

AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs and Service Tax)
Hotel Samrat, 4th Floor, Kautilya Marg, Chanakyapuri
New Delhi

Present:
Justice V.S. Sirpurkar (Chairman)
Shri S.S.Rana (Member)
Shri R.S.Shukla (Member)

The 5th day of August, 2016

Ruling No. AAR/Cus-1/ 26 /2016
in
Application No. AAR/44/Cus-1/5/2015

Name & address of the applicant : M/s First Concept Production Services Pvt.
Ltd., Gurgaon

Commissioner concerned : Commissioner of Customs, New Custom
House, IGI Airport, New Delhi

Present for the applicant : Shri Tarun Gulati, Advocate
Shri Kishor Kunal, Advocate
Sh. Manish Rastogi, Advocate

Present for the Department : Shri Dr.Sudesh Sheoran (AR)

Ruling

M/s First Concept Production Services Private Limited (hereinafter also referred to as applicant) is a resident private limited company. The applicant is a wholly owned subsidiary of Production Resources Management ("PRM"), of which the ultimate parent company is Broadcast Solutions ("BS"). BS engaged, *inter alia*, in the business of providing broadcasting related and production services including providing broadcasting equipment on rental basis to various customers throughout the globe. The applicant is in the process of setting up its business of providing support services to various broadcasting companies for conducting sports and entertainment related events. The applicant wishes to provide outdoor broadcast related production services, which will

include provision of production and such other associated services relating to broadcast of events (“programme production services”).

2. Applicant proposes to procure and import various technical equipment, *inter alia*, including video cameras, camera lenses, audio and video cables and other supporting parts of the broadcasting equipment (“Broadcasting Equipment”) classifiable under Chapter 85 or Chapter 90 of First Schedule of the Customs Tariff Act, 1975 on lease from various vendors. Applicant proposes to procure and import the said Broadcasting Equipment, *inter alia*, in the following manner:-

a Model A: In terms of Model A, the applicant will be taking the said Broadcasting Equipment from BS on lease basis. BS itself has a repository of equipment of various specifications which have been procured from manufacturers throughout the globe and are owned by BS. The said equipment are usually discontinued models of the camera and other broadcasting relating tools purchased by BS from various manufacturers;

b. Model B: Under Model B, the equipment are leased by the applicant from BS, which in turn has been hired by BS from the various manufacturers;

c. Model C: Under Model C, the applicant procures the said equipment from independent third party manufacturers/vendors directly.

3. At the time of import of the said Broadcasting Equipment, the applicant proposes to provide the following documentation with respect to the aforementioned Models in order to justify the value declared for the purpose of levy of Customs Duty:-

i. Chartered Engineer’s Certificate certifying the description of the said equipment, price of the new equipment as in the year of its manufacture, current C.I.F. Value of the equipment, period of usage etc.;

ii. Chartered Accountant’s certificate showing the current book value of the said equipment.

4. Applicant *inter-alia* submits that in aforementioned Models of procurement, the Broadcasting Equipment will be procured by the applicant on lease basis temporarily and for a period for which they are required for the execution of contracts entered into between the applicant and its customers in India; that said Broadcasting Equipment falling under Chapter Heading 85 and 90 of the Tariff; that in terms of the said

Exemption Notification, “*machinery, equipment or tools*” falling under Chapter 84,85,90 or any other Chapter of the Tariff are eligible for the exemption subject to the limitation and conditions specified therein.

5. Applicant has raised following questions for ruling by this Authority:

A. *Whether the applicant is eligible to claim the exemption under Notification No. 27/2002-Cus dated 01.03.2002 as amended by Notification No. 27/2008-Cus dated 01.03.2008 under the category of temporary import of leased goods?*

B. *Whether the value stated in the Chartered Engineer’s Certificate to be provided by the applicant at the time of import of the said Broadcasting Equipment can be the basis of Customs Valuation?*

C. *In the alternative, whether the book value of the said Broadcasting Equipment shown in the books of accounts of BS/foreign suppliers can be basis of Customs Valuation?*

D. *In the alternative, whether depreciated value of the said Broadcasting Equipment can be the basis of Customs Valuation?*

