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Janta Traders Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1986

Reported in : (1987)(13)LC685Tri(Delhi)

Appellant : Janta Traders

Respondent : Collector of Customs

Judgement :

1. M/s. Janta Traders, 59/67, Mirza Street, Bombay-400 003, have filed an appeal being aggrieved from Order No. 418/1982, dated 23rd September, 1982 passed by the Central Board of Excise and Customs, New Delhi.

2 Briefly the facts of the case are that M/s. Janta Traders had imported five consignments of YKK Brand Zip Fasteners from Hongkong in 121 cases. M/s. Azad Shipping Agency, CHA No. 11/234, presented Bills of Entry IGM No. 1629 and Item Nos. 107 to 111 for clearance of the aforesaid consignments. The appellant had presented invoice Nos.

1928/81 to 1932/81, all dated 11-10-1981 issued by Japan Trading Company, Hongkong, the shippers of the consignments. The invoices show the description of the goods as "YKK Brand Plastic Zippers, Size No. 5" and country of origin as Hongkong. The invoices showed that the price charged varied according to the size of the material and there was in all 24 different sizes. The invoices further showed that shippers had shown separate unit price for each size. The total declared CIF value for the five consignments was Rs. 4,49,011/- The appellants

had also filed five separate certificates of origin in respect of the five consignments issued by the Indian Chamber of Commerce, Hongkong. These certificates showed that the goods were of Japanese origin manufactured by M/s. Yoshida Kogyo K.K., Japan and not of Hong Kong origin as declared in the respective bills of entry. The Revenue authorities had inspected these Zip Fasteners and on inspection it was found that the same were of. types "Vislon-VFO-56" which, as per the index of M/s.

YKK, Japan, stands for,. No. 5 Vision Plastic injected Zippers open and automatic lock slider. The Central Intelligence Unit of the Bombay Customs conducted certain enquiries in respect of the value declared for the goods and searched the premises of M/s. Janta Traders, Bombay and seized certain documents relating to import of Zip Fastners as per Panchanama dated 25-1-1982. During the course of interrogation statement of three persons, viz., S/Shri B.K. Handa, C.J. Pinto and Adarsh Veer Jain were recorded under Section 108 of the Customs Act, 1962. Shri B.K. Handa of M/s. S.B. Vijay Laxmi Corporation, Bombay was the local Indenting Agent for M/s. Y.K.K. Zippers (S) PTE Ltd., Singapore and Shri C.J. Pinto is the proprietor of M/s. Crispin Agencies, Bombay, who are the local Indenting Agents representing M/s.

Y.K.K. Japan. Shri Handa stated that his firm booked indents for the supply of YKK Brand Zip Fasteners from their principals as per the price list dated 1-6-1980. Similarly Shri Pinto deposed that he booked indents for the supply of similar goods from his principals M/s. YKK Japan on the basis of the price list dated 1-5-1980. Both of them produced copies of the respective price lists. After scrutiny of the two price lists the revenue authorities were of the view that the goods were priced exactly at the same rate for Indian market in respect of all types including type "VFO-56", irrespective of the supply coming from Singapore or Japan. The Revenue authorities on further investigations noticed that two consignments imported by M/s. Babson and Company, Bombay of the same goods from M/s. YKK Zippers (S) PTE Ltd., Singapore, during the same period had been invoiced on the basis of the price list dated 1-6-1980 produced by Shri Handa. The details of the invoices were furnished in the Show Cause Notice. The Customs authorities had also noticed other imports, as detailed in the show cause notice imported from

Japan which had been invoiced on the basis of the price list dated 1-5-1980. A scrutiny of the price list of M/s.

YKK Japan as well as Singapore showed that there were various types of Zip Fasteners such as VCO 56, VFO 56, VFO 46 etc. The prices were different for the different types. Among the documents seized from the premises of the importers was a telex dated 18-6-1981 in which Shri Adarsh Veer Jain had asked Mr. Chand of M/s. Japan Trading Co. to prepare the invoices to read, "Plastic/Aluminium Zip". Based on the aforesaid investigations, the show cause notice dated 12-2-1982 was issued to the importers containing the following allegations : (i) The correct C1F prices of the imported goods are those which appear in the two price lists dated 1-5-1980 and 1-6-1980 referred to above.

(ii) Based on the aforesaid price lists, the correct CIF value appears to be Rs. 8,91,8'42.65 as against the total declared CIF value of Rs. 4,49,010.92.

(iii) The goods, therefore, appear to have been mis-declared in respect of the value to the extent of Rs. 4,42,831.73 CIF, which would have resulted in a loss of revenue to the extent of Rs. 8,21,200.36.

(iv) There appears to have been an attempt to conceal the correct types of Zip Fasteners imposed by merely declaring them as "Plastic Zip Fasteners" without mentioning the types in the invoices.

(v) The licences produced are valid for the import of Zip Fasteners to the extent of Rs. 4,49,011.00 only, whereas the imported goods comprising the five consignments are of a value of Rs. 8,91,843.00 resulting in the import of goods valued at Rs. 4,42,832.00 without the cover of a valid import licence.

In the Show Cause Notice appellants were asked to explain why the goods should not be confiscated under the provisions of Clauses (d) and (m) of Section 111 of the Customs Act, 1962 and why a penalty should not be imposed on them under Section 112 of the said Act. The appellant had filed a reply to the Show Cause Notice vide their letter dated 9th March, 1982, and had requested for a personal hearing. The personal hearing was granted. At the time of personal hearing the

appellant had reiterated the contentions contained in their written reply. During the course of the personal hearing the appellants had emphasised that the importers had produced a letter No. 6964/81, dated 19-12-1981 from M/s.

Japan Trading Co. enclosing therewith the original invoices of. Hing Kwok Industrial Co. Ltd., to. Japan Trading Co. for the supply of the goods. This Company was the Hong Kong Agents of M/s. YKK Japan. They further pointed out that M/s. Japan Trading Co., purchased the goods at FPB prices quoted in the invoice and even after adding freight and insurance they still made a profit of about 6%. A copy of the said invoice and original bills of lading indicating pre-paid charges and a statement of debits on account of insurance charges in support of his contention were also filed. The appellant had further argued that the Custom House Agent had declared the origin of goods as 'Hong Kong' by mistake without properly going through the Certificates of Origin. Shri V.K. Handa and Shri C.J. Pinto were interested and aggrieved parties inasmuch as they were deprived of the 2% commission in the case of those imports and hence their evidence was biased and could not be used against the appellants, The appellants have further argued that both the price lists contained a note that the prices were subject to fluctuation and hence there was not finality about the same. Shri Handa had himself deposed that in the case of actual users or where the quantity ordered is large, discounts were given after negotiations.

