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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-25-2006

Reported in : (2006)(112)ECC15

Judge : J Balasundaram, Vice-, S T Chittaranjan

Appellant : Tisco

Respondent : Commissioner of Customs and

Judgement :
1. Heard both sides at length on 24th & 25th April, 2006. We note that the matter was earlier remanded to the Tribunal by the Hon'ble Supreme Court by its order dated 16.2.2000 in the following terms: 19. The appeal is allowed. The impugned order of the Tribunal is set aside. The case is sent back to the Tribunal to entertain and examine the plea of the Revenue if the contract DM 302 is undervalued on the basis of the material already available on record. The Tribunal shall consistently with the observations made and findings recorded in this judgment hear and dispose of the appeal before it within a period of six months from the date of communication of this order. The bank guarantee furnished by the appellant shall be kept alive and the amount deposited shall also continue to remain in deposit till the date of decision by the Tribunal whereafter the bank guarantee and the deposit shall be dealt with consistently with the order of the Tribunal.

20. Though we have set aside the order of the Tribunal and made a remand we would like to clarify a few points. Apart from the appellant, two officers of the

company namely Dr. J.J. Irani and Shri S.L. Shrivastava and an engineering consultant of the appellant, namely M/s M.M. Dastur & Co. were also proceeded against and penalties were imposed on them. They were exonerated by the Tribunal. The Revenue has not come up in appeal against the order of the Tribunal exonerating the above said three. This order of remand would not reopen the proceedings against those three. Similarly, the Tribunal has held that the duty liability of the appellant in spite of a finding of under valuation could not be re-determined by pegging the value of the equipment at an amount over and above 21.2747826086 million DM as this was the figure found by the adjudicating officer and not challenged by the Revenue. The amount of penalty levied on the appellant was reduced by the Tribunal to Rs. 4 crores, which too has not been challenged by the Revenue. On hearing the case after remand, if the plea of the Revenue may find favour with the Tribunal, the dutiable value of the equipment and materials shall not exceed 21.2747826086 million DM and the amount of penalty shall not exceed Rs. 4 crores. Shri Ashok Desai, the learned senior counsel for the appellant submitted that the Tribunal has also held, vide para 9 of its order, that the liability of the goods to confiscation did not arise and that part of the order should also be held to have achieved a finality. With this submission we do not agree. If the Tribunal may find the equipments forming the subject matter of contract DM 302 to be under valued the legal consequences flowing from such finding may follow.

Subsequently, this Tribunal by its order dated 28.2.2001 remanded the matter to the adjudicating Commissioner for fresh decision. The impugned order appealed before us has been passed afresh by the adjudicating Commissioner on 14.2.2002.

2. Dr. Samir Chakraborty, learned Advocate appearing on behalf of the appellants has submitted a written summary of his arguments on 10.5.2006. He has inter alia submitted as follows: 1. In the remand proceedings this Hon'ble Tribunal, while further remanding the matter to the Commissioner by its aforestated order dated 20th February, 2001 (at p620-67 of Appellant's Paper Book-Volume II), inter alia, observed as follows (para 10 at p 626): 10. After giving our careful consideration to the submission made by both the sides we find that it is not the entire SN-ITP

contract which was transferred to the appellants. Many of the goods which were originally there in the SN-ITP contract were not part of the contract entered into by the appellants with SN. The details of such items have been given by them.

This decision of the Tribunal has been accepted by both the parties, there being no appeal filed against the same.

2. The issue that has to be determined in the present proceedings is, therefore, whether there has been any under valuation of Blast Furnace equipment covered by the contract MD 302, under which it was imported, by transferring a part of the value of equipments to value of technical documents and drawings imported under contract MD 301, "consistently with the observations made and findings recorded" in its judgment by the Supreme Court (para 19).

3. In the said order, impugned herein, the Commissioner has, besides quoting with approval the findings contained in the earlier order dated 3rd April 1996 on the issue, has given his further reasonings, in support of the purported conclusion arrived at, in paragraphs 21 to 23 (at pages 71-72) of the order.

4. Elaborating further of the aforesaid findings of the Commissioner, it has been contended on behalf of the respondent before this Hon'ble Tribunal that the transfer of part of the equipment cost to the technical documents cost has taken place in the instant case because of non-inclusion of the price of the following in the price of the equipments imported under MD 302: (i) Price of drawings and technical documents for site erection work to be done in India.

(ii) Price of drawings and technical documents for subsequent maintenance of the blast furnace of torpedo ladle cars.

5. Referring to the Agreement MD 301 for supply of technical documents (at page 46 Appellant's Paper Book)-Volume I), it has been submitted on behalf of the respondents that in arriving at the assessable value of 21.27 MDM for the equipments (increasing the same from 13.5 MDM declared by the appellant), the price towards above two items have been taken on the proportionate basis of 81: 10 as contained in the Telex Message dated February 8, 1998 of EH to EHI India

(at page 305-306 of Appellant's Paper Book, Volume I), the foreign seller's agent and that the price of the drawings and technical documents relating to the balance procurement and manufacture to be done in India have been excluded.

6. It is submitted that the price of items (i) and (ii) (Para 4 hereinabove) even assuming though denying the correctness of the proportion taken, cannot be included in determining the price and, hence, the assessable value of the equipments imported under MD 302.

This issue stands concluded by the Supreme Court's judgment.

7. It would have been seen from the order of this Hon'ble Tribunal in the earlier proceedings reported in 1997(23) RLT 504(T), that in the instant case in the original adjudication proceedings, the Commissioner had included the value of those technical documents which were essential for setting up and operating the equipments and had further held that such documents are normally supplied with an equipment without any extra charge. In paragraph 6.2.1 at page 520, it was, inter alia, observed by the Tribunal as follows: Commissioner has included the value of those technical documents which are essential for setting up and operating the equipments.

Such documents, it has been further held are normally supplied with equipment without any extra charge.

6.2.II But it does not mean that the drawings and technical documents are only for erection, operation and maintenance of the imported equipment or for manufacture/procurement of the balance items to be undertaken in India, as contended by the appellants. A close reading of Annex. I to contact MD-301 reveal so. It will be observed from the said list that in case of blast furnace it includes specifically the drawings and technical documents for "site and erection engineering'. This is further split up", into four categories namely "(i) site lay-out and basic information for amenities, (ii) technical specifications and general drawings for erection tests and start up", (iii) manpower estimation and (iv) means for erection definition. Similarly, in respect of technical documents for T.L.C's (in Section II of Annex.I), there are different "drawings for manufacture" and

instructions for assembly and "instructions for commissioning as already extracted above. If one takes a look at page 788 of the paper book (Vol.V), it will be observed that 3 Nos. "Torpedo Ladle Cars' having weight of 540 tons in S.N. Project is being supplied under the contract and no part thereof is to be manufactured or purchased in India, yet detailed drawings as indicated by use of symbol "D" in the table at page 788 (supra) and listed in Section II to the broad categories of drawings at page 747 (Vol. V-paper book) have been supplied. This belies the statement of the appellants that drawings for manufacture of only those parts not supplied by S.N. have been supplied. Similar examples can be found regularly in the long tabular list of items supplied or partly supplied for blast furnace in the said table. It is pertinent to mention, on first appellant's own admission that where an item has been partly supplied and partly not supplied by S.N., technical documents for the latter have been supplied. These technical documents will serve the purpose for the whole item as such, technical documents being common to an item. In this manner, the first appellant has got technical documents for manufacture of substantial number of import items. It is therefore, obvious that the technical documents supplied to the appellants pertain both to (i) the imported equipment and (ii) the equipment which was yet to be procured or manufactured by the appellants. It may also contain (iii) technical documents which are related to post-importation activities undertaken by the appellants for assembly, construction, erection, operation activities undertaken by the appellants for assembly, construction, erection, operation and maintenance of the imported equipment. Value of two categories of documents at (ii) and (iii) above could be excluded, had these values been separately shown in the contract MD-301 or invoices. Since separate values have not been shown, support from Interpretative Note to Rule 4 of the Valuation Rule, proposed by the ld. Advocate Dr. Chakraborty cannot be taken. Hence the entire value of 12.5 million DM of technical documentation will have to be included in value (13.5 million DM) of the equipment of B.E. and T.L.Cs.

9. In its judgment, the Hon'ble Supreme Court quoted the above finding of the Tribunal (in paragraph 8 of the judgment (at pages 244 to 245) and thereafter, dealing with the same, while holding that Interpretative Note 4 of the Customs Valuation (Determination of price of Imported Goods) Rules 1988 (in short 'the

Valuation Rules"), observed and held, in paragraph 17 of the judgment (at page 249) as follows: ...Alternatively, even on the view as taken by the Tribunal on this Note, the drawings and documents having been supplied to the buyer-importer for use during construction, erection, assembly, maintenance etc of imported goods, they were relatable to post-import activity to be undertaken by the appellant. Such charges were covered by a separate contract, i.e. contract MD 301. They could not have been included in the value of imported goods merely because the value of documents referable to imported equipments and materials was mixed up with the value of those documents which were referable to equipment which was yet to be procured or imported or manufactured by the appellant, the value of the latter category of documents also being neither dutiable nor clubbable with the value of imported goods....

10. It is submitted that, in view of the aforesaid finding of the Supreme Court, none of the above two items mentioned in paragraph 4 hereinabove, can be included in the price of the equipments imported under MD 302, and consequently in determining assessable value thereof for the purpose of levy of customs duty. Therefore, on this ground it cannot be contended or held that there has been undervaluation of the equipment price by the appellant by transferring a part of the price thereof to the price of technical documents imported under MD 301.

11. In this respect it is also relevant to refer to the Annexure-I of MD 302 (Equipment Contract), which contains, inter alia the items sold under the contract. Sl No. 7.1 thereof (at page 161 of Volume I of the Appellant's Paper Book) reads as follows: All essential standard accessories, initial spares, reference and instruction manuals etc. included.

From this, it would be clear that, inter alia, cost of all instruction and operating manual, etc. were included in the declared price of the equipment cost.

12. For the reasons aforesaid, it is submitted that the purported findings of the Commissioner contained in paragraphs 21 to 23 of the said order are untenable and unsustainable.

13. Further, in paragraph 18 of the judgment (at p 250) the Supreme Court has observed that what has to be found out is "the price actually paid or payable for the goods' (equipments) "as occurring in Rules 2(f), 4 and 9, so as to find out the transaction value and levy duty thereon under Section 12 and 14 of the Customs Act'.

14. As per Rule 2(f) of the Valuation Rules, "transaction value" means the value determined in accordance with Rule 4 of these rules", Rule 4 provides that the transaction value of imported goods shall be the price 'actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9'.

15. The Tribunal in the order dated 20th August, 1997, relying upon Rules 9(1)(b)(iv) and 9(1)(e) of the Valuation Rules and observing that since all technical documents were to be purchased compulsory with the purchase of equipment, held that the entire price of the technical documents are to be added to the value of the equipments.

16. The Supreme Court, however, reversed the findings of the Tribunal and held that neither Rule 9(1)(b)(iv) nor Rule 9(1)(e) or Rule 4 of the Interpretative Rules were applicable to the present case and that on the Tribunal's reasoning no part of the price of the Contract MD 301 (technical documents) could be added to determine the assessable value of the equipment. The Findings of the Supreme Court are contained in paragraphs 14 to 17 of the judgment (at pages 248 to 250).

17. It is submitted that in view of the aforesaid findings of the Supreme Court also, the purported findings of the Commissioner, in paragraphs 21 to 23 of the said order are erroneous and devoid of any merit.

18. With regard to the purported findings contained in paragraphs 16 to 19 of the said order, wherein the Commissioner has quoted with approval the purported findings contained in the earlier order dated 3rd April 1996, it is submitted as hereunder.

19. It is submitted that the said order has been passed by the Commissioner without taking into consideration not only the findings of this Hon'ble Tribunal as contained in the order dated 20th February 2001 but also the detailed submissions made by the appellant (in short 'TISCO') contained in inter alia the Written Notes of Argument filed before the Commissioner (at pages 1A to 20 of the Appellant's Paper Book-Volume I). This by itself has rendered the said order untenable and unsustainable. In this respect reliance is placed upon, inter alia the following decisions: (i) Jai Bhawani Steel Enterprises Ltd. v. Commissioner of Central Excise .

(ii) Youngman Hosiery Factory v. Commissioner of Central Excise .Banco Aluminium Ltd. v. Commissioner of Central Excise .

(iv) Krishna Industrial Corporation Ltd. v. Commissioner of Central Excise .

20. Without prejudice to the aforesaid, it is submitted that from what is stated herein below it would be evident that there has been no under valuation of the equipment price in the instant case and that the onus cast upon the respondent in this respect by the Supreme Court (in paragraph 18 at p250) has not and cannot be said to have been satisfied.

21. The contracts in question were for sale of equipment and materials (MD 302) and supply of technical documentation (MD 301) respectively under the contract for sale of equipment and materials.

The unused equipments for a Blast Furnace along with three numbers of torpedo ladle cars were to be supplied to the Company (TISCO) by SN for a price of 13.5 Million Deutchse Marks (MDM) under MD 302.

Under the other agreement for technical documentation (MD 301) designs, drawings and other technical documents as stated in the agreement was to be supplied by SN to TISCO for a price of Rs. 12.5 MDM. These two contracts were combined in a Sale Contract dated 11th October, 1989 (incidentally the other two agreements are also dated 11th October, 1989) wherein "overall price" was stated as 26 MDM divided as above.

22. Relying on a telex message dated 8th February, 1988 of SN's agent, EH to its subsidiary in India EHI (at page 305-306 of Appellant's Paper Book Volume I), the Commissioner and his Predecessor have purported to hold that the apportionment between the equipments and refractories on the one hand and engineering and drawings on the other hand should be in the case of the blast furnace of the ratio of 81% and 19% respectively and in the case of torpedo ladle cars 94% and 6% respectively. On the basis of these ratios, the Commissioner and his Predecessor both purported to determine the price of equipment to be allegedly 21.27 MDM out of the overall price of 26 DM and not 13.5 MDM as declared by the appellant, and consequently, came to the conclusion that there was short levy of customs duties on the equipments imported in four consignments, to the extent of Rs. 6,52,30,145.56. In coming to this purported finding the Commissioner conveniently ignored/overlooked the fact, inspite of his attention being specifically drawn thereto that the ratios/percentages disclosed in the said telex related to cost break-down figures received from SN based on "their contract values" with their suppliers i.e. ITP and others and that this percentage break-up would have no application whatsoever to the instant case.

23. The Commissioner failed to appreciate that this was not a back to back contract and all the materials which were received or receivable by SN in terms of contract it had entered into with its suppliers were not supplied under the subject contract with TISCO. This was ex-facie apparent from the contract itself. For example, under item Nos. 2.3.12.1 and 2.4.10.4 of the contract (at pages 55 and 61 of Appellant's Paper Book-Volume I), it would be seen that approximately 2000 Metric Tonnes of refractories which SN had received from its suppliers under the contracts it had entered into with them would be kept by SN and was not supplied to TISCO. Similarly, it would be seen from the initial offer letter dated 4th April 1986 of EH that under its respective contracts SN had not received delivery of substantial tonnage of 2.518 tonnes of materials (at pages 288 and 289 of Appellant's Paper Book-Volume I).

As such it was impossible for SN to supply such non-received material to TISCO under the subject contracts. Significantly, the said order is completely silent on these important and relevant materials, although the attention of the

Commissioner was specifically drawn thereto.

24. From the said letter dated 4th April 1986 (at p.295 of Appellant's Paper Book-Volume I), it would also be seen that although SN had received under its contracts from its supplier eleven torpedo ladle cars, it would be selling (and sold) to the Company only three torpedo ladle cars, a reduction of approximately 75 percent. This obviously reduced substantially the ratio between equipments and engineering from that contained in the telex message.

There was however no reduction in the engineering and drawings supplied. They remained the same. This would be evident, inter alia, from the letter dated 13th August, 1986 of EH to the appellant (at p.171 of Appellant's Paper Book-Volume-I). From this letter it would also be seen (at p.172 thereof) that even on 13.8.1986 when Budgetary offer was made by EH only 5 Nos. of Torpedo Ladle Cars were offered. On some convoluted reasoning, which has no substance whatsoever, the Commissioner has purported to reject this material and relevant factor.

25. Further from the "40 page document" (at pages 375 to 428 of Appellant's paper Book-Volume II), relied upon by the Commissioner in the said order it would also be seen that SN kept back about 1900 MTs of refractories and did not sell them to TISCO (at pages 394 & 400 of Appellant's Paper Book-Volume II). Similarly from the same document (at pages 389 to 428 of Appellant's Paper Book-Volume II), it would be seen that several items which SN had received from its suppliers were either not made available under the subject contract to TISCO or were sold in quantities much letter than what were contained under the "SN project'.

25. It is thus evident that no reasonable person could even allege, let alone held that the telex reflected the ratios in which the equipments and engineering were supplied to TISCO by SN under the subject contracts.

26. The documents being the letter dated 28th July 1988 of TISCO to the Government of India, which was enclosed as Annexure '3' to the reply to show cause notice (pages 251 to 267 of Appellant's Paper Book-Volume I, at p 254), would also show that as against the total equipment under the SN project of 23676

tonnes, items which were for sale by SN to TISCO was 14045 tonnes of equipments and materials, a shortfall of about 9600 Metric Tonnes approximately (at p.254 oft Paper Book). However, conveniently this has been ignored by the Commissioner in the said order on some patently absurd reasoning.

27. In this connection reference may also be made to the answer given by Shri N.R. Sudheer of EHI (whose statements had been relied upon in the said order by Commissioner) in response to the summons under Section 108 of the said Act. Question Nos. 21 and 22 of his statement dated 13.10.1991 (Pages 222 to 244 of Appellant's paper book-volume I, at p227) and answer thereto are as follows: Q No. 21: Specifically talking about the B.F. and 3 TLC which details did you carry with you to TISCO? (b) Brief description of the Engineering details available in possession of SN which would be sold along with equipment.

(c) Equipment schedule running upto about 40 pages giving break up equipment available with SN as against projected requirement of the project.

A. The engineering documents which, were stated to be available along with the B.F. included basic design parameters, detailed design and engineering for the whole plant i.e., over and above the equipment which was in possession with SN to enable any buyer to complete the plant by processing the rest of the items.

Inspite of his attention being drawn to the aforesaid material evidence, the said order of the Commissioner is conveniently silent thereon realising that reference thereto would have made it difficult to arrive at the perverse and baseless purported findings as contained in the said order.

