Cc Vs. Motor Industries Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-01-2002

Reported in : (2002)(84)ECC681

Judge : P A S.L

Appellant : Cc

Respondent : Motor Industries Co.

Judgement :

1. Revenue is aggrieved by Order-in-Appeal No. C. Cus. No. 542/2001 dated 31.8.2001 by which the Commissioner (Appeals) held in the finding portion as follows: I have gone through the records of the case and the submissions of the appellant carefully.

The lower authority has rejected the transaction value stating that "the foremost requirement for accepting transaction value is that it should be the price at which such or like goods are ordinarily sold or offered for sale and that it is not fulfilled in this case and accordingly proceeds to examine the applicability of Rules 5 to 8 sequentially. Admittedly the goods under import are second-hand machines which after being used by the supplier for quite a few years were sold to the appellant.

Though it cannot be claimed that the machine under import is customs -built for the appellant, the very fact that these are second-hand goods would show that there cannot be any sale of such or like goods. I would rather agree with the appellant's argument that if this argument were to be accepted, then there cannot be any assessment of custom built machines/goods as there cannot be any sale of such or like goods.

What is to be seen is whether the transaction value is acceptable or otherwise as per the provisions of Section 14 read with the Valuation Rules. The Hon'ble Supreme Court of India in the case of Eicher Tractors v. CC, Mumbai has clearly laid down that" transaction value in Rule 4 of the Valuation Rules is limited to the transaction in question and that this mandate is only subject to certain exceptions specified in Rule 4(2)". The Hon'ble Apex Court has held that the term "ordinarily sold" in Section 14(1) of the Customs Act implies the exclusion of extra ordinary or special circumstances as detailed statutorily in Rule 4(2). I feel it is also pertinent to quote from in the decision in the case of RRR Spinners Pvt. Ltd. v. CC, Chennai Section 14 read with Rule 4 recognises the primacy of the transaction value whether it be new goods or second-hand machines the law does not allow rejection of transaction value under Rule 4 by ab initio application of Rule 8 that would be putting the cart before the horse. The principle involved is that the 'actual' cannot be superseded by the 'deemed' unless the actual is first rejected in terms of Section 14 read with Rule 4 ibid". In the instant case, it has not been shown that the subject case falls within the exceptions specified in Rule 4(2). The question of rejection of the transaction value and determining the value under any of the rule subsequent to Rule 4 will not arise at all.

Rejection of the transaction value is, not justifiable in the instant case and as such determination of value under Rule 8 is not maintainable.ESSAR Graphics v. CC, Chennai, 2. Revenue contends in this appeal that in the case of second-hand machine, the sale price is always subject to certain conditions/considerations because of its usage, upkeep, maintenance, thereby no comparison whatsoever is possible with other second-hand machines not only under (Rule 4) but also other Rules 5, 6, 7, 7A because a very old second machine may fetch a better price, due to proper maintenance, upkeep and used sparingly, rather than second-hand machine not that much old which will not get better price because of Its bad maintenance, improper upkeep frequently/regularly used. It is stated that the recourse had to be made to Rule 8 read with Rule 10A for determination of value for assessement purposes, They summed up the ground by stating that depreciation method that has been followed as per the age old practice of customs, based on the procedure set out by Govt, in SO 49/87, 6/88, 20/88 & 80/94 etc. (determination of value under the Rule 8) which has also a legal sanction in the light of the Apex Court's judgment in the case of Gajra Bevel Gears and the same is not in conflict with the other rulings of the Apex Court rendered In the case of Eicher Tractors .

3. We have heard Ld. SDR and Shrl S. S. Radhakrlshnan, Ld. Counsel for the respondent.

4. Ld. SDR argued by reiterating the grounds and the findings recorded by the Dy. Commissioner In the Order-in-Original and prayed for setting aside the Impugned order.

