CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/205/2007-DB

[Arising out of Order-in-Original No. 37/2006 dated 11/12/2006 passed by Commissioner of Customs, Cochin]

M/s. FABLINE OVERSEAS
GEORGE POONTHOTTAM, ADVOCATE,
KALOOR, COCHIN

Appellant(s)

Versus

C.C-COCHIN-CUS
CUSTOM HOUSE
COCHIN
KERALA
682009

Respondent(s)

Appearance:

JAYASHANKAR P.G, ADVOCATE,
'PULLUKATTE',
SRM ROAD, ERNAKULAM NORTH
KOCHI
KERALA
18

For the Appellant

Dr. J.Harish, AR For the Respondent

Date of Hearing: 16/08/2018
Date of Decision:07/12/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21860/2018

Per : P. ANJANI KUMAR

Briefly stated the facts of the case are that the appellants presented 3 Bills of Entry, i.e. 121757, 121758 and 121759 all dated 07.01.2003, on import of "Non-Woven Interlining", intended to be used for Apparel, from M/s ASC International,

USA. During May 2003, SIB, Cochin allegedly found a Bill of Lading during examination of a consignment imported during 2002. It was alleged that the BL showed the manufacturer of goods to be M/s Milliken & Co. USA and supplied to M/s ASC International, USA and had its intended destination with the Appellant; the value indicated in this alleged Bill of Lading showed that the value declared by the Appellant was on the lower side indicating the CIF prices whereas the alleged bill of lading showed the price to be on FOB basis. The Appellants imported one more consignment vide by BOE No. 126158 and 126159 both dated 15.5.2003. The department on examination of consignments, found an invoice as well as another bill of lading which showed under valuation as well as mis-declaration.

2. The matter was referred by Cochin Customs to DRI who in turn referred to US Customs. The report received indicated that the goods were essentially scrapped in nature and the seller himself had purchased for $ 0.04 to 0.08/Kg. A Show Cause Notice dated 22.06.2006 was issued to the appellants proposing recovery of additional duty of Rs.54, 43,464 along with interest under Section 28AB and Penalty under Section 28AC. The Commissioner of Customs passed impugned order dated 30.11.2016 holding that the charge of mis-declaration had not

been proved; recovered bills of lading were not directly relevant to the issued at hand; transaction value was liable to be rejected and the import was on FOB basis and not CIF as claimed. He confirmed differential duty of Rs.24, 62,021 along with interest and equal penalty.

3. Ld. Counsel for the appellants submitted that the Commissioner has dropped the charges of mis-declaration holding that the Bill of Lading alleged to have been found had no direct relevance. For the same reason, charges of undervaluation also ought to have been dropped. The goods in question were essentially scrap in nature having no intrinsic value whatsoever as stated by the supplier himself. It is also stated by the supplier that he purchased the goods from @ 0.06- 0.1 $ per kg. If that be so, price of 0.18 $ declared by the Appellant could not be stated to be abysmally low.

3.1. It is to submit that what was recovered during examination is a set of Bills of Lading containing the price of automobile upholstery fabrics. A perusal of the documents thus recovered would show that they pertain to transport of automotive upholstery fabrics from one State in USA to another State in USA by road. In spite of the fact that the said documents were used for transport of the material from one State to another State in

USA through road the said documents has been termed by the Department as Bill of Lading.

3.2. In response to the enquiry made by the Cochin Customs as regards the genuineness of the value declared reply was given by the Department of Customs, USA that the value shown in the Bills of Entry of the transaction on which enquiry was made is the same as declared in the export document filed by the exporter with the US Customs for the export of the goods to India. The value shown in the Bill of Entry is US Dollars 0.18/KG CIF and the answer given from US Customs is also US Dollars 0.18/KG CIF. Copy of the reply given by the US Customs in response to the query made by the Department of Customs, Cochin supplied along with the show cause notice is produced as Annexure - III.

3.3. The case of the department is that the price indicated in the BOE is the FOB price and not CIF price. If that be so, the Appellant would have separately paid the freighters. The department has no case that such money was paid by the Appellant; neither could they establish any money trail which could justify such conclusion. Even if transaction value could not be accepted for some reason, then too price could be arrived at by sequentially following the procedure laid down in Rules 4 to 8 of the 1988 Rules. That having not been done, re-fixation of price in the impugned order is

liable to be set aside.

