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Date: 03.10.2025

CESTAT Mumbai Quashes ₹3.09 Crore Customs Duty Demand on Forklift Parts

This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant ruling, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Mumbai, has set aside a demand for differential customs duty and penalties imposed on Jungheinrich Lift Truck India Pvt Ltd and other appellants. The case revolved around the import of forklift parts and the applicability of additional duties of customs under the Customs Tariff Act, 1975, and the Legal Metrology (Packaged Commodities) Rules, 2011.

Background of the Case

The dispute arose from the import of forklift parts by Jungheinrich Lift Truck India Pvt Ltd between June 2014 and June 2017 through the Air Cargo Complex (ACC), Mumbai, and Jawaharlal Nehru Customs House (JNCH), Nhava Sheva. The customs authorities had re-determined the value of the imported goods and demanded a differential duty of ₹3.09 crore for imports through ACC and ₹7.75 lakh for imports through JNCH. Additionally, penalties were imposed under Sections 114A and 114AA of the Customs Act, 1962.

The crux of the issue was whether the imported forklift parts were subject to the Legal Metrology (Packaged Commodities) Rules, 2011, which mandate the declaration of a "retail sale price (RSP)" for pre-packaged commodities. The customs authorities argued that the goods were liable for additional duties based on the

RSP, while the appellants contended that the goods were not pre-packaged commodities intended for retail sale.

Key Arguments by the Appellants

The appellants, represented by their legal counsel, argued that:

1. The imported forklift parts were intended for after-sales service and were supplied to existing customers, not for retail sale.
2. The goods were not "pre-packaged commodities" as defined under the Legal Metrology Act, 2009, and hence, the requirement to declare an RSP did not apply.
3. The customs authorities lacked the legal authority to re-determine the RSP or impose additional duties based on the RSP.
4. The valuation system under the Customs Tariff Act, 1975, should align with the transaction value, which had already been declared and assessed.

Tribunal's Observations and Ruling

The Tribunal made several critical observations:

1. **Non-Applicability of Legal Metrology Rules**: The Tribunal noted that the Legal Metrology (Packaged Commodities) Rules, 2011, apply only to goods intended for retail sale. The imported forklift parts were supplied to institutional and industrial consumers, exempting them from the purview of these rules.
2. **Lack of Machinery for RSP Re-Determination**: The Tribunal highlighted the absence of statutory provisions or machinery under the Customs Act, 1962, to re-determine the RSP for imported goods. The customs authorities could not rely on the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008, as these rules are not applicable to customs officers.
3. **Jurisdictional Overreach**: The Tribunal held that the customs authorities had exceeded their jurisdiction by attempting to re-assess the value of the goods based on an RSP that was neither declared nor applicable.
4. **No Evidence of Retail Sale**: The Tribunal found no evidence that the imported goods were sold at a price higher than the declared transaction value.

Based on these findings, the Tribunal concluded that the customs authorities lacked the jurisdiction to demand differential duty or impose penalties. The impugned order was set aside, and the appeals were allowed.

Implications of the Ruling

This landmark decision has far-reaching implications for importers and the interpretation of customs laws:

1. **Clarity on Legal Metrology Rules**: The ruling reinforces that the Legal Metrology (Packaged Commodities) Rules, 2011, apply only to goods intended for retail sale and not to industrial or institutional consumers.
2. **Limits on Customs Authority**: The decision underscores the limitations of customs authorities in re-determining the value of imported goods without explicit statutory provisions.
3. **Relief for Importers**: The judgment provides significant relief to importers who face similar disputes over the applicability of additional duties based on RSP.

Conclusion

The CESTAT's ruling in favor of Jungheinrich Lift Truck India Pvt Ltd is a testament to the importance of adhering to the letter of the law in customs assessments. By setting aside the demand for differential duty and penalties, the Tribunal has upheld the principles of fairness and legal certainty in taxation. This decision will undoubtedly serve as a precedent for future cases involving similar disputes.

