Commissioner Of Central Excise, Mysore vs M/S. Tvs Motors Company Ltd on 15 December, 2015

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Bench: Rohinton Fali Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5155-5156 OF 2007

COMMISSIONER OF CENTRAL EXCISE, MYSORE	.....APPELLANT(S)	
VERSUS		
M/S. TVS MOTORS COMPANY LTD.	.....RESPONDENT(S)	

W I T H

CIVIL APPEAL NOS. 1763-1764 OF 2009

CIVIL APPEAL NO. 7007 OF 2011

CIVIL APPEAL NO. 7550 OF 2011

CIVIL APPEAL NO. 2204 OF 2013

CIVIL APPEAL NO. 2205 OF 2013

CIVIL APPEAL NOS. 957-959 OF 2014

CIVIL APPEAL NOS. 7854-7865 OF 2014

CIVIL APPEAL NO. 7444 OF 2008

A N D

CIVIL APPEAL NOS. 3768-3769 OF 2011

J U D G M E N T

A.K. SIKRI, J.

The question of law which arises for consideration in all these appeals is identical, which is the

following one;

Whether the pre-delivery inspection charges (for short 'PDI') and after sales service charges (for short 'ASS') are to be included in the assessable value?

For the sake of convenience, however, we take note of the facts from the record of Civil Appeal Nos. 5155-5156/2007 wherein M/s. TVS Motors Company Ltd. (hereinafter referred to as the 'assessee') is the respondent. The assessee is holding central excise registration for the manufacturing and clearing two wheeled motor vehicles classified under Chapter Sub-Heading 8711.20 and 8711.10 of the Central Excise Tariff Act, 1985. The assessee sells their goods directly to the customers through sales depots spread throughout the country. The assessee had requested for provisional assessment with respect to the depot sales as they could not determine the normal transaction value at the time of clearance at factory gate in respect of such depot clearance. The provisional assessment was finalized for the period from 01.07.2001 to 31.03.2002 and 01.04.2002 to 31.03.2003 vide Order-in-Original No. 47 of 2004 dated 19.07.2004 and 44/2005 dated 04.05.2005. The above said Order-in-Original's included PDI charges and free ASS charges in the assessable value. The reason for doing so by the Adjudicating Authority was Circular No. 643/34/2002 dated 01.07.2002 wherein it has clarified the same to be included in the assessable value.

The assessee filed an appeal against the above cited orders before the Commissioner (Appeals), Mangalore, who, vide Order-in-Appeal No. 227/2005 CE dated 24.10.2005, disallowed inclusion of PDI charges and free ASS charges in the assessable value by relying on the Custom Excise and Service Tax Appellate Tribunal (CESTAT) decision in the case of Maruti Udyog Limited v. CCE, Delhi-III[1] and remanded the case to the Adjudicating Authority to re-examine the disputed issues in the light of settled legal positions and finalise the provisional assessments accordingly.

Aggrieved by the above Order-in-Appeal, the Department filed an appeal before the CESTAT, Bangalore. The Tribunal, vide final Order Nos. 1860 & 1861/2006 dated 03.11.2006 has rejected Department's appeal and upheld the Commissioner (Appeals), Order-in-Appeal, holding that the abatement in respect of PDI charges and ASS charges is correct, by relying upon the Tribunal's decision in the case of Maruti Udyog Limited and remanded the case to the original Authority for re-computation. We may note that the Tribunal's decision in the case of Maruti Udyog Limited was questioned by the Department before this Court vide C.A. No. D 7670 of 2006, which was rejected on the ground of delay. It is under the aforesaid circumstances the Tribunal's order is challenged by way of instant appeals filed by the Department.

We may point out, at this stage, that some other Bench(es) of the Tribunal had taken contrary view and the matter was referred to the Larger Bench which decided the issue in the case of Maruti Suzuki India Ltd. v. CCE, New Delhi[2]. It has held that the definition of 'transaction value' would cover the free PDI as well as ASS charges. It is in this backdrop that three appeals are filed by the assessees questioning the validity of the orders passed by the Bench taking the aforesaid view.

