

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Customs Appeal No. 85882 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-314 to 384/2021-22 dated 22.06.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s. Cisco Commerce India Pvt. Ltd.

Appellant

Prestige Solitaire, Level II,
No.6 Brunton Road, Bengaluru 560 001.

Vs.

**Commissioner of Customs (Air Cargo Import) Respondent
Mumbai**

Air Cargo Complex, Navpada, Sahar Village,
Andheri (E), Mumbai 400 099.

AND

Customs Appeal No. 85883 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-191 to 299/21-22 dated 10.06.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s. Cisco Commerce India Pvt. Ltd.

Appellant

Prestige Solitaire, Level II,
No.6 Brunton Road, Bengaluru 560 001.

Vs.

**Commissioner of Customs (Air Cargo Import) Respondent
Mumbai**

Air Cargo Complex, Navpada, Sahar Village,
Andheri (E), Mumbai 400 099.

Appearance:

Shri D.B. Shroff, Senior Advocate with Shri Sanjeev Nair and Shri Prasad Paranjape, Advocates, for the Appellant

Shri Anand Kumar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 19.10.2022

Date of Decision: 19.10.2022

FINAL ORDER NO. A/86289-86290/2022

PER: SANJIV SRIVASTAVA

The appeals as detailed in table below have been filed by the appellant challenging the order-in-appeal of the Commissioner of Customs (Appeals), Mumbai Customs - Zone III

Appeal No	Order in Appeal		Order in Original	
	No	Date	No	Date
C/85882/2022	MUM-CUSTM-AMP-APP-314 to 384/21-22	22.06.2021	809/2020-21/ACGR.V/NS -V/CAC/JNCH	27.11.2020
			666/2020-21/ACGR.V/NS-V/CAC/JNCH	09.10.2020
C/85883/2022	MUM-CUSTM-AMP-APP-191 to 299/21-22	10.06.2021	671/2020-21/AC/NS-V/CAC/JNCH	27.10.2020

2.1 The Appellant is a subsidiary of Cisco Systems International BV. The Appellant secures third-party customer orders in India for purchases of Cisco products. The prices are negotiated between the Appellant and the 3rd party customers. After securing such orders, the Appellant places purchase orders on their holding company and its other affiliate companies. The price at which the Appellant's holding company and its other affiliate companies sell the goods to the Appellant is an arms-length price. The import prices are 20% lower than the negotiated/agreed prices at which the imported goods are sold by the Appellant to third-party customers. 18% goes towards meeting the sales, marketing, and administrative costs whereas 2% is the Appellant's margin of profit.

2.2 Appellant had regularly filed self assessed Bills of Entry, for the imports made from their holding company. All these imports were related parties transactions. The impact of the relationship on the transactions between the appellant and their holding company was investigated by the SVB cell, Bangalore and issued an order for accepting the declared value as correct and hence, the declared invoice value should be accepted.

2.3 During the verification of these assessments, it was observed that in all these Bills of Entry, there was RMS instructions of higher contemporaneous imports value of identical goods when compared to the present declared value, which ranged upto 200% on the lower side. Queries to this effect were raised and the importer in support of their valuation submitted that the final price and discount offered to customers is decided by Cisco depending upon the volume of business, nature of opportunity and product configuration which are the

key reasons for the variance between unit price of same product covered under two different commercial invoices and in this regard they submitted copy of SVB orders dated 14.11.2018 passed by Bangalore Commissionerate accepting the transaction value under Rule 3(3)(a) of the Customs Valuation Rules, 2007. However, the said SVB order categorically stated that if contemporary imports at higher prices are noticed, groups shall evaluate the goods under the provisions of the Customs Valuation Rules, 2007. As there was a change in the invoicing pattern, which the appellant did not intimate to the SVB and the value of identical goods from the same supplier were noticed at higher price, the value was loaded and the Bill of Entry was re-assessed. Subsequently, the two Orders of Assessment dated 9.10.2020 and 27.11.2020 were issued justifying the enhancement of the assessed value,

2.4 Aggrieved by the re-assessment/Orders of assessment, Appellant filed appeals before the Commissioner (Appeals) urging the following grounds:

- i) the inter-company transfer price (declared import price) represented arm's length transaction value not influenced by relationship and the same is bound to be accepted under Rule 3(3)(a) of the Customs Valuation Rules.
- ii) that the valuation of the imported goods is done in accordance with Section 14 of the Customs Act, 1962
- iii) each of the pricing policies followed by them throughout the relevant period was absolutely correct and consistent with the principles enshrined in the Customs Valuation Rules
- iv) they import goods only based on a pre-existing confirmed order for the purchase of such goods from a customer in India
- iv) the declared value adopted for imports closely approximates the price arrived at under deductive value method
- v) the respondent failed to appreciate the fact that the invoice prices of goods can never be fixed as it significantly depends on the commercial factors involved in every transaction, nature of customer, quantity or order, specification of products, additions to products imported, commercial opportunity etc.

2.5 The appeals filed by the appellant have been dismissed by the Commissioner (Appeals) as per the impugned orders.

2.6 Aggrieved Appellant have filed these appeals.

3.1 We have heard Shri D B Shroff, Senior Advocate with Shri Sanjeev Nair and Shri Prasad Paranjape, Advocates for the appellant and Shri Anand Kumar Additional Commissioner, Authorized Representative for revenue.

3.3 Arguing for the appellant learned counsel submits:

LIST OF DATES AND EVENTS

- Despite the existence of an SVB order, the dispute regarding valuation has arisen only in respect of those bills of entry which were earmarked under the Faceless Assessment Scheme to officers of the Jawaharlal Nehru Custom House (JNCH) for assessment with the RMS instructions.
- In respect of other bills of entry filed in Zone-III, Air Cargo Complex, during the same period, with the same RMS instructions, the value declared in the bills of entry was accepted without any loading. Dispute in valuation seems to have arisen only at JNCH and no other port in India.
- The orders of the lower adjudicating authorities are contrary to Rule 4 (3) of the CVR inasmuch as they have purported to use the value of the imported goods at the highest price at which similar goods were imported earlier by the Appellant. The aforesaid rule clearly states that "In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods."
- It is untenable to hold that the pricing pattern submitted to the SVB, and the pricing pattern noticed at the time of assessment are in complete contrast and that therefore the SVB order was not relevant. The Appellant had categorically stated in Enclosure 8 to the SVB questionnaire that the import price was arrived at after taking into consideration the discount of 20% of the agreed resale customer price from the overseas exporter, while retaining an operating margin of 2% of the end customer re-sale price. Agreed resale price clearly means a negotiated price. The Appellant had never stated that there was

only one price. The SVB accepted this explanation and the values declared by the Appellant were approved. They have followed the same principle while determining the price of the imported goods.