Source: CESTAT Mumbai

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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

CUSTOMS APPEAL NO: 85809 OF 2020

[Arising out of Order-in-Original No: CC-VA/10/2020-21 Adj.(I) ACC dated 18th June 2020 passed by the Commissioner of Customs (Import), Air Cargo Complex, Mumbai]

Jungheinrich Lift Truck India Pvt Ltd
203/204 2nd Floor, Delphi A Wing, Central Avenue
Hiranandani Business Park, Powai, Mumbai - 400706 ... ***Appellant***

versus

Commissioner of Customs (Import)
Air Cargo Complex, Sahar, Andheri (E)
Mumbai - 400099 ***...Respondent***

WITH

(i) Customs Appeal No: 85820 of 2020 (Manojit Acharya); (ii) Customs Appeal No: 85747 of 2020 (Bullet Cargo Movers Pvt Ltd) and (iii) Customs Appeal No: 85746 of 2020 (Intra Express Logistics Ltd)

APPEARANCE:

Shri T. Vishwanathan, Mr Akhilesh Kangazia and Ms Apoorva Parihar, Advocates for the appellant

Shri Piyush Bhadhe, Joint Commissioner (AR) of the Department

CORAM:

HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NOS: 86375-86378/2025

DATE OF HEARING: 03/04/2025
DATE OF DECISION: 01/10/2025

PER: C J MATHEW

Impugning order[1] of Commissioner of Customs (Import), Air Cargo Complex, Mumbai, M/s Jungheinrich Lift Truck India Pvt Ltd assails the revision of assessment with fastening differential duty of ₹ 3,09,60,921 under section 28(4) of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, on them besides imposition of penalty of like amount under section 114A of Customs Act, 1962 and other penalties under section 114AA of Customs Act, 1962 on 'parts of forklift' imported between 25th June 2014 and 30th June 2017 through Air Cargo Complex (ACC), Mumbai and ₹ 7,75,290 on consignments imported through Jawaharlal Nehru Customs House (JNCH), Nhava Sheva between 25th August 2014 and 30th June 2017. The differential duty was determined by re-appraisal of the value for the purpose of additional duties of customs under section 3(1) of Customs Tariff Act, 1975 in accordance with section 3(2) of Customs Tariff Act, 1975, specifying the manner in which the goods were to be valued in the special circumstances of excise duty on like articles manufactured or produced in India being leviable to duty at the appropriate rate of excise duty on the value of 'retail sale price (RSP)' with abatement to the extent permitted in accordance with section 4A of Central Excise Act, 1944. The impugned order re-determined the value thereof to be ₹ 38,06,21,670 and ₹ 1,33,06,443 on the imports effected through respective ports of entry. In doing so, the computation relied

[1] [order-in-original no. CC-VA/10/2020-21 Adj.(I) ACC dated 18th June 2020]

upon rule 6 of Central Excise Valuation (Determination of Retail Sale Price of Excisable Goods) Rules, 2008. The other appellants challenge the penalties imposed on them under the relevant provisions.

2. In the impugned order, the issue framed for determination was correctness of claim of the importer that the said goods were not required to comply with prescription of declaration for 'pre-packaged commodities' in the Legal Metrology (Packaged Commodities) Rules, 2011, issued under the Legal Metrology Act 2009, and, therefore, to be assessed for the purpose of 'additional duty of customs' by any yardstick other than that accepted for charging of 'basic customs duty (BCD)' at the time of import. It was on affirmation of coverage by the said stipulations that the impugned order determined revision of duty liability by reference to the pricelists circulated by the appellant herein.

3. According to Learned Counsel for the appellant, the impugned order had erred inasmuch as all the imports had been effected – spare parts and other parts – for, and intended to be supplied to, existing customers of 'forklift trucks' and other cargo moving equipment of theirs. It was his contention that these could, by no stretch be intended to be covered by the Legal Metrology Act, 2009, premised upon 'sale, distribution and delivery' as well as 'storage' in 'pre-pack' form and that, for all practical purposes, these were captive consumers inasmuch as the contract of sale of the original equipment bound the appellants

herein to supply the parts thereof; it was not in the interest of the consumer himself to place orders for such replacement in the open market and consequently the law, intended to protect consumers, who, but for such stipulations are not in a position to assert their buying rights, would not apply to the persons who are already consumers of theirs.