6. It is observed that benefit of Notification No. 27/2002-Cus dated 01.03.2002, as amended by Notification No. 27/2008-Cus dated 01.03.2008 can be extended provided;

- i. The importer should have taken the goods on lease;
- ii. The importer makes a declaration that the goods are imported temporarily for execution of a contract;
- iii. The goods imported in terms of the exemption are re-exported within three months from the date of import or within an extended period but not exceeding 18 months from the date of the said import with appropriate permission from the Deputy/Assistant Commissioner of Customs;
- iv. Where extension is granted by Deputy / Assistant Commissioner of Customs for re-export, the importer shall pay the differential duty; and
- v. Importer will undertake to re-export said goods within 3 months of date of import or such extended time; to produce the said goods for identification before re-export before Deputy/Assistant Commissioner of Customs and to pay balance

duty along with interest, if said goods are not re-exported within the stipulated period.

7. Applicant submits that he would be satisfying all the conditions of Notification No. 27/2008-Cus dated 01.03.2008, as amended, therefore they are eligible to claim benefit of same. Revenue also has no objection. We have examined the provision of said notification with the plea made by the applicant. We are also in agreement that benefit of Notification No. 27/2002-Cus, amended by Notification No. 27/2008-Cus, shall be available to the applicant.

8. Applicant inter-alia submits that said Broadcasting Equipment proposed to be imported by the applicant on lease basis from BS are not manufactured in India and neither are similar nor identical goods available in the market on account of the fact that the said equipment are outdated and in most of the cases, obsolete; that accordingly, Rules 3 to Rule 8 are not applicable to the present case; that in terms of Rule 9, which provides for the Residual Method of valuation, a reasonable means of valuation ought to be adopted on the basis of available data; that therefore where the Chartered Engineer's Certificate clearly provides for the value ascribed to the said imported equipment, it ought to be adopted for the purpose of levy of Customs Duty under the Act. Applicant further submits that even with respect to the independent third party vendors, the import invoice will be well supported by the Chartered Engineer's Certificate which will categorically certify the description of the second-hand machinery, price of the new machinery as in the year of its manufacture, current C.I.F. Value of the new machinery, period of usage etc. and therefore, the value declared on the basis of the said import invoice along with the certificate issued by the Chartered Engineer ought to be taken as the transaction value for the purpose of calculating the concessional rate of Customs Duty. Applicant states that in light of the foregoing, that the price to be declared by the applicant at the time of import of the said Broadcasting Equipment on the basis of invoice received from BS as well as third party vendors ought to be considered as the transaction value for the purpose of levy of concessional rate of Customs Duty.

Book Value shown in the books of Accounts of the Overseas Vendors ought to be adopted for the purpose of Customs Valuation.

9. Applicant submits that in any event and without prejudice to the submissions that the Chartered Engineer's certificate ought to be taken as the basis for valuation of the imported goods, the book value shown in the books of accounts of BS and the third party vendors supported by a Chartered Accountant's Certificate can be taken as the value for the purpose of Customs Valuation.

Depreciated Value of the said Broadcasting Equipment can be adopted for Customs Valuation

10. Further, applicant submits that in any event and without prejudice to the aforementioned, the depreciated value of the said Broadcasting Equipment can be adopted for the purpose of Customs Valuation. In this regard, applicant refers to the Circular No. 4/2008 dated 12.02.2008 issued by the Central Board of Excise and Customs, wherein, it is clarified that where the Transaction Value is rejected, in the case of a second-hand machinery, valuation can be done on the basis of value of the new machine, as certified by the Chartered Engineer and scaled down by allowing depreciation commensurate with the period of usage; that in the present case, in the event that the Transaction Value viz. the invoice value is not accepted, the value of the said Broadcasting Equipment can be made by allowing the depreciation in terms of the period of usage of the said equipment; that higher rate of depreciation should be available in earlier years as compared to the methodology of charging depreciation on equipments as per CBEC Circular F.No.493/124/86-Cus VI dated 19.11.1987; that Chapter 6 of the Foreign Trade Policy and Handbook of Procedures entail that the depreciation shall not be capped to 70% as mentioned in the said Customs Circular; that the depreciation policy prescribed vide Circular No. F. No. 493/124/86-Cus VI, dated 19.11.1987 cannot be made applicable to the present case as the broadcasting equipments imported by the applicant would have substantially undergone price change due to change in technology and value ought to be calculated in accordance with the principles of depreciation applicable to similar high-end equipment.

