# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

**Excise Appeal No. 91 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

*VERSUS*

**Truwoods Pvt Ltd.,** .. **RESPONDENT**
Talarivanipalem Village, Visakhapatnam,
Andhra Pradesh – 531 035

**WITH**

**Excise Appeal No. 92 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Maxworth Plywoods Pvt Ltd.,** .. **RESPONDENT**
Asakapally Village, Sabbavaram Mandal,
Vizag District, Andhra Pradesh

**WITH**

**Excise Appeal No. 93 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Deccan Veneers Pvt Ltd.,** .. **RESPONDENT**
Asakapally Village, Sabbavaram Mandal,
Vizag District, Andhra Pradesh

**WITH**

**Excise Appeal No. 94 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Alpine Panels Pvt Ltd.,** .. **RESPONDENT**
Asakapally Village, Sabbavaram Mandal,
Vizag District, Andhra Pradesh

**WITH**
**Excise Appeal No. 95 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Trex Veneers** .. **RESPONDENT**
B-109, WHS Timber Market,
Kirti Nagar, New Delhi – 110 015

**WITH**
**Excise Appeal No. 96 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**OM Glass** .. **RESPONDENT**
“N” Ply, D.No.5-10-18,
Chinna Veedhi, Vizianagaram – 535 001

**WITH**
**Excise Appeal No. 97 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Jindal Ply Decors** .. **RESPONDENT**
D.No.49-22-5, Shri Sai Mandsion,
Sankaramattam Road, Visakhapatnam

**WITH**
**Excise Appeal No. 98 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Vellanki Frame Works** .. **RESPONDENT**
272/5, Vellanki Village, Bhimili Road,
Anandpuram Road, Visakhapatnam

**WITH**

**Excise Appeal No. 99 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Anant Promoters & Fincon** .. **RESPONDENT**
**Pvt Ltd.,**
D-73, Bangur Avenue,
Kolkata

**WITH**

**Excise Appeal No. 100 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Carnex Distributors** .. **RESPONDENT**
46, Bipin Behar Ganguly Street,
Kolkata – 700 012

**WITH**

**Excise Appeal No. 101 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Collen Vinimoy Pvt Ltd.,** .. **RESPONDENT**
194B.B Ganguli Street,
1st Floor,Kolkata

**WITH**

**Excise Appeal No. 102 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Ambika & Isha** .. **RESPONDENT**
Charted Accountants,
G-3, Satya Residency,
D.No.30-7-33, Dabagardens,
Visakhapatnam.

**WITH**

**Excise Appeal No. 103 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Amrita Carriers** .. **RESPONDENT**
D.No.49-7-12, Lalitha Nagar,
Visakhapatnam – 530 016

**WITH**

**Excise Appeal No. 104 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Sanjiv Agarwal** .. **RESPONDENT**
D.No.9-19-56/3, 1st and 2nd Floors,
Above Dhanalakshmi Bank, CBM Compound,
VIP Road, Visakhapatnam

**WITH**

**Excise Appeal No. 105 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Rajiv Agarwal** .. **RESPONDENT**
D.No.9-19-56/3, 1st and 2nd Floors,
Above Dhanalakshmi Bank, CBM Compound,
VIP Road, Visakhapatnam

**WITH**

**Excise Appeal No. 106 of 2012**

(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**G.K Ganeriwala** .. **RESPONDENT**
D.No.9-19-56/3, 1st and 2nd Floors,
Above Dhanalakshmi Bank, CBM Compound,
VIP Road, Visakhapatnam

**WITH**
**Excise Appeal No. 107 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Chandrakant Nangelia** .. **RESPONDENT**
D.No.9-19-56/3, 1st and 2nd Floors,
Above Dhanalakshmi Bank, CBM Compound,
VIP Road, Visakhapatnam

**WITH**
**Excise Appeal No. 108 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

*VERSUS*

**R.K. Mohata** .. **RESPONDENT**
Flat No.4A, 4th Floor, 18 Raja
Basant Roy Road, Kolkata – 700 026

**WITH**
**Excise Appeal No. 109 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Dinesh Agarwal** .. **RESPONDENT**
Talarivanipalem Village, Visakhapatnam,
Andhra Pradesh

