IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. IV

APPEAL NO. C/853/2009

(Arising out of Order-in-Appeal No. 187 (AC/GR.II D)/2009(JNCH) dated 29.04.2009 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II.)

Commissioner of Customs (Import), Nhava Sheva — Appellant

Vs.

M/s Sun Tex — Respondent

Appearance:

Shri R. Kapoor, Commissioner (AR) — for Appellant
Shri B.B. Mohite, Advocate — for Respondent

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SANJIV SRIVASTAVA, MEMBR (TECHNICAL)

Date of Hearing: 22.10.2018
Date of Decision:22.01.2019

FINAL ORDER NO. 85950/2026 — Dated : 31.07.2026
ORDER NO. I /1/2019

Per: Ajay Sharma

Instant appeal has been filed by Revenue from the impugned order dated 29.04.2009 Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva by which the learned Commissioner allowed the appeal filed by the respondent herein and set aside the Order-In-Assessment dated 2.2.2009.

2. The goods in question i.e. 200 bags containing 1000 MTs of "Polyester Chips Semi Dull Raw White A Grade" was originally consigned to India from China for importer M/S Filatex (India) Ltd. in the month of August, 2008 and the unit price of the same as agreed between the parties was @ USD 1400/MT, however the said importer i.e. M/s. Filatex (India) Ltd. did not clear the goods and also refused to honour the bank L.C. Thereafter the exporter of the goods located in China contacted the Respondents i.e. M/s Sun Tex for resale of their goods since it was incurring heavy detention and demurrage charges and also because the goods were getting deteriorated and the exporter from China was not getting any other buyer to buy the goods. The said exporter entered into an agreement in the month of December, 2008 with the Respondents and the Respondents agreed to buy the said goods @ USD 600/MT subject to the condition that payment of all detention and demurrage charges will be born by the Respondents. In this matter the detention and demurrage charges alone compute to USD 505/MT. After the finalisation of the agreement, the Respondents filed bill of entry in the month of January, 2009 declaring assessable value of the goods in question as ₹ 2,92,09,200.

3. Since the contemporaneous unit price of polyester chips was higher than declared unit price, therefore enquiry was raised to the Respondents to justify the declared value. Since the Department was not satisfied with the justification given by the Respondents therefore a personal hearing was given to the Respondents on 28.1.2009 and after hearing the respondent, Order-in-Assessment dated 2.2.2009 was passed by the Assistant Commissioner of Customs (import) JNCH by which the declared transaction value @ USD 600/MT was rejected in terms of Rule 12 (i) of the Customs Valuation

(Determination of Value of Imported Goods) Rules, 2007 and the same were assessed @ USD 1400/MT in terms of Section 14 of the Customs Act, 1962.

4. On appeal, the learned Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva vide impugned order dated 29.4.2009 allowed the appeal filed by the Respondents and set aside the Order-in-Assessment. While discussing the decision of the Tribunal in the matter of *CCE, Rajkot vs. Jai Bharat Steel; 2005 (192) ELT 792 (Tri-Mum)*, as cited by the assessee, the learned Commissioner observed that by applying the logic of that case, the case of assessee is on a more sound footing as the parties have also changed and there is mutually signed agreement and nothing is brought on record to show that the price is not the sole consideration. By applying the law laid down by the Hon'ble Supreme Court in the matter of *Collector of Customs, Calcutta vs. Salim Abbas Bhai; 197 (97) ELT 466*, the learned Commissioner observed that the value as arrived by the assessee and the Exporter in the instant case is to be considered for charging customs duty and the law laid down by the Hon'ble Supreme Court has to be followed. While allowing the Appeal filed by the Respondent herein by way of impugned order, he also relied upon various other decisions which are *Mihir enterprises vs. CC(Import), Mumbai; 2008(27) ELT 75, PDM Impex vs. CCP, Calcutta; 2005(191) ELT 1121, Sahil Trends vs. CCP, Ahmedabad; 2005 (183) ELT 75, CC vs. Meera Impex; 2004 (167) ELT 446, D.R. Polymers vs. CC, ICD, New Delhi; 2004 (166) ELT 393 and Kailash Enterprises vs. CC, Chennal; 2003 (155) ELT 548.*

5. We have heard learned Authorised Representative on behalf of the Revenue and learned Counsel for the Respondent and perused the records.