Some of the essential features which needs to be pointed out are that the excise duty is payable on the 'transaction value' as per the provisions of Section 4 of the Act. The provisions of Section 4

amended in the year 2000. All these cases pertained to the period post 2000. Therefore, it is the amended provision of Section 4 which, inter alia, states that excise duty is to be paid on 'transaction value'. The definition of transaction value is given in Section 4(3)(d) of the Act. However, in order to comprehensively answer the issue, it would be necessary to traverse through the unamended provision which prevailed before the amendment in Section 4 by the Finance Act of 2000 and to then determine as to whether amended provision has resulted in altering the provision in the context of the issue raised in these appeals.

The counsel for the parties on either side were ad idem that PDI and ASS undertaken by Dealers and expenditure incurred by them which is not recovered or charged by the assessee from the dealers is not to be included for the purposes of excise duty. The position that the agreement between manufacturer and dealer requires dealer to undertake these activities does not affect this position. Firstly, these are legitimated usual dealer activities in the automobile industries throughout the world including India. Thus, incurring of these items of expenditure by dealer in usual business practice is not an unusual or ex-bonding/peculiar position. This was so settled, way back in the year 1938 by the Privy Council in Ford Motor India Ltd. v. Secretary of State[3], in the case of cars itself in the context of valuation in India under Sea Customs Act. The same has been applied and followed by this Court in this very context, though pertaining prior to 01.07.2000 in A.K. Roy v. Voltas Ltd.[4] The issue in that case was as to whether excise duty was payable on retail sale price or on wholesale cash price. In the said case, the respondent-company carried on the business of manufacturing air conditioners, water coolers and component parts thereof. It organised the sales of these articles from its head office at Bombay as also from its branch office at Calcutta, Delhi, Madras, Bangalore, Cochin and Lucknow. From these offices it effected direct sales to consumers at list prices and the sales so effected came to about 90 to 95% of its production. Apart from these sales, it also sold the articles to wholesale dealers from different parts of the country in pursuance of agreements entered into with them. The agreements provided that the dealers should sell the articles at the list prices, the respondent would sell them the articles at 22% discount over the list prices, the dealers would not be entitled to any discount on the prices of accessories, and the dealers should give service to the units sold in their territory. The respondent's case was that the list price, after deducting the discount of 22% allowed to the wholesale dealers, would constitute the “wholesale cash price” for determining ad valorem value. This case was accepted by the excise authorities up to the end of 1962. However, thereafter Department changed its stand by taking the position that excise duty would be assessed and levied not on the footing of the 'wholesale cash price' but on the basis of retail price. Order-in-Original was passed to that effect and the appeal of the respondent-assessee was also dismissed. The Order-in-Appeal was challenged by filing writ petition in the High Court which was allowed and the judgment of the High Court was upheld by this Court while some of the discussions which was relevant for our purposes is contained in para 12 wherein the Court took note of and discussed earlier judgment of the Privy Council. We would, therefore, like to reproduce this para in its entirety:

> “12. In Ford Motor Company of India Limited, v. Secretary of State for India in Council (AIR 1938 PC 15 : 65 IA 32 : 172 IC 771) the appellants before the Privy Council, who imported Ford Motor vehicles from Canada to India, where they had a monopoly of the supply of those vehicles, sold them only to authorised dealers or

