

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/795 - 798, 571 & 577 /2005 - CU[DB]

Date 03/10/2008

Assistant Registrar
C.E.S.T.A.T., New Delhi

To : 1. M/S SAARA ELECTRO ACOUSTICS PVT. LTD.,
2. HARESH THAKUR
3. MODERN RADIO HOUSE,
4. STUDIO SYSTEM INC.,
23/29 OLD RAJINDER NAGAR,
NEW DELHI - 110 060.

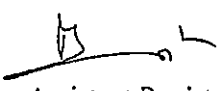
M/S SAARA ELECTRO ACOUSTICS PVT. LTD.

C.C.NEW DELHI

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. C/356-361/08-CUS. DATED 25.09.08
passed by the Tribunal under Section 129. (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

C.C.NEW DELHI

NEW CUSTOM HOUSE NEW DELHI

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5 Bar association, CESTAT, New Delhi

6 M/s. Deenarchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7 M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

8 Excise & Customs cases, B-37, Sector -I, NOIDA - 201301 Gautam Budh Nagar. (U.P.)

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

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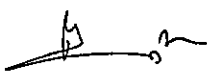
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd, 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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Assistant Registrar
(Customs Appeal Branch)

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IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I

Custom Appeal Nos. 795 – 798 and 571 & 577 of 2005

[Arising out of Order-in-Original No. SN/13-20/05 dated 20.5.05 and Order No. 11/SN/ADJ/05 dated 31.3.2005 passed by the Commissioner of Customs (Imports & General) New Custom House, New Delhi]

Date of Hearings: 03, 04 & 05.07.2008

Date of decision: 25.7.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Sara Electro Acoustics Pvt. Limited
& Others

Appellant

Vs.

CC, New Delhi

Respondent

Appearance:

Mr. Rakesh Khanna & Mr. Saurabh Khanna, Advocates for the Appellant
Mr. R.K. Verma, Authorized Representative (DR) for the Respondent

CORAM: Mr. Justice S.N. Jha, President
Mr. M. Veeraiyan, Member (Technical)

Final ORDER No C/356 to 361/08

Per: M. Veeraiyan:

1.1 Customs Appeals Nos. 795 – 798 of 2005 arise out of order of the
Commissioner No. SN/13-20/05 dated 13.02.2005. Commissioner by the

said order decided eight show cause notices issued on various dates starting from 18.09.2001 to 03.10.2002 and all of them were based on the same set of evidences.

1.2 Customs Appeals Nos. 571 & 577 of 2005 arise out of order of the Commissioner No. 11/SN/ADJ/05 dated 31.3.2005. Commissioner by the said order decided the issues based on the same set of evidences as in the cases mentioned in the appeals referred to in para 1.1 above.

1.3. By the above orders demands of duty of custom stand demanded from M/s Studio System, M/s Sara Electro Acoustics Private Limited and M/s Modern Radio House. Goods belonging to these appellants also stand confiscated; penalties stand imposed on the importers and on Shri H. Thakur.

2. Heard both sides.

3.1 Relevant facts, in brief, relating to Appeals Nos. 795 to 798 are as follows:

- a) M/s Modern Radio House, a Partnership firm, M/s Studio System inc, a Proprietary firm and M/s Sara Electro Acoustics Private Limited, are basically run by Shri Haresh Thakur, either in his capacity as power of Attorney holder , or as proprietor or as Director.
- b) They are into import of professional grade audio equipments.
- c) Premises of the above importing firms and connected premises were searched on 21.07.1997 and thereafter and documents

including price list of various overseas manufacturers and trading companies were recovered. Certain goods lying in the godown were detained with the direction not to dispose of the goods. However, the said goods were found missing and Sh. Haresh Thakur claimed that he had no knowledge about the whereabouts of the goods so detained. On follow up, the premises of CHA, M/s M.H. Khan was searched on 21.10.1997. The residential premises of Sh. Haresh Thakur were visited on 19.11.1997; after several summons issued to them, Sh. Haresh Thakur and M/s Vandana Baga, (an employee with Sh. Haresh Thakur) appeared and tendered their statements under Section 108.

- d) On investigation, show cause notices were issued to the importing firms and connected persons alleging undervaluation of imports made by them and proposing demand of differential duty on imports made under 34 bills of entries.
- e) Commissioner vide his impugned order dropped proceedings in respect of demands relating to 16 bills of entries. However, he confirmed demand of duty on 18 bills of entries. Totally a sum of Rs. 31,76,693/- stands demanded from M/s Sara Electro Acoustic Pvt. Ltd. a sum of Rs. 2,14,764/- stands demanded from M/s Modern Radio House, and a sum of Rs.42,37,072/- stands demanded from Studio System Inc. and penalties of varying amounts have also been imposed.