We have also gone through the case laws discussed by the learned Commissioner in the impugned order as well as the case laws cited before us by the learned Authorised Representative for the Revenue and the learned Counsel for the Respondent. The learned Authorised Representative on behalf of the Revenue submitted that the goods in question landed at Landmass of India on 23.8.2018 and therefore it became liable for tax of on that date itself. He further submitted that since the earlier importer did not take the delivery of the goods in question and thus the title was left with the overseas exporter/supplier itself. According to him the provision of section 14 of the Customs Act is not applicable in instant matter because the goods in question had landed on 23.8.2008 on Indian landmass and when the goods were not taken for delivery by the 1st importer it were not exported back to China, therefore it implies that while entering into fresh sale deal when the appellant, the goods in question were already in India. He further submitted that there is no clause or provision in the Custom Valuation Rules or Customs Act which prescribes that the value of the imported goods can be negotiated after arrival onto Indian landmass. He also submitted that the value was not enhanced based on contemporaneous value but there is value of import which was taken into account while passing the Order-In-Assessment. He also relied upon the decisions of the Tribunal in the matters of *M/s. Steel Strips Ltd. vs. CC, Mumbai [1997(95) ELT 538 (Tri-Mum)]* in which it was held that valuation of the goods to be the actual price giving rise to importation in India and *CC, Jamnagar vs. M/s. Shree Ram Steel & Rolling Industries Ltd. [2005(188) ELT 80 (Tri-Mum)]* in which it was held that revised price not to be the basis for valuation being arrived at after vessel was imported into country. He also relied upon the law laid down by the Hon'ble Supreme Court in the matter of *M/s Udyani Ship Breakers Ltd. vs. CC & CE, Rajkot [2006 (195)*

ELT 3 (SC) in which it was held that sale of ship after act of import, notice sale in course of international trade but only a sale in the course of domestic trade and therefore price of vessel paid during course of international trade to be the price for the purpose of valuation and reduced price during course of domestic price not relevant under section 14(1) of Customs Act, 1962 read with Rule, 4 of Customs (Valuation) Rules, 1988.

6. Learned counsel appearing for the Respondent reiterated the findings recorded in the impugned order and prayed for dismissal of the Appeal filed by Revenue. He submitted that the learned Commissioner (appeals) after carefully considering the provisions of Section 14 of the Customs Act and after considering various aspects of the transaction between the Respondent and the foreign supplier/exporter, took the view that the price declared by the respondent was acceptable as transaction value for the purpose of payment of duty. In support of his submissions he also cited decision of Hon'ble Supreme Court in the matter of *Chaudhary Ship Breakers versus Commissioner of Customs, Ahmedabad; 2010(259) ELT 161(SC)* in which after a conjoint reading of Rule 3 (i) and 4(1) of the Valuation Rules, the Hon'ble Supreme Court has laid down that the adjudicating authority was bound to accept the price paid or payable for the goods as the transaction value, except where any exceptions enumerated in Rule 4(2) were attracted. He also submitted that in this matter the Revenue has also filed stay application before this Tribunal and this Tribunal vide order dated 4.3.2011 dismissed the same with the observation that *prima facie* the Revenue has not shown that the subject transaction would attract any of the exceptions enumerated in Rule 4(2) and therefore the decision of learned Commissioner (Appeals) to accept the declared transaction value cannot be faulted.

7. In order to appreciate the issue involved in this Appeal, it is necessary to go through Section 14 of the Customs Act, 1962 relating to valuation of goods, which is extracted as under:-

> *"Section 14. Valuation of goods. - For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :*
>
> *Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf :*
>
> *Provided further that the rules made in this behalf may provide for,-*
>
> > *(i) the circumstances in which the buyer and the seller shall be deemed to be related;*
> >
> > *(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
> >
> > *(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :*

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Not withstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. - For the purposes of this section -
(a) "rate of exchange" means the rate of exchange
(i) determined by the Board, or
(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)."

Valuation is covered by Section 14 of the Customs Act. The value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. However, Section 14(2) provides that if the Board is satisfied that it is necessary or expedient, it may, by notification in the official gazette, fix tariff values for any class of imported goods or export goods, for the reasons contained therein. In view of the above, duty on imported goods is to be charged on the transaction value of the goods and for determining the transaction value, the following ingredients are required:-

(i) The price should actually be paid or payable when the imported goods are sold for export to India.

(ii) The imported goods should be for delivery at the time and place of importation.

(iii) The buyer and seller of the goods are not related. And

(iv) The price should be the sole consideration for the sale.