**WITH**
**Excise Appeal No. 110 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Sudhama Seth** .. **RESPONDENT**
D.No.9-19-56/3, 1st and 2nd Floors,
Above Dhanalakshmi Bank, CBM Compound,
VIP Road, Visakhapatnam

**WITH**
**Excise Appeal No. 111 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Aditya Saxena** .. **RESPONDENT**
Flat No.119 B, UNA Enclave,
Mayur Vihar, Phase.I, New Delhi

**WITH**
**Excise Appeal No. 112 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Anoop Saxena** .. **RESPONDENT**
538-25-D, Alok Nagar,
Sitapur Road, Lunknow

**WITH**
**Excise Appeal No. 113 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Manoj Gupta** .. **RESPONDENT**
167/11, Civil Lines, Near Ajoy Hotel,
Muzaffarnagar, Uttar Pradesh

**WITH**
**Excise Appeal No. 114 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Rajesh Arora** .. **RESPONDENT**
H.No.2737/1, ST.NO.5,
Jammu Colony, Lucknow

**WITH**
**Excise Appeal No. 115 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Ashok Joshi** .. **RESPONDENT**
D-73, Bangur Avenue,
Kolkata – 700 055

**WITH**
**Excise Appeal No. 116 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Rajiv Agarwal of** .. **RESPONDENT**
**M/s Sarthak Marketing**
2944/3, Chunamandi, 104,
Shyam Chambers, Pahar Ganj, New Delhi

**AND**
**Excise Appeal No. 117 of 2012**
(Arising out of **Order-in-Original** No.35/2011 (RS) dated 30.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax** .. **APPELLANT**
**Visakhapatnam - GST**
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

*VERSUS*

**Ghanshyam Sharma of** .. **RESPONDENT**
**M/s Amrita Carriers**
D.No.49-7-12, Lalitha Nagar,
Visakhapatnam – 530 016

**APPEARANCE**

Shri K. Jagan Mohan, Assistant Commissioner & Shri A. Rangadham, Authorized Representative for the Appellant.
Shri Shivadass & Shri Rishab. J, Advocates for the Respondents at S.No.1-4 & 14-15, None for the remaining Respondents.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**
**HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

## FINAL ORDER No. A/30213-30239/2026

Date of Hearing: 21.01.2026
Date of Decision: 20.04.2026

**[ORDER PER: A.K.JYOTISHI]**

The Department has come in appeal against the Order-in-Original dt.30.09.2011 passed by the Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam. The Commissioner, vide the impugned order, has dropped the entire proceedings initiated by the department in terms of SCN dt.08.02.2008.

2. The brief facts of the case that the department carried out certain searches and post search investigation in respect of M/s Deccan Veneers Pvt Ltd, M/s Alpine Panels Pvt Ltd, M/s Maxworth Plywoods Pvt Ltd and M/s Truwoods Pvt Ltd (commonly known as 'Truwood Group' or 'Deccan Group') ('TW group' for short) and the investigation revealed that these units had not properly accounted for the manufactured goods and indulged in clearance of goods without payment of duty and also by undervaluing the goods by way of improper affixing of grades/ brands. Multiple statements of the concerned persons were recorded and other evidences were brought on record indicating the flow back of money from various entities in respect of undervalued goods cleared by TW group. The basis for these allegations was recovery of certain incriminating documents and the statements recorded from key persons like Shri Sanjiv Agarwal, Shri G.K. Ganeriwala, etc. The department also brought on record the modus operandi for flow back and unaccounted sales proceeds into the account of TW group. The SCN dt.08.02.2008 was issued individually to all the four units of TW group, three dealers from whom the goods were seized and also to the persons involved in undervaluation and resultant evasion of Central Excise duty.

