IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76424 of 2016

(Arising out of Order-in-Appeal No. KOL/CUS(AIRPORT)/SS/110/2016 dated 11.05.2016 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Airport) **: Appellant**
Air Cargo Complex, NSCBI Airport, Dum Dum,
Kolkata – 700 052

VERSUS

M/s. IFB Agro Industries Limited **: Respondent**
Plot No. Ind-5, Sector-1, East Kolkata Township,
Kolkata – 700 107

APPEARANCE:

Shri Subrata Debnath, Authorized Representative for the Appellant

Shri O.P. Khanduja, Advocate for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75162 / 2025

DATE OF HEARING: 23.01.2025

DATE OF DECISION: 28.01.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

This is an appeal filed by the Revenue against the Order-in-Appeal No.KOL/CUS(AIRPORT)/SS/110/2016 dated 11.05.2016 wherein the Ld. Commissioner (Appeals) has set aside the Order-in-Original No.KOL/CUS/ACC/AC/01/2014 dated 17.01.2014 and classified the drawings and designs imported by the respondent under CTH 49.06 and held the same to be chargeable to 'nil' rate of duty as per Sl. No. 263 of Notification No. 12/2012-Cus. dated 17.03.2012.

1.1. Aggrieved by the setting aside of the Order-in-Original dated 17.01.2014 and dropping of the demands confirmed therein, the Revenue has filed this appeal.

2. In their grounds of appeal, the Revenue contends that the classification of the goods viz. "Drawings for the fluid bed for Distiller's Dried Grains with Solubles (DDGS)" as declared by the importer is absolutely wrong in view of the agreement and contract submitted by the importer under Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

2.1. The submission of the Revenue is that the imported item pertains to a "Pre Import Activity" as reflected in the agreement of supply of ETP and DDGS. It is their contention that in the present case, the sale and import are related to physical transfer of tangible goods; the basic feature of valuation of any goods is dependent on its intrinsic value that may be in any form including drawing, design etc., whereas the goods may be in tangible form and such content may be intangible in nature but intrinsic in value; that in this case, designs & drawings supplied in hard copies were basically prints that have only copy value being used for giving approval with stamp and signature and in fact numerable such copy can be generated. Thus, it was inferred that the value of the drawings and designs for imported equipment was includable in the Assessable value of the Effluent Treatment Plant (ETP). The Revenue contends that in terms of provisions laid down under Rule 10(1)(b)(iv) of Customs Valuation (Determination of Value of Imported Goods) 2007, since the imported equipment are manufactured outside India and not related to 'post-import activity'; hence Customs duty was payable on the said imported drawings & designs, as applicable to Imported equipment. Accordingly, it is contended that valuation of the subject consignment was done in accordance with Rule 10(1)(b)(iv) of Customs Valuation Rules, 2007 and the goods are classifiable under CTH 84.19. Thus, the Revenue contents that applicable Customs duty on the consignment assessed would be 7.5% plus 2% plus 1% plus 4% without extending the exemption under Notification No. 12/2012-Cus. dated 17.03.2012.

2.2. The Revenue also contends that the Ld. Commissioner (Appeals) has disregarded the pivotal point, to categorise the imported item under CTH 49.06, treating it as a distinct entity with no connection to any prior imported plant and extended the benefit of exemption under C.B.E.C. Notification No. 12/2012-Cus. dated 17.03.2012. Revenue's contention is that the imported drawings are linked to "Pre Import Activity", which is substantiated by the purchase agreement. Thus, it is contended that the decision of the Ld. Commissioner (Appeals) to treat the impugned drawings as an independent item is legally and procedurally flawed.

2.3. In view of the above submissions, the Revenue prayed for setting aside the impugned order passed by the Ld. Commissioner (Appeals).

3. The Ld. Advocate appearing on behalf of the respondent submitted that the impugned goods had been erroneously classified under CTH 84.19 on the presumption that the goods were of ETP and value of the impugned goods were to be added to the value of ETP under Rule 10(1)(b)(iv) of the Customs Valuation

Rules. He submits that both these presumptions were patently misplaced inasmuch as, all plans and drawings, for any engineering, are classifiable under CTH 49.06, as per the text of the said CTH.

3.1. It is also his contention that the impugned drawings were for 10 different segments of the plant as detailed in paragraph 3 of the Assessment Order and these 10 segments were to be constructed/manufactured/assembled/erected in India; these drawings were not for the goods which had been manufactured by the supplier in Netherlands and supplied to India