5. On the other hand, Ld. Counsel produced catena of case-law and also written submissions In support of his plea that Section 14 read with Rule 4 recognizes the primacy of the transaction value whether it be new goods or second-hand machines and In this regard referred to Tribunal Judgment rendered In Rugmini Ram Raghav Spinners Pvt. Ltd. . He contended that the Stand of the department that In the case second-hand machinery, the value depends on Its age and usage and therefore the transaction value under Rule 4 cannot at all be considered since Sub-rule 2(b) of Rule 4 states that sale price Is not acceptable where the sale price is subject to some conditions and other considerations. This is a ground taken up by the department on gross lack of understanding of Sub-rule 2(b). It is contended and shown with all the documents that the second-hand machinery in question were sold as per the invoice value. It is the price actually paid or payable for the goods when sold to India which is required to be taken as a consideration. There was no condition or consideration at all for which a value was not determinable. It is his contention that in the present case, there was a clear transaction value and there was a price fixed for the second machinery and therefore the judgment of the Apex Court relied on by the Revenue in the case of Gajra Bevel Gears v. CC Bombay in distinguishable as in that case the Apex Court was examining the case of a car on wherein the auction price was, not accepted

but the valuation was made by ascertaining the price of the car when new and then allowing the depreciation. It was noted in the judgment that the price of second-hand car such as that involved in that case could easily have been ascertained by reference to popular magazines and publications relating to cars in England. Therefore, ascertaining the value of second-hand machine imported by the appellants, when new, based on the certificate produced by the appellant itself, and scaling down that price by giving depreciation was held to be not arbitary method of ascertaining its value. Ld.

Counsel after taking us through the judgments contended that, he did not deal with the proposition whether there was a clear transaction value and the sale price was the sole consideration under Rule 4 of the Customs Valuations Rules and in such cases the law as laid down in other judgments of the Tribunal and the Apex Court and the one which are noted by the Commissioner which Is extracted supra are required to be followed. He also contended that in the present case, the department had not accepted the Chartered Engineer's certified price and the price fixed by the Special branch who was directed to assess the machine. On the other hand, the Dy. Commissioner had adopted the price of the new machine and considered to apply the depreciation method on the plea that the machine is custom built and it does not have international market. Ld. Counsel, on this point, submitted that even if it is custom built, it was not at all meant for the appellant alone and the appellant did not give any specification for such manufacture. It was a used and old second-hand machine which was purchased by the appellant after negotiation and the negotiated price is the only sale price for fixing the value and not the depreciation method and hence he prayed for dismissing the appeal.

6. On a careful consideration of the submissions, we notice that this issue is no longer res integra and the matter has been considered over and again in large number of judgments. In the case of Rukmani Raghav Spinners Pvt. Ltd. v. CC, Chennai (supra) the Tribunal after looking into various judgments of the Tribunal clearly held that the transaction value cannot be rejected. It is only when there is no transaction value, then valuation can be adopted by depreciation method. In the present case, there was a clear transaction value arrived at and there was an invoice. Therefore, the rulings relied by the Commissioner (Appeals) as noted

supra would apply to the facts of the case.Essar Graphics (P) Ltd. v. CC, Chennai , the Tribunal clearly held that the transaction value of a second-hand offset printing machine cannot be discarded in the absence of any evidence produced by the Revenue pointing out the circumstances set in Rule 4 (2) or 4(3) to disregard the transaction values. The Tribunal clearly held that any invoice price under Section 14 is required to be accepted. In this judgment, the Tribunal has examined large number of other judgments laying down the ruling conclusively. This judgment of Essar Graphics has since been upheld by the Apex Court and hence the issue is settled in favour of the assessee-importer who buy second-hand machinery on a transaction value and under a clear invoice. There is no merit in this appeal and hence same in rejected.

8. I have perused the order recorded by my learned brother Shri S.L Peeran, Member (J) and I am not able to persuade myself to agree with his view that the Revenue appeal should be rejected. Hence I record a separate order.

9. The facts of this case are already recorded by my learned brother and I am not repeating the same as it is. In this case, the Bill of entry for the import of second-hand machinery i.e. Second-hand Automatic Transfer Honing Machine with three honing stations was filed on 18.7.2001. The importer declared the FOB value as Rs. 31,12,500 and the CIF value at Rs. 40,88,335 and sought assessment on the CIF value.

