

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 53985 OF 2014

[Arising out of the Order-in-Original No. DLI-CUSTOM-PRV-COM-004-14-15 dated 30/04/2014 passed by The Commissioner of Customs (Preventive), New Delhi – 110 037.]

M/s Delphi Automotive SystemsAppellant
Private Limited,
Plot No. 240, Udyog Vihar, Phase – I,
Gurgaon – 122 016.

Versus

Commissioner of Customs,Respondent
(Preventive),
Room No. 212, New Customs House,
Near IGI Airport,
New Delhi – 110 037

**WITH
CUSTOMS APPEAL NO. 53986 OF 2014**

[Arising out of the Order-in-Original No. DLI-CUSTOM-PRV-COM-004-14-15 dated 30/04/2014 passed by The Commissioner of Customs (Preventive), New Delhi – 110 037.]

Shri Nirdesh Karnawat,Appellant
Director & Chief Financial Manager,
M/s Delphi Automotive Systems
Private Limited,
Plot No. 240, Udyog Vihar, Phase – I,
Gurgaon – 122 016.

Versus

Commissioner of Customs,Respondent
(Preventive),
Room No. 212, New Customs House,
Near IGI Airport,
New Delhi – 110 037

**WITH
CUSTOMS APPEAL NO. 53987 OF 2014**

[Arising out of the Order-in-Original No. DLI-CUSTOM-PRV-COM-004-14-15 dated 30/04/2014 passed by The Commissioner of Customs (Preventive), New Delhi – 110 037.]

Shri Kulbhushan Malik, DirectorAppellant
M/s Delphi Automotive Systems
Private Limited,
Plot No. 240, Udyog Vihar, Phase – I,
Gurgaon – 122 016.

Versus

**Commissioner of Customs,
(Preventive),**

Room No. 212, New Customs House,
Near IGI Airport,
New Delhi – 110 037

....Respondent

**WITH
CUSTOMS APPEAL NO. 53988 OF 2014**

[Arising out of the Order-in-Original No. DLI-CUSTM-PRV-COM-004-14-15
dated 30/04/2014 passed by The Commissioner of Customs (Preventive),
New Delhi – 110 037.]

**Shri Prashanth Kumar Nath,
Ex-Country Manager, Customs,
M/s Delphi Automotive Systems
Private Limited,**

Plot No. 240, Udyog Vihar, Phase – I,
Gurgaon – 122 016.

.....Appellant

Versus

**Commissioner of Customs,
(Preventive),**

Room No. 212, New Customs House,
Near IGI Airport,
New Delhi – 110 037

....Respondent

APPEARANCE:

Shri B.L. Narasimhan, Shri Ashwani Bhatia and Ms. Anjali
Gupta, Advocates for the appellants.

Shri Rajesh Singh, Authorized Representative for the
Department

**WITH
CUSTOMS APPEAL NO. 53989 OF 2014**

[Arising out of the Order-in-Original No. DLI-CUSTM-PRV-COM-004-14-15
dated 30/04/2014 passed by The Commissioner of Customs (Preventive),
New Delhi – 110 037.]

**Shri Naresh Gambhir,
Managing Director,
M/s Sash global Logistics
Private Limited,**

G-115, Ground Floor, Saket,
New Delhi – 110 017.

.....Appellant

Versus

**Commissioner of Customs,
(Preventive),**

Room No. 212, New Customs House,
Near IGI Airport,
New Delhi – 110 037

....Respondent

APPEARANCE:

Ms. Priya Pandey, Advocate for the appellant.

Shri Rajesh Singh, Authorized Representative for the Department

AND

CUSTOMS APPEAL NO. 54552 OF 2014

[Arising out of the Order-in-Original No. 04/KAM/Commr/2014-15 dated 30/04/2014 passed by The Commissioner of Customs (Preventive), New Delhi – 110 037.]

Shri M.S. Bedi, Director of

.....Appellant

M/s PSB Logistics Pvt. Ltd.,

L-181, Street No. 07, Mahipalpur Extension,
New Delhi – 110 037.