28. Hence, it was incorrect to even allege, let alone hold that the ratios between equipments and materials on the one hand and engineering and drawings on the other hand as contained in the said telex could apply to the equipments and engineering imported under the subject contracts by TISCO. In this connection reference may also be made to the statement of Dr. J.J. Irani recorded by the Customs authorities pursuant to summons under Section 108 of the Act on 10th November 1992 (Annexure 7 of SCN at pp. 196 to 221 of Appellant's Paper Book-Volume I). In answer to question No. 11 (at p. 198 of Paper Book) it was stated by

him as follows: ...In fact during our examination in Portugal of the goods and catalogue of the equipments we actually eliminated some items which we could get and replace easily in Jamshedpur and for such exclusion we were compensated for final financial agreement.

According to the Commissioner's predecessor, as stated in his order of dated 3rd April 1996 (at page 45 thereof and at page 581 of Appellant's Paper Book-Volume II), the statement of Dr. Irani has to be given due credibility, more so because", the statement has been "given against summons and have evidential value" Hence this evidence also clearly demonstrates that what was purchased from SN under the subject contract was not the same quantities of equipments and materials which SN had received or were to receive under its contracts with suppliers. This material evidence was also ignored by the Commissioner, although his attention was drawn thereto.

29. The Commissioner has relied upon his predecessor's findings allegedly based upon the statement of Shri Parthasarathi, Technical Director of M/s. M.N. Dastur & Company Limited, to allege and hold that blast furnace equipments were "substantially complete" The answers given by Shri Parthasarathi as recorded in his statement dated 12th October, 1991 (Annexure 5 of SCN at pp. 174-195 of Appellant's Paper Book-Volume I), under Section 108 of the said Act, would ex-facie demonstrate the incorrectness of this allegation/finding. They are as follows (emphasis added): Ans. I went there for seeing equipment as well as for discussion with SN Portugal Engineer to make assessment of balance equipment that would be required to be procured in India. I also wanted to collect some basic drawings with which we can start primary work for setting up the plant at Jamshedpur. For this purpose I collected some plant lay-out drawings and brought them with me.

Q.No. 9: Mr. Chadha went there earlier just to see the equipment or to make an inspection formal/informal? Ans. Mr. Chadha went there to check generally the condition of the equipment, see whether they are in good condition. Whereas my going to Lisbon was for assessing the available equipment and the balance equipment to be procured in India and collect preliminary information and layout

drawings.

Q.No. 10. Was TISCO already satisfied the equipment offered made a complete blast furnace before you went and what were Shri V. Chadha's role in it? Ans. TISCO had already satisfied about the extent of equipment M/s.

S.N. Portugal had and the balance equipment that had to be procured and Mr. Chadha was not involved in this.

Q.No. 58: How did M/s. TISCO become satisfied that the equipment offered by M/s. SN Portugal and the equipment that were to be procured on the basis of the technical documents would make complete set? Ans. As far as I know TISCO might have decided on the basis of the list of equipment containing the total requirement for the project showing the items for sale and items to be purchased.

The last question clearly shows that even the Customs authorities were aware of the fact that the equipments which were sold by SN and purchased by TISCO would not make the blast furnace equipments "substantially complete". Inspite thereof, contrary purported finding has been arrived at in the said order.

30. The equipments and materials received or receivable by SN under its contracts with the suppliers were absolutely new equipments whereas what was offered for sale and sold to TISCO by SN under the subject contract were "unused equipments for a Blast furnace" and three torpedo ladles. These equipments were lying unused for about 5/6 years. This would appear from not only the aforesaid letter dated 14th April 1996 of EH but also from the PREAMBLE of the Sale Contract dated 11th October 1989 as well as the order of the Commissioner dated 3rd April 1996 (Page 50 of the order, last 3 lines, at p.586 of Appellant's Paper Book-Volume II). Hence although they were unused they could not be equated with absolutely new equipment and price thereof could not be the same. There had to be a reduction of the price on this account. This also the Commissioner failed to appreciate and/or take into account.

31. The Commissioner failed to appreciate that there was or could be no substantial deterioration thereof. Moreover, as would appear from the aforequoted

Answer to Question No. 22 by Shri N.R. Sudheer of EHI relied upon by the Commissioner, the engineerings and drawings were "for the whole plant" that is "over and above the equipment which was in possession with SN to enable any buyer to complete the plant by processing the rest of the items" than those sold under the subject contract by SN to the appellant. The contrary contention of the Commissioner, as contained in the said order, is erroneous.

There is no support in the documents on record or even in the said order of the erroneous contention that the technical documents and the equipments, shorn of each other had no practical utility. The answers to Questions 39, 40 and 41 of Shri Parthasarathhi as contained in his statement dated 12th October 1992, (Annexure 5 of SCN at page 182 of Appellant's Paper Book - Volume I), on a plain reading thereof set out hereunder, would show that the support thereon by the Commissioner, is misplaced and do not support the purported conclusion arrived at by the Commissioner: Q. No. 39: Is it customary to have separate prices for engineering and equipment in purchase and sale of steel plant equipment, if so what is the scope of the expression "Engineering"? Ans. In a number of case foreign suppliers quote separately for engineering and buy the equipments from the equipment suppliers and supply the two together. For this reason they indicate the cost of the equipment separately and the cost of the engineering separately.

Q. No. 40. Thus the supply of B.F. and T.L.C. by M/s. S.N. fall in similar category.

Ans. Yes, B.F. quotations are also generally received separately for Engineering and equipment.

Q. No. 41. In such situations what actually is meant by 'Engineering.' Please elaborate it.

Ans. The engineering would cover the selection of major equipments, designs, selecting auxiliary facilities, preparation of specifications for equipment, procurement, layout and arrangements drawings, electrical and automation system design and engineering preparation of detail drawings to the extent required.

32. On the contrary, the answers given by Shri Parthasarathi to questions Nos. 55, 56 and 57 (at pages 184 to 185 of Appellant's paper book -Volume I) which are also set out hereinbelow, would show that what was contended by TISCO was correct: Q.No. 55: Since you are aware of all the equipments supplied under MD 302, all the technical documents supplied under MD 302, all the technical documents supplied under MD 301 and the remaining requirement and the assistance that were required to be obtained from M/s. L.T. Do you consider the apportioning of 11.5 MDM for the equipment and 12.5 MDM for the technical documentation justified? Ans. The subject B.F. and TLC has been sold by M/s. SN at unbelievable low price which may even be called distress sale price.

This was because having purchased this small capacity B.F. and having been prevented from installing it they had no way but to sell it. As B.F. of this size are not in demand, they were not getting any customer. The Normal Price for B.F. of this size and conditions (as good as now) would have been around 80 to 90 MDM. Out of which 12.5 MDM could have been safely half portion of Engineering is their reasonable figure.

Q.No. 56: If the B.F. did not have ready market on account of its size and had to be, therefore sold at abnormally low price, the price of the engineering as a component of the total price also should have come down proportionately. How do you justify lowering of the price of equipment without corresponding MOU in the price of the engineering? Ans. According to me, the technical documentation has more lasting value than the equipment. Therefore, the reduction in the engineering has not been much compare to the equipment.

Q. No. 57. It is believed to be established feet that technology becomes obsolete faster than the equipment themselves. In instant case it is evident by the fact that the automation software has already become unusable and is required to be replaced. In this background how can you say that there should have been know lowering of the price in the engineering? Ans. In B.F. technology the technical development do take place and incorporated their in the existing furnace during relining.

Similarly the basic documentation could be used with the changes to certain areas where such technological developments have taken place. Therefore, the reduction in value of engineering for technical obsolence will be at a very low rate'.

33. The ratio as contained in the telex in question (relied upon by the Commissioner in the said order) are wholly immaterial and have no manner of application whatsoever to the instant case.

Significantly there is no other evidence on record except the said telex message (which is also vague and devoid of any material particulars) as regards the alleged ratio between the price of equipments and materials on the one hand technical documents on the other hand under the subject contracts. In this respect it is also pertinent to note that at no point of time SN had made available to TISCO the contracts which it had entered into with its suppliers.

They or their agents have not made available such contracts also to the Customs authorities inspite of attending to summons under Section 108 of the said Act and giving statements. In this connection the following observations of the Commissioner's predecessor as contained at page 39 (last para) of his order dated 3rd April 1996 (at Page 575 of Appellant's Paper Book - Volume I) would clearly demonstrate that this allegation/finding is based on mere surmises and conjectures (quoted with approval at p. 63-67 of the said order): The SN - ITP contract has not been placed before me by any of the notices. I am, therefore, not aware as to whether the break-up of 19:81 is the same as that which existed in the SN - ITP Contract.

What appears to me from the records is that the above referred ratio was based on SN - ITP contract which, logically, means that if at all the ITP had not completed the supply of equipments as required in the SN - ITP contract, then SN would have been aware of this fact and would have taken this fact into account while communicating to M/s TISCO the break-up of the prices of the technical documents and the equipments on a percentage basis. As SN was in the best position to know the correct facts about the SN - ITP contract, the equipments and the technical documents available with them and could have had no interest whatsoever for giving a skewed price break-up, I hold that the break-up, given by

them should from a reasonable basis for determination of relevant values of the technical documents and equipments out of the contracted price of 26MDM. 34. The Commissioner has proceeded on an ex-facie erroneous basis that the "same goods" covered by the SN - ITP contract were sold to the appellant by SN under the subject contracts. As would be apparent from what is stated hereinabove, this is contrary to the records. Some of the "same goods" were not sold or were not available to be sold by SN to TISCO. This fundamental error of fact makes the purported finding of the Commissioner erroneous on the fact of it and thus untenable. The Commissioner had therefore erred in holding that the price break-up contained in the said telex of February 1988 did or could represent the correct break-up of the prices in the instant case.