The case of the importer is that the depreciation method can be adopted only if the transaction value declared by the importer was found to be not correct. I observe that the CIF value of equivalent new machinery in the international market as per the Chartered Engineer's Certificate produced by the importer was 2,505,000 DM. As regards the reasonableness of the price asked for by the suppliers and the basis of such opinion, the Chartered Engineer has clearly stated that there was no market price available to ascertain and the price offered by the supplier is reasonable. This is a case where the importers themselves have produced the Chartered Engineer's Certificate and the Chartered Engineer has categorically stated that there was no market price to ascertain. Therefore, in the absence of availability of market price or any other material such as Popular Magazines or publications indicating the price of old machines, to accept a transaction value, the only course left with the original authority was to accept the CIF value of a new machine stated in the Chartered Engineer's certificate produced by the importers themselves and then proceed to allow depreciation as admissible under the rules. It is in these circumstances that the original authority has rejected the transaction value under Rule 4 of the CVR and proceeded to determine the residual value under Rule 8 of the CVR after proceeding sequentially through Rules 5 to 7. Rules 5 to 7 & 7A, in this case rendered inapplicable, inasmuch as in the case of second-hand machinery, no one to one comparison can be made with regard to its identical nature or similar nature and no data in that regard has also been produced by the importers. Therefore, the original authority has proceeded to determine the price under Rule 8 of the CVR.10. The Ld. Member (J) has held that the judgment of the Hon'ble Supreme Court in the case of Gajra Bevel Gears v. CC Bombay is distinguishable as in that case the Apex Court was examining the case of a car on which the auction price was not accepted but valuation was made by ascertaining the price of the new car and then allowing the depreciation. I observe that in that case while dismissing the appeal of the appellant who relied upon the judgment of the Calcutta High Court , the Apex Court has held as under: Popular publications/magazines indicating price of machines generally not available - value of second-hand machine on the basis of Chartered Engineer's Certificate and scaling down the price of machine by giving depreciation is not an arbitrary method for ascertaining the value thereof In the above case, the Apex Court while dismissing the appeal of the appellant (Gajra Bevel Gears) has referred to the case law 7993 (68) ELT 551 of the Calcutta High Court cited by the Counsel appearing on behalf of Gajra Bevel Grears in which it was found by the High Court that auction price of a car bought in England was not accepted but the valuation was made by ascertaining the price of the car when new and then allowing depreciation and the learned Single Judge held that price of a second-hand car could have been easily ascertained by reference to the popular magazine or publication. Thus the Apex Court has upheld the Tribunal's decision of valuation of second-hand machinery under Rule 8 of the CVR, 1988. In the case of Gajra Bevel Gears Ltd. , against which the party went in appeal before the Apex Court and the Apex Court dismissed their appeal , the Tribunal had allowed 58%

depreciation from the manufacturer's price given by the Chartered Engineer. In the case before us, there are no materials whatsoever which indicated the price of the machine. The Chartered Engineer's certificate also did not indicate the price of the machine. What was stated therein was -- "No market price to ascertain." In such circumstances, the price of the new machine, as was stated in the Chartered Engineer's Certificate produced by the importers themselves was taken into consideration and after allowing depreciation as per age old practice in the Customs House which practice was approved by the Hon'ble Apex Court, the value was determined.

Therefore, I am of the considered opinion that the judgment of the Hon'ble Apex Court in the case of Gajra Bevel Gears in squarely applicable to the facts of the present case and is not distinguishable, as held by the learned M (J). Further the Hon'ble Apex Court in the case of Eicher Tractors Ltd. has laid down the principles in determining the valuation of imported goods. The Revenue has submitted that valuation of second-hand machinery is hit by the exception in Rule 4(2)(b)(ii) which states that "the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of goods being valued." The Revenue has contended that in the case of second-hand machinery, the sale price is always subject to certain conditions/considerations because of its usage, upkeep, maintenance, thereby no comparison whatsoever is possible with other second-hand machine not only under Rule 4 but also under Rules 6 to 7 & 7A of the CVR. I find considerable force in the plea of the Revenue. In view of the above, I am of the considered opinion that the case law cited by the-Revenue in the case of Gajra Bevel Gears Ltd. (supra) is squarely applicable to the present case and the lower original authority has correctly rejected the transaction value and adopted the value under Rule 8 of the CVR and his order needs to be restored and the order in appeal is required to be set aside being unsustainable in law. Ordered accordingly.

11. In view of difference of opinion between the Members, the following question arises for determination by Third Member: Whether the Revenue's appeal is required to be rejected as of no merit as held by Member (Judicial) Shri S.L Peeran in his order; the Revenue's appeal is required to be allowed by setting

aside the Order-in-Appeal as held by Member (Technical) Shri Jeet Ram Kait.

12. Examined the records and heard both sides. The Issue that arises for consideration before me as Third Member Is whether the valuation, by the adjudicating authority, of the Imported second-hand machinery In question under Rule 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 requires to be upheld as held by learned Member (Technical) (or) whether such valuation has to be rejected and the value of the goods declared by the importer has to be accepted under Rule 4(1) of the said rules as held by learned Member (Judicial).