- It is not the case of the revenue that the Appellant having imported the goods in India declaring lower value has subsequently sold the same goods at a significantly higher price contrary to the methodology approved in the SVB order.
- The methodology accepted by the SVB was a methodology akin to Rule 7 of the CVR, i.e., arriving at the import price by the deductive method.
- In paragraph 9 of the impugned order, the Commissioner Appeals, has purported to state that the variation in prices with respect to contemporaneous imports of identical goods are not in the range of 20% as stated by the Appellant. Such a conclusion shows manifest non-application of mind. This was never the Appellant's submission. What was submitted was that once the customer places an order with the Appellant at a specific negotiated price, the Appellant internally places an order on its overseas related party for import of the very same goods at 80% of the negotiated resale price agreed with the customer.
- As per Rule 3 (3) (a) of the CVR, where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods that the relationship did not influence the price. There is no finding in any of the orders of the lower adjudicating authorities that the relationship has influenced the price.
- There are no identical goods imported by any other importer during the same period. Thus there cannot be said to be any "contemporaneous import". In the present case the Department has selected prices at which the Appellant themselves have imported the same goods. The Appellant's import prices of the same goods can never be considered as "contemporaneous imports".
- In any event, the past imports cannot be compared with the present imports as they were not in comparable quantities or at the same commercial level.

- The order of the Commissioner Appeals is based on assumptions and presumptions and displays total non-application of mind. In paragraph 13 he records that no prudent foreign supplier would sell at the negotiated price locally in India, i.e., 80% to the sale price as argued by the Appellant. Such a conclusion is untenable as the foreign supplier has given a 20% discount based on the price negotiated by for sale in India. In any event, this was the basis of the SVB order which was binding on the lower adjudicating authorities.
- In para 22 of the impugned order (page 325), the Commissioner (Appeals) has held that the payback amount of 2% on the sales of the appellants to the manufacturer directly relates to the sale of imported goods and are thus addable/includible in the assessable value as per valuation rules. Appellant submits that additions under Rule 10 of the CVR were never the subject matter of dispute before the lower authority and therefore this finding is beyond the scope of appeal proceedings.
- The impugned orders are contrary to the procedure prescribed in Circular No. 5/16-Customs dated 9/2/2016. Paragraph 9 of the Circular categorically states that where investigative findings are that the declared value is found conforming to Rule 3 of the CVR, 2007, the Customs Station where provisional assessments have been undertaken shall immediately proceed to finalize the same. There would be no need to issue a speaking order for finalizing the provisional assessments in such cases. In the present case the SVB has already investigated and passed an order accepting the declared values as the transaction value.
- There is no independent finding by the Commissioner Appeals in respect of the assessment challenged in the 68 Bills of Entry. The orders are therefore non-speaking orders, and are illegal.
- The impugned order at paragraph 26 advises the SVB Bangalore to review its earlier order. Such a advisory conclusion is completely perverse and beyond jurisdiction as the veracity of the SVB order was not in dispute. There was no appeal filed by the revenue against the SVB order.

3.3 Arguing for the revenue learned authorized representative reiterates the findings recorded in the impugned order submits that, the value has been redetermined on the basis of the RMS instructions given at the time of assessment of the said bill of entries.

4.1 We have considered the impugned orders along with the submissions made in the appeal and during the course of arguments

4.2 Impugned order records the following findings in the matter:

"7. The main contention/grounds of appeal made by the appellant in the import of the impugned goods is that the transaction between their related parties are at arm's length and the SVB cell, Bangalore has investigated the transaction and issued an order for accepting the declared value as correct and hence, the declared invoice value should be accepted. In this regard the appellant has illustrated an example of pricing pattern, which is as under:

Particulars	Amount
End Customer resale price in India	100
Less: India operating expenses (including marketing, establishment, overheads, warehousing, domestic transportation etc.) and duties and taxes	18
Less: Operating Profit Margin @ 2% of end customer resale price	2
Derived Assessable Value/Transaction Value	80

8. In this regard, I find that the Assessing Authority at the time of assessment of Bills of Entry covered under the Assessment Orders dated 9.10.2020 and 27.11.2020 noticed that the price variation was huge varying upto 200% from their own contemporaneous import price. A few examples Copies of the Bills of Entry of such variations, on sample basis as reflected in the Order of Assessment dated 27.10.2020 are given below:

S. No	BE No.	Description	Qty	Unit Price (INR)	B/E No. referred in instruction	Description	Qty.	Unit Price	% Difference
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1	9302604/24 .10.20	MS C9300- 24T- A- Catalyst / 9300 24 Port Data only	2	199 529	9270132/ 22.10.20	C9300-24T-A- Catalyst 9300 24 Port Data only	2	362 338	81.59 %
2	9375922/ 30.10.20	N3K- C352P- 10GX NEXUS 3524x, 24 10g Ports- Non- Carrier Ethernet Switch	3	153 299	8751815/ 9.9.20	N3K-C352P- 10GX NEXUS 3524x, 24 10g Ports-Non- Carrier Ethernet Switch	2	444 567	189.9 9%
3	9305841/24 .10.20	MX100- HW MERAKE MX100 SECURITY APPLIANC E	2	177 055	9014386/1 .10.20	MX100-HW MERAKE MX100 SECURITY APPLIANCE	2	450 401	154.3 8%
4	do	MX67-H MERAKE MX67 SECURITY APPLIANC E	1	246 85	9126116/1 0.10.20	MX67-HW MERAKE MX67 SECURITY APPLIANCE	1	669 10	171%
5	9166943/14 .10 20	C9300- 48UXM- A Catalyst 9300-48- Port 12MGIG 36 2.5GBPS) Network	3	381 511	9169769/1 4.10 20	C9300-48UXM- A Catalyst 9300 -48-Port 12MGIG36 2.5GBPS) Network	1	583 579	52.96 %
6	-do-	VIP-SFP- 1GE- BASET+SF P TRANSC IVER R-IGE BASET 10/100/10 00(NET WORK)	6	824 6	8842388/1 7.9 20	BASET+SFP VIP-SFP-1GE- TRANSC IVER- 1GE BASET 10/100/1000(N ETWORK)	6	151 18	83.31 %
7	9347627/28 .10.20	ISR4431- V/K9 CISCO	1	298 169	8969799/2 8.9.20	ISR4431-V/K9 CISCO ISR 4431(4GE,3NI	1	396 691	33.04 %

		ISR4431 (4GE,3NIM ,8G FLASH,4G DRAM,IPB 000) - ROUTERS				M,8G FLASH,4G DRAM,IPB000) - ROUTERS			
8	92755032/2 2.10.20	AIR- AP18321- D-K9 802.11 AC WAVE 2;3X3:25S ;INTA NT;D REG DEMAIN (ACCESS POINT)	4	148 51	9222930/1 9.10 20	AIR-AP18321- D-K9 802.11 AC 3X3:28S, INTAN T;D REG DEMAIN (ACCESS POINT)	3	372 86	151%
9	93227531/2 6.10.20	ISR4331/K 9 CISCO ISR 4331 (30E,2NIM ,1SM 4G FLASH, 4G DRAM,IPB) ROUTERS	1	567 10	8788348/1 2.9.20	ISR4331/K9 CISCO ISR 4331 (30E,2NIM,1S M,4G FLASH,4G DRAM,IPB) ROUTERS	1	170 136	200%
10	8952383/26 .9.20	VEDGE- 2000- AC- K9 VEDGE- 2000 ACRIYTER BASE CHASSIS WITH 4X1GE FIXED PORT(ROU TER)	2	304 973	8723105/7 .8 20	VEDGE-2000- AC-K9 VEDGE- 2000 ACRIYTER BASE CHASSIS WITH 4X1GE FIXED PORT(ROUTE R)	2	462 129	51.53 %

9. From the above table of comparison, it is crystal clear that the variation in prices with respect to the contemporaneous imports of identical goods are not in the range of 20% as stated and submitted by the appellants.

