THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, CALICUT

v.

M/S. CERA BOARDS AND DOORS, KANNUR KERALA & ORS.

(Civil Appeal Nos. 7240-7248 of 2009)

AUGUST 19, 2020

[S. A. BOBDE, CJI, A. S. BOPANNA AND V. RAMASUBRAMANIAN, JJ.]

Central Excise Act, 1944 – s.4 amended in 2000 – Charging of excise duty – Method of valuation of excisable goods – In present cases arising out of similar facts, assesses allegedly undervalued the goods manufactured and cleared by them – Evaded the excise duty actually payable – Period of assessment pre & post 2000 Amendment – Adjudicating authorities inter alia *held that there was undervaluation and evasion of excise duty – Customs, Excise and Service Tax Appellate Tribunal* (*CESTAT) though upheld said finding but remanded the matters back for re-quantification of duty – Held: Finding w.r.t undervaluation and evasion of excise duty recorded by CESTAT in all the cases has not been challenged by the assesses and hence has attained finality – Further, before amendment, clause (a) of sub-section (1) of s.4 laid emphasis on normal price for an ordinary sale in the course of wholesale trade, after amendment it speaks about transaction value – Thus, after amendment, if a sale is covered by s.4(1)(a), the value of excisable goods shall be the transaction value defined in s.4(3)(d) – Clause (b) of sub-section (1), both before and after the amendment, leaves it to the delegated legislation to prescribe the method of valuation, for cases not covered by clause (a) – After the amendment, the Central Government issued a new set of rules- 2000 Valuation Rules in supersession of 1975 Valuation Rules – Valuation as per the Rules is permissible only in cases covered by s.4(1)(b) and not by s.4(1)(a) – Impugned orders of CESTAT confirmed – Principles enumerated for adjudicating authorities to keep in mind while re-adjudicating the matters – Finance Act, 2000 – Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 – Central Excise (Valuation)*

A *Rules, 1975 – Central Excise Rules, 1944 – Central Excise Rules, 2002.*

Disposing of the appeals, the Court

HELD: 1.1 Common Issues arising in these appeals

B **It may be seen from the facts involved in these batches of cases that there is a common thread that runs along the fabric of these cases. This common thread is that the assessees in these cases allegedly undervalued the goods, sold them for a much higher price than what was reflected in the invoices and thereby they evaded the excise duty actually payable. Though the**
C **assessees uniformly denied the said allegation, the CESTAT has recorded a categorical finding in all the cases that there was undervaluation and evasion of excise duty. The said finding has not been challenged by the assessees and hence it has attained finality. Therefore, what arises for adjudication is only the manner**
D **of determining the value of the goods removed by the assessees for sale to or through dealers. In other words, the entire dispute now revolves around the question of valuation of excisable goods, for the purposes of charging of duty. But for finding an answer to the said question, it is necessary to take note of the period of assessment. In some of these cases, the period of assessment**
E **was both prior to and after 01.07.2000 and in other cases, the period was after 01.07.2000. According to the respondents, the method of determination of value before 01.07.2000 was different from the method of valuation after 01.07.2000, since Section 4 of the Central Excise Act, 1944 was amended with effect from**
F **01.07.2000 under Act 10 of 2000. The amended Section 4 also underwent some changes in the years 2003 and 2012. The Court is not concerned with the changes brought forth in 2012. [Paras 77, 78][500-C-G]**

1.2 In simple terms, 2 different methods of valuation were
G **prescribed in Section 4 as it stood prior to 01.07.2000:**

(i) one covered by clause (a) of sub-section (1) of Section 4, where the emphasis was on normal price, the determination of which co-related to ordinary sale in the course of wholesale trade (satisfying certain
H **conditions), and**

(ii) another covered by clause (b) of sub-section (1) of Section 4, which related to cases where there were no sales, and cases where normal price could not be ascertained for any other reason. [Para 80][507-C-D]

1.3 The prescriptions contained in clause (a) of sub-section (1) of Section 4, before amendment in 2000, are summarized as follows:

I. As a first rule, the normal price, namely the price at which such goods are ordinarily sold in the course of wholesale trade shall be taken as the value, if the buyer is not a related person and the price is the sole consideration for the same.

II. But in cases where different prices are charged to different classes of buyers, each such price should be taken to be the normal price in relation to each such class of buyers.

III. Similarly, if different prices are charged at different places of removal, the normal price shall be the price charged in relation to each such place of removal.

IV. Where the goods are generally not sold in the course of wholesale trade, except to or through a related person, the normal price shall be the price at which the goods are ordinarily sold by the related person, in the course of wholesale trade to other dealers.

Thus it is clear that under Section 4(1)(a), as it stood before 01.07.2000, the method of valuation prescribed therein was directly linked to the normal price for an ordinary sale in the course of wholesale trade. But in cases where normal price was not ascertainable, the same would fall under Section 4(1)(b) and the valuation in such cases had to be done in terms of the Valuation Rules of the year 1975. Clause (b) identifies one situation, namely where goods are not sold, in which, the normal price may not be ascertainable. In addition, clause (b) also recognises the fact that there may be cases where normal price is not ascertainable for any other reason. These cases may perhaps include sales otherwise than in the course of wholesale trade. [Paras 81, 82][507-E-H; 508-A-C]

1.4 Though the words "normal price" were used in Section 4(1)(a), the proviso to clause (a) recognised the fact that the normal price need not be the same universally, but could vary from one class of buyers to another or from one place of removal to another. By the amendment under Act 10 of 2000, with effect from 01.07.2000, the words "normal price" and the words "in the course of wholesale trade" were removed. Instead, the words "transaction value" were inserted in Section 4(1)(a). [Paras 83, 84][508-D-E]

1.5 Though the Constitution Bench in *Grasim Industries* noted the shift, at least in the language, of Section 4(1), from "normal price" to "transaction value", the Constitution Bench did not take note of one major area of difference, namely that the focus of Section 4(1)(a) prior to 01.07.2000 was on finding out the normal price in respect of sales made ordinarily in the course of wholesale trade. The method of valuation, wherever there was no sale, was to be on the basis of the Rules, in view of Section 4(1)(b). Even in cases where there was a sale—

(i) in the course of wholesale trade but the conditions stipulated in clause (a) were not satisfied or

(ii) the normal price could not be ascertained for any other reason, the method of valuation was left under clause (b) of sub-section (1) of Section 4 to the rule making authority to stipulate. The implication flowing out of the words *"for any other reason"* found in clause (b) before amendment is of significance in this regard. After the amendment under Act 10 of 2000, the normal pricing method was gone, as the focus shifted from sale in the course of wholesale trade. [Para 86][509-B-D]

CCE v. Grasim Industries Limited **(2018) 7 SCC 233 : [2018] 6 SCR 1099 – referred to.**

1.6 While clause (a) of sub-section (1) of Section 4, as it stood before amendment, laid emphasis on normal price, clause (a) of sub-section (1) of Section 4, as it stands after amendment, speaks about transaction value. Clause (b) of sub-section (1), both before and after the amendment, leaves it to the delegated legislation to prescribe the method of valuation, for cases not covered by clause (a). For the valuation under Section 4(1) to

follow the "transaction value", (after amendment) the three conditions stipulated in clause (a), namely (i) that the goods are sold for delivery at the time and place of removal, (ii) that the assessee and buyer are not related and (iii) that the price is the sole consideration for the sale, should be satisfied. If the three conditions, enumerated in clause (a) are not satisfied, then the case would fall under clause (b) of sub-section (1) of Section 4, which starts with the words "in any other case". In other words, in cases not covered by clause (a), the value can be determined in such manner as may be prescribed. [Paras 87-89][509-E-H]

1.7 After the amendment under Act 10 of 2000, the Central Government issued a new set of rules called the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. These rules were issued in exercise of the power conferred by Section 37, in supersession of the 1975 Valuation Rules. Rule 3 of the aforesaid 2000 Rules makes it clear that the value of excisable goods, for the purposes of clause (b) of sub-section (1) of Section 4, should be determined in accordance with the said Rules. Therefore, it is clear that the valuation as per the Rules is permissible only in cases covered by Section 4(1)(b) and not by Section 4(1)(a). For the purpose of the issues on hand, it may not be necessary to dwell deep into the aforesaid rules. [Paras 90, 91][510-A-C]

1.8 Suffice it to say, that if a sale is covered by clause (a) of sub-section (1) of Section 4 (after amendment), the value of excisable goods shall be the 'transaction value'. This expression 'transaction value' is defined in clause (d) of sub-section (3) of Section 4. But if a case is not covered by clause (a) of sub-section (1) of Section 4, then the value of the excisable goods should be determined in accordance with the 2000 Rules. Therefore, in essence, an adjudicating authority is obliged to do the following, in respect of transactions that took place after 01.07.2000:

(i) first, he must see whether there is a sale and

(ii) next, he must see if such sale satisfies the three conditions stipulated in clause (a) of sub-section (1) of Section 4.

