CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40785 of 2014

(Arising out of Order-in-Appeal C.Cus. No.667/2013 dated 25.04.2013 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Chennai 600 001.)

M/s.Owens Corning Industries
(India) Pvt. Ltd. **...Appellant**
(Previously known as OCV Reinforcements
Manufacturing Ltd. Ltd.)
No.13-6-437-2C,
Khaderbag, Near Laxminagar Pillar,
No.68 of PYNR Express Highway,
Hyderabad 500 028.

VERSUS

The Commissioner of Customs (Seaport)... Respondent
Custom House
60, Rajaji Salai,
Chennai 600 001.

WITH

Customs Appeal No. 40155 of 2015

(Arising out of Order-in-Appeal C.Cus. No1747/2014 dated 25.09.2014 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Chennai 600 001.)

M/s.Owens Corning Industries
(India) Pvt. Ltd. **...Appellant**
(Previously known as OCV Reinforcements
Manufacturing Ltd. Ltd.)
No.13-6-437-2C,
Khaderbag, Near Laxminagar Pillar,
No.68 of PYNR Express Highway,
Hyderabad 500 028.

VERSUS

The Commissioner of Customs (Seaport)... Respondent
Custom House
60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri T. Viswanathan, Advocate
Shri D. Santhana Gopalan, Advocate
S. Ganesh Aravind, Advocate for the Appellant
Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.40223-40224/2025

DATE OF HEARING : 11.11.2024
DATE OF DECISION :17.02.2025

Per: Shri P. Dinesha

Heard both sides. Shri T. Viswanathan, Ld. Advocate appeared for the Appellant, assisted by Advocates and Shri Sanjay Kakkar, Ld. Deputy Commissioner appeared for the Respondent.

Appeal C/40785/2014

2. The appellant applied for renewal of the SVB order in 2011. The Deputy Commissioner of Customs (SVB) after considering the submissions made by the Appellant passed Order-in-Original No.14237/2011 dated 21.01.2011 and held

that the transaction value is acceptable in terms of Rule 3 (3) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('**CVR, 2007'**). However, the Deputy Commissioner held that 4% running royalty paid on the net sales value of the manufactured products should be included in the transaction value of the good imported as per Rule 10 (1) (c) of CVR, 2007.

3. The aforesaid OIO No.14237/2011 dated 21.01.20111 was upheld by the Commissioner of Customs (Appeals), vide OIA No.667/2013 dated 25.04.2013. Therefore, aggrieved by the OIA dated 25.04.2013, the Appellant has filed the Appeal No.**C/40785/2014** before Tribunal.

Appeal C/40155/2015

4. The Appellant filed an application dated 24.12.2012 before SVB for renewing the Order dated 21.01.2011 , since the order was valid only until 28.12.2012. The Deputy Commissioner, vide OIO No.23194/2013 dated 26.12.2013, directed inclusion of running royalty in the assessable value of the imported goods. However, the Deputy Commissioner has held that transaction value is acceptable.

5. The aforesaid OIO No.23194/2013 dt. 26.12.2013 was upheld by the Commissioner of Customs (Appeals), vide OIA No.1747/2014 dt. 25.09.2014. The said OIA dt. 25.09.2014 is challenged in Appeal No.**C/40155/2015**.

6. It is the case of the importer-Appellant that in terms of Rule 10(1)(c) of the Customs Valuation Rules, 2007 ['**CVR**' for short] there are two conditions to be satisfied if Royalty amount is to be added in order to determine the cost of the value of imported goods, namely, (1) the Royalty/license fee

should be related to the imported goods; and (2) such payment should be a condition of sale of goods. Here, in the case in hand, it is their case that the Royalty forming part of the Manufacturing License Agreement [‘**Agreement**’ for short] dated 01.07.2008 would clearly establish that the Royalty amount paid by the Appellant was not related to imported goods, rather to the net sales value of the goods manufactured in India. It is their further case that the amount is not in connection with the goods imported by the Appellant, the amount of Royalty is for obtaining the Know-how to manufacture products namely Reinforcement Glass Fiber Products and Composite Products.

6.1 Upon analysis of the terms of the Agreement between the importer and its principal located in the US, it was held by the Department/SVB that the transaction value was acceptable and that 4% Royalty was held to be payable on the net sales value of the final products manufactured, negating the contentions of the appellant that the goods imported did not attract Royalty; it was only the final product manufactured using the goods imported that attracted Royalty and hence, there was no question of paying Royalty on Bushings, Glass fiber and other materials imported by them. In this regard para 2.1, 5.1 and para II of Schedule IIA of the Agreement has been referred to.