3. On adjudication, the adjudicating authority has made certain observations, inter alia, to the effect that differential duty on account of

undervaluation was worked out by adopting the actual unit sale price of veneer and the same was arbitrary and without any logic and therefore, not acceptable. The adjudicating authority also found that differential duty on account of undervaluation of plywood, block board, etc., was worked out by adopting highest grade prices basing on the price lists circulated by TW group, by rejecting the existence of grades on the basis of two invoices raised by M/s Maxworth Plywoods Pvt Ltd in September, 2006 and thus the method adopted for arriving at differential duty was held as flawed, unreasonable and arbitrary and not sustainable. It is the view of the department that the adjudicating authority, while rejecting undervaluation and resulting short payment of duty as alleged in the SCN, has not considered the voluminous evidence elaborately brought out in the SCN as regards branding/ grading, under-invoicing of assessable value, collection of unbilled amount in cash, receipts of these unaccounted sale proceeds through courier system/ online deposits, etc. As regards dropping of the demand in respect of quantity of finished goods found physically short compared to stock records by the adjudicating authority on the ground that no statement was recorded during the course of search operations at these premises and that the panchanama value of these goods were revised arbitrarily without any further investigation, it is the case of the department that such views were taken without appreciating the entire evidence holistically. The department has also found that the observations of the Commissioner to the effect that the present demand notice covers a part of the period i.e., 01.01.2003 to 31.03.2005, for which SCNs were issued in the past to TW group units and therefore, raising of notice on the same charge of undervaluation for subsequent period was not legally sustainable on the grounds of limitation and the demand for remaining period i.e., 01.04.2005 to 31.03.2007 was also not legally tenable. Finally, the adjudicating authority has held that the SCN was based on assumption, extrapolations, arbitrary conclusions, weird calculations, inadmissible evidences, incomplete investigations and non-examination of legalities involved in the issue of invoking proviso to section 11A(1) of the Central Excise Act, 1944.

4. Essentially, the department was aggrieved on the dropping of the proceedings on various grounds as according to the department, the adjudicating authority has only examined certain aspects without holistically evaluating voluminous evidence on record, which clearly established

clandestine removal as well as undervaluation and flock back of money in respect of those transactions. These transactions and activities have been duly corroborated in terms of documents recovered in the course of investigation, as also, in terms of the statements given by the key persons.

5. Learned AR for the department, apart from reiterating the grounds taken by the department in the appeals, has also highlighted some of the observations made by the adjudicating authority. He has submitted that the adjudicating authority while rejecting undervaluation, has not considered voluminous evidence elaborately brought out in the SCN as regards branding/ grading, under-invoicing, collection of unbilled amount in cash and receipts of the unaccounted sale proceeds through illegal courier system/ online deposits and their accountal in the books in the form of fictitious sales of imported logs and non-excisable goods and underbooking of expenses and systematic and periodical destruction of invoices/ bills with actual sales value after their collection and reconciliation. He has highlighted the fact that it was clearly established in the course of investigation that there has been receipt of Rs.25,84,57,649/- through illegal courier system in a limited period of seven months itself during August, 2005 to February, 2006 towards unbilled sale proceeds through veneer/ plywood cleared by TW group as evidenced by monthly pocket calendar books recovered from bank lockers. No reasonable or plausible explanation to that effect was given by the appellant. On the contrary, in the statements, they have accepted the factual position. He has further submitted that some of the glaring evidence on record including printed price list with actual price being circulated through their marketing personnel, who helped in selling said goods at higher price than invoice price besides branch transfer of unaccounted sale proceeds through illegal courier system, has not been given its due credence and evidentiary value. Further, the nexus and control of Shri Sanjiv Agarwal and Shri G.K. Ganeriwala over entire TW group was clearly brought out. Some of the documents recovered from the Area Sales Manager have indicated the actual prices and the confirmation of collection of unbilled amount over and above invoices in cash and destroying of bills/ documents containing actual price were admitted by marketing personnel. There are admitted private documents like pocket calendar notebooks recovered from the bank locker of Shri G.K. Ganeriwala clearly showed an evidence of receipt of about Rs.25.84 crores plus Rs.0.52 crores towards unaccounted sale proceeds