4. Learned Counsel pointed out that levy of additional duties of customs on the basis of 'retail sale price (RSP)' on pre-packaged commodities, commenced in 2001 and the valuation system devised in Customs Tariff Act, 1975 was intended to reflect applicability only to the extent that clearance of goods domestically manufactured were required to. He relied upon the decision of the Hon'ble Supreme Court in ***Jayanti Food Processing (P) Ltd v. Commissioner of Central Excise, Rajasthan***[2] mandating stipulated adherence to Legal Metrology Act, 1009 as necessary and essential pre-requisite for such assessment. Learned Counsel submitted that, absent 'prepackaged commodity', there is no packing involved in sale and distribution after clearance for home consumption and any packing or wrapping present at the time of import is solely for protection during transportation and storage. It was pointed out that, in such circumstances, there was no need for declaration of any particular essential for enabling a consumer to make a rationale decision on purchase let alone of price and, more so, in

[2] *[2007 (215) ELT 327 (SC)]*

circumstances of sale contracted by the appellant. He relied upon the decision of the Tribunal in ***Commissioner of Customs (I), Nhava Sheva v. King Kaveri Trading Co***[3] and in ***Fine Equipments (India) Pvt Ltd v. Principal Commissioner of Customs, Nhava Sheva*** in final order[4] disposing off appeal[5] against order[6] of Commissioner of Customs, Nhava Sheva–I. It was further contended that, in view of the specific and peculiar market to which they cater, the activity did not amount to retail sale but is 'after sale service' which is out of the purview of Legal Metrology Act, 2009. Reliance placed on the decision of the Hon'ble High Court of Karnataka in ***EWAC Alloys Ltd v. Union of India***[7] **and in** ***Commissioner of Central Excise, Bangalore – II v. Mysore Cements Ltd***[8]. It was further contended that no power was vested in customs officers to re-determine 'retail sale price (RSP)' either directly in section 3 of Customs Tariff Act, 1975 or indirectly by reference to powers vested in central excise officers under the authority of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008. Reliance was placed upon the decision of the Tribunal in ***ABB Ltd v. Commissioner of Customs, Bangalore***[9] holding that

> *'17. We find that in view of the Central Excise (Determination of Retail Sale Price of Excisable Goods)*

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[3] [2019 (370) ELT 1049 (Tri.-Mumbai)]
[4] [no. A/87592-87593/2023 dated 12th December 2023]
[5] [customs appeal no. 86734 of 2017]
[6] [order-in-original no. 181/2016-17/CC/NS-I/JNCH dated 02nd March 2017]
[7] [2012 (275) ELT 193 (Kar)]
[8] [2010 (259) ELT 30 (Kar)]
[9] [2011 (272) ELT 706 (Tri.-Bang.)]

Rules, 2008 issued on 1-3-2008, it is abundantly clear that in the absence of such rules issued in terms of sub-section (4) of Section 4A of the CEA, there was no statutory machinery to determine the retail sale price in respect of goods manufactured and cleared by a manufacturer without declaring the RSP on such goods. In the absence of a similar machinery to determine the relevant RSP in CTA, no demand of differential CVD could have been validly raised. In this connection, we rely on the following observations of this Tribunal in the case of Millennium Appliances India Ltd. v. Commissioner of C. Excise, Hyderabad [2009 (248) E.L.T. 713 (Tri.-Bang.)] on the applicability of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 prior to 1-3-2008 :

> *"It can be noted that these rules came into force with effect from 1-3-2008. We are of the considered opinion that if these rules came to be effective on 1-3-2008, the ascertaining of value of similar goods has to be done so, with effect from 1-3-2008 and cannot be used to determine the value for the clearances made prior to 1-3-2008. We find strong force in the contention raised by the learned Counsel that the decision of the Tribunal in the case of Aditya Cement - 2007 (218) E.L.T. 166 (T) (supra) would squarely cover the issue in favour of the appellants. The relevant ratio in Para 9 of the said decision is reproduced :-*
>
> *"9. It can be seen from the above reproduced rule that it was in context of the definition of "person liable for paying the Service Tax". This provision in itself may not suffice revenue to direct the appellant to discharge the service tax liability as service receiver, on the face of the fact that notification under Section 68(2) of the Finance Act, 1994, was issued by the Central Government only on 31-12-2004. If the contention of the learned SDR is to be accepted, then there was no necessity for the Government to issue Notification No. 36/2004-S.T. notifying the service receiver from non-resident having no office, to pay Service tax, as receiver. By issuing the said Notification, Central Government intended to tax the service receiver from non-resident, with effect from 1-1-2005, which, in corollary would be that no service tax is payable by this category prior to 1-1- 2005. If that by (sic) so, then the amount paid by the appellant is not a tax, which the revenue cannot kept (sic) with it."*