13. The facts of the case in detail have been stated by Learned brothers in their respective orders, and I need not repeat the same.

The goods in question is a second-hand Automatic Transfer Honing Machine with three honing stations. It was imported by the respondents from Germany and sought to be cleared under a Bill of Entry dated 18.7.2001. The party had declared a CIF value of Rs. 40,88,335 (Rs. 31,12,500 in FOB terms) in respect of the goods on the basis of value of the goods stated by the foreign suppliers in their invoice, and they claimed assessment of the goods on such value. The adjudicating authority did not accept that value as the transaction value under Rule 4(1) of the above rules (hereinafter referred to as "the CVR"). That authority examined the applicability of Rules 5 to 7A sequentially and found those rules inapplicable. The adjudicating authority valued the goods under Rule 8 by resorting to a depreciation method in terms of CBEC Circular F.No. 493/124/86-Cus. VI dated 19.12.87 and Standing Order No. 49/87 dated 22.12.87 of the Collector of Customs, Madras.

That authority relied on the decision of the Supreme Court in Gajra Bevel Gears v. CC Bombay wherein the Apex Court had approved the valuation of a second-hand machine under the depreciation method under Rule 8 ibid. The aggrieved party went in appeal to the Commissioner (Appeals) and the latter set aside the decision of the lower authority and accepted the value declared by the assessee as transaction value under Rule 4(1) ibid read with Section 14(1) of the Customs Act, 1962. The Commissioner (Appeals) relied on the decision of the Supreme Court in Bicher Tractors v. CC, Mumbai .

Aggrieved by the decision of the Commissioner (Appeals), the Revenue has approached this Tribunal.

14. The matter has been exhaustively argued before me. Shri G.Sreekumar Menon, SDR for the appellant refers to Rule 4 to 10A of the CVR and submits that, in terms of the procedure laid down under Rule 10A, ample opportunity had been given to the importer to prove the accuracy and truth of the declared value of the goods, that the Chartered Engineer's certificate produced by the assessee did not disclose any reason for the expert opinion that the value declared by the assessee appeared to be reasonable, that the certificate merely stated that the second-hand machinery in question had been specially designed for the Bosh Technology of production and that no market value was available in respect of the goods. No scientific or technical data supporting the Chartered Engineer's opinion were forthcoming from the certificate, points out the DR. It was in such circumstances that the authority doubted the accuracy and truth of the declared value and, by a query dated 24.7.2001, called upon the importer to furnish independent evidence in support of accuracy of the declared value. The DR submits that, significantly enough, the importer did not ask for any reason in writing for doubting the accuracy of the declared value. The adjudicating authority, therefore, under Sub-rule (1) of Rule 10A, found it necessary to reject the declared value and to proceed to determine the assessable value under the relevant rule among Rules 5 to 7A. Ld. DR submits that, after sequentially traversing Rules 5 to 7A, the authority found that none of those rules offered a remedy.

Ultimately, the residual method under Rule 8 was resorted to. The DR submits that Rule 8 permitted the authority to determine the assessable value by any reasonable means and that the depreciation method was found to be appropriate and reasonable in respect of the second-hand machinery. Ld. DR submits that the depreciation method was applied in a fair and reasonable manner by the adjudicating authority. That authority took the original value of the goods (as on the date on which the goods was purchased from its manufacturer by the importer's German suppliers and depreciated that value in terms of the Board's Circular and the Standing Order No. 49/87 of the Collector of Customs, Madras.