Versus

**Commissioner of Customs,
(Preventive),**

....Respondent

Room No. 212, New Customs House,
Near IGI Airport,
New Delhi – 110 037

APPEARANCE:

Shri Prabhat Kumar and Shri Pralabh Mathur, Advocates for the appellant.

Shri Girijesh Kumar, Authorized Representative for the Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 50786-50791 /2025

DATE OF HEARING : 30.04.2025

DATE OF DECISION : 27.05.2025

P.V. SUBBA RAO

The order-in-original dated 30.04.2014 passed by the Commissioner of Customs (Preventive), New Delhi¹ is assailed by M/s Delphi Automotive Systems Pvt. Ltd., Shri Nirdesh Karnawat, Shri Kulbhushan Malik, Shri Prashanth Kumar Nath,

1. impugned order

Shri Naresh Gambhir and Shri M.S. Bedi in these appeals. By the impugned order, demand of duty of Rs. 25,53,891/- is confirmed on M/s Delphi Automotive Systems Pvt. Ltd. and penalties are imposed on M/s Delphi Automotive and its Directors/employees.

2. We have heard Shri B.L. Narasimhan, Shri Ashwani Bhatia and Ms. Anjali Gupta, learned counsels in Customs Appeal No. 53985-53988 of 2014 and Ms. Priya Pandey, learned counsel in Customs Appeal No. 53989 of 2014 and Shri Rajesh Singh, learned authorized representative for the department. Shri Prabhat Kumar, Shri Pralabh Mathur, learned counsel have been heard in Customs Appeal No. 54552 of 2014 and Shri Girijesh Kumar, learned authorized representative for the department.

3. The issue in all these cases falls within a narrow compass. As per section 14 of the Customs Act, duties have to be levied on the transaction value, i.e., the price paid or payable for delivery of the goods at the time and place of importation/ exportation. When goods are imported, their price should be reckoned for delivery at the place of importation. This price is generally referred to as Cost, Insurance and Freight² price. CIF is one of the international commercial terms³ which includes the cost of the goods, their

2. CIF

3. Inco terms

transportation up to the place of delivery and the transit insurance.

4. Section 14 also provides for notification of Rules to specify, inter-alia, the conditions under which the transaction value can be rejected. Rejection of transaction value is not relevant to these cases. The Customs Valuation (Determination of Value of Imported Goods), 2007⁴ were formulated as per section 14 of the Act. Rule 3 of the Valuation Rules provides for the assessment to be done as per the transaction value adjusted in accordance with Rule 10 of the Valuation Rules. Rule 10 provides for certain costs and services to be included in the transaction value. In other words, if these elements are not already part of the transaction value, they should be added to determine the assessable value. Sub-rule (2) of Rule 10 provides that the cost of transport for the imported goods upto the place of importation and the cost of transit insurance should be added. In other words, if the transaction value does not include these costs, they should be added. For instance, if anybody buys goods on Free on Board⁵ basis, the cost of transport and transit insurance must be added to arrive at the assessable value.

5. The fifth proviso to Rule 10 (2) of the Valuation Rules states further "provided also that in case of goods imported by air, the cost referred to in clause (a) is ascertainable, such cost

4. Valuation Rules

5. FOB

shall not exceed 20% of Free on Board value of the goods". The reason for this proviso is evident. If goods are transported by ship, the cost of transport will not be much. However, if they transported by air, the cost of transport is likely to be very high. Therefore, in such cases, a cap has been put and even if the actual cost of transport of the goods is more, only 20% of the FOB value of the goods should be added towards transport to arrive at the assessable value.

6. This in an interesting case where the invoices were issued NOT as CIF or FOB basis but on 'ex-works basis'. Ex-works or ex-factory price is the price at the factory gate of the exporter. If the cost of the local transport from that factory to the port of export is added to Ex-works price, we will get the FOB value and if we also add the cost of transport to the port of destination and transit insurance we will get the CIF value. The appellants in these cases filed Bills of Entry declaring the ex-works values shown in their invoices as FOB value and cost of local transport up to the port of export as well as the cost of transport up to the port of import and transit insurance were added to it and the assessable value was determined. The Bills of Entry so filed by the appellants were assessed by officers accordingly. In all these Bills of Entry, the goods were transported by air and not by ship. Therefore, the assessable value was determined by considering only 20% of the invoice value (ex-works) as the cost of transportation to be added to the assessable value when actually 20% of the FOB value i.e.

the invoice value on ex-works basis + the cost of local transport up to the place of export should have been added to arrive at FOB value. The Bills of entry should have been filed accordingly. Had they been filed in this manner, the cost of air transport would have been restricted to 20% of the FOB value instead of 20% of the ex-works as was wrongly done.

