IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75677 of 2020

(Arising out of Order-in-Original No.Kol/Cus/Pr.Commisssioner/AP/ADMN/13/2020 dated 30.09.2020 passed by Pr.Commissioner of Customs (Airport & ACC), Kolkata)

M/s Sterling Meta-Plast India Pvt. Ltd.
(E/3, Hiral Mansion, Bhangwadi, Kalbadevi Road, Mumbai-400002)

Appellant

VERSUS

Pr.Commissioner of Customs,Airport & Air Cargo Commissionerate, Kolkata
(15/1, Strand Road, Kolkata)

Respondent

APPERANCE :
S/Shri B.L.Narasimhan, Sr.Advocate & Rahul Tangri & Shovit Betal, Advocates for the Appellant
Shri Subrata Debnath, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75655/2026

DATE OF HEARING : 22 MAY 2026
DATE OF PRONOUNCEMENT : **26 MAY 2026**

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the differential duty has been demanded on the under-valuation in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) and Rule 10(1)(c) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

2. The facts of the case are that the Appellant is engaged in the marketing, sale and wholesale distribution of fashion eyewear, sunglasses and related accessories of various brands in Indian domestic market. It deals in owned brands (like Scott Eyewear, Sprint, Sterling etc.), Licensing Brands (e.g. Tommy Hilfiger, French Connection etc.)

and Distribution Brands (e.g. Marchon Brands viz. CK, Nike, LaCoste, Salvatro Ferragamo).

2.1 The present proceeding is in relation to the Licensing Brands, viz. Tommy Hilfiger (TH) and French Connection (FC). These brands have been licensed to the Appellant for manufacturing, import, sale, distribution, marketing, promotion etc.in India.

2.2 In terms of the Licensing Agreements entered into between the Appellant and the Licensors/ Franchisors (viz. Tommy Hilfiger Arvind Fashion Pvt. Ltd., an Indian entity, for TH Brand and Prestige Brands Ltd., Mauritius for FC brand), the Appellant:

☐ pays Franchise Fee to the licensors (which consists of Minimum Franchise Fee and also percentage Franchise Fee);

☐ incurs substantial amounts on Advertisement, Marketing and Promotion activities in India (AMP Expenses); and

☐ pays Corporate Marketing Fee (CMF) to the Franchisor as its share in Global marketing costs incurred by the Franchisor.

2.3 The Appellant entered into contract for supply of TH and FC brand goods with 3 Hong Kong based entities (hereinafter referred to as the "Overseas Supplier"), viz.

☐ Elegance Optical Mfg. Ltd.,

☐ Arts Optical Company Ltd., and

☐ K. Deekay International (HK) Ltd.

2.4 The prices were negotiated between the Appellant and Overseas Supplier separately and goods were imported paying the duty on the transaction value. There exists no relationship whatsoever between the Appellant, the Overseas Suppliers and the Licensors/ Franchisors.

2.5 The valuation of TH brand goods was questioned by the department in July 2011, whereby, the entire licensing arrangement was brought to the notice of the department. The goods were provisionally cleared by execution of PD bond and also payment of extra duty deposit by the Appellant for 6 bills of entry.

2.6 Further, valuation of Marchon brand of goods was referred to SVB since the Appellant and its supplier in Hong Kong became related parties in October 2013. The issue was thoroughly analyzed by the GATT Valuation Cell, Mumbai, wherein the details of all licensed products including TH and FC were also given to the customs officers. SVB order dated 10.09.2015 accepted the transfer price for import of Machron Brand products. The order clearly opined that the AMP expenditure by the Appellant as per the distribution agreement with Marchon Inc., USA need not be added to the value of imported goods.

2.7 The SVB order dated 10.09.2015 was accepted by the Ld. Commissioner of Customs vide Order dated 14.12.2015. This SVB order was further continued vide the investigation report dated 10.09.2018. The pending assessment of Marchon brand products were finalized by way of cancelling PD bonds and refunding the EDD made by the Appellant.

2.7 Further, vide the Finalization-cum-refund order dated 27.06.2018, even the 6 bills of entry of the TH brand products provisionally assessed in 2011, were finalized by way of cancellation of PD bonds and the refund of EDD made by the Appellant.

2.8 The Appellant has been paying Service Tax/GST on the Franchise Fee as well as the Corporate Brand Marketing Fee being paid to the Licensors abroad and disclosing the same in its returns.

2.9 The case was investigated by the officers of DRI in the month of May 2017, which led to recording of statements of the personnel of the Appellant and also analysis of documents of the Appellant.