Shri Pinto had not booked any order for VFO 56 during 1981. It was also added that the negotiations of prices was a normal international practice and the price charged as a result of such negotiations may be less than that shown in the price lists. The appellants had further contended that their invoices show such negotiated prices and that their clients had not paid the normal 2% commission to the indenting agent. Further in the case of large quantity covered by the orders, the incident of sea freight was also less. The appellant had relied on the invoice of the Hong Kong supplier. The appellants had further argued that their other contemporary imports cited by the department in the show cause notice, covered a smaller quantity as compared to the quantity imported by the appellants which was inclusive of the indenting commission. Shri Adarsh Veer Jain's statement contained a correct and factual position and the department had not brought any

evidence to controvert the same. Regarding paragraph 4 of the show cause notice, the appellant had contended that he had approached various suppliers including M/s. Japan Trading Co., Hong Kong, who sent the price list dated 1-9-1981 in which the goods were described as "YKK Brand Plastic Zippers -Size No. 5". Subsequently, they sent confirmation Notes Nos. 1928 to 1932, dated 7-9-1981 to them. Regarding the telex, the appellant had contended that since octroi duty was leviable on the goods according to the material of which the Zip Fasteners were made, the instructions were' issued to show the material as "plastic/aluminium". In any case the description in no way helps in the evasion of any duty. Regarding the discrepancy between the dates of sale confirmation notes of Japan Trading Co., and proforma invoices of M/s. Hing Kwok Industrial Co., Ltd., the appellant submitted that an uncalled for and wrong inference had been sought to be drawn by the department. It was further contended that the appellants may not be in possession of the material when confirmation was issued but might have subsequently purchased the material at the time of shipment from M/s.

Hing Kwok Industrial Co. Ltd. The invoices represented the correct value of the goods and that in the absence of any evidence regarding the prices of fractional length of the Zip Fasteners, the department cannot deduce prices by taking the average of prices of two sizes. The appellant had contended that the goods were neither liable for confiscation nor liable for penalty under Section 112 of the Customs Act, 1962. The learned Collector of Customs had considered the evidence on record and the submissions made by the importers in their written reply as well as during the personal hearing. He observed that the evidence adduced by the department comprise two price lists of the manufacturers one issued in Japan and the other at Singapore and certain contemporary invoices. He had observed that the appellant had not questioned the correctness or the genuineness of the two price lists and had accepted the price lists as correct and relied on the note in both of them which stated that the prices were subject to fluctuation. The goods were admittedly of Japanese origin and even the proforma invoice of M/s. Hing Kwok Industrial Co. Ltd., produced as evidence by the importers showed that they were agents for YKK Japan.

The appellant had further produced photo-copies of a proforma invoice dated 20-10-1980 issued to M/s. Parjan Brothers, Delhi and an invoice dated 11-3-1981 to M/s. Taj Mahal Exports, New Delhi, as evidence to show that even YKK Japan, the manufacturers, have been supplying goods at a lower price, being a negotiated price. The learned Collector had observed that it was true that those two invoices were invoiced at a lower price than that contained in the YKK Japan price list relied upon by the department. The department had relied upon the invoice Nos.

ID/252/81, dated 28-9-1.981 and ID/291/81, dated 17-11-1981 both issued to M/s. Babson and Co., Bombay, for imports from Singapore and another Invoice No. JM-394, dated 1-8-1981 for imports direct from YKK Japan by M/s. Rajankumar and Brothers, Bombay of different types of Zip Fasteners which had been invoiced on the same basis as the two price lists. It appeared that both the imports were for the same party and mere production of an invoice and calling it a negotiated price would not carry much conviction unless evidence is produced to show what were the conditions in and basis for such negotiations which led to the reduction in prices and there was no reason why YKK Japan should have followed the price list in October, 1981 in effecting supplies to M/s.

Rajankumar and Brothers, Bombay, but give a considerable reduction in 'price for another importer in October, 1980 and March, 1981. In any case, if the Custom House had accepted these invoices without questioning it would not constitute sufficient evidence to show that prices could be negotiated. The learned Collector (Appeals) was of the view that there was undervaluation and the price lists issued by the manufacturers in Japan had not been controverted by the importers.

There is no evidence as to the negotiated prices and there was no correspondence to this effect too. The learned Collector was of the view that a negotiated price cannot be 50% of the basic price quoted by the suppliers in the price list. Even in the proforma invoices produced by the importers, the appellants, the price variation was not as wide, and could lead to a reduction of 5 to 10%. The quantum of reduction, however, cannot be as high as 50% and the Customs Houses in India publish a daily list of imports and exports which contain even details of the quantity and the CIF value and it is not difficult for other importers to

ascertain the prices at which the goods were imported.

This was particularly so in respect of high profit margin articles like Zip Fasteners which were highly restricted for import. The learned Collector also did not accept the contention of the appellant that S/Shri Handa and Pinto were aggrieved parties. The learned Collector however, observed that 50% discount was too much. The appellant placed reliance on the proforma invoices of M/s. Hing Kowk Industrial Co. Ltd. as well as the confirmation note was dated 7-9-1981 and was issued by M/s. Japan Trading Co. They had obtained the goods from M/s. Hing Kwok Industrial Co. Ltd. In para 12(ii) the appellant had stated that on 1-9-1981, the price list was issued by M/s. Japan Trading Company after taking into consideration the availability of the material and the market position and subsequently confirmed on 7-9-1981. These two documents must have been based on the same quotation obtained from M/s.

Hing Kwok Industrial Co. Ltd., who supplied the goods to M/s. Japan Trading Company. The proforma invoice of that company dated 1-10-1981 does not show any order number. In fact there was a column for showing order number and date which was blank. The Indian Chamber of Commerce had, no doubt, stamped the invoice but it was only for the purpose of issue of Certificate of Origin and for nothing else. Chambers of Commerce do not certify the value while issuing the Certificate of Origin. In fact, the Certificates do not con tain any statement that the values were correct values. When they issued the price list on 1-9-1981 and confirmati on on 7-9-1981, M/s. Japan Trading Company must have obtained their quotation on which they must have based their prices. The learned Collector had further observed that there was no mention of the discount in the price list and there was no correspondence in this regard. The learned Collector further observed that M/s. Hing Kwok Industrial Company's prices were lower than that of YKK Japan prices for India. It had to be remembered that M/s. Hing Kwok Industrial Company Limited, were effecting a local sale and not a sale to India. Insofar-as the YKK Brand Zip Fasteners were concerned, the effective price at which they were ordinarily sold for importation into India was the price shown in the price list of the manufacturers, viz., M/s. YKK Japan. The learned Collector was of the view that in terms of Section l4 of the Customs Act the value of

