

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

**REGIONAL BENCH**

**Customs Early Hearing Application No. 30164 of 2020**

(on behalf of the appellant)

**In**

**Customs Appeal No. 30546 of 2019**

(Arising out of Order-in-Original No. HYD-CUS-02-COM-19-2020 dated 19.07.2019 passed by the Commissioner, Customs & Central Excise, Hyderabad)

**Principal Commissioner of Customs  
Hyderabad Customs Commissionerate  
Basheerbagh, Hyderabad**

**Appellant**

**Versus**

**M/S Sachdev Overseas Fitness Private Limited    Respondent**

Plot No. 17, Thyagaraya Colony, West Marredpally,  
Secunderabad – 500 015.

**Appearance:**

Shri L V Rao, Authorized Representative for the Department

Shri M.V.S. Prasad, Advocate for the Respondent

**CORAM:**

**HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)  
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 04.03.2022  
Date of Decision: 19.04.2022**

Final Order No. A/30053/2022

**P.V. Subba Rao**

When this matter was called, learned Departmental Representative submitted that in this case, the Show Cause Notice was issued by the Directorate of Revenue Intelligence<sup>1</sup> and that it was held by the Supreme Court in the case of **Canon India vs**

**Commissioner of Customs**<sup>2</sup> that DRI officers were not competent to issue SCN under section 28 and a review petition<sup>3</sup> in this matter is before the larger bench of the Supreme Court and therefore, this matter may be adjourned. Learned counsel for the respondent submits that he is giving up on the question of competence of DRI to issue the SCN and will not rely on **Canon India** and will argue on merits and that the respondent has a very strong case on merits. Accordingly, with concurrence of both sides, this appeal is taken up for hearing for a decision on merits ignoring the jurisdictional issue as it has been given up by the learned counsel for the respondent.

2. This appeal is filed by the Revenue assailing Order-In-Original <sup>4</sup> dated 19.07.2019 passed by the Commissioner of Customs, Hyderabad Customs Commissionerate, Hyderabad dropping all the proceedings initiated by the Show Cause Notice<sup>5</sup> dated 20.10.2018 issued to the respondent.

3. M/s Sachdev Overseas Fitness Pvt. Ltd.<sup>6</sup>, imports fitness equipment from China and Taiwan. Officers of DRI received intelligence that the respondent was evading Customs duties by mis-declaring the value of the goods imported by it and the goods that it imported were being shipped directly from the manufacturer in China but the purchase invoices for a lower value than the

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**2** AIR 2021 SC 1699  
**3** RP (C) No. 400/2021  
**4** Impugned order  
**5** SCN  
**6** Respondent

manufacturer's price were issued by Shri Durga Prasad Khera<sup>7</sup> alias Rajan Khera of Taiwan.

4. Acting on this intelligence, officers searched the office of the respondent and the residence of Shri Prem Kumar Sachdev<sup>8</sup>, the authorised signatory of the respondent on 03.03.2016 and recovered, inter alia, some invoices raised by the Chinese manufacturer on Shri Khera, two computer Hard-disks of Western Digital make of 500 GB capacity each, one Kingston make pen drive of 1GB capacity and a Kingston make flash drive of 2GB capacity. They sent the digital media to Central Forensic Science Laboratory<sup>9</sup>, Hyderabad for forensic examination and analysis, who retrieved the data and sent their report dated 10.05.2016.

5. After recording statements, scrutinizing the data retrieved by the CFSL from the pen-drive and conducting further investigation, it appeared to the officers of DRI that:

a) Shri Sachdev is the authorized signatory of the respondent and his wife and son are its Directors. All the fitness equipment imported from China and Taiwan are sold under the registered brand name 'Aerofit'. Shri Sachdev engaged Shri Khera and as per their arrangement, the manufacturers in China would raise invoices on the companies run by Shri Khera in Taiwan, who, in turn would raise invoices on the respondent.

**b) The respondent placed purchase orders on the Taiwanese supplier indicating details like Model No.,**

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**7** Khera  
**8** Sachdev  
**9** CFSL

**name of the Chinese manufacturer from who the goods should be procured, quantity of goods, delivery schedule, delivery address, port of discharge etc. on the basis of which the Taiwanese supplier placed orders on Chinese manufacturer who shipped the goods directly from China to India.**

- c) Thus, there were two invoices for the same goods imported by the respondent- one from the Chinese manufacturer to the Taiwanese supplier showing the actual price which was higher and another from the Taiwanese supplier to the respondent showing a lower price.**
- d) The respondent paid the lower amounts specified in the invoices of Taiwanese suppliers through banking channels and paid the difference between the manufacturer's price and these invoice prices through some individuals such as Maheshji, Palji, Malaysia (Dheeru), Babu-TR, Gourav, Bittu-Garry, Balu-seth, Dheeru Bhai, Chunni-Bhallu etc.**
- e) The respondent declared lower prices in the invoices raised by Taiwanese supplier to the Customs Department and paid Customs duties on these lower values.**
- f) The respondent imported mainly through Inland Container Depot<sup>10</sup>, Hyderabad, filed 'Into Bond Bills of Entry' and stored the goods in customs public bonded warehouse located in

Kompally and thereafter cleared goods from time to time as required.

6. Some of the imported goods were pending clearance at the ICD and some were lying in the Custom bonded warehouse and still some other goods were in the office-cum-godown of the respondent which were examined and thereafter seized. The details are as follows:

(i) Fitness equipment imported under B.E. No.4244143 dated 13.02.2016 valued Rs.57,69,445/- which was pending clearance was seized at ICD, Hyderabad on 09.03.2016.

(ii) Fitness equipment imported under BE. No.4244128 dated 13.02.2016 valued at Rs.59,77,739/- which was pending clearance was seized at ICD, Hyderabad, on 10.03.2016.

(iii) Imported goods which were already cleared by the customs valued at Rs.71,07,973/- were seized at the Office cum godown of the respondent on 14.03.2016

(iv) Imported goods valued at Rs.5,53,82,470/- which were stored in Custom bonded warehouse were seized on 31.3.2016 in the bonded premises of M/s. Raghava Warehousing and Logistic Services Pvt. Ltd., Kompally.

7. The total value of the goods seized as was revised was Rs.7,77,44,312/-. The total value of the fitness equipment imported by the respondent from 21.10.2011 to 26.02.2016 was calculated as Rs.250,58,31,276/- (including the above seized goods).

8. The SCN dated 20.10.2018 was issued by the Additional Director General, DRI to the respondents calling upon them to explain as to why differential duties should not be recovered from them under section 28(4) along with applicable interest under Section 28AA and also why the seized goods should not be confiscated under Section 111 and penalties should not be imposed under Section 112(a) and 114A.

