

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No. 41665 of 2014

(All arising out of Order in Original No. 28/2014 dated 7.5.2014 passed by the Commissioner of Customs, Tuticorin)

M/s. Sri Abhisek India

No. 2/800/U, Shanmuga Nagar
S.N. Puram Road, Sivakasi – 626 124.

Appellant

Vs.

Commissioner of Customs

Custom House
New Harbour Estate
Tuticorin – 628 004.

Respondent

With

- (i) Customs Appeal No. 41666/2014 (Ramdev Purba)
- (ii) Customs Appeal No. 41667/2014 (Abhisek India)
- (iii) Customs Appeal No. 41668/2014 (Ramdev Purba)

APPEARANCE:

Shri A.K. Jayaraj, Advocate for the Appellant

Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40217-40220/2026

Date of Hearing: 19.08.2025

Date of Decision: 17.02.2026

Per M. Ajit Kumar,

These appeals are filed against Order in Original No. 28/2014 dated 7.5.2014 passed by the Commissioner of Customs, Tuticorin (impugned order).

2. The brief facts of the case are that based on intelligence regarding undervaluation in the import of slack wax and residue wax, the Directorate of Revenue Intelligence (**DRI**) initiated an investigation against the importers M/s. Abhisek India (**AI**) and M/s. Sri Abhisek

India (**SAI**). M/s. SAI is owned by Shri Ramdev Purba, while M/s. AI is owned by his wife, Smt. Vinod Purba. Both entities operated from the same premises in Sivakasi, engaged in the import and sale of slack wax and residue wax, and were effectively managed by Shri Ramdev Purba. Pursuant to search and seizure operations conducted on 30.09.2011, it was found that AI had filed Bill of Entry No. 4895987 dated 12.10.2011 for the clearance of residue wax. Examination by DRI on 14.11.2011 revealed that 71.530 MT of residue wax valued at ₹46.75 lakhs had been imported from M/s. Harmony Impex FZE, Dubai, UAE. The declared value appeared significantly lower than contemporaneous import prices, including prices charged by the same supplier to another importer, M/s. The Mehta Industries, Sivakasi. The goods were seized under the Customs Act, 1962. Samples were analysed by the Chemical Examiner, Customs House, Tuticorin, who reported that the product consisted of mineral hydrocarbon oil and mineral wax, containing 69.3% mineral hydrocarbon oil. DRI also examined three additional Bills of Entry (Nos. 4895489 dated 12.10.2011, 4966978 dated 19.10.2011, and 5345063 dated 30.11.2011) filed by SAI. The consignments, containing brown wax-like substances identified as heavy slack wax valued at ₹54.25 lakhs and ₹53.3 lakhs, were also seized due to undervaluation when compared with contemporaneous imports from the same supplier. Chemical examination confirmed that the first two consignments contained mineral wax with 20.3% and 21.3% mineral hydrocarbon oil, respectively, characteristic of slack wax. The third consignment had a mineral hydrocarbon oil content of 51.7%. The said seized goods were provisionally released as per the directions of the Hon'ble Madras

High Court, upon payment of applicable duties. In addition to the above live consignments, AI had filed 22 Bills of Entry for slack wax and residue wax between March 2008 and November 2011, all of which had been provisionally assessed pending test results. Based on the investigation, a Show Cause Notice was issued proposing rejection of the declared value under Rule 12 of the Customs Valuation Rules, 2009, redetermination of value under Rules 3, 4, and 9, and recovery of differential duty on 23 Bills of Entry filed by AI and 3 filed by SAI, along with interest and penalty on Shri Ramdev Purba. After adjudication, the Commissioner confirmed the differential duty demand with interest and imposed penalties. Hence this appeal.

3. The learned Advocate Shri A.K. Jayaraj appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 The Ld. Counsel Shri A.K. Jayaraj submitted that:

A) The declared transaction value must be accepted unless it is conclusively proved that the buyer and seller are related or share mutuality of interest and that price is not the sole consideration. This principle stands authoritatively settled by the Hon'ble Supreme Court in **Union of India Vs Mahindra & Mahindra Ltd.** - 1991 (55) ELT 15.

B) Allegations of undervaluation must be established by cogent, corroborative evidence, including proof of mutuality of interest and clandestine remittances. In the absence of examination of the foreign supplier or reliance on supporting documents, rejection of invoice value is unsustainable and vitiates the proceedings.