2.10 This led to the issuance of the SCN dated 22.05.2019 by the Ld. Additional Director General, DRI, alleging as under:

☐ Franchise Fee paid by the Appellant to the licensors of TH and FC brand is includible in the assessable value of goods imported from Hong Kong in terms of Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 since the same is 'condition of sale' of the imported goods.

☐ AMP expenses incurred by the Appellant in India in terms of the Licensing Agreements for the TH and FC brands and the CMF paid to the Licensors of the TH brand, are includible in the assessable value of goods imported from Hong Kong in terms of Rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, since the same are also condition of sale of imported goods and fall under "all other payments" appearing in Rule 10(1)(e),

☐ Extended period of limitation is invokable since the Appellant suppressed the facts of existence of Franchise Agreements from the department, which came to light only during the investigation by DRI in 2017.

2.11 Vide the Order-in-Original dated 30-09-2020, the entire demand proposed in the aforesaid SCN was confirmed.

2.12 Being aggrieved by the said order, the appellant is before us.

3. The ld.Sr. Advocate appearing on behalf of the appellant, submits that the department's case is that franchise fee paid for TH and FC brand has to be included in the assessable value as per Rule 10(1)(c) Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

3.1 He further submits that the provision requires addition of royalty and license fee to the assessable value of the imported goods provided that the same is a 'condition of sale' of imported goods and payable by the buyer, directly or indirectly.

3.2 It is further submitted that in the instant case, franchise fee is paid for grant of rights and license to sell, distribute and promote the imported goods and the brand in the domestic territory of India.

3.3 The rights which the Appellant get in lieu of payment of franchise fee is clearly retable to post import activity and is distinct from the procurement of goods from the overseas suppliers. In the absence of these rights, the Appellant could have imported the goods but could not have sold the same in India. Reliance in this regard is placed on the ruling of the Hon'ble CESTAT in Comm. of Cus., New Delhi vs. Luxottica India Eyewear Pvt Ltd, 2018 (364) E.L.T. 515 (Tri. - Del.). He also relies on the decision of the case M/s Quest Retail Private Limited vs. Commissioner of Customs & Excise, Patparganj, 2019 (7) TMI 778 - CESTAT NEW DELHI. The aforesaid ruling are squarely applicable to the facts and circumstances of the

instant case. In light of same, franchisee fee cannot be added to be assessable value of the imported goods and the demand confirmed on this count is liable to be set aside.

3.4 Further, similar proposition has been made in the following judgments:

☐ Ajinomoto India Pvt. Ltd. v. CC, Chennai, 2024 (390) ELT 677 (Tri-Chennai),

☐ Schunk Metal and Carbon (India) Pvt. Ltd. v. CC, Bangalore, 2024 (387) E.L.T. 197 (Tri. – Bang.), maintained by the Hon'ble Supreme Court, 2025 (393) E.L.T. 124 (S.C.),

☐ Commissioner of Customs v. Ferodo India Pvt. Ltd., 2008 (224) ELT 23 (SC)

☐ CC (Port), Chennai v. Toyota Kirloskar Motor P Ltd., 2007 (213) E.L.T. 4 (S.C.). Also, reliance is placed on GATT Customs Valuation Code by Saul L. Sherman on Article 8.1(c) which is identical to Rule 10(1)(c) of CVR, 2007 at Para 295 at pg. 124 and at Para 297 at 124 and 125.

3.4 He further submits that the payment of franchise fee for a particular quarter is made in the following quarter on the basis of net sales effect in the previous quarter, is itself a proof of the fact that the franchise fee is payable in respect of sale and distribution of goods by the Appellant and not in respect of the procurement of goods from the foreign seller.

3.5 It is further submitted that franchise fee is independent of import of goods because even in the absence of any imports from the third party, the Appellant is liable to pay Minimum Franchise Fee.

3.6 It is submitted that the Appellant is importing goods from Hong Kong instead of getting the same manufactured in India only for commercial reasons of getting the goods at cheap price. The negotiations for sale of goods are independently held between the Appellant and the Hong Kongese firms without interference by the Licensors. Even if the goods are sourced from India and then sold, still the royalty would be payable on re-sale of goods, which proves that there is no linkage of import with the payment of royalties. Payments are in the nature of running royalties based on percentage of sales of imported goods in India. Thus, it has no nexus with the transaction of import.

3.7 It is further submitted that the non-payment of franchise fee by the Appellant to the franchisor does not give any right to the 3rd party manufacturer in Hong Kong to repudiate the contract. Thus, it cannot be said to be 'condition for sale'. The suppliers of goods do not impose any restriction or condition for payment of royalties to the licensors. The condition of sale must flow from seller and not from the third party. Hence, the disputed imports are not conditional upon payment of franchise fee.

