# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

## CUSTOMS APPEAL No. 87475 of 2024

(Arising out of Order-in-Original CAO No. 29/2024-25/CAC/CC(IMPORT-I)/VP/ADG(IMP-I) dated 26.07.2024 passed by the Commissioner of Customs (Import-I), New Custom House (NCH), Mumbai Customs Zone-I, Mumbai.)

**Govindji Gopalji & Sons** **.... Appellant**
**(Now known as GGS Infrastructure Private Limited)**
No.5, Kashiram Jamnadas Building, P.D. Mello Road,
Mumbai – 400 009.

Versus

**Commissioner of Customs (Import-I)** **.... Respondent**
New Custom House (NCH)
Shoorji Vallabhdas Road, Ballard Estate
Mumbai – 400 001.

**With**

## CUSTOMS APPEAL No. 87476 of 2024

(Arising out of Order-in-Original CAO No. 29/2024-25/CAC/CC(IMPORT-I)/VP/ADG(IMP-I) dated 26.07.2024 passed by the Commissioner of Customs (Import-I), New Custom House (NCH), Mumbai Customs Zone-I, Mumbai.)

**Dharmesh Govind ji Vadar** **.... Appellant**
305/306, Trapinex House.
No.15, Sholapur Street
Mumbai – 400 009.

Versus

**Commissioner of Customs (Import-I)** **.... Respondent**
New Custom House (NCH)
Shoorji Vallabhdas Road, Ballard Estate
Mumbai – 400 001.

Appearance:

Shri Chirag Shetty a/w Ms. Ayushi Agarwal, Advocates for the Appellants

Shri Deepak Sharma, Authorized Representative for the Respondent

**With**

## CUSTOMS APPEAL No. 87763 of 2024

(Arising out of Order-in-Original CAO No. 29/2024-25/CAC/CC(IMPORT-I)/VP/ADG(IMP-I) dated 26.07.2024 passed by the Commissioner of Customs (Import-I), New Custom House (NCH), Mumbai Customs Zone-I, Mumbai.)

**Commissioner of Customs (Import-I)** **.... Appellant**
New Custom House (NCH)
Shoorji Vallabhdas Road, Ballard Estate
Mumbai – 400 001.

Versus

**Govindji Gopalji & Sons** **.... Appellant**
**(Now known as GGS Infrastructure Private Limited)**
No.5, Kashiram Jamnadas Building, P.D. Mello Road,
Mumbai – 400 009.

**With**

**CUSTOMS APPEAL No. 87764 of 2024**

(Arising out of Order-in-Original CAO No. 29/2024-25/CAC/CC(IMPORT-I)/VP/ADG(IMP-I) dated 26.07.2024 passed by the Commissioner of Customs (Import-I), New Custom House (NCH), Mumbai Customs Zone-I, Mumbai.)

**Commissioner of Customs (Import-I)** **.... Appellant**
New Custom House (NCH)
Shoorji Vallabhdas Road, Ballard Estate
Mumbai – 400 001.

Versus

**Dharmesh Govind ji Vadar** **.... Respondent**
305/306, Trapinex House.
No.15, Sholapur Street
Mumbai – 400 009.

**And**

**CUSTOMS APPEAL No. 87765 of 2024**

(Arising out of Order-in-Original CAO No. 29/2024-25/CAC/CC(IMPORT-I)/VP/ADG(IMP-I) dated 26.07.2024 passed by the Commissioner of Customs (Import-I), New Custom House (NCH), Mumbai Customs Zone-I, Mumbai.)

**Commissioner of Customs (Import-I)** **.... Appellant**
New Custom House (NCH)
Shoorji Vallabhdas Road, Ballard Estate
Mumbai – 400 001.

Versus

**Dinesh Sharma** **.... Respondent**
Proprietor of M/s Reetika Road Lines
F-3, Flat No.2, Sector 3E/B, Opp Fire Brigade
Kalamboli, Navi Mumbai – 410 218.

Appearance:

Shri Deepak Sharma, Authorized Representative for the Appellant

Shri Chirag Shetty a/w Ms. Ayushi Agarwal, Advocates for the Respondents

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85608-85612/2026**

Date of Hearing: 13.02.2026
Date of Decision: 28.04.2026

**PER: M.M. PARTHIBAN**

These appeals being No. C/87475 and C/87476 of 2024 have been filed by M/s Govindji Gopalji & Sons (now known as M/s GGS Infrastructure Private Limited) and Shri Dharmesh Govind ji Vadar (herein after, referred together as 'the appellants'), assailing Order-in-Original CAO No. 29/2024-25/CAC/CC(IMPORT-I)/VP/ADG(IMP-I) dated 26.07.2024 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Import-I), New Custom House (NCH), Mumbai Customs Zone-I, Mumbai.

1.2 Revenue has also filed appeals being No. C/87763; C/87764 and C/87765 of 2024 against the appellants M/s Govindji Gopalji & Sons; Shri Dharmesh Govind ji Vadar and Shri Dinesh Sharma, assailing the impugned order to the extent it has adjusted voluntary payments claimed by the department to have been made against the duty demands in respect of part of the consignments beyond the extended period of limitation of time, against the duty demands confirmed for the normal period of time in the impugned order. Revenue also contends that this has not been proposed in the show cause proceedings and such adjustment of voluntary payment made offers the appellants a set off against the duty liabilities payable by them without any legal basis.

2.1 The brief facts of the case are that the appellants during the period January, 2006 to September, 2010 had imported 117 consignments consisting of 113 numbers of 'second hand/used cranes'; 4 consignments of its accessories and one another consignment of second hand crane by Shri Dinesh Sharma, by filing Bill of Entry with the jurisdictional Customs Commissionerate/House, seeking clearance of goods from Customs authorities at the port of import. The department assessed the imported goods on first check basis by subjecting the imported second hand cranes

to expert examination by local Chartered Engineer for its proper valuation in terms of the guidelines prescribed by the Central Board of Excise & Customs (CBEC).

2.2 On the basis of intelligence gathered by Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI) indicating that a number of second hand crane importers were involved in evading Customs duty by adopting modus-operandi involving multi-layered strategy of undervaluation of imported goods; suppression/manipulation of freight and insurance; fabrication of documents relating to bill of lading, invoice; and remittances of differential value suppressed which was transferred through unauthorised channels; accepting the benchmark value of Rs.40/- per kg. for the total weight of each crane for hassle-free clearance from jurisdictional Customs authorities etc., necessary investigation was conducted by DRI against such importers.