distributors, each of whom was sole agent for a retail seller of the vehicles in a particular district. The appellants obtained from the distributors information as to their future requirements and placed consolidated orders accordingly with the manufacturers in Canada. The retail price charged by the distributors to the public was that stated in a price list issued by the appellants and current at the time of the arrival of vehicles in India, and the price payable by the distributors to the appellants was the same price less a discount of 20 per cent. The distributors had to pay that price before obtaining delivery, which was given "free on rail". On arrival in India the vehicles were not completely assembled, and were so delivered to the distributors, an agreed allowance against the price being made by the appellants. On the question whether Section 30(a) or 30(b) of the Sea Customs Act, 1878, applied, for the purpose of finding out the real value of the goods for levy of customs duty, the Privy Council held that the price charged by the appellants to the distributors excluding the assembling allowance was the "wholesale cash price, less trade discount" for which the vehicles were sold "at the time and place of importation" within the meaning of Section 30(a) of that Act, the terms of which are more or less similar to those of Section 4(a) of the Act. This case is an authority for the proposition that mere existence of the agreements between the respondent and the wholesale dealers under which certain obligations were undertaken by them like service to the articles, would not render the price any the less the 'wholesale cash price'. To put it in other words, even if the articles in question were sold only to wholesale dealers on the basis of agreements and not to independent persons, that would not make the price for the sales anything other than the 'wholesale cash price'. The argument that what was relevant to determine the 'wholesale cash price' under clause (a) of Section 30 of the Sea Customs Act, 1878, was the price of goods of a like kind and quality was negatived by the Privy Council by saying that goods under assessment may, under clause (a) be considered as members of their own class even though at the time and place of importation there are no other members and that the price obtained for them may correctly represent the price obtainable for goods of a like kind and quality at the time and place of importation." Another decision which may be relevant for our purposes is the case of M/s. Philips India Ltd. v. CCE, Pune[5] wherein advertisement expenses and free ASS during guarantee period was provided by dealers to the product of Philips under agreement. This agreement between the appellant and their dealers are genuine agreements entered into an arms length. The assessee/manufacturer had agreed to share half of the advertisement expenses since advertisement benefited both the manufacturer as well as the dealer. The assessee/appellant had claimed deductions of the aforesaid expenditure which was held by the Adjudicating Authority as inadmissible. The decision was upheld in appeal before the Commissioner as well as the Tribunal. However, this Court reversed the view of the lower authorities holding that the assessee would be entitled to claim deduction from price realised from dealers on the aforesaid account after taking note of the relevant clauses of the Agreement between the parties from which it was found that the agreements were genuine entered into on arms length basis and were between principle to principle under which payments were in fact made. Paras 5

and 6 of this judgment are reproduced below:

> "5. It seems to us clear that the advertisement which the dealer was required to make at its own cost benefited in equal degree the appellant and the dealer and that for this reason the cost of such advertisement was borne half and half by the appellant and the dealer. Making a deduction out of the trade discount on this account was, therefore, uncalled for.
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> 6. As to the after sales service that the dealer was required under the agreement to provide, it did of course enhance in the eyes of intending purchasers the value of the appellant's product, but such enhancement of value enured not only for the benefit of the appellant; it also enured for the benefit of the dealer for, by reason thereof, the dealer got to sell more and earn a larger profit. The guarantee attached to the appellant's products specified that they could be repaired during the guarantee period by the appellant's dealers anywhere in the country. Thus, though one dealer might have to repair goods sold by another dealer and incur costs in that regard, he also had the benefit of having the goods he sold reparable throughout the country. The provision as to after sales service, therefore, benefited not only the appellant; it was a provision of mutual benefit to the appellant and the dealer." Likewise, in the case of Commissioner v. Telco Ltd.[6], by brief order, this Court affirm the view of the Tribunal holding that when sale to independent dealers is at an arm's length, payment directly made by the assessee for labour ASS to additional service centres arranged by the assessee and subsequent recovery of such expenses by the assessee from the dealer, is not a case of flow back of additional consideration nor does such an arrangement make such dealer an agent of the assessee.

What follows from the above is that where manufacturer himself does the ASS and incurs any expenditure thereon, the same is not deductible from the price charged by him from his buyer. Likewise, where the manufacturer has sold his goods to his dealer and wholesale dealer thereafter does ASS to the customer and incurs expenditure therefore, it cannot be added back to the sale price charged by the manufacturer from the dealer for computing the assessable value. This is more so, where the ASS is done by the dealer many weeks after the goods have been sold to him by the manufacturer. Such a post-sale activity undertaken by the dealer is not relevant for the purpose of excise since the goods have already been marketed to the dealer.