18. Excerpts from the Apex Court's judgment in the case of National Insurance Co. Ltd. (supra) were cited by the revenue in support of the claim that the retail sale price

> *could be validly determined even in the absence of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 following the principles informing the legislative policy prescribing RSP as the value. We find that the judgment elaborately deals with interpretation of the language of a statute in such a manner to effectuate the intention of the legislature. In the case on hand, we are not faced with the task of interpreting a provision which can accommodate more than one meaning. We are also faced with the argument of the assessee that when RSP was not declared on the packages, the same had to be ascertained in the manner prescribed in the statute. As regards the CVD levied under CTA on goods notified for RSP based assessment, CTA does not have similar provisions as contained in the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008. In Millennium Appliances India Ltd. case (supra) relied on by the assessee, this Tribunal had held that for the period prior to 1-3-2008, the provisions brought into force on 1-3-2008 could not be applied. As regards the need to determine the RSP not declared on the package by the assessee for the period prior to 1-3-2008, we are not able to distinguish the case on hand from Millennium Appliances India Ltd. case. In that case also RSP was not declared on the package and had to be determined. Following the above decision of the Tribunal, we hold that the impugned order adopted a method to determine the RSP without sanction of law.*

as well as in ***DS Chandok & Sons v. Commissioner of Customs (Export Promotion), Mumbai[10]*** **which held**

> *'7. Furthermore, the mandate by which an assessing authority was enabled, under Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, to revisit the value declared in the entry under section 46*

[10] [2021 (9) TMI 417 – CESTAT MUMBAI]

of Customs Act, 1962 is limited to assessment of 'basic customs duty' under section 12 of Customs Act, 1962. Any revision in the assessable value for determination of 'basic customs duty' would correspondingly impact 'additional duties of customs' too. That inheres in the legislative intent couched in section 3(2) of Customs Tariff Act, 1975. However, while inserting the proviso to section 3(2) of Customs Tariff Act, 1975, carving out an exception to the general scheme for valuation where rates of 'additional duty of customs' are ad valorem, that reference to value under Customs Act, 1962 had, necessarily, to be dispensed with for parity with domestic manufacture as stipulated in section 3(1) of Customs Tariff Act, 1975. Recourse to rules of valuation framed under the authority of section 14 of Customs Act, 1962 was, thus, precluded and the sanctity of 'declared' 'retail selling price' protected from being re-determined.

8. As re-labelling of the specified goods would amount to manufacture after import, it is not that recourse was unavailable to remedy any breach of parity. The adoption of 'retail selling price' of other re-sellers and, that too, while the impugned goods were yet to be cleared for home consumption on the presumption that the importer intended to enhance the 'retail selling price' at the point of sale appears to be a mis-direction on the part of the original authority and the confirmation thereof, by the first appellate authority, bears the same taint as to warrant the setting aside of the impugned order.

5. Learned Authorized Representative submitted that the claim of the appellant was inadmissible inasmuch as the impugned order has categorically found the goods to be covered by the mandate for levy authorized by section 3(1) of Customs Tariff Act, 1975 and fulfilling the intent of *proviso* in section 3(2) of Customs Tariff Act, 1975 owing to which differential duty was empowered for

recovery under section 28 of Customs Act, 1962 by the adjudicating authority. It was pointed out that the claim of the appellant to be institutional/industrial consumer was not tenable in the absence of conformity with the relevant *Explanation* in Legal Metrology (Packaged Commodity) Rules, 2011. It was also argued that there no dispute that the goods themselves did not bear endorsement of sale other than in retail channel which may have been verifiable defence for the appellant. Pointing out to the statements of individuals that had been relied upon, he submitted that the customers had not affirmed that condition of sale included supply of parts. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Commissioner of Central Excise, Pondicherry v. Acer India Ltd***[11] and in ***Commissioner of Central Excise v. Johnson & Johnson Ltd***[12]**.**