In cases where there is a sale and the three conditions stipulated in clause (a) of sub-section (1) of Section 4 are satisfied, the adjudicating authority should determine the value based upon the transaction value. But (i) in cases where there is no sale and (ii) in cases where there is a sale but the three conditions stipulated in clause (a) are not satisfied, then the adjudicating authority should fall back upon the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. [Paras 92-94][510-D-G]

1.9 <u>What the Adjudicating Authority and the Tribunal had and had not done in these cases</u>

Broadly, in the batches of cases on hand (with one or two exceptions), the Adjudicating Authorities came to the following conclusions:

(i) that there was undervaluation and evasion of duty;

(ii) that in respect of sales effected both before and after 01.07.2000, the invoice value, together with the cash paid over and above the invoice value, would represent the normal price or the transaction value, as the case may be, and

(iii) that in cases where there was evidence to show that a dealer had paid more than the invoice value, the amount found to have been paid by such a dealer, though relatable only to a few out of the several transactions that he had with the assessee, should be taken to be the normal price or the transaction value, as the case may be, applicable to all the transactions that the particular dealer had with the assessee.

Similarly, what the CESTAT did in all these cases is:

(i) to uphold the finding of undervaluation and evasion of duty;

(ii) to hold that invoice price need not be taken as the normal price in respect of cases prior to 01.07.2000 and that wherever a particular amount is actually found to have been paid by a dealer, the same could be taken

to be the transaction value, for cases after 01.07.02000; and

(iii) to hold that the determination of the normal price or the transaction value, as the case may be, should be confined only to the evidence available on record, but not to all the transactions across the board. [Paras 95, 96][511-A-F]

1.10 But the Adjudicating Authorities as well as CESTAT are also guilty of failure to do something in these batches of cases. They are:

(i) Failure to find out, in cases covered by Section 4(1) as it stood prior to 01.07.2000, whether there were sales in the course of wholesale trade, satisfying the 3 conditions prescribed therein, falling under clause (a) of sub-section (1) or whether the sales in question fell under clause (b) of sub-section (1) of Section 4;

(ii) Failure to find out, in cases covered by Section 4(1) as it stands amended by Act 10 of 2000 with effect from 01.07.2000, whether the sales in question fell under clause (a) or clause (b) of sub-section (1) of Section 4;

(iii) Failure to find out, in the event of the sales in question falling under clause (b) of sub-section (1) of Section 4 (before or after the amendment), whether the valuation had to be done only in accordance with the Rules (1975 Rules or the 2000 Rules, as the case may be), and

(iv) Failure to find out, in cases covered by Section 4(1)(b), the specific rule that is applicable among the 1975 or 2000 Rules, as there are different rules covering different contingencies, both in the 1975 Rules and in the 2000 Rules.

Since the Adjudicating Authorities as well as the CESTAT failed to make a determination as indicated above, the orders of remand passed by the Tribunal, though for completely different reasons, were justified. [Paras 97, 98][511-G; 512-A-D]

A **1.11 Conclusion**

These appeals are disposed of, confirming the impugned orders of CESTAT setting aside the Orders-in-Original passed by the Adjudicating Authorities and remanding the matters back for re-adjudication. However, while carrying out the exercise of B **re-adjudication, the Adjudicating Authorities should keep in mind the principles enumerated hereunder:**

A. Cases where the period of assessment is prior to 01.07.2000

C **I. First ascertain the price at which such goods are ordinarily sold by the assessee to a buyer who is not related to him, in the course of wholesale trade, at the time and place of removal and also find out whether the price is the sole consideration for the sale. If the Adjudicating Authority is able to find this out, he may** D **take such price as the normal price and treat the case as covered by Section 4(1)(a), applying, wherever permissible, the prescriptions contained in the proviso to clause (a) of sub-section (1) of Section 4.**

II. If the normal price is not ascertainable, either for the E **reason that the goods are not sold or for any other reason, then he may take it that the case would fall under Section 4(1)(b) and take recourse in such cases, to the Central Excise (Valuation) Rules, 1975.**

III. The phrase "for any other reason" appearing in F **Section 4(1)(b) would include cases where the price charged in the course of wholesale trade is not discernible or where the same, though discernible, cannot be linked to delivery at the time and place of removal or where the price is not the sole consideration for the sale, even though the price** G **charged in the course of wholesale trade for delivery at the time and place of removal are available.**

IV. If the case falls under Section 4(1)(b) and the Adjudicating Authority takes recourse to the method of valuation prescribed in the 1975 Rules, he shall H **find out which among the relevant rules would apply**

to the cases on hand before proceeding with the valuation.

B. <u>Cases where the period of assessment is after 01.07.2000</u>

I. First ascertain the "transaction value", with particular reference to the definition of the said expression contained in Section 4(3)(d).

II. Apply the transaction value so ascertained, to cases where three conditions, namely (i) the goods are sold for delivery at the time and place of removal, (ii) the assessee and buyer are not related and (iii) the price is the sole consideration, are satisfied. This is because such cases will fall under Section 4(1)(a).

III. In cases where one or more of the aforesaid three conditions are not satisfied, and also in cases where there is no sale, the Adjudicating Authority should treat the cases as falling under Section 4(1)(b) and hence take recourse to the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

IV. If a case falls under Section 4(1)(b) and the Adjudicating Authority takes recourse to the method of valuation prescribed in the 2000 Rules, he shall find out which among the relevant rules would apply to the case on hand before proceeding with the valuation.

<u>Principles applicable in common (both pre and post amendment)</u>

C. The Adjudicating Authority may treat any amount received either in cash or otherwise, over and above the invoice value, as the value of excisable goods even in cases falling under Section 4(1)(a) (after the amendment), as the definition of "transaction value" under Section 4(3)(d) means the price actually paid or payable.

D. The Adjudicating Authority shall keep in mind the fact that while the expression "normal price" was not defined in

Section 4(1) before amendment, the expression "transaction value" is defined very exhaustively in Section 4(3)(d) and this definition is both inclusive as well as exhaustive.

E. Wherever there is a finding that a particular dealer/ customer has paid a consideration over and above what is reflected in the invoice, the additional payment made by him together with the invoice value shall be taken to be the transaction value, for all the transactions that the particular dealer/customer had with the assessee. In simple terms, if a dealer/customer has made 10 purchases during the period in question, for a particular value stated in the invoice, the transaction value determined on the basis of material relatable to a few out of those transactions, can be applied to all the transactions of that customer/dealer across the board for that period. However, the same value cannot be applied to the other dealers/ customers. This principle shall be followed in respect of cases arising after the amendment.

F. Since the matters are more than a decade old, the Adjudicating Authorities may conduct hearings, afford adequate opportunities to the parties and pass orders in original as early as possible. [Para 99][512-E-H; 513-A-H; 514-A-G]

Collector of Customs, Madras v. D. Bhoormall **(1983) 13 ELT 1546 (SC) – referred to.**

Case Law Reference

[2018] 6 SCR 1099	**referred to**	**Para 85**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7240-7248 of 2009.

From the Judgment and Order dated 24.03.2009 of the Customs Excise & Service Tax Appellate Tribunal, South Zonal Bench at Bangalore, in Appeal No. E/947-954/2006 and E/339/07.

With

C.A. Nos. 8615-8620 Of 2009, 2236-2253, 3231-3233, 3227-3230, 6564-6567, 9988-9991 of 2011.

Balbir Singh, ASG, Ms. Nisha Bagchi, Abhishek Attrey, B. Krishna Prasad, Mrs. Anil Katiyar, V. K. Monga, V. Lakshmikumaran, Ms. Charanya Lakshmikumaran, Aaditya Bhattacharya, Ms. Apeksha

Mehta, Kunal Kapoor, Ms. Mounica Kasturi, Gautam Narayan, Ms. Asmita Singh, Adithya Nair, M. P. Devanath, Advs. for the appearing parties.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

Introduction

1. All the appeals on hand are by the Commissioners of Central Excise, Customs & Service Tax of different Commissionerates, filed under Section 35L(1)(b) of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), questioning the correctness of the orders passed by Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore (CESTAT) in seven different batches of cases, but arising out of similar facts and raising identical questions.

2. For the purpose of convenience, the facts out of which the first batch of cases in Civil Appeal Nos. 7240-7248 of 2009 (which we may call the lead case) arise, are recorded in detail. The facts in the other batches of cases are brought on record in brief and to the extent that they have some distinguishing features. As a matter of fact, the batch of cases relating to the assessee by name, M/s. CERA Boards and Doors (the respondents in Civil Appeal Nos. 7240-7248 of 2009), was decided first by CESTAT. Thereafter, CESTAT decided the other 6 batches of cases on the basis of the ratio laid down in CERA Boards. This is why Civil Appeal Nos. 7240-7248 of 2009 are taken as the lead case.