Ld. DR submits that the Board's circular prescribing the depreciation procedure for valuation of second-hand machinery was binding on the adjudicating authority under Section 151A of the Customs Act. In the absence of a separate specific procedure for valuation of second-hand machinery under the CVR, Ld. SDR submits, the administrative instructions of he Board as contained in the circular held the field and the same were followed in letter and spirit by the adjudicating authority in this case. It is the further contention of the DR that the depreciation procedure was approved by this Tribunal, in the case of Gajra Bevel Gears Ltd, v. CC, Bombay , as a reasonable means under Rule 8 of the CVR and that the said decision of the Tribunal has been affirmed by the Apex Court in the judgment . According to Ld. DR, the facts of the instant case are substantially similar to the facts of Gajra Bevel Gears v. CC Bombay (supra) and therefore the ratio of the decision of the Supreme Court has to be squarely applied to this case. It is the further contention of the DR that the various decisions of the Tribunal relied on by the assessee and noted by the learned Members of the regular bench have got to be examined in the light of the ratio of the Apex Court's decision in Gajra Bevel Gears case. Before concluding his arguments, Ld. DR has also supported the reasoning of the decision of the adjudicating authority with reference to Rule 4(1) of the CVR. He submits that, in respect of a second-hand machinery which is specially designed for working with a manufacturing plant designed on the Bosh Technology, there could be no market data for comparison of the declared value and the question of one-to-one comparison of the goods with identical or similar goods did not arise. Ld. DR submits that, having regard to this indisputable position, this Tribunal categorically held in Gajra Bevel Gears case that, in respect of second-hand reconditioned machirie, the question of finding identical contemporaneous imports did not arise. In that case also, the assessable value was arrived at by taking the manufacturer's price of the imported second-hand machine as certified by the Chartered Engineer and allowing depreciation on the same. Depreciation to the extent of 58% was allowed in that case, having regard to the fact that the machine was less than seven years old and had a residual life of more than 10 years. That procedure was adjudged as reasonable by the Tribunal and the Tribunal's view was upheld by the Apex Court. Ld. SDR, therefore, prays for upholding the decision of the adjudicating authority.

15. Ld. Counsel Shri S.S. Radhakrishnan for the respondents, on the other hand, submits that the deision in Gajra Bevel Gears case is clearly distinguishable from the instant case. He points out that, in Gajra Bevel Gears case, the declared value was rejected on the ground that the invoiced price was of second-hand machinery of 1984 and not of second-hand machinery of 1986 make, which the impugned goods in that case was found to be. Ld. Counsel submits that, in the instant case, no ground whatsoever has been stated for rejecting the declared/invoiced price of the imported goods. It is argued that one has got to record valid ground for holding that the declared value cannot be accepted under Rule 4(1) as the transaction value of the goods for the purpose of assessment of duty, before proceeding further to examine the applicability of the succeeding Rules 5 to 8 of the CVR. In the absence of rejection of the declared value, Ld. Counsel submits, it was not open to the adjudicating authority to examine the applicability of Rules 5 to 8 sequentially as he did. Ld. Counsel, further, submits that there was no mis-declaration of description or value of the goods in this case, unlike in the case of Gajra Bevel Gears wherein the description and value were found to be mis-declared. While admitting that the depreciation method of valuation of second-hand machinery was approved by the Tribunal in Gajra Bevel Gears case, Ld. Counsel submits that such approval was not irrespective of applicability of Rule 4(1) of the CVR but consequential to rejection of the declared value on a valid ground under that rule. Ld. Counsel pleads for distinguishing the case on hand from Gajra Bevel Gears case on this basis. In support of the decision of the lower appellate authority as affirmed by learned Member (Judicial), Ld. Counsel submits that there are numerous similar cases in which this Tribunal has consistently taken the view that, in respect of even second-hand machinery, it Is imperative for the assessing authority to reject the declared value of the goods on valid grounds under Rule 4(1) before resorting sequentially to the later rules of the CVR. He has cited the following decisions of this Bench:Rugmini Ram Raghav Spinners Pvt. Ltd. v. CC, Hyderabad (sic, Chennai) Sree Rejendra Mills Ltd. v. CC, Madras In the above cases, the declared values of imported second-hand machinery were accepted. The Ld. Counsel, further, submits that the adjudicating authority has partly relied on the Chartered Engineer's certificate and partly rejected it in the matter of valuation of the goods in question. For the purpose of original value of

the goods as also for the description of the goods, the adjudicating authority accepted the Chartered Engineer's certificate, whereas the opinion stated by the Chartered Engineer to the effect that the invoiced value of the goods is reasonable has not been accepted by that authority. Ld.

Counsel submits that such approbation and reprobation have been disapproved in .Hartex Elastomers Pvt. Ltd. v. CC Hyderabad 2000 (3) ECL 196 (T). Ld. Counsel has also referred to the Board's circular and the Standing Order relied on by the SDR. He submits that, even according to the procedure laid down by the Board, the declared value can be ultimately rejected, only if there is a wide difference between that value and the value arrived at as per the depreciation method. Ld.

