thousand One (2001).

WITNESSETH

WHEREAS, VOLVO and its affiliates have for many years been engaged in the business of the design, development, manufacture, assembly and sale of vehicles, trucks, busses, construction equipment, and engines for aircraft, marine, industrial and agricultural applications and related after-market service parts (hereinafter referred to as "Products");

WHEREAS, VOLVO owns or has acquired the ownership rights and the right to use various Intangibles in the manufacture of the Product;

WHEREAS, VIPL has the experience, expertise, facilities and personnel 10 (a) Manufacture and assemble the Products, (b) market, sell and distribute the Products and (c) provide services to VOLVO

WHEREAS, .. … …

DEFINITIONS:

"Territory" means India, and all of the states a political subdivisions thereof and SAARC countries other than Pakistan:

Group companies or corporation refer to all the Companies or corporation as mentioned in Appendix-I

"License to manufacture" means the right granted to VIPL, to manufacture the "Products" through transfer of technology is the territory with the specifications and guidance from VOLVO as mentioned in Appendix 2

"Distribution" means the promotion and sale, of the: Products in the Territory as mentioned in Appendix 3

"Services" refers to all such services requested by VOLVO VIPL and mentioned in Appendix 4;

"Local Parts" means the parts, components and materials for the Products, which may be manufactured or purchased from third parties by VIPL with VOLVO's prior written approval;

"Knocked Down Parts" means the parts, components and materials in such knocked down or other form as separately prescribed by VOLVO, which shall be supplied by it to VIPI for the manufacture of the Products or the local Parts under terms and conditions separately agreed;

"Intangibles" would refer to patents, designs, trademarks, specifications and similar know-how related to or associated with the Products;

"Arm's length Price" means the consideration which is applied or proposed to be applied in remunerating for same similar Services as contemplated in this Agreement under conditions that are made or imposed between the Parties in their commercial or financial relations which do not differ from those which would be made between independent enterprises

NOW THEREFORE, in consideration of this agreement hereinafter set forth and other good and valuable consideration received by each of the parties hereto, the parties agree as follows:

1. VOLVO hereby grants the License to manufacture the "Products" as set forth in Appendix 2 thereof

2. VOLVO hereby engages VIPL to distribute the Products as set forth in Appendix 3 thereof

3. VOLVO hereby engages VIPL to perform "Services" as set forth in Appendix 4 thereof.

4. Upon a request by VIPL during the term of this Agreement, VOI, VO agrees to supply VIPL with components materials and production equipment for the manufacture and sale of “Products” to the extent they are available at VOLVO's facilities.

5. Unless otherwise provided, payments for Products or Services other than royalty payments) under this agreement shall be made in compliance with the following:

In consideration of VIPL's performance of the activities under this Agreement VOLVO and VIPL agree that the transaction will be at an Arm Length Price in accordance with internationally accepted arm length standards.

Unless otherwise instructed by VOLVO, the quotation and payment under this Article shall be made in Swedish Krona on the Euro.

Addendum

ADDENDUM TO MASTER AGREEMENT

THIS ADDENDUM to the MASTER AGREEMENT of the First day of April of Year Two Thousand One, between AB Volvo (Publ) and Volvo India Private Limited made on and effective from the date mentioned hereinbelow

WITNESSETH

WHEREAS THE MASTER AGREEMENT read with the appendices form the complete arrangement, this addendum substitutes, alters, amends and includes the presents hereinbelow:

DEFINITIONS:

"Local parts" means the parts, components and materials for products, which may be manufactured or purchased from third parties by VIPL.

"Technical Information" means and includes technical know-how, information and other relevant data relating to the manufacturing, assembly and quality control of the products, which are owned by Volvo and which Volvo has the right to furnish to VIPL without restriction from third parties, and which VOLVO deems necessary and applicable to VIPL's production of the Products and which are supplied to VIPL at VOLVO's discretion for the subsequent modifications of the Products during the effective term of this Agreement in addition to the above technical Information.

"Management support services" shall mean and include various kinds of marketing activities, customer relationship support, usage of trademark, brand and guidelines and background material for all kind of activities related to such services. These may vary over time and will be of different kind and nature and depending on the situation and activity as such.

The following clause shall be inserted in the agreement:

13. Any provision of this agreement may be altered, amended, substituted, deleted, omitted by either party,

with the consent of the other party vide a notice duly communicated not less than 30 days before such proposal is effected.

