CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Customs Appeal No. 51079 of 2020

(Arising out of Order-in-Original No. 20/2020/Principal Commissioner dated 29.05.2020 passed by the Principal Commissioner of Customs, New Delhi)

Reliance Brands Luxury Fashion Private Ltd. ...Appellant
(formerly known as Genesis Luxury Fashion Private Limited)
4th Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai, Maharashtra-400002

VERSUS

The Principal Commissioner of Customs, ...Respondent
Air Cargo Complex, New Customs House, New Delhi

APPEARANCE:

Shri Vipin Jain, Shri J C Patel, Ms. Shamita Patel and Ms. Shilpa Balani, Advocates for the Appellant
Shri Nagendra Yadav, Authorised Representative for the Department

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 10.11.2023
Date of Decision: 01.04.2024

FINAL ORDER No. 55456/2024

JUSTICE DILIP GUPTA:

Reliance Brands Luxury Fashion Pvt. Ltd.[1] (formerly known as Genesis Luxury Fashion Private Limited) has sought quashing of the order dated 29.05.2020 passed by the Principal Commissioner of Customs ACC Import[2], by which the value of the imports made by the appellant have been reassessed by including the expenditure incurred for advertisement and marketing/promotion of the imported goods during the period from 01.09.2012 to 31.08.2017 and, accordingly, the demand of differential customs duty due to reassessment of the

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1. **the appellant**
2. **the Principal Commissioner**

value of goods has been confirmed. The Principal Commissioner has also directed recovery of interest and imposed penalty under section 114A of the Customs Act, 1962[3].

2. The appellant is engaged in the marketing and distribution of products such as shoes, bags, clothing, clothing related accessories, eyewear, perfumery and cosmetics.

3. During the period from 2009 to 2015, the appellant entered into the following Distribution/License Agreements with foreign parties/ suppliers:

(a) Exclusive Boutique Distribution Agreement dated 06.11.2009 with Etro Spa, Italy;

(b) Distributorship Agreement dated 01.04.2011 with Tumi Inc, USA;

(c) Master Store License Agreement dated 17.05.2013 with Michael Kors LLC, USA;

(d) Distribution Agreement dated 27.05.2014 with G-Star Gaw C.V. Netherlands;

(e) Exclusive Distributorship Agreement dated 18.06.2014 with Jimmy Choo Limited, England;

(f) License Agreement dated 06.05.2015 with Paul Smith Limited, England; and

(g) Distribution Agreement dated 04.11.2015 with Bottega Veneta SA, Switzerland.

4. Under the said Agreements, the foreign parties granted to the appellant the right to import for distribution and sale in India, products such as shoes, bags, clothing, clothing related accessories, eyewear, perfumery and cosmetic items bearing 'Marks' owned by the foreign parties. The said Agreements provide that the appellant shall

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3. the Customs Act

incur expenditure towards advertising, marketing and promotion of the products.

5. The relevant Clauses of the said Agreements are as follows:

(i) Boutique Distribution Agreement dated 06.11.2009 with Etro Spa, Italy

> **Article 15.1** "Affiliate shall actively and continuously promote the Products in the Territory. Accordingly, Affiliate commits to devote to advertising and promotional activity an amount equal to 5% (five percent) of the actually purchased amounts (invoiced by ETRO and shipped to AFFILIATE) of the corresponding seasons for each year as a reference plus a contribution by ETRO equal to 5% (five percent) of the actually purchased amounts (invoiced by ETRO and shipped to AFFILIATE) of the corresponding seasons for each year as a reference".

(ii) Distributorship Agreement dated 01.04.2011 with Tumi Inc, USA

> **Article 6.4** "Distributor shall establish a marketing fund, and shall contribute to such marketing fund during each Purchase Period, at such time or times as determined by Distributor and TUMI, up to five percent (5%) of the net retail sales of the Products in the Territory from all Retail Sales Locations, including TUMI Freestanding stores, locations, in the aggregate (the Marketing Fund)".

(iii) Master Store License Agreement dated 17.05.2013 with Michael Kors LLC, USA

Article 3.7 "In each contract year during the term, Licensee shall expend not less than an amount equal to six percent (6%) of total Net Wholesale sales by Licensor to Licensee (the "Advertising Budget") on advertising and promotional activities with respect to Michael Kors Products or Stores in the Territory: provided, that notwithstanding the foregoing, the Advertising Budget shall not be less than six percent (6%) of the Minimum Purchase Obligation".

(iv) Distribution Agreement dated 27.05.2014 with G-Star Raw C.V. Netherlands

Article 11.1 "Distributor shall present to G-Star a marketing plan (the "Marketing Plan") every Year of the Term in advance, to be approved by G-Star. This approval can be withheld at G-Star discretion including cases were the proposed activity may adversely affect the reputation or the image of the Products, the Trademark or are in conflict with the marketing strategy of G-Star.

The Marketing Plan as approved by G-Star (which after such consent makes part of this Agreement) shall include local advertising and promotional activities, press and public relations, events, participation at fairs and exhibitions where applicable and it shall describe in detail all aspects of the allocation of the Marketing Investment (defined below)".

Article 11.2 "The cost of implementing the marketing Plan (the "Marketing Investment") shall be borne by Distributor and must be equal to 1% of the aggregate amount of purchase Volume. As long as

Distributor is in full respect of the obligations assumed in this Agreement and any agreement between the parties or any affiliated companies of the parties and provided that the Distributor has always attained the Guaranteed Minimum Target for any year, G-Star shall grant a contribution to the marketing Investment of the Distributor with a maximum of 5% of the aggregate amount of the purchase volume ("Marketing Contribution").