covering from August, 2005 to February, 2006. Even payments made to couriers along with code number i.e., specified currency note serial number were also collected and these code numbers were found in the SMS mails sent as retrieved from micro memory chip cards recovered from HDFC bank lockers. These facts have also been admitted by Shri G.K. Ganeriwala. There has been systematic manipulation of books of account by TW group as alleged in Para 12.4, 12.5 and 17.1 of the SCN and thereafter, there has been clear cut evidence on ploughing back of unaccounted sale proceeds of excisable goods in the form of proceeds from fictitious high sea sale of timber logs as highlighted in Para 12.04, 16.01 to 16.01.08 of SCN. Even the high sea buyers have admitted this modus operandi. He has further highlighted that there is clear cut admission of these undervalued clearances and receipts of sale proceeds by Shri G.K. Ganeriwala, Chief Executive of M/s Deccan Veneer Pvt Ltd and looking after general administration and marketing of TW group, Shri Sanjiv Agarwal, statements of Area Sales Managers, Customer of High-sea sales, Transporters of logs reportedly sold on high-sea sale basis.

6. Learned AR has also justified the method of computation of differential duty inasmuch as the department, based on the statements and the price circulars circulated and in view of evidence of payment of Central Excise duty on less than 50% of actual sale value by collecting balance unbilled amounts in cash on a continuous basis and also in view of destruction of original bills and other documents with actual sale values after their collection, worked out the value based on evidences like price lists, computer printouts, statements as well as unbilled amount of Rs.25,84,57,649/- collected by TW group in a span of seven months, which indicated around 50% under-invoicing. Therefore, adopting the methodology for computing undervaluation is proper and justified in the facts of the case and not arbitrary or presumptuous. He has further relied on various case laws in support that such cases of clandestine remo0val or devaluation cannot be proved with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the facts of the issue as held by Hon'ble Supreme Court in the case of D. Boormul [1983 (13) ELT 1546 (SC)]. Similarly in the case of M/s Carpenter Classic Exim Pvt Ltd [2006 (200) ELT 593 (Tri-Bang)], it was held that "officers do not possess a magic wand which would unfold the

entire events which had taken place and on the basis of available documents and statements recorded during investigation, they have to come to a conclusion - Preponderance of probability is more concerned rather than proof beyond reasonable doubt - Undervaluation to the extent of 65% taken place and differential duty, interest and penalty upheld.” This decision was upheld by Hon’ble Apex Court as reported in [2009 (235) ELT 201 (SC)].

7. Even in respect of observation of the Commissioner regarding non-sustainability of irregular availment of SSI exemption, he submitted that same is not correct as the same was issued in the light of new and additional set of facts/ evidences that emerged consequent to detailed investigation by the department and hence there is no bar in issuing fresh SCN invoking extended period based on new facts and evidence. Insofar as demanding duty on shortage of stock, which was detected in the course of physical verification of stock, this also supported clandestine manufacture and clearance of excisable goods, apart from non-payment of duty.

8. Learned AR has also pointed out that at the very outset, the adjudicating authority has made an observation that the records/ documents involved in this case ran into thousands of pages and further since many aspects in the SCN were not clear, recourse had to be taken repeatedly to examine the related files and even certain basic documents like panchanama seizure documents and even registers. This observation clearly shows that the adjudicating authority had certain reservation about voluminous evidence and not gone into a great detail into these evidence and especially as regards flow back of money and holding that investigation itself was incomplete and therefore, the decision of adjudicating authority itself appears to be biased.

