

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Customs Appeal No. 30111 of 2016

(Arising out of Order-in-Original No. HYD-CUS-05-COM-15-16 dt.12.11.2015 passed by
Commissioner of Customs, Hyderabad)

M/s Celkon Impex Pvt Ltd

3rd Floor, Block No.II, My Home Hub,
Madhapur, Hyderabad – 50 0081

.....Appellant

VERSUS

**Commissioner of Customs,
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

WITH

Customs Appeal No. 30112 of 2016

(Arising out of Order-in-Original No. HYD-CUS-05-COM-15-16 dt.12.11.2015 passed by
Commissioner of Customs, Hyderabad)

Y. Guruswamy Naidu, Managing Director

3rd Floor, Block No.II, My Home Hub,
Madhapur, Hyderabad – 50 0081

.....Appellant

VERSUS

**Commissioner of Customs,
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

WITH

Customs Appeal No. 30113 of 2016

(Arising out of Order-in-Original No. HYD-CUS-05-COM-15-16 dt.12.11.2015 passed by
Commissioner of Customs, Hyderabad)

M. Balachandrudu, Director

Big C Tower, D.No.1-99/2/B, Plot No.2,
Vithalrao Nagar, Madhapur, Hyderabad – 50 0081

.....Appellant

VERSUS

**Commissioner of Customs,
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

WITH**Customs Appeal No. 30114 of 2016**

(Arising out of Order-in-Original No. HYD-CUS-05-COM-15-16 dt.12.11.2015 passed by
Commissioner of Customs, Hyderabad)

M/s Big C Mobiles Pvt Ltd

Big C Tower, D.No.1-99/2/B, Plot No.2,
Vithalrao Nagar, Madhapur, Hyderabad – 50 0081

.....Appellant**VERSUS****Commissioner of Customs,
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent**AND****Customs Appeal No. 30115 of 2016**

(Arising out of Order-in-Original No. HYD-CUS-05-COM-15-16 dt.12.11.2015 passed by
Commissioner of Customs, Hyderabad)

K. Krishnapavan, Director

Big C Tower, D.No.1-99/2/B, Plot No.2,
Vithalrao Nagar, Madhapur, Hyderabad – 50 0081

.....Appellant**VERSUS****Commissioner of Customs,
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent**Appearance**

Shri T. Satya Murthy, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

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

FINAL ORDER No. A/30188-30192/2026

Date of Hearing: 05.02.2026

Date of Decision: 08.04.2026

[Order per: A.K. JYOTISHI]

M/s Celkon Impex Pvt Ltd (hereinafter referred to as appellant) are in appeal against Order-in-Original dt.12.11.2015 passed by the Commissioner (Adjudicating Authority), who confirmed the demand, confiscated the seized

goods and also imposed penalty on the appellant as well as on M/s Big C Mobiles Pvt Ltd. (M/s Big C), Shri Y. Guruswamy Naidu, Shri M. Balachandrudu and Shri K. Krishnapavan.

2. The brief facts, relevant to the case, are that the appellants are, inter alia, engaged in import of cellular phones under 'Celkon' brand, which are distributed to various dealers for sale to ultimate customers. M/s Big C is one of the dealers of the appellant with whom they have agreement. The department, on the basis of certain market survey and intelligence, felt that the appellants were resorting to evasion of Customs duty by declaring RSP less than Rs.2,000/- at the time of import and thereafter, altering the MRP printed on the label affixed to individual unit of cellular phones subsequent to the clearance from the customs, which carried MRP higher than Rs.2,000/-. Therefore, based on the investigation, the department felt that the appellant had intentionally declared MRP below Rs.2,000/- in respect of six models to pay lesser CVD.

3. On adjudication, the appellants mainly contested that they were not concerned with the alteration of the MRP and there is no evidence to substantiate the relationship between them and M/s Big C. M/s Big C also took the plea that Rule 5 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules (hereinafter referred to as the Central Excise Rules), 2008, is not applicable to them as they are neither a manufacturer nor importer. Further, the entire allegations are based on certain assumptions and presumptions and both the appellants and M/s Big C are two separate legal entities without any mutuality of interest. The adjudicating authority, however, relying on certain documents including 5th Annual Report of Celkon, held that the appellant and M/s Big C are related companies and also held that as per section 3 of Customs Tariff Act, 1975, RSP based determination of value under section 4A of Central Excise Act, 1944 has also made applicable to imported goods for the purpose of payment of CVD and therefore, the provisions of Central Excise Rules, 2008, have been rightly invoked. He also relied on survey report as manifested by the photographs taken during the market survey.