(v) Distributorship Agreement dated 18.06.2014 with Jimmy Choo Limited, England

Article 11 ADVERTISING AND PROMOTION-MINIMUM AMP AMOUNTS

(a) It is expressly understood that JIMMY CHOO shall determine the international AMP strategy, and that JIMMY CHOO shall advise Distributor in order to consistently enhance the brand image.

(b) The Distributor shall use its best efforts to promote and develop the distribution and sale of the products throughout the Territory in such a manner that it is consistent with the reputation of the Trademark.

(c) At the beginning of each season the Distributor will send a proposal relating to the AMP of the Products in the Territory, including but not limited to:

(i) advertising in magazines;
(ii) public relations events;
(iii) television events; and
(iv) catelogues, leaflets, look books

(d) The Distributor acknowledges and agrees that prior to implementing such AMP plan JIMMY CHOO's written approval will be required

(e) The Distributor expressly acknowledges and agrees that it shall spend for the local and regional AMP of the Products in the Territory the minimum AMP amounts ("Minimum AMP Amounts") set out in Schedule 5.

(f) The Distributor acknowledges and agrees to supply JIMMY CHOO with supporting evidence of its AMP expenditures (to the extent reasonably possible, in particular in case of star marking) and copies of its advertising of the products.

(g) If, at the end of Contractual Year, the Distributor has not spent the entire Minimum AMP Amounts set forth in Schedule 5, JIMMY CHOO may at its discretion add the outstanding amount to the following Contractual Year's Minimum AMP Amount, or to terminate the Agreement. If the Distributor has spent a greater amount than the Minimum AMP Amounts, sums in excess may not be credited to the AMP budget for the following year, unless JIMMY CHOO has given prior written consent.

(h) The Distributor acknowledges and agrees that the failure to comply with the Minimum AMP Amounts as set forth in Schedule 5 for any Pre-Fall, Autumn/Winter, Spring/Summer or Cruise collection(s) allows JIMMY CHOO to terminate this Agreement pursuant to Clause 18 below:

(i) The Distributor agrees that its AMP activities for the Products shall be in strict adherence to JIMMY CHOO's guidelines, as to type, form and content, and that any deviation shall require JIMMY CHOO's prior written approval; this shall especially apply to the use of the Trademarks and other intellectual property rights owned by JIMMY CHOO and/or the JIMMY CHOO Group.

(j) JIMMY CHOO will supply to the Distributor AMP material (e.g. catalogues, look books, consumer brochures, standard display material, branded wrapping material and promotion presentation material), at first cost to be paid by the Distributor. All shipping costs shall be paid by the Distributor. The use of any AMP material in the Territory not supplied by JIMMY CHOO will require JIMMY CHOO's prior written approval.

(k) To ensure uniform international advertising standards, the Distributor shall use only one (1) advertising or PR agency, in connection with this Agreement, and the agency shall be approved in writing by JIMMY CHOO in advance. JIMMY CHOO may also require the Distributor to change the advertising or PR agency.

(vi) License Agreement dated 06.05.2015 with Paul Smith Limited, England

Article 12 Advertising and Promotion

12.1 The Licensee shall in each of the Contract Years spend 10% of the greater of the Minimum Order

Value or the actual order value in promoting and advertising the Licensed Business in the Territory.

12.2 Paul Smith shall in each of the Contract Years contribute 2.5% of the invoiced value of the Products for the Lincensee to spend in promoting and advertising the Licensed Business in the Territory. For the avoidance of doubt this contribution is in addition to the amount to be spent by the Licensee under clause 12.1, and shall be spent on promoting and advertising the Products in the Territory.

12.3 The Licensee shall for each Season present a marketing plan to Paul Smith for approval in advance of the Season.

12.4 The Licensee shall, upon Paul Smith's demand, produce copies of invoices and other evidence of amount expended on advertising pursuant to clause 12.1 and 12.2.

12.5 The Licensee shall not conduct or carry on any advertising whatsoever without the prior written consent of Paul Smith including the placing of advertisements.

12.6 All artwork for advertisements specifically for the Territory shall be provided by Paul Smith to the Licensee free of charge unless there is a special request or an advertising campaign as stated below in which case normal commercial rates which will be agreed and paid prior to commencement of such artwork.

12.7 In respect of any Paul Smith advertising campaigns the Licensee shall prominently display and advertise at its own expense sign, cards, notices or

displays which may be supplied to it by Paul Smith. The Licensee shall further purchase from Paul Smith, or procure locally if previously approved in writhing by Paul Smith, such signs, cards, notices or displays as Paul Smith shall reasonably require for the purposes of any such campaigns.

12.8 The Licensee shall not conduct or carry on any promotional activity, function or event whatsoever without the prior written consent of Paul Smith.

12.9 The Licensee shall prominently display and maintain at its own expense the advertising signs, cards, notices or displays supplied to the Licensee by or on behalf of Paul Smith and the Licensee shall not use or exhibit or permit the use or exhibition on or in connection with the Paul Smith Shops any signs, cards, notices or other display or advertising matter unless Paul Smith has given its consent thereto in writing and unless such matter shall be have been obtained from a supplier approved by Paul Smith who will not unreasonably withhold its consent or approval.

12.10 All approved advertising matter of whatever kind shall be maintained at the expense of the Licensee who shall be responsible for obtaining any necessary planning, bye-law or other consents therefor.