C) Even under Rule 8, valuation must be derived, to the greatest extent possible, from previously determined values under Rules 4 to 7; however, the Show Cause Notice itself excludes Rules 4 and 7. Reliance on Rules 5 or 6 without satisfying strict statutory comparability under Section 14(1)(a), as held in **Honesty Traders, Eicher Tractors**, and **Sandip Agarwal**, renders the enhancement impermissible.

D) Issuance of demand under Section 28 prior to finalization of provisional assessment is without jurisdiction, as held in **ITC Ltd.** and **Godfrey Philips India Ltd.** Once assessment is provisional under Section 18, invocation of Sections 124, 111(m), and 112 is premature and renders the proceedings unlawful.

E) Reliance on prices of M/s SPPL is wholly untenable due to lack of parity in oil content, a critical price-determining characteristic of wax products. SPPL invoices do not disclose oil content, while the appellant's test reports show wide variation, defeating comparability.

F) Allegations of non-declaration of country of origin, invoice fabrication, and conspiracy are baseless and unsupported by evidence such as parallel invoices or proof of additional consideration. The proposed re-determination based on account statements and proforma invoices reflects patent non-application of mind and violates the Customs Valuation Rules, 2007.

G) Fixation of purported minimum prices and extrapolation of later-year price trends amount to prohibited minimum value fixation under Rule 9. The valuation is speculative and arbitrary, particularly where the proposed values exceed the price of the finished product itself.

H) Reliance on a post-seizure email dated 30.11.2011 is legally untenable and lacks evidentiary value. The proceedings are further vitiated by denial of an effective opportunity of personal hearing.

I) The imposition of redemption fine under Section 125 and penalties under Sections 114A and 114AA is illegal in a pure valuation dispute lacking mens rea. No interest under Section 28AB is leviable, and acceptance of enhanced value under protest does not bar appellate challenge.

3.2 Per contra the Ld. A.R. Smt. O.M. Reena has submitted that Shri Ramdev Purba controlled all imports made in the names of M/s. Abhisek India and M/s. Sri Abhisek India. The goods originated from Iran, while invoices were routed through Dubai-based front companies, a fact admitted by Shri Purba. The imports were grossly undervalued by substitution of actual invoices, as evidenced by proforma invoices showing declared prices far below actual shipped values. Account statements and email records establish that only the declared invoice value was remitted through banks, with differential amounts paid through other channels. Matching particulars between proforma invoices, commercial invoices, and bills of entry corroborate deliberate misdeclaration. Admissions by M/s. Bilal Match Works and contemporaneous imports by M/s. SPPPL confirm the higher actual transaction values, further supported by market price data. Hence the undervaluation of goods is clearly established. The Ld. A.R. prayed that the appeals may be rejected.

4. We have heard the parties to the dispute and carefully perused the appeal papers. We find that the appeal relates to a case of undervaluation of 4 live BE's imported during October-November 2011

and 22 BE's imported during March 2008 to November 2011, which had been assessed and cleared provisionally for want of test report after taking a bond. It is also settled law that the onus to prove that the declared price did not reflect the true transaction value is always on the Department.

5. The Finance Act 2007 made some fundamental changes to section 14 of the Customs Act 1962. As per sub-section (1) of section 14 of the Customs Act, 1962, prior to its substitution, valuation of goods was based on the concept of '**deemed value**'. The new section provides that the value of imported goods and export goods shall be the '**transaction value**' of such goods, as determined in accordance with the rules made in this behalf. We find that the judgments cited by the appellant pertain to the old provisions of law. The judgment of the Hon'ble Supreme Court in **Union of India Vs Mahindra & Mahindra Ltd.** [1991 (55) ELT 15] examines the issue in terms of the Customs Valuation Rules, 1963. The issue in **Honesty Traders Vs Collector of Customs** [1991 (55) ELT 102], pertains to a Bill of Entry dated 11.12.1989. Similarly the judgment of the Hon'ble Supreme Court in the case of **M/S Eicher Tractors Ltd., Haryana Vs Commissioner Of Customs, Mumbai** [200 (122) ELT 321 (SC)], pertains to Bills of Entry filed in 1993. The judgment of the Hon'ble Calcutta High Court in **Sandip Agarwal Vs Collector Of Customs** [1992 (62) ELT 28 (CAL)], pertains to Bills of Entry filed in 1991. The said judgments pertain to the law prior to changes made to section 14 of the Customs Act. A change of language in a section is suggestive of the fact that change of interpretation of the provision was intended by the legislature. The concept of transaction value is entirely different from