35. The purported finding of the Commissioner that the contention of the appellant that the equipments were incomplete was allegedly not established and that on the contrary from the statements recorded and the evidence on record it was found that the Blast Furnace equipments were substantially completed is wholly incorrect and contrary to the records. For example, at page 41 of the order dated 3.4.1996 referring to the document, being Minutes of the Meeting dated 19/20 Sept. 1989 (Annexure 18 (c) of SCN, at pp.245 to 250 of Appellant's Paper Book - Volume I) amongst representatives of the appellant, ITP and M.N. Dastur & Co. Ltd., it was alleged that in Note at A-I thereof it is observed as follows: I find, further, support in holding my inference from the Note at A-I in the Minutes of the Meeting held on 19/20 Sept. 1989 amongst representatives of Messrs TISCO, ITP and M.N. Dastur & Co. Ltd., wherein it has been confirmed that the items of equipments mentioned under column "SN Project" gives the complete list of equipments for the Blast Furnace Project and that all equipments as stated under this column were complete and available.

It the above is compared with what is actually contained in the said Minutes the incorrect quoting of what is contained in the said Note at A-1 (at page 245 of Appellant's Paper Book - Volume I) would become evident. The said Note in the said Minutes reads as follows: 1. It is confirmed that items of equipment mentioned under Column "SN Project" gives the complete list of equipment for the Blast Furnace Project. All equipment as listed under the column ensures the

completeness of the project".

However, in the said order this patently incorrect quoting has been approved (at p. 67 of the said order), inspite of the error being pointed out.

36. The 40 pages document (at Pages 375 to 428 of Appellant's Paper Book - Volume II) referred to in the said order of the Commissioner (at page 45 of the order dated 3rd April 1996 - at page 381 of Appellant's Paper Book - Volume II) would show that under "SN Project" was listed all equipments required for setting up a blast furnace whereas the items and quantities of the equipments sold by SN to TISCO were listed under the head "Items for Sale", the balance being "To be manufactured or purchased" by TISCO. The said 40 page document clearly shows that what was received was incomplete Blast Furnace Equipments. A chart formed on the basis of the said 40 pages document (at pp. 297-304 of Appellant's Paper Book - Volume II) would show that the total percentage of tonnage of equipments procured and available against total requirement for the SN Project was of the ratio of approximately 56% to 44%; 56% being available from SN and 44% being the quantity which the appellant had to procure from elsewhere or manufacture by itself. Rejection of this relevant and material fact on incomprehensible and absurd reasoning as contained in the said order, clearly demonstrates the closed and predetermined mind with which the said order has been passed, ignoring relevant and material facts on record.

37. The Commissioner should have appreciated and erred in not doing so that even apart from the equipments supplied by SN being unused as against new and without performance guarantee, taxing into account the shortfall in the equipments to be supplied by SN as against the equipments received or receivable under the SN Project, whereas there would be no reduction in the engineerings and drawings supplied, the ratio of 81% of the equipments would come down to approximately 46% as per the following calculation: The ratio of engineerings and drawings would accordingly increase to approximately 54% of the total cost. Thus the ratio of 52:48 (13.5 MDM : 12.5 MDM) approximately between equipments and enginnerings and drawings in the instant case cannot be said to be arbitrary of unreasonable or incorrect or done with any ulterior or malafide motive or purpose.

38. In this connection reference may also be made to TISCO's letter dated 21st July 1988 to the Govt. of India (Annexure '5' to the reply to the show cause notice, at pages 268-270 of Appellant's Paper Book - Volume I). Dealing with the similar query raised by the Govt. of India it was stated as follows: (6) As described in para 5, engineering is readily available for the Integration of different equipment. The specifications are also available for the equipments which are to be procured in India. The equipments which are not available with SN are mainly fabricated structures and their specification and drawings are also available.

Hence, there will be no difficulty in fabricating/procuring and machining the imported and indigenous equipment at TISCO. (7) The engineering fee of DM 12.5 million is reasonable. It may be noted that the engineering fees quoted by reputed parties such as Davy Mckee, U.K. Demag, West Germany for a 2400 M CD. Blast Furnace in 1986 were DM 20 million and DM 27.3 million respectively. The engineering fees of M 12.5 million should not be compared to the every low equipment price negotiation by us. If it is compared with price of the equipment for a new Blast Furnace, the percentage will be low.

The aforequoted answers to question Nos. 55 and 56 of Shri Parthasarathi are also relevant in this context. None of the aforesaid material factors have been considered and/or dealt with in the said order.

39. The aforesaid is also the finding of this Hon'ble Tribunal as contained in its order dated 20th Feb. 2001 wherein in para 10 (at page 626 of Appellant's Paper Rook - Volume II).

40. The allegation that there was nothing on record to suggest that ITP had not supplied to SN all that they were required to supply as per SN-ITP contract is belied, inter alia, by the aforesaid 40 page document, which the Commissioner had referred to and relied upon in the order dated 3.4.1996. Reference may also be made in this respect to the Chartered Engineer's Certificates. These relevant materials have also been deliberately ignored.

41. It is relevant to note herein that although Mr. Sudheer, representative of EHI, whose inter se telex with EH (the agents of the foreign seller) has been relied

upon, was summoned and statement of his recorded and relied upon, no question was put to him on the break up between MD-302 and MD-301. No particulars were also sought for from SN, the supplier of the goods and technical documents regarding the manner in which the break up between MD-302 and 301 vas arrived at, although the relied upon document at page 340 of Department's Paper Book - Volume II being a telex dated 23rd Dec.

1988 of SN to EH/TISCO, clearly evidences (para 1 of the said telex) that the break up between the equipments and technical documents were made with the due approval and involvement of SN. 42. The purported finding in the said order that TISCO had found the areawise price break-up for the equipments on the basis of SN-ITP contract acceptable and had submitted to the Govt. of India on this basis is totally wrong. Neither Annexure 14(1) (ii) nor Annexure 14(o) of the show cause notice (at pages 441-444 and 429 respectively of Appellant's Paper Book -- Volume II) supports this incorrect finding. It would be seen from Annexure 14(1) (ii) that what was said to have been suggested (even assuming though denying that such suggestion was made by Mr. S.L. Srivastava of TISCO was that the break-up should be worked out on the portion of original supply prices "Prorata" (at page 442 of Paper Book). This was because as would be evident from the letter dated 11th July 1988 of the Govt. of India, the Govt. of India had wanted a proforma invoice of the capital goods to be imported with itemwise break-up. Annexure 14(o) is a telex message from EH to EHI. TISCO had nothing to do with it.

43. From the agreement for sale of equipments and materials, MD 302 (at p. 98-99 of Appellant's Paper Boole - Volume I) it would be seen that what has been supplied to TISCO under the subject contract is equipments and materials on "as its where is" basis (Clause 4 of the agreement). This clause also contained the following condition: As a consequence, the SELLER takes no responsibility for any defects or deficiencies whatever they are, namely as regards design project, drawings, operation instructions and hand-books nor for any manufacturing and execution defects or deficiencies of the equipments and materials. Likewise, he neither renders nor assumes any guarantee or obligation relating thereto or to any performances or yet to the adequacy of such equipments and materials for the purposes of the BUYER. 44. Hence there was no performance guarantee or

guarantee of any kind whatsoever and if any deficiency or defect was found upon installation of the equipments and/or in their functioning, no relief of any kind whatsoever was available to TISCO. This has been acknowledged by the Commissioner's predecessor in his order dated 3rd April 1996, (last para of page 52 thereof at p588 of Appellant's Paper Book - Volume II). The guarantee or guarantees which SN had received from its suppliers for supply of equipments to it by them was/were not made available to TISCO under the subject contracts. This is a very material fact which had to be taken into consideration in determining the price of the equipments and materials. These can be no manner of doubt whatsoever that price of equipments coupled with performance guarantee and/or guarantee against defects and deficiencies cannot be equated with price and equipments where no such guarantees are made available. The said order, however, completely overlooks this relevant and material factor. In this regards reliance is placed upon the decision of this Hon'ble Tribunal in the case of A.N. Gupta & Co. v. Collector of Customs 45. As acknowledged by the Commissioner as well as his predecessor in their respective orders and as would be evident from, inter alia, the agreements in question, this was a "distress sale" by SN. This also definitely was a reason which resulted in reducing the cost of equipments. However, this relevant material has also not been considered.

46. It is submitted that in paragraph 17 of its judgment (at p250 thereof), the Supreme Court has also observed as follows: ...Sub-rules (3) and (4) of Rule 9 clearly provide that additions to the price actually paid or payable is permissible under the Rules if based on objective and quantifiable data and no addition except as provided by Rule 9 is permissible.

47. In the present case it would be seen from the said order that no "quantifiable date" on "objective" basis is contained therein.

Hence, the purported additions made, on this ground also, is erroneous and bad.

48. The relevant materials and documents clearly establishes that the price MDM 13.5 for the equipments and materials negotiated and finalized by TISCO with SN on a principal to principal basis was genuine, bonafied and reflected the correct transaction value of the said equipments and materials for the purpose of

determining assessable value thereof and, similarly, the price of MDM 12.5 for the engineering and drawings was also a negotiated bonafied, genuine and correct price for the engineerings and drawings and that the contrary purported finding contained in the said order is ex-facie untenable and unsustainable. It is submitted that there has been no misdeclaration by the appellant of the value of the goods imported and no material evidence to the contrary has been disclosed. The onus cast upon the respondents by the Supreme Court in this regard has not been and/or cannot be said to have been satisfied.