11. Revenue submits that valuation of second hand machinery needs to be done as per the guidelines issued by CBEC vide Circular No. 25/2015-Cus dated 15.10.2015, wherein a detailed method has been prescribed for the purpose. Further, CBEC Circular

No. 4/2008-Cus dated 12.02.2008, relied upon by the applicant stands superseded by said Circular dated 15.10.2015.

12. It is admitted fact that the valuation of broadcasting equipment proposed to be imported temporarily on lease basis, has to be under Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 under "Residual Method". Rule 9 ibid inter-alia states that where the value of imported goods cannot be determined under the provisions of any of the proceeding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

13. It is observed that CBEC vide Circular No. 25/2015-Cus dated 15.10.2015 issued guidelines for valuation of second hand machinery, which are summed up in paragraph 12 and reproduced below;

12. To sum up, the following guidelines shall be followed:

(a) All imports of second hands machinery/used capital goods shall be ordinarily accompanied by an inspection/appraisal report issued by an overseas chartered engineer or equivalent, prepared upon examination of the goods at the place of sale.

(b) The report of the chartered engineer or equivalent should be as per the Form A annexed to this circular.

(c) In the event of the importer failing to procure an overseas report of inspection / appraisal of the goods, he may have the goods inspected by any one of the agencies in India, as are notified by the DGFT under Appendix 2G of the Handbook of Procedures (HBoP) 2015-20 and Aayat Niryat Forms to [FTP 2015-20](#), as amended from time to time (para 2.59 of Handbook of Procedures 2015-20 refers).

(d) At the customs stations where agencies notified by DGFT are not present, importers may continue to avail of the services of locally empanelled chartered engineers.

(e) In cases where the report is to be prepared by the agencies in India notified by DGFT or the chartered engineers empanelled by Custom House, the same shall be in the Form B annexed to this circular.

(f) *The value declared by the importer shall be examined with respect to the report of the chartered engineer. Similarly, the declared value shall be examined with respect to the depreciated value of the goods determined in terms of the Circular No. 493/124/86-Cus VI, dated 19-11-1987[2014(300) E.L.T. (T5) and dated 4.1.1988 [2008 (222) E.L.T. (T15)]. If such comparison does not create any doubt regarding the declared value of the goods, the same may be appraised under Rule 3 of the CLVLR, 2007. If there are significant differences arising from such comparison, Rule 12 of the CVR, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and condition of the goods, determine whether the declared transaction value conforms to Rule 3 of CVR, 2007. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of Rules 4 to 9.*

14. It is clearly mentioned in CBEC Circular No. 25/2015-Cus that value declared by the importer has to be examined with report of Chartered Engineer as also with the depreciated value arrived in terms of said CBEC Circular dated 19.11.1987. In case, there are significant differences from such comparison, proper officer of Customs will seek explanation from the importer for justification of declared value. If proper officer is not satisfied with said justification of the importer, he may proceed to determine the value under Rule 9 *ibid* (as Rule 3 to Rule 8 are not applicable in this case). It is noticed that CBEC Circular No. 25/2015-Cus is reasonable method of determining the value of second hand machinery in this case.

15. In view of above, we rule as under;

A. The applicant is eligible to claim the exemption under Notification No. 27/2002-Cus dated 01.03.2002, as amended by Notification No. 27/2008-Cus dated 01.03.2008 under the category of temporary import of leased goods.

B,C,and D. The value stated in the Chartered Engineer's Certificate to be provided by the applicant at the time of import of said Broadcasting Equipment will be one of the basis of Customs Valuation in terms of paragraph 12 of CBEC Circular No. 25/2015-Cus dated 15.10.2015. Further, determination of value of the second hand Broadcasting Equipment proposed to be imported shall also be as per said Circular.

-Sd/
(S.S. Rana)
Member(R)

-Sd/
(V.S.Sirpurkar)
Chairman

-Sd/
(R.S.Shukla)
Member(L)