

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 15th day of July, 2016

Ruling No. AAR/Cus/21 /2016

Application No. AAR/44/CUS/08/2014

Name & address of the applicant	:	M/s. H&M Hennes & Mauritz Retail Private Limited, New Delhi.
Commissioner concerned	:	Commissioner of Customs Inland Container Depot, Tughlakabad, New Delhi-110020.
Present for the applicant	:	Shri Tarun Gulati, Advocate
Present for the Department	:	Shri Amresh Jain, Authorised Representative (AR)

RULING

M/s H & M Hennes & Mauritz Retail Pvt. Ltd (hereinafter also referred to as applicant) is an Indian wholly owned subsidiary comprising of M/s H&M Hennes & Mauritz GBC AB, Sweden ("H&M GBC") holding 99% of equity shares of the applicant and M/s H&M Hennes & Mauritz International AB, Sweden ("H&M AB") holding the remaining 1% shares of the applicant. Applicant is in the process of setting up its business of single brand retail trading of various products viz. Clothes and Apparel, Footwear, Cosmetics and Accessories, Handbags, Home furnishing products, Children

Products, Outdoor utility products etc. under the brand 'H&M". H&M AB, resident in Stockholm, Sweden, is the parent company of the H&M group of related entities. H&M AB currently operates as the centralized administrative entity of the global H&M operation and is the owner of all H&M intellectual property related to the H&M brand and trademarks. H&M AB's main responsibilities include the development of the overall strategic direction of the H&M Group and the maintenance and ownership of the H&M brand and trademarks. H&M AB has granted global exclusive rights to H&M GBC to exploit "H&M concept" and associated trademarks, and to implement the marketing and brand strategies as defined by H&M AB throughout the globe. H&M GBC, resident in Sweden, is the operational head office company of the H&M Group. H&M GBC is responsible for all operational activities within H&M Group's supply chain, including design, buying (material sourcing), production, logistics, strategy for pricing policy, advertising and marketing, shop location policy, store design, management, finance, strategy, and sales. H&M GBC holds all intellectual property, e.g., operational know-how, associated with these activities.

2. Applicant proposes to procure and import into India, said goods from independent overseas third party manufacturers at an agreed price. The said goods will be procured by the applicant on a principal to principal basis (from the third party manufacturers) and the goods will be imported into India in the name of the applicant only for which purchase orders will be placed on the third party manufacturers. Further, the invoice raised by the third party manufacturers on the applicant will form the basis of the value of the said goods for the purpose of Customs Valuation.

3. Pursuance to import of the said goods, applicant proposes to market and sell the said goods in India on the basis of commercial arrangements with H&M GBC. In this regard, for the sale of goods in India and using the H&M concept and brand, the applicant has entered into three separate Agreements with H&M GBC, which are explained hereunder:-

a. Foreign Collaboration and Sub-License Agreement: Applicant has entered into a Foreign Collaboration and Sub-License Agreement with H&M GBC dated 01.04.2014 for obtaining rights to exploit 'H&M' brand for sale of goods in India. The consideration for this agreement will form part of the Trademark License Agreement and a consolidated consideration will be paid by the applicant to H&M GBC for both the Agreements.

b. Trademark License Agreement: Applicant has entered into a Trademark License Agreement with H&M GBC which is effective from 01.04.2014 for the use of the trademark rights with respect to the 'H&M Concept' for distribution and retailing of the said goods in India. The Agreement allows the applicant to use the H&M trademark and its graphic presentations in India. Further, the license

fee under this Agreement will be calculated and paid to H&M GBC as 1% of the total sales made by the applicant.

- c. Sales and Business Support Agreement:** In lieu of the functions performed by H&M GBC towards overall market strategy, store location, store designing and concept, sales as well as for the entrepreneurial risk assumed, the applicant will pay a Sales and Business Support fee to H&M GBC in terms of the Sales and Business Support Agreement.

4. As regards the said goods proposed to be imported by the applicant, the applicant would place a purchase order for the said goods on the overseas third party manufacturers. On the basis the purchase order, the required goods will be exported by the overseas third party manufacturers directly to the applicant. The said goods will be cleared into India by the applicant. For said goods, the overseas third party manufacturers will issue separate invoices directly to the applicant on the basis of which, the said goods will be cleared in India. The price shown on the invoices of the third party manufacturers will be the sole consideration paid for the said goods and apart from the payment in terms of the said invoices, no other payment will be made by the applicant or by anybody else on behalf of the applicant to the said third party manufacturers for the said goods.