6. The peculiar construct of the proceedings is not that the allegation of short-payment of duties is assailed with claim that, additional duty of customs is not chargeable under section 3(1) of Customs Tariff Act, 1975. It is not the construct of the grounds for recovery that the imported goods did not bear 'retail sale price (RSP)' therein for, in consignments already cleared, that, admittedly, is not verifiable. In the construct of grounds of appeal, the mandate of affixing, among other particulars, retail sale price (RSP)', is sought to be delinked from their obligations upon

[11] [2004 (172) ELT 289 (SC)]
[12] [2005 (180) ELT 20 (SC)]

import. The proceedings were initiated for recovery of 'additional duty of customs' under the authority of section 3(1) of Customs Tariff Act, 1975 on the 'retail sale price (RSP)' instead of on the 'transaction value' to which 'basic customs duty (BCD)' had been added and liability discharged thereon by the appellant. There is, however, no provision under Customs Act, 1962 requiring the importer to affix 'retail sale price (RSP)' on the impugned goods, or, for that matter, on any goods, and Customs Tariff Act, 1975 is applicable, for the purpose of this dispute, only to

> *'……(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:*
>
> *xxxxx*
>
> *Explanation--In this sub-section, the expression the excise duty for the time being leviable on a like article if produced or manufactured in India means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.*
>
> *(2) For the purpose of calculating under sub-sections (1) and (3), the additional duty on any imported article, where such duty is leviable at any percentage of its value, the*

value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of --

(i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include--

(ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962)…..

Provided that in case of an article imported into India,--

(a) in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and

(b) where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is--

(i) the goods specified by notification in the Official Gazette under subsection (1) of section 4A of the Central Excise Act, 1944 (1 of 1944), the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the Central Government may, by notification in the Official Gazette, allow in respect of such like

article under sub-section (2) of section 4A of that Act;

Explanation--Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section…' (emphasis supplied)

in section 3 therein and, in the context of claim of the appellant, leaving no room for doubt that value, for determination of additional duty of customs on such goods, shall be deemed to be the 'retail sale price (RSP)' declared as exception to the general basis of assessment on 'transaction value' mandated by section 14 of Customs Act, 1962 adjusted for 'basic customs duty (BCD)' and, further, that Customs Tariff Act, 1975 is merely hitched to Legal Metrology Act, 2009 for access to notification, enumerating goods intended for coverage of special scheme of valuation for central excise and adjustment for price prevailing at other than 'place of removal, under section 4A of Central Excise Act, 1944 which itself is a marriage of convenience that, from rigour and robustness of oversight envisaged in the latter till the last point of retail, offers price inoculated against the infection of misdeclaration as value for assessment to duties of central excise.

7. This dichotomy was not always so. The *proviso* in section 3(2) of Customs Tariff Act, 1975 *supra*, carving out exception from uniform valuation scheme prevailing till then for all imported

articles, was incorporated by Finance Act, 2001[13] and to keep up with the treatment accorded to domestic manufacture for levy of duties under Central Excise Act, 1944 with incorporation of section 4A[14] therein. Under the authority of this latter provision, notifications enumerating the articles carved out for segregation from standard valuation mechanism and abatement from 'retail sale price (RSP)' came to be issued and which, in turn, was, by the construct *supra* in the *proviso*, to be deployed for assessment of imported goods to additional duty of customs. The impugned proceedings were premised on such authority for 'post-clearance' revision vesting in 'proper officer' in section 28 of Customs Act, 1962 as that empowering 'proper officer' for recovery of duties, not paid or short-paid, under Central Excise Act, 1944. In context, we note that Central Excise Valuation (Determination of Retail Sale Price of Excisable Goods) Rules, 2008, notified[15] under the authority of enablement incorporated[16] in section 4A of Central Excise Act, 1944, and the lack of machinery provision between 14th May 2003 and 1st March 2008, let alone for any prior period, was considered by a Larger Bench of the Tribunal in ***Ocean Ceramics Ltd[17] v. Commissioner of Central Excise, Rajkot*** to bar recovery thus

> *'90. The reference made by the Division Bench to the Larger Bench of the Tribunal is, accordingly, answered in*