2.3 The appellant M/s Govindji Gopalji & Sons is one such importer whose import transactions were subjected to detailed investigation including search of various premises, recording of statements from various persons concerned, detention of 26 used cranes on 26.05.2011 under Supratnama dated 26.05.2011 at the premises of M/s Panch Mahal Warehousing Private Limited at Village Adivoli, Taloja, Raigad District, Maharashtra.

2.4 The investigation culminated in issue of Show Cause Notice (SCN) dated 04.04.2013, which was adjudicated by the Commissioner of Customs (Imports), Mumbai vide Order-in-Original dated 10.10.2014 in confirmation of all the proposals made for demand of differential duty, imposition of redemption fine and penalty on the appellants. In the appeal filed by the appellants in the first round of litigation, the Co-ordinate Bench of the Tribunal vide Final Order No. 85763-85766/2023 dated 24.01.2023 had remanded the matter back to the original authority with respect to the appellants herein. On reconsideration of the case afresh, the learned Commissioner of Customs (Imports), Mumbai vide Order-in-Original dated 26.07.2024 (which is impugned herein) had confirmed the differential duty of Rs. 8,35,01,181/- under Section 28 of the Customs Act, 1962 along with interest, arising on account of re-determination of the assessable value in respect of 81 second hand cranes and 4 consignments of its accessories by invoking extended period of limitation; confiscation of such imported goods under Section 111(m) ibid; imposition of redemption fine of Rs. 5 crore under Section

125(1) ibid; imposition of mandatory penalty equal to duty under Section 114A ibid; penalty of Rs.80 lakhs each on M/s Govindji Gopalji & Sons and Shri Dharmesh Govind ji Vadar under Section 114AA ibid; and another Rs.80 lakhs penalty on Shri Dharmesh Govind ji Vadar under Section 112(a) ibid. Further, he had confiscated 32 second cranes for which the assessable value was redetermined at Rs.13,70,33,060/- by allowing it upon payment of Redemption fine of Rs.1.50 crore and by imposition penalties on the appellants under Sections 112(a), 114A, 114AA ibid and similarly confirmed the adjudged demands in respect of one used crane imported by Shri Dinesh Sharma. Feeling aggrieved with the impugned order both the appellants and Revenue have filed these appeals before the Tribunal.

3.1 Learned Counsel for the appellants at the outset submitted that the issue of demand of differential duty arising on account of revision of assessable value is no longer *res integra* in view of the Final Order No. A/85324-85327/ 2022 passed by the Tribunal in the case of *Karim Jaria and Crown Lifters Pvt Ltd.* Vs. *Commissioner of Customs (Import-I), Mumbai* [2022 (4) TMI 948 – CESTAT MUMBAI]. He placed on record a table of comparison of facts in relied upon case and the case before the Tribunal, including the nature of imported goods i.e., used/second hand cranes; period of investigation; statements of customs broker and agent for alleged undervaluation of imported goods; method of valuation of goods based on chartered engineer's certification, to demonstrate that the factual matrix of both the cases are identical. Therefore, he submitted that the impugned order distinguishing the said order of the Tribunal from the case before the Tribunal is not proper. He further stated that the plea advanced by the department for having preferred an appeal in the case of *Crown Lifters Pvt Ltd.* and hence the said decision of the Tribunal cannot be taken as final, is not justifiable since the Hon'ble Bombay High Court has neither granted any stay nor has set aside the order of the Tribunal.

3.2 He further stated that value declared by the appellants is legally correct and it is as per the provisions of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. They had submitted all the requisite documents and obtained the local chartered engineer's certification for valuation of second-hand goods as per procedure prescribed by the CBEC in Circular No.4/2008-Customs dated 12.02.2008 for valuation of second-hand cranes. However, the department had incorrectly re-determined the value of imported goods on the basis of local purchase

price, comparable values available on the internet, NIDB data, prevalent market price etc. which he claimed is in not conformity with the Customs Valuation Rules, 2007. He further submitted that no subsequent demand of duty can be made in respect of imported second hand cranes on which duty was paid by loading the value declared at the time of import with the chartered engineer's report of the valuation of goods upon its physical examination on first check basis at the port of import.

3.3 Learned Advocate by relying on various case laws cited in their written submissions stated that extended period of limitation is not invokable in their case for demand of duty along with interest, since they were of bonafide belief that the value adopted by them is the correct value and they had also accepted the valuation done by the independent chartered engineers recognised by the department before clearing the goods from customs control. Further, as the appellants have declared in the Bills of Entry all the particulars as per invoice, and the goods were subjected to physical examination on first check basis, there is no ground to claim that any incorrect particulars were declared with an intention to evade duty for invoking the extended period of limitation and for confiscation of impugned goods and for imposition of penalty on the appellants.

4.1 Learned Authorized Representative appearing for Revenue reiterated the findings in the impugned order and submitted that the imported goods though were duly examined by the chartered engineers at the port of import, it is only during the investigation conducted by DRI that the entire modus operandi of evasion of customs duty was brought to the fore. These included suppression of freight, commercial terms of supply of goods, hawala remittances etc., Further, statements recorded from various persons involved in such imports also supported the involvement of customs brokers, shipping lines etc. Hence, he pleaded that the impugned order is legally sustainable.

5. We have heard both the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department and perused the case records along with the additional document given by both sides in the form of written submissions.

6. The following issues arise for determination before the Tribunal:

(i) whether re-determination/enhancement of the assessable value in respect of imported second hand cranes of 118 numbers, more specifically described as (a) enhancement of assessable value for 82

used cranes, 4 consignments of accessories under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [herein after, for short, referred to as "the CVR, 2007"]; (b) 32 consignments of used cranes under Rule 8 ibid; (c) one crane sold on High Sea Sales (HSS) basis under Rule 4 ibid, is proper and valid in terms of Section 14 of the Customs Act, 1962 read with Rules of 2007; and the confirmation of differential customs duty demands under Section 28 ibid is sustainable under the Customs statute;

(ii) Whether confiscation of imported second cranes and its accessories, more specifically confiscation of (a) 81 used cranes, 4 consignments of accessories (itemized under Annexures A-2 & A-3; Sr. No. 28 to 41 of Annexure A-1; Sr. No. 6 to 8 of Annexure A-4) (b) 32 used cranes (itemized under Sr. No. 1 to 27 of Annexure A-1; Sr. No. 1 to 5 of Annexure A-4) ; (c) one used crane under B/E No. 824766 dated 20.02.2007, under Section 111(m) ibid and consequent imposition of redemption fine under Section 125(1) ibid is sustainable or not;

(iii) Whether imposition of penalty on the appellants under Sections 112(a), 114AA ibid is legally sustainable;

(iv) finalization of provisional assessment in respect of one used crane imported vide B/E No.968060 dated 23.09.2010 and consequent determination of differential duty is sustainable;

(v) confiscation of imported goods i.e., used cranes under Section 111(m) ibid and consequent imposition of redemption fine under Section 125 ibid without seizure of the said goods is sustainable under the Customs statute

(vi) differential duty in respect of 32 consignments of appellant M/s Govindji Gopalji & Sons and 1 consignments of Shri Dinersh Sharma, relating to imports beyond the 5 years period from the date of issue of SCN, which was adjusted from the amount deposited voluntarily towards duty on imported goods, which has not been confirmed in the impugned order by the adjudicating authority is proper and justified in terms of the Customs statute.