(vii) Distribution Agreement dated 04.11.2015 with Bottega Veneta SA, Switzerland

Article 11 "Distributor hereby agrees that it shall spend for its local advertising campaign, or pay to Bottega Veneta within thirty (30) days from receiving an invoice therefor if Bottega Veneta exercises it

soption to manage Distributor's local advertising plan as set forth in section 11.3 below, an amount of no less than five percent (5%) of the higher of: (i) the price of the Seasonal Minimum Purchase; and (ii) the total price of al Bottega Veneta Merchandise invoiced by Authorized Supplier for such Season ('Local Advertising Contributions")."

6. The appellant claims that pursuant to the said Agreements, the appellant imported the said products for the purpose of distribution and sale in India and the amount incurred towards expenditure for advertising, marketing and promotion of the said products was borne by the appellant from its own account.

7. In April 2016, the Directorate of Revenue Intelligence (DRI), Lucknow investigated whether the advertising/marketing expenses incurred by the appellant in terms of the said Agreements with the foreign parties were liable to be included in the value of the products imported by the appellant from them.

8. A show cause notice dated 27.10.2017 was then issued to the appellant calling upon the appellant to show cause as to why the assessable value declared by the appellant for import of goods made during the period from 01.09.2012 to 31.08.2017 should not be rejected and reassessed in terms of section 17(4) of the Customs Act and why the expenditure incurred for advertisement and marketing/promotion of the imported products amounting to Rs. 8,78,42,910/- should not be included in the assessable value for determination of customs duty.

9. The appellant filed a reply dated 03.01.2019 to the aforesaid show cause notice contending that the advertisement/marketing

expenses incurred by the appellant in terms of the Agreements with the foreign suppliers are not liable to be added to the transaction value of the imported products. It was also pointed out that the Interpretative Notes to rule 3(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [4] categorically provide 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 such activities would not be part of the value of the imported goods nor shall such activities result in rejection of the transaction value. The appellant also contended that the marketing activities and costs towards advertisement is borne by the appellant and is to the account of the appellant.

10. The Principal Commissioner passed the order dated 29.05.2020 confirming the differential duty demand of Rs.1,81,92,798/- with interest and also appropriated the amount deposited by the appellant under protest during the investigation towards the duty amount. The Principal Commissioner also imposed penalty of Rs.1,18,34,473/- on the appellant under section 114A of the Customs Act.

11. Shri Vipin Jain, learned counsel for the appellant assisted by Shri J C Patel, Ms. Shamita Patel and Ms. Shilpa Balani made the following submissions:

(i) The issue on merits stands concluded in favour of the appellant by the following decisions of the Tribunal in which it has been held that the expenditure incurred by the importer towards advertising/marketing/promotion

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4. The 2007 Valuation Rules

of the imported goods is not liable to be added to the transaction value of the imported goods:

(a) **Commissioner of Customs, Parparganj** vs. **Adidas India Marketing Pvt. Ltd.**[5]; and

(b) **Giorgio Armani India (P) Ltd.** vs. **Commissioner of Customs, New Delhi**[6] as confirmed by the Supreme Court in **Commissioner** vs. **Giorgio Armani India (P) Ltd**[7]**;**

(ii) Interpretative Notes to rule 3(2) (b) of the 2007 Valuation Rules categorically provide 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 those activities would not be part of the value of the imported goods nor shall such activities result in rejection of the transaction value;

(iii) The advertising and marketing activities are for sales in India. Therefore, the expenses related to such advertising and marketing are expenses in respect of activities carried out in India for sale of the goods in India which is post-import and, therefore, such expenses cannot be part of the value of the imported goods;

(iv) Rule 10 (1) (e) of the 2007 Valuation Rules is inapplicable in the present case;

(v) It is internationally an accepted legal position as per the GATT Customs Valuation Code that marketing/ advertising expenditure incurred by the importer even

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5. 2020 (374) E.L.T. 394 (Tri.- Del.)
6. 2018 (362) E.L.T. 333 (Tri.- Del.)
7. 2019 (365) E.L.T. A110 (S.C.)

under agreement with the foreign supplier cannot form part of the transaction value of the imported goods;

(vi) The show cause notice is barred by time under section 28 (1) of the Customs Act and the larger period of limitation under section 28 (4) would be inapplicable in the present case;

(vii) The goods are not liable to confiscation under section 111(m) of the Customs Act; and

(viii) Interest under section 28AA and penalty under section 114A of the Customs Act are liable to be set aside.

12. Shri Nagendra Yadav, learned authorised representative appearing for the department has, however, supported the impugned order and contended that it does not call for any interference in this appeal. Learned authorised representative submitted that the expenses incurred by the appellant for the promotion/marketing and advertisement have to be included in the transaction value for the reason that the appellant incurred expenses in compliance of the condition of sale mentioned in the Agreements. The contention advanced is that both the conditions laid down in rule 10(1)(e) of the 2007 Valuation Rules stand satisfied. Learned authorised representative also submitted that the issue involved in this appeal is covered by the decision of the Tribunal in **Reebok India Company** vs. **CC, Patparganj**[8] and the decision of the Tribunal in **Adidas India Marketing** would not be applicable.

13. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

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8. 2018 (364) E.L.T. 581 (Tri.-Del.)

14. It would be seen from the Agreements, the relevant portions of which have been reproduced above, that the foreign parties had granted to the appellant the right to import for distribution and sale in India products owned by the said foreign parties and under the Agreements the appellant was required to incur expenditure towards advertising, marketing and promotion of the said products. It is pursuant to the said Agreements that the appellant imported the said products for the purpose of distribution and sale in India and incurred expenditure towards advertisement, marketing and promotion of the said products. Thus, these activities were undertaken by the appellant on its own account.