8. It is admitted that in the instant matter earlier the importer was somebody else i.e. M/s. Filatex, although they agreed the price @ USD 1400/MT but did not take the delivery nor honor the bank L.C. They also did not pay any price to the exporter. Therefore neither the transfer of goods from the exporter to the then importer took place nor the goods were delivered to the earlier importer at that time and place of importation i.e. India nor any price was paid or payable by the earlier importer to the exporter. Although the criteria of place of importation was satisfied, but that cannot be read in isolation and the requirement of *'at the time of importation'* has to be read in tandem. The requirement of *delivery at the time and place of importation* is completed only when the respondent herein took delivery of the goods in question. Therefore requirement of Section 14 ibid was not completed in the case of earlier importer M/s. Filatex and all the requirements of the said section were completed only in the case of the Respondents. It is not the case of Revenue that the Respondent and the exporter are related. It can very well be said that in the case of 1st import by M/s. Filatex no sale took place and the sale was completed only with the respondent. It is also not the case of the Revenue that the price declared is influenced with any extraneous consideration. Therefore price is the sole consideration for sale in the instant matter. The value declared by the respondents is the *'transaction value'* of the goods imported as the delivery was taken on agreed price and all ingredients,

which are required to constitute transaction value, are present. No doubt the goods were reached India at an earlier date i.e. August, 2008 but the import was completed only when the Respondents took the delivery of the said goods in December, 2008 after making necessary payment to the exporter and also after paying necessary customs duty.

9. We are in complete agreement with the finding given by learned Commissioner that in this case though the imported goods were intended for delivery at the time and place of importation, the delivery was not taken by the 1st importer and requirement of delivery at the time and place of import is also not met. In fact delivery was taken by the respondent after almost 5 months. Therefore in the facts of this case it is logical to say that the requirement of '*delivery at the time and place of importation'* is met only when the respondents had taken delivery of the goods in question. A contention was raised by learned Authorised Representative on behalf of Revenue that the goods in question were landed at land mass of India vide IGM dated 23.8.2008 and hence became taxable on that date itself. We cannot accept this submission because in the case of *Garden Silk Mills Ltd. vs. UOI; 1993(113) ELT 358(SC)*, which has been referred by Revenue at the time of hearing, the Hon'ble Supreme Court has laid down that *Taxable event* is reached when the goods reach the Customs barrier and Bill of Entry for home consumption is filed. Admittedly in the present case the Bills of Entry were filed by respondent only and that too on 2.1.2009. No Bill of Entry was filed by the earlier importer who neither took the delivery of the goods nor made any payments either to the exporter or to the Customs authorities. Another important aspect of the matter is that if the earlier importer i.e. M/s. Filatex did not take the delivery of the goods in the month of August 2008 when they

were imported, the title was remained with the overseas exporter only and it was transferred only in the month December, 2008 or January, 2009 when the respondents entered into contract with the exporter and made the payment to the exporter as well as to the Customs authorities in India and released the goods for home consumption. We are also not ready to accept the contention of learned Authorised Representative that in view of the decision of this Tribunal in the matter of *M/s. Steel Strips Ltd. (supra)* the value of the goods is the price originally agreed by the original buyer. Because in that matter the consignment was originally shipped for earlier importer M/s. Shyam Sunder & Sons and that importer had also filed B/E for clearance of goods on 23.6.1989 and the goods were landed on 4.7.1989. Whereas in the case in hand, the B/E was not filed by the earlier importer M/s. Filatex when the goods were imported in the month of August, 2008 by them and it was filed by the respondents in the month of January, 2009.

10. In the case in hand, 1st importer did not take the delivery of the goods nor remit the money to the seller and hence the act of import is not over. Since it was not over, therefore the respondents i.e. M/s. Sun Tex purchased the goods and the act of import was completed only when the respondent remitted the agreed money to the overseas exporter and took delivery of the goods and therefore since the respondent purchased the goods from the foreign seller it is an international trade and the purchase price is the transaction value.

11. As per Section 14 ibid, the value of imported goods shall be the transaction value i.e. the price actually paid or payable for the goods for delivery at the time and place of importation. On this issue Hon'ble Supreme

Court in the matter of *Eicher Tractors Ltd. v. C.C., Mumbai [2000 (122) E.L.T. 321 (S.C.)]* has laid down 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 or 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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> *7. The rules which have been framed are the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The rules came into force on 16th August, 1988. Under Rule 3(i) "the value of imported goods shall be the transaction value". "Transaction value" has been defined in Rule 2(f) as meaning the value determined in accordance with Rule 4. Rule 4(1) in turn states:*
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> > *"The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules."*
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> *8. Reading Rule 3(i) and Rule 4(1) together, it is clear that a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value. But the mandate is not invariable and is subject to certain exceptions specified in Rule 4(2) namely:*
>
> > *"(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –*

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3)."

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.