3.2. The facts, relating to Appeals Nos. 571 & 577 of 2005 are more or less identical. A sum of Rs.13,30,512/- stands demanded from M/s Modern

Radio House in respect of import covered by 8 bills of entries and penalties stands imposed.

4. The learned Advocate for the appellants made the following submissions.

a) In respect of imports made under 16 bills of entries, Commissioner has rejected the proposal in the show cause notice for enhancing the value based on comparable import prices on two grounds. In some cases, the compared imports were later in point of time than the imports by the appellants. In other cases, it was rejected as proposal was made to adopt pro rata prices i.e. when several items were imported under one bill of entry, based on evidence relied in respect of one of the items in the bill of entry not only value of the said one item was enhanced but the value of other items in the bill of entry were also enhanced on the same proportion.

b) The transaction value declared in respect of imports made under 18 bills of entries by the importers stands rejected by the Commissioner without valid reasons. The Commissioner has relied upon para 20 and 21 of his order wherein he discussed two isolated transactions and generalised the same and adopted in respect of all other cases of imports covered by 18 bills of entries and such generalisation was not warranted and permissible under law.

c) The value has been enhanced arbitrarily and based on unreliable documents. In respect of imports under 18 bills of entries, demand has been confirmed mostly based on TASCAM price lists of 1.11.1996 and 1.4.1997, price lists of Modern House (which did not refer to any effective date), another price list relating to April 1997 giving prices of some goods in Yen. Reliance has also been placed on proforma invoice dated 9.6.1997 of Kelmark system and the price list of dated 1.4.1997 of M/s Ultra Studio Lab.

- d) He submits that in respect of Customs' Appeal Nos. 795 to 798 substantial amount of demand i.e. Rs. 61,98,755/- was based only on price lists without being substantiated by any other evidence.
- e) He submits the price list alone cannot be the sole evidence for the purpose of enhancing the transaction value declared by the importer. The price lists are basically a reference point and the actual transaction values are arrived at after negotiation between the buyer and the seller. The prices so negotiated and arrived at will depend upon several factors such as the commercial level of purchase, terms of payment, the nature of trade relationship (i.e. of long term or a case of stray purchase) and such other relevant factors. Many times the price list indicates only the retail prices and the wholesale prices will be substantially lower than the list prices and that when large quantities are lifted over a period of time the prices are bound to be further reduced. The prices in the price list should not be adopted unless there was proof that the price lists were actually acted upon and that the same were acted upon for imports into India and that the imports were at commercial levels comparable to the level of imports by the appellant-importers. Discount from the price list is a recognized feature of international trade and, therefore, adopting the prices from the price list for imports is not justified. The price lists are no more than general quotations.
- f) The price lists relied upon, in the first place are not price lists of TASCOT for export into India; TASCOT price lists are dated 1.11.96 and 1.4.97. The price list recovered from Modern House did not have any effective date.
- g) In respect of price list recovered from M/s Modern House, he submits that they were price guides for quoting a price to local parties and includes not only the prices but also charges for various services associated

with the installation and commissioning of the acoustic system. This is basis for quotation and cannot be taken as the final price of the parts and systems listed therein and they were subject to negotiation.

h) Learned Advocate heavily relies on the decision of the Hon'ble Supreme Court in the case of Eicher Tractors Limited and submits that Rule 4 of the Customs Valuation Rules, 1998 gives the mandate to follow the transaction value unless the same come under transactions which are governed by special consideration. The special consideration has to be as specified in the rules, and there cannot be any other meaning given to rule 4. He also submits that if rule 4 is not applicable still rules 5, 6 7 and 7A have to be considered and the authorities cannot jump to Rule 8 straightaway.

i) The demand relates to period prior to coming into operation of rule 10A of Customs Valuation Rules, 1988. Therefore, the burden of proof cannot be shifted to the importers to show that the value declared by them is genuine. At any rate, if the value was found/ suspected to be lower, then it was necessary for the department to have sought for the details like manufacturer's prices and only on failure of the importers to do so, the Department could rely on other mode of valuation under rule 8.