15. The Principal Commissioner held that the expenditure was incurred by the appellant towards advertisement and promotion of the imported products pursuant to the Agreement and so it was required to be included the transaction value. The relevant findings are as follows:

> "29. **It is apparent, in this case, that the price is not the sole consideration as the Party is under an obligation to the supplier to incur certain expenses on advertisement and promotion of various foreign branded products imported from such suppliers. Such obligation is flowing from various Distribution / Licence agreements entered into between the Party and various suppliers.** I find that the expenditure incurred by the Party on behalf of foreign Luxury Brands, towards Advertisement and Promotion of the imported goods was also reflected in the Balance Sheets and Profit & Loss Accounts of the company which substantiates the fact that the Party is incurring expenses on the promotion of the goods in compliance of the condition of sale mentioned in the various Distribution / License Agreements. Actually, the Balance Sheets and Profit & Loss Accounts of the Party for the last five years reflects that they have incurred an expenditure of Rs. 11,26,84,390/-

towards Advertisement and Promotion of the products, **out of which Rs. 8,78,42,910/- is relatable to the expenses incurred for the advertisement and promotions of the foreign branded products imported by them.**

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31. **In view of the fact that the Party is incurring substantial amount towards Advertisement and Promotion of the imported goods, the declared value of the imported goods is not true / accurate and therefore the same is liable to be rejected in terms of Rule 12 of the CVR.** Accordingly the value of the imported goods cannot be determined under the provisions of Rule 3 (1) of the CVR.

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35. **It is apparent from the above that the value would be re-determined in terms of Rule 10(1)(e) of the CVR if and only if the other payments actually made satisfy two conditions namely:**

(i) such payment should be incurred as a condition of sale of the imported goods; and

(ii) such payment should be made by the buyer to the seller, or by the buyer to a third Party so as to satisfy an obligation of the seller.

36. It is apparent from the above discussions that the Party and the supplier have entered into agreements requiring the Party to incur substantial expenses towards Advertisement and Promotion of the imported goods, duly reflected in the Balance Sheets and Profit & Loss Accounts of the company. This clearly substantiates the fact that the Party is incurring expenses on the advertisement and promotion of the imported goods, in India, in compliance of the condition of sale mentioned in the various Distribution / License Agreements entered into between the Party and foreign suppliers. **Thus the first condition that such payment should be incurred as a condition of sale of the imported goods is satisfied.**

> 37. **Now coming to the second requirement that such payment should be made by the buyer to the seller, or by the buyer to a third Party so as to satisfy an obligation of the seller.** I find that the goods under import are high value luxury goods. These are certain well known brands of various goods like apparels, handbags, wallets, footwear etc. of various brands like "Jimmy Choo", "TUMI", "Michael Kors", "Paul Smith", "Bottega Venetta" etc. These brands are very well known all over the Globe and have become so well known only because of extensive advertising and brand promotion. Thus advertisement and brand promotion is an important and essential activity in relation to such high value goods. These goods become so well known because of their extensive advertisement and endorsement by the celebrities. I am of the view that the suppliers have entered into such agreements so as to promote the branded goods in India as per their world-wide strategy to build the brand value. **This view gets credence from the fact that the agreement not only prescribe minimum level of expenditure towards advertisement, marketing and sales promotions, it also provide in details, through requirement of prior approval, the manner of such advertisement and sales promotion. I am of the view that if the Party was not put under obligation, by the supplier, to incur the substantial expenses on advertisement and promotion in India, the supplier would have to incur such expenses to build their brand value in India. This being the case, I am of the view that the second condition laid down in Rule 10(1)(e) of the CVR that the payment should have been incurred to satisfy an obligation of the seller also stands satisfied."**
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> **(emphasis supplied)**

16. The main issue that arises for consideration in this appeal is whether the expenditure incurred by the appellant towards advertising, marketing and promotion of the goods imported by the appellant under the Agreements with the foreign suppliers is liable to be added to the transaction value of the imported goods. In order to

appreciate this issue, it will be appropriate to examine the relevant provisions.

17. Section 14(1) of the Customs Act provides that the value of the imported goods and export goods shall be the transaction value of such goods, which would be the price actually paid or payable for the said goods, where the buyer and the seller of the goods are not related and the price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. The 2007 Valuation Rules have been framed in exercise of the powers conferred by section 14(1) of the Customs Act. They provide for, amongst others, determination of the method of valuation as also the cost and services.

18. The relevant provisions of the 2007 Valuation Rules for determination of the transaction value are as follows:

> "**Rule 3. Determination of the method of valuation. –** (1) **Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10**;
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> (2) Value of imported goods under sub-rule (1) shall be accepted:
> Provided that-
>
> (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which-
>
> (i) are imposed or required by law or by the public authorities in India; or
> (ii) limit the geographical area in which the goods may be resold; or
> (iii) do not substantially affect the value of the goods;
>
> (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below:

(3) ------

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

RULE 10. Cost and Services. – (1) In determining the transaction value, these 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.**

(2) --------

(3) --------

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule."

RULE 13. Interpretative notes. – The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules."

(emphasis supplied)

19. Note to rule 3 contained in the Schedule to the Interpretative Notes is as follows:

The Schedule (see rule 13)

INTERPRETATIVE NOTES

Note to rule 3

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. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

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.