In APPENDIX 2, the following provisions shall be included:

Clause 4 shall be replaced by the following:

VIPL shall use the local parts and knocked down parts in the manufacturing of products, which pass the inspection and quality tests.

6A. …….

6B. .. …..

6C. …. …..

6D. … … ….

6E. LOCAL PARTS ACQUISITION, ADHERENCE TO QUALITY STANDARDS.

In pursuance of cost reduction initiatives of VIPL may source parts/components locally/ from third parties. In every such transaction, VOLVO shall assist VIPL with technical information on quality standards, vendor evaluation procedure, acceptability norms, etc.

6F. QUALITY AUDITS AND INSPECTIONS

As part of quality initiative VIPL shall seek and VOLVO shall, at periodical intervals, send its team of auditors to ensure that the products and process comply and adhere to the global norms formulated and set.

6G . … …. ..

6H. … … … .

6I. OTHER SERVICES

…….

6J. REMUNERATION

VOLVO shall charge a compensation for the technical information and assistance in services mentioned aforesaid. Such compensation shall realize an arm's length price which is applied or proposed to be applied in remunerating for same or similar services as contemplated in this Agreement under conditions which do not differ from those which would be made between independent enterprises. Further, such compensation shall be based on a lump sum payment not exceeding US$ 2 Million: However is such sum were to exceed the monetary limit specified here. then VIPL would seek the required regulatory approvals.

> VOLVO shall charge a compensation for the management support services and assistance provided to VIPL. Such compensation shall realize an arm's length price which is applied or proposed to be applied in remunerating for same or similar services as contemplated in this Agreement under conditions which do not differ from those which would be made between independent enterprises.
>
> Clause 8 shall be substituted with the following:
>
> VIPL shall have the rights of substitution of local parts and may entrust a reliable and competent third party possessing adequate faculties in or outside the territory with the manufacture or local parts and/or purchase local parts therefrom.
>
> Clause 9 shall be substituted with the following:
>
> VOLVO may at its discretion, call for remittance of Royalty from VIPL in respect of Transfer of Technology, Technical Know-how, subject to the local regulations as prescribed. The rate of royalty shall be a percentage not exceed 5% for domestic sales and 8% for Export sales.
>
> VIPL shall keep adequate and accurate records and statements of royalties relating to the Products sold by the VIPL. VOLVO may, periodically, inspect said records and statements of royalties. Discrepancies, if any, shall be effected vide adjustments after mutual agreements and without delay.

35. The learned Commissioner in the impugned order has doubted the veracity/authenticity of the Addendum observing that the said Addendum was never submitted to the SVB authorities at any stage till the investigation was initiated by the DRI. The said Addendum was submitted for the first time on 22.10.2012 together with other documents; also, since the same is not in the same style like the Master Agreement, therefore, it is an afterthought, hence cannot be accepted as evidence. From the records, we find that the said Addendum was subject matter of scrutiny by the Income Tax authorities and reflected at para 7.1 of the Income Tax assessment order dated 31.10.2008. Extract is produced below:-

> 7.1. … …. ….
>
> Further, the taxpayer vide its letter dated 21.07.07 stated that the Master Agreement was amended and an "Addendum to Master Agreement" was executed between

> Volvo India and AB Volvo to include the management support services among other things.
>
> … … …

Also we find from the records that the Service Tax Department has also issued a show-cause notice dated 12.07.2006 wherein at para 5 referred to the Addendum and proposed to recover service tax on payments towards royalty, technical fess and management fees under the category of Intellectual Property Rights (IPR) which was later adjudicated vide order dated 29.06.2007 by the Commissioner, LTU, Bangalore. Therefore, it is incorrect to say that the Addendum was an afterthought after the investigation was initiated. There could be aberrations in non-production of Addendum specifically before the SVB; however, existence of such Addendum wayback in 2007 cannot be brushed aside. The appellant has been registered themselves as a Large Tax Payer Unit(LTU) during the relevant period, therefore, it cannot be considered as an afterthought document, hence, the Addendum has to be read along with the Master Agreement, which the learned Commissioner also adopted while adding the technical fees and notional management fees to the imported value. We do not find any substantial alteration to the Master Agreement by the Addendum; it has only clarified various clauses of the earlier Master Agreement dated 01.04.2001.