[13] [Finance Act, 2001 (Act 14 of 2001), section 116 with effect from 1st March 2001]
[14] [Finance Act, 1997 (Act 26 of 1997), section 82 with effect from 14th May 1997]h
[15] [notification no. 13/2008-CE (NT) dated 1st March 2008]
[16] [Finance Act, 2003 (Act 32 of 2003), section 137 with effect from 14th May 2003]
[17] [2024 (1) TMI 1280 – CESTAT AHMEDABAD]

the following manner:

(i)…It is not permissible to ascertain the retail sale price of goods removed from the place of manufacture, without declaring the retail sale price of such goods on the packages or declaring a retail sale price which is not the retail sale price or tampering with, obliterating or altering the retail sale price declared on the package of such goods after their removal from the place of manufacture, in respect of clearances made prior to 01.03.2008, on which date the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 came into force; .....'

and, in response to contention of inherent legal authority subsisting for recovery of duties of central excise for earlier period. Furthermore, the notification issued under section 4A of Central Excise Act, 1944 is central to the fastening of liability to additional duty of customs – both for abatement and the goods intended to covered by the special method *supra*; here, in the prevailing notification[18] 'retail sale price (RSP)' has been clarified as the '*maximum price at which the excisable goods in* ***packaged form may be sold to the ultimate consumer*** *and includes……and the price is the sole consideration for sale*.' (emphasis supplied). It may also be borne in mind that section 28 of Customs Act, 1962 permits recovery of duties short-paid or not paid at the time of assessment under section 17 and clearance under section 47 of Customs Act, 1962 owing to which the 'proper officer' resumes authority that vested then in the assessing authority to re-determine rate of duty and value. Therefore, the scope of

[18] [notification no. 49-CE (NT) dated 24th December 2008]

adjudication in the present dispute was circumscribed by the constraints on assessment binding the assessing officer.

8. It is evident from a harmonious reading of section 3(1) of Customs Tariff Act, 1975, and section 3(2) therein, that additional duty of customs '***equal to the excise duty for the time being leviable on a like article if produced or manufactured in India'*** was not intended to be the amount of duty to be discharged by a domestic manufacturer on clearance of like goods but only for applicable rate of duty of excise to be charged on the value of the imported goods; thus, till section 3(2) of Customs Tariff Act, 1975 was varied in the manner *supra*, there was no scope for dispute over valuation for assessment of 'additional duty of customs' except in consequence of controversy attending on assessment of 'basic customs duty (BCD)' leviable on imported goods. The rationale law relating to legal metrology, legislated for the Union as Standards of Weights and Measures Act, 1956, dates back to preparation for signing the Convention of the Metre by adoption of the metric system for uniformity after re-organization of the states of the Union and which, though intended for standardizing units of mass and measure initially that was extended to physics, was added to by substituting enactment[19] providing for 'packaged commodities' to be regulated by detailing particulars thereon. The rules framed thereunder as well as the later legislated Legal Metrology Act, 2009, *viz*., Standards of

[19] [Standards of Weights and Measures Act, 1976]

Weights and Measures (Packaged Commodity) Rules, 1977 and Legal Metrology (Packaged Commodity) Rules, 2011, obliged manufacturer to imprint specified details on 'pre-packaged commodities' as a consumer welfare measure with an eponymous agency established to ensure compliance by empowering physical inspection till final sale. This assurance of integrity of declaration on packages, among which is 'retail sale price (RSP)' as ceiling, by intervention-driven preference for compliance combined with the chargeability of duty of central excise upon any subsequent alteration 'deemed to be manufacture' persuaded legislative sanction for assessment by resort to 'retail sale price (RSP)' for levy of duties of central excise at stage of clearance by manufacturer that may well be several stages away from final sale. The benefit of convenience and reduction in disputes over valuation is perceptible.