9. After following due process, the learned Commissioner passed the impugned order dropping the proceedings in the SCN.

10. This appeal is filed by the Revenue assailing the impugned order. On behalf of the appellant Revenue, the following submissions have been made:

- (i) The adjudicating authority held in para 70, 71 of the OIO, that the declared value can be rejected by the officer under Rule 12 of the Customs Valuation Rules, 2007 on the basis of certain reasons which may include the significantly higher value at which identical or similar goods imported at or about the same time were assessed, sale involving abnormal discounts, fraudulent or manipulated documents etc., that no case has been made that the goods are undervalued on account of the value of identical or similar goods, or that there is an abnormal discount, or mis-declaration. He has further held in Para 77 that "*.....no effective investigation was carried out first to reject the declared value then to re-arrive at the transaction value.*"
- (ii) While the explanation to sub-rule (2) of Rule 12 of the Customs Valuation Rules, 2007 lays out a few reasons on the basis of which the accuracy of the declared value may be questioned, this is not an exhaustive list of grounds for rejecting the transaction value. In the instant case, the grounds for seeking rejection of the transaction value adopted by the importer, under Rule 12 of the Customs Valuation Rules, 2007 were narrated at length in Para 14 of the Show Cause Notice. Hence, the proposal for rejecting the declared value cannot be dismissed on the basis of non-satisfaction of the grounds listed in the explanation to sub-rule (2) of Rule 12 of the Customs Valuation Rules, 2007.
- (iii) As detailed in the SCN, the invoices recovered from the premises of the importer, which were raised by the manufacturer in China on the supplier in Taiwan, indicated a higher value of goods. The goods mentioned in these invoices are found to be exactly the same as the ones imported, as evidenced by the serial numbers. The corresponding packing lists also indicate that the goods received by the respondent were stuffed into containers by the manufacturer and shipped directly from China. As such, for all practical purposes, the value stated in the invoices issued by the manufacturer reflects the value of the imported goods and the SCN details the conspiracy entered into by the importer in routing the invoices through Taiwan for undervaluation. The validity and accuracy of the invoices recovered from the premises of the respondent have not been

questioned and contended by the importer before the adjudicating authority. They only contested the relevance of these invoices in, firstly, rejecting the declared value of the importer, and secondly, re-determining the value using the residual method.

- (iv) The fact of recovery of parallel invoices with much higher value from the office premises of the importer for exactly the same goods being imported itself establishes the relevance of the invoices raised by the manufacturer to the import transaction. Had these invoices been irrelevant to the transaction between the importer and the supplier, the invoices would not have been found at their premises. Smt. D.R. Kavita, Office Executive of the respondent in her statement dated 05.03.2016, stated that they receive the manufacturer's invoices and packing list, along with the invoice and packing list of the trader/supplier to their official mail ID, sachdev.overseas09@gmail.com. This reaffirms the relevance of the manufacturer's invoices to the imports made by the respondent. Apparently, these manufacturers' invoices and actual values were the basis for the respondent to work out the differential 'unaccounted' values and make the non-banking payments to the Taiwan supplier Shri Rajan Khera. Hence the said invoices co-relatable with the details in Statement of Accounts form crucial evidence which has not been considered.
- (v) Further, a corroborative statement of accounts was recovered from the pen-drive seized at the residential premises of Shri Prem Kumar Sachdev, Authorized Signatory of the respondent. The statement of accounts indicated that the debit entries against each invoice number are higher than the value declared to the Customs/invoice value of the supplier. Moreover, the statement of accounts also revealed that besides payments through banks, payments were being made through miscellaneous sources to the supplier. An illustrative example of the data in Page 55 and 55A of Annexure A-12 to the SCN (Statement of Accounts) is as follows-

Debits (in USD)		Credits (in USD)	
Opening Balance	15,02,821.45	Bank Transfer	5,47,287.48
Actual assessable value (as per debits against invoices)	9,54,759.98	Other credits (non-banking)	14,78,327.05
		Closing Balance	4,31,966.90
Total Debits	24,57,581.43	Total Credits	24,57,581.43

It may be seen from the Statement of Accounts that while the credit through bank correlates with the value declared to Customs (i.e., USD 5,47,287.48), the total credits inclusive of non-banking credits correlate with the higher debit values shown against each invoice, which in turn correlates with the set of manufacturer's invoices found in the office premises of the importer. Over and above the value shown in the manufacturer's invoice, it is found that the debit entries are even higher, on account of mark-up by the supplier, as discussed in Para 9.1 (vi) and (vii) of the Show Cause Notice.

- (vi) The above facts, as laid out in Para 14 of the Show Cause Notice, form the grounds for doubting the accuracy of the declared value, and proposing for rejection thereof under Rule 12 of the Customs Valuation Rules, 2007.
- (vii) The adjudicating authority at Para 82 of the OIO observed that *"The mere ground that the invoice of manufacturer at China, issued to the trader at Taiwan had higher value than the value declared to the Indian Customs cannot be a ground to reject the value, particularly when much emphasis was laid down under the Rules on what are the grounds available while considering for rejecting a declared value". Further, at Para 83 that it was held that ".....it can be unarguably concluded that none of the ingredients specified under Rule 12 are available in the present import to re-assess the value of the impugned goods"*.
- (viii) It is reiterated that the grounds provided in the explanation to sub-rule (2) of Rule 12 of the Customs Valuation Rules, 2007 for rejection of declared value are merely indicative and not exhaustive. The said explanation itself states that the rule only *"provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value"*. Clause (iii) of the explanation to sub-rule (2) of Rule 12 of the Customs Valuation Rules, 2007 reads, *"The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons **which may include...**"*. It is, therefore, evident that the grounds provided in the said explanation are not exhaustive. Thus, the grounds stated in the SCN are to be considered on their own merits without to whether or not they satisfy or find mention in the indicative grounds listed in the said explanation.
- (ix) The methodology adopted in the SCN for determining the value under Rule 9 of the Rules is not hit by any of the exclusions stated under sub-rule (2) of Rule 9 *ibid*. The value of the products mentioned in the invoice issued by the manufacturer cannot be said to be the "price of the goods on the domestic market of the

country of exportation". Rather, it is the value of identical / very same goods offered for sale in the course of international trade, more so since the same goods were imported directly from China. The methodology proposed in the SCN is also not "arbitrary" or "fictitious", as it is backed by analysis of the evidences recovered during the search proceedings conducted at the importer's premises. The adjudicating authority has not objected to the methodology adopted in the SCN for determining value under Rule 9 of the Customs Valuation Rules, 2007. Rather, the very premise of adopting Rule 9 and relying upon the analysis of data recovered during the search proceedings at the importer's premises has been rejected in the OIO, without adequate justification and without a proper appreciation of relevant facts and evidence on record. In the absence of contemporaneous imports and impossibility of application of Rules 7 or B, it is submitted that adoption of Rule 9 for determining the value is justifiable, when the manner is based on the analysis of evidences recovered and hence the same is not arbitrary.

- (x) In this regard, attention is invited to the decision of Hon'ble CESTAT, Special Bench, New Delhi in the case of "Sai Impex Vs. Collector of Customs, reported in [1992 (62) ELT 616 (Tribunal)] **(Page Nos. 18 to 20)** wherein the Tribunal held as under:

*"The best evidence of the price of the imported goods is available and, therefore, it is not necessary to go to other contemporaneous imports of identical or similar goods. In our view, the manufacturer's invoice represents the transaction under Rule 4 of the Rules. Under the amended rule, importer has to produce invoice of the manufacturer. Since, we are of the view that the manufacturer's invoice is genuine document, there is no reason why it should not be acted upon".*

The Hon'ble Supreme Court affirmed the above view of the Hon'ble Tribunal in the appeal filed by M/s Sai Impex against the Tribunal decision reported in [1996 (84) ELT A47 (S.C.)]**(Page Nos. 21)**. In view of the above, the Tribunal's above order, which was affirmed by the Hon'ble Supreme Court, manufacturer's invoice, if available and genuine, is the best evidence of the price of imported goods and it is not necessary to go to other contemporaneous imports and identical and similar goods and the manufacturers invoice price should be taken as the transaction value under the valuation rules. Thus, the Commissioner's rejection of manufacturers invoice price adopted by the DRI authority to re-determine the value of imported goods in question is incorrect and the Commissioner's finding that the

authorities failed to re-determine the value based on contemporaneous import values will fail.