5.1. Learned DR reiterated the findings of the Commissioner and drew our attention to the following points.

5.2. The price lists which were relied upon have been recovered from the premises of the importers only. The appellants have not cooperated in the investigation. N

5.3. In most of the cases, there is very wide variation between the import price declared by them and the prices found in the price-lists. For example, in bill of entry 571123 the price declared price was only 55 US\$ as against the price of the item which was 500 US\$ as found in the price list. Similarly in the bill of entry No. 553809 dated 2.7.97 as against the value of 689US\$ in the pro forma invoice, the price declared was only US\$ 60. Value declared in respect of some of the system is even lower than the value of some parts contained in the system.

5.4. An importer by name M/s Setron has imported as per the price list of TASCOT Japan from Japan.

5.5. Learned DR relies on the decision in the case of Vimal Enterprises Limited reported in 2001 (129) ELT 123 (Tri. Bom.), wherein the valuation based on the price list of the manufacturer was held to be legal. It was also held in the said case that when the customs authorities have established a prima-facie case of undervaluation, the burden of proving that there was no undervaluation has shifted to the assessee. The learned DR also relies on the decision of the Hon'ble Supreme Court in the case of CC, Kolkata vs. South India Television reported in 2007 (81) RLT 745 (SC), wherein it was held that the invoice price is not sacrosanct and that once that the department discharges the burden of proof by producing evidencing of contemporaneous price, the onus shift to the importer that the invoice relied on by them is valid. Learned DR submits that the decision of the Hon'ble Supreme Court in the case of Eicher Tractors Limited is based on the peculiar facts in the said case. In the said case, that Eicher Tractors purchased goods from their erstwhile supplier; the contract for supply came to an end; the goods were

tailor-made; and the supplier could not get any other customers, therefore, the goods were sold at very nominal price. In the said circumstances Hon'ble Supreme Court held that the price list cannot be relied upon for arriving at the assessable value.

6. One instance of certain payments made to Singapore in 1996 has been quoted and the import of the item has happened in 1997. Another case of an import under bill 55 of 3809 dt. 2.7.97 declaring a price of US\$ 60 has been quoted as against a proforma invoice found with them for a value of 689.

7.1. We have carefully considered the submissions from both sides. We find that the Commissioner has relied on certain instances/ evidences to reject the transaction value declared by the importers. The relevant portion of his finding in this regard, as contained in order of the Commissioner dated 13.02.2005 is reproduced below:-

"20. The noticee has further submitted that they had imported the goods from M/s Al-Yamin, UAE under the cover of an invoice which represents the true transaction value. All payments were made through bank and in no case they had declared less value than the transaction value. It was submitted that the department has not brought on record any evidence to show that the invoices were not genuine or that they did not represent price paid/ payable as agreed between the buyer and the seller and that the said invoices were manipulated. They submitted that the invoices represent the true transaction value and the evidence which the department has produced in the form of price list were not proof of transaction and evidence of contemporaneous imports were necessary to reject the transaction value. They had quoted certain judgements in their favour in this regard as detailed in the written submission as above. Before taking up each bill of entry for further discussion and the evidences which the department has brought for rejecting the transaction value, I would like to take note of certain facts which have been brought in great details in the show cause notices.

- (ii) The investigation has during the course of the search of the premises of the notices have unearthed certain documents, scrutiny of which is very important at this stage. In respect of bill of entry No. 571123 dt. 27.8.97, the investigation found out that the imports were made from M/s Ultra Studio Lab, USA at declared value of US\$ 55 whereas the price list of the same supplier dt. 1.4.96 reflected the items at US\$ 500 per pc. The price list was also recovered from his premises and he only defended such gross low value on grounds that the prices reflected in the price list were retail price subject to negotiation indicating that he negotiated the prices with such extraordinary skills that the supplier gave him the said products at US\$ 55 against the price of US\$ 500.
- (iii) Further, another invoice No. INV/S/0904/97 dt. 22.8.97 issued by M/s Denon Electronics Pvt. Ltd., Singapore in favour of M/s Modern Radio House showing the unit price for certain goods as US\$ 470 for which the importer had made full payment under advance T/T whereas the investigation has brought on record that the same goods of the same description were shown at very low prices under the cover of invoices No. 7002 dt. 1.9.97 issued by M/s Al-Yamin, Sh. Haresh Thakur in his statement dt. 28.11.07 had stated that he had purchased the said goods from M/s Al-Yamin at the declared invoice value and that in respect of supplies from Singapore supplier as mentioned above, they had not paid any amount for the same purchases. Investigations has shown him the GST refund applications along with cash purchase bills made in Singapore at that time, he was not able to give any explanation to it. The price list of M/s Ultra Studio Labs, and M/s Auvi Pte. Ltd., Singapore were recovered from the premises of the noticees which show very high price than the price at which they had declared the goods shown to have received from M/s Al-Yamin. Sh. Haresh Thakur has only stated that M/s Al-Yamin had a huge stock of inventory of that items and as they were closing down their business, they sold goods at a low price. This was a statement which indicated that he agreed that the prices were very low as compared to the prevailing prices for the said musical systems etc. The importer did not produce any correspondence in his defence from M/s Al-Yamin stating that the sale of the goods made by him was a stock clearance sale on account of closing of their business and clearance of stock at throw away prices. I find that M/s Al-Yamin sold the goods for a fairly long period of about a year to the importer. If that was the reason, it is unbelievable that the stock clearance at throwaway prices would continue for such a long period despite the fact that the price list of said items show prices at very high level