3.4. Reliance on invoice at Annexure-V is misplaced. The goods, as can be seen in the invoice, are "full width-scrap", "full width scrap- mixed" and reject-scrap-mixed, whereas the impugned goods are Non-Woven Interlining". The Commissioner has no case that these goods are similar to or identical to the good imported. No effort has been made to ascertain the nature of goods imported by the Appellant. Therefore no reliance can be placed on invoice at Annexure-V.

3.5. It is submitted that the materials covered under the 52 import documents were released on examination by the proper officer and each of those consignments were subjected to chemical analysis both in the customs laboratory and by the approved agencies for providing AZO-DYE Certificate. There is nothing to show that the chemical analysis made by the customs laboratory and the AZO-DYE certificate issued are wrong and contrary to the declarations. When that be the position, the issuance of the show cause notice on an assumption that the goods would have been something different and therefore there is mis-declaration and under valuation is mischievous and bad.

3.6. Commissioner revised the price on the basis of an invoice

dated 10-3-2003 raised by streamer lines for the supplier one M/s. PGI Non-Woven on M/s. ASC International and Master packing list with Bills of Lading numbers 4050229-239224 for the supply of scrap material from Hong Kong to USA. it was contended that the documents found to pertain to the goods covered under Bill of Entry No. 126159 dated 15-5-2003 since the container number and serial number as reflected in the Master packing list annexed with Bill of Lading numbers 4050229-239224 recovered also figured in the Bill of Lading filed along with said Bill of Entry. This statement is totally false and incorrect. It is submitted that the Bill of Entry filed by the clearing agent on behalf of the appellant in the month of May 2003 is in respect of Bill of Lading No. NFL 104391 dated 21-3-2003. The said Bill of Lading No NFL 104391, was issued by the Main Line Operator in favour of the appellant, shipped by ASC International. It can be seen from the Bill of Lading that the mode of payment of freight is clearly stated as 'freight prepaid'. It can be seen from the details furnished by the US Customs on enquiry by the Customs, Cochin as to how and in what manner the exports of these consignments were permitted from USA to India and that the price as declared in the Bills of Entry filed at Cochin is the price at which it was exported from USA as declared in the Shippers Export Declaration filed before the US Customs. It can therefore be seen the

statement contained in Para 2 of the order in original at the finding part of the order is factually incorrect.

3.7. The Customs (determination of price of imported goods) Rules 1988 provide for the determination of the value of imported goods for the purpose of Section 14 of the Customs Act. The price is when sold for export to India. The US Customs report has confirmed the fact that the price of goods when sold for export and when exported to India to be US dollars 0.18 per KG CIF, Cochin. There is no allegation that there has been any payment effected other than what has been mentioned as price when exported to India as evidenced by the purchase order and the invoice. Therefore, the declared price of US dollars 0.18 per KG CIF, Cochin is the transaction value as per law and fact. The adjudicating authority is not permitted by law to bypass this vital evidence revealed by the enquiry conducted by the authorities revealed that the real value of the goods under import by the appellant is dollars 0.18 KG CIF, Cochin for the purpose of section 14 (1) of the Customs Act. Hence this appeal on the following among other: -

3.8. Even assuming that the price indicated the FOB value and not the CIF value, then too going by Rule 9(2)(i), the cost of transport could only be 20 % of the FOB value of the goods.

Therefore, assuming 0.18$ to be the FOB value, 20% thereof 0.036$ could alone be added, taking the value of goods to 0.216 $ per kg. As such, the Commissioner having thoroughly misdirected himself in law and facts, the impugned order is liable to be set aside.

3.9. After coming to such wrong conclusions, the adjudicating authority confiscated the 58 Bills of Entry listed as Annexure I to the said order totally valued at Rs.1,36,11,176/- under Section 111(m) of the Customs Act. It is submitted that there is no law, which authorizes the confiscation of a Bill of Entry, which has been released provisionally under Section 18 of the Customs Act. Further the adjudicating authority has assessed the differential duty on 52 Bills of Entry at Rs.24,62,021/- and imposed the same amount as the penalty on the appellant under Section 114 A of the Customs Act. In so far as the six Bills of Entry are concerned which were provisionally assessed and released on bank guarantee an order under Section 111(m) was issued and allowed redemption on payment of fine of Rs.4,25,000/- and also imposed penalty of Rs.1,70,000/-under section 112 on the appellant. It is submitted that the order thus passed in respect of goods which were allowed to be released provisionally is opposed law and therefore not maintainable.