The aforesaid decisions were followed by this Court in Union of India v. Bombay Tyre International[7] and in the case of Government of India and Ors. v. MRF Ltd. and Ors.[8] The aforesaid judgments were followed by the Tribunal in Mahindra and Mahindra Ltd. v. Collector of Central Excise[9] wherein the Tribunal was considering the issue as to whether the cost of ASS rendered by the dealers and the advertisement expenses incurred by the dealers should be included in the assessable value of the vehicles manufactured and cleared by Mahindra and Mahindra. Incidental issue as to whether PDI conducted by dealers under the terms of agreement entered into by them with Maruti Udyog should be included in the assessable value of the vehicle or not. The Tribunal rejected the contention of the Department and the aforesaid decision was upheld by this

Court in the judgment reported as 1999 (111) ELT A126.

The position in respect of unamended provision, thus, is very clear. Coming to the amendment in Section 4 of the Act, in the year 2000, it may be noted in the first instance that definition of 'transaction value' as per Section 4(3)(d) is exhaustive and covers within its purview, the price of goods and various other amounts charged by the assessee by reason of sale or in connection with sale. This provision reads as follows:

> "(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods." The expression 'any amount that the buyer is liable to pay to' is of significance. This expression shows that, apart from the price of the goods, the buyer should also be liable to pay an additional amount to the manufacturer/seller. In other words, the sale of the goods would not be made unless the buyer is also to pay an additional amount to the manufacturer, apart from the price of the goods. This is also supported by use of expression 'by reason or' or 'in connection with the sale' of the goods. The expression 'in connection with the sale of the goods' would only mean that but for the payment of the additional amount, the sale of the goods would not take place. When we keep in mind the aforesaid legal position, we find no error in the view taken by the Tribunal giving benefit to the assessee. Both the sides were in unison in accepting the position that no major change had been incorporated w.e.f. 01.07.2000 with emphasis on the 'different transaction value' from the 'assessable value', the essence of valuation principles had not undergone major change and the decisions delivered by this Court with regard to unamended provision on the principle of valuation were still applicable in determining the transaction value under the new provisions of Section 4 of the Act red with Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000. In fact, the Order-in-Original in M/s. TVS Motors Company Ltd. or in other cases itself proceeds on that basis.
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> Mr. Radhakrishnan, learned senior counsel appearing for the Department, attacked the decision of the Tribunal by referring to the Board's circular dated 19.11.1997 and submitted that the said circular was issued by the Board after settling the law on the issue of inclusion of ASS, expenses in the assessable value in the case of Bombay Tyre International. The circular accepts the position that though the law has been settled much earlier by the aforesaid judgment rendered in the year 1984, a doubt has been raised relating to the inclusion of expenses of PDI and three initial services performed free of cost during initial usage of the vehicle by dealers in the assessable

value of motor vehicle. Since these services are provided by the dealer and no separate charges for these services are paid by the manufacturer to the dealer and it is the dealer who is incurring the expenses out of the margin allowed by the manufacturer, the doubt was as to whether a portion of dealer's margin has to be included in the assessable value. The circular, thus, clarifies that going by the ratio in the case of Bombay Tyre International, ASS being part of the selling expenses will be includible in the assessable value. The Circular also clarified that subsequent judgment of this Court in M/s. Philips India Ltd. would have no bearing. As per this Circular, the said judgment is related to a case of sale of audio equipments and services are provided under a guarantee attached to the manufacturer's product that these could be repaired during the guarantee period by their dealer anywhere in the country and, therefore, was differentiated on facts. The learned senior counsel, thus, argued that the aforesaid circular amply clarifies the position and the fact situation in the present case would be covered by the judgment in Bombay Tyre International.