4. Learned Advocate for the appellants has, inter alia, submitted that it is not correct to presume that they are related to M/s Big C as M/s Big C is only one of their distributors, who are distributing their mobile phones and

there is an agreement to that effect with M/s Big C. The statement of Shri K. Krishnapavan, Director of M/s Big C, has not been interpreted properly as he has clearly stated that he was a sleeping partner in the appellant company and looked after only purchase and finance in M/s Big C and that he cannot comment on the activities of the appellant company as he is a non-working director in that firm. He merely ordered for replacing MRP stickers on some models during the festival season only for limited stock for the purpose of offering discounts to the customers under 1+1 Jodi offer. The same view was also confirmed by Shri Poleesu Naidu, Manager (Logistics) of M/s Big C. His another argument was that in terms of the decision in the case of ITC Ltd Vs CCE, New Delhi [2004 (171) ELT 433 (SC)], there has to be flow back from M/s Big C to the appellant to make the appellants liable for alteration in MRP made by M/s Big C in their premises, which has not been established by the department. This view has been consistently followed by the Coordinate Benches in the case of Hindustan Coca Cola Beverages P Ltd Vs CCE, Allahabad [2006 (199) ELT 718 (Tri-Del)] and CCE, Patna Vs Bharat Coca Cola Bottling North East (P) Ltd [2008 (227) ELT 402 (Tri-Kol)]. He has further submitted that the adjudication order has traversed beyond the SCN as the 5th Annual Report of Celkon is neither relied upon document nor was the relationship with reference to annual report disclosed in the SCN and they were not put to notice on the relationship in terms of 5th Annual report of Celkon. Further, the corporate veil can be lifted only in the case of flow back or one single family owning all the companies, which is not available in the present case as there is neither any flow back nor appellant and M/s Big C are owned by a family. They have relied on the judgment of Coordinate Bench in the case of Motorola Speciality Oils Ltd Vs CCCE, Vadodara [2009 (243) ELT 449 (Tri-Ahmd)] and Metero Satellite Ltd & Telsatar Electronics Vs Collector [1985 (22) ELT 271].

5. On the reliance placed by the department on market survey, learned Advocate has submitted that the department has not produced any tangible evidence that any market survey was conducted on 28.01.2014 as the said market survey report is not shown as relied upon document in the SCN except for the photographs of the label on outer package of the cellular phones, which were relied in the SCN. He has relied on the judgments, as under, in support that the appellant was not associated with the process

photographing of the labels and therefore, the information gathered at the back of importer cannot be used against him.

- a) Asha Enterprises Vs CC (Seaport), Chennai [2008 (230) ELT 461 (Tri-Chennai)]
- b) M/s Simplex Industries Vs CC (Import), New Delhi [2025 (10) TMI 278]

6. He has also vehemently argued that demand of differential duty on past clearances under Rule 5 of Central Excise Rules, 2008, is not tenable as the appellant is neither a manufacturer nor did they alter the RSP. Moreover, Rule 5, even if it is presumed that it is applicable to them, does not provide for redetermination of MRP when a dealer alters MRP. He has also pointed out that Model No. C5050 for which market survey price was available is not identical to C5050 Star, which was included in duty demand. He has relied on various case laws, as under.

- a) Larsen & Toubro Ltd, RN Mukhija & Prakash B Shet Vs CCE, Mumbai-I [2025 (10) TMI 498 – CESTAT Mumbai]
- b) Amco Batteries Ltd, BN Balachandran Vs CC, Bangalore [2025 (10) TMI 1139 – CESTAT Bangalore]
- c) M/s Reach Infocom Tech Pvt Ltd, Ms. Kinjal Desai Vs CC (Airport & Admin), Kolkata [2025 (11) TMI 210 – CESTAT Kolkata]

7. He has further submitted that in the facts of the case, neither penalty is imposable on companies nor on individuals and extended period is not invokable.

8. On the other hand, learned AR has reiterated the findings of the adjudicating authority and also certain case laws in support that appellant and M/s Big C are related persons and corporate veil can be pierced under certain circumstances.