3.10. Commissioner of Customs has further held that the price declared in the invoice presented by the appellant was actually on FOB terms on the following grounds.

(i). When the value is reasonably suspected to be undervalued and prima facie evidence is available,

(ii). When the declared price is substantially lower than nor prices of the goods, and

(iii). the onus to prove the genuineness of the declared value has not been discharged by the importer (appellant).

All the three points stood proved wrong and incorrect from the averments made in the show cause memo and the documents supplied as Annexures to itself and in particular for the following:

(i). It has been confirmed by US Customs that the price declared in the documents filed with the US Customs for the export of the goods to India was US dollars 0.18/Kg CIF, Cochin which is the value declared by the appellant in the Bill of entry presented by the appellant at Cochin. No other evidence or proof can exist questioning the genuineness of this certification by US Customs regarding the value for the purpose of Section 14 of the Customs Act.

(ii). The recovered invoice (as stated by the adjudicating authority) does not pertain to the appellant but to some other

shipment from Hong Kong to USA and as the Bill of Lading number mentioned in the said recovered document is not the actual Bill of Lading under which the consignment was imported by the appellant from USA to Cochin as reflected in the Bill of Entry presented before Cochin Customs. The recovered document therefore cannot in any way be related to the appellant nor can be held to be incriminating evidence.

(iii). The Bill of Lading under which the goods were actually imported into India from USA presented along with the Bill of Entry. Freight manifest furnished by the steamer lines in pursuance to the adjudicating authorities enquiries reveal the fact that the freight is pre-paid. No evidence of payment of freight by the appellant separately and in addition to the invoice price has been provided by any of the parties with whom the adjudicating authority carried out his enquiries or unearthed by the customs officers. The only evidence available on record is the licit payment effected by the appellant as per the invoice and purchase order presented along with the Bill of Entry which is US Dollars 0.18/Kg CIF, Cochin.

3.11. What has been added to the invoice value in the in original is not the actual freight incurred in the shipment of the goods from USA to Cochin but a flat rate as per freight schedule

provided by various steamer lines for the carriage of one FCL container load. In respect of the three Bills of Entry indicated separately by the adjudicating authority in the order even this fiat rate was not available and therefore the adjudicating authority included an arbitrary rate towards freight. Thus it can be seen that actually the adjudicating authority has failed to appreciate vital facts brought out by the customs authorities themselves in the course of their investigation and included as part and parcel of the show cause memo and therefore the onus to prove that there is deliberate mis-declaration and suppression fact was never shifted to the appellant as the same was proved otherwise through the documents furnished along with the show cause notice and collected by the Department as part of the investigation. As such the order passed by the adjudicating authority ignoring those materials which were specifically highlighted through the reply to the show cause notice and the submissions made during the course of the hearing is wrong and the order in original has been passed without taking into account the said contentions. Hence the order is bad and the same is liable to be set aside. It is prayed accordingly.

3.12. He relied upon the following case law.

(i) Commissioner of Customs, Calcutta Vs South India

Television (p) Ltd 2007(146) ECR 1(SC).

(ii). Commissioner of Customs, Vishakhapatnam Vs Aggarwal Industries Ltd 2011(272) ELT 641(SC)

(iii). Mirah Exports Pvt Ltd Vs Collector of Customs 1998(98) ELT3 (SC).

4. On the other hand, Ld. DR reiterated the findings in OIO and has relied on ***Anil Kumar Tiwari Vs Commissioner of Customs, Tuticorin 2016(344) ELT 1051 (Tri-Chennai)***

5. Heard both sides and perused the records of the case. We find that the issue involves two allegations i.e. allegation of mis-declaration and allegation of under valuation against the importers. It was alleged that in respect of four Bills of Entry, impugned goods were imported by the importer from M/s. ASC International from M/s. Millikan & Co., USA. It was alleged that goods were declared as non-woven fabric (stock lot) whereas the description in the Bill of Lading set to have been recovered from the container, the description was woven fabric (stock lot). The Commissioner observed that on perusal of the examination reports in respect of the Bills of Entry, it is clear that there is no mis-declaration, evidence and that the Bills of Lading received during the investigation are not directly relevant to the issue on hand.