We may mention that the aforesaid circular was withdrawn vide another Circular dated 12.12.2002 issued by the Board taking note of the fact that the CESTAT had decided otherwise in the case of M/s. Mahindra & Mahindra Ltd. (supra), M/s. Hindustan Motors Ltd.[10], and M/s. Escorts Tractors Ltd.[11] and the appeals of the Department against the aforesaid decisions of CESTAT were dismissed by this Court vide order dated 27.01.2000 which was reported as 2000 (120) ELT 290 (S.C.). Thus, while withdrawing the Circular No. 355/71/97-CX., dated 19.11.1997 and subsequent Circular No.435/1/99-CX., dated 12.01.1999, PDI and free ASS provided by the dealer of the vehicle, during the warranty period will not be included in the assessable value. Mr. Radhakrishnan, however, tried to overcome the aforesaid circular by submitting that the appeals in the aforesaid cases were dismissed by this Court on 27.01.2000 with one line order without giving any reasons. He emphasized and insisted that the issue involved in the present case is more proximate with the factual position that prevailed in Bombay Tyre International and, therefore, the same should be followed.

We would like to point out here that the aforesaid circular was in respect of the statutory provision that prevailed prior to 2000. There was statutory amendment carried out in the year 2000 and new valuation procedures were made effective from 01.07.2000 which led to issuance of another circular dated 01.07.2002 by the Board. Various clarifications were issued in the circular. We are concerned with point of doubt No.7 contained in that circular and the explanation thereto which makes the following reading:

|7 |What about the cost|Since these services are provided free | | |of after sales |by the dealer on behalf of the | | |service charges and|assessee, the cost towards this is | | |pre-delivery |included in the dealier's margin (or | | |instpection (PDI) |reimbursed to him). This is one of the| | |charges, incurred |considerations for sale of the goods | | |by the dealer |(motor vehicles, consumer items etc.) | | |during the warranty|to the dealer and will therefore be | | |period? |governed by Rule 6 of the Valuation | | |

|Rules on the same grounds as indicated | | | |in respect of Advertisement and | | | |Publicity charges. That is, in such | | | |cases the after sales service charges | | | |and PDI charges will be included in the| | | |assessable value. | The aforesaid clarification, if that was to be acted upon, may go in favour of the Department. However, it is pertinent to point out that this very clarification as given by the Board was challenged in the High Court of Bombay and in the judgment rendered by the Bombay High Court in the case of Tata Motors Ltd. v. Union of India[12], the same was struck down by making following pertinent observations:

41. In our view, the only question which fell for consideration of this Court was whether Clause 7 of Circular dated 1st July, 2002 is in excess of the provisions of Section 4(1)(a) and 4(3)(d) of said Act as amended by Section 94 of the Finance Act of 2000. In our view, the answer to this question will decide the issues as between the petitioners and the respondents. In our view, it is not necessary for us to record our views on the correctness of the judgment delivered by the larger bench in the case of Maruti Suzuki (Supra). Similarly, in our view, it is not necessary to express any view on the order-in-original dated 5th December, 2011.

We have considered the provisions of Section 4(1)(a) as amended as well as the provisions of Section 4 as they stood prior to the amendment which came into effect from 1st July, 2000. We are in agreement with the submission advanced by learned Senior Counsel Mr. Sridharan that the provisions of Section 4 as amended are not materially different from the provisions of Section 4 as were prevailing prior to 1st July, 2000. By the amendment, a new term has been introduced by name "transaction value" and the said term transaction value has been specifically defined in Section 4(3)(d) of the said Act. The present Section 4(1)(a) r/w definition of term transaction value gives more clarity and all doubts as to how the assessable value is to be arrived at are removed. It is also noted that the various items incorporated in the term transaction value as defined in Section 4(3)(d) of said Act as forming part of value of Excisable goods are in fact the expenses/deductions specifically disallowed by the Supreme Court in Bombay Tyre International Ltd. reported in 1983 (14) ELT 1896 SC. If one closely observes the definition of the term transaction value, it uses the terminology 'servicing'. It appears that the respondents are taking the benefit of this term 'servicing' for the purpose of adding to the assessable value, the expenses incurred by the dealer towards PDI and free said services by resorting to Clause 7 of Circular dated 1st July, 2002 and Circular dated 12th December, 2002.