9. Heard both sides and perused the records.

10. We find that the core issue to be decided in this case is whether the appellants have discharged CVD wrongly on the imports made by them by mis-declaring their actual RSP or otherwise. We find that the adjudicating authority has mainly taken into consideration the fact that there are certain common directors in the appellant company and M/s Big C and they are

being related in terms of Annual report and therefore, they jointly conspired to change the RSP once the goods have been cleared by the customs based on declared RSP. In support of the allegation, he has relied on certain photographs of the label on the outer package of cellular phones found at M/s Big C's premises showing higher RSP. He has also relied on the statement of Shri K. Krishnapavan, who had admitted that RSP was enhanced on some models during festival season only for limited stock.

11. Before we proceed to examine the factual aspect and the legal points involved, we find that cellular phones were brought under the ambit of section 4A of Central Excise Act w.e.f. 24.03.2011 and therefore, the CVD on imported cellular phones was also required to be paid on the declared RSP after allowing abatement of 35%. Initially, CVD was 1%, which got increased to 6% on cellular phones of RSP above Rs.2,000/- w.e.f. 01.03.2013. We find that the department has conducted certain survey, wherein, they found certain packets of cellular phones of certain models in the office premises of M/s Big C where the boxes of certain models of Celkon brand viz., ARR35, C66+, C208, C42, AR45, C720 and C820 were found to be indicating month of import as well as MRP. They also seized certain phones, which had not yet been cleared from the customs area where the declared MRP was less than Rs.2,000/- but the department alleged that MRP found in respect of similar models during market survey was more than Rs.2,000/-. It is observed that in respect of models C7045 and C5055, the department has not found any empty boxes and the presumption about the mis-declaration of RSP was based on MRP in respect of some similar models i.e., Celkon C5050 and even C7045 was being sold in the market with MRP printed on package as Rs.2,799/-. However, it is not clear how they noticed this MRP as this is not one of the boxes seized.

12. Insofar as first issue as to whether the appellant and M/s Big C are related person or not, we find that the issue here is alteration of MRP resulting into lesser payment of CVD. It is not a case of customs valuation where a related person transaction has to be assessed in terms of Customs Valuation Rules or Central Excise Valuation. M/s Big C is not an importer and therefore, the transaction between the appellant and M/s Big C cannot be brought under the ambit of Customs Valuation Rules. Therefore, apparently, the department has tried to bring both these companies as one single entity

in order to establish that the appellants themselves had mis-declared the RSP and thereafter, they themselves altered the RSP and therefore, placing reliance on the Rules, the duty has been demanded for past clearances as well as in respect of consignment, which had not yet been cleared from the customs. We find that the theory of conspiracy based on two statements, few photographs and the Annual report cannot establish that the appellants had directly engaged themselves in mis-declaring the RSP. It is obvious that the alteration, if any, to some extent, in respect of some models have taken place in the premises of M/s Big C, which is an independent legal entity and is also a distributor amongst many distributors of the appellant. Therefore, if at all any alteration or relabeling etc., has taken place, it has been done by M/s Big C. It is also to be noted that in this case, as per the extant statutory provisions, the labeling/ relabeling of mobile phones would tantamount to manufacture in terms of Rule 2(f) of Central Excise Act making the said product leviable to Central Excise duty, which would have been required to be paid by M/s Big C, however, we find that that aspect has not been taken up by the department. Any post-importation manipulation of RSP unless established to have been committed by the importer themselves cannot be brought under the purview of Customs Act, whereas, in the present case, the manipulation, etc., if any, has taken place in the premises of their distributor, who are a separate legal entity. We also find that this is not a case where corporate veil can be pierced to establish that both the appellant and M/s Big C being one and the same company merely because there is some cross shareholding. There is no evidence to suggest that there is any flow back or that appellant was engaged in day to day operations or activities of M/s Big C.

13. We have also perused some of the judgments cited by the appellant in their defence. In the case of Larsen & Toubro Ltd, RN Mukhija & Prakash B Shet Vs CCE, Mumbai-I (supra), wherein the issue was competence of customs authority to take recourse to section 28 of the Customs Act, 1962 in respect of goods cleared domestically and in terms of authority under section 4A of Central Excise Act, 1944, the Coordinate Bench observed that there are several decisions of the Tribunal on the competence of customs authorities to take recourse to section 28 of the Customs Act in the absence of machinery provision for revision of declared sale price at the stage of assessment. They relied on the earlier judgment of Larger Bench in the case

of Ocean Ceramic Ltd Vs CCCE, Rajkot [2024 (1) TMI 1280 – CESTAT Ahmedabad LB]. After examining various relevant case laws, it was held that there is no machinery provision for redetermination of RSP for the purpose of reassessment of additional duties of customs (CVD) and that the authority to reassess the value under Customs Act is limited to Customs duty in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 1962.

