CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III

E-Hearing

Customs Appeal No.51968 of 2024

[Arising out of Order-in-Appeal No.44(RLM)CUS/JPR/2023 dated 24.11.2023 passed by the Commissioner (Appeals), Central Excise and CGST, Jaipur]

Aglow Chemical Pvt. Ltd. **...APPELLANT**
SP-1, Udyog Vihar, Sukher Industrial Area,
Udaipur, Rajasthan-313 001.

Versus

Commissioner of Customs(Preventive), **...RESPONDENT**
Hqrs. At NCRB, Statue Circle,
Jaipur, Rajasthan-302 005.

Appearance:

Shri Ajay K. Mishra, Advocate for the appellant.
Shri Girijesh Kumar, Authorised Representative for the Department.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50898 /2026

Date of Hearing:02.04.2026
Date of Decision:15.05.2026

BINU TAMTA:

1. M/s. Aglow Chemical Private Limited, Udaipur[1] filed Bill of Entry[2] No. 8367218 dated 21.04.2022 for clearance of goods declared as "Plant and Machinery with Technical Assistance Supply as per invoice and packing list" imported from M/s. Cimprogetti Srl, Italy under Bill of Lading No. MEDULV285464 dated 21.03.2022. The appellant declared the assessable value of the imported goods as EUR 1,26,000 (Rs.1,06,34,400/-) on the

[1]Appellant-Importer,
[2] B/E

basis of Invoice No. 2022000067EQ dated 08.03.2022, classified the goods under CTH 84179000 and discharged the applicable customs duty.

2. During verification of documents, the Department noticed that the appellant had entered into a contract with the foreign supplier having a total contract value of EUR 4,20,000, comprising EUR 1,26,000 towards key equipment and EUR 2,94,000 towards licence, engineering package and technical assistance, as reflected in Invoice No.2022000067 dated 08.03.2022. The B/E was thereafter sent for re-appraisal and a Pre-Notice Consultation letter dated 11.05.2022 was issued to the appellant. In reply, the appellant contended that only part machinery had been imported and that licence fee and technical assistance charges were not a condition of sale of the imported goods. Not being satisfied with the explanation, the Department seized the goods on 23.05.2022 under Section 110(1) of the Customs Act, 1962 alleging mis-declaration of value and proposing inclusion of licence and technical assistance charges in the assessable value.

3. Show Cause Notice dated 30.06.2022 was issued to the Appellant proposing re-determination of assessable value at EUR 4,20,000, confiscation of the goods under Section 111(m) of the Customs Act, 1962[3] and imposition of penalty under Section 112(a) of the Act. The Adjudicating Authority vide Order-in-Original dated 06.10.2022 held that licence fee, engineering and technical assistance charges were includible in the assessable value of the imported goods. The appeal filed by the

[3] The Act

appellant has been dismissed by the impugned order[4]**.** Hence the present appeal has been filed.

4. Heard Shri Ajay K. Mishra, Advocate for the appellant and Shri Girijesh Kumar, Authorised Representative for the Department and perused the records of the case.

5. The first and foremost submission of the learned counsel for the appellant is that the authorities below have erred in treating separate invoices for equipment, supply and engineering or technical services as a single composite transaction. He submitted that the engineering package, technical assistance and license fee are independent of the imported equipment and are not related to sale, and therefore, the declared value of imported equipment satisfies all conditions of Section 14 of the Act and should be accepted as the transaction value. Once transaction value is acceptable under Section 14, resort to Customs Valuation Rules [5] is unwarranted. In support of his submission, the learned counsel has placed reliance on the following decisions:-

(1) Tata Iron and Steel Co. Ltd. Vs. Commissioner[6]

(2) Commissioner of Customs (Port), Kolkata Vs. M/s. J.K. Corporation Ltd.[7]

(3) Commissioner of Customs Vs. M/s. Essar Steel Ltd. [8]

(4) CC Vs. Hindalco Industries[9]

(5) CC, Kolkata Vs. SAIL[10]

[4] Order-in-Appeal No.44(RLM)CUS/JPR/2023 dated 24.11.2023
[5] CVR
[6] 2000 (116) ELT 422 (SC)
[7] 2007 (2) TMI 629 -SC
[8] 2015(4) TMI 486 -SC
[9] 2015(5) TMI 696-SC
[10] 2020 (372) ELT 478 (SC)

(6) Erbatech Machinery Pvt. Ltd. Vs. CC, Chennai-II[11]

(7) Indorama Industries Ltd. Vs. CC, Kandla[12]

The learned counsel has also challenged the issue of confiscation on account of mis-declaration of value and levy of penalty.