3.8 Interpretative notes to Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provide that price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. Further, Rule 10(1)(c) also provides that royalties that the buyer is required to pay directly or indirectly as condition of sale should be added to the value of imported goods.

3.9 Thus, the royalties on imported goods would be added only if the same are paid to or on behalf of the supplier. Payment of royalty/ franchise fee to a third person under a separate agreement without any link to the import of goods from the overseas supplier is not includible in the value of goods under Rule 10(1)(c). In this regard, he relies on the decision in the case of Advance Ruling in case of In Re: H & M Hennes ; Mauritz Retail Pvt. Ltd., 2017 (358) E.L.T. 1037 (A.A.R.)

3.10 In light of the above, for this reason also franchisee fee cannot be included in the assessable value of the imported goods. As per this provision any payment made by the buyer is includible in the assessable value of the imported goods only if:

☐ it is made as a condition of sale of imported goods

☐ it is made by the buyer to the seller or a third party

☐ where such payment is made to third party, it is to satisfy an obligation of the seller,

☐ such payment is not already included in the price of the goods.

3.11 The aforesaid conditions are not being satisfied in the case of AMP expenditure incurred by the Appellant.

3.12 He further submits that the AMP expenditure is incurred by the Appellant 'on its own account' by employing in-house personnel and also by engaging the outside agencies. These are post importation costs having no nexus with the import of goods. The Appellant neither makes payment to the overseas suppliers in Hong Kong nor to any third party under the directions of the suppliers. Thus, it is not a condition of sale of imported goods.

3.13 He further submits that the Appellant incurs this expenditure to promote the sale of its products. It is expedient for running of its business. The stipulation in the License/Franchise Agreement to incur this expenditure by the Appellant is to safeguard the brand value of the Licensor so that the product/ brand is marketed adequately and effectively. In this regard, he relies on the decision in Triumph Motorcycles India Private Limited vs. Additional Director General (Abjudication), DRI-New Delhi, Customs Appeal No. 50212 of 2021, Final Order No. 51625 of 2025 dated 29-10-2025. He also relies in the case of Volvo Auto India Private Limited vs. Commissioner of Customs (Import & General) – Customs Appeal No. 52017 of 2018, Final Order No. 51515 of 2021 dated 25-05-21. He also relies on the following decisions :

☐ Commissioner of Customs, Patparganj vs. Adidas India Marketing Pvt. Ltd, 2020 (374) ELT 394 (Tri. – Del.),

☐ Reliance Brands Luxury Fashion Pvt. Ltd. vs. Principal Commissioner of Customs, New Delhi, 2024 (390) ELT 249 (Tri. – Del.),

☐ Giorgio Armani India Private Limited vs. Commissioner of Customs, New Delhi, 2018 (362) ELT 333 (Tri. -Del.); maintained by the Hon'ble Supreme Court of India reported in 2019 (365) ELT A110 (SC).

He also submits that Para 20 of the SVB order in the case of import of goods bearing Marchon brand clearly opined that the AMP spends by the Appellant would not be includible in the value of imported goods. Once SVB takes such a position for related party imports, the customs department cannot take contrary position in relation to the non-related party imports. Thus, the present proceedings are legally untenable.

3.14 It is further submitted that the Corporate Marketing Fee paid to the brand owners in India and Mauritius also does not satisfy the requirements of Rule 10(1)(e), since it is neither paid to the overseas suppliers in Hong Kong nor to a third party on their directions. It is not a 'condition of sale' of goods by the overseas suppliers to the Appellant. Relevant portion of the agreement is extracted hereunder:

3.15 It is further submitted that CMF is paid by the Appellant to the Franchisor as cost of the Franchisor to promote the brand at Global level. CMF indirectly benefits the Appellant in India and has no nexus with the import of the goods. This is because the global reputation of brand plays in the mind of the Indian buyers while buying the Appellant's goods.

3.16 He further submits that extended period of limitation is not invokable since the issue was already in the knowledge of the customs authorities since 2011 when the 6 Bills of Entries of the Appellant for goods of TH brand were provisionally assessed on execution of PD Bonds and EDD. The same were finalized accepting the declared value of the Appellant and the PD Bond was cancelled and EDD refunded vide the Order dated 26.07.2018.

3.17 Further, he submits that the fact of payment of royalty for the TH Brand and FC brand goods was in the knowledge of Customs authorities during the SVB proceedings pertaining to Marchon brand goods, as evidenced from para 5 of the SVB order dated 10.09.2015.

3.18 The SVB order in the case of Marchon brand clearly opined that the AMP spends by the Appellant would not be includible in the value of imported goods.