10. Further, I also find that in the Questionnaire submitted to the SVB Cell, Bangalore at the time of obtaining the SVB order, the appellant has stated in reply to Question No.5.2 and 5.3 that the supplier also supplies the goods to unrelated customers in India and the goods imported by the unrelated buyers from the suppliers are settled at negotiated discount to the Global Price

List and the goods imported by the appellant are settled at negotiated discount to the Global Price List i.e. 80% of the price list. The replies to the relevant question of the Questionnaire submitted by the appellants are as under:

<i>S.No.</i>	<i>Particulars</i>	<i>CC IPL's Response</i>
<i>5.3</i>	<i>Has the price of the goods been settled in manner consistent with the way the price is settled by the seller with unrelated buyers?</i>	<i>Basis of determination of invoice value:</i> <i>A. Goods imported by unrelated buyers from CSIBV are settled at negotiated discount to the Global Price List.</i> <i>B. Goods imported by CC IPL from CSIBV for resale to unrelated buyers are settled at negotiated discount to the Global Price List times 80% (A discount given to cover CC IPL costs for distribution activities)</i> <i>C. Goods imported by CC IPL for provision of network Services (Internal Use)- Price paid by CC IPL for internal use equipment (including without limitation network services equipment) is equal to the price paid by importer for same product purchased by importer for resale to unrelated third parties.</i>
<i>5.4</i>	<i>Please provide the information under Rule 3(3)(b) of CVR, 2007, if any</i>	<i>Detailed explanation of the pricing methodology is attached(Enclosure 8)</i>
<i>5.5</i>	<i>Is the price of the imported goods determined on the basis of a price list? If yes, please provide copy of the price list and the basis of arriving at the invoice value</i>	<i>Yes. Global Price list is attached as (Enclosure 0 in Pen Drive). Basis of determination of invoice value:</i> <i>A. Goods imported by unrelated buyers from CSIBV are settled at negotiated discount to the Global Price List.</i> <i>B. Goods imported by CC IPL from CSIBV for resale to unrelated buyers are settled at negotiated discount to the Global Price List times 80% (A discount given to cover CC IPL costs for distribution activities)</i> <i>C Goods imported by CC IPL for provision of network Services (Internal Use)- Price paid by CC IPL for internal use equipment</i>

		<i>(including without limitation network services equipment) is equal to the price paid by importer for same product purchased by importer for resale to unrelated third parties</i>
5.6		
5.7		
6		
6.1		
6.2	<i>Whether any account or any part of the proceeds of any subsequent resale, disposal or use of the imported goods accrues, directly or indirectly, to the seller</i>	<i>No. the importer does not pay any amount, directly or indirectly, other than the import price as specified in 5.3 above in respect of imported goods.</i>

11. The appellant also at the time of applying/obtaining the SVB order, submitted a comparative chart of their import price vis-à-vis the price of unrelated importers in India, which was comparable and hence the SVB, Bangalore might have issued the SVB orders accepting the transaction value based on the ground that the prices of the appellant/s imports are comparable with unrelated importers after taking into consideration the administrative expenses of the appellants etc.

12. From the above two pricing patterns i.e. the pricing pattern, submitted before the SVB and the actual pricing pattern noticed at the time of assessment after the issuance of SVB order, it is seen that what has been stated before the SVB is in complete contrast with what is being followed actually in the pricing pattern of their imports subsequent to the issue of SVB order.

13. The Global price list is a list maintained and followed by the manufacturer abroad at International level and if there is any change in the pricing, the same is intimated to all its customers throughout. No prudent foreign supplier would sell at the negotiated price locally in India i.e. 80% to the sale price at Indian Market, as argued by the appellant. Global Price List is the price list at which the goods are sold globally by the Supplier and not the price at which the appellants negotiate with the

Customers in India. There is no such approved pricing pattern available in the Customs Valuation Rules, 2007.

14. I also find from the Agreement dated 20.4.2018, at para 7.7 (page No.12 of the agreement) there is a specific mention that the distributor is free to determine its own resale price unilaterally. When it is so, how a manufacturer can supply a goods at a price which is freely fixed by the Distributor. I find that in most of the cases, the difference in pricing of their own import of identical/similar goods price during the relevant period varies upto 200%, as can be seen from the Order of Assessments dated 9.10.2020 and 27.11.2020 issued by the Original Adjudicating/Assessing Authority. Rule-4 of the Customs Valuation Rules, 2007 reads as below "(1)(a) subject to the provisions of Rule 3 of these Rules, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued."

15. I find that the assessing authority has, in this case on concrete evidence of contemporaneous import price of identical goods, legally rejected the transaction value and has given his detailed finding in the Orders-of-Assessment dated 9.10.2020 and 27.11.2020 as to why and how he has ordered for redetermining the value of the consignment of goods imported by the appellant.

16. During the course of personal hearing, the importer heavily argued that there is difference in configuration of the items, which varies from customer to customer and hence the price difference. In this regard, I find that the description of the imported goods covered in the Bills of Entry under appeals, exactly matches with each and every wordings including its capacity such as Model Nos., 24 Port, 4 x IG etc. with the compared contemporaneous imports of identical goods and that too imported by the same appellants. If at all the arguments of the appellant that the price varies because of configurations has to be considered, there has to be a definite reflection of difference in the configurations and capacities of the various components utilized, in the description of the goods being presently/previously imported and the Global Price list should also reflect the same. I find in none of the Bills of Entry any

difference is being reflected. The words and figures of description in the compared contemporaneous Bills of Entry are exactly same, as is evident and can be seen in the description of goods mentioned at the table to para-8 above. The compared models are identical and not even similar to have any room for any difference while comparing. I also find that the appellants failed to submit any evidence on this count of arguments and in all the Bills of Entry, the descriptions have been exactly described identical and in the absence of any detailed/amplified description mentioned in the Bills of Entry, the arguments of the appellant cannot stand on merits and doesn't have any logical significance. Thus, these contentions are liable to be rejected and I accordingly reject the same as untenable.

17. Further, I find that:

i. As per the proviso to section 46(1), "The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a Bill of Entry for home consumption or warehousing in such form and manner as may be prescribed.

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

ii. As per the proviso to section 46(4), "The importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed."

iii. Again, as per the proviso to section 46(4A), "The importer who presents a Bill of Entry shall ensure the accuracy and completeness of the information given therein."