6. Per contra, the learned authorised representative for the Revenue reiterated the findings of the Authorities below. He submitted that the importer entered into a single composite contract with the foreign supplier for supply of plant and machinery along with license, engineering, technical know-how and assistance for setting-up a lime kiln. The agreement clearly shows that all these elements were inseparably linked and were intended to be supplied together. The total contract value agreed between the parties was EUR 4,20,000, which is clearly reflected in the contract and in the consolidated invoice issued by the supplier, the importer later split this amount into two invoices and declared only EUR 1,26,000 to Customs. Merely splitting invoices does not change the transaction value. Under customs law, duties are required to be paid on the actual amount paid or payable for the goods and therefore, the correct assessable value is EUR 4,20,000. Referring to the contract, it was submitted that the supplier agreed to supply the machinery only if the importer also paid the license fee and the engineering charges. The imported equipment by itself was incomplete and commercially unusable without the proprietary design, engineering drawings, operational know-how and technical assistance supplied by the foreign supplier. The lime kiln could not be erected, commissioned or

[11] 2025(5) TMI 586-CESTAT-Chennai
[12] 2024 (7) TMI 1045-CESTAT-Ahmedabad

operated without the proprietary design, engineering drawings, operational, know–how and technical assistance supplied by the foreign suppliers to technology. Since the functioning of the imported machinery was entirely dependent on the supplied know-how, the related payments were directly connected with the imported goods and were therefore, required to form part of the assessable value. The learned authorized representative referred to the CBIC Circular No.38/2007 based on the judgement of the Supreme Court in the case of **J.K. Corporation Limited,** which clarified that when machinery cannot be used without license or technical know-how, other related payments are required to be included in the assessable value. In nutshell, the basic contention is that once the payments made are inextricably linked with the imported design and engineering drawings, including supervision charges, essential for the effective implementation they have to be included in the assessable value. Reliance has been placed on the decision in the case of **Collector of Customs, Ahmedabad versus Essar Gujarat Ltd.**[13] and **Mukund Limited versus Commissioner of Customs, ACC, Mumbai**[14]**,** which has been affirmed by the **Apex Court**[15]**.**

7. The issue for consideration is whether the assessable value declared by the appellant at EUR 1,26,000 under Section 14 of the Customs Act, 1962 represented the true transaction value or whether the Department was justified in determining the value at EUR 4,20,000 by

[13] 1996 (88) ELT 609 (SC)
[14] 1999 (112) ELT 479 (Tribunal)
[15] 2000(120) ELT 30 (S.C.)

including license fees, engineering services, and technical know–how as part of a composite supply. To examine the issue, it is necessary to consider the terms of the contract dated 30.11.2020 entered into between the appellant and the foreign supplier and whether the supply of engineering services and technical know-how is a condition of sale of the plant and equipment.

8. From the contents of the contract entered into with the supplier company, it is apparent that it has two major parts, one part relates to technical assistance for whole plant, license fee etc. for the appellant-company as mentioned at clause 3.1.1 of the contract. The other part as mentioned at clause 3.1.2 of the contract relates to sale-supply of goods i. e. Key Components (as per invoice), which is only a part of the whole plant and machinery, constituting only about 5%-10% of the value of entire Plant arid Machinery. The supplier company raised a consolidated invoice no.2022000067 for EUR 4,20,000.00 towards entire obligations of the contract. As against the consolidated invoice no.2022000067 for EUR 4,20,000.00, two separate part invoices bearing no.2022000067EN for EUR 2,94,000.00 and 2022000067EQ for EUR 1,26,000.00 were issued towards separate contractual obligation of Engineering Package, Technical Assistance, License Fee etc. and supply of key components, respectively. Such a bifurcation in terms of the contracts is evident of the intention of the parties to separately provide for the supply of the technical know–how and the equipment, and therefore, had provided for separate considerations. Law has been settled that once separate prices are provided for the supply of technical assistance, royalty etc. on one

part and supply of equipment or capital goods on other part, then the consideration for the supply of technical assistance cannot be added to the assessable value in respect of import of equipment.