Facts in Civil Appeal Nos. 7240-7248 of 2009

3. M/s. CERA Boards and Doors, Kannur, which is the assessee concerned in this batch of cases, admittedly manufactures plywood/block boards. Searches were conducted by the Directorate General of Central Excise Intelligence (DGCEI) at their factory premises at Kannur, Kerala and their depot at Bangalore, on 17.10.2002 and on subsequent days. Searches were also conducted at the residences of the partners of the firm, the residences of some of their employees and the premises of some of their dealers.

4. CERA Boards and Doors is a partnership firm comprising of one Mr. K. S. Harris and Smt. K. P. Rashida as partners. Their Bangalore depot was managed by its manager, Sh. T. S. Bhaskar.

A **5.** The investigation that followed the searches revealed that the assessee had undervalued the goods manufactured by them and cleared the goods from their factory, resulting in the evasion of Central Excise duty to the tune of Rs. 4,29,01,384 during the period from 01.12.1998 to 05.12.2002.

B **6.** After the search, CERA Boards made payment of a sum of Rs. 12,50,000 towards shortfall in duty for the clearances effected during the relevant period. Thereafter, show cause notices dated 07.04.2003 and 22.12.2003 were issued. The show cause notice dated 07.04.2003 was for the proposed confiscation of the goods seized from CERA Boards, M/s. Ply Home, M/s. Gee Ply, M/s. Decowood Interiors, M/s. Arihant
C Marketing and M/s. Krishna Agencies, respectively valued at Rs. 12,80,926, Rs. 27,961, Rs. 34,332, Rs. 2,88,585, Rs. 32,829 and Rs. 1,00,000. This was under Rule 25 of the Central Excise Rules, 2002.

7. The show cause notice dated 22.12.2003 was for (i) payment of differential duty to the tune of Rs. 4,29,01,384 under Section 11A(1)
D of the Central Excise Act, 1944, (ii) interest under Section 11AB of the Act, (iii) appropriation of the amount of Rs. 12,50,000 voluntarily paid by them immediately after the search, towards duty liability, (iv) penalty in terms of Section 11AC of the Act and also under Rule 173Q of the erstwhile Central Excise Rules, 1944/ Rule 25 of the Central Excise
E Rules, 2002, and (v) imposition of penalty on the Managing Partner and Manager of the firm under Rule 209A of the erstwhile Central Excise Rules, 1944/ Rule 26 of the Central Excise Rules, 2002.

8. The material forming the basis of the aforesaid show cause notices were: (i) the loose sheets recovered from a Sales Executive by
F name Mr. Dayanandan, (ii) computer print outs containing "overdue bills" statements, (iii) the price lists containing the actual rate per square feet of plywood/block boards of different thicknesses, (iv) certain slips containing the details of the sales made during the relevant period, (v) copies of statements of expenses, (vi) copies of periodical cash statements and the statement of cash sent through one Mr. Xavier, (vii) collection
G books, (viii) a red colour notebook containing party-wise details of invoiced amounts and the amounts payable in cash, (ix) a notebook containing details of transactions with various dealers, (x) a green colour notebook and two receipt books, (xi) the diary of the Sales Executive, Mr. Dayanandan, and certain other items.

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9. Apart from the above documents seized during the searches, the show cause notices also relied upon the statements recorded from (i) Mr. Dayanandan (Sales Executive), (ii) Mr. Cyril D'Souza (Sales Executive), (iii) Mr. M. P. Narayanan, (iv) Mr. K. S. Harris (Managing Partner), (v) Mr. K. S. Mohammad Ali (brother of K. S. Harris), (vi) Mr. Gajanan K. Kadolkar (one of the purchasers), (vii) Mr. K. S. Abdul Basheer (a purchaser), (viii) Mr. B. Narayan Rao (a purchaser), (ix) Mr. Riyas Mayalakkare (purchaser), (x) Mr. Jagdish S. Patel (purchaser), (xi) Mr. G. M. Aggarwal (purchaser), (xii) Mr. Sunny John (purchaser), (xiii) Mr. Kailash Kumar (purchaser), (xiv) Mr. Arvind L. Patel (purchaser), (xv) Mr. T. V. G. Ganesan (purchaser) and (xvi) Mr. Abdul Khayoom (purchaser).

10. In response to the two show cause notices referred to above, the assessee sent two replies, one dated 09.08.2005 and another dated 24.08.2005. Through these replies, the assessee sought permission to cross-examine all those whose statements were recorded by the DGCEI and took a stand that there was no undervaluation.

11. The assessee contended in their replies that they were effecting supplies not only to the dealers and consumers in Bangalore but also to dealers in Tamil Nadu and Kerala and that based upon a few documents seized in relation to the transactions in Bangalore depot, an allegation of undervaluation by 70% on all transactions, cannot be made.

12. It was also contended that though the Department sought to rely upon private documents allegedly maintained by two of their staff members at the Bangalore depot, by name Suresh and Deepak Dhiman, they were not examined. According to the assessee, they were transacting with 153 dealers during the period 2001-2002 and 3 dealers during the period 2002-2003, and that the Department was not entitled to reach a conclusion on the basis of the statements recorded from just 2 of those dealers in Karnataka and only one out of 56 dealers in Kerala.

13. It was also contended by the assessee that in so far as the period prior to 01.07.2000 is concerned, what is relevant is the normal price, namely the price at which the goods are sold at the factory there. This was in terms of Section 4(1)(a) of the Act as it stood prior to 01.07.2000. Hence they contended that even if they had realised a higher price from certain buyers, the same would be irrelevant, as regards the period before 01.07.2000.

14. In so far as the period post 01.07.2000 is concerned, it was contended by the assessee in their replies that the transaction value should be arrived at on the basis of the price indicated in each invoice.

15. After the receipt of the replies from the assessee, the Commissioner of Central Excise and Customs, Calicut, held personal hearings, allowed the cross-examination of witnesses, perused the case law relied upon by the assessee and then passed an Order-in-Original No. 14/2006 dated 09.05.2006. By this Order-in-Original, the Commissioner (i) confirmed the demand of duty in a sum of Rs. 79,21,663 from the assessee under the proviso to Section 11A(1) of the Act, (ii) levied interest at the appropriate rate for the belated payment of the duty under Section 11AB of the Act, (iii) imposed a penalty of Rs. 79,21,663 under Section 11AC read with Rule 25, (iv) directed the confiscation of goods seized from the assessee, valued at Rs. 12,80,926 with an option to redeem the same upon payment of fine of Rs. 25,000, (v) directed the confiscation of goods seized from five different dealers, however, with an option to redeem the same upon payment of fine amounts ranging from Rs. 2,500 to Rs. 15,000, (vi) imposed a penalty of Rs. 5,000 each, upon the assessee and five of the dealers and (vii) imposed a penalty of Rs. 5,000 each on the Managing Partner of the assessee and its Manager at the Bangalore depot.

16. It is relevant to note that the proposal as contained in the show cause notice was for the imposition of differential Central Excise duty to the tune of Rs. 4,29,01,384 for the period between 01.12.1998 and 05.12.2002. But, the adjudicating authority confirmed the demand only to the extent of Rs. 79,21,663. The findings recorded by the adjudicating authority, and the reasons given therefor are as follows:-

I. That as per the statements recorded from the dealers, the assessee was usually showing a lesser amount in the invoices than the actual sale consideration and was in the habit of collecting the differential amount by way of cash;

II. That though some of the dealers retracted from their original statements, the retractions happened only during cross-examination that happened after several years and hence, the original statements could be taken into account;

III. That the documentary evidence such as the loose slips, computer printouts, notebooks, diaries, receipt books, etc.

seized by the DGCEI together with the statements recorded from the depot Manager and Sales Executives clearly showed under-invoicing;

IV. That though the Department had demanded differential duty to the tune of Rs. 4,29,01,384 on the actual sales turnover for the period in question, the department collected evidence only in respect of 11 customers and not from all customers whose names were mentioned in Annexure D to the show cause notice;

V. That therefore, the calculation of differential duty had to be confined only to the sales turnover relatable to the aforesaid 11 customers and the turnover relatable to 3 more customers whose confession statements had been recorded;

VI. That in view of the law laid down by this Court in ***Collector of Customs, Madras vs. D. Bhoormall***,[1] the Department could not plead its inability to examine all the dealers to come to the conclusion of undervaluation in all transactions;

VII. That in respect of those 14 dealers, a clear case was made out by the Department about the gross undervaluation of the sales price, and

VIII. That therefore, the differential duty co-relatable to the sales turnover in respect of those 14 dealers could be demanded.

17. Aggrieved by the Order-in-Original No. 14/2006 dated 09.05.2006, one appeal was filed by the assessee, one appeal was filed by its Managing Partner, one appeal was filed by the Manager of the Bangalore depot of the assessee, one appeal each was filed by five dealers from whom seizure of material was effected and one appeal was filed by the Commissioner himself. Thus, there were 9 appeals, 8 of which were at the instance of assessee, its Managing Partner, its Manager, and the five dealers, and the last of which was by the Commissioner of Central Excise.