10. The respondent's submission is that the phrase "the transaction value" read in conjunction with the word "payable" in Rule 4(1) allows determination of the ordinary international value of the goods to be ascertained on the basis of data other than the price actually paid for the goods. This, according to the respondent, would be in keeping with the overriding effect of Section 14(1). We cannot agree.

11. It is true that the Rules are framed under Section 14(1A) and are subject to the conditions in Section 14(1). Rule 4 is in fact directly relatable to Section 14(1). Both Section 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary 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).

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."*

12. The Hon'ble Supreme Court in the matter of *Chaudhary Ship Breakers Vs. Commissioner of Customs, Ahmedabad; 2010 (259) ELT 161(SC)* while interpreting Section 14 of Customs Act and Rule 3 & 4 of Customs Valuation Rules, 1988 has laid down as under:-

"15. *According to Section 14(1) of the Act, assessment of customs duty under the Customs Tariff Act, 1975 is to be made on the value of the goods imported. Unless the value of the goods is fixed under the sub-section (2) of Section 14, the value has to be determined under sub-section (1) of the said Section. The value, as per Section 14(1), as it stood prior to its amendment with effect from 10th October 2007, 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" is clarified in the Section itself, 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...". According to Section 14(1A) price of imported goods is to be determined in accordance with the Rules framed in this behalf. Under Rule 3(i) of the 1988 Rules, the value of the imported goods shall be the "transaction value". Transaction value has been defined in Rule 2(f) as meaning the value determined in accordance with Rule 4. Rule 4(1), in turn, states that "the transaction value of the imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these Rules." It is clear from a conjoint reading of Rule 3(i) and Rule 4(1) that the adjudicating authority is bound to accept the price actually paid or payable for the goods as the transaction value, except where*

> *exceptions enumerated in Rule 4(2) are attracted, which is not the case here. It is, therefore, manifest that both Section 14(1) and Rule 4 provide that in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2) of the 1988 Rules, the price paid by an importer to the seller in the ordinary course of commerce is to be taken as the transaction value for the purpose of valuation of goods."*

13. Similarly, the Hon'ble Supreme Court in the matter of *Udyani Ship Breakers Ltd. vs. CC& CE, Rajkot; 2006 (195) ELT 3 (SC)* while interpreting Section 14 of Customs Act, 1962 and Customs Valuation Rules, 1988 has held as under:-

> *"…the act of "Import" in this case was over as soon as the letter of credit was opened by the importer in favour of the foreign seller and remitted the sum of Rs.24,78,27,175/- to the foreign seller on 12.8.1997 in terms of the letter of credit opened with the Vysya Bank Ltd., Mumbai through ABN Amro Bank, N.V. Brussels."*

14. After going through the abovementioned decisions of the Hon'ble Supreme Court, we are of the view that the transaction value is the price actually paid or payable for the goods when sold for export to India. Transaction value is the value that has actually been paid by the importer i.e. respondent to the exporter abroad. No other price can be taken into consideration for determining the assessable value in terms of the main definition of the term "value" given under sub-section (1) of Section 14 of the Act. The Customs authorities are bound to assess duty on the transaction value. Only in exceptions specified in Section 14 of the Customs Act, 1962 the department can follow Customs Valuation Rules. In the present proceedings before us supplier of goods and importer are not related persons

and there is no evidence on record that any amount in excess of what has been declared by the respondents has been repatriated by the respondents. Since the respondents had to incur additional expenses of Detention and Demurrage charges which compounds and computes to USD 505/MT, that was the reason that the price offered by them is only USD 600/MT for which Bill of Entry was filed and according to us that is well reasoned explanation for quoting the price in question. In these circumstances, there is no ground for rejecting the transaction value and we hereby upheld the impugned order of the learned Commission and the Appeal filed by the Revenue is rejected.

(Pronounced in Court on 22.01.2019)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

Prasad

15.1 I have gone through the order prepared by learned Member (Judicial) but after lot of persuasion, I am not in a position to agree with the same.

15.2 The facts have been narrated by the learned brother. So am not repeating the same.

16. As per Section 46 of the Customs Act, 1962, the Bill of Entry for goods imported has to be filed at the time of importation which in the present case was when the goods for the first time entered into the Indian Customs waters.

16.1 In terms of Section 14, as explained by Hon'ble Supreme Court in the case of *Garden Silk Mills Ltd. vs. UOI – 1999 (113) ELT 358 (SC).* The Hon'ble Supreme Court held as follows:-

> *"**8.** On a careful analysis it is evident that the principles of valuation incorporated in Section 14(1)(a) of the Act therein show that :*
>
> *(a) the price is a deemed price;*
>
> *(b) at which such or like goods are ordinarily sold or offered for sale;*
>
> *(c) for delivery at the time and the place of importation or exportation;*
>
> *(d) in the course of international trade;*

(e) where the seller and the buyer have no interest in the business of each other and

(f) the price is the sole consideration for the sale or offer for sale.