the classic concept of price of goods, as it may include many items which may not classically have been understood to be part of the sale price. [See: **Associated Cement Companies Ltd. Vs Commissioner of Customs** - (2001) 4 SCC 593 / 2001 (128) E.L.T. 21 (S.C.)]. Hence Court judgments interpreting the earlier section would not be relevant in understanding the new provisions as the changes in the section make a lot of difference in the precedential value of a decision. We hence find that the judgments cited by the appellant on the issue of valuation are not applicable to the facts of this case.

6. The appellant in the Appeal Memorandum has relied upon The Customs Valuation (Determination of **Price** of Imported Goods) Rules **1988**, as is clear from para 20 of the Appeal Memorandum. Whereas the SCN is based on The Customs Valuation (Determination of **Value** of Imported Goods) Rules **2007**. Occasional reference has also been made by the appellant to the 2007 Rule, thereby creating confusion in the legal submissions. No attempt has been made to file a written synopsis summarising the issues involved and updating the landmark judgments that have since been pronounced having a bearing on the issue, during the public hearing of the case, as is the usual practice. The Appellant would have been better served and errors of law and fact avoided by following the guidelines with respect to the submission of written arguments/ synopsis as formulated by the Hon'ble Delhi High Court in **Mst. Kiran Chhabra And Anr. Vs Mr. Pawan Kumar Jain And Ors.** [CS(OS)No.1671/2009, Dated:14.02.2011], and is reproduced for guidance:

"2. When the Court calls for written arguments to be submitted, it is expected to be something as would assist the Court in its endeavour to do justice and decide the case. Simply filing a list of judgments and

attaching photocopies does not assist the Court nor does filing long-winded arguments which are not structured and properly arranged.

3. Written arguments, which Order XVIII Rule 2(3A) of the Code of Civil Procedure also recognizes, ought to be such that would assist the Court. **The pattern would vary from case to case but generally Written Arguments should comprise a very brief list of dates, the admitted facts and the disputed facts.** The points to be decided should be duly formulated as questions or propositions. In case issues have been framed, separate arguments on each issue are necessary unless two or more issues are such which can be more conveniently addressed together. The factual premises on which a particular argument is given has to be stated on each issue so that the proposition can be appreciated in that light.

4. For each proposition, after stating the factual premises on which a particular argument is given, there should be first the applicable statute which can even be excerpted. Only then, case-law may be cited not just as the legal database on a computer shows up on a query; **but each judgment has to be examined and only the more relevant ones for each topic be cited. The Court expects the lawyers to place all case laws, both for and against his case, so long as it is relevant to the proposition in question.** Those from the Supreme Court be placed first; those from our High Court be placed next; and those from other High Courts be placed thereafter. In each grouping, the judgments are to be arranged in a reverse chronological order. This is in line with the law relating to precedents. Thereafter, for each decided case which appears to be important, a brief resume of the factual scenario in which the judgment was rendered, is necessary whereafter the relevant portion can be excerpted or described.

5. If there are older judgments which have been noticed in a later judgment, then the older judgment need not be cited. But if the later judgment merely follows and says nothing new, then the older judgment, which contains the reasoning and also lays down the law, should be cited and against the first (later judgment) it ought to be noted that it simply follows or approves a particular earlier judgment. In that event, the earlier judgment may be excerpted or discussed together with a brief resume of the factual scenario in that case.

6. **After the judgments have been cited or portions excerpted, the ratio-decidenti of the judgment needs to be stated, for, it is the ratio-decidenti and not the conclusion, that is binding as a precedent.**

7. **If there is a contention of the opposite side, it must be answered and not ignored or left for the court to look for an answer.** When all the points or proposition on which the arguments are addressed have been stated, there has to be a summing up so that the Court can get a fair idea of what the arguments are leading to.

