



***ALO Law Office- IDT Tax | Arbitration | Litigation***

**Date: 14.06.2025**

## **CESTAT Chennai- Royalty Payments Not Dutiable Under Customs Valuation Rules**

In the case of *M/s. KAMAZ Motors Ltd. vs. Principal Commissioner of Customs, Chennai-II*. The case revolved around the contentious inclusion of royalty payments in the assessable value of imported CKD kits under Rule 10 of the Customs Valuation Rules, 2007.

### **Case Background**

KAMAZ Motors Ltd., formerly Kamaz Vectra Motors Ltd., imported CKD kits for manufacturing heavy-duty trucks in India from its related foreign supplier M/s. CJSC Kamaz Foreign Trade Company, Russia. The Customs authorities had provisionally assessed the imports and later issued a Show Cause Notice proposing to add royalty of USD 450 per CKD kit—paid to another group entity M/s. OJSC Kamaz Inc.—to the assessable value, alleging it to be a condition of sale.

The Department relied on Rule 10(1)(c) and 10(1)(e) of the Customs Valuation Rules, 2007, stating that royalty payments were directly linked to the import of CKD kits and therefore must be included in the transaction value.

### **Appellant's Arguments**

- The appellant submitted that royalty payments were made to a third-party parent company, M/s. OJSC Kamaz Inc., for the use of technology and the “KAMAZ” trademark under a Technology License Agreement, not to the supplier of CKD kits.
- The CKD supply and the royalty agreement were governed by two independent contracts. The supplier (KFTC) was not a party to the royalty agreement.

- Royalty was paid based on the number of trucks assembled in India using CKD kits and not on importation, making it unrelated to the condition of sale.
- Service Tax and R&D Cess were already paid on royalty under reverse charge, signifying the payment was for technology transfer services.
- The earlier SVB investigation (2010 and 2018) had accepted the declared transaction value, and there was no suppression to invoke the extended period under Section 28.

### **Tribunal's Observations**

- The Tribunal criticized the Commissioner (Appeals) for passing a cryptic and non-speaking order without addressing arguments on merits and limitation.
- Referring to the SVB's investigation report, the Tribunal noted there was no influence on the transaction value.
- The royalty was payable for the right to manufacture and use the "KAMAZ" trademark—not for the sale of imported goods.
- The supplier of CKD kits was not the licensor; hence, the royalty was not a condition of sale under Rule 10(1)(c).
- CESTAT emphasized the Supreme Court's ratio in *Ferodo India Pvt. Ltd. and Toyota Kirloskar Motors Ltd.* wherein it was held that unless royalty is a prerequisite for import, it is not includible in assessable value.

### **Final Verdict**

The CESTAT set aside the demand order, ruled that the royalty amount was not dutiable under Rule 10(1)(c) of the Customs Valuation Rules, 2007, and allowed the appeal in favour of KAMAZ Motors with consequential relief.

### **Conclusion**

This ruling reiterates that royalty payments made for technology or trademark usage, unlinked to the condition of sale of imported goods, cannot be added to the assessable value. The decision reinforces the principles of transparency in related-party transactions and provides a valuable precedent for importers facing similar valuation challenges under customs law.

*This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Chennai**

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Write to us at [office@aadrikaalaw.com](mailto:office@aadrikaalaw.com)

Tel: +91-11-4999 2707 | +91-9999005379

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**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. III

**Customs Appeal No. 40111 of 2022**

(Arising out of Order-in-Appeal Seaport C.Cus.II No.734/2021 dated 01.12.2021 passed by Commissioner of Customs (Appeals-II), Chennai)

**M/s. Kamaz Motors Ltd.,** **....Appellant**  
(Formerly known as M/s. Kamaz Vectra Motors Ltd.),  
Represented by its Senior Manager Finance,  
Sri. P. Ganesan, No.3114A, SIPCOT Phase-1,  
Hosur-635 126, Tamil Nadu.

***Versus***

**The Principal Commissioner of Customs, ... Respondent**  
Chennai-II Commissionerate,  
60, Rajaji Salai, Custom House,  
Chennai-600 001.