3.19 The finding that the Appellant never filed the agreements of TH and FC brands with the SVB cell is mis-founded since these goods were being imported from unrelated overseas suppliers, thus, there was no requirement to refer the same to the SVB cell. Even after the aforesaid 6 bills of entry which were provisionally assessed in 2011, the department did not order any provisional assessment for the subsequent consignments. Thus, the demand in the present proceedings is to be restricted to the normal period of two years from the relevant date only.

3.20 It is submitted that redemption fine cannot be levied when goods have been cleared for home consumption and are not available for confiscation. Redemption fine can only be imposed for releasing of goods which have been confiscated by the department.

3.21 He further submitted that as goods have already been cleared in the instant case, such goods ceased to be "imported goods" and thus, cannot be confiscated. Consequently, as goods cannot be confiscated, redemption fine which is imposed for releasing of goods from the custody of the department cannot also be imposed. Reliance in this regard is placed on Commissioner of Customs (Import), Mumbai vs. Finesse Creation Inc., 2009 (248) E.L.T. 122 (Bom.); this was maintained by the Hon'ble Supreme Court of India reported at 2010 (255) E.L.T. A120 (S.C.).

3.22 It is also submitted that when the principal demand cannot be sustained, demand for interest and penalty being consequential to such demand cannot also be sustained. Further, the demand has been confirmed on an interpretational issue, not involving any malafide

intent. Thus, penalty is not imposable against the Appellant. He therefore, prays for setting aside the impugned order.

4. The ld. A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. On going through the submissions made from both sides, the following issues are framed :

(i) Whether the Franchise Fee paid to the licensing TH and FC Brands is includible in the value of the goods imported from Hong Kong in terms of Rule 10(1)(c) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 , since the same is condition of sale of imported goods, or not ?

(ii) Whether the Advertisement & Promotional Expenses (AMP) incurred by the Franchisor in terms of the licensing agreement and TH and FC brands and Corporate Marketing Fees (CMF) paid to the licensing TH brand are includible in the assessable value of the goods from Hong Kong in terms of Rule 10(1)(c) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, or not ?

(iii) Whether, extended period of limitation is invokable in the facts and circumstances of the case or not ?

Issue (i)

(i) Whether the Franchise Fee paid to the licensing TH and FC Brands is includible in the value of the goods imported from Hong Kong in terms of Rule 10(1)(c) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules,

2007 , since the same is condition of sale of imported goods, or not ?

7. For better appreciation of facts, the relevant provisions of Rule 10(1)(c) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is reproduced below :

"Rule 10, (1) :

"(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;"

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

8. We find in this case, the appellant has paid the Franchise Fee for TH and FC to sell, distribute and promote the imported goods and the brand in the domestic territory of India. As per the agreement entered by the appellant and the franchisors, the appellant is authorized by the agreement, they are having license to sell the goods under the brand name of the franchisors in India. In the absence of this right, the appellant can import the goods in India, but cannot sell the goods in India. Therefore, We have to see whether this Franchise Fee paid by the appellant is includible in terms of Rule 10(1)(c) of the Valuation Rules or not ?

9. In fact, the appellant has not procured the goods from the franchisor, but procured the goods in question from the distributors or

other suppliers of the said goods from outside India on principal to principal basis and the payment of license fee or the Franchise Fee was not the condition for sale of goods in India. As there is not condition of sale to pay Franchise Fee by the appellant to franchisor, in that circumstances, the same is not includible in the assessable value in terms of Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as held by this Tribunal in the case of Commissioner of Customs, New Delhi Vs. Luxottica India Eyewear Pvt. Ltd. reported in 2018 (364) ELT 515 (Tri.-Del.), wherein the facts of the case are as under :

> *"**2.** The brief facts of the case are that the respondent, M/s. Luxottica India Eyewear Pvt. Ltd. ("LIEPL") was engaged in the import of Sun glass, frames, their spare parts and advertising material from their holding company M/s. Luxottica Itlay and its affiliates/subsidiaries - the owners of well-known eyewear brands like Ray Ban, Oakley, Vogue, Versace, Bulgari, Prada, etc. LIEPL (the importer) is a wholly owned subsidiary of Luxottica Itlay (the supplier). The third party involved in the case was an Indian entity and another subsidiary of M/s. Luxottica Itlay, M/s. Ray Ban Sun Optics India Ltd. (RBSOIL) who were in the business of manufacturing and distributing eyewear products under the trademark Ray Ban since October, 2000 using the technical know provided by Luxottica. RBSOIL was also distributing eyewear products imported from Luxottica or its subsidiaries without any formal agreement. The fact that three parties mentioned above being "related parties" within the meaning of Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules, 2007 - specifically Rule 2(2) and Rule 3, was not in dispute and had not been contested. The dispute is with reference to loading of certain value in the assessable value of imported goods by the respondent.*