49. In the said order an issue has been sought to be made out with reference to splitting of the composite contract of 26 MDM into two contracts, MD-301, and MD 302 and purported inference have been sought to be arrived at. It is submitted that in the light of the finding of this Hon'ble Tribunal in its order dated 20th August 1997 and the Supreme Court observation thereon in its judgment and the relevant materials on record, these assumptions and/or purported inferences have no merit or substance whatsoever. In paragraph 10.2 of its order (at page 524 of 1997 (23) RLT 504(T)). It was inter alia, observed by this Hon'ble Tribunal as follows: 10.2 We have heard the concerned counsel for the appellants and for the Revenue. We observe that split up into two contracts - one for technical documentation and engineering fees and another for import of equipments and material was a legal necessity because the licence or approval for releasing foreign exchange for technical documentation was to be given by Secretariat for Industrial Approvals and the licence for import of equipment was required to be given by the C.C.I. & E. 49.1 Referring to the abovequoted observation, the Supreme Court in its judgment (paragraph 17 at page 249)inter alia, observed as follows: ...The Tribunal has not doubted the genuineness of the contracts entered into between the appellant and SNP. Rather it has observed vide para 10.2 of its order that entering into two contracts (MD 301 and MD 302) was a legal necessity.

The aforesaid clearly sets at rest the genuineness and the bona fide of the two contracts and as regards the requirement therefore.

49.2 Further, from the relevant documents on record, it would also be seen that each of these two contracts, MD 301 and MD 302 were approved by the

concerned authorities of the Government of India, being the Ministry of Steel and the Ministry of Industries, Secretariat for Industrial Approvals, Department of Industrial development The relevant documents evidencing the aforesaid are at pages 268-270 (Appellant's Paper Book-Volume 1) pages 251 to 254 (Appellant's Paper Book-Volume I) and at pages 373-376 (Department's Paper Book-Volume-II). It would be seen there from that such approvals were granted upon due scrutiny and upon being satisfied by the answers of the appellant to the queries raised.

50. There being thus no misdeclaration in the value of the said goods, the question of confiscation thereof in terms of Section 111(m) of the said Act could not and did not arise, the condition precedent thereof not being satisfied. The contrary purported finding of the Commissioner as contained in the said order is without any basis or substance whatsoever, patently untenable, illegal, invalid and bad.

51. The said goods not being liable to confiscation under Section 111(m) of the said Act, the consequent direction as contained in the said order allowing redemption thereof upon payment of a fine of Rs. 6.5 crores is also wholly without jurisdiction, without authority of law and thus illegal, invalid and bad.

52. Without prejudice to the aforesaid and fully relying on the same further and in any event it is submitted that, even otherwise the Commissioner has erred in confiscating the said goods and imposing redemption fine for redeeming the same.

52.1 In the judgment dated February 16, 2000, the Hon'ble Supreme Court has observed, in paragraph 20 (at page 251) thereof, that if the Tribunal found the equipments forming the subject matter of MD 302 to be undervalued, the legal consequences flowing from such findings may follow rejecting the contention of the appellant that since the Tribunal had held the goods were not liable to confiscation, that part of the order should be held to have achieved a finality. It is submitted that to this extent, the Supreme Court upheld the Adjudication Order dated April 3, 1996 of the Commissioner, wherein the Commissioner had held that since the goods were undervalued and misdeclared, for the reasons stated in the said Adjudication Order, they were liable to confiscation under Section 111(m) and (d) of the Customs Act, 1962(at page 601 of Appellant's Paper Book-Volume II).

The Commissioner further held that, however, since the goods were not available for confiscation, no redemption fine was being imposed by him and keeping this factor into account, imposed a penalty of Rs. 5 crores was imposed upon the appellant (which was reduced to Rs. 4 crores by the Tribunal in its order dated 20th August, 1997).

52.2 It is submitted that it is now settled law that when goods, though liable to confiscation are not available for confiscation, they can neither be confiscated, nor can any redemption fine be imposed. In this respect reliance is placed upon, inter alia the following decisions: This decision was affirmed by the Supreme Court 2001(130) ELT A 266 (SC).Associate Marketing Services v. Commissioner of Customs (Airport), Chennai 52.3 Further and in any event, it is also settled law that on readjudication upon remand, the favorable directions obtained by the appellant from the Adjudicating Authority in the original proceedings cannot be disturbed nor can there be enhancement of penalty or find in such remand proceedings. In this respect reliance is placed upon the following decisions:Commissioner of Customs v. Hitachi Chemicals 1999 (1130 ELT 847 (T) Paragraph 3 -relying upon the decision of Supreme Court in Banshidhar Lakshmi Prasad v. Union of India .HCL Infosystems Ltd. v. Commissioner of Central Excise 2005 (192) ELT 740 (T) Paragraph 10HCL Ltd. v. Collector of Customs (Supra) 52.4 It is submitted that the aforesaid are the legal consequences which would follow, even if this Hon'ble Tribunal comes to a conclusion that the said goods were liable to confiscation because of undervaluation. This the Commissioner failed to appreciate.

53. Without prejudice to the aforesaid and fully relying on the same, further and in any event, the imposition of redemption fine of Rs. 6.5 crores, is, even otherwise, untenable and unsustainable. The same is also contrary to the provisions of Section 125(1) of the said Act and thus, illegal, invalid and bad. No basis has been disclosed in the said order as to how and on what basis the Commissioner has purported to arrive at the redemption fine of Rs. 6.5 crores. On this ground also the redemption fine is liable to be set aside.

54. In the facts and circumstances of the instant case none of the conditions precedent for imposition of any penalty under Section 112 of the said Act has been

or can be said to have been satisfied. The purported imposition of penalty by the Commissioner upon the appellant is therefore totally illegal, invalid and bad.

55. Without prejudice to the aforesaid and fully relying on the same further and in any event, the imposition of penalty of Rs. 4 crores and redemption fine of Rs. 6.5 crores, in the facts and circumstances of the instant case, are undue, oppressive, unjust and harsh and on this ground also, are liable to be set aside.

56. It is therefore prayed that the appeal be allowed and the impugned order of the Commissioner be set aside, including the purported demand made and penalty and fine imposed therein, with consequential relief to the appellant.

3. Shri K.M. Mondal, learned Consultant appearing for the department has submitted a written summary of his arguments on 9.5.2006. The main arguments advanced by him are as under: 3.1 The issue involved in the appeal relates to correct determination of value of a 1578 cubic meter Blast Furnace Equipment and three 200 Ton Torpedo Ladle Cars (3 TLCs) and related technical documents imported by the appellant from M/s Siderurgia Nacional, Portugal (SN).

3.2 The allegation of the Revenue is under-valuation of the Blast Furnace Equipment by transferring a part of the value of the equipment to the value of Technical documents with a view to evading appropriate amount of customs duty.

3.3 However, before going into the allegation of under-valuation, a few relevant facts need to be seen for proper appreciation and judicious consideration.

(i) Some time in 1981, M/s. Italimpianti, Italy (ITP, for short) had supplied to SN equipments for blast furnace, LD converter, continuous billet casting machines, wire rod mill, torpedo ladle cars, etc. together with related Engineering and technical documents for expansion of steel plant in Portugal. However, before the equipments could be installed, Portugal decided to join European Economic Community. Consequently, Portugal could not have expanded its steel making capacity. M/s. SN had, therefore, to cancel its investment plan and sell the equipments and materials lying unused from 1981 to 1986. For this purpose, SN had appointed M/s. Elof Hansson, Sweden (EH, for short) as its Agent. EH had its

Subsidiary in India called M/s. Elof Hansson (India) Ltd. (EHI, for short).

(ii) Vide its letter dtd. 13/8/86, EHI had offered to the appellant a number of equipments and materials that SN had received from ITP for a sum of DM 82.1 millions F.O.B. on the basis of "as is, where is" along with all drawings and engineering related to the project.

(The said letter may be seen at page 217 of the PB, Part-II filed by the Deptt.) (iii) Initially, the appellant did not show any interest as the capacity of the blast furnace equipment was too small for their requirement. However, later they became interested to buy the blast furnace equipment and the three torpedo ladle cars, besides a few other materials which are not the subject matter of this appeal. The F.O.B. value of the blast furnace equipment and the 3 TLCs as per the offer letter dtd. 13/8/86 was DM 29.9 millions. After a good bargaining and negotiation with SN, the value of the blast furnace equipment and the 3 TLCs was finally fixed at DM 26 millions.

(iv) A Memorandum of Understanding was signed towards this end by SN and the appellant on 29/2/88 followed by a Protocol which was signed by the parties on 14/4/88. As per the protocol, the total price was to be the price for the equipment plus price for the engineering, F.O.B. Portugal. Clause 1 of the protocol stated that the price for the equipment with suitable sea-worthy packing to be provided by SN would be DM 13.5 millions and the price for engineering would be DM 12.5 millions, while Clause 2 stated that the equipment was sold without any operation or performance guarantees, in "as is, where is" condition.