7. The dispute between the appellants-importer and the department lies in determination of appropriate duties of customs payable on the imported goods, duly determining its assessable value for the purpose of calculation of duty under Section 14 of the Act of 1962 read with CVR, 2007. Further, it is also required to be determined whether the imported goods are liable for penal consequences of confiscation, redemption fine and the appellants concerned with such goods are liable for penalty under the various provisions of Customs Act, 1962.

8.1 Before we consider the issues under dispute along with the submissions made by both sides, it is important to note that the undisputed facts with the respect to the factual matrix of the case are as follows:

(i) These appeals were earlier heard by the Co-ordinate Bench of the Tribunal in C/85160, C/85914 & C/85915 all of 2015; along with one another appellant Shri A.K. Mani, proprietor of M/s AKM Enterprises in C/85168/2015 and the matter, except the appeal of Shri A.K. Mani, was remanded back to the original authority for *de novo* adjudication vide Final Order No.85763-85766/2023 dated 24.01.2023.

(ii) All the impugned goods/second hand cranes imported during the disputed period from January, 2006 to September, 2010 were subjected to physical examination by local chartered engineer and on the basis of value of goods determined by such technical expert, the proper officer of Customs at the port of import have assessed the import duty leviable of on such goods. Further, on the basis of such enhanced/ redetermined value of goods, the appellants have paid the Customs duty before taking clearance of imported goods from Customs control;

(iii) 26 numbers of second hand cranes lying at the premises of M/s Panch Mahal Warehousing Private Limited, Village-Adivoli, which were earlier imported by the appellant M/s Govindji Gopalji & Sons, were detained by DRI on 26.05.2011, and later the said goods were seized under Supratnama dated 26.05.2011 and was handed over to the warehouse keeper for safe custody;

(iv) the appellants, during the investigation have paid an amount of Rs.35 lakhs vide pay orders dated 24.12.2010 which was deposited by DRI vide challan dated 18.03.2011; similarly, appellants have also paid an amount of Rs.2.50 crore vide various pay orders dated 30th November, 2010; 1st,3rd,4th,7th and 8th of December, 2011 which were deposited by DRI vide challan dated 28.10.2011.

(v) on completion of the DRI investigation, SCN was issued on 04.04.2013 *inter alia* covering duty demands of import of goods covered under various B/Es mentioned in the Annexures-A,B,C,D.

(vi) in the de novo adjudication, learned Commissioner of Customs (Import) had offered cross examination of the persons whose statements were relied upon, and Shri Hakim Sheikh alone had attended cross examination on 16.01.2024 none of the other persons appeared.

8.2 In terms of the legal provisions under Section 2(2) of the Customs Act, 1962, the phrase “assessment” would mean determination of the duty

liability of imported goods including *inter alia* in arriving at the appropriate valuation of such imported goods as determined in accordance with the provisions of Section 14 ibid and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [herein after, for short, referred to as "the CVR, 2007"]; framed thereunder. Further, the provisions relating to search of premises, detention/seizure of goods involving customs offence, provisional release, confiscation, imposing redemption fine in lieu of goods, penalty on the persons etc. are also provided under the respective legal provisions of the Act of 1962. These are extracted for convenience of reference and given below:

> ***"Section 2. Definitions.*** *-*
> *(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;'*
>
> *Post amendment w.e.f.29.03.2018*
>
> *[1](2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—*
>
> *(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
>
> *(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
>
> *xxx xxx xxx xxx*
>
> *(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*
>
> *and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;*
>
> *(25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;*
>
> ***Section 12. Dutiable goods.*** *-*
>
> *(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*
>
> ***Section 14. Valuation of goods.*** *-*
> *(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may*

[1] *Substituted by the Finance Act, 2018, w.e.f. 29-3-2018.*

*be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

***Provided** that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*

*xxx xxx xxx xxx*

***Section 105. Power to search premises.***
*(1) If the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.*

*(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "[7][Principal Commissioner of Customs or] Commissioner of Customs" were substituted.*

***Section 110. Seizure of goods, documents and things***
*(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :*

***"Provided** that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer."*

*Post amendment w.e.f.01.08.2019*
***Provided** that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

***Section 111. Confiscation of improperly imported goods, etc.***
*The following goods brought from a place outside India shall be liable to confiscation :—*

*(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*

*xxx xxx xxx xxx*

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect;*

*xxx xxx xxx*

***Section 112. Penalty for improper importation of goods, etc.***

*Any person,—*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*shall be liable,—*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*

*(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher;*

*xxx xxx xxx*

*(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*

*(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*

*(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.*

***Section 114AA. Penalty for use of false and incorrect material.***

*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any*

*business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

***Customs Valuation (Determination of Value of Imported Goods) Rules, 2007***

***Definitions***

***Rule 2.*** *(1) In these rules, unless the context otherwise requires, -*

*xxx xxx xxx xxx*

*(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;*

*(d) "identical goods" means imported goods-*

*(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods,*

*(ii) produced in the country in which the goods being valued were produced, and*

*(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,*

*but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;*

*(f) "similar goods" means imported goods-*

*(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;*

*(ii) produced in the country in which the goods being valued were produced; and*

*(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,*

*(iv) but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;*

*(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;*

***Determination of the method of valuation***

***Rule 3.*** *(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

*(2) Value of imported goods under sub-rule (1) shall be accepted :*
*Provided that –*

*(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which-*
*(i) are imposed or required by law or by the public authorities in India; or*
*(ii) limit the geographical area in which the goods may be resold; or*
*(iii) do not substantially affect the value of the goods;*

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

*(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*

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

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

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

*(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;*
*(ii) the deductive value for identical goods or similar goods;*
*(iii) the computed value for identical goods or similar goods:*

*Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;*

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

*(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9.*

***Transaction value of identical goods*** *—*
***Rule 4.*** *(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued :*