imported 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 and place of importation, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for the sale. The price list issued by the manufacturer is one which is of general application to all importers and when the goods have been imported at the same prices as those shown in the price list, then that is the price at which such goods are ordinarily sold or offered for sale at the time and place of importation. The learned Collector had come to the conclusion that it was correct for the department to base the assessment on an authentic price list issued by the original manufacturer and on the basis of which an Indenting Agent who represents such manufacturer books his orders. The learned Collector was of the view that the telex cited did not establish that the misdeclaration of value was based on the same, The YKK Japan price list did not show separate prices for 12.5", 13.5", 14.5", 15.5" and 16.5" etc. The revenue had taken the average price for the fractional inches based on the lower and higher sizes. The learned Collector had accepted the contention of the appellant and had directed that the fractions may be ignored and the prices be reckoned on the basis of those quoted for the lower sizes. The learned Collector had held that the correct CIF value of the goods comes to Rs. 8,85,998.00 and had worked out the same on the basis of the price lists. This resulted in an undervaluation to the extent of Rs. 4,36,987.00. He also held that the goods were liable for confiscation under Section 111(m) of the Customs Act, 1962, and that the goods of a value of Rs. 4,36,987.00 were not covered by valid import licences and that the same were liable to confiscation under Section 111(d) of the Customs Act, 1962. He had given an option to pay the following fines in lieu of confiscation and clear the consignments for home consumption :- B/E No. & Date Fine imposed _____ _____(i) 1629/107 of 16-11-1981 Rs. 77,100/-(ii) 1629/108 of 16-11-1981 Rs. 68,600/-(iii) 1629/109 of 16-11-1981 Rs. 67,430/-(iv) 1629/110 of 16-11-1981 Rs. 72,000/-(v) 1629/111 of 16-11-1981 Rs. 75,360/- He had also imposed a penalty of Rs. 10,000 each on the five consignments under Section 112 of the Customs Act, 1962. Being aggrieved from the aforesaid order the appellant had filed an appeal to the Central Board of Excise and Customs, New Delhi. The Board had confirmed

the findings of the Collector of the point of undervaluation to the tune of Rs. 4,36,987.00 and had reduced the fine in lieu of confiscation as follows :-(i) B/E No. 1629/107, dated 16-11-1981 from Rs. 77,100/- to Rs. 40,000/- (Rupees forty thousand only);(ii) B/E No. 1629/108, dated 16-11-1981 from Rs. 68,600/- to Rs. 35,000/- (Rupees thirty five thousand only);(iii) B/E No. 1629/109, dated 16-11-1981 from Rs. 67,430/- to Rs. 35,000/- (Rupees thirty five thousand only);(iv) B/E No. 1629/110, dated 16-11-1981 from Rs. 72,000/- to Rs. 35,000/- (Rupees thirty five thousand only); and(v) B/E No. 1629/111, dated 16-11-1981 from Rs. 75,360/- to Rs. 40,000/- (Rupees forty thousand only).

The Board had also reduced the personal penalty of Rs. 10,000/- imposed on each of the consignments to Rs. 2,500/- (Rupees two thousand five hundred only), in respect of each consignment. Being aggrieved from the aforesaid order the appellant has come in appeal before the Tribunal.

3. Shri S.D. Nankani, the learned advocate has appeared on behalf of the appellant. He has reiterated the contentions made in the appeal memo Shri Nankani, the learned advocate has pleaded that the goods are still under detention. He has pleaded that the appellant had filed written submissions dated 9th October, 1985 and the revenue authorities had also filed written reply which was presented in the registry on 26th November, 1985 and in response to the same the appellant had filed a rejoinder dated 16th December, 1985 which was received in the registry on the 18th November, 1985. Shri Nankani, the learned advocate has pleaded that his appeal may be decided on the basis of the appeal memo, written submissions and the rejoinder. Shri Nankani had laid great emphasis on the earlier judgments of the Tribunal mentioned by him in his written submissions. Shri Nankani has referred to the Comparative Exchange Fluctuations at per the Customs Rate, the details of which appear on page 61 of the Paper Book. He had pleaded that on 1st April, 1980 Indian hundred rupees were equal to 60.90 Hong Kong Dollars equal to 2,990.00 Japanese Yen. Thus one Hong Kong Dollar was equal to 49.10 Japanese Yens. On 1st October, 1981, Rupees hundred were equal to 66.10 Hong Kong Dollars equal to 2,504.00 Japanese Yens. Thus one Hong Kong Dollar was equal to Japanese Yen 37.90. Thus in comparision with October, 1981 and April, 1980 Japanese Yens had appreciated by 29.55%

towards Hong Kong Dollars. Thus in all other things being normal and prices as on 1-4-1980 and 1-10-1981 being same in Japan, goods imported from Japan would be 30% cheaper if imported in Hong Kong Dollars on October, 1981 in comparision with April, 1980, and it would be other way along if imported under Japanese Yens. Shri Nankani states that if the purchase had taken place from Hong Kong in terms of Hong Kong Dollars, it is perfectly in order and there is no undervaluation as alleged by the revenue authorities. Shri Nankani has referred to para No. 5 of internal page 4 of the Show Cause Notice dated 12th February, 1982 where the revenue has converted the value into Japanese Yens. He has placed that the revenue authorities have taken rupees hundred equal to Japanese Yens 2,504 and the CIF value in Yens has been taken at Yen 2,23,31,740/-. Shri Nankani, the learned advocate has pleaded that the exchange rate of Rs. 100/- equals to 2504 Japanese Yens fully tallies with the exchange rate given by him in the Paper Books on page 61. He has pleaded that the appellant had imported the goods from Hong Kong and invoices are in Hong Kong dollars and as such revenue authorities were not justified in converting the CIF value from Japanese Yens to Rupees. He stated that in the interests of justice and as per prevelant practice the invoice value in Hong Kong dollars should be converted into rupees and if this conversion is followed there is absolutely no misdeclaration by the appellant. The declared Hong Kong value fully tallies with the CIF value in rupees.