5.1. We find, however, that Commissioner has concluded that there was under valuation on the part of the appellants. Quoting invoice dated 10.03.2003 raised M/s. PGI non-woven on M/s. ASC International and Master Packing List with Bill of Lading No. 4050229- 239224 dated 10.03.2003, Commissioner found that these documents pertain to goods covered under Bill of Entry No. 121659 dated 15.05.2003 since the container No. and Seal No. are tallying. The value shows in the invoice recovered was USD 0.22/KG whereas the value declared in the invoice No.12171 was only USD 0.1/KG only. The Commissioner, however, gave a finding that this invoice was though raised in the course of domestic trade, is indicative of the FOB value.

5.2. Thereafter, the Commissioner proceeded of the valuation on the basis of the freight charges obtained from various streamer lines in respect of all the imports except three consignments. The Commissioner concluded that the contracted price of 0.18 USD/KG is not reflective of the transaction value and that the importer could not explain the value and could not explain as to why the freight was more than CIF value. We find force in the appellants contention that even assuming that the price indicated the FOB value and not the CIF value; going by Rule 9(2)(i), the cost of transportation could only be 20 % of the FOB value of the goods

i.e. 0.036$ and the total assessable value per Kg could be 0.216 $ per kg. However, Ld. Commissioner has taken transportation charges on the basis of information claimed to have been obtained from carriers, which was not at all proposed in the SCN.

5.3. We find that the Commissioner has not given a clear finding as to why the declared value was rejected. On the one hand, he found that there was no mis-declaration of goods on the part of the appellants and on the other hand, he proceeds to find that the price was mis-declared. The learned Commissioner has not given a reasoned finding as to why the declared price should not be allowed. He has based his findings merely on the data of shipping charges collected from various streamer agents. He has proceeded with the opinion that CIF value cannot be more than the price declared. The price declared is in the range of 0.18 USD/KG. As per the Commissioner’s findings itself, the report of special agent Shri Allan Stark and the representation of M/s. First Quality, the value of non-woven scrap was in the range of 0.02 to 0.08 USD/KG. The price declared by the appellants on the import is in the range of 0.18 USD/KG. It is also seen that the overseers investigation conducted through DRI did not reveal any significant discrepancies in the values declared by the appellants. Whereas the SCN alleged under valuation on the basis of un-connected bids of information culled from the investigation as well as the

overseer's report, the learned Commissioner proceeded to confirm the differential duty on the basis of assumed freight. No piece of evidence was put forth to show that such freight was actually paid by the appellants. Not even a single case has been cited to show that the appellants have paid the extra freight to the carriers.

5.4. The appellants have submitted that though the Commissioner has rejected the assessable value declared by them, he has not adduced any evidence to arrive at the figures they have taken for the purpose of arriving at the differential rate of duty. The fact that there were contemporaneous imports at about the same time by other importers in the country was totally ignored. We find that the learned Commissioner has not given any findings on the contemporaneous imports. In fact, the learned Commissioner has not given any finding as to under which provision of Customs Valuation Rules, the declared values of the importer were being revised. Such a non-speaking order does not stand the testimony of law. This Tribunal and the various Courts have enunciated the law regarding valuation of import goods in many cases and it was firmly held that the onus to prove that the transaction value was liable for rejection and that the value adopted is correct is squarely on the Revenue. We find that no such onus has been discharged by the Revenue. No evidence has been shown that there were contemporaneous imports at higher

price. Under such circumstances, the value adopted by the adjudicating authority is liable to be held unsubstantiated and unreasonable.