(v) Subsequently on 11/10/89, a Sale Contract (page 2 of PB. Vol. I) was entered into between the parties. Preamble to this contract, inter-alia, stated that the seller offered these equipments and the materials for sale to the buyer. The Technical Documentation for construction, erection, operation and maintenance as received from the original suppliers for the Blast Furnance and Torpedo Ladles was also offered for sale by the seller. On the same date, two more agreements forming integral part of this sale contract were also signed. These are: (a) MD 301 -Agreement for supply of Technical Documentation (page 36 of PB. Vol.-I) and (b) MD 302 -Agreement for sale of Equipments and Materials (page 98 of PR. Vol.-I).

The overall price as per this contract, was fixed at DM 26 millions being: (vi) Pursuant to the aforesaid sale contract, technical documents covered by MD 301 arrived at Calcutta and was cleared at 'nil' rate of duty under sub-heading No. 4906.00 of the Customs Tariff vide Bills of Entry dtd. 13/3/90 and 11/4/90. However, the appellant sought for registration of its contract MD 302 under Project Imports Regulations, 1986 with the Custom House, Paradeep which was duly allowed enabling it to avail the benefit of concessional rate of duty for project imports. Against this contract MD 302, the first consignment of part of the equipment arrived at the Paradeep Port and was assessed provisionally and allowed clearance on payment of duty on the declared value of DM 60,75,000 (F.O.B.) under Bill of Entry dtd. 6/4/90. The second consignment under this contract also arrived at Paradeep Port and the Bill of Entry dtd. 7/9/90 was filed declaring the F.O.B. value as DM 6,75,739.

(vii) In the meantime, the Deptt. gathered intelligence that the contract MD 302 registered under the Project Import Regulations was actually a sister contract of MD 301, the two being sub-contracts of another contract of the same date and the value thereof was DM 26 millions. Thereupon the Asstt. Collector of Customs, Paradeep vide letter dtd. 7/7/90 called upon the appellant to submit all the documents including the correspondence with the foreign supplier.

Accordingly, the appellant submitted the required documents including a copy of the Agreement MD 301.

(viii) On examination of the documents, on 16/7/90, the Asstt.

Collector of Customs, Paradeep issued a Show cause notice dtd.

16/7/90 to the appellant calling upon it, inter-alia, to show cause as to why DM 12.5 millions covered by contract MD 301 should not be included in the value of the equipments covered by MD 302. By an order dtd. 10/8/90, the Asstt. Collector permitted clearance of the goods upon furnishing of a Bank Guarantee of Rs. 7,44,80,301/- and on deposit of extra duty of Rs. 2,82,01,636/- as also payment of admitted Customs duty. Thereupon the appellant moved the Orissa High Court by filing a Writ Petition on 10/8/90. On 30/8/90, the Orissa High Court disposed of the

Writ Petition by directing release of the goods on the appellant's furnishing a Bank Guarantee of Rs. 8 Crores and depositing Rs. One Crore accompanied by payment of admitted Customs duty. Accordingly, the appellant got the goods cleared.

(ix) Thereafter the appellant replied to the Show cause notice and the Asstt. Collector had also granted personal hearing. However, before passing any order, consequent upon the detailed investigation, on 23/8/93, the Commissioner of Customs and Central Excise, Bhubaneswar issued a second Show cause notice to the appellant and others in continuation to the notice dtd. 16/7/90. The said notice finally resulted into the order dtd. 3/4/96 passed by the Commissioner confirming the duty of Rs. 15,49,09,060/- and imposing a penalty of Rs. 5 Crores on the appellant. Penalties were also imposed on the other noticees.

(x) The above order of the Commissioner was appealed in the Tribunal by all the aggrieved parties, i.e. TISCO and two of its employees Dr. J.J. Irani & Shri S.L. Srivastava and M/s. M.N. Dastur & Co. The Tribunal, after considering the relevant material, had held that the value of the equipments would be the entire contract price of DM 26 millions. However, as the Commissioner had determined the value of the equipments at DM 21.2747826086 millions and the Deptt. did not file any appeal against the same, the duty liability of the appellant would be determined pegging the value of the equipment as determined by the adjudicating authority. The Tribunal also reduced the penalty to Rs. 4 Crores from Rs. 5 Crores imposed on the appellant, TISCO. The appeals of Dr. J.J. Irani, Shri S.L.

Srivastava and M/s. M.N. Dastur & Co. were allowed by the Tribunal by setting aside the penalties imposed on them vide its order dtd.

20/8/97 reported in 1999 (109) ELT 263 (T).

(xi) Aggrieved by the Tribunal's order, the appellant TISCO filed an appeal in the Hon'ble Supreme Court. Vide its order dtd. 16/2/2000, the Hon'ble Supreme Court disposed of the said appeal by way of remand to the Tribunal with the directions contained in para 18 of its order reported in 2000 (116) ELT 422 (S.C.). As per the said directions, the Tribunal was required to find out whether there has been

under-valuation of the Blast Furnace Equipments by transferring a part of the value of such equipments to the value of engineering documents and drawings.

(xii) Pursuant to the above directions, after hearing both the sides, the Tribunal disposed of the appeal by way of remand to the Commissioner by its order dtd. 20/2/2001. The operative portion of the order contained in para 10 is reproduced below: 10. After giving our careful consideration in the submissions made by both the sides we find that it is not the entire SN-ITP contract which was transferred to the appellants. Many of the goods which were originally there in the SN-ITP contract were not part of the contract entered into by the appellants with SN. The details of such items have been given by them. However, we find that such detailed submissions were not made before the Commissioner and as such the Commissioner has not been able to pass the order by taking these submissions into consideration. Accordingly we are of the view that the matter needs to go back to the Commissioner for appreciating the detailed submissions made by the appellants before us. Accordingly for the purpose of deciding the allegations of transfer of value of equipments towards the price of engineering design documents, we remand the matter to the Commissioner for fresh decision. Appeal is thus allowed by way of remand.

(xiii) Pursuant to the above directions, the Commissioner has passed the impugned order dtd. 14/2/2002 which has been appealed by the appellant. In the impugned order, the Commissioner has determined the value of the Blast Furnace Equipments at DM 21.28 millions and that of engineering documents and drawings at DM 4.72 millions. The Commissioner has also ordered confiscation of the said goods Under Section 111(m) of the Customs Act, 1962, but allowed to be redeemed on payment of a fine of Rs. 6.5 Crores Under Section 125 of the said Act. The Commissioner has also imposed a penalty of Rs. 4 Crores on the appellant Under Section 112(a) & (b) of the said Act.

3.4 At the outset, it may be noted that EHI, vide its letter dtd.

13/8/86 to the appellant, offered for sale various equipments of a steel plant along with all related drawings and engineering at a price of DM 82.1 millions on "as is, where is" condition. The appellant was, however, interested only in the blast

furnace equipment and the 3 TLCs price of which, as per the offer letter, was DM 29.9 millions (i.e. DM 28 millions plus DM 1.9 millions).

This price was negotiated personally by Dr. J.J. Irani, the then Managing Director of TISCO with the Chairman of SN at the former's office at Jamshedpur and finally it was settled at DM 26 millions as may be seen from his statement dtd. 10/11/92 (in answer to question No. 1 at page 196 of the PB Vol.-I filed by the appellant).

3.5 From the above, it would be quite evident that both the offered price and the negotiated price was a composite one without any break-up between the equipment and the drawings and engineering.

However, from the documentary evidences on record which have not been disputed at any stage, it would appear that right from the beginning the appellant was insisting upon break-up of the total price between the equipment and the engineering. This is evident from the report of Shri N.R. Sudheer, Marketing Manager of EHI sent to EH, Sweden under the title 'Report of Call" (at page 240/241 of the PB, Part-II filed by the Department). This report was made by him after visiting Jamshedpur and holding discussions with the various officials of TISCO during the period 23/1/88 to 25/1/88.

Para 8 of his report which is noteworthy is reproduced below: 8. TISCO also wants to have the break-up of total price under following heads: Above needed to assess total cost of BF plant. Engineering does not attract Customs duty while the import duties for equipment and Refractories are different (please see special note at the end of this report).

3.6 Consequent upon the insistence of the appellant, EHI, vide its telex dated 8/2/88 communicated to TISCO the Cost Break Down Figures as received from SN. The same are as follows: 3.7 Genuineness of this document has never been disputed by the appellant. The Commissioner has relied upon this document in determining the value of the technical documents and the equipments in the ratio of 19:81. No fault can, therefore, be found with the impugned order.

3.8 One of the contentions raised in the appeal as also at the time of hearing is that SN had received 11 Torpedo Ladle Cars from ITP, while it sold to the appellant only 3 Torpedo Ladle Cars, a reduction of approximately 75 percent. This obviously reduced substantially the ratio between the equipments and the engineering.

There was however, no reduction in the engineering and drawings supplied. They remained the Same. Further, most of the refractories received by SN from its supplier were not sold to TISCO. As against the total contracted weight of 23676 M/T for supplies from ITP to SN, only 14045 M/T had been supplied to TISCO which represented only 56% of the equipments covered by the SN-ITP contract. Thus based on the SN-ITP contract, the ratio of the price of equipments to technical documents was 46:54 which was very close to the ratio of the prices at which these were imported which was 52:48.

3.9 The above contention of the appellant does not merit acceptance.

The appellant ignores the fact that the goods were sold on the basis of "as is, where is". The appellant also ignores the fact that SN supplied only the related technical documents and not all the technical documents as received by it from ITP. This is quite evident from the Agreement MD-301 which clearly states that the seller and the buyer have agreed upon the present Agreement for supply of Technical Documentation for one 1578.5 cum Blast Furnace and three 200 Ton Torpedo Ladles which is listed under Annexure-I (List of Drawings, Manuals and Technical Specifications). From this Agreement itself, it is established beyond any doubt that only the related technical documents were supplied to the appellant.