7. There is no dispute about the legal position between the department and the appellants. The submission of the learned counsel for the appellants is that it was a genuine mistake on their part as well as on the part of the officers who had assessed the Bills of Entry. All Bills of entry were assessed by officers and there was no self-assessment during the relevant period. The invoices were produced before the officers along with the Bills of Entry and other documents. The invoices clearly showed that the prices were on ex-works basis. The airway bills were also enclosed with the Bills of Entry. The airway bills showed separately the cost of freight and the cost of local transport upto the port of export. Therefore, according to the learned counsels the appellants had not concealed any facts from the department. According to the appellants, under such circumstances, the demand of customs duty under the proviso to section 28 alleging collusion or willful mis-statement or suppression of facts cannot be sustained. For the same reason, the penalties under section 114A and 114AA on the appellants also cannot be sustained.

8. Learned authorized representative for the revenue submits that the law is clear. There is no reason for the appellants to have mis-declared ex-works price as their FOB value. The submission of the learned counsel that the customs EDI system for filing the Bills of Entry provided for only declaration of FOB value or CIF value, but not ex-works value cannot be accepted. The appellant should have either added the cost of local transport to the invoice value and shown that amount as the FOB value or they should have added local transport as 'other charges'. Learned authorized representative further submits that transactions on ex-works basis are common and in all such cases the importers add the cost of local transport as other charges. Had that been done this evasion of duty would not have taken place.

9. According to the learned Authorized Representative, insofar as the wilful mis-statement is concerned it can only be deduced from the facts of the case. It is evident that the appellant had gained by reducing their tax liability. It is also apparent that the appellants had full knowledge of the nature of their transactions and that the invoices were on ex-works basis and that they were, in addition, paying an amount for local transport which was also recorded in the airway bills. In view of the above, all appeals may be dismissed and the impugned order may be upheld.

10. We have considered the submissions advanced by both the sides and perused the records.

11. There is no dispute regarding the legal position – that the duty must be levied on CIF value and for this purposes cost of freight, if the goods are transported by air should be restricted to 20% of the FOB value. In all these Bills of Entry, the ex-works price was given as the FOB value and the cost of local freight up to the place of export was also added to the cost of transport. As a result, the amount which has been reckoned as the cost of air transport has been reduced from 20% of FOB to 20% to the ex-works price. Hence, the demand of differential duty.

12. The next question is whether extended period of limitation under section 28 could have been invoked in case of non-payment or short payment by reason collusion or willful statement or suppression of facts. There is no doubt that there was a mis-statement on the part of the appellants because they declared the ex-works price as FOB value. The question is if it was willful or it was a genuine oversight. According to the appellants that was genuine oversight. According to the Revenue, the mis-statement was willful to evade payment of duty. In this context, we note that all the Bills of Entry were assessed by the officers and they had all the documents which the appellant had. They could have also called for any additional documents. However, the officers also assessed the

Bills of Entry considering the ex-works price as the FOB value. We do not find any allegation in the show cause notice that the officers had somehow colluded in the short payment of duty. Therefore, there is no evidence of any collusion. It was evidently an honest mistake on the part of the officers who assessed the Bills of Entry as well as on the part of the appellants.

13. Under these circumstances, we find that extended period of limitation could not have been invoked in the facts of these cases. For the same reason, we find that the imposition of penalties also cannot be sustained. As entire period of demand falls within the extended period of limitation, the entire demand needs to be set aside.

14. In view of the above, all appeals are allowed and the impugned orders are set aside with consequential relief to the appellants.

(Order pronounced in open court on 27/05/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)