Counsel further points out that, even if the difference between the two values is found to be very high, it has to be further proved by the Revenue that the low value was declared by the importer fraudulently or with mala fides. Ld. Counsel submits that, in the instant case, there was no charge of mala fides or fraud against the importer and therefore the depreciation procedure laid down by the Board cannot be applied in this case. Referring to Rule 10A of the CVR, Ld. Counsel submits that all the relevant documents were placed before the adjudicating authority in answer to the query dated 24.7.2001 and the assessee did its part in establishing the truth and accuracy of the declared value.

According to Ld. Counsel, nothing contained in Rule 10A entitled the adjudicating authority to reject the declared value without stating any reason therefor and to proceed to examine the applicability of Rules 5 to 8. Ld. Counsel submits that exceptional or extraordinary reasons ought to have been indicated for not accepting the declared value as transaction value under Rule 4(1) read with Section 14(1) of the Customs Act. This was not done by the adjudicating authority in this case and the omission of the adjudicating authority has been made good by the lower appellate authority. In this context, Ld. Counsel relied on the decision of the Hon'ble Supreme Court in Eicher Tractors Ltd. . He submits that the Apex Court clearly laid down that exceptional/extraordinary circumstances as particularised under Sub-rule (2) of Rule 4 ought to be found by the assessing authority in order to exclude the provisions of Rule 4(1) from consideration. In the instant case, Ld. Counsel submits, the adjudicating authority has found under Clause (b) of Sub-rule(2) of Rule 4 that some condition or consideration existed, which allegedly warranted rejection of the declared value under Rule 4(1). Counsel submits that the 'condition' and 'consideration' referred to under Clause (b) of Sub-rule (2) of Rule 4 were misconceived by the adjudicating authority. He submits that the "condition & consideration" contemplated under Clause (b) are factors of monetary value. No such factor has been found by the adjudicating authority, Ld. Counsel, therefore, submits that the reliance placed by the adjudicating authority on Rule 4(2)(b) for rejecting the declared value is misplaced. None of the exceptional or extraordinary circumstances as particularised under Rule 4(2) was found to have existed in the instant case and therefore the rejection of the declared value under Rule 4(1) was illegal. Ld. Counsel, therefore, urges that the order of the Commissioner (Appeals) be affirmed.

16. I have applied my mind to the facts of the case as also the submissions made before me. I have also given careful consideration to the case-law cited before me.

17. The limited question before me is whether, in the peculiar facts and circumstances of this case, the invoice price of the second-hand machinery imported by the respondents should be accepted as the transaction value of the goods under Rule 4(1) for the purpose of assessment of duty and, if not, whether the depreciation method of valuation adopted by the adjudicating authority under Rule 8 of the CVR should be held to be in order. The case-law heavily relied on by the lower appellate authority, which decided the issue in favour of the importer, is the decision of the Apex Court in Gajra Bevel Gears Ltd. case (supra). That was the decision rendered by a Three Judge Bench of the Supreme Court affirming the decision of this Tribunal . In that case, the Tribunal was seized, inter alia, of the question whether certain second-hand machinery imported by the assessee required to be valued, under Rule 8 of the CVR, by the depreciation method laid down by the Board in its circular dated 19.12.87 as clarified by the Collector of Customs, Madras in Standing Order No. 49/87 dated 22.12.87. The importation was in terms of a licence issued by the DGFT for import of second-hand machinery of 1984 make. The invoice issued by the foreign supplier also described the goods as of 1984 make. However, on examination, the Customs

authorities found the goods as of 1986 make. Therefore, the authorities framed a case of misdescription, undervaluation etc. against the importer and issued a show-cause notice to them for confiscating the goods as also for assessing the goods at a higher value. The importer, in that case, has furnished a Chartered Engineer's certificate which provided the original price of the goods. On that basis, the goods were valued by depreciation and assessed to duty. The dispute which arose out of that assessment ultimately came up before the Tribunal. The Tribunal upheld the depreciation method of valuation adopted by the lower authorities under Rule 8 of the CVR, and rejected the assessee's appeal. The ratio of the decision is contained in paragraphs 21 to 23 of the Tribunal's judgment which are extracted below: 21. On careful examination of the ratio of the judgments cited above, we find that in the instant case, the invoice gives particulars of import licence dated 26.9.1991 against which the goods have been supplied. This import licence is for importing machines of '1984 make' and therefore, this invoice shall give the price only of machines which of '1984 make'. Since the second-hand machines imported by the appellants were of 1986 make we therefore, hold that value indicated in the invoice was not acceptable and rightly so. The importer himself supplied Chartered Engineer's Certificate indicating that the value of the machines when manufactured was DM 80,000. This price has been indicated against entry VI in the Chartered Engineers certificate.