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) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) The price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(c) The price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semifinished goods which have been provided

> by the seller on condition that he will receive a specified of the finished goods.
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> **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 furnished 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.**"
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> **(emphasis supplied)**

20. It would be seen that rule 3 deals with the determination of the method of valuation. It provides that subject to rule 12, the value of the imported goods shall be the transaction value adjusted in accordance with provisions of rule 10. Rule 10 deals with cost and services. It provides that in determining the transaction value, the amount referred to in (a), (b), (c), (d) and (e) of sub-rule (1) of rule 10 shall be added to the price actually paid or payable for the imported goods. The payment referred to in (e) of sub-clause (1) of rule 10 is in issue in this appeal. It provides that in determining the transaction value, 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 shall be added. Sub-rule (4) of rule 10 stipulates that no addition shall be made to the price actually paid or payable in determining the value of the imported goods, except as provided for in rule 10.

21. It, therefore, clearly emerges from a bare perusal of rule 10(1)(e) that it contemplates two situations in which all other payments actually made or to be made can be added to the price actually paid for determination of the transaction value. The first is a situation when all other payments actually made or to be made by the buyer to the seller as a condition of sale of the imported goods to the extent that such payments are not included in the price actually paid or payable, have to be added. The second is a situation when all other payments actually made or to be made by the buyer to a third party as a condition of sale of the imported goods to satisfy an obligation of the seller to the extent that such payments have not been included in the price actually paid or payable have to be added.

22. For the sake of convenience, rule 10(1)(e) can be broken up into two parts for the purpose of determining the transaction value by adding:

> (a) such payments actually made or to be made as a **condition of sale** of the imported goods **by the buyer to the seller** to the extent such payments are not included in the price actually paid or payable;
>
> Or
>
> (b) such payments actually made or to be made as a **condition of sale** of the imported goods **by the buyer to a third party** to satisfy an obligation of the seller to the extent such payments are not included in the price actually paid or payable.

23. What also needs to be noticed is that in both the aforesaid two situations the payment should be made as a condition of sale. The second situation also requires that they should be made to satisfy an

obligation of the seller towards a third party. As an example, the obligation of the seller could be when the seller owes a debt to a third party. In such a situation, the seller may require the buyer to adjust the debt. Rule 10(1)(e) requires that this requirement should be a condition of sale of the imported goods, for it is not that every debt which the seller owes to a third party can be added to the price of the imported goods.

24. In regard to the first condition that such payment should actually be made or to be made by the buyer to the seller or by the buyer to a third party as a condition of sale of the imported goods, it is also necessary that there is an enforceable right available to a seller to enforce such a condition. Thus, an option must not be available with the buyer to ignore the condition of sale.

25. The importance of sub-rule (4) of rule 10 of the 2007 Valuation Rules cannot also be lost sight of. It, in very clear terms, provides that no addition shall be made to the price actually paid or payable in determining the value of the imported goods, except as provided for in rule 10.

26. Equally important are the Interpretative Notes contained in the Schedule to the 2007 Valuation Rules. Note to rule 3 provides in clear terms that 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. In fact, the note to rule 3 (2)(b) states 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. However, conditions or

consideration relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. As an example, it has been stated 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 would not be part of the value of imported goods nor shall such activities result in rejection of the transaction value.

27. These are important factors which would have to be taken into consideration for determining whether the requirements set out in rule 10(e) of the 2007 Valuation Rules are satisfied.

28. It will also be useful, at this stage, to refer to cases that have discussed the requirement of rule 10(1)(e) of the 2007 Valuation Rules that payment should actually be made as a condition of sale. These decisions hold that the costs incurred on advertisement and promotion, even if such advertisement and promotion is carried out under an agreement between the buyer and seller, can be added to the amount paid by the buyer for import of goods only when there is a right with the seller to enforce such a condition on the buyer to incur such expenditure.

29. In **Commissioner of Central Excise, Surat** vs. **Surat Textile Mills Ltd** [9] , the Supreme Court emphasized that advertisement expenditure incurred by a customer the manufacturer can be added to the sale price for determining the assessable value only if the manufacturer has an enforceable legal right against the customer to insist on incurring such advertisement expenses by the customer. The relevant portion of the judgement is reproduced below:

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9. 2004 (167) E.L.T. 379 (S.C.)

> "21. We have carefully perused the judgments and orders passed by the CEGAT which are impugned in these appeals. As righty contended by the counsel appearing on either side, the CEGAT failed to appreciate the arguments advanced before it by the counsel appearing on either party in its proper perspective. In fact, in Civil Appeal Nos. 13400/1996, 4672/1997 and 4762/1997, the CEGAT failed to appreciate that in several earlier judgments, the CEGAT consistently held that the advertisement expenditure incurred by a manufacturers" customer can be added to the sale price for determining the assessable value, only if the manufacturer has an enforceable legal right against the customer to insist on the incurring of such advertisement expenses by the customer."

30. This judgement of the Supreme Court in **Surat Textiles Mills** was followed by the Principal Bench of the Tribunal in **Honda Seils Power Products Ltd.** vs. **Commissioner of Central Excise, Meerut- III**[10]. The Tribunal noticed, after perusing the agreement, that there was nothing in the agreement from which it could be concluded that the appellant had an enforceable legal right against the dealers that they must incur certain amount of expenses on advertisement and publicity of the products of the appellant and merely because a clause in the agreement required the dealer to make efforts for promoting sales of the products of the appellant would not mean that a legal obligation was cast upon the dealer to incur expenses on advertisement. The observations of the Tribunal are as follows:

> "5. We have considered the submissions from both the sides and perused the records. The undisputed facts are that:-
>
> (a) the appellant's agreement with their dealers only have a clause which require the dealers to make

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10. 2015 (317) E.L.T. 510 (Tri. – Del.)

efforts for promoting the sales of the appellant's **products**; and

(b) during the period of dispute, the dealers had incurred expense on advertisement and publicity, a part of which had been reimbursed by the appellants to the dealers.