Turning to point in question, it is noticed that the definition of the transaction value in Section 4(3)(d) of the said Act is extensive and ropes in the price of the goods and other amounts charged by the assessee by the reason of sale or in connection with sale. A close reading of Section 4(3)(d) of the said Act would indicate that the term transaction value comprises of price actually paid or payable by the buyer and includes additional amount that the buyer is liable to pay or on behalf of the assessee by reason of sale or in connection of sale whether payable at the time of sale or at any other time including the amount charged for or to make provision for certain items such as advertising etc. One such item is servicing. In view of the definition of the term transaction value, it would be necessary for this Court to apply the definition of the term "transaction value" to the facts of this

case and decide the matter. It is admitted by the petitioners that after a car is sold to a dealer on the terms and conditions entered into mentioned in the dealer's agreement, a dealer is required to carry out Pre Delivery Inspection as well as said services in regard to a car which is sold to a customer. From the record it is seen that a dealer is required to pay an amount to the petitioners towards the cost of the car and a dealer cannot charge more than the amount specified by the petitioners. The difference between the price so fixed by the petitioners and the price paid by the dealer constitutes what is called as dealer's margin. A dealer has to spend money to conduct PDI as well as render said services. We are inclined to accept the stand of the petitioners that the dealer is required to perform PDI as well as said services as a part of the dealer's responsibility cast on him as per the dealership agreement. The contention of the petitioners that the petitioners do not charge the dealer for the expenses incurred by the dealer towards PDI and said services is required to be accepted. From the record it is clear that the case of the petitioners so far as the amount incurred by the dealer towards PDI and said services does not form any of the clauses viz. (a) Any amount charged for (b) Amount charged to make provision for (c) Any amount that the buyer is liable to pay to the assessee (d) Any amount that the buyer is liable to pay on behalf of the assessee. The record indicates that once a car is sold by the petitioners to the dealer at a price, the dealer is not required to pay any further amount to the petitioners on account of PDI and free after sales services/after sales services. It is clear that when the petitioners are selling the car to a dealer, price is the sole consideration and the petitioners and the dealer are not related to each other. Having complied with these requirements set out in Section 4(1)(a) of the said Act, the assessable value of the Cars will have to be treated as the one which will be the transaction value. The transaction value will have to be arrived at by taking into consideration the definition of the term transaction value appearing in Section 4(3)(d) of the said Act. The record clearly goes to show that apart from the price which is paid by the dealer to the petitioners, no amount is recovered by the petitioners from the dealer or the customer. As such, the stand of the respondents that the expenses incurred towards PDI as well as said services have to be included in the assessable value cannot be accepted. This is being observed on the ground that there is no material to show that the expenses for the pre-delivery inspection as well as after sales services are paid by the dealer to the petitioners. The dealer renders PDI and said services as a routine and legitimate activity as a dealer. It is also clear from the record and on the basis of the typical dealership agreement entered into with the dealer by the petitioners that a dealer renders PDI as well as said services on account of dealership. It is pertinent to note that the respondents have in affidavit in reply dated 29th June, 2012 admitted that the dealer carries out free PDI and after sales services at their end. It is admitted that labour cost towards PDI and said services is borne out of retailing profit. The contention of the respondents that the expenses incurred for PDI and said services must be included in the transaction value and is required to be included in the assessable value of the car is required to be negatived on the ground that the petitioners do not charge the dealer any amount equivalent to the cost incurred towards PDI and free after sales services.