**APPEARANCE:**

Shri Raghavendra B. Hanjer, Advocate for the Appellant  
Smt. Anandalakshmi Ganeshram, Authorized Representative for  
the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**  
**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.40604/2025**

**DATE OF HEARING: 28.01.2025**  
**DATE OF DECISION: 10.06.2025**

**Per: Shri P. Dinesha**

This appeal is filed against Order-in-Appeal Seaport C.Cus.II No.734/2021 dated 01.12.2021 passed by Commissioner (Appeals), Chennai.

2. Heard Shri Raghavendra B. Hanjer, Ld. Advocate for the Appellant and Smt. Anandalakshmi Ganeshram, Ld. Assistant Commissioner for the Respondent

3.1 Brief facts of the case leading to this Appeal are that the appellant had filed Eight Bills of Entry between period September 2011 and February 2014 for the clearance of imported goods i.e. 'CKD-For MFG of 6520 and 6540 Model Kamaz Trucks'; since the importer and supplier were related parties a case was registered with Special Valuation Branch (in short **SVB**) Custom House, Chennai to investigate the influence on the transaction value due to the said relationship. On registration of SVB case as per CBIC Circular No.01/2010 dated 01.01.2010, the imported goods were assessed provisionally and cleared on payment

of 1% EDD and applicable duties. The SVB had submitted its investigation report No.63/2018 dated 05.07.2018 the findings of which are that the M/s. Kamaz Group of companies, Russia & Vectra Group U.K. formed a Joint Venture Company during 2009-10 and started a public limited Joint Venture company namely M/s. Kamaz Vectra Motors. The supplier M/s. CJSC Kamaz Foreign Trade Company, Russia was a Joint Venture partner with the importer M/s. Kamaz Vectra Motors Ltd. Due to heavy losses M/s. Vectra group U.K. exited from the company. In the year 2013-14, Kamaz Foreign Trade Company, Russia and Mikam Holding Ltd, a KAMAZ Group of company have acquired the shares from VECTRA Group and VECTRA group had exited from Joint Venture. The company was renamed as M/s. Kamaz Motors Ltd. M/s CJSC Kamaz, main supplier of goods and M/s. Kamaz Motors Ltd., Hosur the importer, both are subsidiary of M/s. Kamaz OJSC or Kamaz PTC, the main holding company.

3.2 It is an admitted fact that the importer Indian Company viz. M/s Kamaz Motors Ltd., and supplier Foreign Company viz. M/s CJSC Kamaz are related in terms of Rule

2(2)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

3.3 On verification of Form 3CEB and Form 15CB it was found that Royalty charges of 1,46,700 USD, 39,600 USD and 82,800 USD had been paid by the Indian Company during the year 2013 and 2014. The Indian Company has stated that this Royalty was paid to OJSC KAMAZ Inc, who are the original Brand Owner of "KAMAZ" and that, they are not their Foreign Supplier.

3.4 The importer is using the trade mark of "KAMAZ" for their final product as per Section 10.1 of Technology Licence Agreement Vide No. 356/00231515/09033, entered into between M/s. Kamaz Incorporated and M/s. Kamaz Vectra Motors Ltd., which reads as under:

*"Technical documentation shall always remain the exclusive property of the Licensor and the Licensee shall not acquire any rights or interest except for the right to use it pursuant to the Agreement. According to Section 11.1, in remuneration for the rights grants Under the Agreement, the Licensor is entitled for a Royalty payment of 450 US \$for each CKD kit delivered by CJSC KFTC"*

3.5 Section 11 of the said Agreement reads as:

*11.1. Royalty on Kamaz Trucks: In remuneration for the rights granted under this Agreement the Licensee shall pay to the Licensor a royalty in the amount of: 450 (four hundred fifty) US Dollars for each CKD delivered within a reporting period. Data about the volume of delivered CKD to calculate the amount of royalty shall be determined by the Licensor based on the information submitted by 'Foreign Trade Company KAMAZ (KAMAZ FTC), being the Licensor's commission agent.*

3.6 As per Rule 10(1)(e) of Customs Valuation (Determination of value of imported goods) Rules, 2007, in determining the transaction value there shall be added to the price actually paid or payable for the imported goods, all other payments actually made or to be 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. The explanation to the said Rule 10 states that "Where the royalty, licence 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.”