22. We also note that the machines were second-hand re-conditioned and therefore the question of finding identical contemporaneous imports did not arise. We also note that the manufacturer's price of the machine was not produced by the appellants. In view of the above case law on the subject, we hold that the learned Collector was perfectly right in allowing depreciation from the manufacturer's price of a machine given by the Chartered Engineer in the peculiar circumstances of the case. Further, we also find that the learned Collector has allowed depreciation of 58% though the machine was reportedly less than 7 years old and had a residual life of more than 10 years and in the circumstances, we find that reasonable deduction as depreciated has been given.

23. Having regard to the above facts and circumstances we hold that the value has rightly been determined by the Collector in his impugned order.

18. In para-21 extracted above, the Tribunal held that the invoiced value was not acceptable as that value was not that of 1986 make of the second-hand machinery. Ld. Counsel has attempted to bank heavily on this finding of the Tribunal, in support of his argument that the rejection of the invoiced price was on a discreet ground and therefore the applicability of rules other than Rule 4(1) was examined in that case. I do not find any persuasive force in this argument inasmuch as, after recording a categorical finding that the question of identical contemporaneous imports did not arise in respect of second-hand machinery, the Tribunal straightaway went into the question whether the residual method laid down under Rule 8 of the CVR could be applied in respect of such goods. On a perusal of the submissions of the DR recorded by the Tribunal in that case, I find that the method adopted in that case is identical to the one adopted by the adjudicating authority in the instant case. The authority rejected the invoice value, traversed the Rules 5 to 7 and found those rules inapplicable.

Ultimately, the authority took recourse to the residual method under Rule 8 read with Section 14(1) of the Customs Act, 1962 and arrived at the assessable value by depreciating the original value of the goods in terms of the instructions of the Board. It was this procedure which was approved by the Tribunal and, later on, by the Apex Court. It is true that a two Judge Bench of the Apex Court in the case of Etcher Tractors Ltd., (supra) laid down the general principles of valuation under the CVR read with Section 14 of the Customs Act. In that case, the Court held that any of the exceptional circumstances as particularised under Rule 4(2) of the CVR should be found to exist if the invoiced price of the imported goods was sought to be rejected under Rule 4(1).

Admittedly, none of the rules of the CVR provides specifically for valuation of second-hand goods. Under Section 151 A, the Board has power to issue instructions for the purpose of uniformity in relation to levy of customs duty and such instructions are binding on the assessing authority. The circular relied on by the lower appellate authority as also by the Ld. DR today contains Board's instructions issued under Section 151 A. The executive instructions issued by the Board under Section 151A has statutory force and the same would cover an area in which the CVR is silent. According to my understanding, the Tribunal and the

Apex Court in the case of Gajra Bevel Gears Ltd. have virtually given the stamp of approval to this proposition, by holding to the effect that, where second-hand machinery, in respect of which the question of contemporaneous imports of identical/similar would not arise, is imported, depreciation method of valuation would be an appropriate residual method under Rule 8 of the CVR that could be invoked to the exclusion of other rules. !t is significant to note that neither the Tribunal nor the Apex Court has attempted to examine the need of considering the applicability of Rules 5 to 7A before taking recourse to the residual method under Rule 8. It appears to me that the ratio of the decision in Gajra Bevel Gears case is that, in respect of second-hand machinery, the rule of valuation is the rule laid down by the Board which has to be applied as a reasonable means under Rule 8 of the CVR.19. Neither side has pointed out any conflict between Eicher Tractors (supra) and Gajra Bevel Gears (supra). Even if there is any, the ratio of the latter decision rendered by a Three Judge Bench of the Supreme Court will prevail over the former rendered by Two Judge Bench.

20. I, therefore, hold the view that the adjudicating authority, in this case, decided the assessable value of the goods correctly. It is nobody's case that there was any unreasonableness within the depreciation procedure adopted by the adjudicating authority. I hold that the adjudicating authority has correctly valued the subject goods under Rule 8 of the CVR and therefore the duty has to be paid on that basis.

The matter shall be placed before the regular bench to formalize and pronounce the majority decision.

In terms of the majority order, the Order-in-Original passed by the adjudicating authority is confirmed and the Revenue's appeal is allowed.