9. *This Section clearly indicates that it is not the price stated in the CIF contract which alone is to be accepted as being the value of such goods for the purpose of Section 14 of the Act. The said Section requires determination of the value of the imported goods. The appellants are right in contending that this is a deeming provision. The value of such goods is to be deemed to be the price at which such goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. The price of the imported goods, in other words, has to be determined in respect of import of those goods for delivery at the time and place of importation. It appears to us that the word "delivery" must necessarily mean the point of time when the goods can be physically delivered to the importer. In other words, "delivery" and "discharge" are not synonymous. As we shall presently see, merely by the shipper discharging the goods at the port of import does not ipso facto give the importer a right to take the delivery thereof.*

10. *Chapter VI of the Act contains the provisions relating to conveyances carrying imported or exported goods. Chapter VII of the Act contains provisions regarding the clearance of imported goods and export goods. Reading the provisions contained in the said chapters, it becomes apparent that all goods carried by vessel or aircraft entering from any place outside India has to land the goods at a customs port or customs* *airport and that too with the permission of the Customs Officer (Section 29).*

11. *The import manifest of the vessel is required to be delivered to the Customs Officer in terms of Section 30. Unloading of imported goods can take place only after the import manifest has been delivered and an order permitting entry inwards of the vessel has been given by the Customs Officer in terms of Section 31. Section 32 provides that unloading of only those goods is permitted as are mentioned in import manifest. The goods are to be unloaded as per Section 33 only at the place which is approved for that purpose and the same cannot be unloaded except under the supervision of the Customs Officer (Section 34).*

12. *All imported goods unloaded in a customs area are required to remain under the customs authorities until they are cleared for home consumption or are warehoused or are transshipped (Section 45). The goods can be cleared by the importer only after, as provided by Section 46, the importer files a bill of entry for home consumption or warehousing pursuant to which clearance of goods is granted under Section 47 by the Customs Officer. This clearance is given after the officer is, inter alia, satisfied that the importer has paid the import duty assessed on the imported goods.*

13. *The aforesaid provisions of the Act, therefore clearly show that after the imported goods are discharged from the vessel at the wharf the importer cannot immediately take delivery thereof. The imported goods remain in the custody of the Port Trust Authorities till they are inter alia, cleared for home consumption. This being the position the goods cannot be cleared and delivery taken without their being* *valued and assessed and, thereafter, duty being paid. Section 14 of the Act provides that the value of the goods shall be deemed to be the price of the goods for the delivery at the time and place of importation in the course of international trade. The value has to be determined with relation to the time when physical delivery to the importer can take place. Physical delivery can take place only after the bill of entry, inter alia, for home consumption is filed and it is the value at that point of time which would be relevant. It is evident that there normally will be some lapse of time between the time when the shipper discharges the goods and the time when the bill of entry is filed. The landing charges, which are imposed at or after the time of the discharge of the goods and prior to the clearance being granted under Section 47 of the Act, necessarily have to be an element which have to be taken into account in determining the value thereof for the purpose of assessing the customs duty which would be chargeable.*

14. *Section 14 is a deeming provision. The legislative intent is clear that the actual price of the imported goods, namely the landing cost, cannot alone be regarded as the value for the purpose of calculating the duty. If the submission of the learned Counsel for the appellants is correct namely that the C.I.F. price represents the value of the imported goods, then the Section 14 would have been differently worded. It could, for instance, have easily been stated that the value of the imported goods would be the transaction value of the goods. The language of Section 14 clearly indicates that though the transaction value may be a relevant consideration, the value for the purpose of Customs duty will have to be determined by the*

Customs Authorities which value can be more, and at times even less, than what is indicated in the documents of purchase or sale.