14. In the case of Reach Infocom Tech Pvt Ltd, Ms. Kinjal Desai Vs CC (Airport & Admin), Kolkata (supra), the Coordinate Bench again examined similar issue and certain judgments of the Tribunal viz., Mitashi Edutainment Pvt Ltd Vs CC (Imports) [2018 (12) TMI 390 – CESTAT Mumbai], DS Chandok & Sons Vs CC [2021 (9) TMI 417 – CESTAT Mumbai], Acer India Pvt Ltd Vs CC (Audit), Chennai [2024 (5) TMI 478 – CESTAT Chennai], L'Oreal India Pvt Ltd Vs CCE, Raigad [2014 (308) ELT 748 (Tri-Mum)], Titan Industries Ltd Vs CCE Chennai [2007 (217) ELT 423 (Tri-Chennai)] and came to the conclusion that there is no mechanism available under section 3(2) of Customs Tariff Act to demand CVD when the same is not based on ad valorem basis and also that once the goods fall under Third Schedule of Central Excise Act, 1944 liable for Excise duty payment under section 4A, when the labelling/ relabeling is done, the Excise duty is to be demanded and not CVD, which is also the view taken by the department in the case of L'Oreal India Pvt Ltd (supra) and Titan Industries Ltd (supra). Thereafter, held that demand of Custom duty in the form of differential duty of CVD is without jurisdiction and hence legally not sustainable. Para 27 of the judgment is cited below.

"27. To Summarize:

(a) We hold that the Section 3 (2) of the Custom Tariff Act, read with Section 4A of CEA 1944 provisions, do not contain any provision enabling re-determination of the Additional Duty of Customs [CVD], when the CVD is paid in terms of Section 4A at the time of imports.

(b) In terms of Section 4A, in respect of Third Schedule goods of the CEA 1944, packing, repacking, labelling, relabelling of imported goods would amount to manufacture in terms of Section 2 (f), wherein the Excise Duty would become payable. Even in such cases, the CVD paid initially at the time of import would be eligible as Cenvat credit. The present proceedings have been initiated to recover Addl Duty of Customs, which is erroneous.

(c) The persons recording the statements, relied upon heavily by the Revenue, have not been subjected to Section 138B procedure. Therefore, their statements lose the evidentiary value.

(d) The goods have been cleared under self-assessed Bill of Entry during the period 2015 to 2017. The assessments were required to be challenged by the Revenue by way of Appeals, as has been held by the Hon'ble Supreme Court in the case of ITC, which has not been done in this case.

(e) In view of (a) to (d) above, the Appeals are allowed on merits.

(f) The imported goods have been cleared after the selfassessment, without any Bond, in the normal course. Therefore, in the absence of any Bond and in the absence of the goods available physically, the Confiscation order is legally not sustainable.

(g) No proper documentary evidence has been brought in towards willful suppression with an intent to evade against the appellants. Hence, the confirmed demand for the extended period is set aside."

15. Therefore, we find that the evidence on record is not sufficient enough to establish that it is the importer/appellant who has intentionally mis-declared RSP at the time of import and later on they themselves replaced the label by showing higher MRP. The evidence relied upon by the department is based on certain presumptions and non-application of correct legal provisions as Rule 5 of Central Excise Rules, 2008 as it would not be applicable in this case as the importer/ appellant is not a manufacturer engaged in manufacture of excisable goods subjected to excise duty in terms of section 4A of Central Excise Act, 1944. We find force in various judgments cited, supra, by the appellant to the effect that the demand under Customs Act would not be sustainable in respect of such alleged alteration/ labelling/ relabeling of RSP post importation. If at all there was any case, it was a case of non-payment of Central Excise duty based on deemed manufacture due to alteration/relabeling of RSP on mobile phone packages by M/s Big C. This is not the case in the present appeal and hence, we refrain from commenting any further on this aspect. Moreover, we have also noted various judgments cited, supra, in support that there is no authority to recover differential duty by invoking section 28 in respect of altered RSP.

16. Therefore, in view of the above discussions and reasons, we find there is merit in the appeal and hold that differential duty cannot be demanded on import. As the differential CVD cannot be demanded on merit in the facts of the case, the penalties and confiscation will also not sustain. Since the issue

has been decided on merit itself, we have not taken up the issue of limitation. The impugned order is accordingly set aside.

17. Appeals allowed.

(Pronounced in the Open Court on 08.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)