9. We may consider a later decision in the case of **Steel Authority of India Ltd.**[16]**,** where the Apex Court upheld the decision of the Tribunal and rejected the Department's appeal seeking addition of basic design and engineering drawings and supervision charges to be included in the transaction value of the imported equipments as they formed the integral part of the agreement agreed upon between the two consortium and SAIL. The Revenue had described such arrangement as turnkey contracts and such intangible items constituted conditions of sale within the meaning of Rule 9(1)(e) of the 1988 Rules, which are not post-importation charges. The Bench considered the earlier line of decisions in support of its decision and quoted the decision in **M/s. Essar Steel Ltd.** as under: -

> **"14.** Another thing to be noticed is that a conjoint reading of the technical services agreement and the purchase order do not lead to the conclusion that the technical services agreement is in any way a pre-condition for the sale of the plant itself. On the contrary, as has been pointed out above, the technical services agreement read as a whole is really only to successfully set up, commission and operate the plant after it has been imported into India. It is clear, therefore, that clause 9(1)(e) would not be attracted on the facts of this case and consequently the consideration for the technical services to be provided by Met Chem Canada Inc. cannot be added to the value of the equipment imported to set up the plant in India."

The Apex Court then considered their earlier decision in **Tata Iron and Steel Company Limited** in the following terms:-

[16] 2020 (4) TMI 774 (SC)=2020(372) ELT 478 (SC)

"18. This Court, while dealing with the case of *Essar Steel Limited* (supra) had referred to the case of *Tata Iron and Steel Company Ltd.* (supra). The latter authority related to importation made under an umbrella contract, which branched into two. One related to agreement for supply of technical documentation (MD 301) and the other for sale of equipments and materials pertaining to a blast furnace and three torpedo ladle cars (MD 302). The value of MD 301 was 12.5 million DM and MD 302 was 13.5 million DMs. The consignment under MD 301 was cleared by the customs authorities having nil duty component as importer claimed the same to be classified under sub-heading No. 4906.00 of the Customs Tariff Act, 1975. But while scrutinising the consignment under MD 302, the customs authorities initiated action for including the value of MD 301 for determining the assessable value. The dispute reached the Tribunal. In paragraph 7 of the said report comprising of the judgment of this Court, the finding of the Tribunal has been summarized :-

> **19.** It was held and observed by this Court in the case of ***Tata Iron and Steel Company Ltd***. (supra) :-
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> **"16.** It is nobody's case that the seller had an obligation towards a "16. third party which was required to be satisfied by it and the buyer (i.e. the appellant) had made any payment to the seller or to a third party in order to satisfy such an obligation. The price paid by the appellant for drawings and technical documents forming the subject-matter of contract MD 301 can by no stretch of imagination fall within the meaning of "an obligation of the seller" to a third party. There was also no payment made as a condition of sale of imported goods as such. Rule 9(1)(e) also, therefore, has no applicability.
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> **17.** So far as the Interpretative Note to Rule 4 is concerned it is no doubt true that the Interpretative Notes are part of the Rules and hence statutory. However, the question is one of their applicability. The part of the Interpretative Note to Rule 4 relied on by the Tribunal has been couched in a negative form and is accompanied by a proviso. It means that the charges or costs described in clauses (a), (b) and (c) are not to be included in the value of imported goods subject to satisfying the requirement of the proviso that the charges were distinguishable from the price actually paid or payable for the imported goods. This part of the Interpretative Note cannot be so read as to mean that those charges which are not covered in clauses (a) to (c) are available to be included in the value of the imported goods. To illustrate, if the seller has undertaken to erect or assemble the machinery after its importation into India and levied certain charges for rendering such service the price paid therefor shall not be liable to be included in the value of the goods if it has been paid separately and is clearly distinguishable from the price actually paid or payable for the imported goods. Obviously, this Interpretative Note cannot be pressed into service for calculating the price of any drawings or

> technical documents though separately paid by including them in the price of imported equipments. Clause (a) in the third para of the Note to Rule 4 is suggestive of charges for services rendered by the seller in connection with construction, erection etc. of imported goods. The value of documents and drawings etc. cannot be "charges for construction, erection, assembly etc." of imported goods. Alternatively, even on the view as taken by the Tribunal on this Note, the drawings and documents having been supplied to the buyer-importer for use during construction, erection, assembly, maintenance etc. of imported goods, they were relatable to post-import activity to be undertaken by the appellant. Such charges were covered by a separate contract, i.e. contract MD 301. They could not have been included in the value of imported goods merely because the value of documents referable to imported equipments and materials was mixed up with the value of those documents which were referable to equipment which was yet to be procured or imported or manufactured by the appellant; the value of the latter category of documents also being neither dutiable nor clubbable with the value of imported goods. The Tribunal has not doubted the genuineness of the contracts entered into between the appellant and SNP. Rather it has observed vide para 10.2 of its order that entering into two contracts (MD 301 and MD 302) was a legal necessity. The Tribunal has also stated that it was not recording any finding of "skewed split-up". Shri Ashok Desai, the Learned Senior Counsel for the appellant has pointed out that under Chapter Heading 49.06 of the Customs Tariff Act, 1975 plans and drawings for engineering and industrial purposes being originals drawn by hand as also their photographic reproductions on sensitised papers and carbon copies thereof are declared free from payment of customs duty. Sub-rules (3) and (4) of Rule 9 clearly provide that additions to the price actually paid or payable are permissible under the Rules if based on objective and quantifiable data and no addition except as provided for by Rule 9 is permissible."