After going through the provisions of Section 46(1), 46(4) & 46(4A) mentioned above, it is very much clear that the importer is solely responsible for the accuracy and completeness of the information given in the Bill of Entry. The importer should have specifically mentioned the parameters/specifications of the goods under import in the Bill of Entry, which has impact on deciding value as well as CTH of the goods imported. Such parameters/specifications of the goods must be mentioned on import documents as well as on goods and the same should be easily identifiable by Assessing Authorities to decide the correct value, CTH and eligibility of notification benefits. If the specifications which differs the goods under import from previously imported goods and vital for deciding the valuation of the goods under import was not readily available with the importer, then he might request the proper officer to permit him to examine the goods in the presence of an officer of customs before filing the Bill of Entry for the imported goods under Section 46(1) of the Customs Act, 1962 to ensure the correct specification of the goods. But, the importer has not done so and simply filing the Bill of Entry under Section 46(1) and self assess the same under section 17(1) of the Customs Act, 1962. Hence, the Assessing Authority has rightly enhanced the value based on the value of the compared contemporaneous imports of identical goods under Customs Valuation Rules, 2007.

18. I also find from the Distributors Agreement dated 1.11.2011 entered between the related supplier and the appellants that there exists initial and final pricing pattern/adjustments, which is reproduced as under:

7.0 Costs and Payments

7.1 Product costs and Services Costs.

7.2

19.0 All the above existence of initial price, final price, and that the distributor is free to determine its own resale prices goes to prove that the invoice price is not the transaction price as provided under Rule-3 of the Customs Valuation Rules, 2007.

20.0 I also find from the SVB orders dated 14.11.2018 that the SVB orders are retrospectively effective from 23.7.2018. Further, I also find from the letter dated 21.8.2018 of the appellant to the Dy. Commissioner of Customs, Air Cargo Complex,

Bangalore intimating that they had filed an undertaking dated 25.7.2018 based on inter-company agreements between the appellants and the overseas suppliers, that with effect from 23.7.2018 (i.e. the effective date of SVB order) that "all Cisco products whether for resale purpose or for provision of networking services (internal use) will be imported at the same value with effect from 23.7.2018 i.e. on the effective date of SVB orders.

21.0 I also find in the said letter dated 21.8.2018 that the appellants have agreed for 2% return on sales/profit margin of all sales made to end customers. This margin covers the Appellant's cost for distributing resale products.

22.0 I find that the appellants are not a manufacturer and the payback amount of 2% on the sales of the appellants to the manufacturer/foreign supplier on the net sales directly relates to the sale of imported goods and is conditional and thus are addable to the assessable value of the goods, as per the Valuation Rules. Under Rule 9(1)(c) of the Valuation Rules, 2007, such royalty which is relatable to the imported goods and which is a condition of sale of such goods could be added to the declared price. In this regard, I rely upon the following case laws:

- a) Matsushita Television & Audio Ltd. (supra) 2007 (211) ELT 200 (SC)*
- b) Husco Hydraulics Pvt. Ltd. v/s CC (I), Mumbai 2016 (341) ELT 0113 Tri-Bom.*

23.0 The appellants in one of their arguments/grounds of appeal have stated that since they have been issued with SVB order accepting the transaction value, their declared value should be accepted. It appears that the SVB orders dated 14.11.2018 has been obtained/issued on the basis of 80% invoicing price of the global pricelist. It is not a blanket permission for acceptance of whatever the values declared by the appellants from their related supplier. The SVB order dated 14.11.2018 categorically states that "If contemporary imports at higher prices are noticed, groups shall evaluate the goods under the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007."

24.0 As per Rule-4 of the Customs Valuation Rules, 2007, since there exists contemporaneous import price of the identical goods and the values have been loaded by the Assessing Authorities according to the Valuation Rules, orders of the Original Authority/loading of the assessable value is to be upheld and I accordingly uphold the same.

25.0 In arriving at this decision, I find my view is supported by the following case laws:

- i. Deepak Electronics - [1994 (73) E.L.T. 817],*
- ii. N.K. Agarwal - [1994 (74) E.L.T. 83],*
- iii. Polyvinyl Industrial Corporation - [1994 (74) E.L.T. 426],*
- iv. Ankit Audio Industries - [1995 (76) E.L.T. 173].*
- v. SSK Impex Pvt. Ltd. V/s Commissioner of Customs, Hyderabad 2018 (363) E.L.T. 916 (Tri. - Hyd.)*
- vi. Gareware Polyester Ltd. v/s Commissioner of C.Excise, Mumbai-IV 2017 (6) GSTL (488) (Tri-Mum)*

26.0 Further, the SVB Authorities, Bangalore is also advised to review their SVB orders dated 14.11.2018, in view of the factual position as discussed above."

4.3 Appellant Counsel during course of argument highlighted the following issues for determination by us:

- i. Whether whilst valuing goods imported from a related party, the Department can ignore the relevant SVB order that had accepted the Appellants' valuation methodology and had accepted the Appellants' declared price especially when there is no change in the invoicing pattern.
- ii. Whether the Department can value the current imports made by the Appellant on the basis of the highest price at which the Appellant themselves have imported the same goods by treating such earlier imports as contemporary imports, contrary to Rule 4 of the Valuation Rules.
- iii. Whether both the lower authorities have usurped jurisdiction on the ground that there is a change in the invoicing pattern without showing what is the change or legal foundation to the basis.
- iv. Whether, even assuming whilst denying that there was a change in the invoice pattern, it is open for the lower adjudicating authorities to assess the bills of entry without

reference to the SVB as provided for in Circular No. 05/16-Customs dated 09/02/2016.

- v. Whether the lower authorities have erred by not taking into consideration the fact that the bills of entry that they have compared are not only for different quantities but are not in comparable commercial transactions. These are all negotiated prices depending upon the quantities, the business volumes and the configuration.
- vi. Whether the order of the Commissioner (Appeals) is in violation of the principles of natural justice as he has not discussed any details whatsoever in respect of 68 Appeals and is contrary section 17 (5) of the Customs Act, 1962.

4.4 Board has issued Circular No 5/16-Customs dated 09.02.2016 prescribing as follows:

Cases, which may be considered for SVB Investigations

4.0 While filing a bill of entry, every importer makes a declaration about whether the seller of imported goods is a related party or not, as defined under Rule 2(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (CVR, 2007). In other words, where any importer makes a declaration that the transaction is between 'related persons', as defined under Rule 2 (2) of CVR 2007, it would be necessary to examine whether or not the circumstances surrounding the sale of the imported goods indicate that the relationship has influenced the price. Accordingly, such transactions will require to be examined as to whether SVB inquiries are necessary.

.....

Procedure for reference to SVB:

6. In the event of the Commissioner directing investigations by SVB, the proper officer shall promptly carry out provisional assessment in terms of section 18 of the Customs Act, 1962 and ensure that no delays occur in the release of the goods.

6.1 In order to facilitate expeditious inquiries by the SVB, the proper officer shall alongside of provisionally assessing the bill of entry, requisition further information from the importer as per Annexure B to this circular. The importer should be advised to furnish the documents and a duly indexed reply to the

questionnaire to the jurisdictional SVB (as per para 3.1) within 60 days.

6.2 Upon completion of the procedure for provisional assessment and issue of the questionnaire (Annexure B), all related records shall be transferred to the jurisdictional SVB, and in no case later than 3 working days of the release of the goods.