9. After all, in a tax statute designed to charge duties on manufactured goods at the stage of sale, the transfer of possession, along with invoicing and assumption of duty liability, at a price not more than that imprinted on 'packaged commodity' together with regulatory oversight, vesting in legal metrology officials for enforcement by them, providing wherewithal for charging of further duties of central excise on deemed manufacture, should have sufficed as earnest of compliance with both statutes. That disputes of a new *genre* emerged has more to do with inexorable instinct for revenue maximization and

venturing beyond range of section 4A of Central Excise Act, 1944 by benchmarking prescriptions in legal metrology statute to shift between the two valuation systems. It may not be gainsaid that assessment to additional duty of customs is amenable to such transactional delineation as to permit similar grafting and that it was more attributable to legislative design of empowerment not traversing beyond ascertainment of conformity of declared 'retail selling price (RSP)' with such particular printed on 'pre-packaged' imported goods. The stipulations in legal metrology statute does not bind seller in international transaction. Even if imported goods are not in compliance thereof, it devolves on importer to make good the deficiency before clearance for home consumption in accordance with section 47 of Customs Act, 1962. The importer, thus, makes a declaration of 'retail selling price (RSP)' either from having instructed seller to print such on the package or from having had to undertake such printing after arrival; either way, it is not externally determined and occurs well before any transaction of further sale. Such 'price' lacks the rigour of an independent 'transaction value' contemplated in section 14 of Customs Act, 1962 both by provenance as well as by absence of benchmark and want of surrogate. When legislative sanction is for self-assessment to be effected against self-declaration with no benchmark for ascertainment until after clearance and any discrepancy thereafter being cause for charging duties of central excise as 'deemed manufacture', there is no scope for revisit of assessment effected at the time of clearance of imported goods

either then under section 17(4) of Customs Act, 1962 or later under section 28 of Customs Act, 1962.

10. Moreover, in the absence of provisioning, for 'surrogate value', akin to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the lack of machinery provision for re-assessment before clearance for home consumption handicaps equally any attempt to do so under section 28 of Customs Act, 1962 after clearance. This is the ratio of the decision in *re* ***Ocean Ceramics Ltd*** of a Larger Bench of the Tribunal *supra*. Recourse cannot be had to any of the specific options in Central Excise (Determination of Retail Selling Price of Excisable Goods) Rules, 2008 which, having been framed under Central Excise Act, 1944, is not exercisable by officers of customs, let alone rule 6 therein offered as justification by adjudicating authority

11. Emerging from this backdrop of law set out in section 3(1) of Customs Tariff Act, 1975 read with section 3(2) therein is the proposition that declared value, whether of 'retail sale price (RSP)' or in terms of section 14 of Customs Act, 1962, should, for levy of additional duty of customs, be accepted and intervention is warranted, insofar as the former is concerned, only to secure conformity with particulars of price on the package of pre-packaged commodities. Insofar as such articles being found after clearance to be without such details on package as is stipulated in Legal Metrology (Packaged Commodity) Rules, 2011 are concerned, detriment in accordance with section 111 of Customs

Act, 1962 alone may be contemplated. Section 28 of Customs Act, 1962 does not merit invoking in the absence of empowerment to re-determine 'surrogate price' through legislated mechanism; neither is the interests of the exchequer, in the context of nature and purposes of the levy, prejudiced sufficiently to sanction supply of any contrived lack with some price under authority of another law or without any validation. The disputed valuation in the impugned proceedings is secondary to, and contingent upon, fitment of the impugned goods within coverage of notification issued under the authority of section 4A of Central Excise Act, 1944.

12. The appellant contends that the impugned goods, *viz*. parts of forklift trucks or other cargo moving equipment, are neither 'pre-packaged' nor meant for 'sale, distribution or delivery' to customers. The adjudicating authority held that the importer was obliged to declare 'retail sale price (RSP)' as marked on the package to determine levy of additional duty of customs which, in the factual matrix of claim of the appellant, did not exist on the commodities; at best and in the circumstances of imported goods having been consumed, no purpose is served by fastening 'retail sale price (RSP)', such as it is, on the goods after consumption and 'transaction value' adjusted for 'basic customs duty (BCD)' may be deemed to be the 'retail sale price (RSP)' on which duty has already been discharged. No evidence of impugned goods having been sold at the price adopted for computation of duty in

the impugned show cause notice is available for affirmation of differential duty as being in accordance with law and procedure.