8. **Throughout these written arguments, page numbers and placitums of the documents or other material on the court record, and the reported judgment, must be given so that the Court can readily reach it in order to verify.**

9. Lastly, keeping them brief is more helpful than giving a long mass of something which could even be incoherent. Structuring is most important. **If an approach as this followed, the Court gets full assistance, much lesser time of the Court is consumed, and there is less likelihood of the Court falling into error.**

10. The parties are directed to file the written submissions **not exceeding five pages** on the above terms along with the copies of the judgments with relevant portions highlighted for the convenience of the court at least one week before the next date of hearing. The photocopies of the relevant pages of the documents already on record with relevant portions highlighted be also attached to the written submissions for ready reference and convenience of the Court."

(emphasis added)

7. The appellant has stated that allegations of undervaluation must be established by proof of mutuality of interest and clandestine remittances and by examination of the foreign supplier otherwise rejection of invoice value is unsustainable and vitiates the proceedings. We find that there is no straight jacket formula on the ingredients required to prove undervaluation. It is the duty of the assessing officer to collect and sift the evidence submitted by the importer or gathered by him, confront the assessee, and allow for explanation, to find whether the declared value meets the requirement of transaction value. If the assessee fails to provide a credible explanation, the Assessing Officer can raise an inference of a wrongly declared value

and proceed sequentially in the manner provided in the Valuation Rules. The test of admissibility of evidence lies in its relevancy. The Hon'ble Supreme Court in **Rabindra Chandra Paul Vs. Commissioner of Customs** [(2007) 3 SCC 93] and **Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd.**, (2007) 6 SCC 373], has stated the legal position that transaction value can be rejected if the invoice price is not found to be correct, but it is for the department to prove that the invoice price is incorrect. Further the Hon'ble Supreme Court, in **SOUNDS N. IMAGES Vs COLLECTOR OF CUSTOMS** [2000 (117) E.L.T. 538 (S.C.)], held that it is always for the Customs Authorities to establish by methods known to law and in a satisfactory manner that the value of imported goods is not what the importer says it is and what that value actually is. It is also a settled position of law that the facts which are admitted need not be proved. In the case of **CCE, Madras vs. Systems & Components Pvt. Ltd.** - 2004 (165) ELT 136 (SC), the Hon'ble Apex Court observed as under:

"..... Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use, there is no need for the department to prove the same. It is a basic and settled law what is admitted need not be proved".

It would hence be profitable to examine the concepts of 'burden of proof', 'onus of proof', 'pre-ponderance of probabilities' and the legal concept of 'proved' 'disproved' and 'not proved', before examining whether the department has been able to discharge its burden in the case.

8. The presumption of innocence is a background assumption of our legal system, unless the statutes states otherwise. Having said that,

discharging the burden of proof is not a one step process, it happens during the many steps involved in the continuous shifting of onus of proof between the department and the importer/noticee. There is an essential distinction between burden of proof and onus of proof, which has been discussed in the recent Apex Court's Judgment in **MAHAKALI SUJATHA Vs THE BRANCH MANAGER, FUTURE GENERALI INDIA LIFE INSURANCE COMPANY LIMITED & ANOTHER** [(2024) 8 SCC 712 / CIVIL APPEAL NO. 3821 OF 2024, Dated: 10.04.2024]

"41. . . . Section 101 of the Evidence Act, 1872 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. This Section clearly states that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. Simply put, it is easier to prove an affirmative than a negative. In other words, the burden of proving a fact always lies upon the person who asserts the same. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Further, things which are admitted need not be proved. Whether the burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. The party on whom the burden lies has to stand on his own and he cannot take advantage of the weakness or omissions of the opposite party. Thus, the burden of proving a claim or defence is on the party who asserts it.

42. Section 102 of the Evidence Act, 1872 provides a test regarding on whom the burden of proof would lie, namely, that the burden lies on the person who would fail if no evidence were given on either side. Whenever the law places a burden of proof upon a party, a presumption operates against it. Hence, burden of proof and presumptions have to be considered together. There are however exceptions to the general rule as to the burden of proof as enunciated in Sections 101 and 102 of the Evidence Act, 1872, i.e., in the context of the burden of adducing evidence: (i) when a rebuttable presumption of law exists in favour of a party, the onus is on the other side to rebut it; (ii) when any fact is especially within the knowledge of any person, the burden of proving it is on him (Section 106). In some cases, the burden of proof is cast by statute on particular parties (Sections 103 and 105).