5.5. The issue of rejection of assessable value and the redetermination of the same was subject matter of a various decisions of Honorable Supreme Court. A few are discussed as below for better appreciation of the provisions of Law. We (i). In the case of Commissioner of Customs, Calcutta Vs South India Television (p) Ltd (supra), it was observed that

6. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent- importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of

under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has

to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reach the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under- valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in

the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

7. Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Department. Further, in the present case, the Department has relied upon export declaration made by the foreign supplier in Hong Kong. In this connection, we find that letters were addressed by the Department to the Indian Commission which, in turn, requested detailed investigations to be carried out by Hong Kong Customs Department. The Indian Commission has forwarded the export declarations in original to the Customs Department in India. One such letter is dated 19.9.1996. In the present case, the importer has alleged that the original declarations were with the Department. Those certain portions of the originals were not shown to the importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present civil appeal, an application was moved by the importer calling upon the Department to produce

the original declaration in the Court. No reply has been filed to the said I.A. till date. In the circumstances, we are of the view that the Department had erred in rejecting the invoice submitted by the importer herein as incorrect. Further, the Department received from the Hong Kong supplier a Fax message dated 22.7.1996. That was produced before the Commissioner. In that message, he had explained that the manufacturer of the impugned goods was getting export rebates and, therefore, it is possible that the manufacturer had over-invoiced the price in order to claim more rebate. The goods were of Chinese origin. In the Fax message it is further stated by the foreign supplier that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his order, the Commissioner has not ruled out over-invoicing of the export value by the foreign supplier in order to obtain incentives from his Government. For the afore stated reasons, we find no infirmity in the impugned judgment of the Tribunal.

(ii). In the case of ***Mirah Exports Pvt Ltd Vs Collector of Customs (supra)*** it was held that

14. *The legal position is well settled that the burden of proving a charge of under valuation lies upon Revenue and*

Revenue has to produce the necessary evidence to prove the said charge "Ordinarily the Court should proceed on the basis that the apparent tenor of the agreement reflect the real state of affairs" and what is to be examined is "whether the revenue has succeeded in showing that the apparent is not the real and that the price shown in the invoices does not reflect the true sale price." [See: Union of India Vs. Mahindra & Mahindra (supra), at p. 487].

15. *In the present case the only evidence that was adduced by Revenue in support of the charge of under-valuation is the price list No. 8102 dated February 15, 1981 which was found during the course of search in the premises of Skefko, etc. that was conducted by the officers of the enforcement Directorate on or about June 22, 1983. The price list does not even mention about the discount of 20% that has been allowed by the Tribunal in the impugned judgment. The matter of discount to be given on the prices indicated in the price list is actually mentioned in other documents that were seized during the search. The said documents include the various letters and telexes received from SKF Oversees Bearings Division, Sweden which indicate the new pricing policy of the foreign supplier. As pointed out by the Addl. Collector of Customs in his order dated April 16, 1985 the said*

documents show that 20% discount is allowed to the original equipment manufacturers who import for fitment in their manufactured products and for this build up inventories with sizeable orders after securing favorable prices between various competitors but as regards canvassers and Skefko, who import in even greater bulk for the purposes of only trading, the policy envisaged that they may even secure lower price particularly if they generated additional volumes of sales. The documents seized during the search and seizure that were produced by the appellants before the customs authorities (genuineness of which was accepted by the Addl. Collector of Customs) show that apart from Mirah Exports a number of other importers namely, Skefko, Amul Engg., Krishna Engg. work, Delhi Jayaveer Forge, Davangere, Ajay Trading Co., Delhi Ramgopal Lachmi Narayan, Bombay Sanmukh Engineering Industries, etc. has also imported comparable quantities of similar bearings at the same or lesser prices as that of Mirah Exports and that discount from 50% to 70% on the list prices was the normal invoice price for a number of unconnected importers during the period. The Collector of Customs, while passing the order dated December 5, 1986 and march 20, 1987 and the Tribunal in the impugned judgment have not taken note of the said documents and the fact that the importers had been given 50% to 70% discount on the prices

indicated in the list price.