It has been the contention of the respondents that the petitioners provide warranty in regard to the car which is sold by the dealer to the customer. According to the respondents the customer can avail of the benefit of this warranty, provided PDI is carried out in respect of the car and the customer avails of the benefit of said services. According to the respondents the warranty given by the petitioners is linked with expenses incurred towards PDI and said services and that is how the expenses incurred for PDI and said services become a part of the transaction value. We are not

inclined to accept this contention. It is true that the Owner's Manual specifically indicates that if the PDI and said services are not availed of, then the customer would not be able to claim the benefit of the warranty. This will go to show that the petitioners undertake responsibilities so far as the warranty aspect is concerned provided the customer takes the benefit of PDI and said services. It has no bearing on the assessable value as it is abundantly clear that to perform PDI as well as render said services is on the dealer's obligation on account of dealership agreement and not on any other count. Once it is held that the PDI and said services are not provided by the dealer on behalf of the petitioners, it cannot be treated as consideration for sale. It also cannot be treated as a deferred consideration. The respondents while issuing Circular dated 1st July, 2002 have wrongly referred to the Rule 6 of the said Rules and have wrongly linked the expenses incurred for PDI and said services with expenses for advertisement or publicity. It is required to be noted that the provisions of the said Rules will not be applicable to the facts of this case as the transaction between the petitioners and the dealer does not fall within the ambit of Section 4(1)(b) of the said Act. The transaction of sale of a car between the petitioners and the dealer is governed by the provisions of Section 4(1)(a) of said Act as the petitioners as assessee and the dealer as a buyer of the car are not related to each other and price is the sole consideration for the sale. In our view, reference to the Rule 6 of the Valuation Rules in Clause 7 of Circular dated 1st July, 2002 is totally misconceived. The reference made by learned Senior Counsel Mr. Sridharan to the case of Mr. A.K. Roy and Anr. Vs. Voltas Ltd. reported in 1977 (1) ELT (J-177) SC is apt. We have perused the said judgment and applying the said judgment to the facts of the present case, the respondents would be able to demand Excise duty on the amount which is charged by the petitioners to the dealer. It is to be noted that as per the record, once the car is sold by the petitioners to the dealer for a particular consideration, no other amount is payable by the dealer to the petitioners. It is required to be mentioned that the petitioners are not reimbursing any amount to the dealer towards expenses incurred for the PDI and said services and the petitioners are paying Excise duty on the entire amount for which the petitioners sale the car to the dealer. In the present case, even if it is taken that the petitioners are giving trade discount to the dealer, the petitioners are paying the Excise amount on the whole amount and not the amount which is arrived at after giving the trade discount. Learned Senior Counsel Mr. Sridharan's submission in terms of judgment in the case of Atic Industries Ltd. Vs. H.H. Dave, Assistant Controller of Central Excise and Ors. reported in 1978 (2) E.L.T. (J 444) S.C. that the price which is relevant for the purpose of Excise duty was the price when the good first entered in the stream of trade is required to be accepted. In the present case, when the petitioners sell the car to the dealer, the goods enter the stream of trade for the first time and, therefore, the amount at which the car is sold to the dealer would be the assessable value on which the Excise duty would be payable. In the present case, the expenses incurred by the dealer for PDI and said services has nothing to do with the term "servicing" mentioned in the transaction value and as such, the said expenses cannot be added to assessable value.

On consideration of the Clause 7 of Circular dated 1st July, 2000, it is apparent that the respondents have brought into existence a deeming provision that is to say the respondents have treated all the manufacturers of cars on one platform and by fiction taken a decision to add the expenses incurred towards PDI and said services in the assessable value. It will have to be mentioned that in all cases where the expenses incurred towards PDI and said services are solely borne by the dealer and the manufacturer like petitioners have nothing to do with the said expenses then adding those expenses

in the assessable value would be contrary to the provisions of Section 4(1)(a) r/w Section 4(3)(d) of the said Act. Looking to the facts and circumstances of this case, the respondents have not been able to place on record any material to show that the amount incurred towards PDI and said services can fall within the definition of the transaction value." We agree with the enunciation of legal position stated by the High Court.

We have also to keep in mind these cases pertain to the period post 2000. It is also to be borne in mind that the clarification very categorically proceeded on the basis that the services were provided free by the dealer 'on behalf of the assessee' and the same was 'during the warranty period'. The clarification given, keeping in mind the aforesaid two features, makes all the difference inasmuch in these cases, we find that the services which are provided by the dealers are on their behalf and not on behalf of the assessees. The facts disclosed that the amount which was reimbursed by the assessee to their dealers pertaining to free service was being claimed as abatement in relation to the normal transaction value. It was one of the contention of these assessees that free service charges is a post sale activities and all post sale activities continued to be excludable in determining transaction value.