43. There is an essential distinction between burden of proof and onus of proof; burden of proof lies upon a person who has to prove the fact and which never shifts but onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, in a suit for possession based on the title, once the

plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title vide RVE Venkatachala Gounder vs. Arulmigu Viswesaraswami and VP Temple, (2003) 8 SCC 752.”
(emphasis added)

9. The **standard of proof** required to prove a matter is, as in a civil case, i.e. **pre-ponderance of probabilities**. Inference of pre-ponderance of probabilities can be drawn not only from the materials on records but also by reference to the circumstances. A five Judge Bench of the Hon'ble Supreme Court in, **M Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors** [AIRONLINE 2019 SC 1420 / 2020 (1) SCC 1], has examined the legal issue comprehensively, as under:

"The standard of proof.

720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence]. In Miller v. Minister of Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372.], Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H)

"(1) . . It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice." (emphasis supplied)

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, LJ in Bater v. Bater [Bater v. Bater, [1951] P. 35 (CA).], where he formulated the principle thus: (p. 37)

"So also, in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. **The degree depends on the subject-matter.**" (emphasis supplied)

722. The definition of the expression "proved" in Section 3 of the Evidence Act is in the following terms:

"3. **"Proved"**.- A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

723. Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:

723.1 The test of a prudent person, who acts under the supposition that a fact exists.

723.2 In the context and circumstances of a particular case.

724. Analysing this, Y.V. Chandrachud, J. (as the learned Chief Justice then was) in N.G. Dastane v. S. Dastane [**N.G. Dastane v. S. Dastane**, (1975) 2 SCC 326.] held : (SCC pp. 335-36, para 24)

"The belief regarding the existence of a fact may, thus, be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue [Per Dixon, J, in Wright v. Wright, (1948) 77 CLR 191 (Aust).] , CLR at p. 210"; or as said by Lord Denning, "the degree of probability depends on the subject-matter". In proportion as the offence is grave, so ought the proof to be clear [Blyth v. Blyth, [1966] A.C. 643 : [1966] 2 WLR 634 : (1966) 1 All ER 524 (HL).] , All ER at p. 536'. But whether the issue is one of cruelty or of a loan on a promote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged." (emphasis supplied)

725. The court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.

726. In State of U.P. v. Krishna Gopal [**State of U.P. v. Krishna Gopal**, (1988) 4 SCC 302 : 1988 SCC (CrL.)], this court observed : (SCC p. 314, para 26)

"26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge."

(emphasis added)

10. The Hon'ble Supreme Court of India in **RVE Venkatachala Gounder Vs Arulmigu Viswesaraswami and VP Temple** [(2003)

8 SCC 752], has examined the legal terms 'proved'. It held:

"28. Whether a civil or a criminal case, the anvil for testing of 'proved', 'disproved' and 'not proved', as defined in Section 3 of the Indian Evidence Act, 1872 is one and the same. A fact is said to be 'proved' when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists. It is the evaluation of the result drawn by applicability of the rule, which makes the difference.

"The probative effects of evidence in civil and criminal cases are not however always the same and it has been laid down that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. BEST says : There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision: but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. (BEST, S. 95). While civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt." (See Sarkar on Evidence, 15th Edition, pp.58-59)

In the words of Denning LJ (Bater Vs. B, 1950, 2 All ER 458,459)

"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. So also in civil cases there may be degrees of probability."

Agreeing with this statement of law, Hodson, LJ said

"Just as in civil cases the balance of probability may be more readily fitted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others." (Hornal V. Neuberger P. Ltd., 1956 3 All ER 970, 977).

29. . . . However, as held in **A. Raghavamma & Anr. Vs. Chenchamma & Anr.**, AIR 1964 SC 136, there is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence."

(emphasis added)

In **State of W.B. Vs Mir Mohammad Omar & Ors.** [(2000) 8 SCC 382], the Hon'ble Supreme Court held that the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused **should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning.** The Court went on to observe that the doctrine of presumption is not alien to such a rule, nor would it impair the temper of the rule. On the other hand, **if the traditional Rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.**

11. We can now examine the issues involved. It is the departments case that 4 live BE's imported during October-November 2011 and 22 BE's imported during March 2008 to November 2011, were undervalued. There are two stages in cases of redetermination of assessable value. The first stage involves the process of rejecting the declared value and the second stage involves determining the value by proceeding sequentially from rule 4 to 9 of CVR 2007.