***Provided*** *that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

*(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.*

*(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level*

*or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.*

*(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.*

*(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.*

***Transaction value of similar goods***

***Rule 5.*** *(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:*

***Provided*** *that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

*(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.*

*xxx xxx xxx xxx*

***Computed value***

***Rule 8.*** *Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-*
*(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;*
*(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;*
*(c) the cost or value of all other expenses under sub-rule (2) of rule 10.*

***Residual method***

***Rule 9.*** *(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India :*
***Provided*** *that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.*

*(2) No value shall be determined under the provisions of this rule on the basis of:-*
*(i) the selling price in India of the goods produced in India;*

*(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;*
*(iii) the price of the goods on the domestic market of the country of exportation;*
*(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;*
*(v) the price of the goods for the export to a country other than India;*
*(vi) minimum customs values; or*
*(vii) arbitrary or fictitious values.*

*xxx xxx xxx xxx*

***Rejection of declared value***
***Rule 12*** *(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

*(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)….”*

9.1 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the duties of customs payable on imported goods by properly determining the assessable value under Section 14 ibid read with the Rules of 2007. In the present case, the proper officer of customs at the port of import had assessed the duty payable on the imported second-hand/used goods after subjecting it to examination by independent local chartered engineer for determining the assessable value and levy of duty. However, on account of intelligence developed by DRI and upon conducting detailed investigation unearthing the modus operandi of multi-layered strategy of undervaluation adopted by the appellants, the Department had issued SCN dated 04.04.2013 demanding differential duty of customs payable on account of suppression of actual transaction value on which the imported goods were procured by the appellants and for determining the transaction value in terms of Rules of 2007 for 122 imported consignments, during the period commencing from January, 2006 to September 2010.

9.2 In terms of the legal provisions governing recovery of duties not levied or short levied or short paid, such duty can be recovered by issue of SCN within 5 years from the relevant date under Section 28 ibid. On perusal of the case records, it transpires that in respect of 32 consignments of imported second hand cranes by appellant M/s Govindji Gopalji & Sons and 1 consignment of imported second hand crane by appellant Shri Dinesh Sharma, were covered by various B/Es of dates 22.05.2006, 02.07.2006, 05.10.2006, 11.10.2006, 26.11.2006, 27.11.2006, 04.12.2006, 27.12.2006, 01.01.2007, 19.02.2007, 12.03.2007 and 31.01.2006. Since these imported consignments on which the appellants had paid customs duty at the time of its import before clearance from customs control on different dates, goes/dates back beyond the 5 years' time limit from the date of issue of SCN dated 04.04.2013, no duty demand can legally sustain in terms of Section 28 of the Act of 1962. In the SCN it has been stated that "*differential duty of (32+1 = 33 cranes) being beyond 5 years, is beyond time period under Section 28 of the Customs Act, 1962. However, differential duty having been deposited voluntarily, the same has been adjusted against duty evaded*." However, in the impugned order, the learned adjudicating authority did not confirm the duty demand in respect of these imports, which are beyond the statutory time limit of 5 years for issue of SCN in recovering the short levy and also did not appropriate the voluntary payments against such duty. Therefore, in our considered opinion re-determination/enhancement of the assessable value for 32 consignments of used cranes under Rule 8 ibid; and one crane sold on High Sea Sales (HSS) basis under Rule 4 ibid, for demanding duty is not proper and cannot sustain legal scrutiny in terms of Sections 14 and 28 of the Customs Act, 1962 read with Rules of 2007. Therefore, the appeal filed by Revenue for setting aside the voluntary deposit made by the appellants which was appropriated by the learned adjudicating authority towards the confirmation of adjudged demands within 5 years period, in order to enable such payment of duty for its appropriation or recovery of duty on such aforesaid consignments beyond 5 years period, is liable to be dismissed. Thus, the appeals filed by Revenue are liable to be rejected.

9.3 On careful perusal of the impugned order passed by the learned Commissioner, it transpires that out of the total 118 consignments of second hand cranes, in respect of one crane imported on high sea sale basis by Shri Dinesh Sharma vide B/E No. 824766 dated 20.02.2007, on

the basis of price actually paid for the goods when sold for export to India, the transaction value was adopted under Rule 4 of CVR of 2007 for demand of differential duty. Since, the transaction value has been adopted by the adjudicating authority, which was also accepted by the respondent importer Shri Dinesh Sharma in his voluntary statement which had not been retracted, there is no infirmity in terms of the method of valuation adopted by the learned adjudicating authority at paragraph 49.3 (ii) in the impugned order. Further, in respect of 32 consignments of second hand cranes, assessable value was re-determined by the adjudicating authority, under Rule 8 of CVR of 2007 at paragraph 49.2 (ii) in the impugned order; and similarly for 81 consignments of second hand cranes, assessable value was re-determined by the adjudicating authority, under Rule 9 of CVR of 2007 at paragraph 49.1 (ii) in the impugned order, on the basis of available evidence and industry practices being a method having well-reasoned, justified and aligns with the principles of CVR of 2007. In respect of second hand cranes of 81 consignments alone differential duty has been determined, being the imports covered within the extended period of time, and such redetermined value was used as a basis for determination of redemption fine and penalty [refer paragraph 49.1 (iii), (iv) to (xiii) in the impugned order]; however, in respect of other remaining consignments such redetermined value was only used as a basis for determination of redemption fine and penalty, without involving any demand of differential duty [refer paragraphs 49.2 (iii), (iv) to (vii) & 49.3 (iii), (iv) & (v) in the impugned order]. Therefore, it clearly transpires that the learned Commissioner had adopted Rule 8 and Rule 9 of CVR, 2007 for re-determination of assessable value of impugned goods.