(iii). We further find that Supreme Court in the case of ***Commissioner of Customs, Vishakhapatnam Vs Aggarwal*** Industries (supra) observed that

11. On a plain reading of Sections 14(1) and 14(1A), it is clear that the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in Section 14(1) of the Act. Section 14(1) is a deeming provision as it talks of deemed value of such goods. The determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1) of the Act. Conjointly read, both Section 14(1) of the Act and Rule 4 of CVR 1988 provide that in the absence of any of the special circumstances indicated in Section 14 (1) of the Act and particularized in Rule 4(2) of CVR 1988, the price paid or payable by the importer to the vendor, in the ordinary course of international trade and commerce, shall be taken to be the transaction value. In other words, save and except for the circumstances mentioned in proviso to Sub-rule (2) of Rule 4, the invoice price is to form the basis for determination of the transaction value.

Nevertheless, if on the basis of some contemporaneous evidence, the revenue is able to demonstrate that the invoice does not reflect the correct price, it would be justified in rejecting the invoice price and determine the transaction value in accordance with the procedure laid down in CVR 1988. It needs little emphasis that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports, which obviously

would include the date of contract, the time and place of importation, etc., were at a higher price. In such a situation, Rule 10A of CVR 1988 contemplates that where the department has a `reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Needless to add that `reason to doubt' does not mean `reason to suspect'. A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject it as evidence of the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. We may hasten to add that although strict rules of evidence do not apply to adjudication proceedings under the Act, yet the Adjudicating Authority has to examine the probative value of the documents on which reliance is sought to be placed by the revenue. It is well settled that the onus to prove under- valuation is on the revenue but once the revenue discharges the burden of proof by producing evidence of contemporaneous imports at a higher price, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct.

12. In Eicher Tractors Ltd. (supra), relied upon by the Tribunal, this Court had held that the principle for valuation of imported goods is found in Section 14(1) of the Act which provides for the determination of the assessable value on the basis of the international sale price. Under the said Act, customs duty is chargeable on goods. According to Section 14(1), the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed it

has to be decided under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place and importation in the course of international trade. The word "ordinarily" implies the exclusion of special circumstances. This position is clarified by the last sentence in Section 14(1) which describes an "ordinary" sale as one where the seller or the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale. Therefore, when the above conditions regarding time, place and absence of special circumstances stand fulfilled, the price of imported goods shall be decided under Section 14(1A) read with the Rules framed thereunder. The said Rules are CVR 1988. It was further held that in cases where the circumstances mentioned in Rules 4(2)(c) to (h) are not applicable, the Department is bound to assess the duty under transaction value. Therefore, unless the price actually paid for a particular transaction falls within the exceptions mentioned in Rules 4(2)(c) to (h), the Department is bound to assess the duty on the transaction value. It was further held that Rule 4 is directly relatable to Section 14(1) of the Act. Section 14(1) read with Rule 4 provides that the price paid by the importer in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in Section 14(1). Therefore, what should be accepted as the value for the purpose of assessment is the price actually paid for the particular transaction, unless the price is unacceptable for the reasons set out in Rule 4(2). (Also See: Rabindra Chandra Paul Vs. Commissioner of Customs (Preventive), Shillong.

7.1. On-going through the above cases, it is seen that in the

absence of any special circumstances indicated in Section 14(1) of the Customs Act, 1962, the price paid or payable should be taken as transactional value. The charges under invoices have to be supported by evidences of prices of contemporaneous of imports like goods. Invoice price, though, not sacrosanct, the Department has to give cogent reasons before rejecting the invoice price. The Department has to find out whether there are any imports of identical goods or similar goods at a higher price around of same time unless the evidence is gathered in that regard. The question of rejecting the value does not arise. The invoice price has to be accepted in such circumstances if the charge under valuation cannot be supporter either by evidence or information about comparable imports, the benefit of doubt must go to the importer. In the instant case, the Commissioner on the one hand held that there is no mis-declaration of description on the part of the appellants. He has not adduced any evidence of payment by the appellants over and above the invoice price. No proof of payment either to the foreign suppliers or to the steamer agents for transportation. Differential duty payable has been arrived only on the basis of certain data called for from the steamer agents. We find that the learned Commissioner has not only traversed beyond the SCN but also has not given due consideration to the contemporaneous imports, if any, of identical or similar goods.

Therefore, we find that the impugned order does not stand the scrutiny of law.

8. In view of the above, the appeal is allowed.

(Order was pronounced and dictated
in Open Court on **07/12/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Parveen...