12. Search conducted at the premises of the importer M/s AI certain emails were downloaded from the Inbox of the computer found

therein. They included correspondence with one Massoud Moussigh of M/s Global Future Expander Corp, Iran who had sent 3 proforma invoices which corresponded with invoices filed by the importer for BE's 471152, 471613 and 483183 and was confirmed by Shri Ramdev Purba. Similarly email dated 03.01.2012 carried an Account Statement for 2009 and 2011, with details like invoice number, date of document 'retired' from the bank, shipment details etc. At the end of the Account Statement for 2009, payment details were shown which allegedly indicated that Shri Ramdev Purba had paid amount to the supplier in two parts – (i) amount as per the invoice submitted to Customs through the bank and (ii) differential amount between the shipped price (i.e. actual price) and invoiced amount through other means. Similar details were also found in the Account Statement for 2011.

13. We find that, the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 prescribe transaction value as the primary basis for valuation under Rule 3(1), **subject to** Rule 12 and adjustments under Rule 10. The expression "subject to" is of clear legal import and denotes subordination of Rule 3(1) to Rule 12. As explained in Black's Law Dictionary (5th Ed.) the expression 'Subject to' means:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by: provided that; provided, answerable for. *Homan v. Employers Reinsurance Corporation*, 345 Mo. 650, 136 S.W. 2d 289, 302"

Further as affirmed by the Hon'ble Supreme Court in **South India Corporation (P) Ltd. v. Secretary, Board of Revenue** [AIR 1964 SC 207], a provision expressed to be "subject to" another must yield where the latter is attracted. Accordingly, Rule 3(1) applies only so

long as the declared value is acceptable. Once the proper officer entertains reasonable doubt as to the truth or accuracy of the declared value, Rule 12 is triggered. A conjoint reading of Rules 3(1) and 12 makes it evident that where such doubt persists even after seeking further information from the importer, the declared transaction value is liable to be rejected. In the present case, the declared value was found to be substantially lower than contemporaneous import prices, justifying invocation of Rule 12 and rejection of the transaction value under Rule 3(1). The Department has thus discharged its initial burden of demonstrating that the declared value is unreliable; the onus now lies on it to determine the correct assessable value in accordance with law.

14. We find that the valuation of the goods was arrived at as per para 28 and 29 of the impugned order, which is reproduced below:

"28. In respect of BE No 5345063 dt. 30.11.2011 filed by M/s. SAI for clearance of residue wax the actual invoice value of USD 840/MT as available in the accounts statement is to be adopted as per rule 4 of CVR 2007. Similarly, in respect of the other 2 Bills of Entry No. 4895489 dated 12.10.2011 and 4966978 dated 19.10.2011 Imported in the name of M/s. SAI for clearance of heavy slack wax the value of USD 1015/MT can be safely adopted under Rule 4 of CVR 2007 as it is clear from the Account statement of M/s. Harmony Impex, FZE, who has supplied stack wax of the same type at the rate of USD 1015/MT to M/s. AI vide Bill of Entry No. 4048800 dated 12.07.2011 with the declared value of USD 375/MT (CF). Based on re-determined value as per the above calculation, M/s. SAI is liable to pay duty of Rs. 25,52,958/- under section 28 of Customs act, 1962 in respect of the said 3 consignments.

29. Of the 23 consignments of M/s. Abhisek India, value in respect of 11 is available in the accounts statements and can be adopted. Values of the remaining 12 consignments have to be derived from either their own contemporaneous imports or contemporaneous imports of other importers. Accordingly, in respect of 11 BEs filed by M/s AI (as per Annexure-III to the notice), the value was determined as per Rule 3 of the CVR 2007 read with Section 14 (1) of the Customs Act, 1962, based on their actual value available in

the account statement / proforma invoice. In respect of remaining 12 BEs (Annexure IV) values were arrived on the basis of the prices of contemporaneous supplies/Exports of the very same goods from the same country as available under the column Shipped price of the accounts statement and import prices of M/s. SPPPL as discussed at para 14 as per rule 4 and or Rule 9 of the said rules. Based on the above calculation the total duty in respect of 23 consignments imported by M/s. AI has been worked out at Rs.1,27,02,468/-(vide Annexure-II, IIa, IIc & IId to the Show Cause Notice). Of this, they have already paid 63,85,864/-. Thus, the differential duty works out to be Rs.63,16,604/-."