Shri Nankani states that there was appreciation in the value of the yen and the basis adopted by the department has resulted in such a higher valuation. He has referred to his grounds of appeal and has laid special emphasis on page 33 of the Paper Book. He has pleaded that the revenue has shown discrimination to the appellants and revenue's case is based on two price lists produced by M/s. S.B. Vijay Laxmi Corporation, Bombay and M/s. Crispin Agencies, Bombay. On the other hand the appellants had produced documentary evidence of YKK Zip Fasteners having been allowed clearance by the Bombay Custom House itself on the prices lower than those indicated in the said 2 price lists. The prices shown in the price lists filed by the Department were negotiable and the prices in the said price lists were the basis for such negotiations and the fact of imports at lower prices has not been denied by any of the revenue authorities and the representatives of such agents in their statements and correspondence had clearly

admitted that their prices in the price lists were negotiable. Shri Nankani has referred to para No. 11 of the appeal petition wherein the appellant has duly mentioned that on or about 17-9-1982 the appellants had filed written submissions enclosing therewith a chart showing the comparision exchange fluctuations as per the Customs rates of Hong Kong Dollars and Japanese Yens and the documents pertaining to the imports of YKK Brand Zip Fasteners by other parties from YKK Tokyo and M/s. Japan Trading Company, Hong Kong. Shri Nankani, the learned advocate has referred to the case law cited by him in his written submissions. He has further argued that to save the precious time of the court he is not repeating the written submissions filed by him which are already on record. He has pleaded that the Bench may go through the written submissions and case law cited by him as well as the appeal petition and the rejoinder tiled by him. He has pleaded for the acceptance of the declared value and cancellation of the fines in lieu of confiscation and personal penalties. He has pleaded for the acceptance of the appeal.

4. Shri V.M. Doiphode, the learned Senior Departmental Representative has appeared on behalf of the respondent. He has pleaded that the present matter before the Bench is a matter in which under valuation as well as misdeclaration in the Bill of Entry are involved. He has referred to the Bill of Entry which appear on pages 37, 38, 39, 40 and 41 of the respondent's Paper Book. Shri Doiphode states that a simple perusal of the Bill of Entry will show that the appellant had given wrong description of the goods in the Bill of Entry as the country of origin has been shown as Hong Kong. He has referred to the order passed by the Collector of Customs, Bombay in particular page 111 of the appellant's Paper Book. Shri Doiphode has argued that the Bill of Entry does not contain the complete description of the imported goods and the complete description of the goods was taken by the revenue authorities after the examination of the goods. He has referred to the price lists of YKK Japan filed by the appellant. He has pleaded that the learned Collector of Customs has based his case on the invoices of M/s. Babson and Company, Bombay. He has pleaded that the invoices were issued by M/s. YKK Zippers, Singapore and is dated 28th September, 1981 and that the said imports pertains to the same period and the Bill of Lading is dated 19th October, 1981. He has also argued that the shelter taken by the appellants on two proforma

invoices in the case of M/s. Parjan Brothers and Taj Mahal Export does not help the appellant in any way because they are much earlier to the disputed goods imported by the appellants. Shri Doiphode has referred to para No. 11 of the adjudication order. In the said para the Collector has accepted the fact that the value in both the invoices was at a lower price than that contained in the YKK Japan price lists relied upon by the Department.

He had further observed that the appellant cannot have the benefit of the same in view of the department's Invoice Nos. ID/252/81, dated 28-9-1981 and ID/291/81, dated 17-11-1981 both issued to M/s. Babson and Company, for imports from Singapore and another invoice No. JM-394, dated 1st August, 1981 for imports direct from M/s. YKK Japan by M/s.

Rajankumar and Brothers, Bombay. He has also referred to the Show Cause Notice dated 12th February, 1982. Shri Doiphode has referred to the invoice dated 28th September, 1981 which appears on page 25 of the respondents Paper Book in favour of M/s. Babson and Company and has also referred to the invoice dated 7th November, 1981 which appear on page 259 of the appellants Paper Book.

He has referred to the invoice dated 1st August, 1981 in favour of M/s.

Rajankumar and Brothers appearing on page 18 of the Paper Book. He has stated that M/s. Babson and Company had imported consignments by air and the consignment is dated 28th September, 1981 and covers only 1800 pieces and the consignment dated 17-11-1981 covers 5700 pieces and the same were also imported by air. Shri Doiphode has referred to para No.15 of the order passed by the Collector of Customs and has argued that the appellant had taken shelter on the proforma invoices of M/s. Hing Kwok Industrial Company Limited. The sale confirmation note was dated 7-9-1981 and was issued by M/s. Japan Trading Company, the suppliers.

They had obtained the goods from M/s. Hing Kwok Industrial Company Limited. Shri Doiphode states that the appellant was. interested to become an agent of YKK Japan. He has referred to page 11 of the Paper Book which is a letter dated 24th December, 1980 written by M/s. YKK Japan to the appellants which shows

that the appellant was interested to become an agent of M/s. YKK Japan. He has also referred to a letter from YKK Japan to M/s. East Punjab Traders to the effect that the price and quality are always the same as long as the goods are bought from YKK. Shri Doiphode further states that the prices do not indicate whether there was any discount on large or small quantities. Shri Doiphode has referred to Section 14 of the Customs Act and has pleaded that in terms of Section 14 of the Customs Act the value of imported 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 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 sale or offer for the sale. Shri Doiphode, the learned Departmental Representative has referred to a judgment of the Hon'ble Delhi High Court in the case of. Oswal Woollen Mills v. Assistant Collector of Customs, Bombay and Ors. reported in 1984 (18) ELT 203 where the Hon'ble High Court had held that under Clause (a) of Section 14(i) of the Customs Act, 1962 the value have to be assessed on the price at which such or like goods are offered for sale or often sold. The word 'Ordinarily' accordingly to Oxford Dictionary means 'Usually', 'Commondly'. The Hon'ble High Court had further held that in view of the Customs Valuation Rules special discount was not admissible. Shri Doiphode has referred to another judgment of the Tribunal in the case of. Automotive Enterprises v.Collector of Customs, Bombay, reported in 1985 (22) ELT 283 where the Tribunal had held that the deemed value is to be the value for assessment even if invoice price prove to be true price. He has also referred to a judgment of the Hon'ble Bombay High Court in the Case of., Sattelite Engineering Ltd. v. Union of India reported in 1983 ELT 2177 where in the Hon'ble High Court had hold that in terms of the provisions of Section 14 of the Customs Act, 1962 and Rule 3(d) of the Customs Valuation Rules, 1963 the value of the goods for the purposes of levying duty shall be fixed with reference to the price at which such goods are sold or offered for sale in the course of international trade and where the seller and the buyer hand no interest in the business of each other and the price is the sole consideration. He has referred to para 6 of the said judgment. Shri Doiphode has referred to another judgment of the Tribunal in the case of Consolidated Coffee Ltd., Pollibetta v. Collector of Customs, Bombay [1986 (24) ELT 429 (Tri.)],