6.2 It is the case of the Revenue, in the impugned order, that in terms of Rule 10(1)(c) *ibid* as pointed out by the importer, the Royalty could be included in the transaction value provided it related to the imported goods and it forms a condition for sale of the goods. In the instant case and from the copy of the Agreement made available, it was understood that the Royalty mentioned therein related to the sale of goods manufactured in India; the net sales value included cost of the license fee and technical know-how as the supplier of the raw material and the capital goods themselves are the license-holder and technical know-how supplier and hence, the Royalty payable was clearly a part of the price of the manufactured goods in India. Reliance in this regard was placed on para 6.2 of the Agreement between the parties.

6.3 From the Grounds of Appeal in the Appeal Memorandum and upon hearing the Ld. Advocate, it is the case of the appellant that the Agreement is for grant of license to manufacture and sell the products specified in the said agreement ***using the technology*** of the licensor. Hence, Royalty for the same was paid by the appellant in accordance with the terms of the above Agreement. The Royalty is payable on the net sales of manufactured goods undertaken by the Appellant and hence, Royalty is clearly relatable to the goods manufactured in India and sold.

It therefore does not cover 'sale' of goods alone. What is more relevant in the 'manufacturer' using the technology for which Royalty is paid.

6.4 There is a reference to definition clause in the said Agreement including the term 'Royalties'. It is thus averred that in the instant case the running Royalty was paid for obtaining the know-how to manufacture products viz., reinforcement Glass fiber products and composite products in the factory of the appellant in India. It was therefore claimed that Royalty so paid by them was not in connection with the imported goods and is only in relation to the goods manufactured in India and hence, the first leg of rule 10(1)(c) of CVR was not satisfied.

6.5 Reliance in this regard is placed on **Union of India Vs Mahindra and Mahindra India Ltd. -** 1995 (76) ELT 481 (SC); **Himson Textiles Enginr. Indust. Ltd. Vs CC Mumbai –** 2000 (117) ELT 535 (SC); **Polar Marmo Aggglomerates Ltd. Vs CC New Delhi –** 2003 (155) ELT 283 (Tri-LB); **Panalfa Dongwon India Ltd. Vs CC Mumbai –** 2003 (155) ELT 287 (Tri.-LB) and **CC New Delhi Vs Prodelin India (P) Ltd. –** 2006 (202) ELT 13 (SC); **CC Vs Ibed Gallegher** – 2005 (191) ELT 967 (Tri.-Bang.)

6.6 It was contended that there is no stipulation in the Licensing Agreement that the appellant has to import the raw materials, machineries or equipment from the know-how provider, i.e. from the Group Company only and that there is also no stipulation that the appellant should not buy raw materials/machineries from others. In this regard, para 6.2 of the above Agreement was referred to. It is also their case that the appellant had not imported any capital goods from the licensor or from any other company; they had imported spares in negligible quantities for the capital goods; they would "*regularly import Bushings made of platinum, rhodium 'under exchange' programme in terms of Notification No.12/2012– CUS (Sl.No.393), on the cost of repair and to & fro freight*". It was submitted that the bushing imported was made from the worn-out bushing exported by the Appellant as has been the practice in the Glass Fiber Industry.

6.7 It is their further case that they would regularly import processing aids/chemicals used in the manufacture of glass fiber, reinforcement and composite products from unrelated persons and in support of this claim, they would refer to the Table reproduced at paragraph C.8 of Grounds wherein, they have captured various imports made from the year 2010 to 2012. Further, major input materials like Quartz, Dynamite, Clay, Limestone, Soda Ash, Sodium Sulphate are obtained locally by them. From paragraph 6.2 of the Licensing Agreement, it was contended that they were not required to purchase raw materials, machinery, etc. only from the licensor to whom Royalty was paid since for the Royalty to be a condition of sale of goods would mean that no Royalty would be payable when no goods are imported. Conversely, in their case, the Royalty was continued to be paid irrespective of whether goods were imported or not as the same was dependent on sale of the products manufactured by them using the know-how. Hence, the very fact that Royalty was payable even when no goods were imported would prove that Rule 10(1)(c) *ibid* was not invocable.

6.8 Insofar as the procurement of raw materials from others in relation to those products for which know-how has been provided to the Appellant, the primary material viz. minerals were not even imported but procured locally and the chemicals were purchased from global vendors who were unrelated parties which facts stand undisputed. In this regard, it was urged that the documentary evidence demonstrates that they had procured raw materials from unrelated suppliers, locally. Reliance has been placed in this regard on an order of Mumbai Tribunal in the case of **ABB Ltd. Vs CC (Import) Mumbai –** 2013 (288) ELT 296 (Tri.-Mumbai)**.** Insofar the applicability of Explanation to Rule 10(1) *ibid* read with Circular No.38/2007 –Cus. dated 09.10.2007 is concerned, the same would not help the Department in any manner, but surprisingly, in the impugned order, the Commissioner (Appeals) does not even refer to the Explanation. Explanation to Rule 10(1) reads as under: -