TISCO had indicated that it was interested in one BF and 3 TLCs only. Therefore, in order to evaluate their cost, it had asked for break up of prices under Equipment, Refractory & Engineering. The break up given for this purpose was evidently only for the equipments sought (one BF & 3 TLCs) and not for the SN-ITP contract though it was based on the same. This is also evident from the Telex dtd. 8/2/88 itself.

3.10 From the documentary evidences relied upon in the proceeding, it is quite apparent that the intention of the appellant right from the beginning was to have two sub-contracts, namely, MD-301 and MD-302 so that part of the value of the equipment could be transferred to the Technical Documents and thus evade duty. This intention was quite obvious from the Telefax Message dtd. 22/8/88 sent as enclosure to the confidential letter dtd. 24/8/88 written to TISCO by Shri N.R. Sudheer, Marketing Manager of EHI (page No. 277/279 of the PB Part-II filed by the Department). Para (c) of the said enclosed Telefax sent to EH by EHI, inter-alia, states as follows: As you are aware, TISCO decided to split contract with SN into two with a view to avoid problems in Customs duty assessment and has sought two separate approvals from GOI for Foreign Collaboration (Engg.) and Capital Goods import (suppliers) respectively.

3.11 In this connection, it may be mentioned that at the material time, technical documents carried 'nil' rate of duty, while the equipments (sic) refractories had different rates of duty.

Accordingly, it appears that the appellant had planned to have two sub-contracts as MD 301 and MD 302 under the parent sale contract dtd. 11/10/89 so that part of the value of the equipment could be conveniently transferred to the Technical documents carrying 'nil' rate of duty.

3.12 Although in the Protocol dtd. 14/4/88, separate prices for the equipment and the engineering were shown, it appears, SN was not inclined to have two separate agreements - one for the equipment and the other for the engineering. Hence the appellant went on persuading SN until the object was achieved. This will be quite evident from the following documents.

(i) Minutes of the meeting held at Lisbon on 25/7/88 between Dr.

J.J. Irani of TISCO & the representative of SN (at page 332/334 of the PB Part-II filed by the Deptt.) (ii) Telex dtd. 19/12/88 from TISCO to SN (at page 336/338 of the PB Part-II filed by the Deptt.) (iii) TISCO's telex dtd. 29/12/88 to SN (at page 341/342 of the PB Part-II filed by the Deptt.) 3.13 Perusal of these documents would show that TISCO was persistently trying to impress upon SN to agree to

make two separate agreements - one for the engineering and the other for the equipment supply. The fact that SN was not inclined to have two separate contracts is quite clear from SN's Telex dtd. 23/12/88 to TISCO (at page 339/340 of the Deptt.'s PB, Part-II). Para 1 of this Telex reads as follows: 1. In principle there shall be only one contract. However and if necessary, we can consider the separation in different chapters of the matters related to equipment and technical documentation.

SN could not have agreed to two separate contracts as there could not be one contract for 'equipments' and the other for 'technical documents' which included documents such as, operation manuals, maintenance manuals which are supplied along with the equipments during the course of normal trade. Without such documents, the equipments were not salable and as such there could not have been separate contracts for sale of equipments and such technical documents.

3.14 As a result of constant persuasion, finally on 11/10/89, the sale contract was made by the parties and under this contract, two sub-contracts of the same date - one for the technical documentation (MD 301) and the other for the equipment (MD 302) were also made.

From the wordings of the two sub-contracts, it would appear that they had been made in such a way that they looked independent and linkage between them became difficult. This was precisely the reason that when the investigation started at Paradeep, the balance equipments were imported through Calcutta Port under Bills of Entry dtd. 28/8/90 and 13/5/91.

The real reason for alteration of the break up in the Sale Contract dated 11/10/89 from that given by EH in the Telex dtd. 8/2/88 is that the two Break Ups do not represent the same thing. While the former is a break up between 'equipment' and 'technical document', the technical documents' covering within its fold documents relating to 'engineering' along with other technical documents e.g. Operation Manuals, Maintenance Manuals, Assembly, drawings etc. which are supplied along with the equipments in the course of normal trade and without which the 'equipments' cease to be marketable commodities, the latter is the break up between 'equipments' and 'engineering'.

3.15 Referring to para 17 of the judgment of the Hon'ble Supreme Court, the Ld. Counsel for the appellant submitted that the value of the technical documents covered by MD-301 cannot be clubbed with the value of the equipments covered by MD-302. The Ld. Counsel ignores the fact that the Commissioner has not clubbed the value of the technical documents with that of the equipments. The Commissioner has determined the value of the technical documents and the value of the equipments separately in accordance with break-up of prices given in the Telex dtd. 8/2/88 by EH to EHI. 3.16 At the cost of repetition, it may once again be mentioned that EH was the Agent of SN for sale of the blast furnace equipment and 3 TLCs along with the related technical documents. They were the link between the appellant & SN. Be that as it may, based on the break up of prices given in the aforesaid telex, the Commissioner has correctly determined the value of the technical documents at DM 4.72 millions and that of equipments at DM 21.23 millions. The appellant has not disputed the genuineness of the telex at any stage of the proceedings. No fault can, therefore, be found with the impugned order.

3.17 While referring to Annexure - I to MD-301 (Agreement for supply of Technical Documentation), the Ld. Counsel for the appellant stated that the blast furnace equipment was not complete and many of the parts were required to be procured/manufactured in India and for which drawings and technical documents were also supplied by SN. 3.18 In this connection, EHI's offer letter dtd. 13/8/86 may once again be referred to. From this letter, it may be seen that amongst various other items, one blast furnace equipment exclusive of blowers was also offered for sale. It would, therefore, appear that except for the blowers, the blast furnace equipment was complete.

The fact that the blast furnace equipment was substantially complete is quite evident from the statements of Dr. J.J. Irani, M.D. of TISCO and Shri C.R. Parthasarathi, Technical Director of M/s. M.N. Dastur & Co. and Shri N.R. Sudheer, Marketing Manager of EHI. 3.19 In his statement dtd. 10/11/92 (page 196 of the Paper Book Vol.

I), Dr. J.J. Irani had stated in answer to question No. 9 that they could build complete blast furnace from amongst the equipment which was lying in store in Portugal. For the sake of convenience and proper appreciation, question No. 9 together with his answer is reproduced below: Q. 9: It was known that Portugal had not completed their deal with the original supplier of Blast furnace equipment i.e. IP. Was not there a doubt that the Blast furnace could be incomplete.

A: I was not personally aware and I am not aware even now whether the original deal between SN and IP were completed or not. On the other hand we had our engineers examining the list of components very minutely and we were satisfied that we could build complete Blast furnace from amongst the equipment which was lying in store in Portugal, which has been also proved by the fact that we have completed the Blast furnace erection in Jamshedpur and I find every thing intact.

3.20 Similarly, in his statement dated 10/11/91 (page 174 of Paper Book Vol. I) Shri C.R. Parthasarathi had also stated that the blast furnace was substantially complete as seen from his answer to question No. 35. For the sake of convenience and proper appreciation, question No. 35 together with his answer is reproduced below: Q. No. 35 : Please give a short narration on what is meant by B.F. and T.L.C. Ans: The B.F. that can be offered for sale comprises not merely shells for the B.F. and the heating stoves but it is a complete set equipments and facilities (the later expression referring to several equipments put together to provide some functions). Thus a B.F. offered for sale would comprise a number of such equipment? such as shells heating stove cooling system furnace top charging system, bustle pipe and tuyers, mudgun, tap hale, drilling machine etc. in addition to stock house equipment such as screens, feeders, weigh hoopers, conveyor belting and the gas cleaning equipments etc. Also it would include the necessary measurement instruments for measurement of temperature and flow and other control computers along with the information to make them usable such as listed under the heading "drawing/documents for electrically at B.F. in the Annexure-I to the above referred letter No. AO/CME/7857 dated 8.6.89 and the computer and Micro computer with complete operating software". The B.F. offered by M/s. S.N. Portugal comprised of these equipments and technical, literature and, therefore, is substantially complete.

In his statement dtd. 13/10/91 (at page 222 of PB, Vol. I), in answer to question No. 27, Shri Sudheer has also stated that the equipment supplied by SN to TISCO was complete in all respects.

From the above evidences, there cannot be any manner of doubt that the blast furnace was substantially complete.

3.21 During the hearing, a grievance was made by the Ld. Counsel that the appellant had submitted written notes of arguments under cover of its letter dtd. 22/9/01 for consideration by the Commissioner. However, the Commissioner has considered only a few of them and not all. Perusal of the impugned order particularly from paras 16 to 23 would clearly show that all the relevant submissions made by the appellant have been duly considered by the Commissioner.

Hence the grievance is not genuine and is unacceptable.

3.22 At the conclusion of his submissions, the Ld. Counsel for the appellant pointed out that in the earlier adjudication order dtd.

3/4/96, no redemption fine was imposed. However, in the present impugned order, the Commissioner has imposed a fine of Rs. 6.5 Crores which cannot be sustained. In his submission, in the remand proceeding, the Commissioner ought not to have imposed any fine at all. The Ld. Counsel ignores the fact that the Hon'ble Supreme Court, vide para 20 of its judgment, has observed that if the Tribunal may find the equipments forming the subject matter of contract DM -302 to be under-valued, the legal consequences flowing from such finding may follow. After considering the relevant material, the Commissioner has found that the equipments have been under-valued to the extent of 36.54% by transferring part of the value of the equipments to the technical documents, thereby rendering the goods liable to confiscation Under Section 111(m) of the Customs Act, 1962. As however, the goods have already released earlier, the Commissioner has imposed a fine of Rs. 6.5 Crores. The Commissioner has, therefore, acted strictly in accordance with the ambit of the order of remand by the Hon'ble Supreme Court. No fault can, therefore, be found with the impugned order.