36. Now, a plain reading of Rule 10(1)(c) makes it clear that royalty and licence fees related to the imported goods that the buyer is required to pay as a condition of the sale of the goods being valued directly or indirectly if the costs are not included in the price. The twin conditions required to be fulfilled as laid down under the said Rule are mentioned at para 219 of page 123 in the Commentary Notes by Saul L. Sherman on GATT Customs Valuation Code, which reads as follows:-

> The key requirements of Article 8 para 1(c) are that the royalty or license fee shall be included in the Transaction value only if it is
>
> - related to the goods being valued and
> -the buyer (importer) must pay either directly or indirectly as a condition of sale of the goods being valued.
>
> Both requirements must be satisfied separately. However, there is also a close economic connection between these requirements; a royalty or license fee that is a condition of sale is usually (but not always) paid for rights, information or services that also relate to the imported goods. It then becomes appropriate from an economic perspective to treat the royalty as a part of the purchase price of the goods.

Therefore, the royalty or licence fee should be related to the goods being valued before adding the same to the value. The author at para 293 to 295 of the said Commentary explained the tests to be applied for the said purpose which reads as below:

> "It may be difficult to determine unambiguously what a royalty or license fee is being paid for, depending on the special circumstances of each individual case. Normally, what will have to be determined in the first place is the type, scope and value of the rights, information or services covered by the royalty or license fee. If there is nothing of value other than the imported goods passing from the exporter to the importer, the (refutable) conclusion is appropriate that there is no royalty or license fee at all but simply a separated form of purchase price.
>
> A right to reproduce imported goods is not related to those goods being valued but to other goods to be produced in the country of importation therefore a royalty payment for this right is not a payment for the imported goods themselves. This is confirmed by the notes:
>
> ' charges for the right to reproduce the imported goods in the country for importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value'.
>
> The most essential point in assessing the relationship of goods(the tangible) to the payment for the right, information or service (the intangible) is whether the importer could have purchased the tangible without purchase of the intangible. If so, it should be possible to establish a separate value for each and to say that the royalty payment does not relate to the tangible……"

On the second test i.e. as a condition of sale of the goods valued, the author opined at para 297 as:

> The requirement that 'the buyer must pay (the royalty) as a condition of sale does not have a single, clear meaning one can hope to master and then be able to apply automatically and with confidence. Broadly speaking, the term can most appropriately be interpreted to refer to the separately or inseparability of the purchase of the goods being imported from the payment of the royalty for the rights. If they are sufficiently separable the royalty is not to be added to the price in determining the custom value of the goods. This factor or separability may depend upon the technological facts on methods of doing business or on the terms of the contract between the parties. The mere fact that payment of the royalty is a term of the contract between the parties does not mean that payment of the royalty is a condition of the sale within the meaning of article 8.1(c) if the buyer had a genuine choice whether to ask the goods with or without the rights

37. The learned Special Counsel for the Revenue has referred to the examples at the above Commentary at para 297 and para 300 to advance the argument that the aforesaid test is relevant to understand whether the goods would have been sold without the payment of royalty and licence fee and submitted that there is an implicit requirement of having to pay royalty for the sale of the parts and components to the manufacturers because the said sales would not have been taken place if the Master Agreement has not been entered into. Further referring to para 300 of the said Commentary, he has submitted that payment of royalty becomes an essential requirement as the technology provided by Volvo is very much used and it could not have imported without the licence to manufacture. As far as the submission relating to para 297 of the Commentary, it will be clearer when the agreements are discussed in detail in the subsequent discussion on the issue, but at this juncture it can be said that since the appellant was free to purchase the parts and components from third parties and there is no restriction for such purchase, we do not see how this could be considered as related to the goods being valued. The opinion at para 300 refers to payment to a

third party, which may not be relevant to the facts of the present case.

38. The said twin tests can be ascertained from the agreement of sale entered between the importer and the overseas supplier and other circumstances surrounding the transaction which has not been examined by the learned Commissioner in the impugned order. It is not in dispute that the exporter AB Volvo and the appellant are related person and the related transaction value of the imported goods used in the manufacture of products has been accepted by the Department under Rule 4(3)(a) / 3(3)(a) of CVR 1988 / 2007 being not influenced by the relationship. Under the Master Agreement, the AB Volvo granted licence to manufacture the products and the said expression 'licence to manufacture' is defined as the right granted to the appellant to manufacture the products through transfer of technology in the territory with the specifications and guidance from Volvo as mentioned in Appendix 2 to the said agreement. Under Clause 3 of Appendix 2, it is mentioned that in manufacturing the products, appellant shall specify the requirement of drawings and/or specifications, and faithfully observe technical instructions given by Volvo under this Agreement and shall maintain the proper and specified quality of the products. Under Clause 4, it is mentioned that appellants shall use only the knocked down parts and local parts which have passed the inspection and tests. Clause 9 mentions that AB Volvo may, if so desires request for remittance of royalty from the appellant in respect of transfer of technology as per the regulations prescribed by the Government of India in this regard. Clause 1 of Appendix 2 stipulates that the appellant should inform the requirement of parts specifying the part number, quantity and the receiving month of each of the products. In the Addendum under the definition column 'local parts', 'technical information' and 'management support service' have been added