3.7 It is thus the case of the Revenue that based on the interpretation of the above Rule it has been held in various rulings of Tribunal & Courts that Royalty payments are to be includable in the assessable value if the following two conditions are fulfilled:

- i. There is a nexus between goods imported & payment of royalty;
- ii. Royalty is a pre condition for sale of goods.

3.8 From a plain reading of the terms of Technology Licence Agreement paras 11.1 to 11.3, particularly para 11.2(b), it is apparent that importer is required to pay Royalty for the imported goods i.e. CKD parts and it is a precondition of sale as the importer is not allowed to import further unless a Royalty of US \$ 450 is paid for each unit of the imported CKD parts.

3.9 In view of the above facts, it appeared that the royalty amount of US\$ 450 per CKD kit is liable to be

included in the assessable value of all the imports of "CKD kits For manufacture of 6520 & 6540 KAMAZ Trucks" under the Bills of Entry which were provisionally assessed and released at the time of import. Since, the above said Bills of Entry are taken up for final assessment, the Royalty amount is liable to be included in the assessable value of all the imports "CKD kits-For manufacture of 6520 & 6540 KAMAZ Trucks.

4. Accordingly, a Show Cause Notice dated 09.07.2019 was issued to the appellant, who replied to the same *vide* its letter dated 07.11.2019. The Lower Adjudicating Authority *vide* impugned Order-in-Original No.12/2020 dated 29.05.2020 ordered for the inclusion of Royalty amount of US \$450 per CKD Kit paid to the supplier for import of "CKD kits-For manufacture of 6520 & 6540 KAMAZ Trucks" under the 8 Bills of Entry in the assessable value for arriving at the Customs duty liability and ordered to increase the assessable value of the 8 subject Bills of Entry from Rs.35,62,13,466/- to Rs.36,35,66,367/- by including the royalty amount in terms of Rule 10(1) (c) & (e) of the Customs Valuation (Determination of Value of

Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. He also ordered for the final assessment of the 8 Bills of Entry mentioned therein, which were assessed provisionally earlier by including the Royalty amount @US \$450 per CKD Kit paid to the supplier for arriving at the assessable value..

5.1 Aggrieved by the impugned order, the appellant has filed their Appeal before us.

5.2 Submissions on behalf of the Appellant are that the impugned order has failed to appreciate the fact that SVB, Chennai had already conducted investigation on the issue of valuation of imported goods way back in 2010 and the same had resulted in passing Order-in-Original No. 12808/2010 dated 02.09.2010 by clearly holding that the relationship between the Appellant and the supplier of goods did not influence the price of imported goods. The said Order-in-Original was accepted by the Department on 26.11.2010.

5.3 Ld. Advocate submits that it is clear from the

agreement entered into with the supplier and the technology license agreement dated 09.07.2009, the appellant had imported the goods from M/s. Kamaz Foreign Trade Company [in short **KFTC**] whereas the royalty payments are made to M/s. OJSC Kamaz Inc. and hence, the payment of royalty has no connection with import of goods.

5.4 The Appellant further submits that they have imported the CKD of RHD KAMAZ-6540-1630-10 trucks for assembling in India for a total consideration of \$3,00,00,000 from the Principal M/s. CJSC Kamaz Foreign Trade Company based on the agreement No.356/40096783-9433 dated 22.09.2009. The said agreement came to be amended by including CKD kits for all models of Kamaz tipper trucks. The Appellant had also entered into a separate Technology License Agreement bearing No: N 356/00231515/09033 with M/s. OJSC Kamaz Incorporation who is the parent company of the holding company. According to this agreement, right to manufacture Kamaz trucks and usage of 'KAMAZ' trade mark have been granted to the Company by Kamaz Inc.

Para 11.1 of the said agreement provides for payment of royalty of US\$ 450 per CKD to them [not to the Principal] for such transfer of right.

5.5 Thus, the royalty is payable to M/s. OJSC KAMAZ Inc. towards transfer of right to manufacture Kamaz trucks using the technology provided by KAMAZ Inc. and using the trade mark-'KAMAZ' and not towards the sale of CKD Kits by KFTC. The principal from whom the appellant has imported the impugned goods was not a party to the Technological Transfer Agreement.

5.6 Further, it was submitted that M/s. OJSC KAMAZ Inc. while forwarding a copy of the agreement has clearly stated that the royalty payable by the appellant is independent of sale and purchase of CKD notwithstanding any price mutually agreed upon from time to time on the sale and purchase of CKD and spares. The prices for CKD kits are separately negotiated and the appellant has entered into separate agreements for definite quantities of import with KFTC while the Technological Transfer Agreement has been made with KAMAZ Inc. The transfer

agreement facilitates payment of royalty @450 US dollars per CKD kit instead of payment of a lump sum. The payment of royalty is on KAMAZ Truck manufacturing by the appellant for using ICAMAZ Inc.'s technology and brand name 'KAMAZ' and not for the importation of CKD kits from KFTC.

5.7 Under GATT Valuation Agreement and Rule 10[1][c] of Customs Valuation [Determination of value of Imported Goods] Rules, 2007 royalties and license fee are to be added to the invoice value only if they relate to the goods imported and are paid as a condition of sale of the goods.

5.8 From the wordings of the 'Transfer of Technology Agreement', KAMAZ, Russia-the provider of the service has taken the number of CKD kits imported by the company as a measurable devise to arrive at the quantum of royalty amount payable to them towards the transfer of technical knowhow and use of trade mark 'KAMAZ' inasmuch as each CKD kit on assembly would result in the manufacture and sale of one number of 'KAMAZ' truck in India.

5.9 Royalty is payable only for the use of technology for the manufacture and use of their trademark and not for the import of CKD kits. Moreover, as per Section 11.2 of Technology license agreement, royalty payments are to be paid on the products assembled using the CKD kits and not on the imports.

5.10 As the transfer of technology comes under Transfer of Intellectual Property Rights Service, the Company has also paid Service Tax of Rs.32,13,424/- vide various challan numbers and R&D Cess under reverse charge mechanism by treating the transfer as 'Import' Service. Thus, the payment of royalty was towards the import of technology and not towards the import of CKD kits/spares.

6. Ld. Counsel places reliance on the decision of the Hon'ble Apex Court in the case of **Commissioner of Customs vs. Ferodo India Pvt. Ltd.** reported in 2008 (224) ELT 23 (SC) wherein it has been held that Rule 9(1)(C) of Customs valuation [Determination of Value of Imported goods] Rules, 1988 analogous to the present Rule 10(1)(C) of ibid 2007 would come into operation only

when such royalty payment is pre-requisite for importation of goods. The Hon'ble Apex Court in the case of **Commissioner of Customs [Port], Chennai vs. Toyota Kirloskar Motors Ltd.** reported in 2007 (213) ELT 4 (SC), has held that the transactional value must be relatable to import of goods which a fortiori would mean that the amounts must be payable as a condition of import.

7.1 Shri Raghavendra B. Hanjer, Ld. Advocate also submitted that the Show Cause Notice was issued proposing to demand differential duty on royalty payments made during the period 2013 and 2014 under Rule 10(1)(c) and (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 and 18(2) of the Customs Act, 1962. The impugned demand of differential duty is hit by the statutory period of limitation as provided under Section 28 of the Customs Act, 1962. In the present case, the longer period of limitation is not invocable as the Appellant has not suppressed/mis-declared any facts much less with an intention to evade payment of duty to attract the provisions of Section 28(4) *ibid.*

7.2 It is his further case that the appellant had entered into a Technology License Agreement way back in 2009, i.e., on 07.09.2009 and the royalty payments are made from time to time based on the sale of KAMAZ vehicle. The issue of valuation of goods imported by the Appellant was investigated by the SVB Chennai way back in 2010 and the same had culminated in Order-in-Original No. 12808/2010 dated 02.09.2010 by clearly holding that the relationship between the Appellant and the supplier of goods had not influenced the price of imported goods. The said order was further accepted by the Department on 26.11.2010. Under these circumstances, the question of invocation of longer period does not arise as all the facts were already in the knowledge of the Department and the Department had failed to initiate appropriate action for recovery of duty on the royalty payments and instead re-opened the case for further investigation. He would then pray for setting aside the impugned order and allow the appeal.

8. *Per contra*, Smt. Anandalakshmi Ganeshram, Ld. Assistant Commissioner supported the findings of the

Lower Authorities. She would invite our attention to the findings in the Order-in-Original, specifically to paragraph 27.3 wherein, the Adjudicating Authority has after analysing the agreement between the parties, has inferred that the KFTC being the supplier as well as the license commission agent would be the obvious choice to execute the withholding of the CKD parts and components and hence, the licensor would not only hold authority over the use of technical know-how, selling, marketing or distributing the license products but also supply the goods in CKD condition. There is also a further reference at para 27.4 that the licensor could easily terminate the license i.e., if the licensee does not pay the royalty timely, then the licensee shall have the limited right to complete the manufacture and assembly of those trucks for which it has already received orders and sell and distribute its remaining inventory of the licensed products which existed as on the date of expiration. Going further, the Licensee would have no right to market, sell, distribute or otherwise dispose of its remaining inventory of the license products after 90 business days after the expiration or termination of the agreement.

9. Thus the provision for payment of royalty becomes evident even before the import of the subject goods in CKD condition as the ultimate purpose of import was to sell, market or distribute the Licensed products; since the supplier-importer and License Holder are related as they belong to the same group company, the royalty is not paid to supplier but to the License Holder. Hence, the twin conditions of Rule 10 of Customs Valuation Rules, 2007 having been satisfied, the nexus between goods imported and payment of royalty having already been established, the importer being not allowed to import the subject goods namely CKD parts unless royalty is paid, which is a condition of sale, the amount of US\$ 450 paid as royalty for the import of each CKD is rightly added to the accessible value of the goods. She would thus pray for upholding of the impugned order.

10. We have carefully considered rival contentions and we have very carefully considered the impugned order as well as the detailed Order-in-Original. Unfortunately, the First Appellate Authority has passed a very cryptic order

inasmuch as there is no discussion on the legal arguments advanced by the appellant on merits as well as on limitation; as a quasi-judicial Authority, it is expected from an officer of the rank to pass a reasoned and speaking order. In the impugned order, the Commissioner (Appeal) has extracted the provisions, referred to the findings of the Original Authority, extracted in detail the contentions of the appellant and finally rejected the appeal without giving any finding. Hence, we are of the view that the order is passed without application of mind. It is strange that the First Appellate Authority has chosen not to address the legal arguments with regard to the limitation, especially when the appellant has referred to the earlier investigation report by the SIIB wherein, admittedly, there is a categorical finding that the relation did not influenced the declared value. Thus, the import value was accepted on the similar facts. It is even more surprising that the authority has ignored even the binding decisions of the Hon'ble Supreme Court in her order. Hence, we would rather refer to the Order-in-Original for factual position.

11. We have perused the documents placed on record very carefully, we have also considered the investigation report submitted by the SVB dated 05.07.2018 which is a part of the paper book filed before us. It is relevant here to reproduce the conclusion drawn by the Assistant Commissioner, SVB, which reads as under:

*From above analysis of information provided by the Importer to this Branch for issuance of Investigation Report the following facts emerge:*

**a. Relationship between the Importer and the Foreign Supplier**

*The importer and the Foreign Supplier are related persons in terms of Rule 2(2)(iv) of the Custom Valuation Rules, 2007.*

**b. Acceptance or Rejection of transactional value of imported goods.**

*As per evidences submitted by the importer as discussed in para supra, no evidence has been found to suggest any influence on the declared Transaction Value of the goods imported from the related foreign supplier. Therefore, transaction value may be accepted in terms of Rule 3(3)(a) of the CVR, 2007.*

12. In no confusing words has the Assistant Commissioner revealed that there was no evidence to suggest any influence on the declared transaction value on the goods imported from the related foreign supplier, which is therefore to be accepted in terms of Rule 3(3)(a) of CVR, 2007. Quite contrary to this, the Original Authority in the Order-in-Original at paragraph 27.8 proceeds to hold

that the nexus stood established and the royalty has been paid by the buyer to a third-party that is the license holder and therefore he proceeds to include the royalty in the accessible value.

13. Even for an earlier period, it appears that there was a similar investigation by SVB insofar as the valuation of the imported goods in 2010 was concerned and, based on the investigation, Order-in-Original dated 02.09.2010 was passed by holding that the relationship between the appellant and its supplier did not influence the value of the imported goods. It was also contended before us that the said order was accepted by the department without filing any appeal.

14. We have also perused the financial arrangements as specified in the agreement between the parties; as per clause 11.1 of the same, the royalty is payable to M/s. OJSC KAMAZ Inc. towards transfer of right to manufacture KAMAZ trucks using the technology provided by KAMAZ, Inc. and using the trademark 'KAMAZ' and certainly not towards the sale of CKD kit by KFTC. We also find that the

principal from whom the goods in question were imported is not a party to the said technological transfer agreement. The terms of the agreement are also clear to the effect that the royalty payable by the Appellant is independent of sale and purchase of CKD kits, notwithstanding the price mutually agreed upon from time to time on the sale and purchase of CKD and spares. This apart, transfer agreement itself has provided for the payment of royalty at US\$450 per CKD kit instead of payment of a lump sum which is also an indicative of the fact that the cost of transfer of right had no bearing on the price negotiated for the import of CKD kit.

15. Moreover, we find that it is not denied by the Revenue that the payment of royalty was on KAMAZ trucks manufactured by the appellant for using KAMAZ Inc.'s technology and the brand name 'KAMAZ'.

16. In the backdrop of the above narrated facts, we will now analyse the applicability of Rule 10(1)(c). This provision, according to us, is applicable/invocable only when the twin condition test stands satisfied. The

royalty/license fee should not only be related to the goods imported, to be paid to the seller directly or indirectly as a condition of the sale of the goods being valued or imported. That means to say, the payment of royalty becomes includable in the price of the goods imported only if the said payment constitutes a pre-condition/prerequisite for the supply of the goods imported from the foreign supplier. In the present case however, from the perusal of the transfer of technology agreement the foreign service provider namely KAMAZ-Russia has, based on the number of CKD kit imported by the company, calculated the quantum of royalty amount payable to them towards the transfer of technical know-how and use of their trademark/brand 'KAMAZ'. Hence, it appears to us that the royalty paid to KAMAZ Russia has no bearing with the import from KAMAZ, PTC. Thus, the royalty is not to be paid for the import of CKD which is also clear from reading of clause 11.2 of the technology license agreement as per which, the royalty payments are to be paid on the products assembled using the CKD kits and not on the imports.

17. At this juncture, we find it appropriate to refer to the landmark judgement of the Apex court in the case of **Commissioner of Customs vs. Ferodo India Private Limited** [2008 (224) E.L.T. 23 (S.C.)] wherein, the apex court has held as under:

*24. One of the questions which arises for determination in this civil appeal is whether reliance could be placed by the Department only on the Consideration Clause in the TAA for arriving at the conclusion that payment for royalty was includible in the price of the important components.*

*25. Rule 4(3)(b) of the CVR, 1988 provides for an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value. A number of factors, therefore, have to be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the difference in values etc. As stated above, Rule 4(3)(a) and Rule 4(3)(b) of the CVR, 1988 provides for different means of establishing the acceptability of a transaction value. In the case of Matsushita Television (supra) the pricing arrangement was not produced before the Department. In our view, the Consideration Clause in such circumstances is of relevance. As stated above, pricing arrangement and TAA are both to be seen by the Department. As stated above, in a given case, if the Consideration Clause indicates that the importer/buyer had adjusted the price of the imported goods in guise of enhanced royalty or if the Department finds that the buyer had misled the Department by such pricing adjustments then the adjudicating authority would be justified in adding the royalty/licence fees payment to the price of the imported goods. Therefore, it cannot be said that the Consideration Clause in TAA is not relevant. Ultimately, the test of close approximation of values require all circumstances to be taken into account. It is keeping in mind the Consideration Clause along with other surrounding circumstances that the Tribunal in the case of Matsushita*

*Television (supra) had taken the view that royalty payment had to be added to the price of the imported goods.*

**26.** *For the aforesaid reasons, we find no infirmity in the impugned orders of the Tribunals. Accordingly, the civil appeals filed by the Department are hereby dismissed with no order as to costs.*

18. The same view was expressed by the Apex court in the case of **Commissioner of Customs [Ports], Chennai vs. Toyota Kirloskar Motors Ltd.** [2007 (213) ELT 004 (SC)] and by various CESTAT benches namely:

- i) SI Group India Ltd. vs. CC., Mumbai – 2015 (319) E.L.T. 161 (Tri.-Mumbai)
- ii) ABB Ltd. vs. CC (Imports), Mumbai – 2013 (288) E.L.T. 296 (Tri.-Mumbai)
- iii) Lord India Chemical Products Pvt. Ltd. vs. CC., Pune – 2015 (330) E.L.T. 802 (Tri.-Mumbai)
- iv) CC (Import) Mumbai vs. Bridgestone India Pvt. Ltd. – 2013 (292) E.L.T. 403 (Tri.-Mumbai)
- v) Sandvik Asia Pvt. Ltd. vs. CC (Import) Mumbai – 2015 (329) E.L.T. 493 (Tri.-Mumbai)
- vi) Commissioner vs. Prodelin India Pvt. Ltd. – 2006 (202) E.L.T. 13 (S.C.)

- vii) Commissioner vs. Toyota Kirloskar Motor Pvt. Ltd.  
– 2007 (213) E.L.T. 4 (S.C.)
- viii) Commissioner vs. Bridgestone India Pvt. Ltd. –  
2013 (292) E.L.T. 403 (Tribunal)

19. Even this Chennai bench in one of the recent cases of **Ajinomoto India Pvt. Ltd. Vs. Commissioner of Customs, Chennai**, [2024 (390) E.L.T. 677 (Tri.-Chennai)/(2024) 22 Centax 266 (Tri.-Chennai)] has held *vide* Final Order No. 41101/2024 dated 21.08.2024 as under:

*16. Royalty or payments for use of intellectual property etc, differ from business to business and there is no standard format. Hence each judgment is an authority in the setting of its own facts and terms of agreement. The Tribunal judgments in Herbalife International and Fujitsu Ten India Pvt Ltd are based on the Apex Courts Judgment in Matsushita Television & Audio. The said judgment in Matsushita was examined by the Hon'ble Supreme Court in **Ferodo India Pvt. Ltd.** (supra) and it was held that the pricing arrangement and TAA are both to be seen by the Department. If the 'Consideration Clause' indicates that the importer/buyer had adjusted the price of the imported goods in guise of enhanced royalty or if the Department finds that the buyer had misled the Department by such pricing adjustments then the adjudicating authority would be justified in adding the royalty/licence fees payment to the price of the imported goods. No such condition of sale is noticed by the Original Authority from the Agreement in the impugned case and hence the judgments are distinguished. Further in the case of **Kruger Ventilation Indus. (North India) Pvt. Ltd. Vs Commr. of Customs (Import), New Delhi** [2022 (382) E.L.T. 541 (Tri. - Del.)], a Coordinate*

*Bench of this Tribunal held that, though the royalty is paid as percentage of the net turnover of goods manufactured, which includes the imported material, it is not sufficient to add royalty to the assessable value. This decision was also affirmed by the Hon'ble Apex Court as reported in (2023) 9 Centax 75 (S.C.) = 2023 (386) ELT 13 (SC).*

*17. We find that as per the order of the Ld. Original Authority the transaction value declared by the importer has been accepted under rule 3(3)(a) of CVR 2007. There is nothing to show the appellant had adjusted the price of the imported goods in guise of enhanced royalty. Royalty is not paid to Ajinomoto Thailand from whom the appellant procures its goods. Revenue has not been able to establish the payment of royalty is a 'condition of sale' of the imported goods nor has any flow back or direct / indirect payment from Ajinomoto India to Japan or Thailand been established. In such circumstances postponing the collection of duty on the imported goods, on an uncertain quantity, to the time of domestic sale after being repacked under a trademark, appears far too remote to retain the character of a Customs impost. We feel that the question Revenue should have addressed / investigated is whether the import would have taken place from Ajinomoto Thailand if the appellant declined to pay royalty to Ajinomoto Japan or whether it would only lead to a denial of repacking of goods using the trademark. However, as it stands Revenue has failed to establish its allegations and hence the impugned order merits to be set aside.*

20. In view of the above discussion, we are of the view that there was no need to invoke rule 10(1)(c) to add Royalty to the assessable value as the said payment was in no way connected with the condition of sale and hence, the impugned order cannot sustain.

21. Consequently, we set aside the same and allow the appeal with consequential benefits if any, as per law.

(Order pronounced in open court on 10.06.2025)

**(M. AJIT KUMAR)**  
Member (Technical)

**(P. DINESHA)**  
Member (Judicial)