9.4 In terms of legal provisions of Customs statute, if the requirements of Rule 3 of CVR, 2007 are not met inasmuch as there were certain situations as detailed in sub-rule (2) & (3) therein, such as existence of certain restrictions in disposition or use of imported goods or some conditions were there which could not be quantified for addition to the declared value or certain part of sale proceeds accrued to the buyer subsequently or sale between related persons etc., which have not been captured in the transaction value, in which case, the value for imposition of duty must be determined under one of the subsequent methods of valuation applied in sequential order from Rule 4 to Rule 9 *ibid*. Further, while determining the assessable value in terms of Section 14 ibid read

with Rules 3, 4, 5 of the Rules of 2007, the value of the goods shall be the transaction value, unless the same is rejected in terms of Rule 12 ibid and thereafter to proceed with Rules 4 to 9 sequentially. In the present case, the transaction value of second hand cranes were already rejected under Rule 12 ibid and was re-determined by the proper officers of customs at the port of import, on the basis of independent chartered engineer's assessment, which is in compliance with the instructions issued by the CBEC vide Circular No.4/2008-Customs dated 12.02.2008 and the earlier Circular No. F. No. 493/124/86-Cus.VI dated 19.11.1987 for assessment of second hand goods. Therefore, in order to again re-determine the assessable value, there should be specific evidence on the basis of which the duty that escaped assessment or duty short levied could be confirmed on the appellants importer. It is on record that the learned Commissioner has justified the valuation methodology for confirmation of the adjudged demands on the basis of two grounds viz., (i) offer prices of purportedly similar cranes available for sale on the internet, primarily for the years 2011-2013, duly adjusting for a deduction of 15% as 'margin for bargain', contemporaneous exchange rates, addition of actual freight and calculated insurance charges; (ii) statement from industry experts to state that used cranes typically ranges between Rs.80,000/- to Rs.1,20,000/- per ton of lifting capacity, particularly for cranes of more than 15-20 years old, duly adjusting for a deduction of 10% for margin of profit, transportation and general expenses of 10%, actual customs duty paid and landing charges from ascertained market price. Therefore, the learned Commissioner has upheld the re-determined assessable value under Rule 8/9 of CVR of 2007, in the impugned order.

9.5 We have carefully gone through the CBEC vide Circular No.4/2008-Customs dated 12.02.2008 issued in furtherance to Circular No. F. No. 493/124/86-Cus.VI dated 19.11.1987. The extract of the same is given below:

***"Circular No. 4/2008-Cus.,***
***dated 12-2-2008***

***F. No. 467/34/2006-Cus.V***
*Government of India*
*Ministry of Finance*
*(Department of Revenue)*
*Central Board of Excise & Customs,*
*New Delhi*

***Subject: Valuation practice of second hand machinery to be adopted by all Custom Houses/ Customs Commissionerates - Regarding***

*It has been noticed that the Custom Houses/Customs Commissionerates have been adopting different assessment practices with regard to valuation of imported Second Hand Machinery/Capital Goods. As this was resulting into diverse assessments the following guidelines are being issued so that assessments are done as far as possible on their basis.*

*2. A careful analysis of the Tribunal decisions and an Apex Court judgment on the issue of valuation of second-hand machinery reveal the following views of the judiciary :*

*(i) If other parameters of Section 14 of the Customs Act, 1962 are satisfied, the transaction value method of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 can also be applied to importation of second-hand machinery sold for export i.e. it was imported immediately after sale without any further usage abroad.*

*(ii) However if transaction value of Rule 3 is rejected, valuation of second-hand machinery can be done under Rule 9, on the basis of value of new machine, as certified by the Chartered Engineer, and scaled down by allowing depreciation commensurate with the period of usage. Supreme Court judgment in the case of Gajra Bevel Gears [2000 (115) E.L.T. 612 (S.C.)] refers in this regard.*

*(iii) However, transaction value of Rule 3 cannot be rejected by ab initio application of Rule 9, inasmuch as one cannot, before rejecting transaction value of Rule 3 with sufficient evidences, straightaway arrive at a notional value under Rule 9.*

*3. It may thus be seen from the judicial decisions that, before redetermination of value of second hand machinery under Rule 9, it is essential to reject the transaction value of Rule 3. There would be no difficulty in rejection of transaction value in those cases where the assessing officer is able to assail the documents like Chartered Engineer's Certificate, invoice, etc., as manipulated or fraudulently obtained. Similarly, there will also be no difficulty in rejection of transaction value in cases where the assessing officer proves that certain basic particulars like description, period of usage, extent of the re-conditioning, year of manufacture, model no., price when new, etc., are mis-declared either in the Chartered Engineer's Certificate or in the invoice. There will also be no difficulty in rejecting the transaction value in cases which are hit by the provisions to Sub-Rule (2) of Rule 3. Difficulties may however be faced in situations other than those described above.*

*4. In this context, attention of the assessing officers is drawn to Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which provides for rejection of declared value under certain circumstances. Following views have emerged from various Tribunal decisions on the application of Rule 12 :*

*(i) Rule 12 empowers the Revenue not to determine the value of the imported goods on the basis of transaction value under Rule 3(1) of the Valuation Rules. The Tribunal decision in the case of Chandni International [2003 (153) E.L.T. 312] refers.*

*(ii) Rule 12 provides that when the proper officer has reason to doubt the truth or accuracy of the value declared, he may ask the importer to furnish further information or other evidence. If he still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of the goods cannot be accepted. It is therefore required to determine whether the evidences constitute reasonable doubt for the assessing officer to doubt the value of the goods. The Tribunal decision in the case of Sunny Enterprises [2004 (175) E.L.T. 420] refers.*

*(iii) Rule 12 is a procedural provision, which is meant to act as an aid in determining as to whether Sub-Rule (1) or Sub-Rule (4) of Rule 3 would be applicable in a given case. This deeming provision contained in Rule 12 has necessarily to be pressed into service at the very initial stage under the sequential scheme. It has no role after the scheme has worked out. The Tribunal decision in the case of Venus Insulation Products Mfg. Co. [2002 (143) E.L.T. 364] refers.*

*5. Thus in respect of valuation of second hand machineries as well, the assessing officers may apply Rule 12 in appropriate cases. As an illustration, if the declared value of a second hand machinery is found to be much below the value arrived at by the depreciation method on the basis of the certified price of the new machinery in the year of its manufacture, the assessing officer may have reason to doubt the truth or accuracy of the declared value, and ask the importer to furnish further information and explanation. If he is satisfied, he may accept the declared value. But, if he still has reasonable doubt about the truth or accuracy of the declared value, he can reject the declared value under Rule 12, and proceed to re-determine the value under Rule 9 by following the Board's Circular No. F. No. 493/124/86-Cus. VI, dated 19-11-1987 in respect of the depreciation to be extended to such second hand machinery.*

*6. In fact, for other imported goods as well, the method for acceptance or rejection of declared value, and then re-determination of value in case the declared value is rejected, would be similar to that in the case of second hand machinery, as explained hereinabove.*

*7. In cases where the declared value is rejected, and assessable value is re-determined, the assessing officer shall issue a detailed speaking order, giving the reasons for such rejection, by invoking the provisions of Rule 12 or Rule 3(2), as appropriate, and giving the reasons for re-determination of value under appropriate provision.*