15. *The question as to whether the import is completed when the goods entered the territorial waters and it is the value at that point of time which is to be taken into consideration is no longer res integra. This contention was raised in Union of India v. Apar Industries Limited - 1999 (112) E.L.T. 3 (S.C.) = 1999 (5) J.T. 160. In that case the day when the goods entered the territorial waters, the rate of duty was nil but when they were removed from the warehouse, the duty had become leviable. The contention which was sought to be raised was that what is material is the day when the goods had entered the territorial waters because by virtue of Section 2(23) read with Section 2(27) the import into India had taken place when the goods entered the territorial waters. Following the decision of this Court in Bharat Surfactants (M/s) (Private) Ltd. and Another v. Union of India and Another, 1989 (43) E.L.T. 189 (S.C.) = 1989(4) SCC 21 and Dhiraj Lal H. Vohra and Others v. Union of India and Others 1993 (66) E.L.T. 551 (S.C.) = 1993 (Supp. 3) SCC 453, this Court came to the conclusion in Apar's Private Limited case that the duty has to be paid with reference to the relevant date as mentioned in Section 15 of the Act. "*

16.2 In terms of Section 14, the price needs to be determined in course of international trade on the time and date of importation which in the present case is clearly when the goods were first imported. Any subsequent event prior to clearance of the said goods from the port cannot alter the price in course of international trade as for the purpose of determination of value under Section 14. In the present case the value has been sought to be reduced substantially for the reason that when the goods are sought for clearance by the second person who has purchased these goods before clearance from port for the reason that huge amount of detention and demurrage charges are due against the person. Levy of detention and demurrage charges cannot be the reason for reduction in the international sale price of the goods. Accordingly in my view, the order of Commissioner (Appeals) allowing reduction in transaction value on this account for this reason is not justified.

17. The appeal filed by the Revenue needs to be allowed.

(Sanjiv Srivastava)
Member (Technical)

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POINTS OF DIFFERENCE

In view of the orders as above, matter is referred to Hon'ble President, to refer the matter to Third Member to determine,-

Whether the appeal should be dismissed as held by Member (Judicial) or it should be allowed as held by Member (Technical).

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

ORDER ON DIFFERENCE OF OPINION

INTERIM ORDER NO.107/2023

Date of Hearing: 23.12.2022
Date of decision: 21.04.2023

PER: S.K. MOHANTY

18. This appeal of Revenue is directed against the impugned order dated 29.04.2009 passed by the learned Commissioner of Customs (Appeals), Mumbai-II, wherein the assessment order dated 28.01.2009 in enhancing the value of imported goods was set aside and the appeal was allowed in favour of the respondents. Feeling aggrieved with the impugned order dated 29.04.2009, Revenue has preferred this appeal before the Tribunal.

19. Brief facts of the case, leading to this appeal, have already been set out at the preceding paragraphs from 2 to 4 in the Order No. I/1/2019 dated 22.01.2019 passed by the referral bench. Therefore, the facts are not been repeated here. While hearing the appeal, the learned Members in the Division Bench have raised the difference of opinion with regard to determination of the transaction value of the imported goods i.e., "Polyester Chips Semi Dull Raw White 'A' Grade". The issue for consideration by the referral bench was whether, the unit price of the subject imported goods @ USD 1400/MT as agreed upon by the initial importer M/s Filatex (India) Ltd. with the overseas supplier should be considered as the transaction value; or, at the re-negotiated price of USD 600/MT, as per the agreement entered into between the respondent M/s. Sun Tex and the overseas supplier of the goods.

20.1 Learned Judicial (Member) in the said order dated 22.01.2019 has held that the negotiated price paid by the respondent M/s Sun Tex to the overseas supplier should be considered as the transaction value of the imported goods, for the purpose of payment of customs duty, in terms of sub-section (1) of Section 14 of the Customs Act, 1962. In support of such findings, the learned Member (Judicial) has observed that the respondent and the overseas supplier are not related and over and above the agreed upon price, no further amount was paid for supply of such goods and thus, the price actually paid by the respondent, being the sole consideration for the sale, the said price should be considered as the transaction value for payment of customs duties thereon.

20.2 On the contrary, the learned Member (Technical) has observed that as per Section 14 read with Section 46 of the Act of 1962, since the import price is required to be determined in the course of international trade, on the time and date of importation, i.e., when the goods entered into the Indian Customs Waters for the first time, should qualify as 'import' and the price of imported goods prevailing on such date and time of entry, should be reckoned to as the value of imported goods, for payment of Customs duty thereon. It was further observed that any subsequent event prior to clearance of the said goods from the port of import, cannot alter the price in the course of international trade, for the purpose of determination of value under Section 14 of the Act of 1962. Thus, it was held that since the goods in question had landed on 23.08.2008 in Indian landmass for the first time, the initial contract price agreed upon between the overseas supplier and Indian importer M/s Filatex (India) Ltd. @ USD 1400/MT, should merit consideration as 'value' for payment of Customs duty. Based on such analysis, learned Member (Technical) has expressed his views that the impugned order, allowing reduction in transaction value is not justified and accordingly, the appeal filed by the Revenue needs to be allowed.