13. It is noted that applicability of chapter 2 of the Legal Metrology (Packaged Commodities) Rules, 2011 is limited to '*packages intended for retail sale*' and it has not been evidenced that the impugned goods did pass through channel that conforms to 'retail sale' set out in rule 2(l) of the said Rules. Neither can it be discountenanced that the impugned goods were not supplied to customers of their supply of original equipment and, hence, within the ambit of exclusion extended to 'industrial consumer' exempted from stipulatory marking under rule 3 of Legal Metrology (Packaged Commodities) Rules, 2011.

14. Consumers of the appellant are either rendering service or are manufacturers. It is not in dispute that the customers of the appellant would be using the impugned goods for incorporation in 'forklift trucks' or 'material handling equipment' which are used either in factory of production or for servicing of customers. They cannot, therefore, be excluded from the category of 'institutional customers' or 'industrial customers' as set out in rule 3 of Legal Metrology (Packaged Commodities) Rules, 2011. It was for the customs authorities to demonstrate that the buyers for whom the intended goods were procured are not institutional consumers or industrial consumers. The adjudicating authority has not adjudged so but rejected the claim on the finding that the impugned goods were not used in production of 'forklift trucks' or

other material handling equipment for sale; though 'manufacturer' is found in the relevant provision, reference is not restricted to central excise point of view.

15. Leaving all these aside, the impugned order has placed emphasis on exemption notifications and strict adherence thereof. This, in our view, is patent misconstruction of the provisions of law as well as administration of additional duties of customs in accordance with section 3(2) of Customs Tariff Act, 1975. The decision of the Hon'ble Supreme Court in ***Sarabhai M. Chemicals v. Commissioner of Central Excise, Vadodara[20],*** asserting that exemption notification should be strictly interpreted, was rendered in the context of claim of the appellant therein that the specific entry in notification issued under section 5A of Central Excise Act, 1944 merited strict compliance and

> *'18. We do not find any merit in the preliminary submission made on behalf of the appellant…..'*

merely disposed off claim of the appellant therein that the expression 'normally' should be read up.

16. The notification referred to herein is not exemption notification but promulgating notification issued as statutory instruments. The notification enumerating the goods that are to be covered by section 4A of Central Excise Act, 1944 is not an

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exemption notification. The notification providing for abatement, considering the objective of Central Excise Act, 1944, is also one issued under the authority of section 4A of Central Excise Act, 1944. These are by no means exemption notifications and the foundation laid by the adjudicating authority on such premise erase the consequent findings. Likewise, reliance placed by the adjudicating authority on interpretation of 'manufacture' in Central Excise Act, 1944 for determination that consumers of the appellant are not industrial consumers is not relevant for the purpose of section 3(2) of Customs Tariff Act, 1975.

17. All of these is academic in the light of lack of machinery provision for re-determination of 'retail sale price (RSP)' that impedes re-visit of assessment of additional duties of customs. Such negation of authority is not of prejudice, as pointed out *supra,* to the interests of the exchequer or to the purpose of law. No case has been made out that the enforcement authority under Legal Metrology Act, 2009 had found these goods to be covered by the statute and, thereby, in breach of the statute. There is no evidence that the goods had, at any stage, been sold at a price which was forced on their customers through lack of dissemination. There is no authority drawn from the provisions of Customs Act, 1962 or any of the rules framed thereunder to appropriate empowerment to re-assess value of impugned goods. The authority to re-assess the value under Customs Act, 1962 is limited to Customs Valuation (Determination of Value of Imported

Goods) Rules, 2007 and refers only to 'transaction value' which is of relevance only to section 14 of Customs Act, 1962.

18. In the facts and circumstances as set out *supra,* the adjudicating authority has not established the empowerment invoked under section 3(2) of Customs Tariff Act, 1975 nor of the competence to re-determine the value for the purpose of assessment under section 17(4) of Customs Act, 1962 from which power was further drawn to recover duty, not paid or short-paid, under section 28 of Customs Act, 1962. In view of this jurisdictional lack of competence to re-assess the duty on the goods, the recovery of differential duty and the fastening of consequence of such recovery, as well as confiscation of goods, fails. Accordingly, the impugned order is set aside and the appeals allowed.

(Order pronounced in the open court on 01/10/2025)

(JUSTICE DILIP GUPTA)
President

(C J MATHEW)
Member (Technical)

**/as*