- (xi) The agreement dated 06.04.2010 between M/s SOFPL and M/s Lucky Partners Investments Ltd., Argain Company Limited (Taiwan suppliers), to the effect that a quantity discount of a maximum of 35% based on approximate turnover in a financial year would be given by the Taiwan suppliers to M/s SOFPL, was not submitted to the investigating agency nor even referred to remotely, during the course of investigation, despite having ample time and opportunities to do so. Further, in the various statements of the authorized Signatory and employees of M/s SOFPL, recorded under Section 108 of Customs Act, 1962, wherein they have acknowledged the vast difference in value, none had brought up the existence of such an agreement dated 06.04.2010 nor was there any whisper about such an agreement.
- (xii) Further, the invoices provided to Customs at the time of importation of the goods have no mention of any discount in the value. In the written submissions of the importer, it is mentioned that, *"while the supplier gives 35% discount, he must be getting more than 35% quantity discount at the end of the year from the concerned manufacturers"*. Inasmuch as there is no mention of any discount in any of the Chinese manufacturers' invoices, it appears that the Taiwan supplier, i.e., Sri Rajan Khera gets the discount only at the end of the year, and no prudent businessman would pass on such quantity discount in advance, right from the first transaction, before getting any such discount from his suppliers i.e., the Chinese manufactures in this case. Hence the argument that 35% discount was received, based on a new and un-investigated document submitted to the adjudicating authority, is not tenable. The alleged agreement and claim of quantity discount are clearly afterthoughts that are tailor-made to negate the observations made in the said Show Cause Notice. The aforesaid agreement cannot be taken into cognizance unless the authenticity of the agreement is verified after thorough investigation, as the same was not provided to the investigating authority. The adjudicating authority, has not given any findings / basis for taking such agreement into consideration and deciding the case by solely relying on the same and dis-regarding the variegated evidences both documentary as well as depositions which was brought out in the SCN.
- (xiii) Another piece of evidence corroborating the undervaluation was the presence of Statements of Accounts in the pen-drive recovered during the search proceedings at the residential premises of Shri Prem Kumar Sachdev, Authorized Signatory of M/s. SOFPL on 03.03.2016. The adjudicating authority in Para 89 of the OIO held, that the party has contended that they

were not provided with any analysis report, and in Para 90 of the OIO that in the absence of evidence that the data so collected from the third agency was shared with the importer, it cannot be said that the principles of natural justice were followed by the investigating agency, who failed to share the data with the importer. The adjudicating authority has relied upon the judgment of the Hon'ble Tribunal in Surya Boards Ltd. vs. CCE, Rohtak, reported in 2014 (312) ELT 282 (Tri-Delhi) in this regard.

- (xiv) It is factually incorrect that the digital evidences extracted by the Central Forensic Science Laboratory, Hyderabad were not shared with the importer. Shri Prem Kumar Sachdev vide his statement dated 22.09.2016 recorded under Section 108 of the Customs Act, 1962 (enclosed as Annexure 13 to the SCN) acknowledged that he was shown the examination report dated 10.05.2016 and the contents of the digital evidence extracted from the pen drive and flash drive recovered from his residential premises under Panchnama dated 03.03.2016.
- (xv) Further, the examination report received from CFSL was provided to the noticees along with the show cause notice as Annexure-4. The copy of the file containing the statement of accounts, extracted from the pen drive was also enclosed as Annexure-12 to the SCN, as a relied-upon document. The same bears the dated signature of Shri Prem Kumar Sachdev on each page with the word "seen" in token of having seen the said document on 22.09.2016 (during the course of his statement dated 22.09.2016). Thus, the adjudicating authority has erred in rejecting the evidentiary value of the data extracted from the pen drive by stating that the analysis report was not shared with the importer.
- (xvi) With regard to payments made over and above the values declared to Customs, the data extracted from the pen-drive recovered during the search of residential premises of Shri Prem Kumar Sachdev, Authorized signatory of M/s SOFPL on 03.03.2016 reveals that besides transactions listed as "bank documents", there are amounts over and above the declared values listed as having been received through various individuals with names mentioned as Maheshji, Palji, Malaysia(Dheeru), Bablu TR, Gourav, Bittu-Garry, Ballu-seth, Dheeru Bhai, Chunni-Bhallu etc. Shri Prem Kumar Sachdev, Authorized Signatory of M/s SOFPL, who in his statement dated 22.09.2016 admitted that the name Palji referred in the statement of accounts retrieved from the pen drive could be of Devendar Pal Narang who is on their rolls as Director(Marketing) and employed at Mumbai, for the last seven years. He further stated that the name Gaurav mentioned in the accounts refers to one Gaurav Bawa of M/s Veegee Sales Pvt. Ltd who is one of the dealers.

- (xvii) Further, Sri Davinder Pal Narang identified the name of "Sarada" appearing in the Statement of Accounts as wife of Shri RajanKhora. Thus, it is evident that the names mentioned in the Statement of Accounts are related to the importer. Moreover, Davinder Pal Narang in his statement dated 23.09.2016 has admitted that he had travelled to Taiwan and China several times to attend exhibitions pertaining to fitness equipment on behalf of Shri Prem Kumar Sachdev and has also attended Shri Rajan Khera's son's marriage in Chandigarh. This goes on to indicate that the persons mentioned in the Statement of Accounts retrieved from the pen drive recovered at the residence of Shri Prem Kumar Sachdev are not alien to M/s SOFPL. Sri Prem Kumar Sachdev in his written submission admitted that the pen drive was recovered from his residence. It is for Sri Prem Kumar Sachdev to explain the contents of the pen drive found from his residence and the burden of proof shifts on him to explain the same.
- (xviii) The adjudicating authority, in Para 85 of the OIO, held that it has not been proven beyond reasonable conclusion that "Sri Pal Ji" listed in the document is none other than Sri Devinder Pal Narang. However, it is well established that the standard of proof in Customs adjudication proceedings is preponderance of probability and not proof beyond reasonable doubt. The preponderance of probability of amounts paid to the supplier in excess of the declared values is amply established in the facts laid out in the SCN that
- a) the evidence is recovered from the pen drive found in the residential premises of the Shri Prem Kumar Sachdev the Authorized Signatory of M/s SOFPL during search proceedings;
  - b) the Statement of Accounts found in the pen drive shows that besides the payment through banking channel corresponding to the value declared to Customs, additional payments were made through individuals;
  - c) the individuals are connected with M/s SOFPL and their Authorized Signatory Shri Prem Kumar Sachdev and
  - d) the amounts shown in the debit entry against each invoice number are higher than the values declared to Customs in the same invoice numbers.
- (xix) The Hon'ble Supreme Court in the case of Anvar P.V. Vs. P.K. Basheer and Others (**Page Nos. 22 to 57**) examined the evidentiary value of electronic records and upheld its evidentiary value and held as under:

**"(a).** *Electronic record produced for the inspection of the court is documentary evidence under Section 3 of the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'). The Evidence*

Act underwent a major amendment by Act 21 of 2000 [The Information Technology Act, 2000 (hereinafter referred to as 'IT Act')]. Corresponding amendments were also introduced in The Indian Penal Code (45 of 1860), The Bankers Books Evidence Act, 1891, etc.

**(b).** Section 45A of the Evidence Act reads as follows:

**"45A. Opinion of Examiner of Electronic Evidence.**-When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000(21 of 2000)., is a relevant fact.

*Explanation.* --For the purposes of this section, an Examiner of Electronic Evidence shall be an expert."

**(c).** Section 65A reads as follows:

**"65A. Special provisions as to evidence relating to electronic record:** The contents of electronic records may be proved in accordance with the provisions of section 65B."