21. In view of the above difference of opinion between the learned Members in the Division Bench on the subject issue, the matter was referred by the Hon'ble President of the Tribunal, to me as a Third Member, for resolving such dispute. The matter was referred to the Third Member to determine whether, the appeal should be dismissed, as held by Member (Judicial); or it should be allowed, as held by Member (Technical).

22. Heard both sides and examined the case records.

23. The case of the respondent in this appeal is that the goods in question were originally consigned to India, by the overseas supplier M/s Andtex Industries, Hong Kong for another importer M/s Filatax (India) Ltd., in August 2008 at the agreed upon price of USD 1400/MT; that the said importer, however, did not clear the goods and also refused to honour the bank Letter of Credit (L.C.); that under such circumstances, the overseas supper had contacted the respondent for resale of their goods, which was incurring heavy detention and demurrage charges at the port of import and accordingly, an agreement was entered into for buying the goods @ USD 600/MT. The respondent further canvassed that the detention and demurrage charges alone were computed at USD 505/MT and thus, it was pleaded that sale price

agreed between the parties and the value declared @ USD 600/MT is justified for consideration as transaction value.

24. The provisions for valuation of imported goods and export goods are contained Section 14 of the Act of 1962, which reads as under:

> *"**Section 14. Valuation of goods**"*
>
> *(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or, as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:……"*

25. On reading of the above quoted statutory provision, it would transpire that for determining the 'transaction value' in the case of imported goods, the following criteria are required to be fulfilled:

> *(a) The price should actually be paid or payable, when the imported goods are sold for export to India;*
>
> *(b) the imported goods should be for delivery at the time and place of importation;*
>
> *(c) the buyer and seller of the goods are not related; and*
>
> *(d) the price should be the sole consideration for the sale of goods.*
>
> (emphasis supplied)

26. In the case in hand, it is an admitted fact on record that pursuant to the contract, though the goods were initially consigned to India, but due to non-payment of sale proceeds through the approved banking channel to the overseas supplier, the said imported goods were not delivered to the first importer M/s Filatex (India) Ltd. Since no price was paid or subsequently payable for the imported goods, and that the said importer did not take delivery of the goods at the port of import, it can be said that the conditions itemized at (a) and (b) above are absent in the case of initial import made by M/s Filatex (India) Ltd. On the other hand, considering the fact of deterioration of the goods, since the same were lying with the shipper for more than five months, and to avoid further incurrence of demurrage and detention charges, the overseas supplier M/s Andtex had approached the present respondent and negotiated the price to sell the subject goods @ USD 600/MT., and accordingly, a contract to such effect was entered into between them. As per the contractual norms, the respondent had paid the agreed upon price to the said overseas supplier through approved banking channel and

thereafter, the ownership and title of such goods were transferred in favour of the respondent. Further, it is not the case of the Revenue that the respondent and the overseas supplier are related to each other and other than sale proceeds, any further price had been paid by the respondent for the benefit of the overseas supplier for sale of the subject goods. The factual matrix narrated above demonstrates that the criteria laid down at (a) to (d) above had been duly fulfilled by the respondent and as such, the price paid by them towards sale of goods by the overseas supplier should be considered as 'transaction value', for the purpose of payment of customs duty.

27. On reading of the findings recorded by the Learned Member (Judicial), I find that he has referred to various judgments delivered by the Hon'ble Supreme Court, in context with the valuation provision in respect of the imported goods and concluded that the price declared @ USD 600/MT in the bill of entry by the respondent had been satisfactorily explained and accordingly, rejected the appeal filed by the Revenue. The said judgments referred to at paragraph 9, 11, 12 and 13 by the Learned Member (Judicial) in the Interim Order dated 22.01.2019 relate to period prior to 11.05.2007, where a deeming provision with regard to the value of imported goods was made in Section 14 of the Act of 1962. As per the 'deemed value' concept, the words "ordinarily sold or offerred for sale", used in the valuation provision under Section 14 *ibid* was interpreted by the Court of law to conclude that contract price between the overseas supplier and the importer is not sacrosanct for determination of the value of imported goods and such value can only be ascertained on the basis of prevailing price in the market on the date of importation. The said Section 14 was substituted by the Finance Act, 2007 (22 of 2007), dated 11.05.2007, w.e.f. 10.10.2007. The effect of substitution is that the concept of 'deemed value' was replaced with the provision of "transaction value".