wherein the Tribunal had held that the deemed value of imported goods, where duty is to be levied ad valorem is, in terms of Section 14 of the Customs Act, 1962, not their actual value, the invoice value of the price at which they are capable of being sold. It is, on the contrary, the price at which such goods are ordinarily sold or offered for sale at the time and place of importation i.e. the market price at the time and place of importation and where it is not so ascertainable, its nearest equivalent determined in accordance with the Customs Valuation Rules, 1963. Shri Doiphode has referred to the statement of Mr. Pinto which appears on page 181 of the appellants Paper Book and page 46 of the respondent's Paper Book. He has referred to para 12 of the Collector of Customs Order wherein it was held that the negotiated price cannot be 50% of the basic price quoted by the suppliers in the price list. Shri Doiphode, the learned Senior Departmental Representative has pleaded for the dismissal of the appeal and acceptance of the cross objection filed by the respondents wherein the respondents had prayed for the withdrawal of the relief given by the Central Board of Excise and Customs, New Delhi.

5. In reply Shri S.D. Nankani, the learned advocate has again referred to his memo of appeal, written arguments and the rejoinder. He has stated that in his written submissions in para No. 22, he has relied on case law and in particular has referred to certain judgments of the Tribunal in the case of the following :-Mangla Brothers, Bombay v. Collector of Customs, Bombay [1984 ECR 449 (CEGAT) - 1984 (15) ELT 151 (Tri.)];Weston Electronics Limited, New Delhi v. Collector of Customs, BombayRakesh Press, New Delhi v. Collector of Customs, Bombay [Order No. 573/1984-A, dated 7-8-1984, 1985 (21) ELT 140 (Tribunal)];Maheshwari Trading Corporation, New Delhi v. Collector of Customs, DelhiTara Art Printers, Delhi v. Collector of Customs, Bombay [Appeal No. 469 of 1984];Basant Export Corporation, Bombay v. Collector of Customs, Cochin (7) Kishco Cutlery Ltd., and Ors. v. Union of India [1984 (15) ELT 367 (Bom.)];R.N. Agarwal and Company, New Delhi v. Collector of Customs, BombayBabcock Ventatesware Hatcheries Pvt. Ltd. Poona v. Collector of Customs, Bombay He has also referred to a judgment of the Hon'ble Bombay High Court in the case of Union of India and Ors. v. Glaxo Laboratories (India) Ltd. reported in 1984 (17) ELT 284 (Bom.) wherein the Hon'ble High Court had held that "the value by which import licence is to be debited by Customs authorities is actual c.i.f. value and not the

international price of the imported goods which is relevant and material only for calculating import duty thereon under Section 14(1) of the Customs Act, 1962. Therefore, to equate c.i.f. value consisting of. price of goods paid, commission allowed, freight and insurance with value' as defined in Clause 2(e) of the Import Control Order is erroneous". Shri Nankani states that in view of the judgments cited by him, the value declared by the appellant was , perfectly in order and there was no occassion for raising the same. Shri Nankani has referred to another judgment of the Tribunal in the case of Orient Enterprises, New Delhi v. Collector of Customs, Cochin reported in 1985 ECR 2158 (CEGAT) = 1986 (23) ELT 507 (Tri.), wherein the Tribunal had held that "from the correspondence it was clear that the invoice price was the contractual price. The lower authorities have not assigned any reason to hold that this correspondence was false or fabricated. We accept the authenticity of the correspondence relating to the contract and see no reason to hold the same as false or fabricated". It was further held by the Tribunal that "Merely because a statement has been recorded under Section 108 of the Customs Act does not mean that it has to be ipso facto accepted as truthful. It is only a piece of evidence, which is relevant and admissible, but its value still required to be gauged in conjunction with other evidence and attending circumstances to prove the fact in issue". It was also held that "Exculpatory statement of co-accused loses its evidentiary value, as he poses himself to be innocent and implicates others". Shri Nankani states that in the present matter the statement of Shri Bharat Bhushan Handa recorded on 6th November, 1981 cannot be used against the appellant. He states that Shri Bharat Bhushan Handa is a prosecution witness. In his statement he has mentioned that he gets a commission of 1 to 5% on the sales through him and since he gets commission he is an interested witness and as such his statement cannot be used against the appellant. In internal page 2 of his statement he has himself admitted that "sometimes, however, in the case of actual users or in respect of large quantity of orders, they give discount according to the negotiations carried out by us or the importers with M/s. Y.K.K. Singapore". He has also referred to the last para of internal page 4 of his statement he has stated "I am not aware whether there are any more parties who have made similar arrangements as M/s. Jalaram Trading Co. to get YKK Zippers from Singapore directly without our indents with the held of

some local parties in Singapore. We cannot object to such arrangements as we do not have the sale agencies of M/s. YKK Zippers, Singapore. In view of this M/s. YKK Zippers will not disclose to us if they are supplying any goods directly to parties in India without our indents". Shri Nankani, the learned advocate has referred to the price list No. 1308/81, dated 1st September, 1981 which appears on page 219 of the Paper Book. He has pleaded that the said price list is a seized document and the genuineness of the same cannot be doubted. The price list is of Japan Trading Co. and the factum of this seized price list duly finds. place in panchnama. Shri Nankani has referred to the letter dated 7th August 1982 written by Mr. Pinto of Crispin Agencies which appear on page 185 of the appellant's Paper Book and this letter was duly filed before the CBEC. In the said letter there is a mention that "The reason for not booking orders for YKK Item VFO-56 is because the customers found the prices listed in Price List dated May 1, 1980 to be not suitable". Shri Nankani has stated that the value declared by the appellant is very reasonable. Shri Nankani also states that during the course of arguments Shri Doiphode, the learned SDR had referred to the appellant's letter which appears on page 11 of the respondent's Paper Book wherein it was mentioned that the appellant was interested to become an agent of YKK Japan in India. Shri Nankani says that in the adjudication proceedings no reliance was placed on that letter. Shri Nankani also states that the judgment cited by the learned SDR in the case of Automotive Enterprises v. Collector of Customs, Bombay reported in 1985 (22) ELT 283 (Tribunal) is not applicable in the case of the appellants as a material difference in the facts of the case. Shri Nankani, the learned advocate has again pleaded for the acceptance of the appeal.