15. We find that the present case does not involve assessments made in the normal course of trade. Departmental investigations have established a prima facie case of mis-declaration of value. Such clandestine activities are inherently conducted in secrecy, rendering direct evidence difficult to obtain. In such circumstances, where facts are especially within the knowledge of a person, the onus of proof shifts to him [See: Section 106 of the **Evidence Act, 1872** and Section 109 of the **Bharatiya Sakshya Adhinyam, 2023**]. Annexure I to the show cause notice demonstrates that the invoice numbers declared in the Bills of Entry correspond with those reflected in the account statements, while simultaneously revealing suppression of value. Once the Department has established a high degree of probability sufficient to shift the onus, it is incumbent upon the importer to discharge the same. In the absence of such discharge, the burden is deemed to have been satisfactorily met by the Department. In the present case, the importer-appellant neither filed a reply to the show cause notice nor appeared for personal hearing despite four opportunities being granted. Consequently, the plea of denial of effective personal hearing is devoid of merit. The statements relied upon remain unretracted; the authenticity of the emails has not been

disputed. The appellant's objection to reliance on the post-seizure email dated 30.11.2011, retrieved not from its storage in the appellants computer but from an external mail server, is unsupported by reasons or by citing any provision of law. No request for cross-examination of the witnesses whose statements were relied upon was made before the adjudicating authority. The judgments cited by the appellant on valuation have also been found distinguishable on facts and are inapplicable to the present case. The Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Madras Vs Messrs Best & Co.** [1966 AIR 1325, 1966 SCR (2) 430], observed as follows;

"When sufficient evidence, either direct or circumstantial, in respect of its contention was disclosed by the Revenue, **adverse inference could be drawn against the assessee if he failed to put before the Department material which was in his exclusive possession.** The process is described in the law of evidence as shifting of the onus in the course of a proceeding from one party to the other." (emphasis added)

16. The Hon'ble High Court of Madras in its recent judgment the case of **M/s AMRITHA MARKETING, MADURAI Vs THE JOINT COMMISSIONER OF CGST AND CENTRAL EXCISE CENTRAL, MADURAI** [2026-TIOL-148-HC-MAD-GST, Dated: 26.11.2025], examined the issue of permitting cross examination of persons whose statements have been recorded. It held as under:

8. . . . It is well settled that though the right to cross examine a given witness may not be provided by or under the statute, it being a part of the principles of natural justice should be held to be an indefeasible right. **But the assessee must still make out a case for cross examination.** It will not be "Ask, and it shall be given". The assessee seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. **A blanket**

request to cross-examine all persons whose statements have been recorded by the department, cannot be sustained (vide 2025 (4) TMI 1154, **Vallabh Textiles v. Addl. Commissioner, Central Tax (GST)** = 2025-TIOL-680-HC-DEL-GST.

9. Applying the above principle, the petitioners may not have a case for cross-examining the author of the report containing the data recovered from the electronic devices of the assessee. **This is because, the assessee had nowhere questioned the veracity of the data retrieved from the systems maintained by them.** It is seen that the retrieval took place very much in their presence. The assessee themselves duly certified the process of retrieval. While the retriever who was only a technical person might not have been competent to describe the nature of the data retrieved from the systems as "actual sales data", that may not really make much of a difference. The assessee was examined and their statements were recorded under Section 70 of the Act. To specific questions, they admitted that the data retrieved from the systems was actually entered by them. I, therefore, hold that the request to cross-examine the retriever of data was rightly denied and in any case, it did not cause any prejudice to the petitioners.
(emphasis added)

17. A similar view was taken by the Hon'ble Delhi High Court in its recent judgment in **M/S. VALLABH TEXTILES Vs ADDITIONAL COMMISSIONER CENTRAL TAX GST, DELHI EAST AND ORS** [W.P.(C) 4576/2025, Dated: 09.04.2025] and by the Hon'ble Allahabad High Court in **Commissioner Of Customs (Preventive) Lucknow Vs Shri Sarad Chand Agrahari @ Sharad Chand Agrahari** [2026:AHC-LKO:3332-DB / CUSTOM APPEAL No. - 19 of 2025, Dated: 16.01.2026]. Further the Hon'ble Karnataka High Court in **Commissioner of Customs, Bangalore Vs Jyothi C. Jain & Ors.** [2025 (9) TMI 1225 - KARNATAKA HIGH COURT], after discussing the judgment of the Hon'ble Supreme Court, in **M/s. Andaman Timber Industries Vs Commissioner of Central Excise, Kolkata-II** [(2016) 15 SCC 785], held as under:

"10. In light of the above judgment, it is only where the statement of a witness has been recorded and such statement is proposed to be relied upon against the assessee that, **upon a request made by the assessee, the adjudicating authority is bound to afford an opportunity of cross-examination.** In the present case, the Tribunal has erred in issuing a direction for cross-examination without recording any finding as to whether statements of the witnesses were recorded and relied upon against the assessee. **The direction to permit cross-examination is, therefore, without any foundation and is unsustainable.** Furthermore, since the Tribunal remanded the matter to the adjudicating authority for de novo consideration limited to cross-examination of the panch witnesses, it has failed to examine the other issues raised by the respondent-assessee."

(emphasis added)

18. The appellant has stated that the issuance of demand under Section 28 prior to finalization of provisional assessment is without jurisdiction, as held in ***ITC Ltd.*** and ***Godfrey Philips India Ltd.*** Once assessment is provisional under Section 18, invocation of Sections 124, 111(m), and 112 is premature and renders the proceedings unlawful. We find that the Hon'ble Supreme Court in the case of ***Commr. Central Excise & Customs, Mumbai & Ors. Vs M/s. I.T.C. Ltd. & Ors.*** [2006 (203) ELT 538 (SC)], has held that the power under Section 11-A of the Central Excise Act can be invoked only when a duty has not been levied or paid or has been short-levied or short-paid. Such a proceeding can be initiated within six months from the relevant date which in terms of Sub-section (3)(ii)(b) of Section 11-A of the Act (which is applicable in the instant case) in a case where duty of excise is provisionally assessed under the Act or the Rules made thereunder, the date of adjustment of duty after the final assessment thereof. A proceeding under Section 11-A of the Act cannot, therefore, be initiated without completing the assessment proceedings. The appellant has also relied on the judgment of CESTAT, Mumbai in the case of

Commissioner of C. Ex., Mumbai Vs Godfrey Philips India Ltd

[2007 (211) ELT 52 (Tri-Mumbai)], relating to the valuation of cigarettes under the Central Excise Act, which followed the judgment of the Hon'ble Supreme Court in **M/s. I.T.C. Ltd.** (supra).

19. We find that this is a case where the dispute between the parties is not due to a difference of opinion on how goods should be valued, but is an outcome of an investigation into a fraud committed by the appellant in under valuing the goods to evade payment of duty. Further section 11A of the central Excise Act and section 28 of the Customs Act are not in pari materia. However we find that the appellant has relied upon the judgment of the Hon'ble Delhi High Court in **International Computers India Manufacturers Vs UOI and Others** [1981 ELT 632 (Del)], which has held that section 28 of the Customs Act is not attracted in the case of provisional assessment. Again in **Collector of Customs Vs Kussum Marodia** [1995 (77). ELT 808 (Cal.)], the Hon'ble Calcutta High Court held that unless the final assessment is made there is no scope for taking action under section 111(m) or 112(a) of the Customs Act.

20. We find that all the live BE's in this case were assessed provisionally following the orders of the Hon'ble Madras High Court dated 04.11.2011 and the earlier BE's were cleared after being assessed provisionally at the behest of the department. Hence the penal provisions are not attracted, in the light of the ration of judgments cited above. However the issue of the SCN has not caused any prejudice to the appellant as he was given an opportunity to join the proceedings for finalisation of assessment but he neither gave a reply to the SCN nor did he or his authorised representative appear for

a personal hearing in spite of four opportunities being given, attracting the doctrine of non-traversal.

21. In the facts and circumstances of the matter we uphold the assessments made but set aside the confiscation of goods, fine and penalty imposed. The impugned order is modified to that extent. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 17.02.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Rex