28. The transaction value concept was dealt with by the Hon'ble Supreme Court in the case of *C.C.E. & S.T., Noida Vs. Sanjivani Non-Ferrous Trading Pvt. Ltd.*- 2019 (365) E.L.T. 3 (S.C.). While upholding the order dated 17.01.2017 of the Tribunal, the Hon'ble Supreme Court has held that the assessable value has to be arrived at on the basis of the price of the imported goods, which was actually paid and mentioned in the bill of entry; and such value can be rejected by the assessing authority on an subjective analysis that the price paid was not the sole consideration of the transaction value. The relevant paragraphs recorded in the said judgement are quoted herein below:

> *"**4.** The entire basis of the order of the Tribunal is contained in paragraph 7 of the impugned judgment and since that paragraph contains the reasons which*

persuaded the Tribunal to set aside the order of the authorities below, we reproduce this para along with paragraph 8 which disclosed the outcome of the appeals, in entirety.

> *"7. Having considered the rival contentions and on perusal of record, we find that the Original Authority was directed by the Hon'ble High Court to pass speaking order on the enhancement of assessable value. We find that the Original Authority in its Order-in-Original dated 25-3-2015 passed comments on the ground of writ petition and did not properly examine the evidence available with the department required to be examined for enhancement of assessable value. Further, we find that as held in the case laws stated above and as provided by Section 14 of Customs Act, 1962, the assessable value has to be arrived at on the basis of the price which is actually paid and in a case the price is not sole consideration or if the buyers and sellers are related persons then after establishing that the price is not sole consideration the transaction value can be rejected and taking the other evidences into consideration the assessable value can be arrived at. Such exercise has not been done in these cases on hand. Therefore, we reject the enhancement of assessable value in respect of the Bills of Entry which are involved in all the appeals being decided and we restore the assessable value as declared by the appellant in said Bills of Entry.*
>
> *8. In result, we set aside all the impugned Orders-in-Appeal and allow all the appeals. The appellant shall be entitled for consequential relief, if any, in accordance with law."*

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7. *This argument may seem to be attractive, but only when there is a cursory look at the aforesaid observations of the Tribunal that the Assessing Officer did not examine the evidence available with the Department which was necessitated for such a purpose. However, the observations of the Tribunal have to be understood in their entirety and in the context in which these are made. The Tribunal has categorically mentioned that as per the provisions of Section 14 of the Customs Act and the principles laid down in the case law (which it referred to in the earlier part of the judgment) interpreting this provision, the assessable value has to be arrived at on the basis of the price which is actually paid. It is the basic principle enshrined in the aforesaid provision, i.e., Section 14, which can be culled out from the catena of judgments pronounced by this Court.*

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.*
>
> *xxx xxx xxx*
>
> *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.*
>
> *xxx xxx xxx*
>
> *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."*

29. On careful reading of the order portion recorded by learned Member (Technical), I find that he has basically dealt with the concept of 'deemed value' for arriving at the conclusion that the price declared in the bill of entry cannot be considered as the transaction value and consequently, has held that the appeal of Revenue is required to be allowed. This fact is evident from paragraph 16.1 in the interim order dated 22.01.2019, where the reference was made to the judgement of Hon'ble Supreme Court in the case of *Garden Silk Mills Ltd. Vs. Union of India* – 1999 (113) E.L.T. 358 (S.C.). On reading of the said judgement relied upon by the learned Member (Technical), I find that the provisions of valuation contained in Section 14 of the Act of 1962 i.e., 'deemed value', as it existed prior to the period 10.10.2007, was considered in the said judgement. Since, the concept of 'transaction value' was brought into the statute book w.e.f. 10.10.2007, and the dispute involved in the present case relates to the period January, 2009, it is proper and justifiable in law, that the concept of 'transaction value' alone should be adopted for the purpose of ascertaining the customs duty liability. In the case in hand, since all the parameters laid down in the amended Section 14 of the Act of 1962 had been complied with by the respondent, as discussed in the preceding paragraph, the price actually paid to the overseas supplier for the imported goods should be considered as transaction value. In other words, no

interpretation can be placed to upset the declared value as the price paid by the respondent to the overseas supplier is the sole consideration for the sale of the disputed imported goods.

30. In view of the foregoing discussions, I am in agreement with the learned Member (Judicial) that the value declared in the bill of entry by the respondent should form the transaction value and accordingly, the appeal filed by Revenue is liable to be dismissed.

31. Registry is directed to place this Order before the Regular Bench for recording of the majority order.

(Order pronounced in open court on 21.04.2023)

(S.K. Mohanty)
Member (Judicial)

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MAJORITY ORDER

PER: CORAM

In view of the majority opinion, the impugned order sustains and the appeal filed by Revenue is dismissed.

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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