18. While the 8 appeals filed at the instance of the assessee and its coterie were directed against the demand for differential duty, interest, penalty and confiscation, with an option of redemption, the appeal filed by the Commissioner was on the ground that as against the proposal for

[1] (1983) 13 ELT 1546 (SC)

A a differential duty of Rs. 4,29,01,384 made in the show cause notice, the adjudicating authority confirmed the demand only to the extent of Rs. 79,21,663.

19. By Final Order Nos. 245-253/2009 dated 24.03.2009, the CESTAT (i) rejected all the five appeals filed by the five dealers B challenging the orders of confiscation of the seized goods with the option for redemption and (ii) allowed the three appeals filed respectively by the assessee, its Managing Partner and its Manager, challenging the demand for differential duty, interest, and penalty and remanded the matter for re-quantification of duty in light of the findings given. The C appeal filed by the Revenue also followed the fate of the three appeals filed by the assessee, its Managing Partner and its Manager.

20. The effect of the Final Orders passed by CESTAT is (i) that the appeals of the dealers against confiscation with the option of redemption stood rejected and (ii) that the substantive appeals arising out of the imposition of differential duty, interest, penalty, etc. stood D allowed and remanded back to the adjudicating authority for a fresh consideration.

21. The findings recorded and the reasons therefor, as given by CESTAT, are as follows:-

E I. That there was overwhelming evidence to show under-invoicing;

II. That in light of the statements made by depot officials as well as dealers, the finding of the Adjudicating Authority that 30% of the actual value alone was mentioned in the invoice cannot be interfered with;

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III. That as per Section 4(1)(a), as it stood before 01.07.2000, duty was payable on the normal price, namely the price at which such goods were ordinarily sold in the course of wholesale trade; and hence the Commissioner was obliged to find out what the normal price in the course of wholesale G trade was for the clearances made prior to 01.07.2000;

IV. That in respect of the sales made prior to 01.07.2000, the adjudicating authority should adopt the normal pricing method;

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V. That for the clearances made after 01.07.2000, the transaction value had to be determined in respect of each transaction and the differential duty confined only to the evidence available on record;

VI. That the stand of the Revenue that 70% should be added to the invoice value uniformly in respect of all clearances, could not be accepted and,

VII. That therefore, the matter required re-adjudication.

22. Therefore, the Revenue has come up with this batch of nine appeals, Civil Appeal Nos. 7240-7248 of 2009.

Facts in Civil Appeal Nos. 8615-8620 of 2009

23. The facts of this batch of appeals are similar to those in Civil Appeal Nos. 7240-7248 of 2009. M/s. Prestige Boards Pvt. Ltd., Kannur which is the assessee concerned in this batch of cases, also manufactures plywood/block boards. Similar searches conducted at their premises revealed that the assessee had grossly undervalued the goods cleared by them from their factory, resulting in evasion of Central Excise duty to the tune of Rs. 2,72,03,232 during the period between 01.12.1998 and 17.10.2002.

24. Show cause notices (i) dated 08.04.2003, for confiscation of the material and cash, imposition of penalty, etc., and (ii) dated 22.12.2003, demanding differential duty of Rs. 2,72,03,232 under Section 11A(1) of the Act, interest, penalty, etc. were issued.

25. After the receipt of the replies from the assessee to the two show cause notices, the Commissioner of Central Excise and Customs, Calicut, held an enquiry and passed an Order-in-Original No. 10/2006 dated 27.03.2006, by which, he (i) confirmed the demand of duty to the extent of Rs. 1,50,23,911 from the assessee under the proviso to Section 11A(1) of the Act, (ii) levied interest at the appropriate rate for the belated payment of duty under Section 11AB of the Act, (iii) imposed a penalty of Rs. 1,50,23,911 under Section 11AC read with Rule 25, (iv) directed the confiscation of goods seized from the assessee, valued at Rs. 14,24,286 with an option to redeem the same upon payment of fine of Rs. 1,50,000, (v) directed the confiscation of goods seized from M/s. Prestige Traders, valued at Rs. 5,49,176, with an option to redeem the same upon payment of fine of Rs. 50,000, (vi) directed the confiscation

of goods seized from M/s. Ply Home, valued at Rs. 29,270, with an option to redeem the same upon payment of fine of Rs. 3000, (vii) directed the confiscation of goods seized from M/s. Gee Ply, valued at Rs. 38,268, with an option to redeem the same upon payment of fine of Rs. 3500, (viii) ordered outright release of Rs. 2,50,000 seized from Sh. P. K. Shakeer, (ix) imposed a penalty of Rs. 5,000 each on M/s. Prestige Traders, M/s. Ply Home and M/s. Gee Ply, and (x) imposed a penalty of Rs. 50,000 each on Sh. K. S. Mohammad Ali (Managing Director) and Sh. Kunjuraman (Manager, Bangalore depot).

26. The Commissioner held that there was evidence to prove undervaluation, but the demand had to be confined only to the transactions that the assessee had with 20 customers from whom alone evidence had been collected. Like the Order-in-Original passed in the case of CERA Boards, the Commissioner ruled in this case also that (i) with respect to the period prior to 01.07.2000, the normal price should include the price indicated in the invoice plus the amount collected by way of cash, and (ii) for the period post 01.07.2000, the transaction value was nothing but the invoice value plus the amount collected in cash.

27. Aggrieved by the Order-in-Original No. 10/2006 dated 27.03.2006, the assessee, its Managing Director (Sh. K. S. Mohammad Ali), its Sales Manager (Sh. Kunjuraman), M/s. Prestige Traders and the two dealers from whom seizure of material was effected, filed six appeals before the CESTAT.

28. By Final Order Nos. 414-419/2009 dated 21.04.2009, the CESTAT (i) allowed the three appeals filed by the assessee, its Managing Director and Sales Manager challenging the demand for differential duty, interest and penalty, and remanded the matter for re-quantification of duty in light of the findings given, and (ii) rejected the appeals filed by M/s. Prestige Traders and the two dealers challenging the orders of confiscation.

29. The findings recorded and the reasons therefor, as given by CESTAT, are as follows:-

I. That there was overwhelming evidence to show under-invoicing;

II. That in respect of the sales made prior to 01.07.2000, the Adjudicating Authority should have adopted the normal pricing method;

III. That for the clearances made after 01.07.2000, the transaction value has to be determined in respect of each transaction and the differential duty confined only to the evidences available on record;

IV. That the stand of the Revenue that 70% should be added to the invoice value uniformly in respect of all clearances, cannot be accepted.

30. Aggrieved by the said order, the Revenue has come up with this batch of six appeals, Civil Appeal Nos. 8615-8620 of 2009.

Facts in Civil Appeal Nos. 2236-2253 of 2011

31. Searches were conducted by the officers of the Directorate General of Anti-Evasion (Central Excise) on 23.09.1997, simultaneously at the premises of eleven plywood manufacturing units located at Kumbla, Kasargod District, on the basis of intelligence reports that they were indulging in undervaluation and evading payment of central excise duty.

32. After recovering incriminating evidence and recording the statements of proprietors/partners, employees and dealers of the units in question, two show cause notices, one dated 23.03.1998 and another dated 02.08.1999 were issued. The first show cause notice was against M/s. Universal Wood Crafts, Kumbla, M/s. Wood Crafts, Kumbla, M/s. Uniwoods, Kumbla, M/s. National Boards, Kumbla, M/s. Darvesh Plywoods, Kumbla, Sri K. Mohammed Arabi, Kumbla, Sri Khaleel Rahiman, Kayarkulam and Sri Mansoorul Huck, Kayarkulam, proposing the confiscation of the seized plywood and the seized Indian currency, demand drafts and cheques.

33. The second show cause notice quantified the duty short paid by the seven plywood units, namely M/s. National Boards, M/s. Darvesh Plywoods, M/s. Uniwoods, M/s., Wood Crafts, M/s. Universal Wood Craft Co., M/s. Mailatty Wood Industries and M/s. National Wood Products, at Rs. 7,59,24,737 and the duty short paid by the chemical unit by name M/s. Bharath Chemicals, at Rs. 9,12,375, for the period from 1994-1995 to 1999-2000 (up to June 1999). The notice also proposed the levy of interest and penalty, apart from confiscation.

34. Subsequently, twelve periodical show cause notices were issued to the plywood manufacturing/dealing units for different periods of time.

35. After the receipt of the replies from the assessees and their proprietors/partners to the two show cause notices, the Commissioner of Central Excise, Calicut, held an enquiry and passed an Order-in-Original No. 10/2005 dated 30.06.2005, wherein he confirmed the duty demanded from the units in question, named in column 1 of the table below, to the extent indicated in column 2 thereof. The Adjudicating Authority also imposed penalties on each of them, to the extent indicated in column 3 of the table:

Name	**Duty Demanded**	**Penalty**
M/s. National Boards	Rs 28,95,584/-	Rs 28,95,584/-
M/s. Darvesh Plywoods	Rs. 86,01,648/-	Rs. 86,01,648/-
M/s. Uniwoods	Rs. 72,15,522/-	Rs. 72,15,522/-
M/s. Wood Crafts	Rs. 73,59,665/-	Rs. 73,59,665/-
M/s. Universal Wood Crafts Co.	Rs. 26,73,758/-	Rs. 26,73,758/-
M/s. Mailatty Wood Industries	Rs. 23,24,056/-	Rs. 23,24,056/-
M/s. National Wood Products	Rs. 61,14,236/-	Rs. 61,14,236/-
M/s. Bharath Chemicals	Rs. 5,52,839/-	Rs. 5,52,839/-

36. In addition to the above, the Adjudicating Authority confirmed the demand of interest under Section 11AB, ordered the confiscation of material with an option to redeem the same on payment of fine and imposed penalties. However, (1) the currency of Rs. 20,66,940 and the demand drafts and cheques seized from Sh. Mohammed Arabi was directed to be released and (2) the proceedings envisaged in the twelve show cause notices on account of clubbing the value of clearances of all the units, were dropped.

37. The Adjudicating Authority ruled that there was sufficient evidence to prove undervaluation. However, he took the view that since the units were registered separately with the Departments of Industries, Sales Tax and the Income Tax, their clearances could not be clubbed to deny them the benefit of Small Scale Industries exemption under Notification No. 1/93.

38. As against the aforesaid Order-in-Original dated 30.06.2005, 17 appeals were filed by the eight units and their partners and proprietors. These 17 appeals in Central Excise Appeals Nos. E/1145-1161/2005 were disposed of by CESTAT, by a common order dated 01.04.2010.

39. In and by the said order, the CESTAT came to the following conclusions:

I. That the finding of the Adjudicating Authority about undervaluation and clandestine clearance of goods resulting in evasion of duty, was unassailable;

II. That the units in question operated secret price lists for sale of their finished products and paid duty on a much lower value and also resorted to innovative methods of accounting;

III. That the previous decisions of the Tribunal in the case of CERA Boards, Noble Ply and Prestige Boards, with regard to the fixation of normal price in respect of the clearances made prior to 01.07.2000, should be followed and the matter remanded back;

IV. That as regards Bharat Chemicals, the demand of differential duty of Rs. 9,12,375 together with other penal liabilities, was liable to be confirmed and their appeal liable to be dismissed;

V. That as regards the clandestine clearances made by M/s. Wood Crafts, M/s. Uniwoods, M/s. Darvesh Plywood, M/s. National Boards, M/s. National Wood Products, M/s. Mailatty Wood Industries and M/s. Universal Wood Crafts Co., the matter had to be remanded back to the Commissioner, for the purpose of adjudicating whether the turnover reckoned by the Adjudicating Authority included proceeds of sale of non-excisable goods;

VI. That as a consequence of the remand, the penalties imposed on the seven units (whose names are indicated in the preceding point) should also be re-adjudicated after the re-quantification of the liability;

VII. That the appeals filed against the confiscation of plywood valued at Rs. 2,86,389.20 seized from Khaleel Rehman

A Glass Centre, the appeals filed against the confiscation of plywood sheets valued at Rs.15,056.20 seized from Mansarool Huck, with an option to redeem upon payment of fine, and the appeals filed against the individual penalties imposed upon Khaleel Rehman and Mansarool Huck were also liable to be rejected, and

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VIII. That all the other appeals are to be allowed, and the matter remanded for re-adjudication on the terms indicated above.

40. Aggrieved by the said order, the Revenue has come up with this batch of appeals, Civil Appeal Nos. 2236-2253 of 2011.

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Facts in Civil Appeal Nos. 3227-3230 of 2011

41. Similar to the preceding cases, M/s. Mysore Chipboards Ltd., which is the assessee concerned in this batch of cases, also manufactures plywood/block boards/particle boards. Searches conducted by the DGCEI at their premises revealed that the assessee had undervalued the goods
D manufactured by them and cleared them from their factory, resulting in the evasion of Central Excise duty to the tune of Rs. 7,51,53,570 during the period from 01.07.2000 to 28.08.2003.

42. A show cause notice dated 21.07.2005 was issued, demanding differential duty of Rs. 7,51,53,570 under Section 11A(1) of the Central
E Excise Act, 1944, interest, penalty, etc.

43. After the receipt of the reply from the assessee, the Commissioner of Central Excise, Mysore held an enquiry and passed an Order-in-Original No. 06/CCE/2006 dated 05.10.2006. By this Order-in-Original, the Commissioner (i) confirmed the demand of duty in a sum
F of Rs. 81,01,637 from the assessee under the proviso to Section 11A(1) of the Act, (ii) directed appropriation of Rs. 16,00,000 voluntarily paid by the assessee, (iii) levied interest at the appropriate rate for the belated payment of the duty under Section 11AB of the Act, (iv) imposed a penalty of Rs. 81,01,637 under Section 11AC read with Rule 25 and (v)
G imposed a penalty of Rs. 10,00,000 on Sh. Shyam Daga, the Resident Director of the assessee.

44. The adjudicating authority held that undervaluation was established only (i) to the extent of Rs. 3,79,452 in respect of the invoices raised by the factory at Mysore, (ii) to the extent of Rs. 29,677 relating to the six slips from the Lucknow office and (iii) to the extent of
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Rs. 5,02,26,106 with respect to sales through assessee's consignment agent, M/s. Kela Brothers. The Adjudicating Authority further ruled that the evidence in respect of undervaluation in sales through M/s. Umiya Enterprises, M/s. Balaji Glass & Plywoods, M/s. Rohini Plywood & Laminates, and the Ludhiana and Delhi office of the assessee was insufficient.

45. Aggrieved by the Order-in-Original No. 06/CCE/2006 dated 05.10.2006, three appeals were filed, one by the assessee, another by its Resident Director and the third by the Commissioner of Central Excise, Mysore, before the CESTAT.

46. The assessee challenged the maintainability of the appeal filed by the Commissioner of Central Excise, Mysore, on the ground that as per the decision of the Committee of Chief Commissioners, it was only the Mangalore Commissioner and not the Mysore Commissioner who was entitled to file an appeal.

47. In response to the said objection, the Commissioner of Central Excise, Mysore then filed a Miscellaneous Application in its appeal before the CESTAT, placing on record, a corrigendum to the order of the Committee of Commissioners authorising the Mysore Commissioner to file the appeal.

48. By a Final Order passed in the three regular appeals and one miscellaneous application, namely Final Order Nos. 985-987/2010 dated 07.07.2010 and Miscellaneous Order No. 300/2010 dated 07.07.2010, the CESTAT (i) allowed the appeals filed by the assessee and its Resident Director challenging the demand for differential duty, interest and penalty and remanded the matter to the Adjudicating Authority for re-quantification of duty; (ii) allowed the appeal filed by the Revenue and remanded the matter for fresh adjudication (except on the clearances relating to Umiya enterprises and sales from the Delhi branch) and (iii) allowed the Miscellaneous Application relating to the maintainability of the appeal filed by the Mysore Commissioner.

49. The findings recorded and the reasons therefor, as given by CESTAT, are as follows:-

I. That the demand of Rs. 60,712 for the differential value of Rs. 3,79,452 in respect of the clearances reflected in the Inter-Office memo was rightly confirmed by the Adjudicating Authority, by rejecting the retractions of the

A statements of Sh. K. Sridhar and Sh. Umeedmal Jain who had admitted to undervaluation and collecting differential amounts in cash;

II. That the demand of duty of Rs. 4748 on the differential value of Rs. 29,677 with respect to clearances from the
B Lucknow branch was liable to be sustained;

III. That the demand of Rs. 80,36,177 on the differential value of Rs. 5,02,26,106 for the clearances made to M/s. Kela Brothers was to be confirmed on the principle of preponderance of probability regarding undervaluation by
C the assessee;

IV. That since the demand was towards differential duty, the same should have been correlated to particular invoices covering such clearances, which the Adjudicating Authority had not done;

D V. That the Adjudicating Authority rightly dropped the demand relating to M/s. Umiya Enterprises;

VI. That the Adjudicating Authority was correct in not applying the charge and level of undervaluation in respect of all the clearances, and

E VII. That differential duty could be demanded only where undervaluation was established and in the light of transaction value introduced w.e.f. 01.07.2000, such evidence had to be available in respect of each removal.

F **50.** Aggrieved by the said order, the Revenue has come up with this batch of 4 appeals, Civil Appeal Nos. 3227-3230 of 2011.

Facts in Civil Appeal Nos. 3231-3233/2011

51. M/s. Plama Boards Pvt. Ltd., Mangalore, which is the assessee concerned in this batch of cases, manufactures plywood/ block boards.
G Searches conducted by the DGCEI at their premises revealed, according to the Revenue, that (i) the assessee had fraudulently undervalued the goods manufactured and cleared, (ii) that the actual value of clearances had crossed the Small Scale Industries exemption limit of Rs. 1,00,00,000 and (iii) that the assessee had thus, evaded Central Excise duty to the tune of Rs. 2,13,70,618 during the period from 01.10.2000 to 28.04.2004.
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52. A show cause notice dated 22.11.2005 was issued demanding differential duty of Rs. 2,13,70,618 under Section 11A(1) of the Central Excise Act, 1944, interest, penalty, etc.

53. After the receipt of the replies from the assessee, the Commissioner of Central Excise, Mangalore, held an enquiry and passed an Order-in-Original No. 10/2006 dated 29.05.2006, in and by which, he (i) confirmed the demand of duty in a sum of Rs. 1,37,81,152 from the assessee under the proviso to Section 11A(1) of the Act, (ii) directed appropriation of Rs. 5,00,000 voluntarily paid by the assessee, (iii) levied interest at the appropriate rate for the belated payment of the duty under Section 11AB of the Act, (iv) imposed a penalty of Rs. 1,37,81,152 under Section 11AC read with Rule 25, (v) imposed a penalty of Rs. 1,00,000 under Rule 173Q/ Rule 25 (vi) imposed a penalty of Rs. 10,00,000 under Rule 2019/ Rule 26, and (v) imposed a penalty of Rs. 10,00,000 on Sh. P. M. A. Razak, the Managing Director of the assessee.

54. The Commissioner recorded a finding that the evidence on record proved that the assessee had undervalued the goods sold through Shree Shyam Plywoods by about 75% and those sold through other dealers by about 70%.

55. Aggrieved by the Order-in-Original No. 10/2006 dated 29.05.2006, the assessee, its Managing Director and the Commissioner of Central Excise, Mangalore filed three appeals before the CESTAT.

56. By Final Order Nos. 1145-1147/2010 dated 26.08.2010, the CESTAT allowed all the three appeals and remanded the matter for re-quantification of duty in the light of the findings given.

57. The findings recorded and the reasons therefor, as given by CESTAT, are as follows:-

I. That the statements given by third parties in the course of investigation stood in contrast to the statements given by the employees of the assessee and that once retracted, the statements of third parties would lose their evidentiary value;

II. That the pocket planner recovered from Sh. Ashraf was not an official record of the assessee but a private diary;

III. That the prices written on the letterhead of M/s. Shree Shyam Plywoods were not corroborated by the dealers and

A even the statement of the proprietor could not be taken as corroboration, as the said statement was retracted;

IV. That the price lists recovered from M/s. Plydeal could not be relied upon as M/s. Plydeal did not purchase plywood from the assessee;

B

V. That the Adjudicating Authority's decision to confirm undervaluation to the extent of 75% to M/s. Shree Shyam Plywoods and 70% to the other dealers was not appropriate and that undervaluation could not be presumed in respect of all the clearances made by the assessee during the material period, by just examining clearances of only a few dealers;

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VI. That no concrete evidence of undervaluation and evasion with reference to any particular clearance had been found by the Adjudicating Authority;

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VII. That as seen from the statement of the Managing Director, there was no doubt about undervaluation and payment of lesser duty than what was due, and

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VIII. That since the dispute was for clearances after 01.07.2000, the value had to be determined based on each transaction.

58. Aggrieved by the said order, the Revenue has come up with this batch of 3 appeals, Civil Appeal Nos. 3231-3233 of 2011.

Facts in Civil Appeal Nos. 6564-6567/2011

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59. M/s. Thumbay Holdings Pvt. Ltd., Mangalore, which is the assessee concerned in this batch of cases, admittedly manufactures plywood/block boards and is also engaged in construction and sale of immovable properties. Searches similar to the ones in the previous batches of appeals were conducted by the DGCEI at their premises, which revealed that the assessee had undervalued the goods manufactured by them and cleared them from their factory, resulting in the evasion of Central Excise duty to the tune of Rs. 8,37,019 during the period from 01.04.2003 to 31.03.2004.

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60. Thereafter, a show cause notice dated 11.10.2006 was issued, demanding differential duty of Rs. 8,37,019, interest, penalty, etc.

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61. Unlike in the other batches of cases, the Joint Commissioner of Central Excise, Mangalore, was the Adjudicating Authority in this batch, in view of the monetary value of the demand. After receipt of the assessee's reply to the show cause notice, he held an enquiry and passed an Order-in-Original No. 20/2007 dated 29.06.2007. By this Order-in-Original, the Joint Commissioner (i) confirmed the demand of duty in a sum of Rs. 7,21,568 from the assessee under the proviso to Section 11A(1) of the Act, (ii) levied interest at the appropriate rate for the belated payment of the duty under Section 11AB of the Act, (iii) imposed a penalty of Rs. 7,21,568 under Section 11AC, (iv) imposed a penalty of Rs. 50,000 under Rule 25 and (v) imposed a penalty of Rs. 50,000 each on Sh. B. Abdul Salam, Sh. J. M. Ashraf and Sh. Manoj Kumar Amin under Rule 26.

62. The Adjudicating Authority held that there was undervaluation on assessee's part and that therefore, Section 4(1)(a) was not applicable to the assessee's transactions and that the assessable value had to be ascertained in terms of Rule 11 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

63. Aggrieved by the Order-in-Original No. 20/2007 dated 29.06.2007, the assessee, Sh. B. Abdul Salam, Sh. J. M. Ashraf and Sh. Manoj Kumar Amin filed four separate appeals before the Commissioner of Central Excise (Appeals).

64. The Commissioner of Central Excise (Appeals) dismissed the appeals.

65. Aggrieved by the Orders-in-Appeal dated 18.09.2008, the assessee, Sh. B. Abdul Salam (Managing Director), Sh. J. M. Ashraf (Chief Executive Officer) and Sh. Manoj Kumar Amin (Marketing Executive), filed four appeals before the CESTAT.

66. By Final Order Nos. 1505-1508 dated 07.12.2010, the CESTAT allowed all the four appeals and remanded the matter for re-quantification of duty liability and penal liability in light of the findings given.

67. The findings recorded and the reasons therefor, as given by CESTAT, are as follows:-

I. That retraction by the witnesses of their statements at a belated stage was not acceptable;

A

II. That the entries in the slips had been corroborated by statements of the witnesses and hence evasion of Central Excise duty to an extent of 67% stood proved;

III. That since only 3 out of 25 dealers had recorded their statements and only one of those clearly incriminated the assessee, which had also been later retracted, the total evidence available may not be adequate to quantify evasion by the assessee for a whole year;

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IV. That an analysis of the provisions of the Bankers' Book Evidence Act, 1891 showed that the Adjudicating Authority was not barred from requisitioning the bank statement;

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V. That the Adjudicating Authority rightly held that the show cause notice was not barred by limitation;

VI. That however, the finding of evasion of duty could not be applied to all the clearances by the assessee, and that if the standard of preponderance of probability was applied in that respect, it would contain an element of arbitrariness, and

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VII. That the Adjudicating Authority's quantification of duty due based on a formula worked out on the basis of the slips and a few invoices, was not permissible, and that transaction value had to be calculated with respect to each removal, in terms Section 4 of the Act.

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68. Aggrieved by the said order, the Revenue has come up with this batch of 4 appeals, Civil Appeal Nos. 6564-6567 of 2011.

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Facts in Civil Appeal Nos. 9988-9991 of 2011

69. The facts of this last batch of appeals are also similar to the preceding cases. M/s. Hajee Timber Complex, Mangalore, which is the assessee concerned in this batch of cases, manufactures plywood/block boards. Searches conducted by the DGCEI at their premises revealed that the assessee had undervalued the goods manufactured and cleared by them, resulting in the evasion of Central Excise duty to the tune of Rs. 50,42,761 during the period between 01.07.2001 to 31.03.2004.

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70. A show cause notice dated 10.10.2006 was issued demanding differential duty of Rs. 50,42,761 under Section 11A(1) of the Central Excise Act, 1944, interest, penalty, etc.

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71. After the receipt of the reply from the assessee, the Commissioner of Central Excise, Mangalore, held an enquiry and passed an Order-in-Original No. 08/2007 dated 29.03.2007, wherein he (i) confirmed the demand of duty in a sum of Rs. 40,46,923 from the assessee under the proviso to Section 11A(1) of the Act, (ii) directed appropriation of Rs. 2,00,000 voluntarily paid by the assessee, (iii) levied interest at the appropriate rate for the belated payment of the duty under Section 11AB of the Act, (iv) imposed a penalty of Rs. 40,46,923 on the assessee under Section 11AC, (v) imposed a penalty of Rs. 2,00,000 on the assessee under Rule 25 of the 2002 Rules and (vi) imposed a penalty of Rs. 2,00,000 each on Sh. B. Abdul Salam, Sh. J. M. Ashraf and Sh. Manoj Kumar Amin under Rule 26 of the 2002 Rules.

72. The Adjudicating Authority held that the documentary evidence and witness statements clearly showed that the assessee had grossly undervalued their products.

73. Aggrieved by the Order-in-Original No. 08/2007 dated 29.03.2007, the assessee, Sh. B. Abdul Salam, Sh. J. M. Ashraf and Sh. Manoj Kumar Amin filed four appeals before the CESTAT.

74. By Final Order Nos. 1509-1512/2010 dated 08.12.2010, the CESTAT allowed all the four appeals and remanded the matter for re-quantification of duty liability and penal liability in the light of the findings given.

75. The findings recorded and the reasons therefor, as given by CESTAT, are as follows:-

I. That the slips and price lists recovered from one of the dealers, the price list recovered from the BA group of companies and the statements obtained from the dealers and employees of the BA group, revealed the modus operandi followed by the assessee in undervaluation of excisable goods;

II. That the initial statements of the witnesses were voluntary and hence, valid evidence;

III. That the test of preponderance of probability could not be applied to judicially quantify the duty short paid during the entire period of the dispute relying upon one slip showing actual price in respect of few transactions;

A IV. That the proviso to Section 11A(1) was applicable to the present case and the show cause notice was not barred by limitation, and

V. That each impugned clearance was assessable to duty on the particular price (transaction value) charged for each
B removal.

76. Aggrieved by the said order, the Revenue has come up with this batch of 4 appeals, Civil Appeal Nos. 9988-9991 of 2011.

Common Issues arising in these appeals

C **77.** It may be seen from the facts involved in these batches of cases that there is a common thread that runs along the fabric of these cases. This common thread is that the assessees in these cases allegedly undervalued the goods, sold them for a much higher price than what was reflected in the invoices and thereby they evaded the excise duty actually payable. Though the assessees uniformly denied the said
D allegation, the CESTAT has recorded a categorical finding in all the cases that there was undervaluation and evasion of excise duty. The said finding has not been challenged by the assessees and hence it has attained finality. Therefore, what arises for adjudication is only the manner of determining the value of the goods removed by the assessees for sale to
E or through dealers.

78. In other words, the entire dispute now revolves around the question of valuation of excisable goods, for the purposes of charging of duty. But for finding an answer to the said question, it is necessary for us to take note of the period of assessment. In some of these cases, the
F period of assessment was both prior to and after 01.07.2000 and in other cases, the period was after 01.07.2000. According to the respondents, the method of determination of value before 01.07.2000 was different from the method of valuation after 01.07.2000, since Section 4 of the Central Excise Act, 1944 was amended with effect from 01.07.2000 under Act 10 of 2000. The amended Section 4 also underwent some
G changes in the years 2003 and 2012. We are not concerned with the changes brought forth in 2012.

79. Therefore, let us first take note of how the statutory prescription stood before 01.07.2000 and after the said date. The relevant portion of Section 4 as it stood before 01.07.2000 and as it stands after 01.07.2000
H is presented in a tabular column as follows:

Section 4 as it stood before 01.07.2000	**Section 4 as it stands after 01.07.2000, including the amendment in 2003 but not including the amendment in 2012**
4. *Valuation of excisable goods for purposes of charging of duty of excise.*—	4. *Valuation of excisable goods for purposes of charging of duty of excise.* —
(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value, shall, subject to the other provisions of this section be deemed to be—	(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—
(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:	*(a)* in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of goods are not related and the price is the sole consideration for the sale, be the transaction value;
	(*b*) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.
Provided that—	
(*i*) where in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related	*Explanation*.— For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the

persons) each such price shall, subject to the existence of the other circumstances specified in clause (*a*), be deemed to be the normal price of such goods in relation to each such class of buyers;	assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.
(*ia*) where the price at which such goods are ordinarily sold by the assessee is different for different places of removal, each such price shall, subject to the existence of other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such place of removal;	(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3. (3) For the purpose of this section— *(a)* "assessee" means [...];
(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force, or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (*iii*) of	(*b*) persons shall be deemed to be "related" if— [...] (*c*) "place of removal" means— *(i)* a factory or any other place or premises of production or manufacture of the excisable goods;

this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;	(*ii*) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty,
(*iii*) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail;	*(iii)* a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed;
(b) where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in	*(cc)* "time of removal", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory; (*d*) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable

such manner as may be prescribed. *(2)* Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price. *(3)* [...] *(4)* For the purposes of this section— (*a*) "assessee" means [...]; (*b*) "place of removal" means— (*i*) a factory or any other place or premises of production or manufacture of the excisable goods; (*ii*) a warehouse or any other place or premises	at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organisation expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

wherein the excisable goods have been permitted to be deposited without payment of duty; (iii) A depot, premises of a consignment agent or any other place or premises from the excisable goods are to be sold after their clearances from the factory and, from where such goods are removed; *(ba)* "time of removal", in respect of goods removed from the place of removal referred to in sub-clause (iii) of clause (b), shall be deemed to be the time at which such goods are cleared from the factory; (*c*) "related person" means [...] (*d*) "value", in relation to any excisable goods—	

(*i*) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee. *Explanation*.—[...] (*ii*) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale. *Explanation*.—[...]	

(*e*) "wholesale trade" means sales to dealers, industrial consumers, Government, local authorities and other buyers, who or which purchase their requirements/otherwise than in retail.	

80. In simple terms, 2 different methods of valuation were prescribed in Section 4 as it stood prior to 01.07.2000:

(i) one covered by clause (a) of sub-section (1) of Section 4, where the emphasis was on normal price, the determination of which co-related to ordinary sale in the course of wholesale trade (satisfying certain conditions), and

(ii) another covered by clause (b) of sub-section (1) of Section 4, which related to cases where there were no sales, and cases where normal price could not be ascertained for any other reason.

81. The prescriptions contained in clause (a) of sub-section (1) of Section 4, before amendment in 2000, are summarized as follows:

I. As a first rule, the normal price, namely the price at which such goods are ordinarily sold **in the course of wholesale trade** shall be taken as the value, if the buyer is not a related person and the price is the sole consideration for the same.

II. But in cases where different prices are charged to different classes of buyers, each such price should be taken to be the normal price in relation to each such class of buyers.

III. Similarly, if different prices are charged at different places of removal, the normal price shall be the price charged in relation to each such place of removal.

IV. Where the goods are generally not sold in the course of wholesale trade, except to or through a related person, the normal price shall be the price at which the goods are

A ordinarily sold by the related person, in the course of wholesale trade to other dealers.

82. Thus it is clear that under Section 4(1)(a), as it stood before 01.07.2000, **the method of valuation prescribed therein was directly linked to the normal price for an ordinary sale in the course of** B **wholesale trade**. But in cases where normal price was not ascertainable, the same would fall under Section 4(1)(b) and the valuation in such cases had to be done in terms of the Valuation Rules of the year 1975. Clause (b) identifies one situation, namely where goods are not sold, in which, the normal price may not be ascertainable. In addition, clause (b) also recognises the fact that there may be cases where normal price is C not ascertainable **for any other reason**. These cases may perhaps include **sales otherwise than in the course of wholesale trade**.

83. Though the words "normal price" were used in Section 4(1)(a), the proviso to clause (a) recognised the fact that the normal price need not be the same universally, but could vary from one class of buyers to D another or from one place of removal to another.

84. By the amendment under Act 10 of 2000, with effect from 01.07.2000, the words "normal price" and the words "in the course of wholesale trade" were removed. Instead, the words "transaction value" were inserted in Section 4(1)(a).

E

85. As rightly pointed out by the learned Additional Solicitor General, the third question referred to the Constitution bench in ***CCE vs. Grasim Industries Limited***[2] was whether or not the concept of "transaction value" makes any material departure from the deemed normal price concept of the erstwhile Section 4(1)(a) of the Act. In the F penultimate paragraph of its decision, the Constitution bench answered this question in the following manner:

> *"Further, we hold that "transaction value" as defined in Section 4(3)(d) brought into force by the Amendment Act, 2000, statutorily engrafts the additions to the "normal price"* G *under the old Section 4 as held to be permissible in Bombay Tyre International Ltd. (supra) besides giving effect to the changed description of the levy of excise introduced in Section 3 of the Act by the Amendment of 2000. In fact, we are of the view that there is no discernible difference in the statutory*

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concept of "transaction value" and the judicially evolved meaning of "normal price"."

86. Though the Constitution Bench in ***Grasim Industries*** noted the shift, at least in the language, of Section 4(1), from "normal price" to "transaction value", the Constitution Bench did not take note of one major area of difference, namely that **the focus of Section 4(1)(a) prior to 01.07.2000 was on finding out the normal price in respect of sales made ordinarily in the course of wholesale trade**. The method of valuation, wherever there was no sale, was to be on the basis of the Rules, in view of Section 4(1)(b). Even in cases where there was a sale—

(i) in the course of wholesale trade but the conditions stipulated in clause (a) were not satisfied or

(ii) the normal price could not be ascertained for any other reason,

the method of valuation was left under clause (b) of sub-section (1) of Section 4 to the rule making authority to stipulate. The implication flowing out of the words ***"for any other reason"*** found in clause (b) before amendment is of significance in this regard. After the amendment under Act 10 of 2000, the normal pricing method was gone, as the focus shifted from sale in the course of wholesale trade.

87. While clause (a) of sub-section (1) of Section 4, as it stood before amendment, laid emphasis on **normal price,** clause (a) of sub-section (1) of Section 4, as it stands after amendment, speaks about **transaction value**. Clause (b) of sub-section (1), both before and after the amendment, leaves it to the delegated legislation to prescribe the method of valuation, for cases not covered by clause (a).

88. For the valuation under Section 4(1) to follow the "transaction value", (after amendment) the three conditions stipulated in clause (a), namely (i) that the goods are sold for delivery at the time and place of removal, (ii) that the assessee and buyer are not related and (iii) that the price is the sole consideration for the sale, should be satisfied.

89. If the three conditions, enumerated in clause (a), (indicated above) are not satisfied, then the case would fall under clause (b) of sub-section (1) of Section 4, which starts with the words "in any other case". In other words, in cases not covered by clause (a), the value can be determined in such manner as may be prescribed.

90. After the amendment under Act 10 of 2000, the Central Government issued a new set of rules called the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. These rules were issued in exercise of the power conferred by Section 37, in supersession of the 1975 Valuation Rules.

91. Rule 3 of the aforesaid 2000 Rules makes it clear that the value of excisable goods, for the purposes of clause (b) of sub-section (1) of Section 4, should be determined in accordance with the said Rules. Therefore, it is clear that the valuation as per the Rules is permissible only in cases covered by Section 4(1)(b) and not by Section 4(1)(a). For the purpose of the issues on hand, it may not be necessary for us to dwell deep into the aforesaid rules.

92. Suffice it to say, that if a sale is covered by clause (a) of sub-section (1) of Section 4 (after amendment), the value of excisable goods shall be the 'transaction value'. This expression 'transaction value' is defined in clause (d) of sub-section (3) of Section 4. But if a case is not covered by clause (a) of sub-section (1) of Section 4, then the value of the excisable goods should be determined in accordance with the 2000 Rules.

93. Therefore, in essence, an adjudicating authority is obliged to do the following, in respect of transactions that took place after 01.07.2000:

(i) first, he must see whether there is a sale and

(ii) next, he must see if such sale satisfies the three conditions stipulated in clause (a) of sub-section (1) of Section 4.

94. In cases where there is a sale and the three conditions stipulated in clause (a) of sub-section (1) of Section 4 are satisfied, the adjudicating authority should determine the value based upon the transaction value. But (i) in cases where there is no sale and (ii) in cases where there is a sale but the three conditions stipulated in clause (a) are not satisfied, then the adjudicating authority should fall back upon the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

What the Adjudicating Authority and the Tribunal had and had not done in these cases

95. First, let us see what they did, before looking at what they did not. Broadly, in the batches of cases on hand (with one or two exceptions), the Adjudicating Authorities came to the following conclusions:

(i) that there was undervaluation and evasion of duty;

(ii) that in respect of sales effected both before and after 01.07.2000, the invoice value, together with the cash paid over and above the invoice value, would represent the normal price or the transaction value, as the case may be, and

(iii) that in cases where there was evidence to show that a dealer had paid more than the invoice value, the amount found to have been paid by such a dealer, though relatable only to a few out of the several transactions that he had with the assessee, should be taken to be the normal price or the transaction value, as the case may be, applicable to all the transactions that the particular dealer had with the assessee.

96. Similarly, what the CESTAT did in all these cases is:

(i) to uphold the finding of undervaluation and evasion of duty;

(ii) to hold that invoice price need not be taken as the normal price in respect of cases prior to 01.07.2000 and that wherever a particular amount is actually found to have been paid by a dealer, the same could be taken to be the transaction value, for cases after 01.07.02000; and

(iii) to hold that the determination of the normal price or the transaction value, as the case may be, should be confined only to the evidence available on record, but not to all the transactions across the board.

97. But the Adjudicating Authorities as well as CESTAT are also guilty of failure to do something in these batches of cases. They are:

(i) Failure to find out, in cases covered by Section 4(1) as it stood prior to 01.07.2000, whether there were sales in the course of wholesale trade, satisfying the 3 conditions prescribed therein, falling under clause (a) of sub-section (1) or whether the sales in question fell under clause (b) of sub-section (1) of Section 4;

(ii) Failure to find out, in cases covered by Section 4(1) as it stands amended by Act 10 of 2000 with effect from 01.07.2000, whether the sales in question fell under clause (a) or clause (b) of sub-section (1) of Section 4;

(iii) Failure to find out, in the event of the sales in question falling under clause (b) of sub-section (1) of Section 4 (before or after the amendment), whether the valuation had to be done only in accordance with the Rules (1975 Rules or the 2000 Rules, as the case may be), and

(iv) Failure to find out, in cases covered by Section 4(1)(b), the specific rule that is applicable among the 1975 or 2000 Rules, as there are different rules covering different contingencies, both in the 1975 Rules and in the 2000 Rules.

98. Since the Adjudicating Authorities as well as the CESTAT failed to make a determination as indicated above, we are of the view that the orders of remand passed by the Tribunal, though for completely different reasons, were justified. Hence the appeals are liable to be disposed of, confirming the orders of remand passed by CESTAT, with a clarification on the legal issues so that the Adjudicating Authorities know how to proceed.

Conclusion

99. In fine, these appeals are disposed of, confirming the impugned orders of CESTAT setting aside the Orders-in-Original passed by the Adjudicating Authorities and remanding the matters back for re-adjudication. However, while carrying out the exercise of re-adjudication, the Adjudicating Authorities should keep in mind the principles enumerated hereunder:

A. Cases where the period of assessment is prior to 01.07.2000

I. First ascertain the price at which such goods are ordinarily sold by the assessee to a buyer who is not related to him, in the course of wholesale trade, at the time and place of removal and also find out whether the price is the sole consideration for the sale. If the Adjudicating Authority is able to find this out, he may take such price as the normal price and treat the case as covered by Section 4(1)(a),

applying, wherever permissible, the prescriptions contained in the proviso to clause (a) of sub-section (1) of Section 4.

II. If the normal price is not ascertainable, either for the reason that the goods are not sold or for any other reason, then he may take it that the case would fall under Section 4(1)(b) and take recourse in such cases, to the Central Excise (Valuation) Rules, 1975.

III. The phrase "for any other reason" appearing in Section 4(1)(b) would include cases where the price charged in the course of wholesale trade is not discernible or where the same, though discernible, cannot be linked to delivery at the time and place of removal or where the price is not the sole consideration for the sale, even though the price charged in the course of wholesale trade for delivery at the time and place of removal are available.

IV. If the case falls under Section 4(1)(b) and the Adjudicating Authority takes recourse to the method of valuation prescribed in the 1975 Rules, he shall find out which among the relevant rules would apply to the cases on hand before proceeding with the valuation.

B. Cases where the period of assessment is after 01.07.2000

I. First ascertain the "transaction value", with particular reference to the definition of the said expression contained in Section 4(3)(d).

II. Apply the transaction value so ascertained, to cases where three conditions, namely (i) the goods are sold for delivery at the time and place of removal, (ii) the assessee and buyer are not related and (iii) the price is the sole consideration, are satisfied. This is because such cases will fall under Section 4(1)(a).

III. In cases where one or more of the aforesaid three conditions are not satisfied, and also in cases where there is no sale, the Adjudicating Authority should treat the cases as falling under Section 4(1)(b) and hence take recourse to the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

A IV. If a case falls under Section 4(1)(b) and the Adjudicating Authority takes recourse to the method of valuation prescribed in the 2000 Rules, he shall find out which among the relevant rules would apply to the case on hand before proceeding with the valuation.

B Principles applicable in common (both pre and post amendment)

C. The Adjudicating Authority may treat any amount received either in cash or otherwise, over and above the invoice value, as the value of excisable goods even in cases falling under Section 4(1)(a) (after the amendment), as the definition of "transaction value" under C Section 4(3)(d) means the price actually paid or payable.

D. The Adjudicating Authority shall keep in mind the fact that while the expression "normal price" was not defined in Section 4(1) before amendment, the expression "transaction value" is defined very exhaustively in Section 4(3)(d) and this definition is both inclusive as D well as exhaustive.

E. Wherever there is a finding that a particular dealer/ customer has paid a consideration over and above what is reflected in the invoice, the additional payment made by him together with the invoice value shall be taken to be the transaction value, for all the transactions that the E particular dealer/customer had with the assessee. In simple terms, if a dealer/customer has made 10 purchases during the period in question, for a particular value stated in the invoice, the transaction value determined on the basis of material relatable to a few out of those transactions, can be applied to all the transactions of that customer/ dealer across the board for that period. However, the same value cannot F be applied to the other dealers/ customers. This principle shall be followed in respect of cases arising after the amendment.

F. Since the matters are more than a decade old, the Adjudicating Authorities may conduct hearings, afford adequate opportunities to the parties and pass orders in original as early as possible.

G The appeals are disposed of accordingly. There will be no order as to costs.

Divya Pandey Appeals disposed of.