and Clause 4 has been substituted with sub-clauses between 6A to 6J. Also, Clauses 8 and 9 have been substituted. A new clause has been added as Clause 13 which allows the agreement be altered, amended and substituted not earlier present in the Master Agreement. Further, in Clause 8, it is clarified that the appellant shall have the rights of substitution of local parts and may entrust a reliable and competent third party with the manufacture and or procurement of local parts. In Clause 9 specifically laid down the rate of royalty shall not exceed 5% for domestic sales and 8% for export sales.

39. A deeper analysis of the various clauses of the Master Agreement, indicates that AB Volvo who possessed with the technical know-how and acquired ownership rights and the right to use various 'intangibles' in the manufacture of the products, grants the licence to manufacture the products on the terms and conditions under Appendix 2. Under the Appendix-2, the requirement of the products needs to be informed in advance and while manufacturing the product, the appellant is required to use the knocked down parts and local parts which have passed the inspection and tests. In other words, the use of the parts as per the specification of the Volvo was considered as a strict control by Volvo on the appellant which according to the Department has a bearing on the price of the products. However, the knocked down parts and local parts which required to be used in the manufacture of the products has been clarified in the Addendum at para 6E, which says that the appellant may source parts and components / from third parties; however, in every such transaction AB Volvo shall assist the appellant with technical information on quality standards, vendor evaluation procedure, acceptability norms etc. Therefore, it makes it clear that procurement of parts by the appellant both locally as well as imported to be used in the manufacturing of products has to adhere to strict technical specifications and standards of AB

Volvo. But, it cannot be construed that selling of parts by AB Volvo to the appellant for manufacturing of products be interwoven or interlinked or be considered as a condition of sale for payment of royalty in respect of transfer of technology, technical know-how @ 5% for domestic sales and 8% of export sales. On the contrary, the payment of royalty and technical fees is in relation to manufacturing of products in India using the technical know-how for which the royalty is paid. It cannot be considered as a condition of sale or purchase of imported parts and components which are later to be used in the manufacture of products, for which license is granted by Volvo, since the appellant are free to procure the parts also locally, subject to adherence of the technical specifications. The said stipulation is to maintain the standards of the AB Volvo, which is with an objective not to dilute the quality of the product. It has no connection or can be treated as a condition of sale of the products. Besides, since there is no apportionment of the parts and components to be imported and procured locally and the appellant is at liberty even to procure all parts & components and use it in the manufacture of products as per the licence to manufacture the products granted under the said Master Agreement; only condition is that it should adhere to the prescribed specification and quality test of AB Volvo.

40. Hon'ble Supreme Court in Ferodo India Pvt. Ltd.'s case (supra) laid down the principle for application of Rule 9(1)(c) / 10(1)(c) of CVR. Briefly stated, in the said case, the buyer is the manufacturer of brake liners and brake pads in India. On 8-9-1995, a technical assistance and trade mark agreement ("TAA" for short) was entered into between the respondent (buyer/licensee) and M/s. T & N International Ltd., U.K. (foreign collaborator/licensor). Under the said agreement, the licensor claimed to be in possession of certain secret processes, formula and information. Under the agreement, the licensor agreed to

permit manufacture of brake liners and brake pads (licensed products) by the licensee. Under the agreement, the licensor agreed to disclose the relevant secret processes, formula and information to the licensee. Under the agreement, the licensee was required to import/buy raw material and capital goods from the licensor. Under the agreement, the licensee was obliged to pay a licence fee along with royalty, based on the net sales value of licensed products sold, consumed or otherwise disposed of. Analysing Rule 9(1)(c) / 10(1)(c), their Lordships observed as follows:-