5. Applicant has raised following questions for rulings by this Authority;

- A. *Whether the value on the invoice raised by the overseas third party manufacturer on the applicant is the Transaction Value and on which Customs Duty is required to be paid in terms of Section 14 of the Act read with the Customs Valuation (Determination of Values of Imported Goods) Rules, 2007?*
- B. *Whether the Trade Mark/ License Fee and the payment made in terms of the foreign collaboration agreement by the applicant to H&M GBC does not qualify as payment under Rule 10 (1)(c) of the Rules or any other Rule and is not required to be added to the Transaction Value of the said goods for levy of Customs Duty under the Act read with the Rules?*
- C. *Whether the Sales and Business Support Fee paid by the applicant to H&M GBC does not qualify as payment under Section 10 (1) (c) of the Rules or any other Rule and is not required to be added to the Transaction Value of the said goods for levy of Customs Duty under the Act read with the Rules?*

6. Revenue submits that it is evident from the disclosure/submissions made by the applicant that the applicant and the overseas third party manufacturers do not qualify as 'related entities' in as much as none of the conditions specified in Rule 2(2) of the Customs Valuation (Determinations of Value of Imported goods) Rules, 2007 (in short Valuation Rules) is satisfied; that it is also clear that the price paid by the applicant to the overseas third party manufacturers will be based on the purchase invoices and is the

sole consideration for the sale transaction; that from the disclosure/submission made by the applicant, it also appears that none of the conditions mentioned in proviso to Rule 3(2) exists in the present case. Revenue further state that applicant has submitted that, they are not making any of the payment specified under Rule 10 to the sellers i.e. the third party manufacturers either directly or indirectly in relation to the sale of the goods by the sellers to the applicant; that Rule 10 (i) (c) of the Valuation Rules prescribe that royalties and license fee paid by the buyer of the goods, directly or indirectly, as a condition of sale, is includible in the Transaction Value; that therefore, for inclusion of royalties and license fee, it must clearly be established to be a “condition of sale” of the goods; that in the present case, import of the said goods from overseas third party manufacturers and payments of Trademark License fee by the applicant to H&M GBC are independent transactions; that in view of the aforesaid, since payment of Trademark Licenses fee by the appellant to H&M GBC is not a condition of sale of said goods by the overseas third party manufacturers to the applicant, the same does not appear to be includible in the Transaction Value for levy of Customs Duty.

7. Revenue further submits that the applicant will pay the Trademark License fee in lieu of grant of right to exploit ‘H&M concept’ in India and use of associated trademark for sale of said goods; that such Trademark License fee will be payable on the basis of the sales made by the applicant in India; that said activities for which the applicant will pay the license fee are post importation activities and are not related to the sale of goods by the third party manufacturers to the applicant. Further, the said payment of Trademark License Fee is a not condition for sale between the third party manufacturers and the applicant; that royalties and license fee to be includible in the Transaction Value, it is essential that the buyer of the goods pay the same to the seller of the goods; that this aspect has been clarified in the interpretative notes to Rule 3 of the Valuation Rules; that the said interpretative notes provide that the *“Price actually paid or payable is total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods”*.

8. Revenue further submits that the payment of Sales and Business Support fee is also not payable by the applicant as a condition of sale of said goods by overseas third party manufacturers to the applicant; that submissions made with regard to the payment of Royalties and License fees supra is also *mutatis mutandis* applicable to the payment of sale and business support fee.

9. Revenue submits that as a matter of abundant precaution, the possibility of any Agreement between the third party manufacturers and H&M GBC needs to be enquired into whereby the third party manufacturers might have agreed to supply the goods to only such party who enters into an Agreement with the H&M GBC under the Foreign Collaboration Agreement and the Trademark License Agreement. However, during hearing of this case, it was made clear on behalf of the applicant that there is no

Agreement between third party manufacturers and H & M GBC. The role of H & M GBC is only restricted to indentifying independent third party manufacturers.

10. In view of the above, there is no divergence in the views of the applicant and the Revenue as far as questions raised in this application are concerned. After examining the issue, we rule as under;

- A. *The value on the invoice raised by the overseas third party manufacturer on the applicant is the Transaction Value and on which Customs Duty is required to be paid in terms of Section 14 of the Act read with the Customs Valuation (Determination of Values of imported Goods) Rules, 2007.*
- B. *The Trade Mark/ License Fee and the payment made in terms of the foreign collaboration agreement by the Applicant to H&M GBC does not qualify as payment under Rule 10 (1) (c) of the Rules or any other Rule and is not required to be added to the Transaction Value of the said goods for levy of Customs Duty under the Act read with the Rules.*
- C. *The Sales and Business Support Fee paid by the applicant to H&M GBC does not qualify as payment under Section 10 (1) (c) of the Rules or any other Rule and is not required to be added to the Transaction Value of the said goods for levy of Customs Duty under the Act read with the Rules.*

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

Sd/-
(V.S. Sirpurkar)
Chairman

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