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which the said supplier could have grabbed at the time of subject sales.

I felt it relevant to take note of para 6 of the notice wherein it is stated that the stock of goods lying in their godown for which Sh. Haresh Thakur has given an undertaking to the effect that said stock of goods will not be sold, transfer or disposed off without the prior permission of the customs authorities whereas when the investigating officers visited the premises on 17.11.97 they found that Sh. Haresh Thakur could not produce the goods as per the said list. This act of Sh. Haresh Thakur also revealed his malafide all along.

21. Under Clause (a) of section 14(1) of the Customs Act, 1962 the value has to be assessed on the price at which such or like goods are ordinarily sold or offered for sale i.e. in the ordinary course of trade usually to the usual extent. Rule 4(2) of Customs Valuation Rules, 1988 provided that the transaction value of the goods under import should be accepted if the sale is in the ordinary course of trade under fully competitive conditions and it does not involve any abnormal discount or reduction from the ordinary competitive price. Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 is directly relatable to Section 14(1) of the Customs Act. Both section 14(1) and rule 4 provide that the price paid by an importer to the vender in the course of Commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2) of the Customs Valuation Rules. The investigation has brought on record clinching evidences to show that the importer was engaged in mis-declaration of the value of the goods over a period Sh. Haresh Thakur in his statements 23.12.97 (as given in para 11 above) has stated that M/s Al-Yamin Est. had a huge stock inventory of those items and as they were closing their business, they sold those items at low prices and as discussed above, I hold that the transaction value as declared by the importer falls under the exceptions mentioned in the Rule 4(2) of the Valuation Rules and accordingly the declared value is rejected being not in consonance with the Section 14(1) of the Act and Rule 4(2) of the Customs Valuation Rules, 1988. The importer has submitted that all the payments were made through banks and the onus of rejection of transaction value was on Customs. They submitted that in the show cause notice no evidence were adduced on contemporaneous import and the price list of the manufacturer/ certain traders without contemporaneous imports cannot be made basis on enhancement of value. Whereas in this case, the corroboratory evidence are on record to reject the transaction value. Accordingly having established the grounds for rejection of the transaction value, I resort to determination of value by proceeding sequentially through Rule 5 to Rule 8 of the Valuation Rules. In these cases, the value of

identical or similar goods is not available with the department and no data regarding deductive or computed value of goods have been submitted by the importer therefore, the value of the goods is determined on the basis of Rule 8 of the Customs Valuation Rules. Rules 8(2) (iv) of the Customs Valuation Rules 1988 states that no value shall be determined under the provisions of (this rule) on the basis of the price of goods for export to country other than India. In the present case the export prices for India were available in the form of the Tescam price-list and Modern Radio price list brought on record by the investigation and recovered during the course of search conducted at the office and premises of the notice".

7.2. We find that the Commissioner has, for confirming substantial part of the demand, merely relied on the price lists. The price lists or quotations are subject to negotiations. It is common knowledge that the discount from the printed price lists is a trade practice throughout the world. Even in the solitary case relied by the Department to show that the price lists has been acted upon as in the case of import by Setron from M/s Ultra Studio Lab, we find that the price quoted as per price list dated 1.4.97 for digital audio tape deck was 51,000 yens and for the same item the price declared in the price list dated 1.11.1996 is US\$ 520 and the import price for 10 sets in yen was @ 45,000 yen. In other words there has been a discount from the listed price. It was claimed on behalf of the appellant that their level of imports of the digital audio tape deck (DA 20) is much higher than those imported by M/s Setron.