*8. Guidelines in respect of some other issues related to valuation of second hand machinery are as follows :*
*(a) For valuation of second hand machinery/capital goods, the assessing officers must insist on importers submitting a certificate issued by an independent Chartered Engineer or any equivalent in the country of supply. The certificate should indicate inter alia :*
*(i) Price of new machinery as in the year of its manufacture,*
*(ii) Current CIF value of new machinery if purchased now,*
*(iii) Year of the manufacture of machinery,*
*(iv) Sale price of the supplier,*
*(v) Present condition of machinery,*
*(vi) Nature of reconditioning or repairs carried out, if any, and the cost (including the dismantling cost, if any) thereof,*

*(vii) Expected life span.*

*(b) There is no need to specify the agencies whose certificates alone, issued at the port of loading, would be accepted. The number of such agencies should not be limited.*

*(c) In the absence of proper Load Port Certificate, a local Chartered Engineer's Certificate may be accepted. Each Custom House may consider issuing Public Notices giving names and addresses of Chartered Engineers, whom the trade can contact for issuance of CE Certificate.*

*(d) It is not essential to have the examination of the second hand machinery by a panel of officers, since in many Customs formations no machinery expert is posted. The routine examination of second hand machinery being done by the Docks staff shall continue.*

*9. The aforesaid guidelines regarding valuation of second-hand Machinery as contained in foregoing paragraphs 3 to 8 shall be strictly followed.*

*10. Any difficulty in the implementation of the foregoing guidelines may be brought to the notice of the Directorate General of Valuation, Mumbai with a copy to the Board."*

From the above, it clearly transpires that assessment of imported second hand cranes have to be done in terms of legal provisions of the Customs statute and the various Rules under CVR of 2007 have to be followed sequentially and Rule 9 ibid cannot be adopted straight away, ignoring the other rules. Further, method of valuation under Rule 8 of CVR, 2007 is to be determined on the basis of computation of value of materials, processing or fabrication charges, profit margin etc., of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India. Further, the method of valuation of goods Rule 9 of CVR 2007 should be on reasonable means consistent with the principles and general provisions of the rules of CVR, 2007 and on the basis of data available in India. In adopting such method, the learned Commissioner had relied upon the statement of two persons viz. S/Shri Praveen Chawla and Hardayal Singh, who are stated to be industry experts providing the value of used cranes on the basis of tonnage of lifting capacity. Such determination at the most could be termed as thumb rule value, as no basis for such determination has been provided in the impugned order, while accepting such method as the basis for re-determination of assessable value. Further, we also find that such a practice or procedure does not find place in the CBEC instructions (supra). Furthermore, it is not the case of the department that they had recovered certain parallel invoices indicating the actual transaction value or actual auction value, for sustaining the demand of differential duty.

9.6 In the remand proceedings concluded vide the impugned order, consequent to the Final Order No.85763-85766/2023 dated 24.01.2023 of the Tribunal, the learned Commissioner had *inter-alia* offered for cross-examination of the various persons, whose statements were relied upon in the proposals made in the SCN for demand of differential duty. These persons included Shri Hakim Shaikh, Director of Huda Equipments Private Limited, Thane (West); Shri Dinesh Sharma, Proprietor of M/s Reetika Road Lines, Kalamboli, Navi Mumbai; Shri Nizar Rangara, Chairman-cum-Director of M/s Rangara Industries Private Limited, Mumbai; Ahri A.K. Mani, Proprietor of M/s AKM Enterprises, Chennai; Shri Anand Kumar Manath, Director of M/s N.M.T. Shipping Private Limited and Shri Brijesh Gala. However, no record of cross-examination has been made available as none of the above persons, except Shri Hakin Shaikh has appeared before the adjudicating authority. In the record of cross-examination of Shri Hakin Shaikh dated 16.01.2024, inter-alia it is mentioned by him that he stands by the reply filed to the SCN and also stated that the goods were imported as per documents submitted at the time of import i.e., invoice supported by chartered engineer certificate. He also stated that there was no under valuation of second hand cranes done by him. In respect of opportunity for providing cross-examination of the persons whose statements are relied in the adjudication and on the issue of under-valuation of goods, we find that this Bench of the Tribunal in the case of *Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II* - (2024) 16 Centax 503 (Tri.-Bom) have held that when the Bills of entry was already assessed at time of importation of goods and said assessment orders were not been appealed against/reviewed and, thus, had attained finality, further proposal to re-enhance value could not be proceeded with for rejection of declared value; and the statements of witnesses/importer are not admissible as evidence unless proper procedure as prescribed under the statute is followed duly affording the opportunity of cross examination. Thus, it was held that the allegation of undervaluation of imported goods on basis of such documents and witnesses was not sustainable. The relevant paragraphs of the said order is quoted below:

> ***"12.*** *It is submitted by the Learned Counsel for the appellant that the adjudicating authority had not examined the witnesses, as per the provisions of Section 138B of the Act, 1962. In this context, we find that the Hon'ble Delhi High Court, in the case of J&K Cigaratte v. Collector of Customs - 2009 (242) E.L.T. 189 = 2011 (22) S.T.R. 225 (Del.), while dealing with Section 9D(1) of the Central Excise Act, 1944 (Parimatria*

*to Section 138B of the Customs Act, 1962) have held that the procedure as prescribed in the statute is required to be followed for proving the truth of the statement. The said decision of the Hon'ble Delhi High Court has also been relied upon by the Hon'ble Punjab & Haryana High Court, in the case of G-Tech Industries v. Union of India - 2016 (339) E.L.T. 209 (P & H). We find force in the submissions of the Learned Counsel for the appellant that the adjudicating authority has not followed the procedures prescribed under section 138B of the Act, 1962. We are also in agreement with the Appellant that the statements of witnesses cannot be relied upon as Learned Adjudicating authority not conducted cross-examination. Hence, on this ground also demand of duty cannot be sustained.*

***13.** We also noticed that the Adjudicating authority in order to justify the under valuation, has relied upon the statements of partners of the appellant's company. However, the Appellant has objected to such reliance, as the statements were retracted. The Appellant has pleaded that retracted statements cannot be accepted as evidence for confirmation of demand. The adjudicating authority in the impugned order has chosen not to consider the retraction. We are of the view that the said approach of the adjudicating authority is incorrect. Be that as it may, we note that statements cannot be the sole reason to confirm the charge of undervaluation. We also note that in the present matter there are no evidences produced by the department that the excess amount over and above the invoice price was paid to suppliers. There is no evidence as to how the Appellant came into possession of cash alleged to be differential amount towards goods imported, nor there is any evidence of any cash being handed over to any person, representing suppliers in India. Department had failed to produce corroborative evidences regarding the undervaluation of imported goods. Hence, in our view, the charge of undervaluation of imported goods in the present matter is not sustainable.*

***14.** Further, we also find that in respect of disputed imported goods, Bills of entry were already been assessed at the time of importation of the goods and hence, further proposal to re-enhance the value, in the eventuality, when the earlier assessment orders having not been appealed against/reviewed, have attained finality and accordingly, cannot be proceeded with for rejection of the declared value. In other words, there cannot be any re-assessment of the said values, which had become final for want of appeal against the same. Our views are supported by the judgments in case CC v. Lord Shiva Overseas (supra), Malhotra Impex v. Commissioner of Customs, Ahmedabad - 2006 (203) E.L.T. 561 (Tri.-Del.) and Commissioner of Customs (Prev.), v. Paras Electronics - 2009 (246) E.L.T. 231 (Tri.-Mumbai)/2009 taxmann.com 923 (Mum. - CESTAT).”*

The department being aggrieved with the above order of the Tribunal filed Civil Appeal Diary No. 4161 of 2024, wherein the Hon’ble Supreme Court had dismissed the appeal of Revenue by upholding the Order of the Tribunal. Therefore, we do not find any merits in confirmation of the

adjudged demands by the learned Commissioner on the basis of re-determination of assessable value, without effectively contesting the value firstly determined by the proper officers of customs in the port of import on the basis of independent chartered engineer's certificate and on the basis of statements recorded from various persons, whose cross-examination could not be conducted by him. Hence, on this ground also demand of duty cannot be sustained.

9.7 Further, the Co-ordinate Bench of the Tribunal vide Final Order No. A/85324-85327/2022 dated 12.04.2022 passed in the case of *Karim Haria and Crown Lifters Private Limited* (supra) have held that since there was no ascertainment of the actual purchase price of second hand/used cranes purchased through auction, re-determination of value on the basis of alleged payments made through non-banking channels etc. is not sustainable particularly in the absence of corroboration of evidences and its test of cross-examination and its relevancy. It was also held in this case that there was no allegation of the imported goods being prohibited or correct duties have been not discharged before its clearance from customs control. Thus, the subsequent findings of undervaluation could at the most be limited to re-assessment for levy of differential duty that had escaped and this cannot transform into penal consequences. Accordingly, the differential duty demanded by the department and confiscation of goods, consequential penalties imposed was set aside. The relevant paragraphs of the said order are extracted and given below:

> *"6. We have held supra that the 'acceptance' of the voluntary payment is beyond the framework of the proceedings as determined by the proposals in the show cause notice and, with that having been set aside, the Tribunal lacks jurisdiction to address retention of such amount for any purpose, including as restitution towards duty that has been short-paid. Nonetheless, the finding in the impugned order that this payment of duty was voluntary, and even despite being beyond the period of limitation and in the absence of any threat or coercion from customs authorities, does throw some light on the bona fides of the importer who, indeed, was not under legal obligation to do so. The prevailing practice of assessment on the basis of weight which has seemingly been followed by M/s Crown Lifters is also on record. There has been no ascertainment of the actual purchase price of each of the nine 'used cranes', which surely must be available considering that these were sourced at auctions, by the adjudicating authority. The initiation of proceedings for confiscation under section 111(m) of Customs Act, 1962 and penalties under section 112 and section 114AA of Customs Act, 1962 must be viewed through that prism.*

*7. Clearance of goods for home consumption, in exercise of authority under section 47 of Customs Act, 1962 and subject to satisfaction of 'proper officer' that the goods are not prohibited and that the correct duties have been levied, attains a finality thereby that can be disturbed only upon subsequent finding that the goods are prohibited or that short-payment of duty has occurred with the latter to be re-opened only within the stipulated time-frame. There is no allegation of the goods being prohibited and, indeed, recourse to confiscation under section 111(m) of Customs Act, 1962 repudiates that contingency. The discharge of correct duty liability is a determination of rate of duty, under section 12 of Customs Act, 1962, and value determined in the manner prescribed in section 14 of Customs Act, 1962. The first is not in dispute as far as the impugned goods are concerned and the show cause notice has not proposed recovery of duties of customs on goods imported by M/s Crown Lifters; valuation, under the authority of section 14 of Customs Act, 1962, is limited to assessment. In the glaring absence of proposal in the present proceedings for levy of differential duty, recourse to valuation merely for the purpose of resorting to confiscation is to transform it from penal consequence to cause of action. Hence, it would appear that confiscation is disproportionate detriment and without any justification to cause such detriment. Consequently, confiscation of nine 'used cranes' imported by M/s Crown Lifters fails along with the penalties arising therefrom.*

*11. It was after going through the re-determination of value, the confiscation and the imposition of penalty that the Tribunal found it fit to reject all the conclusions in the order impugned therein for want of credibility of the statements relied upon in the absence of cross examination. That order of remand, and its contents, had not been challenged by Revenue in appeal. In such circumstances, it was gross impropriety on the part of the adjudicating authority, and subordinate to the Tribunal, to allege failings in the remand order - the exclusive privilege of the constitutional courts - and reflects his determined obduracy to stand by the first adjudication order. Furthermore, the order now impugned has not relied upon any evidence to corroborate the statements upon which the first adjudication was based. Neither has there been any attempt at ascertainment of the actual transaction value other than by way of the 'confessional statements' of the noticees purportedly being corroborated by the operator of 'illicit fund transfer' and whose cross-examination, sought for specifically in the de novo proceedings, was peremptorily discarded with the specious contention that the deposition merely supplemented the confession of the noticees. A more blatant case of violation of the principles of natural justice may yet have to surface and is, thereby, clear contravention of a specific direction in the remand order.*

*12. While we find no reason to disapprove the rejection of request for cross-examination of some investigating officials and of persons whose statements had not been relied upon for initiation of proceedings, the finding of the adjudicating authority that the statement of Shri Brijesh Gala, despite being corroborative of the confessions in the statements of the noticees, was not of such relevance as to warrant cross-*

*examination is unacceptable. More so, in the absence of any other evidence to support the allegation of undervaluation and which has not relied upon the authority of the several methods prescribed in the Rules framed under section 14 of Customs Act, 1962. We, therefore, are constrained to hold that the re determination of assessable value by resort to rule 3 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 is not in accordance with law. The re-assessment, recovery of differential duty and confiscation of 'used cranes' imported by M/s Crown Lifters Pvt Ltd in the impugned order fails.*

*13. Accordingly, we set aside the order for confiscation of the 'used cranes' imported by both entities under section 111 (m) of Customs Act, 1962 along with the consequential penalties under section 112 of Customs Act, 1962. We also set aside the penalties imposed on the noticees under section 114AA of Customs Act, 1962 as also the recovery of differential duty under section 28 of Customs Act, 1962 from M/s Crown Lifters Pvt Ltd."*

9.8 We further find that the appeals filed by the department vide CUAPP/31/ 2023 and CUAPP/37/ 2023 against Crown Lifters P Ltd., and Crown Lifters, respectively, the Hon'ble High Court of Bombay had assigned the filing number to the appeals on 29.09.2023 by registering the same, and had not given any hearing or given any stay against the order of the Tribunal, as on date. Therefore, we do not find any justifiable ground for taking a decision contrary to the above order passed by the Co-ordinate Bench of the Tribunal on the same set of facts.

10.1 In the impugned order, the learned adjudicating authority has held that confiscation of goods have been established due to under valuation of imported goods through confessional statements, manipulated invoices, predetermined valuation of goods based on weight of goods rather than on actual transaction value, remitting differential amounts abroad through illegal hawala transactions etc. For the purpose of confiscation of the imported goods, he was of the understanding *that the power of confiscation is a separate provision aimed at addressing contravention is of customs regulations, including valuation rules, and is not strictly bound by the limitation period applicable to duty demands under section 28 of the Act.* Therefore, he had imposed redemption fine on these goods on the ground that there were held liable for confiscation under section 111 (m) ibid and stated that *physical unavailability of the goods do not undermine the validity of the proposed confiscation*, by relying on the judgement of the Hon'ble Madras High Court in the case of *Visteon Automotive Systems India Limited Vs. CESTAT, Chennai* - 2018 (9) G.S.T.L. 142 (Mad.). On careful

perusal of the relied upon case, we find that the facts of the case therein are entirely different from the present case before us and the ratio of said referred case is not applicable to the present case. In the case of *Visteon Automotive Systems* (supra) the imported goods found in excess or were not included in the declaration made under Section 77 ibid, and it was held that once power of authorisation for confiscation of goods gets traced to the Section 111 of the Act of 1962, then the physical availability of goods is not so much relevant. In the present case before us, the imported goods were duly declared in the declaration under Section 77 ibid i.e., in the B/Es, and after subjecting the goods for physical examination, verification of the value through independent local chartered engineer, the import duty was assessed by the proper officer of customs and thereafter upon payment of such duty, the imported goods were cleared out of customs control. Unlike the facts in the relied upon case, where the goods were found excess/not declared, in the present case the goods were very much available for action as deemed fit by the proper officer of customs at the first instance of import and thereafter after clearance, during the investigation conducted by DRI, they had also detained/seized certain imported goods from the custody of the warehouse premises. Therefore, there is no ground to claim that in the absence of imported goods not being available, the redemption fine can be imposed in lieu of confiscation of such goods.

10.2 Further, on harmonious reading of the various provisions relating to 'search, seizure under arrest' under Chapter XIII and 'confiscation of goods and conveyances, imposition of penalties' under Chapter XIV as the Act of 1962, we find that under Section 105 ibid, if the Assistant Commissioner of Customs (AC) or Deputy Commissioner of Customs (DC) has reason to believe that any goods, documents or things that are liable for confiscation are secreted in any place then he may authorise any officer of customs, for conducting search of the premises for search of such goods etc. During the search process of the premises, if the proper officer of customs has reason to believe that any goods are liable for confiscation, then he may affect seizure of such goods under Section 110 ibid. The specific reasons by which any imported goods are liable for confiscation are itemized in detail in clauses (a) to (q) of Section 111 ibid. Once the goods are authorised for confiscation in the above process under Section 111 ibid, then in new of confiscation and option to pay fine can be imposed under Section 125 ibid. For the present case, the relevant clause (m) of Section 111 ibid had been

invoked for imposing redemption fine. On reading the relevant clause (m), it transpires that in respect of value or in any other particular relating to imported goods, if the particulars declared do not correspond, then such goods shall be liable to confiscation. From the facts of the case, it is evident that the value declared by the appellant-importers were not accepted by the proper officer of customs as the nature of goods were used/second hand, and therefore the value of the goods was re-determined as per the guidelines prescribed in the Circulars issued by CBEC (supra) for import of second-hand goods. Therefore, the mis-match between the actual value of imported goods as determined by the department in their re-determination of assessable value and the value of imported goods as per invoice declared by the appellants-importer in the declaration, does not result in mis-declaration per se, but is a subject matter of re-assessment by proper officer in terms of Section 17 of the Act of 1962. In the absence of any ingredient as itemized under various clauses of (a) to (q) of Section 111 ibid, having been proved to be in the present case, we find that it is not feasible to invoke the provision of Section 112(a) and/or Section 114AA ibid for imposition of penalty on the appellants.

10.3 As regards the goods cleared under provisional assessment vide B/E No. 968060 dated 23.09.2010 (Sl. No. 8 of Annexure-A-4) the impugned order had demanded the differential duty of Rs.29,43,891.87/- which had also been proposed for appropriation without any penal action. Thus, such action of the adjudicating authority would amount to finalization of provisional assessment of imported goods under Section 18 ibid. Since, such finalization of assessment was on the same basis as discussed in paragraph 9.3, 9.4 above and no specific findings were given for adoption of CIF value at higher prices by the adjudicating authority. Hence, we do not find that the differential duty demanded in this regard is justifiable and proper in terms of the legal provisions of Section 14 ibid and CVR of 2007.

11. In view of the above analysis of the statutory provisions vis-à-vis the facts of the case, and our observations and findings on such issues, we are of the opinion that the duty demand confirmed against the appellants-importer and penalties imposed upon them are not sustainable. For the same reason, the penalty imposed on the co-appellants namely, Shri Dharmesh Govind ji Vadar and Shri Dinesh Sharma is also not sustainable. Therefore, the impugned order confirming the adjudged demands on the appellants is *set aside* and the appeals are allowed with

consequential relief to the Appellants, as per law. Appeals filed by Revenue against the impugned order to the extent it has not confirmed the duty demands in respect of part of the consignments being barred by limitation of time and non-imposition of penalty on the appellants M/s Govindji Gopalji & Sons; Shri Dharmesh Govind ji Vadar and Shri Dinesh Sharma, being not sustainable and are thus dismissed.

12. In the result, by setting aside the impugned order dated 26.07.2024 to the extent as discussed above, the appeals filed by the appellants are allowed in their favour; and the appeals filed by Revenue is dismissed.

(Order pronounced in the open court on 28.04.2026)

**(S.K. Mohanty)**
**Member (Judicial)**

**(M.M. Parthiban)**
**Member (Technical)**

*SM*