3. *The contents of the two agreements were relevant to the present dispute. The first one is License and Distribution agreement dated 22-4-2008 between Luxottica, Italy and RBSOIL. The agreement granted exclusive licence to the RBSOIL to use the trade mark and technical know how for manufacture and distribution of eyewear products as well as exclusive licence to distribute imported products supplied through the subsidiaries of Luxottica. Another agreement dated 15-3-2010 is a sub-distribution agreement between RBSOIL and the respondent. The respondent was appointed as exclusive distributor for eyeware products, Indian and imported. For such appointment, the respondent should pay RBSOIL, a sum of Rs. 2.75% of the net sales of eyeware products at the end of every financial year. In the year 2010, RBSOIL gave up its exclusive distributorship rights, which was with them, for the eyewear products bearing trade mark of Luxottica or its affiliates/subsidiaries. The said right was vested in the respondent for a consideration mentioned above.*

4. The dispute now in the present appeal is with reference to payment of Rs. 5,75,22,576/- on account of trademark licence fee as a condition of sale of goods that the respondent got from RBSOIL, which RBSOIL got from Luxottica, Itlay. This amount was not being directly paid to Luxottica, Itlay, but being paid to RBSOIL. The Revenue alleged that this expense incurred by the respondent is includible in the transaction value in terms of Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, proceedings were initiated against the respondent to demand differential duty on this account. It may be noted here that the demand proceedings were also for an addition of consideration of Rs. 88,69,10,274/- in the assessable value on account of advertisement, marketing and promotional activities. This amount was held to be not includible in the assessable value in the impugned order. The Revenue has not contested the said finding. The present appeal by the Revenue

is restricted only to the addition of trademark licence fee of Rs. 5.71 crores in the assessable value in terms of Rule 10(l)(c) of the Customs Valuation Rules. Accordingly, we are concerned only with this part of the dispute."

and this Tribunal has observed as under :

*"**8.** On careful consideration of the impugned order, we note that the Original Authority has given specific attention to all the facts relevant to the case and applied the provisions of Rule 10(l)(c) appropriately. With reference to dispute at hand, the Original Authority proceeded to examine the legal provisions in the following manner :-*

"26.1 The relevant sub-rule for this issue is Rule 10(1)(c) which is the only sub-rule that deals specifically with the inclusion of royalties and licence fees. The relevant extract of the sub-rule reads as under :

***"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",

The reasoning or rationale for the inclusion of the aforesaid 'trademark licence fee' is contained in paragraph 16.6 of the Show Cause Notice which states that this amount was paid "as a condition of sale". It has further been stated that "the

assessee got the rights from RBSOIL which RBSOIL got from Luxottica Sra Itlay. This amount though is not being paid directly to Luxottica Sra Itlay but being paid to RBSOIL against the imported goods".

26.2 From a plain reading of Rule 10(l)(c), it is evident that the following conditions must be satisfied for the rule to apply :

(i) the royalty and licence fees should be related to the imported goods and the buyer should be required to pay the same;

(ii) the payment could be direct or indirect;

(iii) the requirement to pay must be a condition for sale; and

(iv) such royalty or licence fees should not have been included in the price actually paid or payable.

It is only when all these conditions are fulfilled that an amount paid or payable by the buyer as royalty or licence fees can be included in the assessable value of the imported goods."

9. *The Original Authority proceeded to examine each one of the above conditions with reference to the facts of the present case. He held that the first and fourth conditions mentioned above are fulfilled in the present case. On the second condition regarding the payment could be direct or indirect, he relied on the decision of the Hon'ble Supreme Court in Ferodo India Pvt Ltd. (supra) to interpret the term "directly". We are in agreement with the analyses made by the Original Authority with reference to non-fulfilment of conditions No. 3 viz. payment being not direct or indirect. The payment would be considered "indirect" where the pricing arrangement is such that the price of imported goods is "adjusted" downwards and the royalty or licence fee is inflated suitably to make up for that. It is clear that payment of licence*

trade mark fee by the respondent to RBSOIL would not merit as "indirect" payments within the ambit of Rule 10(l)(c).