6. We have heard both the sides and have gone through the facts and records of the case including the written submissions filed by the appellant, written reply filed by the respondent and the rejoinder filed by the appellant. The appellant had imported five consignments of YKK Brand Plastic Zip Fasteners, Size No. 5 equal to VFO-56 and had declared the total CIF value at Rs. 4,49,011/-. The revenue authorities had enhanced the same to Rs. 8,85,998/-. It was further held that the goods to the extent of Rs. 4,36,987/- were not covered by the ITC Licence and the learned Collector of Customs had confiscated the goods and had given -to redeem the same after payment of fine. He had also imposed the personal penalty of Rs.

10,000/- on each consignment for misdeclaration. Being not satisfied with the order of the Collector the appellant had gone in appeal before the Central Board of Excise and Customs. The Board had reduced the fines in lieu of confiscation and personal penalties and had confirmed the orders as regards valuation.

It is against this order that the appellants have come up before us to the charge of undervaluation of the goods, violation of ITC regulation and imposition of personal penalties. We are taking the valuation aspect first. The appellant had filed five Bills of Entry and in the Bills of Entry he had declared the value on the basis of the invoice.

Bills of Entry and Invoices appear on pages 147 to 166 of the appellants Paper Book. The appellant has also supported his invoices with the Certificates of Origin from the Indian Chamber of Commerce, Hong Kong in respect of five consignments. Invoices were issued by Japan Trading Co., Hong Kong and the invoices show the description of the goods as YKK Plastic Zip Fasteners Size No. 5 and the country of origin as Hong Kong. The Certificates of Origin further show that the goods were of Japanese Origin manufactured by YKK Japan. In support of his case the appellant had also produced letter No. 6964/81, dated 19-12-1981 from M/s. Japan Trading Company enclosing therein the original invoices of M/s. Hing Kwok Industrial Company Limited who are Hong Kong Agents of YKK Japan and the Japan Trading Company had purchased the goods on FOB prices quoted in these invoices and even after adding freight and insurance they still made a profit of about 6%. The appellant had also filed 2 photocopies of proforma invoices issued to M/s. Parjan Brothers, Delhi and an invoice dated 11th March, 1981 of M/s. Taj Mahal Exports, New Delhi as evidence to show that even YKK, the manufacturers have been supplying goods at a lower price being a negotiated price. The revenue has relied on the two price lists dated 1st May, 1980 and 1st June, 1980 which appear on respondents Paper Book's pages 3, 5 and 6. In both the price lists there is a note that "The above prices are subject to market fluctuations". Both the price lists are per 100 pcs. in Japanese Yen. The Revenue has supported its claim of undervaluation on the basis of two invoices dated 1st August, 1981 issued by YKK in the name of M/s. Rajankumar and Brothers. The said invoice is in Japanese Yen. The invoice in the case of M/s.

Rajankumar and Brothers appear on page 18 of the respondent's Paper Book and the invoice of M/s. Babson and Company, pertaining to 1,800 pcs. appears on page 25 of the respondent's Paper Book. On the bottom of the said invoice there is a mention "We hereby certify that the goods are of Singapore origin". Before we come to a conclusion on this point of valuation we feel that we must go through the provisions of Section 14 of Customs Act, 1962. Section 14(l)(a) of the Customs Act, 1962 and Rule 8 of the Customs Valuation Rules, 1963 read as under:- "Section 14(1). For the purposes of the India Tariff Act, 1934, or any other law for the time being in force where under a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be - (a) the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time 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 : Provided that in the case of imported goods, such price shall be calculated with reference to the rate of exchange as inforce on the relevant date referred to in Sub-section (1) of Section 15".

"Rule 8. If the value of the imported goods cannot be properly determined under the foregoing provisions, the proper officer shall after taking into account all relevant material which he has gathered, determine the value to the best of his judgment".

A simple perusal of the Section shows that the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time 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. There is no finding by the lower authorities that the seller or the buyer had any interest in the business of" each other or that the prices were not the sole consideration for sale or offer for sale. In such circumstances the price at which the goods were sold by the Hong Kong supplier and purchased by the appellant was the price at which the value of the goods could be fixed under Section 14(l)(a). Shri Nankani, the learned advocate had cited ad judgment of the Tribunal in the case of. Mangla Brothers,

Bombay v. Collector of Customs, Bombay reported in 1984 ECR 449 (CEGAT) = 1984 (15) ELT 151 (Tri.), wherein the Tribunal had held that - Valuation : Under valuation must be proved by proper evidence, "There is a lot of force in the argument advanced by Shri Nankani that it is extremely unfair to the appellants to appraise their price for National Cassette Tapes E-180, with reference to the value charged for a consignment of 100 pieces as against the consignment of the appellants where 4500 units of the same article have been imported.

With regard to the National Tapes E-120 we find that some enquiries seem to have been made with parties in Bombay, but there is no firm offer, not to speak of an actual importation, at a price other than the one shown in the appellant's invoice. We also agree with Shri Nankani that comparison of prices indicated in the invoice dated 25-6-1981 is unrealistic because the appellants have imported goods directly from Japan whereas the invoice dated 25-6-1981 covers goods which were first imported in Hong Kong and thereafter imported into India". The Tribunal in the case of. Weston Electronics Ltd., New Delhi v. Collector of Customs, Bombay [Order Nos. 165 & 166/84-A, in Appeal No. CD(SB) A.No.1999/83-A & 2323/83-A] has held that the onus to prove the charge of undervaluation was on the revenue and the revenue has not been able to discharge that onus. Para No. 4 of the said judgment is reproduced below :- "Para No. 4. We have carefully considered the submissions made by both sides. The Additional Collector has taken three main grounds for holding the appellants guilty of misdeclaration of the value of the goods in question : (i) He has compared the value of the present importations with reference to an importation made by the appellants themselves a few months earlier; (ii) The present importation had been effected by the appellants from a related party in Hong Kong and hence the value declared by them could be discarded as being special in character; and (iii) Hitachi brand tubes being superior, the appraised value determined qua the value of other inferior brands was justified and was in accordance with the Law.

Shri Narasimhan, the learned counsel for the appellants has given very cogent reasons as to why the above grounds cannot be sustained in law. We agree with him that the entire adjudication order has proceeded on grounds which lack any force. The onus to prove the charge of undervaluation against the appellants was

on the Customs House and the evidence relied upon by them, as contained in the adjudication order, is not at all sufficient to discharge that onus.

There is no cogent evidence on record to prove that there is any special relationship between the appellants and the foreign supplier. This misconception on. the part of. the lower authorities has been explained by Shri Narasimhan, Similarly, no evidence has been adduced by the lower authorities to show that Hitachi brand tubes are superior to other brands with reference to which the valuation of the appellants goods has been made We accordingly accept the appellants' contention that the correct assessable value of the goods is as declared by them in the relevant import documents".