> *"Where the royalty, license fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.*

6.9 It is hence claimed that the above Explanation does not alter the existing settled position since the same only provides that Royalty is includible only in the circumstances specified in Rules 10 (1)(c) and (e) of CVR. Further, Rule 10(1)(c) *ibid* is applicable only if the Royalty is paid as a condition for sale of the imported goods; and Rule 10(1)(e) *ibid* is applicable only when the payment is related to the imported goods, paid as a condition for sale of the imported goods and hence, both these conditions have to be satisfied cumulatively and simultaneously. This was the position prior to October 2007, which remains unaltered even after the introduction of the Explanation *supra* to Rule 10 *ibid* which was added with effect from 10.10.2007 to Rule 10(1) *ibid*.

7. It is also a fact borne on record that no where it is denied by the appellant that all the above inputs procured from their Group Company were in fact used in the manufacture using the 'technology'; and it is this 'technology' for the use of which, the appellant had obtained license by paying Royalty.

7.1 It was further contended that in para 17 of the OIO, it is observed that the Royalty was paid by the appellant on the net sales value and is not excluding the imported goods, but the non-exclusion of the value of machinery, materials, etc. cannot be a basis for including the Royalty in the transaction value of the imported goods. Hence, the Royalty paid was not related to the goods being imported into India, but the same was solely related to the goods manufactured and sold in India. Just because the value of imported goods was taken into account in the net sales price for the purposes of payment of Royalty, would not mean that the payment of Royalty was related to the imported goods; it is only a method adopted by the parties to the Agreement in order to calculate the Royalty and hence, from the formula alone, it cannot be said that the payment of Royalty is related to the imported goods.

7.2 Revenue's contention in this regard was that for the purpose of calculating Royalty, value of the goods imported is considered, it is claimed that the same was not paid on the value of the imported goods but on the net sales. If it is so, then there is no logic in considering the value of imported goods since, as argued, the imported goods or its value has nothing to do with the payment of Royalty, which is to be paid only on the net sales price of the finished product.

8. Ld. Advocate placed reliance on an order of Mumbai Tribunal in **CC Mumbai Vs BASF Strenics Pvt. Ltd**. – 2006 (195) ELT 206 (Tri.-Mumbai) which was affirmed by the Apex Court in **CC Vs Ferodo India Pvt. Ltd**. reported in 2008 (224) ELT 23 (SC).

9. After considering the rival contentions and perusal of documents placed on record, the following points are the crux of appellant's case:

(i) the Agreement referred to is for the transfer of the licensor's 'Advantix Technology' to the Appellant-importer for the purpose of manufacturing and selling the subject goods in India;

(ii) Subject goods are reinforcement Glass Fiber Products and Composite Products;

(iii) The Royalty/license fee was not related to the imported goods, and that such payment was not a condition for the sale of imported goods.

10. Rule 10 of CVR refers to '**Cost and services'** and clause (1) of the same reads as under:

"In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

…..
…..

(c) royalties and licence fees **<u>related</u>** 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;

…..

…..

Explanation. — Where the royalty, licence fee or any other payment ***<u>for a process</u>***, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, ***<u>notwithstanding the fact that such goods</u>*** may be subjected to the said process after importation of such goods."

11. We have carefully read the judicial precedents relied upon during the hearing before us, we have also gone through the documents placed on record including the Agreement in question. Upon going through the various decisions, we have no doubts in our mind that as long as the Royalty is not paid or payable on the imported goods and as long as there is no condition as to 'sale of goods' being valued, the same is not includable in the price. But we only have to check the impact of Explanation in this context. Explanation [*supra*] refers, clearly, to 'a process' for which Royalty is paid, shall be added to the price actually paid or payable for the imported goods. The emphasis again, is on the 'imported goods' which would suffer Royalty when brought into India. Therefore, our understanding is that the imported goods should undergo the 'process' for which 'Royalty' is paid, which is not even the case of the Revenue.

We say so because, it is clear that the imported goods in this case are not procured from the Group Company and nor do we find any condition to the effect that these goods shall be sold only upon payment of Royalty. In fact, the Agreement also provides a leverage to the appellant in case of any damage or the non-selling of goods, charging back, etc. and hence, the payment of Royalty is fixed at 4% of the Net sales. On these peculiar facts, the order of Bangalore Bench in **CC Vs Ibex Galleghar** - 2005 (191) ELT 967 (Tri.-Bang.) stands distinguished.

12. Viewed thus, there was no requirement to add Royalty to the price of imported goods as done by the Commissioner in this case and hence, the impugned orders cannot sustain.

13. Resultantly, we allow the appeals with consequential benefits if any, as per law.

(Order pronounced in the open court on 17.02.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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