The point of dispute is as to whether the expenses on advertisement and publicity expenses incurred by the dealers, which were borne by them, are to be added to the assessable value of the goods or not. On this point, it is seen that the Apex Court in case of C.C.E., Surat v. Surat Textile Mills Ltd., reported in 2004 (167) E.L.T. 379 (S.C) has held in clear terms that only when a manufacturer has enforceable legal right against his customers/ dealers to insist on incurring of expenses on advertisement, the advertisement expense incurred by the dealers can be added to the assessable value. Same view has been taken by the Tribunal in case of Maruti Suzuki India Ltd. reported in 2008 (232) E.L.T 566 (Tri.- Del.).

6. **On going through the appellant's agreement with their dealers, we find that there is nothing in their agreement from which it can be concluded that appellants had enforceable legal right against the dealers to insist on incurring of certain amount of expenses on advertisement and publicity of the appellant's products. Just a Clause in the agreements requiring the dealers to make efforts for promoting sales of the appellant's products cannot be treated as a clause imposing legal obligation on the dealers to incur certain level of expenses on advertisement.** In view of this, we hold that the impugned orders are not sustainable. The same are set aside. The appeals are allowed."

(emphasis supplied)

31. In **Maruti Suzuki India Ltd.** vs. **Commissioner of Central Excise, Delhi/Bhopal**[11], the appellant was a manufacturer of motor vehicles and parts thereof. The appellant had an agreement with the

11. 2008 (232) E.L.T. 566 (Tri. – Del.)

dealers that they shall at all times during the currency of the agreement make efforts to promote the product and its reputation in the allotted territory. The Department formed an opinion that since the dealers incurred expenses under the terms of the agreement, such activities were carried out on behalf of the manufacturer and therefore, would have to be treated as consideration for sale and accordingly, differential duty was required to be paid. The Tribunal held that there was no enforceable legal right with the appellant to insist on incurring such advertisement expenses and at best, failure on the part of dealer to cause advertisement, could only lead to the cancellation of the agreement. The relevant portion of the decision of the Tribunal is reproduced below:

> "10. In the present case, relating to M/s. Maruti Suzuki India Limited, we find it has been claimed that the advertisements are not done by all the dealers; and even in respect of dealers undertaking such advertisements, the extent of expenses does not get linked to or proportionate to number of vehicles sold by them; it was claimed that the dealers have incurred expenses varying from 0.0070% to 0.2333% of total sale value. **In view of the above, it appears that these advertisements cannot be held to have been carried out by the buyers on behalf of the manufacturer; that the assessee has no enforceable legal right to insist on incurring such advertisement expenditure.** The contention of the Department that there is no option available to the dealers does not stand proved. **The stand of the department that the failure on the part of the dealer may lead to the cancellation of dealership and therefore there is a enforceable legal right is (not) acceptable. Such cancellation cannot enable recovery of dealer"s share of cost of advertisements.** Therefore, this case is squarely covered by the decisions of the Hon"ble Supreme Court in the cases of Philips India Ltd. v. CCE, Pune reported in 1997 (91) E.L.T. 540 (S.C) and the decision of Surat

> Textile Mills [2004 (167) E.L.T. 379 (S.C)] cited supra wherein it has been held that "the advertisement expenditure incurred by a manufacturers" customer can be added to the sale price for determining the assessable value, only if the manufacturer has an enforceable legal right against the customer to insist of the incurring of such advertisement expenses by the customer."
>
> **(emphasis supplied)**

32. The same view was taken by a Division Bench of the Tribunal in **Giorgio Armani India**. The observations of the Tribunal are as follows:

> "10. Lastly, we consider the loading @3% of the value of purchase. **As per the agreement with the foreign buyers, the appellant is required to incur an expenditure not less than 3% towards advertising in India.** Such advertisement is carried-out in India for promotion of "Giorgio Armani" Brands. Such expenditure is incurred after import of the goods. **Even though, the appellant is required to incur such expenditure as per the agreement with the foreign principal, it cannot be said that such expenditure has been incurred to satisfy the obligation of the foreign principal.** Consequently, the condition specified in rule 10 (1)(e) is not satisfied and accordingly we find no justification to load the invoice value to this extent. Such loading is accordingly set-aside."
>
> **(emphasis supplied)**

33. It needs to be noted that against the aforesaid decision of the Tribunal in **Giorgio Armani India**, the Department filed a Civil Appeal[12] before the Supreme Court. This Civil Appeal was dismissed by the Supreme Court on 02.01.2019 observing that the Supreme Court was not inclined to interfere with the impugned order. The observations of the Supreme Court are as follows:

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12. Diary No. 41388 of 2018 decided on 02.01.2019

> "Delay condoned. We are not inclined to interfere with the impugned order. The appeal is accordingly dismissed."

34. The provisions of rule 10(1)(e) of the 2007 Valuation Rules also came up for interpretation before a Division Bench of this Tribunal in **M/s Indo Rubber And Plastic Works** vs. **Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi**[13]. M/s Indo Rubber entered into an agreement with Sunlight Sports for the purpose of import and sale of "Li Ning" brand sports goods within India. Article 4 of the agreement provided that the Distributor will make best endeavours to promote and extend sales of goods within the territory. Article 7 provided that the Distributor will bear all costs of marketing, advertising and promotions for the territory. The Revenue believed that the marketing, advertising, sponsorship and promotional expenses/ payments made by M/s Indo Rubber for promotion of "Li Ning" brand was a condition of sale and consequently such amount was liable to be included in the value of the imported goods in terms of rule 10(1)(e). The Tribunal held that the activity of advertisement and sales promotion was a post import activity incurred by the appellant on its own account and not for discharge of any obligation of the seller under the terms of sales.