**(d).** Section 65B reads as follows:

**"65B. Admissibility of electronic records:**

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store

*or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*

*(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*

*(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*

*(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*

**(e).** *Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:*

*(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*

*(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;*

*(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and*

*(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity”.*

- (xx) However, the Learned Adjudicating Authority did not consider the digital evidence extracted by the Central Forensic Laboratory, Hyderabad holding that the same was not shared with the importer and violative of principles of natural justice.
- (xxi) Shri Prem Kumar Sachdev, in his written submissions stated that admissions of undervaluation in the Panchnama dated 09.03.2016 and 10.03.2016 are hearsay. This averment of the importer is far from the truth. The two seizure Panchnamas are proceedings narrated by the Panch witnesses and also signed by Sri Prem Kumar Sachdev himself. He has categorically stated before the Panchas and the officers that the value declared did not represent the true transaction value and have been undervalued.

8. Learned Departmental Representative prayed that the impugned order may be set aside and the demand, interest, confiscation and penalties as proposed in the SCN may be confirmed.

9. On behalf of the Respondent, the following submissions have been made:

- a) The Respondent imports fitness equipment as per an agreement entered into with M/s. Lucky Partners Investments, Ltd., M/s. Power Argain Company and M/s. Best Crown Industries Ltd. all of which belong to Shri Khera and are located in Taipei, Taiwan. Shri Khera procures the goods

from the manufacturers and supplies to the Respondent with a quantity discount over the Chinese manufacturer's price based on the turnover assured by the Respondent. Therefore, the prices at which Shri Khera exported the goods to the Respondent were lower than the manufacturer's price.

- b) The case of the Revenue is based mainly on a Statement of Accounts<sup>11</sup> found on a pen drive which was seized during the search of the house of Shri Sachdev. It does not belong to the respondent. No investigation was conducted to find out as to whom the Pen drive belonged to and who authored the entries in the file saved in it. The SOA also contained some names against which cash payments were shown to have been made to Shri Khera which forms the basis of the allegation of the Revenue that additional payments were made to Shri Khera. Neither were the persons named in the file identified nor were they questioned to establish that cash payments were indeed made and if so, at whose behest.
- c) DRI believed the SOA found in the Pen drive to be gospel truth and worked out the differential duty based on the difference in the values in the debit entries in the statement and the values shown in the invoices. The pen drive or any other form of electronic evidence is admissible under Section 138C of the Customs Act but in this case, the procedure prescribed under section 138C was not followed. Reliance is placed on **HS Chadha vs Commissioner of Customs**<sup>12</sup> to assert that mails and other electronic evidence cannot be

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**11** SOA

**12** Customs Appeal No. 51768 of 2016 decided by FINAL ORDER NOS. 50063-50066/2020 dated 9.1.2020

relied upon to prove undervaluation in absence of compliance of provisions of section 138C of the Customs Act. The fact that all documents were received through bank and all remittances were also made through bank and there is no evidence of any cash generation as certified by the Chartered Accountant cannot be ignored.

- d) Without prejudice to the inadmissibility of the evidence, the percentage of undervaluation was also calculated in the SCN for the period beyond 20.10.2011 to 21.10.2014. The period of dispute is 2011 to 2016 and all the calculations beyond 21.10.2014 were not even based on the inadmissible evidence of the file in the pen drive and merely based on assumption of undervaluation.
- e) Even if the invoice value is rejected on suspicion based on the entries in the pen drive, valuation has to be done sequentially as per the Valuation Rules. This was not done on the ground that there were no imports of identical or similar goods during the relevant period. This was a wrong claim and the respondent disproved it by producing evidence of imports of similar goods. This evidence has not been rebutted.
- f) The entire investigation by the DRI is too meager to establish any undervaluation of goods.
- g) There was no admission of undervaluation of goods at any stage by the Respondent.
- h) If DRI found a difference between the manufacturer's invoice and the invoice under which the goods were imported, the logical step would be to ask Shri Sachdev, the authorised

signatory of the appellant or his office staff about the differences and they would have explained. No question was put to them asking to explain why there were differences.

- i) The manufacturer's invoices found in the office of the respondent are not relevant for examining the value in the present case.
- j) The averment that parallel invoices were recovered from the office of the respondent is not true. Only a few invoices were recovered which are not relevant to decide the valuation in this case.
- k) The assertion that the differential amounts were paid by the respondent to Khera through non-banking channels is only a presumption and does not survive the test of law.
- l) The contents of the pen-drive are not admissible for the following reasons:
  - (i) The Hash copy of the contents of the pen drive or a printout of the pen drive was neither taken nor given to Mr. Sachdev during the search of the house and seizure of the pen-drive.
  - (ii) The copy of the report of the CFSL was also not given to the respondent during or after examining him.
  - (iii) The ownership of the pen drive and the author of its contents have not been established.
  - (iv) The alleged contents are not proved to be part of the respondent's business accounts available in office files or office computers.

(v) The Computer from the SOA were recovered was neither identified nor certified by any responsible person in custody of such computer.

(vi) The contents of the pen drive have not been proven as per section 65B of the Evidence Act read with section 3 of the Information technology Act, 2000 and hence have no evidentiary value.

10. We have considered the submissions made by both sides and perused the records of the case. Revenue is aggrieved by the impugned order passed by the Commissioner dropping all further proceedings in the Show Cause Notice issued by the DRI alleging undervaluation by the respondent to evade duty amounting to about Rs. 30 crores. The case of the Revenue is that DRI received intelligence about undervaluation and searched the premises of Shri Sachdev of the respondent and recovered a pen-drive at his residence which was sent to the Central Forensic Laboratory who retrieved its contents in the form of an EXCEL file. It is also the case of the Revenue that during searches they retrieved some invoices of the original manufacturer from China raised on Khera's companies in Taiwan and the corresponding invoices raised by Khera's companies on the respondent for the same goods sent by the same consignment. The packing list, the container number, name of the vessel, the date of sailing, etc. are the same in both sets of invoices. The invoice raised by the manufacturer in China on Shri Khera's companies is for a higher value and the corresponding invoice raised by Shri Khera's companies on the respondent was for a lower value. Samples of corresponding invoices were pasted in

the SCN. The manufacturer's invoice reflects the correct transaction value and the invoice raised by Shri Khera for a lower value on the respondent is only meant to declare a lower value and pay less Customs duty. According to the Revenue, the respondent paid to Shri Khera's companies, the amount declared in the invoice through banking channels and paid the difference between invoice value and the manufacturer's price (which is the true value) through various persons as indicated in the excel sheet in the pen drive. The differential value and duty was worked out as follows:

- a) Differential duty of Rs. 13,00,13,327 was worked out in WORKSHEET II based on the EXCEL file that was in the pen-drive.
- b) Differential duty of Rs. 2,44,92,805/- was worked out in WORKSHEET IIIA based on the averaged margins in Worksheet II. In other words, since some undervaluation was found in Worksheet II based on the evidence found in the pen-drive, extrapolating similar levels of undervaluation in other clearances where there was no evidence of undervaluation at all in WORKSHEET IIIA.
- c) In respect of goods not covered by either of the above, the undervaluation was assumed and the values were worked out under Rule 9 of the Customs Valuation Rules, i.e., the method to be adopted when the value cannot be determined under any of the Rules. This differential duty was worked out to Rs. 15,45,74,102/-in WORKSHEET IV.

11. The above three amounts were added and differential duty of Rs. 30,90,80,233/- was proposed to be demanded in the SCN.

Thus, of the above, (a) is based on the evidence found in the pen-drive, (b) and (c) are based on projections and extrapolations.

12. Before examining the facts of this case, we examine the relevant legal provisions, viz., Section 14 of the Customs Act, 1962<sup>13</sup> and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007<sup>14</sup>. Duties of customs are levied on goods imported into and exported from India at the rates specified in the Schedules to the Customs Tariff Act, 1975. On some goods, the levy is based on quantity (specific duty), and other goods it is based on value (ad valorem). If the duty is to be levied based on value, valuation for the purpose has to be done as per Section 14 which reads as follows:

**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:**

**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;**

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**13 Act**  
**14 Rules**

**(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) Notwithstanding 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)

13. The non-obstante clause in sub-section 2 of section 14 gives the Board the power to fix tariff values for any class of goods and if fixed, the tariff value will be the value to determine the duty. This sub-section is not relevant to this case. In all other cases, the value to be reckoned for calculating the Customs duty shall be the transaction value subject to five conditions:

- a) Buyer and seller are not related.
- b) Price is for delivery at the time and place of importation, i.e., all costs up to the point of import are to be included. For instance, if the sale is on Free on Board basis, the costs of transportation to the place of import, transit insurance, etc. will have to be added.
- c) Price is the sole consideration for sale.

- d) Some amounts indicated in the first proviso to sub-section 1 of section 14 must be included.
- e) Valuation will be as per any other conditions as may be specified in the Rules.

14. Thus, the default position is that the valuation has to be done on the basis of the transaction value and not based on any fixed value. If there are a hundred transactions between the importer and the overseas seller at different prices, for each transaction, the value under section 14 shall be that transaction value. Simply because the price is higher in any particular transaction, such price cannot be applied to other transactions to determine duty. Conversely, the importer cannot claim to pay duty on a lower value than the transaction value in any consignment even if other consignments were sold to the same importer by the same overseas supplier at lower prices. Valuation has to be done for each import as per that transaction value. There is also no provision to take the average price to determine the duty if the transaction values are available.

15. The first proviso to sub-section 1 of section 14 provides for some additions to the transaction value which are not relevant for the present case. The second proviso to this sub-section provides for Rules to be made in this behalf to provide for:

- a) the circumstances in which **the buyer and the seller shall be deemed to be related;**
- b) the manner of determination of value in respect of goods **when there is no sale,**

- c) the manner of determination of value in respect of goods if **the buyer and the seller are related,**
- d) the manner of determination of value in respect of goods where **price is not the sole consideration for the sale;**
- e) the manner of determination of value in respect of goods in **any other case;** and
- f) 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.

16. The Valuation Rules were framed as per the second proviso to sub-section 1 of section 14. It has 13 Rules in all of which Rules 1 and 2 are Preliminary rules. Rule 3 states that subject to Rule 12, the value shall be the transaction value adjusted according to Rule 10. Rule 10 provides for certain costs to be included in the transaction value. Rule 12 provides for the proper officer to reject the transaction value if he has reason to doubt its truth and accuracy. **Thus, unless the proper officer rejects the transaction value under Rule 12, valuation has to be based on transaction value as per Rule 3 with some additions, if necessary, as per Rule 10.**

17. Rule 3 further provides that if the valuation cannot be done under that Rule, i.e., as per the transaction value with additions as per Rule 10, then **it must be done sequentially under Rules 4 to 9.** In other words, if the transaction value is rejected under Rule

12 and valuation cannot be done as per the transaction value under Rule 3 and it must be done sequentially under Rules 4 to 9.

18. We now proceed to examine Rules 4 to 9. **Rule 4** provides for the valuation to be done on the basis of **identical goods**. **Rule 5** provides for the valuation to be done on the basis of the value of **similar goods**. Rule 6 states if Rules 4 and 5 cannot determine the value then they must be done as per Rule 7 and thereafter Rule 8 but this sequence can be reversed at the option of the importer. In other words, if the importer so chooses, Rule 8 can be applied directly instead of Rule 7. **Rule 7** provides for a **deductive method of valuation** on the basis of prices of similar or identical goods sold in India and after making some deductions from such prices. **Rule 8 provides for a computed value**, i.e., based on the cost of raw material, cost of manufacture, reasonable profit, etc. In view of Rule 6, the importer may choose the computed value without examining the feasibility of determining value through deductive methods. **Rule 9 is a residual method** which provides for determining the value where it cannot be determined under Rules 3 to 8. Rule 10, as already discussed, provides for some costs to be added to the transaction value if the valuation is done as per Rule 3. Rule 11 requires the importer to make a declaration. Rule 12 lays down the provision for rejection of transaction value. Rule 13 provides for interpretative notes for the Rules.

19. **To sum up, valuation has to be done sequentially** as follows:

- a) If a **tariff value** is fixed by the Board, it is the value (sub-section 2 of Section 14);
- b) If no tariff value is fixed by the Board, valuation is as per the **transaction value, if necessary, with some additions** (as per the first proviso to sub-section 1 of section 14 and as per Rule 10);
- c) If the transaction value is rejected as per Rule 12 by the proper officer, valuation has to be done as per the **value of identical goods** (Rule 4);
- d) If transaction value is rejected and there is no value of identical goods, then it must be as per the **value of similar goods** (Rule 5);
- e) If transaction value is rejected and there is no value of identical goods or similar goods, value must be determined through **Deductive method** (Rule 7)
- f) If transaction value is rejected and there is no value of identical goods or similar goods and it is not possible to determine value following deductive method, then value must be determined through **computation** (Rule 8)
- g) If the importer so chooses, computational method may be adopted without examining the deductive method first (Rule 6).
- h) If the transaction value is rejected and there is no value of identical goods or similar goods and if it is also not possible to determine the value through deductive method or computational method, then value may be determined

through the **residual method** by the officer following the above principles (Rule 9).

20. The next question which arises is when can the proper officer reject the transaction value. Rule 12 reads as follows:

**12. Rejection of declared value. -**

(1) When the proper officer **has reason to doubt the truth or accuracy of the value declared** in relation to any imported goods, he **may ask the importer of such goods to furnish further information including documents or other evidence** and if, **after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt** about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

**Explanation.**-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) **The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -**

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

**(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;**

(c) the sale involves special discounts limited to exclusive agents;

(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) then on declaration of parameters such as brand, grade, specifications that have relevance to value;

**(f) the fraudulent or manipulated documents.**

21. Thus, if the officer has **reason to doubt** the truth and accuracy of the transaction value, he can call for information including documents and evidence. If the information and evidence is presented and after examining it or if no information or evidence as called for is presented, if the proper office has **reasonable belief** then it shall be deemed that the value cannot be determined as per Rule 3 (i.e., based on transaction value with additions, if necessary). While the officer can, in the first place call for information and evidence if he has reason to doubt, at the second stage, he should have not just some reason to doubt but a **reasonable doubt**. If he has such reasonable doubt, then the transaction value can be rejected. The grounds on which the proper officer may raise doubts about the truth and accuracy of the transaction value have been illustrated in explanation 1 (iii) to Rule 12. The list is inclusive and not exhaustive. In this case, DRI officers found that the invoice which was presented along with the Bill of Entry was a trader's invoice for a value which was substantially lower than the price at which the trader himself had purchased the goods. Both the manufacturer's invoice on the trader and the trader's invoice on the importer were for exactly the same consignment with the same details as they were back to back orders. In other words, the respondent placed an order for X quantity of goods on the trader in Taiwan and the trader placed an order for the same goods on the manufacturer in China. The goods were shipped directly by the manufacturer from China to the

respondent. According to the Revenue, the trader's invoices are fraudulent and manipulated invoices. Insofar as the first part of the demand indicated in paragraph 10 (a) above is concerned, the EXCEL sheets in the pen drive as well as the invoices recovered during the searches form the basis for the doubt. As far as the second and third parts of the demand indicated in paragraphs 10 (b) and 10 (c) are concerned, the doubt is based on projections.

22. The grounds for proposal to reject the transaction value under Rule 12 in the SCN are as follows:

"14. Whereas in view of the documentary evidences discussed above and in the light of aforesaid legal provisions, it appears that the value declared by M/s SOFPL to the Customs in respect of all the imports made from Taiwan Suppliers does not represent the true 'transaction value' and is liable to be rejected in terms of Rule 12 of the Customs Valuation Rules on the following grounds:-

- i) Manufacturer's invoices of the Chinese manufacturer, in respect of the goods imported by M/s SOFPL, recovered during the search of their office premises, pertaining to the period ranging from 2011 to 2016, show much higher value of the imported goods as compared to the correspondent invoices of the Taiwan suppliers.
- ii) The statement of accounts contained in the pen drive and retrieved on forensic analysis covering the period from 21.10.2011 to 25.12.2104 show debit entries of a higher value than the one declared to Indian Customs. It also shows entries reflecting payments in addition to the payments through banking channels.
- iii) Shri Prem Kumar Sachdev has admitted to the under-valuation of goods imported by M/s SOFPL from Taiwan suppliers in his statements read with Panchnama dated 09.03.2016. He has expressly admitted that the value declared to the Indian Customs, for the goods imported by M/s SOFPL from Taiwan suppliers represents merely 35% to 45% of the actual value.
- iv) All consignments imported by M/s SOFPL are relating to fitness equipments, shipped directly from China and invoices raised by same 'Taiwan suppliers'. The invoices of the Chinese manufacturers recovered during investigation range over a wide period starting from

09.11.2011 to 02.02.2016. From the values available over this long period it appears that there is a consistent suppression of value to the extent of 30% to 40% on the values contained in the Chinese manufacturers invoice. Moreover the values contained in the statement of accounts obtained from the pen drive also matches with the manufacturer's invoices and support the fact that the import of fitness equipment by M/s SOFPL are under-valued. Hence it appears that there has been suppression of values by M/s SOFPL for all the imports of fitness equipment made by them and that all the imports made by M/s SOFPL from Taiwan supplier do not represent the true transaction value and the declared value is liable for rejection."

23. The grounds for proposal to re-determine the value as per Rule 9 in the SCN are as follows:

"15. In view of the above all the imports made by SOFPL from Taiwan suppliers do not represent the true transaction value and the correct value cannot be determined under Rule 3 of the Valuation Rules. The value of the goods cannot be determined even under Rule 4 and 5 as there are no identical or similar contemporaneous imports declaring the true transaction value. Further, the value cannot be determined even under Rule 7 and 8 for the reason that the exercise determined in respective rule is not possible for the subject goods. Hence the provisions of Rule 9 of the Valuation Rules are applicable. The evidence on record indicates that the goods imported by M/s SOFPL from Taiwan supplier have been consistently under-valued in the range of 55% to 35% of the true transaction value and only 45% to 65% of the true transaction value is disclosed to Indian Customs. The average value declared to Indian Customs is 57.49% of the true transaction value. Hence, for the purpose of determination of value of imported goods for the Bills of Entry for which original Chinese manufacturer invoices are not available, the actual value is arrived by calculating the percentage of under-valuation mentioned above in terms of Rule 9 of the Valuation Rules, 2007, which is 42.51%.

15.1 In respect of the consignments figuring in the statement of accounts contained in the pen drive recovered from the residence of Shri Prem Kumar Sachdev, the debit entries made against each invoice appears to be the amount actually paid or payable by M/s SOFPL to Taiwan suppliers and consequently represents the true transaction value.

15.2 The details of total imports made by M/s SOFPL for the period from 21.10.2011 to 26.02.2016 was compiled and reconciled with the customs database and is provided

in **Worksheet-I** appended to this show cause notice. **Worksheet-I** shows the total imports made by M/s SOFPL for the period from 21.10.2011 to 26.02.2016. The total declared value to Customs is USD 2,35,96,022/- (Rs.1,44,06,42,474/-). The total duty paid is Rs. 41,79,72,002/-.

15.3 **Worksheet-II** has been compiled based on the evidences contained in pen drive in excel file titled '2012-2013 PS' and covers invoices starting from date 12.09.2011 to 25.12.2013. This is the statement of accounts for the transactions between the Taiwan suppliers and M/s SOFPL. The values mentioned against each invoice appear to be the true transaction value inasmuch as this is the amount paid/payable by M/s SOFPL to the Taiwan suppliers. Based on the values contained in the excel file invoice wise, the true transaction value appears to be USD 1,86,75,220. The value not declared to Customs i.e., differential value is USD 79,38,180 and the differential duty payable comes to **Rs.13,00,13,327/-**.

15.4 The details of the values available in the invoices of the Chinese manufacturer recovered from the office premises of M/s SOFPL and from the hard disk drives (recovered from the office premises of M/s SOFPL) are provided in **Worksheet-IIIA/B**. However, the values available in the manufacturers invoices raised on the Taiwan suppliers, is further enhanced by the Taiwan suppliers when the very same goods are sold to M/s SOFPL. The enhanced values can be seen in the 'statement of accounts' available in the pen drive recovered from the residential premises of Sri Prem Kumar Sachdev. The proportionate increase in value by the Taiwan suppliers is adopted to arrive at the true transaction value in terms of Rule 9 of valuation rules and the same is detailed in **Worksheet-IIIA/B**. The Chinese manufacturer's invoices are annexed to this show cause notice.

15.5 **Worksheet-IIIA** shows the values shown in the Chinese manufacturer's invoices which are also covered in the statement of accounts contained in the pen drive. Thus the undervaluation in respect of said invoices already stands quantified in Worksheet-II as mentioned above.

15.6 **Worksheet-IIIB** shows the values shown in the Chinese manufacturer's invoices which are not covered in the statement of accounts contained in the pen drive. As the business pattern remains same and the supplies are from the same Taiwan suppliers represented by Shri Rajan Khera, the undervaluation in respect of said invoices has been quantified based on the averaged margins, as worked out in Worksheet-II as mentioned above. Thus in worksheet-IIIB the value is arrived as per

Rule 9 of Valuation Rules taking into consideration the values contained in the Chinese manufacturers invoice and the values contained in the statement of accounts. The average value declared to Customs is arrived at 57.49% of the true transaction value. Adopting the same percentage, the true transaction value is arrived as per Rule 9 of Valuation Rules. The true transaction value arrived at in Worksheet-IIIB is USD 30,39,339 and differential duty liable to be paid by M/s SOFPL works out to Rs. 2,44,92,805/-.

15.7 The invoices of the Chinese manufacturers are ranging over a wide period from 09.11.2011 to 02.02.2016. The invoices submitted to Indian Customs declare about only 60% to 70% of the value shown in the Chinese manufacturer's invoices over the past 5 years. From the values available over this long period it appears that there is a consistent suppression of value to the extent of 30% to 40% on the values contained in the Chinese manufacturer's invoices. Hence inference can be drawn that there has been suppression of values by M/s SOFPL for all the imports of fitness equipment made by them, even where the Chinese manufacturer's invoices are not available and which are not covered by the said statement of accounts. The values contained in the statement of accounts obtained from the pen drive also support the fact that the import of fitness equipment by M/s SOFPL is consistently under-valued. Thus the values based on these evidences can be adopted for the imports of fitness equipment made by M/s SOFPL for which no direct documentary evidence is forthcoming.

15.8 Accordingly, **Worksheet-IV** has been compiled arriving at the true transaction value under Rule 9 of the Customs Valuation Rules for all the imports where the Chinese manufacturer's invoices are not available and which are not covered by the said statement of accounts during the last five years. The true transaction value arrived at under Rule 9 is USD 1,93,27,997 and the differential duty liable to be paid by M/s SOFPL works out to Rs. 15,45,74,102/-.

15.9 Consolidating the differential duties payable as worked out in **Worksheet II, IIIB and IV**, the total duties of customs payable by M/s SOFPL for the imports made from Taiwan suppliers works out to Rs. 72,70,52,235/- and the differential duty payable works out to Rs. 30,90,80,233/- as detailed in the Worksheet-V annexed to this show cause notice."

24. As may be seen, the proposal to reject the transaction value in respect of those imports listed in WORKSHEET II to the SCN [indicated in paragraph 10 (a) above] is based on the EXCEL sheet

recovered from the Pen drive recovered from the residence of Shri Sachdev of the respondent and the copies of invoices recovered from the office of the respondent. As for the imports listed in WORKSHEET IIIA to the SCN [ indicated in paragraph 10(b) above] and WORKSHEET IV to the SCN [ indicated in paragraph 10(c) above], they are based on projections and extrapolations. Since the officers found some reason to reject the transaction value in imports covered by WORKSHEET II, it is also proposed to be rejected in the imports covered by the other two worksheets. We do not find any legal provision by which the transaction value can be rejected by extrapolation. As we explained above, each import is an assessment by itself and is appealable and if there are a hundred imports at different transaction values, duty on each import must be determined based on the transaction value of that import. If the transaction value is higher in any one case, that, by itself cannot form the basis for assessment of other imports. Conversely, if the transaction value in any one case is lower, the importer cannot ask for that to be the basis for assessment of all other imports. A single value has to be reckoned for assessment of all imports only if it is a tariff value fixed by the Board under Section 4 (2).

25. Undervaluation of goods is a serious charge which entails not only re-determination of duty and recovery of duty but also penalties. If one is found to have undervalued goods in one case, inference cannot be drawn that he has undervalued in all other imports as well. Penalties and pecuniary liabilities based on extrapolation is, in our considered view, impermissible and is

inconsistent with the legal principles known to us. For example, if a suspect is caught stealing a wallet on a day, he can be prosecuted for that crime but it cannot be presumed, without any evidence, that given the character of the suspect, he must have been stealing a wallet everyday and prosecute him for several thefts. If an unscrupulous government employee is caught accepting a bribe of Rs. 5,000/- to process a file, he can be prosecuted for corruption to that extent. However, he cannot be prosecuted by extrapolating that since he handled 200 similar files and must have accepted Rs.5,000/- as bribe in each case and therefore must have taken bribes totaling Rs. 10,00,000/-. If income tax department discovers that an assessee had under-reported his income by 30% in one financial year, it cannot presume, that given his nature, he must have similarly underreported 30 % of his income for the past five years. If Central Excise officers find that a truck of goods has been clandestinely removed by the manufacturer on a day, it cannot be presumed that the manufacturer has been clandestinely removing one truck of goods every day for the past five years. Each case must be examined only based on the evidence in it. Since each assessment is a quasi-judicial order based on the transaction value in it, transaction values cannot be rejected under Rule 12 by extrapolations. They can be rejected if the officer has reasonable belief based on the evidence in that case, that the transaction value is not true and accurate. We, therefore, find that the rejection of the transaction value in the imports covered in Worksheets IIIA and IV of the SCN by extrapolation and re-determination of the value have no legal basis and need to be set aside. Consequently, the

demands in these cases by re-determination of the values cannot also sustain.

26. As far as the consignments covered by WORKSHEET II of the SCN are concerned, the rejection of the transaction value and its re-determination is based on the EXCEL file retrieved by the CFSL from the pen-drive seized from the residence of Shri Sachdev of the importer as well as copies of manufacturer's invoices recovered from the office of the respondent. The undisputed facts are that the respondent placed import orders on Shri Khera's companies in Taiwan who placed back-to-back orders on the manufacturers in China. The consignment was shipped directly from China by the Chinese manufacturer to the respondent. Such transactions are not uncommon in international trade where A places an order on B who, in turn places an order on C and goods get shipped from C directly to A but there will be two invoices one which C raises on B and another which B raises on A. Naturally, in such a transaction, B, as the trader gains some profit by buying from C at a lower price and selling to A at a higher price. Although the goods are shipped directly, consideration for the goods also flows from A (the importer) to B (the trader) and from B (the trader) to C (the manufacturer).

27. What is unusual about this case is that the trader companies in Taiwan have been buying at a higher price from the manufacturer and selling to the respondent importer at a price about 30% lower. This is not a one-time concession given in a particular case for any business reasons but it is a repeated process. In other words, the trader companies in Taiwan are in the

business of running their business so as to incur a loss of 30% in every transaction. This is sufficient reason to doubt the truth and accuracy of the invoices issued by them as no prudent man will run his business so as to lose 30% on each and every transaction more so, when they are back-to-back deals and not where the trader has some old stock left which he clears selling at a price below his purchase price. The submission of the learned counsel for the respondent before us is that they are getting a quantity discount as per the agreement with the trader in Taiwan whereby they get the goods at a price 30% lower than the manufacturer's price. Trade discount is a common business practice to encourage larger purchases. The seller gives a discount in the price so as to increase volumes of sale. Trade discount can take various forms but all have one objective- increase the sales so that even though the seller loses some profit on each item sold, the overall profits are higher because of larger volumes and he also increases his market share. However, the trade discount is not given so as to lose money on each transaction. Greater volumes in such a case will result in larger losses and no prudent business will run its business so that it can increasingly lose money on transactions. Thus, the submission of the learned counsel does not provide any satisfactory answer as to how the trader is buying at a higher price and selling at a lower price again and again and again so as to enhance its losses.

28. Learned counsel's submission is that the respondent is not aware what kind of deal the trader in Taiwan has with the manufacturer in China. It does not help answer the mysterious business arrangement; there could be some explanation but

nothing is apparent from either the records or the submissions of the learned counsel. For instance, if the trader is giving a discount of say, 30% and the manufacturer, in turn, is giving back to the trader more than 30% of the manufacturer's invoice in some form (say, at the end of the year) it is understandable. The logical thing for any investigating officer who found two sets of invoices is to question the importer and if possible the trader and the manufacturer about the apparent anomaly. For an organization like DRI with its Customs Overseas Intelligence Network officers posted in many places including in Hong Kong, such investigation is not impossible. Unfortunately, in this case, in the statements of Shri Sachdev recorded by DRI officers as reproduced in the SCN only record his agreement that the trader's invoice is lower than the manufacturer's invoice (which is a matter of fact evident from the two invoices). He was not asked why. He was not asked as to how his supplier is selling each consignment at a loss of 30%. We also do not find that such a question was put to others whose statements were recorded. If the investigating officers had put this question, the answers to such question would have given them material to investigate if the explanations were correct or a mere hogwash. Instead, the investigating officers concluded that since there are two sets of invoices, the invoice showing lower values is a fraudulent invoice and the assessment must be done as per the manufacturer's invoice.

29. Learned counsel for the respondent also argued that it is not established as to who is the owner of the pen-drive who is the author of the EXCEL file in the pen-drive. He asserted that the pen-

drive does not belong to the respondent. From the facts of the case, it is evident that the pen-drive was recovered from the residence of Shri Sachdev who was asked by the officers about the authorship of the EXCEL file and he said in his statement that he does not remember as to who the author of the statement was. The authorship of the EXCEL file is under the exclusive knowledge of Shri Sachdev from whose residence the pen-drive was seized and if he refuses to explain as to who the author was, the officers cannot be faulted for it. It is impossible for the officers to establish the authorship of the EXCEL file when it is in the exclusive knowledge of Shri Sachdev. It also does not matter whether the pen-drive belongs to Shri Sachdev or not. He may have owned it or borrowed it from someone. Learned counsel's submissions that the pen drive does not belong to the respondent cannot be accepted. It is undisputedly, recovered from Shri Sachdev's residence by the officers. In his statement, Shri Sachdev said that he does not remember who the author of the EXCEL file was. He did not say that it was not recovered from his residence or that it belonged to somebody else and was only found in his home during search for some reason. It is inconceivable that the pen-drive belongs to someone else. We can think of no reason for someone else to keep a meticulous record of the transactions of the respondent in an EXCEL file and also leave the pen-drive in the residence of the respondent.