On the other hand, we would like to refer to Circular dated 12.05.2000 which was issued contemporaneously with the amendment in Section 4. It expressly states that amount should be recovered from the buyer by the assessee-manufacturer and makes the following reading in this behalf:

> "2.2 Definition of 'transaction value' has also been modified to make it more transparent. Any amount paid by the buyer himself or on his behalf to the assessee by reason of, or in connection with the sale, would form part of the transaction value. Any amount that is charged or recovered from the buyer on account of factors like advertising or publicity, marketing and selling organization expenses, storage and outward handling etc. will also be part of the transaction value. In fact, most of the charges that are recovered on account of the specific activities by advertising or publicity, etc. mentioned in the definition of transaction value are includable in the computation of 'value' under the existing section.
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> As such, the definition of transaction value does not seem to be divergently wider in content and scope from the interpretation of 'value' under existing Section 4. The definition of 'transaction value' should help set at rest any doubt regarding amounts that are charged or recovered from the buyer in respect of specific kind of operations done by the assessees. In essence, whatever is recovered from the buyer by reason of, or in connection with the sale, whether payable at the time of sale or at any other time is included in the transaction value.
>
> ... (emphasis supplied)" This very position is reiterated by the Board in its circular Letter F. No. 354/81/2000-TRU dated 30.06.2000 which gives clause by clause explanation of the Section. Relevant extract from the same is reproduced herewith as under:

"6. ...It may also be noted that where the assessee charges an amount as price for his goods, the amount so charged and paid or payable for the goods will form the assessable value. If, however, in addition to the amount charged as price from the buyer, the assessee also recovers any other amount by reason of sale or in connection with sale, then such amount shall also form part of the transaction value for valuation and assessment purposes. Thus if assessee splits up his pricing system and charges a price for the goods and separately charges for packaging, the packaging charges will also form part of assessable value as it is a charge in connection with production and sale of the goods recovered from the buyer ... It would be seen from the definition of 'transaction value' that any amount which is paid or payable by the buyer to or on behalf of the assessee, on account of the factum of sale of goods, then such amount cannot be claimed to be not part of the transaction value. In other words, if, for example, an assessee recovers advertising charges or publicity charges from his buyers, either at the time of sale of goods or even subsequently, the assessee cannot claim that such charges are not includable in the transaction value. The law recognizes such payment to be part of the transaction value that is assessable value for those particular transactions." The sequitur of the aforesaid discussion would be to hold that PDI charges and free ASS charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty. The view taken by the Tribunal in favour of assessees in this behalf is correct in law and all the appeals of the Department, i.e. C.A. Nos. 5155-5156/2007, 1763-1764/2009, 2204/2013, 2205/2013, 957-959/2014, 7854-7865/2014 and 7444/2008 are dismissed. On the other hand, Larger Bench view in Maruti Suzuki does not lay down the law correctly and is, therefore, overruled and the appeals filed by the assessees, i.e. C.A. Nos. 7007/2011, 7550/2011 and 3768-3769/2011 are allowed.

.....J. (A.K. SIKRI) .....J. (ROHINTON FALI NARIMAN) NEW DELHI;

DECEMBER 15, 2015.

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[1] 2004 (170) ELT 245 (Tri-Del) [2] 2010 (257) ELT 226 [3] AIR 1938 PC 15 = 1978 (2) ELT (J 265) (PC) [4] (1973) 3 SCC 503 [5] 1997 (91) ELT 540 [6] 2001 (130) ELT A260 (S.C.) [7] (1984) 1 SCC 467 [8] (1995) 4 SCC 349 [9] 1998 (103) ELT 606 [10] 1998 (101) ELT 198 (T) [11] 1999 (078) ECR 342 (T) [12] 2012 (286) ELT 161 (Bom.)