10. The observations of the **Apex Court** in **SAIL** as are relevant in the present context is that if a single agreement involves importation of dutiable equipments and also services for post-importation activities and these two sets of items are segregable, it would be open to the importer to claim duty exclusion in respect of items directly relatable to post importation activities in cases where Rule 9 of the Valuation Rules are applicable. The concluding paragraph reads as follows:-

> **"28.** In the present appeal, involving two import consignments, the authorities of First Instance and the

> Appellate Authority proceeded on the basis that since all the scheduled items formed part of the same contract and were linked with activities at post-import stage with the imported equipments, the provisions of Section 9(1)(e) could be invoked. Such reasoning infers subsistence of conditions for awarding post-importation work to the overseas consortia or makes import of both sets of items otherwise interdependent. We find from the orders-in-original that the stand of SAIL was consistent that the subject drawings and specifications did not relate to the equipments imported and was meant for post-importation activities and there was no condition laid down that the import of the equipments were to be supplemented by post-importation work."

11. The principles laid down by the Apex Court in **SAIL** and the other relied on decisions are squarely applicable in the present context. As noticed above, the total contract value of EUR 4,20,000 is bifurcated into engineering package for EUR 2,96,000 and equipment package for EUR 1,26,000. Invoice no.2022000067 dated 8.03.2022 for EUR 4,20,000.00 represent consideration for entire contract, however invoice no.2022000067EQ and invoice no.2022000067EN, both dated 8.03.2022 represents consideration for equipment package and engineering package, respectively. The authorities below have proceeded on the footing that the importer for the purpose of saving customs duty has intentionally got the consignment split in two invoices. Secondly, referring to para 2.1, 2.3 and 3.1 of the contract concluded that the element of condition of sale is present. We do not agree with the observations made by the adjudicating authority for the simple reason that no such intention can be determined from the context of the contract. On the other aspect, we would like to refer to para 2.2 under the heading 'Object of the Contract', which reads as under:-

> **"2. OBJECT OF THE CONTRACT**

> 2.2 BUYER will take care of all additional machinery other then mentioned in the annex and local contracting as well as building construction and infrastructure as specified in ANNEX 1."

The above para of the contract clarifies that only key equipments valued at EUR 1,26,000 have been imported from CIM and the other machineries required for setting a plant comprising Lime Kiln such as Kiln Assembly, Kiln Electricals, Structure, Back Filters, Blowers, Hydraulic Units, Valves, Coal Fire System, Compressor, Foundations, etc are to be prepared indigenously by the buyer. Note to Rule 3 of CVR does not support inclusion of the separately contracted value of technical documents in the customs value of the imported equipment.

12. Coming to the issue, whether the supply of technical know-how was the condition precedent for the supply of the plant and equipments, the Revenue has not been able to show anything from the contract that there was any binding obligation to buy services as a prerequisite for the purchase of equipment or machinery. No nexus has been pointed out between the know-how, technical and engineering services meant for setting-up and operation of lime kiln and the imported equipment. Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides for addition in the price actually paid or payable for the imported goods, while determining the transaction value of such imported goods in different situations. Rule 10(1)(c) provides for addition of Royalties and Licence fees related to imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable. From the reading of

this Rule, it is very much clear that such Royalties and Fees will be added only when these are required to pay as a condition of sale of the goods under import. If such Royalties and Fees are paid not as condition of sale, then it is not required to be added in the transaction value. Thus, payment under the technical services agreement is not a payment as a condition of sale of the imported plant and therefore, is not includible in the transaction value under Rule 10 (1)(e) of CVR.

13. Following the decisions of the Apex Court and the Tribunal, we decide the issue on merits in favour of the appellant that there is no binding obligation in the contract to buy services as a pre-requisite for the purchase of equipment or machinery and hence the value thereof cannot be included in the transaction value of the plant and equipment. Consequently, it is not necessary to go into the question of confiscation and the imposition of penalty.

14. We therefore, set aside the impugned order and allow the present appeal.

[pronounced in open court on 15th May, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Ckp.