6.3. The documents received from the importer with respect to the checklist shall be duly acknowledged by the SVB. An intimation shall be forwarded to RMD and the referring appraising group regarding submission of the documents within time so that provisional assessments, without security deposit or bank guarantee, continue till the finalisation of the investigation.

Procedure for cases where reference to SVB is not required:

7. In case where after examination of the transaction, it is decided by the Commissioner that a reference to SVB is not necessary, the Customs House shall issue a reference number to the importer and the Risk Management Division to indicate that the transaction has been examined from the point of view of need for SVB inquiries and it has been decided not to refer the same for SVB investigations.

Procedure in Special Valuation Branch

8. Upon receipt of all related records from the referring customs formation, the SVB shall forthwith assign a case number and update the Central Registry Database (CRD) maintained by DGoV. The SVB shall also inform the RMD of the details of the importer, his IEC code, and details of seller for inserting suitable instructions for assessing officers at all Customs Houses so as to ensure provisional assessments during the currency of SVB inquiries.

8.1 Upon receipt of information from the importer as per Annexure B, SVB shall commence inquiries, during the course of which the Deputy Commissioner / Asst. Commissioner (SVB) may call for further documents or information as required. The importer shall also be given suitable opportunity to submit evidence in support of the declared value.

8.2. *The SVBs shall, as far as possible, complete the investigations and issue its findings within two months from the date of receipt of information in Annexure B. In cases where investigations are not completed within 2 months, the SVB shall seek the approval of the jurisdictional Commissioner for such extended time period as is deemed necessary to complete investigations. However, where investigations are not completed within 4 months from the date of receipt of information in Annexure B, the matter shall be submitted before the Chief Commissioner for extension of period as is deemed fit.*

8.3. *Upon completing investigations, the SVB shall submit the findings before the Principal Commissioner/Commissioner, quantifying the extent of influence on the transaction value due to the relationship or payments towards royalty or licence fee or other payments actually made or to be made as a condition of sale of the imported goods. Upon approval by the Principal Commissioner / Commissioner, an Investigation Report (IR, for short) shall be prepared incorporating all relevant facts, submissions made by the importer, investigative findings, grounds for acceptance or rejection of transaction value, and the extent of influence on declared transaction value, if any. The IR shall include all relied upon documents and shall be communicated to the referring customs station/appraising group and such other stations where imports have been provisionally assessed. A copy of the IR shall also be sent to the DGoV. [In cases where the investigative findings are that the declared value is found confirming to Rule 3 of the CVR, 2007, the concerned SVB shall convey through a communication to the importer regarding the acceptance of the declared value].*

Finalisation of assessments

9. *Upon receipt of the IR from the SVB, where investigative findings are that the declared value is found conforming to Rule 3 of the CVR, 2007, the customs stations where provisional assessments have been undertaken shall immediately proceed to finalize the same. There would be no need to issue a speaking order for finalising the provisional assessments in such cases.*

9.1 *However, when investigative findings are that the declared value has been influenced by the circumstances surrounding the*

sale, the proper officer shall issue a show cause notice to the importer within 15 days of the receipt of the IR, under intimation to the concerned SVB.

9.2 In cases where imports have been cleared through multiple customs locations, the jurisdictional commissioner of the SVB shall, after issue of notices by the proper officers in the said locations, make a proposal addressed to the Commissioner (Customs), CBEC recommending appointment of a common adjudicating authority by the Board for the purpose of passing order for finalization of the provisional assessments.

9.3. The adjudicating authority shall, after following the principles of natural justice, pass an order quantifying the extent of influence on the declared transaction value. The Order shall be endorsed to the Risk Management Division and the DGoV, for updating the Central Registry Database. 'inserted on 26% August, 2016 vide F.No. 465/12/2010-Cus.V (Pt.)

9.4 The appellate provisions under Section XV of the Customs Act would apply for filing appeals against the order passed by the adjudicating authority.

Change in circumstances surrounding the sale

10. In any case where, the circumstances of sale or terms and conditions of the agreement between the buyer and related seller change, or any other payments of the kind referred under Rule 10 (1) (c), (d) & (e) of the CVR, 2007 become payable, the importers shall be required to declare the same at the place of import in the prescribed format at Annexure C. In all such cases, the proper officer shall examine the transactions as per procedures laid out above in this circular and the jurisdictional Commissioner shall refer the matter to the jurisdictional SVB, where required.

10.1 In view of the above, it may be noted that the system of renewal of SVB orders has been discontinued with immediate effect.

10.2 Instructions regarding disposal of pending cases are contained in circular 4/2016 dated 9 February 2016.

4.5 Undisputedly the transaction between the importer and the seller are between the related parties. Appellant being the

distributor of the seller, is related to the seller. However after examining the relationship, distribution agreement and the circumstances surrounding the sale, SVB cell Bangalore has issued the letter stating as follows:

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
AIRPORT & AIR CARGO COMPLEX
AIR INDIA SATS TERMINAL, KEMPEGOWDA INTERNATIONAL AIRPORT
DEVANAHALLI, BENGALURU - 560 300**

C.No. S44/02/19/2013 SVB BNG

Dated 14.11.2018

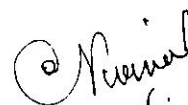
To

M/s Cisco Commerce India (P) Ltd ,
Prestige Solitaire, Level -II,
No.6, Burton Road,
Bengaluru 560 001

Gentlemen,

Sub: SVB - Imports from M/s Cisco Systems International BV, Netherlands,
Cisco Systems Inc., USA and other Cisco affiliates - reg

This is to inform you that as per the SVB Investigation Report (New Case) No.62/2018 dated 31.10.2018, the declared invoice value of goods imported by you from (1) M/s Cisco Systems International BV, (2) M/s Cisco Systems Inc and other affiliates has been accepted as transaction value under Rule 3(3)(a) of the Customs Valuation Rules, 2007 with usual add-ons, if any, under Rule 10(b) supra. If contemporary imports at higher prices are noticed, groups shall evaluate the goods under the provisions of Customs Valuation (Determination of value of imported goods) Rules, 2007. The same will come into effect from 23 07 2018 and remain in force till present method of invoicing remains unchanged. Any changes, affecting the invoice prices materially shall be informed to the SVB suo-moto without any delay



(NIRMAL JOY)

Assistant Commissioner of Customs

From the above correspondence it is quite evident that after going through the entire documents in respect of the imports made by the appellant from their principals and affiliates SVB has concluded that the declared invoice value needs to be accepted as the transaction value under Rule 3 (3) (a) of the Customs Valuation Rules, 2007. In view of the above observations made by the SVB Cell it was incumbent on the revenue authorities to finalize the bill of entries accordingly. However the assessments made by the appellant has been

sought to be modified by referring to the value of contemporaneous imports made.