"The department, had not adduced any evidence to show that over and above the declared prices in the import documents the appellants had clandestinely made any remittances towards the cost of the- goods in question".

In the present matter before us there is no evidence on record which shows that the appellant had paid any amount to the supplier over and above the invoice. The learned counsel for the appellant has also relied on number of other judgments the list of which, has already been reproduced on page number 23 of this order. Shri Doiphode, the learned Departmental Representative had relied on the judgment of the Hon'ble Delhi High Court in the case of Oswal Woollen Mills Ltd., Ludhiana v.Assistant Collector of Customs, Bombay and Ors. reported in 1984 (18) ELT 203 (Delhi). In that case the Hon'ble High Court had come to the conclusion on the ground that special discount was not admissible under the Customs Valuation Rules l63. In the present matter before us there is no special discount. H: is the negotiated price with the suppliers.

The other judgment relied upon by shri Doiphode was in the case of.

Automotive Enterprises v. Collector of Customs, Bombay reported in 1985 (22) ELT 283 where the Tribunal not held that the value for assessment is to be the deemed value even if the invoice price prove to be true price. Under Section l4(1)(a) of the Customs:. Act, 1962 the value for the purposes of assessment of duty would be the deemed value as provided for under' the said Section, even if

the invoice price is provided to be true price as agreed between the parties, for it is the international market price which is the 'value' for the purpose of customs taxation. In the said judgment it was further held by the Tribunal that if a charge of misdeclaration is made against an importer, it would be for the department to establish the said charge by acceptable evidence. In the case before us the only evidence on which the revenue has relied are the two price lists dated 1st May and 1st June, 1980 and the two invoices of M/s. Rajankumar and Brothers and M/s. Babson and Company. The appellant had paid the cost price of the imported goods in Hong Kong Dollars whereas both the invoices as well as the price lists are in Japanese Yens. Even Crispin Agencies, Bombay and S.B, Vijay Laxmi Corporation, Bombay had been booking indents for YKK Zip Fasteners on the basis of the above price lists but no evidence had been produced that the Zip Fasteners of the type and sizes were imported by other parties as per the prices indicated in the price lists. It is also on record that the indenting agents of YKK had not booked a single indent since 1-5-1980 for YKK Vision No. VFO-56.

because the customers did not find the prices to be suitable. Shri Pinto in his statement dated 20-1-1982 had admitted that "There are regular imports of LFC-32, AO-52, AC-52 but as regards VFO-56 we have not booked any order during 1981, as there has been no enquiries from any local customers for this type of Zip Fasteners". Shri Handa in his statement dated 16-11-1981 recorded under Section 108 of the Customs Act, had deposed :- "Sometimes, however, in the case of actual users or in respect of large quantity of orders, they give discount of according, to the negotiations carried out by us or the importers with YKK (Singapore)".

"We cannot object to such arrangements as we do not have the sole agency of YKK Zippers, Singapore, In view of this YKK Zippers will not disclose to us if they were supplying any goods directly to parties in India without our indents".

The learned Department Representative has referred to two other judgments in the Case of. Sattelite Engineering Ltd. v. Union of India reported in 1983 ELT 2177 where the Hon'ble Bombay High Court had held that the value of the goods for the purpose of levying duty shall be fixed with reference to the price at which such

goods are sold or offered for sale in the course of international trade and where the seller and the buyer have no interest in the business of each other and the price is the sole consideration. In the case of Consolidated Coffee Ltd. Pollibetta v. Collector of Customs, Bombay reported in 1986 (24) ELT 429 the Tribunal had held that the deemed value of imported goods, where duty is to be levied ad valorem is, in terms of Section 14 of the Customs Act, 1962, not their actual value, the invoice value or the price at which they are capable of being sold. It is, on the contrary, the price at which such goods are ordinarily sold or offered for sale at the time and place of importation, i.e. the market price at the time and place of importation. Both the judgments do not help the respondent in any way as there is no evidence on record that the seller or the buyer had any interest in the business of each other. In the present matter before us the transaction was at arms length. There is also no evidence of any clandestine remittence over and above the contract price. The facts and circumstances of the cases cited by the learned Departmental Representative are different, and do not help them. The appellant has filed a Comparative Exchange Rate Fluctuation Statement on page 61 of the Paper Book. On 1st April, 1980 Rupees hundred were equal to 60.90 Hong Kong Dollars and 2,990.00 Japanese Yens. Thus one Hong Kong Dollar was equal to 49.10 Japanese Yens whereas on 1st October, 1981 Rupees hundred were equal to 66.10 Hong Kong Dollars equal to 2,504.00 Japanese Yens. Thus one Hong Kong Dollar was equal to Japanese Yen 37.90. Thus in comparision with October, 1981 and April, 1980 Japanese Yens had appreciated by 29.55% towards Hong Kong Dollars.

The appellant had paid the prices in Hong Kong Dollars and we feel that the revenue authorities were not correct in converting the value from Japanese Yens to Indian Rupees. If the Hong Kong currency is converted into Indian Rupees it fully tallies with the invoice prices. The two invoices adopted as the basis of valuation against the appellant is not sufficient evidence which can lead to the inference that there was underinvoicing resulting in undervaluation. Even the two price lists dated 1st May and 1st June, 1980 on which the revenue has laid its reliance are not sufficient to discharge the heavy onus which lies on the revenue authorities. There is also no cogent evidence on record to prove that there is any special relationship between the appellant and the foreign supplier. Keeping in

view the earlier judgments of the Tribunal especially in the case of Mangla Brothers v. Collector of Customs, Bombay(Tri.), and Weston Electronics, New Delhi v. Collector of Customs, Bombay [Order Nos. 165-166/84-A, dated 1st March, 1984 in Appeal Nos. CD/A.No.1999/83 & 2323/83-A] we do not find any reason why the appellant should be denied the benefit of the earlier judgment of the Tribunal.

Accordingly we accept the appellants contention that the correct assessable value of the goods is as declared by them in the relevant import documents and we quash the findings of the lower authorities on this issue. Since we have accepted the value declared by the appellants in the import documents, the revenue's charge as to the violation of ITC Regulations does not survive. Accordingly we quash the sustained fines in lieu of confiscation.