9. Subsequently, the department, by way of additional submission, has further submitted that reference made to various previous SCNs issued by the adjudicating authority to hold that the grounds of limitation were not available as similar issues were taken up in the past by the department, the department has submitted that four SCNs referred to in Para 122 of OIO were issued mainly alleging clandestine manufacture and clearance of excisable goods by non-accounting of imported wooden logs covering the period from April, 1998 to March, 2000. Though, later on, the Tribunal allowed the party’s appeal but the same order was not accepted by the

department initially but later on withdrawn on monetary grounds, thus, it has not precedence value. Similar, the SCN listed at S.No.5 was based on certain evidence including second set of records maintained using 17 Hard Disk Drives recovered from the factory/ office premises. This SCN has not been dropped and it is still pending adjudication in terms of Hon'ble High Court Order dt.06.12.2012 and 14.02.2013 and therefore, there is an apparent factual error. The remaining 19 SCNs listed at S.No.6 to 24 at Para 122 of OIO were issued solely relying upon evidences unearthed by DGCEI covering period from 1998 to November, 2002 without any independent investigation and therefore, it was set aside by the Tribunal. The department wanted to appeal against the said order where the Tribunal had not found evidence convincing and sufficient, however, the competent authority directed the department to examine the nature of investigation that has gone into making of the case and the impugned SCN dt.08.02.2008 was issued basing on new and additional evidence based on a detailed extensive investigation and therefore, cannot suffer on the grounds that in the past also similar investigations were carried out. They have relied on various case laws including Nizam Sugar Factory Vs CCE, Hyderabad [1999 (114) ELT 429 (Tri-LB)], wherein it has been held that limitation of five years is available even when the department had knowledge about suppression or fraud, etc.

10. On the other hand, learned Advocate for the Respondents at S.No.1 to 4 & 14 to 15, has submitted that they have filed Cross Objections /rejoinder against departmental appeals. He has taken the grounds that the SCN has been issued against TW group as a whole and not to any individual entity even though the Tribunal has held that these were separate entities and therefore, the SCN should have been issued separately to individual units and not to the group as a whole. He has relied on certain case laws, as under.

a) Satyanarayana Plastic Agency Vs CCE, Hyderabad-IV [2010 (249) ELT 433 (Tri-Bang)] – affirmed by Hon'ble Supreme Court [2024 (389) ELT 308 (SC)]
b) CCE, Mangalore Vs Sushil Chemicals [2008 (230) ELT 117 (Tri-Bang)]
c) CCE, Chandigarh Vs Shital International [2010 (259) ELT 165 (SC)]
d) Gajanan Fabrics Distributors Vs CCE, Pune [1997 (92) ELT 451 (SC)]

11. He has further submitted that the question framed by the adjudicating authority was not correct and therefore, the conclusion drawn in respect of said question is also not true reflection of the charges levied against the evidence relied upon by the department. He has further justified the observation of the adjudicating authority for dropping the proceeding on the grounds that she has made a very categorical observation after framing the question holding that these are not legally sustainable and therefore, the decision cannot be called arbitrary or without appreciating evidence on record. Further, insofar as the observation of the adjudicating authority regarding non-invocation of extended period, he has submitted that a very categorical observation has been made based on precedent SCNs covering identical issue. Hence, no fault could be found on this ground.

12. Heard both sides and perused the records.

13. At the very outset, it was pointed out that as the entire demand was dropped and they are not being aggrieved with the impugned order, they cannot file any cross objections in terms of statutory provisions, however, the grounds taken in cross objection can be considered as rejoinder to the grounds taken by the department in their appeal.

14. We find that primarily the department is contesting the impugned order on the grounds that the adjudicating authority has not appreciated the entire gamut of evidence brought on record by them based on extensive investigation and instead has framed her opinion based on the mode and method of calculation of differential duty and her own observation regarding shortcomings in the investigation. We find that in this case, a very detailed investigation has been carried out by the department, which has indicated clearance of goods under one value and thereafter, selling the same at a higher price and collecting the differential price in cash and routed back through illegal channel to the appellant. The department has also brought on record various documents/ evidence, apart from admission of such modus operandi by the persons concerned, to support the allegations that there was an elaborate mechanism involving key personnel for clearing the goods at a lower price and collecting higher price from the customers and ploughing back the money by covering it under the garb of various fictitious sales and transactions. We also find that in the given circumstances, the department could not have proved with pinpoint precision that each and every clearance