4.6 In order to understand the issue in detail reference is made to the relevant provisions of "Distributor Agreement 2.0" between the appellant and their principals:

CONFIDENTIAL

EXECUTION COPY

**CISCO SYSTEMS INTERNATIONAL B.V.
CISCO COMMERCE INDIA PRIVATE LIMITED
DISTRIBUTOR AGREEMENT 2.0**

*This Distributor Agreement 2.0 ("**Agreement**") is made by and between Cisco Systems International B.V., a company organized and existing under the laws of the Netherlands ("**Manufacturer**), and Cisco Commerce India Private Limited, a company organized and existing under the laws of India ("**Distributor**").*

RECITALS

A. Manufacturer performs manufacturing, assembly, configuration, testing, and quality assurance activities related to computer networking hardware and software products, provides related services, and resells Services (as defined below). Manufacturer also performs refurbishment activities with respect to products that have been reacquired, directly or indirectly, from customers and/or otherwise acquires refurbished products for distribution to customers.

B. Manufacturer desires to engage Distributor to distribute products manufactured by Manufacturer, including refurbished products, and Services offered by Manufacturer, on the terms and conditions of this Agreement, and Distributor desires to accept such engagement.

*C. The Parties acknowledge and agree that they have entered, are entering or may enter into other agreements governing the provision of services (including without limitation marketing and sales support services) by Distributor to Manufacturer in connection with Products and Services marketed, sold, distributed or maintained by or for the account of Manufacturer ("**Manufacturer Goods and Services**"). For the avoidance of doubt: (1) any such services provided to Manufacturer by*

Distributor in connection with Manufacturer Goods and Services shall be governed by such other agreements; and (2) any similar services described in this Agreement shall relate exclusively to Products and Services to be distributed by Distributor pursuant hereto and not to Manufacturer Goods and Services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

.....

7. COSTS AND PAYMENTS

7.1 Product Costs and Services Costs.

(a) Initial Costs. *Distributor's initial costs for Products and Services (collectively "Initial Costs"), payable by Distributor to Manufacturer, shall be **computed by applying the discount rate set forth on Exhibit A for Products ("Initial Product Discount") to the resale prices charged by Distributor to the applicable Customer(s) for such Products** and applying the discount rate set forth on Exhibit B for Services ("Initial Service Discount") to the Services. resale prices charged by Distributor to the applicable Customer(s) for such Manufacturer may change the Initial Product Discount for any Product and/or the Initial Service Discount for any Service from time to time and shall provide notice of any such change to Distributor. The Initial Costs shall be used to facilitate statements of account and payment procedures.*

(b) Final Costs. *Distributor's final costs for Products and Services (collectively "Final Costs," and together with the Initial Costs, the "Costs") shall be determined by the Parties on a periodic basis such that Distributor's operating margin with respect to its activities under this Agreement, calculated in accordance with US GAAP, excluding costs related to stock-based compensation ("Operating Margin"), is equal to the percentage set forth on Exhibit A with respect to Products and is equal to the percentage set forth on Exhibit B with respect to Services. Payments made to Manufacturer for the Initial Costs shall be adjusted as necessary through additional payments to*

Manufacturer or refunds or credits to Distributor such that the net payments to Manufacturer for Products and Services sold by Manufacturer to Distributor equal the Final Costs for such Products and Services.

7.2 Terms. *Manufacturer will issue statements of account or other reports to Distributor at the end of each month for all Products shipped and Services sold during such month and amounts so invoiced shall be paid to Manufacturer no later than two (2) months following the end of such month (the "Payment Date"). Payments may be made in cash or via wire transfer or may be netted or otherwise settled, except to the extent prohibited by any applicable laws, rules or regulations between and/or among the Parties and one or more Affiliates through the intercompany accounts maintained by or for the Parties in accordance with the intercompany Netting and Loan Provisions attached hereto as Exhibit E, as amended from time to time as agreed to by the Parties.*

7.3 Breach. *If, at any time, Distributor is delinquent in the payment of any statement of account or other report issued pursuant hereto or is otherwise in breach of this Agreement, Manufacturer may, in its discretion, withhold shipment (including partial shipments) of any order or may, at its option, require Distributor to pay in advance for further shipments. Distributor is solely responsible for collecting all monies owed from its Customers.*

7.4 Currency. *Costs and related payments to Manufacturer for Products and Services purchased by Distributor pursuant to this Agreement shall be calculated and/or adjusted as necessary in the currency of the applicable Customer to which Distributor sells such Products and Services.*

7.5 Taxes. *All Costs and other payments made pursuant to this Agreement shall not include any Taxes, however designated, which are based upon the sale or distribution of Products and Services or otherwise arise in connection with the obligations of the Parties pursuant to this Agreement. Any Taxes related to Products or Services purchased pursuant to this Agreement must be paid by Distributor, or Distributor shall present an exemption certificate acceptable to applicable taxing authorities.*

7.6 Interest. Simple interest on any overdue payments (after application of any netting of intercompany accounts in accordance with Section 7.2, to the extent not prohibited by applicable law) will be calculated for each month using the applicable interest rate for such month as determined by the Parties in accordance with applicable law.

7.7 Resale Prices. Notwithstanding any other provision of this Agreement, Distributor is free to determine its own resale prices unilaterally.

7.8 US GAAP. Except as otherwise agreed by the Parties and except to the extent prohibited by local accounting rules or applicable local law, the Parties agree and acknowledge that the accrual method, as applied consistent with US GAAP, shall be applied in accounting for expenses and/or costs incurred in connection with this Agreement.

EXHIBIT A

DISCOUNT RATES AND PRODUCTS COSTS

A. Discount Rate; Initial Costs

1. Initial Product Discount Rate.

Unless and until otherwise agreed by the Parties, the Initial Product Discount rate set forth below shall apply to the Products purchased by Distributor from Manufacturer pursuant to this Agreement.

The Initial Product Discount rate for the Products shall be:

Twenty Percent (20%) of the resale price charged by Distributor to its Customers for such Products.

2. Initial Costs for Products. The resulting Initial Costs payable by Distributor to Manufacturer for the Products shall equal:

Eighty Percent (80%) of the resale price charged by Distributor to its Customers for such Products.

3. Changed Discount Rate. The Initial Product Discount rate set forth above may be changed from time to time as provided in Section 7.1(a) of the Agreement.

4. Exclusions and Different Discount Rates. *Manufacturer reserves the right to exclude specific Products from the Initial Product Discount rate or any changed discount rate and to set different discount rates for selected Products. Manufacturer will provide Distributor with commercially reasonable notice of such exclusions or different discount rates.*

B. Final Costs; Operating Margin

1. Final Costs for Products.

Unless otherwise agreed by the Parties In writing, Final Costs for Products for any Year shall be determined in a manner such that Distributor's Operating Margin from its Products and Services activities under this Agreement is equal to a specified percentage of Distributor's net revenue from the distribution of Products and Services under this Agreement, calculated in accordance with US GAAP, excluding costs related to stock-based compensation ("Net Revenue"), which percentage may be amended from time to time by the mutual agreement of the Parties.