35. The relevant portion of the decision of the Tribunal is reproduced below:

> "**16. xxxxxxx. Further, we find that the activity of advertisement and sales promotion is a post import activity incurred by the appellant on its own account and not for discharge for any obligation of the seller under the terms of sale."**
>
> **(emphasis supplied)**

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13. 2020-VIL-85-CESTAT-DEL-CU

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.

40. The second requirement of rule 10(1)(e) is that payment should be made by the buyer to a third party to satisfy an obligation of the seller towards the third party.

41. The contention of the learned counsel for the appellant is that even if payment is made by the buyer to a third party as a condition of sale of the imported goods, then too it has to be established that the seller had a pre-existing obligation to pay the said amount to such third party, which obligation of the seller is being discharged by the buyer. If any payment is made by a buyer to a third party on his own account, then the condition would not be met and this amount cannot be added to the value of the imported goods since it has not been made to satisfy a pre-existing obligation of the seller.

42. In this connection it would be important to refer to the Interpretative Notes contained in the Schedule to rule 13 as such notes can be applied for the interpretation of the rules. Note to rule 3 deals with "price actually paid or payable", which expression finds place in rule 10(1) dealing with **cost and services** for determining the transaction value. It is this "price actually paid or payable" that has been explained in the Note to rule 3 to mean the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. Such payments can be made directly or indirectly and an example of indirect payment would be the settlement by the

buyer, whether in whole or in part, of a debt owed by a seller. It has also been provided that in the Note that activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not to be considered as an indirect payment to the seller even though they may be regarded as of benefit to the seller. The cost of such activities cannot, therefore, be added to the price actually paid or payable in determining the value of the imported goods.

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

advertising and promotion warranty costs and similar expenses have been excluded from the transaction value if paid by the importer, even if he is obliged to make the expenditure under an agreement with the seller and even though the activities also benefit the foreign seller. It has also been emphasized that the phrase "undertaken by the buyer on his own account" means expenses incurred and paid for by the buyer. The relevant provisions contained in Chapter III of the book dealing with "Transaction Value of the Imported Goods (Articles 1 and 8)" are reproduced below:

> "**A.** The price for the goods when sold for export to the country of importation
>
> Article 1 states that the customs value of imported goods shall be the Transaction Value (TV) that is
>
> "the price actually paid or payable for the goods when sold for export to the country of importation"
>
> adjusted in accordance with Article 8 and provided that none of the grounds for rejecting Transaction Value applies. (C8-15)
>
> **1. The Price**
>
> (a) ----
>
> (b) ----
>
> (c) ----
>
> (d) ACTIVITIES BENEFITING BOTH BUYER AND SELLER; ADVERTISING, WARRANTY, ETC.
>
> "**Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value".**
>
> **The most important of such activities are advertising and warranty and other marketing and promotion efforts which benefit both the**

exporter and the importer by increasing sales and by making the trademark, if there is one, more valuable. As to these expenditures, the Notes go on to say:

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

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

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

> The phrase 'undertaken by the buyer on his own account' means very simply expenses incurred and paid for by the buyer....."
>
> **(emphasis supplied)**

44. A Division Bench of the Tribunal in **Adidas India** examined almost similar terms of the Agreements and held that the requirements of rule 10(1)(e) of the 2007 Valuation Rules are not satisfied.

45. In view of the aforesaid decision the second criterion is also not satisfied.

46. This apart, advertising and marketing activities are for sale of the imported goods in India and, therefore, expenses related to such advertising and marketing are expenses in respect of activities carried out in India for sale of the goods in India post-import. Such expenses cannot, therefore, be said to conditions of sale of the imported goods and cannot form part of the value of the imported goods.

47. Learned authorised representative of the Department has, however, placed reliance on the decision of the Tribunal in **Reebok India** to contend that advertising and promotion expenses have to be added to the price of the imported goods for determining the transaction value. The relevant portion of the decision of the Tribunal in **Reebok India** is reproduced below:

> "**The crux of the dispute is whether such expenditure incurred by the appellant in terms of the above clause will incur the mischief of rule 10(1)(e) of the Customs Valuation Rules**. For such payments to be added to the price actually paid, the same should be made as a condition of sale by the buyer to seller or by the buyer to the third party to satisfy the obligation of the seller and such payments are not already included in the price actually paid. **There is no doubt that the amount is not already included in the price actually paid or payable. The**

appellant is allowed to import goods from the principal in terms of the above agreement only subject to the terms of the entire agreement. In terms of this agreement the appellant will have to necessarily spend 6 per cent of the invoice value on advertisement and promotion. It is an obligation of the appellant to its principal for import of goods. The other related question is whether such amounts have been spent by the appellant to satisfy an obligation of the seller i.e. RIL England.

8. In addition to para 4.13.4 further conditions are mentioned in clause 4.9. In terms of this clause, we note that the appellant is not only required to spent on advertising, but is required to submit marketing and business plan, advertising budget, and even is required to get vetted by Principal draft of any endorsement or promotion contract exceeding the value of US dollar 25 per cent year. These stipulations lead us to conclude that RIL UK is controlling every aspect of such promotion. RIL UK is the owner of the brand name 'Reebok' and it is obvious that such promotion, and advertising is towards promotion of their brand as a whole and not only in respect of goods being imported by the appellant. Therefore, from these agreements it is evident that the appellant is carrying out such brand promotion on behalf of RIL England and such expenses were made on behalf of RIL UK. **Hence we conclude that advertising and promotion expenses have been incurred as a condition of sale and on behalf of seller and may be considered as satisfying the obligation of the seller.**

9. The interpretative Note of Rule 3 (2) (b) of the Customs Valuation Rules forbids loading the expenses incurred relating to marketing of the imported goods, if such expanses are incurred by the buyer on his own account even though by agreement with the seller. It is clear from the discussion above that the appellant has incurred such expenses on the expression obligation of RIL England and as a clear condition of the sale of goods for disputing them in India**. It cannot be concluded, in the facts of the present case, that the expenditure has been incurred by the**

appellant on their own account.