of goods was undervalued and the exact differential amounts received in cash. It is not a case based on statement recorded under section 14 of Central Excise Act alone but also on corroboration by the documentary evidences indicating the alleged modus operandi. We also take note of the fact that the adjudicating authority has, at the very outset, showed the difficulty in appreciating the evidence in view of voluminous record and evidence, however, she had proceeded thereafter based on her ability to evaluate the evidence and for arriving at the conclusion leading to dropping of proceedings completely. We, therefore, find that there are various evidences, which were also required to be evaluated and duly appreciated by the adjudicating authority before coming to the conclusion that the mode and method of calculation of differential duty is not proper and is based on presumptions and suppositions. Therefore, we find that there is force in the submissions and in the grounds taken by the department that the adjudicating authority has not holistically evaluated the entire gamut of evidence in the form of statements and other documents as well as other evidence unearthed in the course of investigation pointing out to a well-planned modus operandi by the individual units commonly known as TW group for clandestine removal as well as undervaluation of excisable goods resulting in short payment of duty.

15. Even in respect of her observations on the issue of the limitation, we find that the adjudicating authority has heavily relied on the fact that in the past, SCNs were issued involving similar grounds. We find that in this case also, the department has submitted that those SCNs were based on different set of facts and were also disposed of by the appellate authority appreciating particular set of evidence and facts and therefore, that cannot become precedence for non-invocation of extended period for any future evasion. We find that there is force in this contention inasmuch as there are different facts and its appreciation by the adjudicating authority as well as appellate authority in respect of SCNs issued prior to the impugned SCN. The impugned SCN is based on elaborate investigation, which has brought various evidence on record, which was never alleged or found in respect of earlier SCNs and therefore, it needs to be evaluated independently and in case it establishes the undervaluation, the extended period may also be invokable as this is a completely new evidence. It is to be understood that if a case of clandestine removal is made against the company or a case of

undervaluation is made against the company, it is not immune from further investigation by the department where even the extended period can be invoked if the ingredients are found in respect of said period in which such undervaluation or clandestine removal has taken place.

16. Insofar as respondents' contentions are concerned, we find that their rejoinder are mostly on technical grounds viz., that SCN cannot be issued to a group and it has to be issued only to individual units. Insofar computation of demand is concerned, the demand itself suffers from various arithmetical errors based on wrong assumptions and the rates applied were random. He has also basically contested that extended period was not invokable and the adjudicating authority has rightly dropped on this ground also. We, however, note that there is no finding on these grounds except for limitation by the adjudicating authority.

17. We, therefore, find that the department has been able to demonstrate that the adjudicating authority has not been able to comprehensively appreciate and evaluate the evidence on record adduced by the department in support that respondents had indulged in large scale undervaluation. We find that the adjudicating authority, perhaps owing to voluminous evidence and supporting documents, could not appreciate the entire gamut of evidence holistically taking into account the evidence adduced by the department, as well as submissions made by the parties, corroborating such evidence. Therefore, we find that in this case, the impugned order is not sustainable and is liable to be set aside and the matter needs to be remanded back to the adjudicating authority for re-adjudication after evaluating all the evidences, as brought on record, comprehensively in support of alleged undervaluation. In the course of de novo proceedings, the respondents will also be at liberty to adduce the grounds, which they have raised now as these are legal grounds and can be taken up at any stage. The department may also depute a well conversant person to assist or explain the adjudicating authority the entire gamut of evidence brought on record by the department in support of their allegations. We note that this matter involves voluminous records and appreciation of detailed evidence and documents, however, this being an old matter, we expect that this may be decided within a period of three months. We also would like to make it clear

that we have not expressed any opinion on merit of the case and have left all the issues open for decision by the adjudicating authority.

18. With these directions, the appeals are allowed by way of remand.

(Pronounced in the open court on 20.04.2026)

**(A.K. JYOTISHI)**
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**
**MEMBER (JUDICIAL)**

Veda