2. Initial Operating Margin. *The initial Operating Margin for Distributor's Products and Services activities under this Agreement, as of the Effective Date, shall be Two Percent (2%) of Distributor's Net Revenue.*

From the perusal of the above distributor agreement it is evident that the appellant is free to determine the resale prices of the imported goods to its customers unilaterally. As per the terms of the agreement the resale price at which the appellant sells the goods to its customers is the basis for determination of the price at which the manufacturer supplies the goods to the distributor. In fact the invoice declared invoice as per this agreement is 80% of the resale price. The appellant on the behalf of the manufacturers negotiates and determine the resale price to the independent buyers, depending on various factors. The price at which the manufacturer bills the goods to the appellant is determined in terms of this agreement. It is not the case of the revenue that in any of the case of the imports made by the appellant in terms of this agreement the resale price was being manipulated and did not reflected the actual resale price. SVB Cell has after considering the terms of the agreement and

declarations made by the appellant have accepted that the declared invoice value is the transaction value as per Rule 3 (3) (a) of the Customs Valuation Rules, 2007.

4.7 It is also not the case of the revenue that the invoicing pattern followed by the manufacturer to the distributor has undergone change, from what has been examined by the SVB Cell, that being so the value as determined in terms of the communication dated 14.11.2018 of SVB Cell cannot be challenged. Board Circular specifically at para 8.3 and 9.1 of the above said circular has stated so. Further in case if there is change in the circumstances surrounding the sale the matter was to be re-examined for reference to SVB as provided in para 10.1 of the said circular.

4.8 In case of Sanjivani Non-Ferrous Trading Pvt. Ltd [2019 (365) E.L.T. 3 (S.C.)], considering the case for rejection of transaction value Hon'ble Apex Court has observed as follows:

"8. In Eisher Tractors Ltd., Haryana v. Commissioner of Customs, Mumbai-1, (2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.), this Court held as under :

"6. Under the Act Customs duty is chargeable on goods. According to Section 14(1) of the Act, 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, the value has to be determined 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 of importation - in the course of international trade. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "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 ...". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the Rules framed in this behalf.

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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.*

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12. *Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to Customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.*

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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 7A. 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.

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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. [1993 Supp. (4) SCC 57] 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 rejecting the transaction value under Rule 4(1) except the price list of vendor. 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)."

9. To the same effect, are other judgments, reiterating the aforesaid principle, such as, Commissioner of Customs, Calcutta v. South India Television (P) Ltd., (2007) 6 SCC 373 = 2007 (214) E.L.T. 3 (S.C.), Chaudhary Ship Breakers v. Commissioner of Customs, Ahmedabad, (2010) 10 SCC 576 = 2010 (259) E.L.T. 161 (S.C.) and Commissioner of Customs, Vishakhapatnam v. Aggarwal Industries Ltd., (2012) 1 SCC 186 = 2011 (272) E.L.T. 641 (S.C.).

10. The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed

to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.

11. In *South India Television (P) Ltd.*, the Court explained as to how the value is derived from the price and under what circumstances the deemed value mentioned in Section 14(1) can be departed with. Following discussion in the said judgment needs to be quoted hereunder :

"10. 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

misdeclaration regarding the price. There is no allegation of misdeclaration in the context of the description of the goods. In the present case, the allegation is of underinvoicing. The charge of underinvoicing 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.

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12. 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. Undervaluation has to be proved. If the charge of undervaluation 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 undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, 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 undervaluation. 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 underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. 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."

12. The observations of the Tribunal made in the impugned judgment are to be appreciated in the light of the principles of law specified in the aforesaid judgment, inasmuch as the Tribunal has categorically remarked that the normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act and the case law referred to by it (In paragraph 5, the Tribunal referred to its own judgments which follow the aforesaid principle laid down by this Court).

13. It is, therefore, rightly contended by Mr. Dushyant A. Dave, Learned Senior Counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the price

declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.”

We do not find anything in the order which would justify rejection of the transaction value in the present cases under consideration. Undisputedly SVB Cell has accepted the declared invoice value as the transaction value.

4.9 Further it is interesting to note the valuation has been proposed in the impugned orders on the basis of the contemporaneous imports made by the appellant from their principals. It is interesting to note that for determination of the value revenue authorities have sought to apply the maximum value for enhancing the declared value. Rule 4 of the Custom valuation Rule, 2007 provide as follows:

Rule 4. Transaction value of identical goods . -

(1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are

significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

From the plain reading of the above referred rule it is quite evident that in case of the identical goods the lowest of the transaction values was to be used for determining the value of the imported goods. In table in para 8 of the impugned order, the transaction value of the identical goods have been used to enhance the value, after comparing only two imports. It is not even stated in the impugned order as to how many bill of entries for the identical goods were filed and examined by the authorities for determining the value on the basis of contemporaneous imports made by the importer and what was the minimum value of such imports. However ignoring the provisions of Rule 4 (3) the highest of the value has been adopted for determining the value of the imported goods. Such approach is contrary to decisions of this tribunal in the case of Aasu Exim Pvt Ltd [2006 (202) ELT 445 (T)] affirmed by the Hon'ble Supreme Court at [2018 (360) E.L.T. 386 (S.C.)]

"6. In respect of POY, eight bills of entry have been relied upon as evidence of contemporaneous imports, but out of these, four relate to yarn not imported by the appellants. One, viz. the bill of entry at serial No. 3 of the table forming Annexure II to this order, for which the assessable value is US\$ 0.85 per kg, shows the value as per the standing order and the order-in-original and the remaining three bills of entry values are different from the ones mentioned in the standing order and arrived at in the impugned order. Therefore, the final values adopted in the present cases are not based on these three bills of entry, but on the standing order which matches only with one bill of entry. The finding that the assessment is based on contemporaneous import is, therefore, clearly factually incorrect. While we note that the Hon'ble Gujarat High Court in the case of Ramchandra Art Silk Yarn v. UOI - 2002 (139) E.L.T. 540 (Guj.), has held that

*while standing orders containing instructions for determining price of imported articles in cases where the transaction value is not determinative, can be taken as guidelines, the standing order cannot be a rigid mandate. In the present case, the standing order dated 4-2-2000 has been adhered to as if it were rigid mandate and this is plainly contrary to the express mandate of Rule 8(2)(v) which bars best judgment assessment on the basis of minimum Customs value. **Reliance cannot be placed upon the date produced by the Customs authority to form the basis of assessment unless the value referred to represents the lowest value, as is clear from the language of Rule 5(3) of the Customs Valuation Rules and there is not even an averment that the values shown in bills of entry produced by the Deputy Commissioner before the Commissioner (Appeals) represent the least value.***"

4.10 Thus in view of the above we are not in agreement with the value determined by the impugned order on the basis of said contemporaneous imports. Impugned order relies upon the decision in the case of SSK Impex [2018 (363) E.L.T. 916 (Tri. - Hyd.)] in the support of the case of revenue. In the said decision following findings have been recorded:

"6. On careful consideration of submissions made by both sides, we find that the adjudicating authority has, in this case on reasonable suspicion for rejecting the transaction value and has given detailed finding in paragraph No. 10 of the Order-in-Original as to why and how he has ordered for redetermining the value of the consignment of goods imported by the appellant. We reproduce the same

10. Rule 5 of the Customs Valuation Rules, 1988 reads as below :

"(1)(a) subject to the provisions of Rule 3 of these Rules, the value of imported goods shall be the transaction of identical goods sold for export to India and imported at or about the same time as the goods being valued."