7.3. The Commissioner has held that the prices of a particular import cannot be raised based on prices of imports of comparable goods at a later date. However he has adopted the prices in price lists dated 1.11.1996 and 1.4.1997 for several imports up to October 1997 and in some cases, as prices for imports of earlier period. Such a contradictory approach may not be justified, especially in the absence of evidence for acting upon those price

lists. The Commissioner has held that the value of identical or similar goods was not available with the Department and no data regarding deductive value of comparable goods was submitted by the importer and therefore value of the goods has to be determined on the basis of Rule 8 of the Customs Valuation Rules. At the same time, he basically relies on price lists which are again value of identical/comparable goods to enhance the value. There is thus apparent contradiction.

7.4. Wide variation between prices recorded in the price list /price guide / quotation/ pro forma invoice when compared to the prices declared in the bill of entry has been brought to our notice. The variations are really wide and give rise to strong suspicion in our minds also. However strong the suspicion may be, the same can not take the place of proof. The invoice prices declared by the importers are no doubt not sacrosanct as rightly held by the Supreme Court in the case of M/s South India Television (supra). But to reject the said price evidences have to be produced by the Department. The relevant portion of the decision of the Hon'ble Supreme Court which in fact is relied upon by the Id. DR is reproduced below.

"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 department 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 importers 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".

8. We hold that the Department was not able to adduce reliable evidence to reject the transaction values; there was no evidence of import at prices mentioned in the price lists to confirm that the price lists recovered from them have been acted upon; no evidence of extra payment than what was declared in the invoice price has been adduced. No evidence that the prices in the price lists were actually meant for export to India at commercial level comparable to the one imported by the importer has been adduced. Under these circumstances, the enhancement of the value based on such documents appears arbitrary and not in accordance with law.

9. The relevant portion of the decision of the Hon'ble Supreme Court in the case of Eicher Tractor is reproduced below:

"9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs Authorities are bound to assess the duty on the transaction value.

13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7-A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India". If the phrase "the transaction value" used in Rule 4 were not limited to the particular transaction then the other rules which refer to other transactions and data would become redundant.

14. It is only when the transaction value under Rule 4 is rejected, that under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely, if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent rules.

20. Mirah Exports Pvt. Ltd. along with other importers had imported bearings at high rates of discount. The declared value was rejected by the Customs Authorities on the basis of the price list of the vendors. This Court set aside the decision of the respondent Authorities accepting the argument that a discount is a recognised feature of international trade practice and that as long as those discounts are uniformly available to all and based on logical commercial bases, they cannot be denied under Section 14. It appears from the judgement that a distinction was drawn between a discounted price special to a particular customer and discounts available to all customers.

22. In the case before us, it is not alleged that the appellant has misdeclared the price actually paid. Nor was there a misdescription of the goods imported as was the case in Padia Sales Corpn. It is also not the respondent's case that the particular

import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejected the transaction value under Rule 4(1) except the price list of vender. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially-acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case a discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one-time sale of 5-year-old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1).

10. The learned Advocate conceded that in respect of bill of entry 55 3809 dt. 3.8.97, the price declared by them was 60 US\$ as against the price of 689 US\$ found in proforma invoice and that he did not want to contest the issue. However, the said bill of entry related to many other items. The Ld Advocate assails the decision of the adjudicating authority to enhance the value to 11 times in respect of other items on pro rata basis as not justified and not warranted. We accept this submission as well.

11. From the above, the following emerges-

- a) There is wide variation between the prices found in documents like price lists, quotations, price guide and the prices declared by the importers throwing strong suspicion. However strong the suspicion may be, the same can not take the place of proof.
- b) The price enhancement is mostly based on such price lists, quotations, price guides and no evidence of actual import into India

at the price at which the prices mentioned in these documents has been relied upon.

- c) No contemporaneous import prices of comparable goods have been relied upon to enhance the value. The enhancement of the assessable value is not based on reliable evidence and therefore, arbitrary and cannot be upheld.
- d) The ratio of the decision of the Eicher Tractors cited supra is applicable to the facts of the present case.
- e) The enhancement of the assessable value being arbitrary cannot be upheld.

12. The demand conceded by the appellant to the extent referred to in para10 above is confirmed. Otherwise the appeals are allowed with consequential relief.

[Pronounced on 25-9-2008]

(Justice S.N. Jha)
President

[M. Veeraiyan] /
Member [Technical]

[Pant]