10. *One of the conditions for addition of value under Rule 10(1)(c) is that payment of licence fee should be "condition of the sale of the imported goods". This aspect has been examined in great detail by the Original Authority. Relying on the terms of the agreement, it was concluded that the respondent accepted and acquired exclusive distributorship rights for the sale of the imported eyewear products with the express approval of the seller of those goods "Luxottica" subject to the terms and conditions mentioned therein. We note that the Original Authority correctly concluded that the consideration to be paid by the respondent is for the distribution rights and not for their imports. Even if the licence fee is not paid by the respondent, the consequence would be that they would lose the right to distribute the goods in India and not to import. The Original Authority observed that even if the distributorship agreement was not there, the respondent would have imported the goods as done prior to 2010. Accordingly, the conclusion drawn by the Original Authority that it is the distribution of goods in India that is linked to the payment of licence fee and not to the import. Finally, we note that the payment made by the respondent for the right to distribute or resell the imported goods should not be added to the price paid or payable for such goods, if such payments are not a condition of the sale for export to the country of importation of the said goods. We are in agreement with the conclusion drawn by the Original Authority in this regard. As correctly contested by the respondent, the grounds of appeal or case law relied upon by the Revenue do not support to the case for such addition in the import value."*

10. Further, in the case of Quest Retail Pvt. Ltd. Vs. Commissioner of Customs & Excise, New Delhi reported in 2019 (7) TMI 778- CESTAT, New Dehi, the Tribunal has observed as under :

"9. From the perusal of the Customs Act and the Valuation rules, it is evident that only if royalty payable is for pre-importation activity, as a condition of sale from the supplier to buyer then only it is to be added for the purpose of calculation of Customs duty in terms of Rule 10(1)(c) of the Customs Valuation Rules read with Section 14 of the Customs Act. A perusal of the agreement along with side letter indicate that the franchise/royalty fee is paid for provisions of management, consultation, advice service and training provided to the appellant in connection with use of Body shop products and the proprietary Marks of M/s Body shop. The condition of payment of the royalty, which is contingent upon the volume of sale in the domestic market after importation of the goods has no connection with the import of goods. Once the goods have been cleared from the Customs area the same is not required to be treated as imported goods and all the activities of the management, consultation etc. is relatable to the goods which is ceased to be imported goods in terms of the Customs Act, 1962. We find that the learned Advocate, on behalf of the appellant has countered all the decisions relied upon by learned Authorised Representative in the facts and circumstances of the case which we also find that is appropriate and relevant to the case at hand. We find that in the case of Ferro Alloy, Bridgestone India Pvt. Ltd. and Max Atotech Ltd. (supra), the Hon"ble Supreme Court and Hon"ble Tribunal have held that if there is no nexus of royalty payment with that of the imported merchandise and which relate to the subsequent marketing thereof the same is not required to be included for the purpose of payment calculation of Customs duty on the imported goods, in terms of Customs Act and Valuation Rules.

10…….

11…….

12……..

13. We also find that agreement and side letter are more of a service agreement and royalty is measured in terms of sales effected by the various stores, which are to be opened by the

appellant. Not only that the amount of royalty is also measured in terms of value of sale by the appellant, but that is graded and dependent upon the volume of sale in the domestic market. The treatment of such type of royalty as condition of sale for the import of goods by the appellant is not explicit from the agreement. The agreement is more of the management of store, sales and other related activities. The issue regarding includibility of such royalty in assessable value for the purpose of payment of Customs duty has been decided by international ruling as well as appearing at para 5(a) of the order, which we do agree."

11. Further, the Hon'ble Apex Court in the case of Ferodo India Pvt. Ltd., has observed as under :

*"**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……..

***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).

19…….

***20.** Be that as it may, in the present case, on reading TAA we find that the payments of royalty/licence fees was entirely relatable to the manufacture of brake liners and brake pads (licensed products). The said payments were in no way related to the imported items. In the present case, no effort was made by*

the Department to examine the pricing arrangement. No effort was made by the Department to ascertain whether there exists a price adjustment between cost incurred by the buyer on account of royalty/licence fees payments and the price paid for imported items. No effort was made by the Department to ascertain enhancement of royalty/licence fees by reducing the price of the imported items. In the circumstances, we find no infirmity in the impugned judgment of the Tribunal. In this case, the Department has gone by TAA alone. On reading TAA in entirety, we are of the view that there was no nexus between royalty/licence fees payable for the know-how and the goods imported for the manufacture of licensed products. The Department itself has invoked Rule 9(l)(c).”

12. In view of the above, we hold that the provisions of Rule 10(1)(c) of the Valuation Rules, 2007, are not applicable to the facts of the case, therefore, the franchise fee paid by the appellant is not includible in the assessable value.

13. It is also certified by the advisory opinion on Customs Valuation wherein the Technical Committee Customs Valuation have expressed their views, which are as under :

“ The importer is required to pay a royalty to obtain the right to use the trademark. This obligation results from a separate agreement unrelated to the sale for export of the goods to the country of importation. Goods are purchased from a supplier under another contract and payment of royalty is not a condition of sale of these goods. Therefore, the royalty payment in this is not to be added to the price actually paid or payable.”