> **15.** Rule 9(1)(c) extends the quantum of levy under Rule 4. Rule 9(4) mandates that there can be addition to the transaction value except as provided in Rule 9(1) and (2). Hence, addition for cost can only be made in situations coming under Rule 9(1) and (2). Rule 9(1) and (2) is based on the principle of attribution. Under Customs law. valuation is done on pricing whereas in the case of transfer pricing under Income-tax Act, 1961, valuation is profit based. The principle of attribution of certain costs (including royalty and licence fee payments) to the price of the imported goods is provided for in Rule 9 under situations mentioned in Rule 9(1) and (2). In transfer pricing, the arm's length price is inferred from various methods to avoid profit-shift from one jurisdiction to another and it is here that principle of allocation of profits comes in (i.e. in the case of transfer pricing).
>
> **16.** Under Rule 9(1)(c), the cost of technical know-how and payment of royalty is includible in the price of the imported goods if the said payment constitutes a condition pre-requisite for the supply of the imported goods by the foreign supplier. If such a condition exists then the payment made towards technical know-how and royalties has to be included in the price of the imported goods. On the other hand, if such payment has no nexus with the wording of the imported goods then such payment was not includible in the price of the imported goods.
>
> **17.** In the case of *Essar Gujarat Ltd.* (supra) the condition pre-requisite, referred to above, had direct nexus with the functioning of the imported plant and, therefore, it had to be loaded to the price thereof.
>
> **18.** Royalties and licence fees related to the imported goods is the cost which is incurred by the buyer in addition to the price which the buyer has to pay as consideration for the purchase of the imported goods. In other words, in addition to the price for the imported goods the buyer incurs costs on account of royalty and licence fee which the

> buyer pays to the foreign supplier for using information, patent, trade mark and know-how in the manufacture of the licensed product in India. Therefore, there are two concepts which operate simultaneously, namely, price for the imported goods and the royalties/licence fees which are also paid to the foreign supplier. Rule 9(1)(c) stipulates that payments made towards technical know-how must be a condition pre-requisite for the supply of imported goods by the foreign supplier and if such condition exists then such royalties and fees have to be included in the price of the imported goods. Under Rule 9(1)(c) the cost of technical know-how is included if the same is to be paid, directly or indirectly, as a condition of the sale of imported goods. At this stage, we would like to emphasis the word *indirectly* in Rule 9(1)(c). As stated above, the buyer/importer makes payment of the price of the imported goods. He also incurs the cost of technical know-how. Therefore, the Department in every case is not only required to look at TAA, it is also required to look at the pricing arrangement/agreement between the buyer and his foreign collaborator. For example if on examination of the pricing arrangement in juxtaposition with the TAA, the Department finds that the importer/buyer has misled the Department by adjusting the price of the imported item in guise of increased royalty/licence fees then the adjudicating authority would be right in including the cost of royalty/licence fees payment in the price of the imported goods. In such cases the principle of attribution of royalty/licence fees to the price of imported goods would apply. This is because every importer/buyer is obliged to pay not only the price for the imported goods but he also incurs the cost of technical know-how which is paid to the foreign supplier. Therefore, such adjustments would certainly attract Rule 9(l))(c).
>
> **Application of Rule 9(l)(c) to the facts of the present case**
>
> **19.** Applying the above tests to the facts of the present case, we find that the adjudicating authority had not examined the pricing arrangement between the foreign collaborator and the buyer. It has only examined the royalty/TAA.

41. Applying the said principles to the present case, we find that no scrutiny has been made by the adjudicating authority to examine about the pricing arrangement between the appellant and the overseas supplier so as to find out whether the royalty and technical know-how fees have been charged as a condition of sale and such payment is made by the appellant to the overseas buyer in relation to the parts imported and used in the manufacture of products. The same yardstick is applicable to

technical fees paid during the period 2007-08 & 2008-2009 and not the subsequent years. Also, we find that the appellant has discontinued payment of management fees to AB Volvo during the relevant period. However, the learned Commissioner proposed to add management fees notionally @ 4% for the period 01.08.2007 to 31.03.2012 which is also on a hypothetical basis and rests on assumptions and presumptions, hence cannot be sustained. Therefore, we are of the opinion that the royalty, technical assistance/know-how fees paid by the appellant to the AB Volvo, the overseas supplier of the parts for which the appellant was granted licence to manufacture products cannot be added to the transaction value.

42. Since in our view the appellant succeeds on merits, the other issues raised viz. applicability of the penal provisions, confiscation of goods and interest of the Customs Act, 1962 in connection with levy & collection of CVD/SAD under Customs Tariff Act, 1975, limitation etc. become academic; hence, not delved into. In the result, the impugned order is set aside and accordingly, appeal is allowed/disposed of. Miscellaneous application also disposed of.

(Order pronounced in Open Court on 06.05.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...