3.2. It is further submitted by the respondent that the Department had erroneously proceeded on the incorrect premise, that since the value of the impugned drawings was to be included in the assessable value of the equipment imported and/or to be imported subsequently in terms of provisions laid down under Rule 10(1)(b) (iv) of the Valuation Rules. The Revenue also considered that the impugned goods would classifiable under CTH 84.19 instead of CTH 49.06, since ETP was classifiable under CTH 8419. The respondent submits that the above said contention of the Department is clearly misplaced, inasmuch as the sub clause (iv) of clause (b) of Rule 10(1) of the Valuation Rules seems to have been read in isolation by the Revenue. The Ld. Counsel for the respondent submits that a bare perusal of the above provisions clearly indicates that the inclusion of the cost of engineering, development, art work, design work, plants and sketches can only be considered, when the same are supplied by the buyer to the supplier of the imported goods. In the instant case, the Agreement clearly states that the impugned drawings were supplied by the foreign supplier namely M/s. Imtech Ventilex and not by the respondent to them. As such, it is their plea that the application of Rule 10(1)(b)(iv) as heavily relied by the Revenue is absolutely misplaced and therefore, the Ld. Commissioner (Appeals) has rightly set aside the Order-in-Original dated 17.01.2014 passed by the lower authority being ex-facie bad in law.

4. Heard both sides and perused the appeal records.

5. We find that the respondent has imported "Drawings for the fluid bed for DDGS". The respondent classified the imported drawings under the CTH 49.06 whereas the Revenue has sought to classify the same under CTH 84.19. We observe that CTH 49.06 clearly covers "Plans and drawings for architectural, engineering, industrial commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts: photographic reproductions on sensitized paper and carton copies of the foregoing.

5.1. Further, the HSN Explanatory Notes to CTH 49.06 read as under: -

> *"This heading covers Industrial plans and drawings the purpose of which, generally, is to indicate the position and relation of partsor features of buildings, machinery or other constructions either as they exist, or for the guidance of builders or manufacturers in their construction (e.g., architects' or engineers' plans and drawings). The plans and drawings may include specifications, directions, etc., printed or not."*

5.2. From the above, we find that CTH 49.06 would cover plans and drawings for architectural, engineering, industrial commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts: photographic reproductions on sensitized paper and carton copies. This heading covers industrial plans and drawings the purpose of which, generally, is to indicate the position and relation of parts or features of buildings, machinery or other constructions either as they exist, or for the guidance of builders or manufacturers in their construction (eg., architects' or engineers plans and drawings). The plans and drawings may include specifications, directions, etc. printed or not. In the instant case, the supplier, M/s Ventilex B. V. confirmed that these drawings are original, taken print out from computer and solely prepared in accordance to the contract no. IFBFAG/PO/PROJ-CMG/2013-14/017 dated 09.07.2013; in other words, the impugned drawings are original print outs, supplied separately and not as a part of the ETP.

5.3. We find that the impugned drawings were for 10 different segments of the plant as detailed in para 3 of the impugned order. These 10 segments were to be constructed/manufactured/assembled/erected in India & these drawings were not for the goods which have been manufactured by the supplier in Netherlands & supplied to India. We find that the certificate issued by the Vice-President Projects confirms the said fact. We find that in paragraph 6 of the Order-in-Original, the Ld. adjudicating authority assumes erroneously that the impugned drawings were for the equipment manufactured by the supplier in Netherlands and therefore, the value of the impugned goods relate to the equipment imported by IFB. We find that the supplier, M/s Ventilex B. V. has confirmed that these drawings are original, taken print out from computer and solely prepared in accordance to the contract no. IFBFAG/PO/PROJ-CMG/2013-14/017 dated 09.07.2013. Thus, we find that the impugned drawings are original print outs, supplied separately and not as a part of the ETP. Therefore, we hold that the import of impugned drawings and designs are related to post import activity and not related to pre-import activity, as contended by the Revenue.

5.4. We also observe that the Department had also erroneously proceeded on the incorrect premise, that since the value of the impugned drawings was to be included in the assessable value of the equipment imported and/or to be imported subsequently in terms of provisions laid down under Rule 10(1)(b)(iv) of the Valuation Rules, therefore, the impugned goods were classifiable under CTH 84.19 instead of CTH49.06, since ETP was classifiable under CTH 84.19. The above said contention of the Department is clearly misplaced, inasmuch as the sub clause (iv) of clause (b) of Rule 10(1) of the Valuation Rules seems to have been read in isolation.

5.5. We find that the Department had erroneously assessed the goods under CTH 84.19 which inter alia covers," Machinery, plant or laboratory equipment for the treatment of materials by a process involving change of temperature...." The goods under assessment are Drawings and designs and are not machinery, plant or equipment and, by no stretch of imagination, could be classified under CTH 84.19. The value of the intellectual property contained in these drawings is the real worth of the drawings and the same has been specifically determined at Euro 244.000 as per the Agreement dated 09.07.2013.

6. Thus, we find that the Ld. Commissioner (Appeals) has given a categorical finding and concluded that the item imported viz. drawings and designs, are rightly classifiable under CTH 49.06. We therefore do not find any reason to disagree with the reasoned findings given by the ld. Commissioner (Appeals) in the impugned order.

7. Consequently, we uphold the impugned order and reject the appeal filed by the Revenue.

(Order pronounced in the open court on **28.01.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd