CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 50212 OF 2021

(Arising out of Order-in-Original No. 10/(11)ADG(Adj.)/DRI/N.Delhi/2020-21 dated 24.09.2020 passed by the Additional Director General (Adjudication), D.R.I., New Delhi)

M/s. Triumph Motorcycles (India) Pvt. Ltd. **.....Appellant**
2nd Floor, Wing-A, Commercial Plaza,
Radisson Hotel, NH-8, Mahipalpur,
New Delhi-110037

VERSUS

Addl. Director General (Adjudication), D.R.I., New Delhi **.....Respondent**
Directorate of Revenue Intelligence,
Room No. 214, New Customs House,
Near IGI Airport, New Delhi

APPEARANCE:

Shri Rohan Shah, Senior Advocate and Shri Mohammed Anajwalla, Advocate for the Appellant

Shri Mihir Ranjan, Special Counsel and Shri M.K. Shukla, Authorized Representative for the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 18.09.2025
DATE OF DECISION: 29.10.2025

FINAL ORDER NO. 51625/2025

JUSTICE DILIP GUPTA:

M/s. Triumph Motorcycles (India) Pvt. Ltd.[1] has filed this appeal to assail the order dated 24.09.2020 passed by the Additional Director General (Adjudication), D.R.I., New Delhi[2] that adjudicates the show cause notice dated 30.09.2019. The said order re-determines the transaction value declared by the appellant by including the amount remitted or expenses incurred as Management Service Fees[3] and Advertisement and Promotional

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1. **the appellant**
2. **the Additional Director General**
3. **MSF**

Expenses[4] in the transaction value treating the said amount as constituting "condition of sale" of imported goods under section 14(1) of the Customs Act, 1962[5] read with rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[6]. Accordingly, the impugned order directs for recovery of the differential customs duty with cess in terms of the provisions of section 28(4) of the Customs Act. The order also holds that the goods are liable to confiscation under section 111(m) of the Customs Act but as they had been cleared for home consumption, redemption fine has not been imposed under section 125(1) of the Customs Act. The order also directs for recovery of interest under section 28AA and penalty under section 114A of the Customs Act.

2. The appellant is engaged in the business of importing and trading in Motorcycles. These Motorcycles are imported either in completely built units[7] or completely knocked-down[8] condition. The appellant is also an Indian distributor of imported "Triumph" Motorcycles. It is also engaged in import and reselling of parts, accessories and clothing of "Triumph's" trademark from its affiliated companies Triumph Motorcycles Ltd., UK[9] and Triumph Motorcycles (Thailand) Ltd.[10]. The appellant is a 100% owned subsidiary of Triumph Motorcycles (Singapore) Pte. Ltd. Triumph UK is the ultimate holding company of the appellant.

3. For the proposes of importing the goods from Triumph UK and Triumph Thailand, the appellant entered into a Distributor Agreement dated 01.07.2013. The Agreement was for sale of goods by Triumph UK to the appellant; marketing materials and programmes; participation of the

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4. APE
5. the Customs Act
6. the 2007 Valuation Rules
7. CBU
8. CKD
9. Triumph UK
10. Triumph Thailand

appellant in promotional activities and use of trademark by the appellant. The appellant also entered into a Management Services Agreement dated 28.06.2013 for supply of services by Triumph UK to the appellant. On 01.07.2017, the Distributor Agreement and the Management Services Agreement were renewed.

4. The Directorate Revenue of Intelligence[11] initiated investigation and also issued summons to Vishal Goyal on 06.10.2016 and Tarun Sachdev on 20.10.2016 and 17.01.2017. The investigation ultimately resulted in the issuance of a show cause notice dated 30.09.2019 to the appellant alleging that MSF and APE incurred by the appellant were liable to be added to the value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules since these expenses were a "condition of sale". It was, therefore, alleged that the appellant evaded customs duty by undervaluation of the imported goods. The period of dispute is from July 2014 to June 2019.

5. The appellant filed a reply on 01.06.2020 to the show cause notice and denied the allegations made therein. The appellant also filed additional written submissions on 08.06.2020. The main contention of the appellant in reply to the show cause notice are:

(i) The services procured under the Management Services Agreement are in the nature of business support services and do not bear any correlation with the import of goods;

(ii) Services provided under the Management Services Agreement are on independent basis and are not obligatory in nature for the purpose of imports;

(iii) The appellant had paid the applicable service tax/goods and service tax on MSF paid to Triumph UK;

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11. DRI

(iv) There is no relation between the imported goods and APE incurred by the appellant;

(v) APE incurred by the appellant are not obligatory in nature for the purpose of import of imported goods nor as a condition of sale basis the Distributor Agreement;

(vi) Entire APE cannot be treated as APE incurred for imported goods as it includes other expenses such as post-sale discounts to dealers, conferences with dealers, and dealer/distributor training expenses;

(vii) Management Services Agreement and Distributor Agreement are independent of each other and are meant for different purposes; and

(viii) The appellant has received services under MSA for undertaking efficient and smooth business operation in India.

6. The Additional Directorate General passed the order dated 24.09.2020 confirming the demand holding that:

(a) The Agreements exclusively provide for mandatory undertaking of "management/administrative" and "advertisement and promotional" activities related to the imported goods pursuant to which the appellant remitted MSF to Triumph UK and APE to third parties;

(b) It can be concluded that the payments of MSF and APE are a "condition of sale" of imported goods for such payments are made to satisfy the obligation of the seller towards the third parties and such payments have not been included in the price actually paid or payable for the imported goods; and

(c) Transaction value declared by the appellant is liable to be re-determined by way of inclusion of the amount remitted to

Triumph UK (as MSF) and to third parties (as APE), as such amount constitute a condition of sale of imported goods.

7. The demand raised in the order dated 24.09.2020 passed by the Additional Directorate General is as follows:

Expenses and payments sought to be added to the transaction value of the imported goods	**Amount of differential duty demanded in the impugned order**
Advertising and Promotional Expenses (APE)	14,99,50,634
Payment of Management Services Fees (MSF)	6,86,39,220
Total	**21,85,89,854**

8. On the aforesaid demand of the differential duty interest as applicable under section 28AA of the Customs Act has also been demanded and penalty in terms of section 114A of the Customs Act has been imposed.

9. It is against this order dated 24.09.2020 that the present appeal has been filed.

10. The dispute in the present appeal relates to valuation of the imported goods. The issues that arise for consideration are:

(i) Whether the advertisement and promotional expenses incurred by the appellant in India are required to be added to the value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules;

(ii) Whether the management services fees remitted by the appellant to Triumph UK are required to be added to the value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules;

(iii) Whether the extended period of limitation could have been invoked in the facts and circumstances of the case;

(iv) Whether interest under section 28AA could be demanded from the appellant; and

(v) Whether penalty could be imposed upon the appellant under section 114A of the Customs Act.

11. To appreciate the issues involved in this appeal, it would be appropriate to refer to the relevant provisions.

12. Section 14 of the Customs Act relates to valuation of goods. The relevant portion of section 14 is reproduced below:

> "**Section 14. Valuation of goods**
>
> (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:
>
> Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:
>
> Provided further that the rules made in this behalf may provide for,-
>
> (i) the circumstances in which the buyer and the seller shall be deemed to be related;
>
> (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
>
> (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or

> accuracy of such value, and determination of value for the purposes of this section;
>
> (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria."

13. Rule 3 of the 2007 Valuation Rules relates to determination of the method of valuation. Sub-rule (1) of rule 3 provides that subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with the provisions of rule 10. Sub-rule (2)(b) of rule 3 provides that the value of imported goods under sub-rule (1) shall be accepted provided that, amongst others, the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of goods being valued and that the buyer and the seller are not related, or where the buyer and seller are related the transaction value is acceptable for customs purposes under the provisions of sub-rule (3). Sub-rule (3)(a) provides that the transaction value shall be acceptable in a case where the buyer and seller are related if the examination of circumstances of the sale of the imported goods indicates that the relationship did not influence the price.

14. Rule 10 of the 2007 Valuation Rules deals with cost and services and rule 10(1)(e), which is relevant, is reproduced below:

> "**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) *****
>
> (d) *****

(e) 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.

Explanation.- 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."

(emphasis supplied)

15. Rule 13 of 2007 Valuation Rules deals with Interpretative Notes and provides that the Interpretative Notes specified in the Schedule to these Rules shall apply for the interpretation of these rules.

16. Note to rule 3 of the 2007 Valuation Rules is as follows:

"**Price actually paid or payable**

The 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. *****

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, 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 value of imported goods.

*****"

17. Note to rule 3(2)(b) of the 2007 Valuation Rules is as follows:

"**Rule 3(2)(b)**

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value

> shall not be acceptable for customs purposes. Some examples of this include-
>
> (a) *****
>
> (b) *****
>
> (c) *****
>
> However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. **Likewise, 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 value of imported goods nor shall such activities result in rejection of the transaction value.**"
>
> **(emphasis supplied)**

18. It is not in dispute that the appellant and Triumph UK are related parties. Under the provisions of section 14 of the Customs Act and the 2007 Valuation Rules, related party import transactions are examined by the Special Valuation Branch[12] to determine whether the relationship has influenced the declared value.

19. In the present case, the SVB, by an order dated 09.12.2014, categorically held that the relationship between the appellant and Triumph UK had not influenced or reduced the invoice value of the imported goods. On a periodic review in 2018, after the appellant had furnished copies of the relevant Agreements, the SVB, by an order dated 20.12.2018, reaffirmed the finding holding that:

> "There is no evidence of any payment over and above the invoice value of the imported goods to make any addition under the provisions of Rules 10(1) of Customs Valuation Rules, 2007."

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12. the SVB

20. It is stated that the aforesaid orders passed by the SVB were not appealed or reviewed by the department and have attained finality.

21. During the course of its business, the appellant entered into a Distributor Agreement dated 01.07.2013[13] with Triumph UK. The appellant has been described as the Distributor in the Agreement. The relevant portions of the agreement are reproduced below:

> "**TRIUMPH**
>
> **NON-UK DISTRIBUTOR AGREEMENT**
>
> **This Agreement is made this 1st day of July 2013, between:**
>
> **Triumph Motorcycles Ltd.**, whose business address is Normandy Way, Off Dodwells Road, Hinckley, Leicestershire, LE10 3BZ, England ("Triumph")
>
> **and**
>
> **Triumph Motorcycles (India) Private Limited**
> Unit-CB24, Stylus Business Center, EGL
> 1st Floor, Pine Valley, Off. Intermediate Ring Road,
> Bangalore-560071
> (the "Distributor")
>
> and **governs (1) the sale by Triumph to the Distributor of Triumph products** (homologated for use in the Sales Area), **accessories and replacement parts for those products listed in Exhibit I as amended from time to time** (those products, accessories and replacement parts together in this Agreement called the "Products"), (**2) the provision by Triumph and the use by the Distributor of marketing materials and programmes and (3) the participation of the Distributor in promotional activities including Riders Association of Triumph and (4) the use of trade marks, and related matters.**
>
> *****
>
> **1. APPOINTMENT AND TERM**

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13. the Distributor Agreement

a) Triumph hereby appoints the Distributor as its exclusive importer and distributor of the Products in the Sales Area described in Exhibit II with effect from the date of this Agreement. *****

*****

3. MARKET REPRESENTATION AND DEVELOPMENT

The Distributor agrees actively to promote and develop the sale of the Products throughout the Sales Area, to ensure their balanced and thorough distribution and at all times to stimulate and supply the demand and requirements of the potential market for the Products in the Sales Area. For the avoidance of doubt Products in this clause 3 as throughout this Agreement means motorcycles, parts, clothing and accessories manufactured and/or supplied by Triumph. The Distributor expressly undertakes the following obligations:

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b) PROMOTION OF PRODUCTS

The Distributor shall actively promote and advertise the sale of the Products throughout the Sales Area and shall hold at least all such promotional events and activities as Triumph shall require from time to time. The Distributor shall in particular promote and distribute such marketing materials, and participate in and offer such promotional programmes and marketing incentives, as Triumph may require from time to time, and shall purchase from Triumph and ensure that its dealers display all such point-of-sale materials as Triumph shall from time to time make available. When the Distributor achieves in the Sales Area either annual sales of 500 motorcycles or an established customer list of 500 persons, the Distributor will discuss with Triumph the establishment in the Sales Area in the following 6 months of a branch or branches of the Riders Association of Triumph club and Triumph shall provide reasonable advice, assistance and materials to enable the Distributor effectively to establish and manage the promotion and activities of the Riders Association of Triumph.

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4. ORDERS AND TERMS OF PURCHASE

a) The Distributor shall buy its entire requirement for Products from Triumph on Triumph's terms and conditions of sale from time to time in force and subject to the provisions of this Agreement.

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6. PRICES

a) The Distributor shall purchase Products from Triumph at the prices current at the time of delivery of any of them. Triumph will notify the Distributor from time to time of prices but may alter its prices without notice both before and after acceptance of the Distributor's order.

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10. TITLE

a) Products shall remain the property and in absolute ownership of Triumph until the Distributor has paid in full all amounts owned by the Distributor to Triumph (including without limitation applicable taxes including VAT) in respect of each relevant transaction. Until such payment is made the Distributor holds the Products as Triumph's fiduciary agent and bailee and Triumph may at any time request the return of any of the Products which have not been paid for and which are in the possession or control of the Distributor.

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17. RELATIONSHIP OF THE PARTIES

a) The Distributor shall sell the Products as principal. It shall not otherwise dispose of the Products, and shall not sell the Products on behalf of, or in the name of, Triumph.

*****

19. TERMINATION OF AGREEMENT

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19.2 Triumph shall have the right to terminate this Agreement forthwith by written notice to the Distributor without affecting its accrued rights and without entitling the Distributor to receive any compensation:

a) if the Distributor fails to fulfil any of its obligations in clause 3 including, in particular, making the minimum level of purchases determined in accordance with clause 3(a) or failing to obtain prior written consent to the manufacture or distribution of competing products in accordance with clause 3(n);

*****"

(emphasis supplied)

22. A fresh Distributor Agreement dated 01.07.2017 was entered into between the appellant and Triumph UK.

23. A Management Service Agreement dated 28.06.2013[14] was also executed between Triumph Motorcycles Ltd. and Triumph Motorcycles (India) Pvt. Ltd. The relevant portions of this Agreement are reproduced below:

"**AGREEMENT**

DATED 28th June 2013

BETWEEN

(1) **TRIUMPH MOTORCYCLES LIMITED**, a company incorporated in England and Wales (company number 01735844), having its registered office at Ashby Road, Measham, Swadlincote, Derbyshire DE127JP (the "Supplier"); and

(2) **TRIUMPH MOTORCYCLES (INDIA) PRIVATE LIMITED**, a company incorporated in India (company number U35122KA2012FTC063008), having its registered office at No. 235, 10th Main, 7th Cross, Hanumantha Nagar, Bangalore – 560019, Karnataka, India (the "Recipient")

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14. Management Service Agreement

BACKGROUND

A The Supplier and the Recipient are Affiliates (as defined below) of each other.

B Since the Effective Date (as defined below) the Supplier has been providing certain management services to the Recipient for the purpose of running its business, on the terms of this agreement. The parties wish for the Supplier to continue to provide the Recipient such services in accordance with the terms services in accordance with the terms set out in this agreement.

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1. DEFINITIONS AND INTERPRETATION

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"Service Fee" the remuneration to be paid by the Recipient to the Supplier pursuant to clause 5, as calculated in accordance with schedule 2;

"Services" the management services set out in schedule 1; and

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5. SERVICE FEE

5.1 In consideration of the provision of the Services by the Supplier, the Recipient shall pay the Supplier the Service Fee.

5.2 The Service Fee for each Quarter shall be:

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12. TERM AND TERMINATION

12.1 This agreement shall come into force on the Effective Date and, subject to clause 12.2, shall continue in force unless and until terminated by either party giving to the other not less than one (1) Months' notice of termination.

12.2 Either party may terminate this agreement immediately upon notice to the other party if such other party:

12.2.1 is in material or persistent breach of this agreement and, in the event of a material breach (where such breach is capable of remedy), fails to remedy the breach within 30 days of receipt of notice of such breach; or

12.2.2 becomes insolvent or a receiver, examiner or administrator is appointed over the whole or any part of such other party's assets or such other party is struck off (without the ability to be reinstated) the Register of Companies (or similar register) in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up such other party (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound); or

12.2.3 ceases to be its Affiliate.

*****"

24. This Agreement was renewed by a fresh Agreement dated 01.07.2017.

25. It is in the light of the aforesaid provisions of the Customs Act, the 2007 Valuation Rules and the two Agreements that Shri Rohan Shah, learned senior counsel for the appellant assisted by Shri Mohammed Anajwalla made the following submissions:

(i) The issue regarding inclusion of MSF in the transaction value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules has been decided in favour of the appellant in the following decisions of the Tribunal:

(a) Thyssenkrupp Elevator (I) P. Ltd. vs. **ACC (Import & General), New Delhi**[15];

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15. 2017 (356) E.L.T. 249 (Tri.-Del.)

(b) **Schwing Stetter (I) Pvt. Ltd.** vs. **Commissioner of Customs (Imports), Chennai**[16]; and

(c) **Alcan India Pvt. Ltd.** vs. **Commissioner of Customs (Import), Mumbai**[17];

(ii) MSF, in view of the aforesaid decisions, being for independent services not related to the import of goods, cannot be added to the transaction value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules;

(iii) The issue regarding inclusion of APE in the transaction value has also been decided in favour of the appellant by the Tribunal in the following decisions:

(a) **Reliance Brands Luxury Fashion Pvt. Ltd.** vs. **Principal Commissioner of Customs, New Delhi**[18];

(b) **Commissioner of Customs, Patparganj** vs. **Adidas India Marketing Pvt. Ltd.**[19];

(c) **Indo Rubber and Plastic Works** vs. **Commissioner of Customs**[20]; and

(d) **Giorgio Armani India (P) Ltd.** vs. **CC, New Delhi**[21];

(iv) Thus, as the APE represent marketing and promotional activities carried out by the appellant on its own account, it would not satisfy the condition set out for inclusion of the value under rule 10(1)(e) of the 2007 Valuation Rules;

(v) The impugned order, therefore, fails to appreciate that the jurisdictional preconditions of rule 10(1)(e) of the 2007 Valuation Rules were not satisfied as the payments were not incurred as a "condition of sale" of the imported goods. In this

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16. 2016 (344) E.L.T. 271 (Tri. - Chennai)
17. 2015 (323) E.L.T. 623 (Tri.-Mumbai)
18. (2024) 390 E.L.T. 249 (Tri.-Del.)
19. 2020 (374) E.L.T. 394 (Tri.-Del.)
20. 2020 (373) E.L.T. 250 (Tri.-Del.)
21. 2018 (362) E.L.T. 333 (Tri.-Del.)

connection, reliance has been placed on the following decisions:

(a) **Lulu International Shopping Malls Pvt. Ltd.** vs. **Commissioner of Customs, Kochi**[22];

(b) **Page Industries** vs. **Commissioner of Customs, Bangalore**[23];

(vi) The impugned order overlooks the key aspects of the Distributor Agreement, Management Services Agreement, MSF and APE;

(vii) It is not open to the department to go behind the terms of the contract and rewrite the terms and conditions of the contract entered into between the parties. The Distributor Agreement does not stipulate that the supply of goods would be made subject to the appellant making payment of MSF with Triumph UK or the appellant incurring minimum level on APE spends;

(viii) The department failed to discharge the burden cast upon it under rule 10(1)(e) of the 2007 Valuation Rules and findings have been recorded on surmises and conjunctures;

(ix) The second condition contained in rule 10(1)(e) of the Valuation Rules that provides that payment should be made by the "buyer to the seller" or by the "buyer to the third party" so as to "satisfy an obligation of the seller" is also not satisfied;

(x) The impugned order is contrary to the Interpretative Notes to rule 3 of the 2007 Valuation Rules;

(xi) The transactions in the present case are "service transaction" and, therefore, subject to service tax/goods and service tax and cannot be taxed again to customs duty;

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22. Customs Appeal No. 20383 of 2024 decided on 02.06.2025 (CESTAT-Bang.)
23. Customs Appeal No. 20132 of 2023 decided on 13.03.2024 (CESTAT-Bang.)

(xii) Reliance on the decision of the Tribunal in **Reebok India Company** vs. **Commissioner of Customs, Patparganj**[24] in the impugned order is misplaced in view of the decisions of the Tribunal in **Giorgio Armani** and **Adidas India**;

(xiii) The SVB orders were passed with full knowledge of the Agreements submitted by the appellant. They recorded a categorical finding that no addition to the value of the imported goods is warranted under rule 10(1)(e) of the 2007 Valuation Rules. Thus, also no addition could be made to the value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules;

(xiv) The extended period of limitation could not have been invoked in the facts and circumstances of the case;

(xv) Interest and penalty could not have been imposed; and

(xvi) The demand for interest on countervailing duty, special additional duty and integrated goods and service tax is unsustainable in view of the judgment of the Bombay High Court in **Mahindra & Mahindra Ltd.** vs. **Union of India**[25].

26. Shri Mihir Ranjan, learned special counsel for the department and Shri M.K. Shukla, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

(i) The Additional Director General was justified in including the payments made for MSF and APE in the transaction value under rule 10(1)(e) of the 2007 Valuation Rules since the appellant paid the specific amount to the overseas sellers as a condition of sale;

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24. 2018 (364) E.L.T. (Tri.-Del.)
25. (2023) 3 Centax 261 (Bom.)

(ii) The contention of the appellant that all documents had been submitted to the SVB is not correct as the appellant did not submits all the Agreements to the SVB before the DRI initiated the inquiry;

(iii) The contention of the appellant that the transactions are charged to service tax is not correct;

(iv) The dispute in the present case has to be tested in light of the provisions of rule 10(1)(e) of the 2007 Valuation Rules;

(v) The contention of the appellant that the relationship between the payments made under MSF and imported goods being valued must bear some mathematical relation is not correct; and

(vi) The decisions, on which reliance has been placed by the appellant to contend that the pre-conditions of rule 10(1)(e) of the 2007 Valuation Rules have not been satisfied, are misplaced.

FIRST ISSUE

Whether APE can be added to the value of imported goods

27. As noted above, under the two Distributor Agreements dated 01.07.2013 and 01.07.2017, Triumph UK granted to the appellant the exclusive right to import, distribute and sell Triumph products in India and other specified territories. The Agreements envisage that the appellant, in its capacity as an independent distributor and owner of the goods post-import, would undertake advertising, marketing and promotional activities "at its own cost" in order to develop sales of the products in the specified territory. The appellant was subject to minimum sales and purchase targets, bearing full commercial risk and responsibility for distribution. While the appellant was required to promote/advertise products and could be asked to hold

promotional events, these activities are undertaken "at the own cost of the appellant", and no fixed expenditure towards promotion/advertising imposed on the importer/distributor as a percentage of invoice value or otherwise was prescribed in the Agreements. Ownership in the goods passes to the appellant upon payment for the said goods. Non-fulfilment of obligation could lead to termination of the Agreement, but such termination is a commercial consequence not an enforceable legal right of Triumph UK to compel specific advertising spends. On termination, the appellant has to "sell" the goods in stock back to Triumph UK at the agreed price.

28. What, therefore, transpires is that the goods imported from Triumph UK are "sold to the appellant". Consequently, the appellant becomes the owner of the goods and all subsequent activities, including advertising, marketing and promotional efforts, are undertaken in relation to goods of which the appellant is the owner. These activities are carried out on the "own account" of the appellant to enhance the sale of its own products in the sales area. The Interpretative Note to rule 3(2)(b) of the 2007 Valuation Rules makes it absolutely clear that where the buyer undertakes, on its own account, even though by Agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities cannot form part of the value of the imported goods, nor can such activities justify rejection of the transaction value.

29. What follows from an appreciation of Interpretative Note to rule 3(2)(b) of the 2007 Valuation Rules, is that:

(i) Even if the Distributor Agreement envisages that the appellant will promote or advertise the products, but since such expenditure is incurred by the appellant on its own account for its own benefit and profit in respect of goods that it owns, such

expenditure cannot be included in the assessable value of the imported goods; and

(ii) Since the expenses are neither in discharge of any obligation of Triumph UK, nor are they a "condition of sale" of the imported goods, rule 10(1)(e) of the 2007 Valuation Rules cannot be invoked.

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**.

31. In this connection, it would be appropriate to reproduce the relevant observations made by the Tribunal in **Reliance Brands** and the same are:

> "**36.** In the present case, it clearly transpires from the Agreements entered into between the appellant and the foreign suppliers that the foreign suppliers had granted to the appellant the right to import the products for distribution and sale in India but the appellant had to incur, on its own account, the expenditure towards advertising, marketing and promotion of the products. In some of the Agreements the appellant was required to use its best efforts to promote and develop the distribution and sale of the products and the Agreement could be terminated at the discretion of the foreign supplier if the appellant did not spend the amount indicated in the Agreement.
>
> **37. In the decisions referred to above, it has been held that advertisement expenditure can be added to the sale price for determining the assessable value only if there is an enforceable legal right to insist on incurring of the expenses on advertisement and publicity. A clause in the Agreement requiring**

> **the appellant to promote sales of the products cannot be treated as a clause imposing legal obligation on the appellant to incur certain level of expenses on advertisements. Merely because there is a discretion vested in the foreign supplier to cancel the Agreement does not mean that there is an enforceable right.**
>
> **38. Note to Rule 3(2)(b) of the Interpretation Notes also needs to be remembered.** Though it provides that if the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes but it also provides that 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 value of imported goods nor shall such activities result in rejection of the transaction value.
>
> **39. It cannot, therefore, be urged that the appellant incurred expenditure to satisfy obligation of foreign sellers. Thus, the first requirement of Rule 10(1)(e) of the 2007 Valuation Rules is not satisfied.**"
>
> **(emphasis supplied)**

32. This view was also taken by the Tribunal in **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.

34. The decision of the Tribunal in **Reebok India**, on which reliance has been placed by the learned special counsel appearing for the department, was distinguished in paragraphs 48 and 49 of the aforesaid decision of the Tribunal in **Reliance Brands**.

35. Learned special counsel appearing for the department has also placed reliance upon the judgment of the Supreme Court in **TATA Iron & Steel Co. Ltd.** vs. **Commission of C. Ex. & Cus., Bhubaneswar**[26] to contend that APE is a "condition of sale" incurred by the appellant to satisfy an obligation of the foreign entity and, therefore, would be includable in the value of imports.

36. Reliance placed by the learned special counsel appearing for the department on this judgment of the Supreme Court in **TATA Iron** is misplaced. In **TATA Iron**, the dispute related to import of machinery together with technology know-how, drawing, technical documentation supplied by the foreign vendor. The Supreme Court held that such technical documents were indispensible for installation and functioning of the imported machinery. As APE is not a condition of sale of the imported goods, the decision relied upon by the learned special counsel in **TATA Iron** will not be applicable.

37. The factual position in the present case is covered by the decisions of the Tribunal in **Reliance Brands**, **Giorgio Armani**, **Adidas India** and **Indo Rubber**. It has been held that unless the payments are a condition of sale of the imported goods and incurred to satisfy an obligation of the foreign supplier, they cannot be added to the transaction value of the imports under

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26. 2000 (116) E.L.T. 422 (S.C.)

rule 10(1)(e) of the 2007 Valuation Rules. Interpretative Note to rule 3(2)(b) of the 2007 Valuation Rules clearly provides that if the buyer undertakes such expenses "on his own account", even though by an Agreement with the seller, the value of these activities cannot be added to the value of the imported goods.

38. It, therefore, follows that APE incurred by the appellant is not required to be added to the value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules.

Second Issue

Addition of MSF remitted by the appellant to Triumph UK

39. The issue that requires to be determined is whether MSF remitted by the appellant to Triumph UK can be added to the value of the imported goods under rule 10(1)(e) by the 2007 Valuation Rules.

40. The two Agreements dated 28.06.2013 and 01.07.2017 were entered into for several management services to be provided by Triumph UK (as the supplier) to the appellant (as the recipient) for the purpose of supporting the business activities of the appellant.

41. The services to be provided are listed in Schedule 1 to the Agreement and they are as follows:

(a) **Finance:-** Support for reporting, cash management, exchange risk, new operations, financial systems, and insurance cover;

(b) **IT:-** Service desk, software enhancements, leased lines, secure communications, and system upgrades;

(c) **Human resources:-** HR policies, performance appraisals, compliance training, HR support in non-HR countries, and education for Thai secondees/students;

(d) **Central marketing:-** Sales forecasts, despatch, customer surveys, marketing collateral including translation, trade shows, press launches, and apparel propositions;

(e) **Warranty:-** Warranty process, service bulletins, technical newsletters, and dealer support;

(f) **Management:-** Overall strategy, communication with heads, dealer/politician visits, and driving culture/policy adherence;

(g) **PCA Freight charges:-** Costs of shipments of parts, clothing, accessories from UK to dealers, borne by the recipient;

(h) **Product liability:-** Central insurance to protect recipient from product claims; and

(i) **Additional services:-** May be provided by mutual agreement

42. The consideration for these services is paid as a "service fee" which for any period is equal to an allocation of the costs for such period, plus a mark-up on such allocation of 5%. The allocation of cost is calculated in the following manner:

Function	**Allocation Key**
Accounts	Time spent basis
IT	Devices supported
Human Resources	Number of employees
Marketing	Number of wholesales
Warranty	Number of wholesales
Strategic Management	Time spent basis
PCA Freight Charges	Entities supplied
Product Liability Insurance	Number of wholesales

43. These services were provided to the appellant on a continuing basis. There is no stipulation in the Agreement that the appellant has to request for such services from Triumph UK or prevent the appellant from undertaking similar services itself or entering into other service arrangements with either Triumph UK or other service providers. The recipient of service is liable to

pay all indirect taxes on the amount paid under the Agreement. The appellant contends that it had paid service tax and subsequently goods and service tax on a reverse charge basis on these services imported from Triumph UK.

44. The contention of the learned senior counsel of the appellant is that the Distributor Agreement and the Management Services Agreement are two independent commercial transaction between the appellant and Triumph UK for import of the goods, and for the supply of services. Each Agreement operates in its own commercial field and, therefore, the provisions of rule 10(1)(e) of the 2007 Valuation Rules cannot be invoked to include the consideration paid towards service tax under the Management Services Agreement as part of the assessable value of the imported goods.

45. This submission of the learned senior counsel for the appellant deserves to be accepted.

46. MSF are payments towards identified support services and the Agreement provides that the consideration for such services is to be paid as "service fee" which is determined on a cost-plus basis. Since the Agreement stipulates that the service fee would be equal to the allocation of cost for the relevant period, plus a 5% markup, none of the parameters have any co-relation with the import of goods.

47. In this connection, it would be useful to refer to the decision of the Tribunal in **Thyssenkrupp Elevator**. The Tribunal held that payments under a service agreement for corporate services (such as accounting, consultancy, marketing and sales support) are independent of the import of goods, and hence cannot be added to the transaction value. The relevant portion of the decision is reproduced below:

"**12.** The view taken is that service agreement dated 21-12-2011 is provided by the appellants' principal to all group companies and the appellant is under obligation to avail such services. **Consequently, it has been held that payments for the services is to be made as a condition of sale of the imported goods.**

13. On a perusal of the relevant service agreement dated 21-12-2011, we observe that the appellant is required to pay the principal in Hong Kong for various corporate services, such as coordination, support accounting, consultancy, marketing and sale support, etc. It emerges on perusal of the agreement that the services are completely independent of the import of goods by the appellant. Consequently, there is no justification for such loading of the invoice value. Similar views has been expressed by the Tribunal in several other cases including the case law cited by the appellant in the case of Expert Industries (Supra). In this case, Tribunal held that product consultancy charge which has got nothing to do with the imported goods and is covered by the separate contract cannot be included in the assessable value."

(emphasis supplied)

48. The same view was expressed by the Tribunal in The **Schwing Stetter** and the relevant paragraphs are:

"**24.** On perusal of the Service Agreement dated 3-3-2011 we find that the principal agreed to provide Management Services, Sales Services, General Administrative Services which includes, marketing legal and IT Support Services, etc. and the consideration is payable on actual on quarterly basis. The copy of Invoice No. 920028, dated 29-2-2012 raised by the Schwing GmbH, Germany clearly shows that the amount raised for the services rendered for the month of Feb., 2012.

25. It is evident from the above facts that these charges are related post-manufacturing activities and not connected to the import of goods and the payments made towards these services has no nexus to the import of pumps.

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27. Further, we find that the appellants are registered with Service Tax Department and discharged Service Tax on the said service charges paid to the overseas service supplier under reverse charge basis which is not in dispute. **In view of the above facts, we hold that service charges and other charges paid to their overseas supplier towards various services has no nexus with import of pumps and accessories and the said amount not addable to the transaction value of imported goods covered in their appeals under Rule 10(1)(c) of CVR. Accordingly, we set aside the impugned order loading of the amount of service charges.**"

(emphasis supplied)

49. The contention of learned special counsel appearing for the department is that MSF payment is a "condition of sale" and is integrally linked to the Distributor Agreement. In support of this contention, reliance has been placed on the decision of the Supreme Court in **TATA Iron**. This judgment of the Supreme Court will not come to the aid of the department. As noticed above, the factual dispute in **TATA Iron** was entirely different as it related to import of machinery together with technology, know-how and technical developments supplied by the foreign vendors. It is in the background of this factual position that the Supreme Court held that such technical documents were indispensible for installation and functioning of the imported machinery. In the present case, it cannot be said that without making payment of MSF, the goods cannot be imported by the appellant.

Conclusion

50. In view of the aforesaid discussion, neither the fees relating to APE nor relating to MSF can be added to the transaction value of the imported goods under rule 10(1)(e) of the 2007 Valuation Rules. Thus, neither interest could

not be charged from the appellant section 28AA of the Customs Act nor penalty can be imposed upon the appellant under section 114A of the Customs Act.

51. It would, therefore, not be necessary to examine the contention advanced by the learned senior counsel for the appellant that the extended period of limitation could not have been invoked in the facts and circumstances of the case. It would also not be necessary to examine the contention raised by the learned senior counsel for the appellant that the SVB orders are binding on the department and, therefore, no addition to the value of the imported goods can be made under rule 10(1)(e) of the 2007 Valuation Rules.

52. The impugned order dated 24.09.2020 passed by the Additional Director General, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **29.10.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya