COMMISSIONER OF CUSTOMS, CALCUTTA

*v.*

SOUTH INDIA TELEVISION (P) LTD.

JULY 9, 2007

[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

*Customs Act, 1962; Ss. 2(41), 14(1) and 14(1A)/Customs valuation (Determination of Price of Imported Goods) Rules, 1988; Rr. 4, 5, 6, 7 and 8: Valuation—Import of Ceramic Capacitors and Diodes—Misdeclaration of prices of imported goods in Bill of Entry and invoices—Show cause notice—Revenue confirmed differential amount of customs duty in terms of show cause notice—Reversed by Tribunal—On appeal, Held: No rule exists governing valuation of export goods, it must be done in terms of s. 14 of the Act—Since the allegation is of under invoicing, the charge has to be supported by evidence of prices of contemporaneous imports of like goods—Burden lies on Revenue to prove that the apparent price is not the real price—Value of any goods chargeable to* **ad volorem** *duty has to be deemed price in terms of s. 14(1) of the Act—Transaction value under r.4 of the Rules is the price paid/payable on such goods at the time and place of importation—Invoice price is not sacrosanct, however, Revenue has to give cogent reasons before its rejection—In the absence of such an evidence, invoice price has to be accepted as the transaction value—Revenue has to prove under valuation by evidence or collecting information about comparable imports—Revenue has failed to discharge its burden—Under the circumstances, it erred in rejecting the invoice price—No infirmity found in the impugned judgment of the Tribunal.*

*Words and phrases:*

*'value', 'price' and 'valuation'—Meaning of in the context of s. 2(41) and s. 14(1) of the Customs Act, 1962.*

**Respondent-assessee had imported six consignments of ceramic capacitors and one consignment of diodes from Hong Kong during the period February 1996 to July, 1996. A show cause notice was issued by the Revenue authorities alleging *inter alia* that as per the overseas investigation report of the Hong Kong Customs and Excise Department the declared price of the**

A imported goods did not represent the transaction value under Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 ("Customs Valuation Rules") as the price actually paid appeared to be different than the declared price and that the importer had under-invoiced the value of the goods to evade huge amount of the Government's revenue. The importer was asked to show cause as to why the value of the consignments in question should not be enhanced based on the export declaration under Rule 8 of the Customs Valuation Rules made by the Foreign Supplier. Accordingly, a demand was raised for the differential duty of Rs. 28,04,831.40 and fine in lieu of confiscation. Rejecting the contentions of the assessee, the demand of differential amount of duty was confirmed by the Revenue. Aggrieved by the order of the authorities, the assessee filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), which was allowed by the Tribunal. Hence the present appeal filed by the Revenue and the connected appeals filed by the assessees.

Dismissing the appeals, the Court

HELD: 1.1. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself.

[Para 6] [103-H; 104-A]

1.2. The Revenue has charged the respondent-importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. The allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Revenue to prove that the apparent is not the real. [Para 6] [104-B, C]

1.3. On a plain reading of Section 14(1) and Section 14(1A) of the Act, it envisages that the value of any goods chargeable to *ad valorem* duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 of the Rules must be the price paid or payable on such goods at the

time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Revenue is the value or cost of the imported goods at the time of importation, the invoice price is not sacrosanct. However, before rejecting the invoice price Revenue has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, Revenue has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. [Para 6]

1.4. If the Revenue relies on declaration made in the exporting country, it has to show how such declaration was procured. It is clarified that strict rules of evidence do not apply to adjudication proceedings.

[Para 6] [105-B]

1.5. Once the Revenue discharges its burden of proof by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. [Para 6] [105-C, D]

1.6. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

[Para 6] [105-D, E]

2.1. Applying the above tests to the facts of the present case, it is found that there is no evidence provided by the Revenue showing contemporaneous imports at higher price. On the contrary, the assessee-importer has relied

A upon contemporaneous imports from the same supplier, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Revenue. [Para 7] [105-E, F]

2.2. The importer has alleged that the original declarations were with the Revenue. That certain portions of the originals were not shown to the B importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present civil appeal, an application was moved by the importer calling upon the Revenue to produce the original declaration in the Court. No reply has been filed to the said I.A. till date. In the circumstances, this Court is of the view that Revenue C had erred in rejecting the invoice submitted by the assessee as incorrect. [Para 7] [106-A, B]

2.3. In the message received from the foreign supplier, the supplier had explained that the manufacturer of the impugned goods was getting export rebates and, therefore, it is possible that the manufacturer had over-invoiced D the price in order to claim more rebate. The goods were of Chinese origin; that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his order, the Commissioner has not ruled out over-invoicing of the export value by the foreign supplier in order to obtain incentives from his Government. E For these reasons, no infirmity is found in the impugned judgment of the Tribunal. [Para 7] [106-B, C, D]

3. It is clarified that it is still open to Revenue, based on evidence, to show that the declared price is not the price at which like goods are sold or F offered for sale *ordinarily*, which words occur in Section 14(1) of the Act. In the decision of this Court in the case of *Eicher Tractors Ltd.* v. *Commissioner of Customs, Mumbai*, this Court has held that Revenue has to proceed sequentially under Rules 5, 6 onwards and it is not open to them to invoke Rule 8 without sequentially complying with Rules 5, 6 and 7 even in cases where the transaction value is to be rejected under Rule 4. In the present G case, the show cause notice indicates that they had invoked Rule 8 without complying with the earlier rules. [Para 8] [106-G, H; 107-A]

*Eicher Tractors Ltd.* v. *Commissioner of Customs, Mumbai*, (2000) 122 E.L.T.321, relied on.

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**4. In the connected appeals, the Tribunal has held on facts that the import invoices issued by Hong Kong traders and the export declarations filed by the same traders before Hong Kong Customs bear different values. No explanation whatsoever has been given for quoting two different values. Further, the importers in the present cases have failed to file the manufacturer's invoices in support of the value shown in the import invoices. For these reasons, no infirmity is found in the judgment of the Tribunal which has decided the matter in favour of the Revenue. [Para 10] [107-C, D, E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1137 of 2002.

From the Judgment and Order No. A-161/KOL/2001 dated 15.02.2001 of the Customs, Excise & Gold (Control) Appellate Tribunal Eastern Bench at Kolkata in Appeal No. C-8/99.

WITH

C.A. Nos. 5517 & 5518 of 2004.

Mathai M. Paikaday, Sr. Adv., Shishir Pinaki, Shalini Kumar, B. Krishna Prasad and Neeru Vaid for the Appellant.

Joseph Vellapally, Sr. Adv., C. Hari Shankar, Rupesh Kumar, S. Sunil, Pinaki Mohapatra, N. Jagdeesh, Jay Kumar and Tara Chandra Sharma for the Respondent.

The Judgment of the Court was delivered by

**KAPADIA, J.** Civil Appeal No. 1137 of 2002.

1. The dispute involved in this civil appeal is as regards the assessable value of the Ceramic Capacitors and Diodes imported by the importer from M/s Pearl Industrial Company of Hong Kong during the period February, 1996 to July, 1996. The importer had declared the price of Ceramic Capacitors @ Hong Kong $ 6 per 1000 pcs. and the CIF price of the consignment of diodes was declared as Hong Kong $ 29406.

2. The facts giving rise to this civil appeal are as follows. The respondent had imported six consignments of ceramic capacitors and one consignment of diodes from Hong Kong during the above period. The goods were shipped from Hong Kong by M/s Compo Export of Hong Kong and M/s Pearl Industrial Company of Hong Kong. The price of ceramic capacitors was declared by the

A respondent in its Bill of Entry @ HK$ 6.00 per 1000 pcs. whereas the price of diodes was declared @ HK $ 29406 CIF as reflected in the invoices. On 27.4.1998 a show cause notice was issued by the Assistant Commissioner of Customs, Calcutta alleging *inter alia* that as per the overseas investigation report of the Hong Kong Customs and Excise Department the declared price
B did not represent the transaction value under Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 ("Customs Valuation Rules") as the price actually paid appeared to be different than the declared price and that the importer had under-invoiced the value of the goods to evade huge amount of the Government's revenue. At this stage, it may be pointed out that in the show cause notice the Assistant Commissioner had
C specifically invoked Rule 8 of the Customs Valuation Rules, 1988, which was subsequently given up by the Department. Be that as it may, the importer was asked to show cause as to why the value of the consignments in question should not be enhanced based on the export declaration under Rule 8 of the Customs Valuation Rules made by the Foreign Supplier. Accordingly, *vide* the aforestated show cause notice, the Assistant Commissioner raised a demand
D for the differential duty of Rs. 28,04,831.40 and fine in lieu of confiscation. In reply, the importer denied the above allegations. In reply, it was submitted that the show cause notice was based solely upon the purported investigation report of Hong Kong Customs and Excise duty; that the said report was accompanied by xerox copies of the export declarations; that the xerox copies
E did not bear the seal or signature of the customs officials in Hong Kong; that the authenticity of the declaration was doubtful; that the declarations were not the correct reproduction of the original and that there were endorsements to the effect that the documents shall not be used against any third party or in any legal proceedings. In other words, the importer contended that the charge of under-valuation cannot be based on xerox copies of the declarations
F which were not even certified by the competent authority in Hong Kong. According to the importer, such declarations had no bearing upon the actual sale price of the goods in the hands of Hong Kong exporters. According to the importer, there was no allegation in the show cause notice that it had paid higher value to the supplier than that declared by it in the Bill of Entry. Before
G the Assistant Commissioner, the importer supported the declared price mentioned in the Bill of Entry by relying upon various contemporaneous imports made during the above period by other importers whereas the price declared for identical goods was the same as the price declared by the importer in the present case in its Bill of Entry. It was further submitted by the importer that it was not open for the Assistant Commissioner to adjudicate
H the value under Rule 8 without going sequentially from Rule 5 to Rule 6 and

Rule 6 to Rule 7 onwards. The importer further contended that, in the present case, the value of the goods could have been determined in terms of Rule 5 and, therefore, there was no question of invoking Rule 8. In this connection reliance was placed on the judgment of this Court in the case of *Eicher Tractors Ltd.* v. *Commissioner of Customs, Mumbai* reported in (2000) (122)E.L.T.321.

3. The above arguments of the importer were rejected. The show cause notice and the demand levied was confirmed. Aggrieved by the aforesaid decision, the matter was carried in appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The Tribunal allowed the appeal by holding that xerox copies of the export declarations, even though procured from Hong Kong customs will not make such declarations genuine declarations. According to the Tribunal, the origin of the goods was from China/Tiwan, therefore, there was a possibility of the export declaration price being on the higher side (over invoiced). This was in view of the fact that in some of the above countries, the goods are subsidized by the concerned Governments. Huge subsidies are given based on the export declaration price. Similarly, incentives are also given in that regard. This possibility has not been rejected by the adjudicating authority. Even according to the adjudicating authority, the Hong Kong supplier might have inflated the price in order to earn export incentives and if that be the case then according to the Tribunal, the export declaration made by the Hong Kong supplier cannot be made the basis for increasing the value of the goods in India. Further, according to the Tribunal, in the present case, the importer has relied upon instances of import of identical goods at identical rates by other importers from the same supplier (namely, M/s Pearl Industrial Company, Hong Kong) during the aforesaid period. The Department had accepted those rates. This evidence led by the importer herein has not been rebutted. It had not been discussed by the adjudicating authority. In the circumstances, the Tribunal allowed the appeal filed by the importer. Hence, this civil appeal has been filed by the Department.

4. At the outset, we quote hereinbelow Section 2(41), Section 14(1) and Section 14(1A) of the Customs Act, 1962, as it stood at the relevant time:

> "2(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of section 14.
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> xxx

A 14. *Valuation of goods for purposes of assessment.*—(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time B and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale:

C Provided 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 or bill of export, as the case may be, is presented under section 50.

*(1A)* Subject to the provisions of sub-section (1), the price referred D to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf."

5. We also quote hereinbelow Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, as it stood at the relevant time:

E "*4. Transaction value.* (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

F (2) The transaction value of imported goods under sub-rule (1) above shall be accepted :

Provided that—

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

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

or

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

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or

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

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

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

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

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule."

6. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the

A conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the B Department has charged the respondent-importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department C to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to *ad valorem* duty has D to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of E importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what F has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the G transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. H Casting suspicion on invoice produced by the importer is not sufficient to

reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

7. Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Department. Further, in the present case, the Department has relied upon export declaration made by the foreign supplier in Hong Kong. In this connection, we find that letters were addressed by the Department to the Indian Commission which, in turn, requested detailed investigations to be carried out by Hong Kong Customs Department. The Indian Commission has forwarded the export declarations in original to the Customs Department in India. One such letter is dated 19.9.1996. In the

A present case, the importer has alleged that the original declarations were with the Department. That certain portions of the originals were not shown to the importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present civil appeal, an application was moved by the importer calling upon the Department to produce the original declaration in the Court. No reply has been filed to the B said I.A. till date. In the circumstances, we are of the view that the Department had erred in rejecting the invoice submitted by the importer herein as incorrect. Further, the Department received from the Hong Kong supplier a Fax message dated 22.7.1996. That was produced before the Commissioner. In that message, he had explained that the manufacturer of the impugned goods was getting C export rebates and, therefore, it is possible that the manufacturer had over-invoiced the price in order to claim more rebate. The goods were of Chinese origin. In the Fax message it is further stated by the foreign supplier that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his D order, the Commissioner has not ruled out over-invoicing of the export value by the foreign supplier in order to obtain incentives from his Government. For the aforestated reasons, we find no infirmity in the impugned judgment of the Tribunal.

E 8. Before concluding, we may point out that in the present case at the stage of show cause notice, the Department invoked Rule 8 on the ground that the invoice submitted by the importer was incorrect. In *Eicher Tractors* (supra) this Court observed that Rule 4(1) of the Customs Valuation Rules refers to *the* transaction value. Utilization of the word '*the*' as definite article indicated that what should be accepted as the transaction value for the F purpose of assessment under the Customs Act is the price actually paid by the importer for the particular transaction, unless it is unacceptable for the reasons set out in Rule 4(2). In the said judgment, it has been further held that, the word 'payable' in Rule 4(1) also refers to *the "transaction value"* and payability in respect of the transaction envisaged a situation where G payment of price stood deferred. Therefore, this decision of the Supreme Court directs the Revenue to decide the validity of the particular value instead of rejecting the transaction value. We wish, however, to clarify that it is still open to the Department based on evidence, to show that the declared price is not the price at which like goods are sold or offered for sale *ordinarily*, which words occur in Section 14(1). Lastly, it is important to note that in the H above decision of this Court in *Eicher Tractors* (supra) this Court has held

that the Department has to proceed sequentially under Rules 5, 6 onwards and it is not open to the Department to invoke Rule 8 without sequentially complying with Rules 5, 6 and 7 even in cases where the transaction value is to be rejected under Rule 4. In the present case, the show cause notice indicates that the Department had invoked Rule 8 without complying with the earlier rules.

9. For the aforestated reasons, we find no infirmity in the impugned judgment of the Tribunal and accordingly Civil Appeal No. 1137/2002 is dismissed with no order as to costs.

*Civil Appeal Nos. 5517/2004 and 5518/2004*

10. These two civil appeals are a sequel to our judgment delivered today in the case of *Commissioner of Customs* v. *M/s South India Television (P) Ltd. vide* Civil Appeal No. 1137/2002. We need not refer the present set of the facts in detail once again. However, the Tribunal has held on facts that the import invoices issued by Hong Kong traders and the export declarations filed by the same traders before Hong Kong Customs bear different values. No explanation whatsoever has been given for quoting two different values. Further, the importers in the present cases have failed to file the manufacturer's invoices in support of the value shown in the import invoices. On the other hand, in the earlier matter (in the case of *M/s South India Television (P) Ltd.*) a detailed explanation was offered regarding the Government giving incentives to exporters in China, which explanation is not there in the present cases. For the aforestated reasons, we find no infirmity in the judgment of the Tribunal which has decided the matter in favour of the Department.

11. Accordingly, both these Civil Appeal Nos. 5517 and 5518 of 2004 filed by the importers are dismissed with no order as to costs.

S.K.S. Appeals dismissed.