Bill of Entry No. Sustained Fine and Date(1) B/E No. 1629/107, dated Rs. 40,000 (Rupees Forty 16-11-1981 thousand only)(2) B/E No. 1629/108, dated Rs. 35,000 (Rupees thirty 16-11-1981 five thousand only)(3) B/E No. 1629/109, dated Rs. 35,000 (Rupees thirty five 16-11-1981 thousand only)(4) B/E No. 1629/110, dated Rs. 35,000 (Rupees thirty five 16-11-1981 thousand only)(5) B/E No. 1629/111, dated Rs. 40,000 (Rupees forty 16-11-1981 thousand only) Before we part with this issue we would further like to observe that even if the valuation declared by the appellant is not acceptable to the Customs Authorities, the Customs authorities were not justified in taking the value so adopted under Import Trade Control Regulations. We very respectfully agree with the observation of the Hon'ble Bombay High Court in the case of Union of India and Ors. v. Glaxo Laboratories (India) Ltd. reported in 1984 (17) ELT 284 (Bombay) which was followed by the Tribunal in the case of Virchem Corporation v. Collector of Customs, Bombay reported in 1985 (19) ELT 257. The Hon'ble Bombay High Court in the case of Union of India and Ors. v. Glaxo Laboratories (India) Ltd. had held that "The value by which import licence is to be debited by Customs authorities is actual, c.i.f. value and not the international price of the imported goods which is relevant and material only for calculating import duty thereon under Section 14(1) of the Customs Act, 1962. Therefore, to equate c.i.f. value consisting of price of goods paid, commission allowed, freight and insurance with 'value' as defined in Clause

2(e) of the Import Control Order is erroneous." In view of these observations we further hold that the revenue authorities were not justified in confiscating the imported goods under Sections 111(d) and (m) of the Customs Act, 1962.

7. The learned Collector of Customs had imposed personal penalties of Rs. 10,000/- each totalling Rs. 50,000/- under Section 112 of the Customs Act, 1962 whereas the Board had reduced the same to Rs. 2,500/- in respect of each consignment. In the foregoing paragraphs we have accepted the plea of the appellants on the plea of the valuation and have also quashed the fine in lieu of confiscation. There is no justification for the imposition of penalty under Section 112 of the Customs Act, 1962. The order in this regard is also quashed. Penalty proceedings are quasi-criminal proceedings. The revenue has not been able to establish that there was mensrea on the part of the appellant.

Hon'ble Supreme Court in the case of The Commissioner of Income Tax, West Bengal v. Anwar Ali had held that "Before penalty can be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had conciously concealed the particulars of his income or had deliberately furnished inaccurate particulars". In view of the above findings the appeal filed by the appellant is allowed. The revenue authorities are directed to give consequential effect to the same.

8. [Per D.C. Mandal, Member (T)] - According to the provisions of Section l4(1)(a) of the Customs Act, 1962, the value of the goods for the purpose of charging customs duty at ad valorem rate shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of the 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 price is the sole consideration for sale or offer for sale. In the case of Satellite Engineering Ltd. v. Union of India and Ors. [1983 ELT 2177] it has been held by the Hon'ble High Court of Bombay that value of the goods for the purposes of levying duty shall be fixed with reference to the price at which such goods are sold or offered for sale in the course of international trade and where the seller and the buyer have no interest in the business of each other and the price is the sole

consideration. In other words, the transaction must be at arms length and not entered for other considerations. In.

Automotive Enterprises v. Collector of Customs, Bombay, reported in 1985 (22} ELT 283, this Tribunal has held that under Section l4(l)(a) of the Customs Act, !962, the value for the purpose of assessment of duty would be the deemed value as provided for under the said Section even if the invoice price is proved to be true price as agreed between the parties, for it is the International market price which is the "value" for the purpose of customs duty. Similar view was held by this Tribunal in the case of Consolidated Coffee Ltd., Pollibetta v.Collector of Customs, Bombay, reported in 1986 (24) ELT 249. It was held therein that the deemed value in terms of Section 14 of the Customs Act, 1962 is the price at which such good., are ordinarily sold or offered for sale at the time and place of importation. In my view, the above is the correct interpretation of Section 14(l)(a) of the Customs Act, 1962 and I fully agree with the same. In the present case, the Department has charged the appellants for under valuation of the imported Zip asteners on the basis of the price lists of Manufacturers dated 1-5-1980 and 1-6-1980 and also the import price of two consignments imported by M/s. Raj Kumar and Brothers, Bombay vide Invoice No. J-M 394, dated 1-8-1981 and M/s. Babson and Company, Bombay vide Invoice No. ID-252/81, dated 28-9-1981. M/s. Raj Kumar and Brothers, vide invoice dated 1-8-1981 imported Zip Fasteners of Type A.O. 52 No, 5 Aluminium open end with pin lock slider which are different from the type of Zip Fasteners imported by the appellants in five consignments covered by this appeal. They imported Zip Fasteners of type VFO-56, size No. 5 Plastic Zip Fasteners. Therefore, the price of the goods imported by M/s. Raj Kumar and Brothers can not be the basis for valuation of the goods imported by the appellants. The other consignment which was imported by M/s. Babson and Company, vide invoice No. ID-252/81, dated 28-9-1981, contain Zip Fasteners of the type of VFO-56. Although the type of Zip Fasteners imported in this consignment by Babson and Company is the same as that imported by the present appellants, the Size of the Zip Fasteners imported by M/s. Babson and Company was 27'", whereas the goods imported by the appellants in five consignments were of different sizes, including sizes 12.5", 1.3.5", 14.5", 15.5", 16.5", 17.5", 18.5", 19.5" and 20.5" etc. In the price lists relied upon by the

Department for determining the value of the impugned goods, imported by the appellants, such odd sizes are not included. Moreover, the quantity imported by Babson and Company vide the aforesaid invoice dated 28-9-1981 was I800 pieces only. whereas the quantity imported by the appellants in five consignment taken together was more than 3 lakhs pieces. Valuation of the consignments imported by the appellants on the basis o' the aforesaid invoice of a very small consignment of 1800 pieces imported by M/s. Babson and Company and the price lists of 1-5-1980 and 1-6-1980 is riot quite correct. For the above reasons and the other reasons explained by my learned brother Mr.

Harish Chander, I hold the veiw that in the present case there is no sufficient evidence to establish the charge of under valuation levelled against the appellants. The Department has not produced sufficient evidence to show that the goods identical to those imported by the appellants were being ordinarily sold or offered for sale for delivery at the time and place of importation in the course of International trade at the price adopted by the Department. In the circumstances, the invoice price of the imported goods is to be accepted for the purpose of assessment of customs duty, particularly when there is no adequate evidence to prove that the same is not the correct price. So far as the charge of I.T.C. violation is concerned, I agree with the findings of my learned brother. In the result, the appeal success and the impugned order is set aside. The appeal filed before us is, therefore, allowed with consequential relief to the appellants.

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