Therefore, the franchise fee paid by the appellant to the franchisor is not includible in the assessable value.

Issue (ii)

Whether the Advertisement & Promotional Expenses (AMP) incurred by the Franchisor in terms of the licensing agreement and TH and FC brands and Corporate Marketing Fees (CMF) paid to the licensing TH brand are includible in the assessable value of the goods from Hong Kong in terms of Rule 10(1)(c) or (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, or not ?

14. For better appreciation of facts, Rule 10(1)(e) of the Valuation Rules, 2007, is as under :

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

As we have seen in terms of Rule 10(1)(e) of the Valuation Rules, no payment made by the appellant is includible in the assessable value of the imported goods as the same is not the condition of sale and not paid by the appellant to the seller or to the third party to satisfy an obligation of the seller, the said payment is not includible in the price paid for the goods. The appellant has incurred the advertisement and promotional market expenses on its own account as per the franchise agreement and also made the same payment for its own shares outside

India. These expenses were incurred by the appellant on its own account. These are post importation cost for non-existent of import of goods in question. If at all, the appellant do not import any such branded goods, the appellant has to incur such expenses, therefore, the same is not the part of the imported goods. The appellant neither makes payment to the overseas suppliers nor to any third party under the directions of the suppliers and it is not a condition of sale of imported goods. These expenses are to promote the sale of its products and as per the franchise agreement to incur this expenditure by the appellant is to safeguard the brand value of the licensor so that the product or brand is marketed adequately and effectively. Therefore, the Advertisement & Promotional Expensenses (AMP) is not includible in the assessable value of the imported goods by the appellant.

15. The said issue has been examined by this Tribunal in the case of M/s Triumph Motorcycles (India) Pvt. Ltd. Vs. Addl.Director General (Adjudication), DRI, New Delhi vide Final Order No.51625/2025 dated 29.10.2025, wherein this Tribunal has observed as under :

> *"30. It is also a settled position in law that advertisement and promotional expenses can be added to the sale price only if there exists an "enforceable legal right" in the seller to insist upon such expenses being incurred by the buyer. Unless the seller is legally entitled to compel the buyer, by way of an enforceable claim, to incur such expenditure, no addition can be made to the transaction value. This is precisely what has been held by the Tribunal in Reliance Brands, Giorgio Armani, Adidas India and Indo Rubber.*
>
> *33. Thus, if the expenditure is undertaken by an importer on his "own account" in the interest of his own business, then rule 10(1)(e) of the 2007 Valuation Rules would not be applicable. An*

analysis of the Distributor Agreement leaves no manner of doubt that the appellant was not required to discharge any obligation to Triumph UK. In fact, the appellant had borne the expenses on its own account in order to develop its own market to increase its own sales of the products. Merely because Triumph UK may have some interest in seeing its brand promoted in India will not alter the character of the expenditure."

16. Further, in the case of Adidas India Marketing Pvt. Ltd. reported in 2020 (374) ELT 394 (Tri.-Del.), the Tribunal has observed as under :

*"**38.** In this connection, it would also be useful to refer to "Commentary on the GATT Customs Valuation Code" by the noted authors Saul L. Sherman and Hinrich Glashoff on Customs Valuation for analyzing the provisions of Rule 10(1)(e). Chapter III deals with Transaction Value of the Imported Goods (Article 1 and 8). Article 1 states that the customs value of the imported goods shall be the transaction value, that is "the price actually paid or payable for the goods when sold for export to the country of importation" adjusted in accordance with Article 8. In the context of the activities benefitting both the buyer and seller, like advertising, it has been stated that activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not to be considered as an indirect payment to the seller, even though they might be of benefit to the seller. The cost of such activities, therefore, have not be added to the price actually paid or payable in determining the customs value. It has been noted by the authors that the most important of such activities are advertising and marketing and promotion efforts, which tend to benefit both the exporter and the importer by increasing sales. Initially, treatment of advertising expenditure was controversial, but subsequently such advertising and promotion warranty costs and similar expenses have been excluded from the transaction value if paid by the importer, even if he is obliged to make the expenditure under an*

agreement with the seller and even though the activities also benefit the foreign seller. It has also been emphasized that the phrase "undertaken by the buyer on his own account" means expenses incurred and paid for by the buyer. The relevant provisions contained in Chapter III of the book dealing with 'Transaction Value of the Imported Goods (Articles 1 and 8)' are reproduced below :

"A. The price for the goods when sold for export to the country of importation

Article 1 states that the customs value of imported goods shall be the Transaction Value (TV) that is

'the price actually paid or payable for the goods when sold for export to the country of importation'

adjusted in accordance with Article 8 and provided that none of the grounds for rejecting Transaction Value applies. (C8-15)

1. The Price

(a) ---

(b) ---

(c) ---

(d) ACTIVITIES BENEFITING BOTH BUYER AND SELLER; ADVERTISING, WARRANTY, ETC.

'Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value'.

The most important of such activities are advertising and warranty and other marketing and promotion efforts, which benefit both the exporter and the importer by increasing sales and by making the trademark, if there is one, more valuable. As to these expenditures, the Notes go on to say :

'...if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value'.

The treatment of advertising expenditures was highly controversial in the negotiation of the Code. The BDV had been widely interpreted as requiring many such expenditures to be included in the customs value even if the payment was made by the buyer, for the expenditures were often regarded as an indirect benefit to the exporter which, under the notional concept of the BDV, ought to be included in the 'normal price. Sometimes a sophisticated split of bundled activities into trademark advertising (deemed to benefit only the foreign trademark owner) and advertising of the importing distributor's name (deemed to be non-dutiable) was necessary. This view was rejected in the Code. Advertising, warranty costs and similar expenses are excluded from the Transaction Value if paid for by the importer, even if he is obliged to make the expenditure under his agreement with the seller and even though the activities benefit the foreign seller.

If the exporter chooses to pay for the advertising and recover the expense through his pricing, the cost is included in his price, and there is no provisions in the Code for excluding it from Transaction Value. The result is the same if the exporter bills the importer separately for the advertising expense, which would then be an indirect payment for the goods. We are speaking here, of course, about advertising which clearly relates to the imported

product being valued. The amount of advertising cost attributable to each unit of the goods may have to be determined.

The phrase 'undertaken by the buyer on his own account' means very simply expenses incurred and paid for by the buyerx……..."

[emphasis supplied]

17. Further, in the case of Volvo Auto India Private Limited vide Final Order No.51515/2021 dated 25.05.2021, this Tribunal again examined the issue and observed as under :

"23. Thus Rule 10 (1) (e) requires that any payment made as a condition for sale to either the seller or to a third party to satisfy the obligations of the seller is to be included in the value. We find that if the appellant is responsible for certain activities such as customs, taxability, inventory costs, distribution and sales promotions including advertising and marketing for its entire business in India, it cannot be called a payment to their foreign supplier but would be managing affairs related to its own business. It would have been a different case, if the appellant was required, as per the agreement to promote, at its cost, the sales by the foreign suppliers to other customers in India or make some payment on behalf of the seller to a third party. In such a case, some expense would have been incurred by the appellant which could have been examined to see if it formed an additional consideration for the sale of the goods to the appellant. For instance, if the appellant was paying $100 for the imported goods and in addition was incurring, say $10 to promote the sales of the foreign supplier to other customers, this $10 could have been said to be an additional consideration for sale. The appellant is a distributor and is in the business of selling the cars which necessarily requires them to deal with imports, pay taxes,

promote sales, advertise, etc. These, in our considered view, cannot be termed as expenses incurred on behalf of the foreign supplier although the foreign supplier would also indirectly benefit if the appellant"s business improves. The foreign supplier is also independently selling the goods (cars) to embassies, etc. and there is nothing on record to show that the appellant has incurred any expenses to promote such sales."

18. Therefore, relying on the above said decisions, we hold that the AMP incurred by the appellant, are not includible in the assessable value of the imported goods in terms of Rule 10(1)(e) of the Valuation Rules, 2007.

19. Likewise, the Corporate Marketing Fee is also not includible in the assessable value in terms of Rule 10(1)(e) of the Valuation Rules, 2007 as it is neither paid to the overseas suppliers nor to a third party as per the direction of the seller of the imported goods.

20. Further, in the case of Marchon brand clearly opined that the AMP spends by the appellant would not be includible in the value of imported goods. As the appellant is not related party to the seller, therefore, without challenging the order of SVB , the Department cannot take a contrary view.

21. Therefore, this issue is also answered in favour of the appellant.

Issue (iii)

Whether, extended period of limitation is invokable in the facts and circumstances of the case or not ?

22. As the goods were provisionally assessed and importation of the same was in the knowledge of the Revenue itself and the Bills of Entry

were provisionally assessed on execution of PD Bonds EDD. The same were finalized accepting the declared value of the appellant and the PD Bond was cancelled and EDD refunded. In that circumstances, we hold that the extended period of limitation is not invokable.

23. In view of this, we hold that the appellant has paid franchise fee correctly on the brand owners and there is no question of under-valuation. Therefore, we hold that the goods are not liable for confiscation. Consequently, no redemption fine is imposable on the appellant on the goods in question. In that circumstances, no penalty is imposable on the appellant.

24. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in the open court on **26.05.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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