Therefore the values of identical goods imported at the nearest to the time of import of the impugned goods was taken on the NIDB data available and the values adoptable are found to be as follows :

<i>Sl. No.</i>	<i>Description of computer mother boards</i>	<i>Qty. in Nos.</i>	<i>Value as declared by Importer Rs.</i>	<i>Value in respect of the quantity Rs.</i>	<i>Value of identical goods as per NIDB Rs.</i>	<i>Value in respect of the qty. as per Rule 5 of CVR, 1988 Rs.</i>
1.	Intel Mother boards Model BOXDG33BUC	760	1032.50	7,84,700	4,104.59	31,19,488
2.	Intel Mother boards Model BOX945GCPE	200	1032.50	2,06,500	2,211.60	4,42,320
3.	Intel Mother boards Model BOX0945GCCRL	140	1032.50	1,44,550	2,825.93	3,95,630

On scrutiny of the NIDB data available in respect of contemporaneous imports, I find that the values as mentioned above are rightly adoptable for redetermining the value of the impugned goods in terms of Rule 5 of the Customs Valuation Rules, 1988. In adopting these values, I am satisfied that the due consideration was shown towards aspects like physical characteristics, quantity, make, model, sale at the same commercial level. In view of these facts, I uphold the adoption of value of identical goods as discussed in the show cause notice. In arriving at this decision, I find my view is supported by the following case laws :

- (i) Deepak Electronics - [1994 (73) E.L.T. 817],*
- (ii) N.K. Agarwal - [1994 (74) E.L.T. 83],*
- (iii) Polyvinyl Industrial Corporation - [1994 (74) E.L.T. 426],*
- (iv) Ankit Audio Industries - [1995 (76) E.L.T. 173].*

7. In the grounds of appeal, appellant has not controverted the above findings as to there being contemporary import, and values of which are applied in the case in hand. The only submission is that the supplier had written a letter the goods have been mis-sent. In our considered view, the findings of the adjudicating authority are correct and do not require any interference and the impugned order redetermining the value of the consignment of goods is upheld, as also the duty liability."

From the reading of the said decision it is evident that in the said case the value was determined on the basis of the value available in NIDB and not on the basis of the single bill of entry. Thus the facts of this case are distinguishable from the present case and do not advance the case of revenue. Further four decisions referred in this decision have been relied upon by the impugned order even without stating the reason for placing reliance on these judgments. In view of the decision of the Hon'ble Apex Court in case of Saheli Leasing and Industries Ltd [2010 (253) E.L.T. 705 (S.C.)] holding as follows, we do not intend to separately discuss these cases here.

"6. *We, therefore, before proceeding to decide the matter on merits, once again would like to reiterate few guidelines for the Courts, while writing orders and judgments to follow the same.*

.....

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative."

4.11 In case of Aggarwal Industries Ltd. [2011 (272) ELT 641 (SC)], Hon'ble Supreme Court has observed as follows:

"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 undervaluation 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 v. Commissioner of Customs (Preventive), Shillong, (2007) 3 SCC 93 = 2007 (209) E.L.T. 326 (S.C.)]

13. *Applying the above principles to the facts in hand, we are of the opinion that the revenue erred in rejecting the invoice price. As stated above, in the present case the whole controversy arose on account of difference in price of the same commodity, contracted to be supplied under different contracts entered into at different points in time. As aforesaid, in the instant case, admittedly the contract for supply of crude sunflower seed oil @ US \$ 435 CIF/PMT was entered into on 26th June 2001. It could not be performed on time because of which extension of time for shipment was agreed to between the contracting parties. It is true that the commodity involved had volatile fluctuations in its price in the international market but having delayed the shipment, the supplier did not increase the price of the commodity even after the increase in its price in the international market. This fact is also proved by the actual amount paid to the supplier. There is no allegation of the supplier and importer being in collusion. It is also not the case of the revenue that the transaction entered into by the respondent was not genuine or undervalued. Nor was there a misdescription of the goods imported. It is also not the case of the revenue that the subject imports fell within any of the situations enumerated in Rule 4(2) of CVR, 1988. It is manifest from the show cause notice, extracted in para 3 supra, that the contract value was not acceptable to the Adjudicating Authority in terms of Section 14(1) of the Act read with Rule 4 of CVR, 1988 merely because by the time actual shipment took place in August 2001, international price of the oil had increased drastically. No other reason has been ascribed to reject the transaction value under Rule 4(1) except the drastic increase in price of the commodity in the international market and the difference in price in the*

invoices in relation to the goods imported under contracts entered by the respondents in the month of August 2001. In our opinion, the import instances relied upon by the revenue could not be treated as instances indicating contemporaneous value of the goods because contracts for supply of the goods in those cases were entered into almost after a month from the date of contract in the present cases, more so, when admittedly there were drastic fluctuations in the international price of the commodity involved. We are, therefore, of the opinion that the revenue was not justified in rejecting the transaction value declared by the respondents in the invoices submitted by them.”

4.12 Further in Annexure A as per the Board Circular above while submitting the information to SVB cell, appellant has in response to Question 7, has stated as follows:

7	<i>Has the importer or any of its associates entered into, an Advance Pricing Agreement with the Income Tax Authorities or obtained Advance Ruling? (Please Enclose Copy)</i>	<i>Yes. CSIBV and CCIPL have entered into a bilateral APA, with income tax authorities in India and Netherlands on November 16,2017 effective for the period April 1, 2013 to March 31, 2019 (Enclosure 10)</i>
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This agreement dated 16.11.2017 which was considered by the SVB Cell while making the opinion in respect of the declared value is the bilateral agreement with the income tax authorities in India and Netherlands. The pricing mechanism as adopted between the appellant and their principal is part of the said agreement. It is not even referred to in the impugned order and what would be impact of the said agreement on the transactions under consideration is not discussed. Any value which does not satisfy the terms of the said agreement cannot be said to be value acceptable as transfer pricing under Income Tax laws of the said two countries.

4.13 In view of the discussions as above we would answer the questions at (i) to (v) as stated in para 4.3 above in favour of the appellant.

4.14 It is also observed that Commissioner (Appeal) has in the impugned order sought to reconsider the submissions made by

the appellant to the SVB Cell, and record a finding contrary to the findings recorded by the SVB Cell and communicated to the appellant. The approach of the Commissioner (Appeal) cannot be justified because the finding in respect of the invoicing and the transactions between the appellants and their principals have been duly determined after following the due process by the SVB Cell. If the findings recorded by the SVB Cell are to be challenged than the matter should have been referred by the jurisdictional Commissioner to the SVB Cell as have been provided by the Circular of the Board referred above. The direction given by the Commissioner (Appeal) in the impugned order to the SVB Cell to review its finding is beyond the jurisdiction of the Commissioner (Appeal) in the appellate proceedings.

4.15 in terms of the Board Circular as referred above if the jurisdictional officers are satisfied that there is change in the circumstance of sale, then they should refer the matter to SVB cell for reconsideration of its findings as communicated to the appellant vide letter of 14.11.2018.

5.1 Appeals are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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