30. Learned counsel also argued that the statement of accounts in the form of EXCEL sheet contained some names against which cash payments were shown to have been made to Shri Khera which

forms the basis of the allegation of the Revenue that additional payments were made to Shri Khera. Neither were the persons named in the file identified nor were they questioned to establish that cash payments were indeed made and if so, at whose behest. We agree with the learned counsel. If the case built by the investigating agency is that the goods were under-invoiced and that the differential amount was paid in cash to the supplier in Taiwan and the names of the persons through whom the amounts were paid are available in the EXCEL file, the logical step would be to identify and question these persons so as to establish that the amounts were, indeed paid in cash and if so, by whom, when and where. There is nothing on record to support that cash payments were made other than the entries in the EXCEL file. The persons indicated in the EXCEL file as those who made the payments were not identified or questioned.

31. Learned counsel also argued that the pen drive or any other form of electronic evidence is admissible under Section 138C of the Customs Act but in this case, the procedure prescribed under section 138C was not followed. Reliance is placed on **HS Chadha vs Commissioner of Customs**<sup>15</sup> to assert that mails and other electronic evidence cannot be relied upon to prove undervaluation in absence of compliance of provisions of section 138C of the Customs Act. Learned counsel also submitted that the fact that all documents were received through bank and all remittances were also made through bank and there is no evidence of any cash generation as certified by the Chartered Accountant cannot be

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**15 Customs Appeal No. 51768 of 2016 decided by FINAL ORDER NOS. 50063-50066/2020 dated 9.1.2020**

ignored. We find that as far as the amounts paid through banking channels is concerned, there is no dispute. What is in dispute is only the additional alleged cash payments through various persons indicated in the EXCEL file found in the pen-drive recovered from the residence of Shri Sachdev. We do not find any other evidence or statements to corroborate the cash payments and therefore find insufficient evidence to establish such payments.

32. Learned counsel argues that the pen-drive is not admissible as evidence in view of Section 138C of the Customs Act, Section 65B of the Evidence Act and Section 3 of the Information Technology Act, 2000. These read as follows:

**Indian Evidence Act, 1872**

**Section 65B. Admissibility of electronic records.—**

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. Explanation.—For the

purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

### **Section 3 in The Information Technology Act, 2000**

#### 3. Authentication of electronic records.-

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record. Explanation.-For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible-

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

### **Customs Act, 1962**

#### **Section 138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. -**

(1) Notwithstanding anything contained in any other law for the time being in force, -

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely :-

(a) the computer printout containing the statement was produced by the computer during the period over which the

computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied there to in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

**Explanation .** - For the purposes of this section, -

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

33. There is nothing on record to show that the procedure prescribed under section 65B of the Evidence Act, section 3 of the Information Technology Act, 2000 or section 138C of the Customs Act were followed. Learned Departmental representative could not also produce anything on record to show that these were followed. Therefore, the pen-drive is inadmissible as evidence despite the vital information which it contained and which was relied upon by the Revenue.

34. Learned Departmental Representative relied on the judgment of the larger bench of the Supreme Court in the case of Arjun Panditrao Khotakar vs Kailash Kushanrao Gorantyal and others<sup>16</sup> to assert that merely not providing a certificate under section 65B of the Evidence Act does not necessarily vitiate the evidence when

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<sup>16</sup> 2020 (7) TMI 740- Supreme Court

the pen drive itself is available as primary evidence. We have examined this assertion. In the case before the Supreme Court was an election dispute. The winning candidate's candidacy was challenged by the losing candidate on the ground that he had filed the nomination papers after the time for filing the nomination was complete. The Returning Officer returned the winning candidate anyway. The losing candidate sought to rely on the CCTV footage available with the election commission which was date and time stamped to assert that the nomination was, indeed filed one hour after the last date and time. The election commission did not provide a certificate as required under section 65B but provided the video footage which showed that the nomination was filed late. The returning officer was summoned and had, on oath affirmed that that the video footage pertained to the nomination. The question before the Supreme Court was, whether the video footage can be relied upon in the absence of a certificate under section 65B as held in a previous judgment of a supreme court in the case of *Anvar P V vs P K Basheer*<sup>17</sup>. The Supreme Court held as under:

**72.** The reference is thus answered by stating that:

- a) *Anvar P.V.* as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in *Tomaso Bruno*, being per incuriam, does not lay down the law correctly. Also, the judgment in *Shafhi Mohammad* and the judgment dated 3-4-2018, do not lay down the law correctly and are therefore overruled.
- b) **The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing**

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<sup>17</sup> Civil Appeal No. 4226 of 2012

**information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4).** The last sentence in para 24 in *Anvar P.V.* which reads as "... *if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...*" is thus clarified; it is to be read without the words "*under Section 62 of the Evidence Act,...*". With this clarification, the law stated in para 24 of *Anvar P.V.* does not need to be revisited.

- c) The general directions issued in para 64 (*supra*) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.
- d) Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67-C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the metadata to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justices' Conference in April 2016.

35. In the present case, the person who had control over the pen drive has not given a testimony on oath that it reflects his transactions. On the contrary, the counsel for the respondent disputes that the pen drive reflects the true transactions. Hence, **Arjun Panditrao Khotkar** does not advance the case of the Revenue.

36. Revenue has also relied upon the order of this Tribunal in case of *Sai Impex vs Collector of Customs*<sup>18</sup> upheld by the Supreme Court<sup>19</sup> to assert that once the manufacturer's invoice is available valuation has to be done as per it and it is not necessary to go into the values of identical goods, similar goods, etc. We find that the order was issued in the context of unamended section 14 of the Customs Act and the corresponding valuation rules. Under the

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<sup>18</sup> **1992(62) ELT 616 (Tribunal)**

<sup>19</sup> **1996(84) ELT A 47(SC)**

unamended provisions, value of the goods was defined as 'the price at which such goods are ordinarily sold in the course of international trade for delivery at the place of importation' and it was not based on transaction value. Therefore, it was necessary to determine the value at which such goods are ordinarily sold and in that context, the manufacturer's price, if available, was held to be a good indicator and that that one need not go into the prices of identical goods and similar goods. This appeal before us is a case where the amended section 14 where valuation shall be the transaction value. Hence, **Sai Impex** does not help the case of the Revenue.

37. Further, department also explained in its appeal that the Commissioner had, in the impugned order, not considered the digital evidence extracted by the Central Forensic Laboratory, Hyderabad holding that the same was not shared with the importer and violative of principles of natural justice. We find that the Commissioner was correct in not relying on it and even on that ground the pen drive cannot be relied upon.

38. Since this pen drive is inadmissible as evidence, the pieces of evidence left in support of the Revenue are:

- a) the statements of the respondent and others none of which admit to either the under valuation of the goods or cash payments; and
- b) copies of the invoices of the trader and the corresponding invoice of the manufacturer; DRI officers have not asked the respondent about the reasons for the large price difference

but simply presumed that the second set of invoices were fake.;

39. In our considered view, the mere fact that there was a difference between the two sets of invoices without questioning anyone or investigating as to why there is a difference cannot be a sufficient ground to reject the transaction value and redetermine it as per the manufacturer's invoice and recover differential duty.

40. In view of the above discussions, we do not find any reasons to interfere with the impugned order and accordingly, it is sustained. The appeal is rejected.

(Pronounced in Court on 19.04.2022.)

**(P.K. Choudhary)**  
**Member (Judicial)**

**(P.V. Subba Rao)**  
**Member (Technical)**