3.23 In view of the foregoing submissions, the appeal merits to be rejected.

4. We have considered the arguments from both sides as well as the case records and the cited case laws. We find that in the first round of litigation, the Tribunal had determined the value of the impugned equipments to be the entire price paid i.e. 26 Million DM but had restricted the value to be 21.2747626086 Million DM as was originally determined by the adjudicating Commissioner in view of the fact that Revenue had not filed any appeal and the order was passed on the appellants' appeal. While determining the value of the equipments, the Tribunal interpreted the provisions of the Customs Valuation Rules, 1988 and held that the value of the technical documents is to be included in the value of the equipments, as the same were purchased compulsorily along with parts of the equipments in view of provision under Rule 9(1)(b)(iv) as well as Rule 9(1)(e). However, we find that the Hon'ble Supreme Court, on appeal from the said order has ruled that the cost of the technical documents can not be added to the value of the equipments. As such, in the second round of litigation, it is not open before us to consider, whether value of the technical documents can be added to the value of the equipments by interpretation of the provisions under the Customs Valuation Rules, 1988. The matter has been remanded by the Hon'ble Supreme Court to specifically consider the plea of the department as to whether the value of the equipments has been bifurcated by transferring a part of the value to the value of engineering documents and drawings. The question, therefore, in the fresh proceedings before us is limited to determination as to whether the declared value of the impugned equipments is correct or part of its value is shown as value of the engineering documents and drawings. The Hon'ble Supreme Court has also held that the plea of the Revenue regarding under valuation of the impugned equipments should be examined on the basis of material already available in the record. As such, there is no scope for either considering any additional material or directing the adjudicating authority to obtain any fresh evidence. The task of the Tribunal, therefore, in this 2nd round of litigation lies within a very narrow compass.

5. We find that the department's case regarding under valuation of the equipments is based on its conclusion that the appellants were themselves interested in the purchase of the equipments from M/s SN, that it was not so much of a distress

sale as claimed by the appellants and it is the appellants, who got the break-up of prices for engineering and hardware, which M/s SN was initially reluctant to agree to. It is the department's case that the appellants negotiated for purchase of the entire Blast Furnace earlier purchased by M/s SN from Italy and that the negotiated contract price was for the entire Blast Furnace and the break-up of prices was only at the instance of the appellants to reduce their customs duty liability. The department has inter alia placed reliance on the following in support of their case: (a) EHI letter dt. 22.7.88 to TISCO - it is difficult for S.N. to accept to turn one contract into two.

(b) Minutes of the meeting held between Dr. J.J. Irani, TISCO and representatives of SN at Lisbon on 25.7.88 - SN finds it difficult to divide the contract into two as SN cannot sell the Engineering.

(c) Telex from TISCO to SN dated 19.12.88 - it is very essential to have two separate agreements for Engineering and Equipment supply.

(d) EHI's letter to DH dated 8.12.88 - it becomes necessary to strike a compromise between one contract stand of SN and two contract stand of TISCO. (e) SN's letter dt. 13.12.88 to TISCO - in principle there shall be only one contract, matters relating to equipments and technical documents may be dealt with in separate chapters.

(f) TISCO's telex dated 29.12.88 - two separate contracts are most essential.

(g) EHI's telex to EH dt. 30.12.88 - for TISCO two separate contracts are most essential and indispensable.

(h) Shri N.R. Sudheer's statement dt. 12.10.91 - explaining role of EH and EHI points to skewed splitting of price between equipment and engineering was done in spite of resistance from SN and EH.6. It is the department's case that once the contract was divided into two sub-contracts (MD-301 and MD-302), the appellants promoted MD-301 as a Foreign Collaboration Agreement and the contract amount was shown as a Foreign Collaboration Fee. However, a five years collaboration agreement was doubtful as the equipments being sold was on 'as is where is'

basis. MD-302 was presented as an agreement for purchase of new/unused equipment from the original supplier from Italy. It is the department's case that the appellants had kept the customs authority in dark about MD-301 sub-contract and had not submitted copy of the sub-contract MD-301 to the customs authorities in Paradeep and the technical documents under MD-301 was cleared from the Air Cargo Complex at Kolkata at Nil rate of duty.

7. In view of the foregoing as well as other attendant circumstances, the department has concluded that the appellants have purchased substantially the same equipments with necessary documentation which was initially sold by the Italian manufacturer to SN and subsequently resold to the appellants and that the total amount has been divided under two sub-contracts showing a lower value for the equipments which has been suppressed by transferring part of the value towards Foreign Collaboration Agreement and the technical documents.

8. After going through the case records, we note that no investigation has been carried out by the department to obtain any evidence from M/s SN or from the Italian suppliers so as to verify whether the actual price paid for the equipments was more than what has been declared. The Italian manufacturers as well as M/s SN, being located outside India, investigation at the suppliers end definitely poses difficulty but such an investigation with the help of Customs/Tax authorities abroad using diplomatic channel and making use of instruments of the World Customs Organization would have clinched the issue. This does not seem to have been done and in view of the specific direction of the Hon'ble Supreme Court, it is not possible for us to direct the authorities below to carry out fresh investigation or to collect any fresh material, as a decision is required to be taken on the basis of the material already available on record.

9. Going by the material already available on record, we are of the view that the same supports the department's conclusion that the appellants, at their own instance only, have got the contract divided into two sub-contracts, one for the equipments and the other for the engineering. The appellants have challenged the splitting of value worked out by the adjudicating Commissioner on the ground that it does not take into account the fact that the appellants did not receive the entire

plant as some refractories having limited shelf life and other items were not supplied by M/s SN.10. According to the remand direction of the Hon'ble Supreme Court, the Tribunal has to determine the value of the equipment and give a finding as to whether the same was suppressed. Determining the value of the equipments poses considerable difficulty in view of the fact that no investigation appears to have been conducted at the supplier's end and also in view of the dispute as to what portion of the equipments was not imported. However, we find that it is possible to work out an estimate of the value of the engineering (inclusive of technical documents and drawings) and using the same, indirectly find out the value of the equipments imported.

11. We note that the sub-contract MD-301 in paragraph 3 under "Scope" states that the technical documentation of the equipments, in the possession of the Seller belongs to the phase in which the plan of Seller was suspended and may possibly not correspond to the final versions which were to be worked out only during or after erection, tests and start-up. This clause of the contract is very significant and it clearly indicates that SN has transferred the same technical documentation under sub-contract MD-301, which it had earlier received from the Italian manufacturers. We also note that in the Telex dated 8.12.88, on the basis of break-up received from SN, EHI has clearly indicated that 19% of the value represented cost of engineering for the Blast Furnace and 6% of the value represented cost, of the Torpedo Ladle Cars.

12. In our view these percentages can be applied to the initial offer value of 28 Million DM for the Blast Furnace and 1.9 Million DM for the 3 Torpedo Ladle Cars as per the offer made by SN to the appellants for working out the value of engineering. Applying the percentages indicated in the Telex to the initial offer from SN, the engineering cost for the Blast Furnace comes to 5.32 Million DM (28 MDM x 19%) and the cost for the engineering for Torpedo Ladle Cars comes to 0.114 Million DM (1.9 MDM x 6%), both totaling 5.434 Million DM. We note that in place of the earlier offer of 28 + 1.9 = 29.9 Million DM, the equipments and the engineering have been sold at 26 Million DM.Attributing the reduction in the price entirely to the non supply of the part of the equipments, and presuming that the price for the engineering was not reduced (which goes to the advantage of the

appellants), we arrive at a price of 26 - 5.434 = 20.566 Million DM as the value for the equipments.

13. Our calculation as above is not dependent on how much of the equipments including refractory were not supplied. It relies on the clause of the contract itself regarding description of the engineering/technical documentation and the price break-up between engineering and equipments as given in the Telex. We note that if part of the equipment was not supplied, then the percentages attributed to engineering can only go up and by adopting the percentages @ 19% and 6% as in the original Telex, the amount calculated works in favour of the appellants for this reason also. Similarly, as stated earlier, presuming that the contracted price was not reduced for the engineering in the final contract, calculation of the balance value for equipments also works in favour of the appellants. Hence, in our view the value worked out above, namely 20.566 Million DM is required to be adopted as the value of the equipments as against the declared value of 13.5 Million DM and the value of 21.2747826086 Million DM adopted by the lower authority. In view of the fact that we have determined a different value from what was adopted by the lower authority, we set aside computation of duty made in the impugned order and remand the matter for the limited purpose of working out the duty demand afresh by the adjudicating authority. The appellants shall be given an adequate opportunity of hearing before passing a fresh order in regard to quantification of the duty amount.

14. In view of our finding above that the value of the impugned equipment has been undervalued, we uphold the order of confiscation of the impugned goods passed by the lower authority but in the circumstances of the case and particularly keeping in view the reduced differential duty to be demanded from the appellants as a result of re-calculation, we reduce the redemption fine of Rs. 6.5 crores to Rs. 2 crores and we reduce the penalty from Rs. 4 crores to Rs. 1 crore.

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