10. We have also considered the various case laws cited by the Appellant in the appeal as well as argued. Most of the case laws deal with including in the transaction value with amounts paid towards royalty and other expenses. In the specific case cited by the assessee, Samsonite 2015 (327) ELT 528 Tribunal-Mumbai, the Tribunal has set aside the demand made by the Department by including certain expenses incurred by the M/s. Samsonite towards advertising. However, after a careful perusal of the case we note that such expenses were charged to the account of M/s. Samsonite by their principal as a share of the global expenditure. Consequently we are of the view that facts of that case is distinguishable and will not be applicable to the present facts of the case."

(emphasis supplied)

48. It needs to be noticed that the same Members of the Bench that decided **Reebok India** on 12 January, 2018 also later decided **Giorgio Armani** on 05 April, 2018. In **Giorgio Armani**, the appellant was required to incur an expenditure of not less than 3% towards advertising in India for promotion of "Giorgio Armani Brands". The Bench noticed that even though the agreement required such expenditure to be incurred, but it could not be said that such an expenditure was required to be incurred to satisfy an obligation of the seller and therefore, the condition specified in rule 10(1)(e) was not satisfied. The decision of the Tribunal was assailed by the Department before the Supreme Court. The Supreme Court dismissed the Civil Appeal holding that the Court was not inclined to interfere with the impugned order. However, in **Reebok India,** the same Bench which decided **Giorgio Armani,** also examined the provisions of rule 10(1)(e) of the 2007 Rules. The Bench noted that under article 4.13.4, the distributor had agreed to spend on advertisement and

promotion a sum not less than 6% of its total net invoice sale of products and under article 4.9, the distributor was required to submit marketing and business plan, advertising budget and even the draft of any endorsement or promotion contract exceeding a certain value was required to be approved. It is from a reading of these two provisions of the agreement that the Bench concluded that the advertisement was caused by the distributor on behalf of the seller and, therefore, the expenses had been incurred as a condition of sale on behalf of the seller and could be considered to be an obligation of the seller. The decision rendered in **Samsonite South Asia Pvt. Ltd.** vs. **Commissioner of Customs (Import), Mumbai**[14], by the Tribunal was distinguished for the reason that in that case the expenses were charged to the account of **Samsonite** as a share of global expenditure. Though the Bench did notice that the amount paid by the buyer to a third party should be paid to satisfy an obligation of the seller and in this context referred to the Interpretative Notes also, but the Bench failed to examine whether the seller was indebted to the third party, which obligation of the seller was being satisfied by the buyer. It also needs to be remembered that the Civil Appeal filed by the Department against the decision of the Tribunal in **Giorgio Armani** was dismissed by the Supreme Court on 02.01.2019.

49. The decision of the Tribunal in **Reebok India** was also distinguished by a Division Bench of the Tribunal in **Indo Rubber,** as the facts were found to be different since in **Reebok India**. A Division Bench of the Tribunal in **Adidas India** also distinguished the decision of the Tribunal in **Reebok India**.

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14. 2015 (327) E.L.T. 528 (Tri.– Mumbai)

50. In this view of the matter, the reasoning of the Principal Commissioner in the impugned order that since the appellant was required and obliged to undertake marketing/ advertising in terms of the Agreements with the foreign suppliers, the price of the imported goods cannot be said to be the sole consideration within the meaning of section 14 of the Customs Act and, therefore, the transaction value is liable to be rejected under rule 12 of the 2007 Valuation Rules is clearly contrary to the categorical stipulation in the Interpretative Notes to rule 3 that activities relating to marketing of the imported goods undertaken by the buyer, even though under agreement with the seller, cannot be considered to be additional consideration and cannot form part of the value of the imported goods, nor shall such activities result in rejection of the transaction value.

51. It would, therefore, not be necessary to examine the other contentions raised by learned counsel for the appellant for setting aside the impugned order.

52. The impugned order dated 29.05.2020 passed by the Principal Commissioner, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed with consequential relief(s).

(Order pronounced on **01.04.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Jyoti, Shreya

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Customs Appeal No. 51079 of 2020

(Arising out of Order-in-Original No. 20/2020/Principal Commissioner dated 29.05.2020 passed by the Principal Commissioner of Customs, New Delhi)

Reliance Brands Luxury Fashion Private Ltd. ...Appellant
(formerly known as Genesis Luxury Fashion Private Limited)
4th Floor, Court House, Lokmanya Tilak Marg, Dhobi Talao, Mumbai, Maharashtra-400002

VERSUS

The Principal Commissioner of Customs, ...Respondent
Air Cargo Complex, New Customs House, New Delhi

APPEARANCE:

Shri Vipin Jain, Shri J C Patel, Ms. Shamita Patel and Ms. Shilpa Balani, Advocates for the Appellant
Shri Nagendra Yadav, Authorised Representative for the Department

CORAM: **HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 10.11.2023
Date of Decision: 01.04.2024

ORDER

Order pronounced on **01.04.2024.**

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Jyoti