# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## CHENNAI

REGIONAL BENCH – COURT No. III

## Customs Appeal No. 41786 of 2019

[Arising out of Order-in-Original No. 67498/2019 dated 13.02.2019 passed by Commissioner of Customs (Audit), Chennai, Custom House, No. 60, Rajaji Salai, Chennai - 600 001]

**M/s. Acer India (Pvt.) Ltd.,** **...Appellant**
Embassi Heights, 6th Floor,
No. 13, Magrath Road,
Bangalore – 560 025.

*VERSUS*

**Commissioner of Customs (Audit)** **...Respondent**
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

**APPEARANCE:**

For the Appellant : Shri V. Lakshmi Kumaran, Senior Advocate
Shri Anurag Kapur, Advocate
Shri Rohan Muralidharan, Advocate
Shri S. Ganesh Aravindh, Advocate

For the Respondent : Shri P. Narasimha Rao, Commissioner,
Authorised Representative.

**CORAM:**
**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.40534/2024**

**DATE OF HEARING : 23.02.2024**
**DATE OF DECISION : 08.05.2024**

**Per : Ms. Sulekha Beevi C.S.**

Brief facts are that the appellant has been importing and clearing notebook / laptop computers and supplying the same to M/s. Electronics Corporation of Tamil Nadu Ltd. (herein after referred to as 'ELCOT') and

other state Government agencies for free distribution to students. On specific intelligence that the appellant has been suppressing the actual sale price by mis-declaring the MRP to evade Customs duty (CVD), officers of SIIB conducted inspection of the goods stored at warehouse of the importer situated at the premises C/o. M/s. Uniworld Logistics Pvt. Ltd., SIPCOT, Sriperumbudur.

1.2 It was discovered by the officers that there were 16,331 Nos. of laptop computers ready for supply to M/s.ELCOT with Tamil Nadu Government Logo pasted in the form of sticker on the carton boxes and a rubber stamping with the words 'Box 1&2 shipped with combined MRP of Rs.16,899/-'. On enquiry, it revealed that the laptop bags were purchased locally and packed in a box along with laptop computer and a combined MRP of Rs.16,899/- had been affixed in respect of both laptop computer and the laptop bag. Copies of several tax invoices billed to various schools in Nilgiris District, Tamil Nadu were also found and seized.

1.3 In addition to the aforesaid laptops, 25,512 Nos. of Acer Brand laptops meant for supplying to M/s. Rajcomp Info Services Ltd., for free distribution to the students of Rajasthan was also discovered. An offence for evasion of duty in respect of these laptops (for supply to M/s.Rajcomp) were also registered by the Department for which Show Cause Notice was issued separately. In the present case, the dispute is with regard to the notebook / laptop computers meant for supply to M/s.ELCOT for free distribution to schools in Tamil Nadu only.

1.4 The appellant submitted that the goods are for distribution to the schools in Tamil Nadu and in order to keep up the time frame, the appellant requested for provisional release of the goods. On 23.07.2013, the Commissioner of Customs (Import) permitted provisional release of 16,331 Nos. of laptops on execution of bank guarantee for Rs.1.31 crores (the amount being the differential CVD calculated on the difference between actual sale price and declared MRP after 20% abatement in respect of total 57,024 Nos. of laptops imported *vide* Bill of Entry dated 31.05.2013 for supply to ELCOT) and also on execution of bond for the value of goods to the tune of Rs.72,17,40,737/-. On 25.09.2013, the appellant furnished details of past and present supply of laptops to State Government agencies, such as

ELCOT and Orissa Computer Application Centre (OCAC) under their free supply scheme. On query as to the difference in the MRP declared at the time of import and MRP affixed on the laptop along with the carry bag (RSP Rs.2,500/-), it was contended by the appellant that since both the laptop and the carry bag are covered under the Legal Metrology Act, declaring the RSP on the laptop was mandatory. The RSP of the laptop was decided by the company and RSP of the carry bag which was procured locally was declared as provided by the supplier.

1.5 The laptops were preloaded with software and the import invoice price was US$ 226.30. They had obtained the Special Valuation Branch Order No. 465/2013 dated 25.04.2013 which accepted the transaction value with its related party suppliers under Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.

1.6 The Department noted that there was much difference in the MRP affixed on the laptops at that time of import and the MRP that was affixed on the laptop along with the carry bag which was to be supplied to ELCOT. At the time of import, in some Bills of Entry, the MRP declared for laptop alone was Rs.14,399/- whereas the MRP declared for supply to ELCOT with carry bag and inclusive of VAT was Rs.16,789/-. The importer claimed that the difference in the price is because supply to ELCOT was to be made along with laptop bag whereas the order placed with the foreign supplier was only for laptop. The laptop bags were procured by the appellant locally at the rate of Rs.225/- though the market price of laptop bag is Rs.2500/-. The appellant had affixed the new MRP for supply to ELCOT after packing the laptop along with the carry bags, and therefore the difference in MRP at the time of import (Rs.14,399/-) and at the time of supply to M/s.ELCOT (Rs.16,789/-).

1.7 It appeared to the Department that the appellant had undervalued the MRP at the time of import of laptop to evade payment of Countervailing Duty (CVD). Show Cause Notice dated 08.08.2017 was issued proposing to reject the MRP declared by the appellant in the Bills of Entry and to re-determine the same under Section 4A of the Central Excise Act, 1944 read with Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008. Show Cause Notice proposed to demand

differential CVD along with interest and also proposed to impose penalties, besides proposing to hold the goods liable for confiscation. After due process of law, the Original Authority rejected the MRP declared by the appellant at the time of import and re-determined the same. Adjudicating Authority ordered for confiscation of the goods, confirmed the demand of differential duty (CVD) along with interest and an option was given to redeem the goods on payment of redemption fine Penalties were also imposed. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. Senior counsel Shri V. Lakshmi Kumaran appeared and argued for the appellant. His submissions are as follows:-

The Ld. Counsel explained the facts as under :

2.1 The Appellant is engaged in the business of import and trading of laptops, personal computers, projectors, TFT monitors and various computer peripherals. The present Appeal is against the differential CVD demand in respect of laptops imported by the Appellant in packaged form for supply to Electronics Corporation of Tamil Nadu Limited **("ELCOT")** meant for further distribution to school students in Tamil Nadu.

*Transaction that forms the subject matter of the present dispute:*

2.2 During the impugned period, the Appellant imported laptops for further sale in India. As the laptops are intended for retail sale, the Appellant paid CVD based on the Retail Sale Price **("RSP")** which was declared and affixed on the imported laptops. The imported laptops were exempted from Basic Customs Duty **("BCD")** as well as Special Additional Duty of Customs **("SAD")** in terms of Notification No. 24/2005-Cus. dated 01.03.2005 and Notification No. 21/2012-Cus. dated 17.03.2012 respectively.

2.3 Generally, the laptops imported by the Appellant for retail sale in India falls in two categories, viz. **a)** laptops imported for sale to retail customers and **b)** Laptops imported for supply to Central/State Government agencies for their own use or for further free distribution to students and other beneficiaries.

2.4 The present dispute is confined to the MRP adopted by the Appellant for the purpose of payment of CVD in respect of Laptops imported by Appellant for sale to State Government agency namely ELCOT, along with other goods and services as required in the tender(s) issued by ELCOT.

2.5 During the relevant period, the Appellant was awarded with a contract by ELCOT to supply Laptops, Laptop back packs, user manual, instruction guide. Details of the same are tabulated below:

| Period of Import | Quantity of Imports | ELCOT Purchase Order Price for Laptop with Bags (inclusive of VAT) |
|---|---|---|
| **May to August 2012** | 200250 | 13939 |
| **Mar-April 2013** | 96095 | 16790 |
| **May-June 2013** | 110000 | 16790 |
| **May-June 2014** | 130950 | 16486 |
| **Total** | **5,37,295** | |

2.6 The ELCOT Purchase Order price as above was a lump-sum price for the entire bundle of supply including laptop and laptop bags. There was no break-up of individual items to be supplied under the contract.

2.7 For undertaking supplies to ELCOT, the Appellant imported laptops from M/s. Acer Inc., Taiwan. However, the Appellant procured laptop bags with MRP of Rs. 2,500/- from a local vendor at a price of Rs. 225/- (inclusive of VAT).

2.8 The MRP of imported laptops were determined by appellant for supply to ELCOT as the total price agreed with ELCOT (less) the MRP of locally procured bags i.e., Rs. 2,500/-.

**Case of the Department:**

2.9 It is submitted by the Ld. Counsel that pursuant to the investigation by SIIB in 2013, the Revenue initiated proceedings against the Appellant vide Show Cause Notice dated 08.08.2017 alleging the following:

a) *Firstly,* the price initially quoted by the Appellant to ELCOT for supplying the laptops along with bags etc. **("Quoted price")** (plus 5% VAT) is inclusive of all elements of costs of the laptop and denotes the

actual MRP of the laptop with the backpack. Therefore, it is the quoted price and not the finally agreed purchase order price that must be considered as the combined MRP of Laptops and Laptop Bags. The manner in which Revenue has sought to re-determine MRP is shown below:

| **Period of Import** | **Quantity of Imports** | **Quoted Price with VAT (A)** | **Price of Bag with tax (B)** | **Re-determined MRP of Laptop before abatement (C)**<br><br>**(A) – (B)** |
|---|---|---|---|---|
| May to August 2012 | 200250 | 17,586 | 225 | 17,361<br>(17586-225) |
| Mar-April 2013 | 96095 | 18,097 | 225 | 17,872 |
| May-June 2013 | 110000 | 18,097 | 225 | 17,872 |
| May-June 2014 | 130950 | 16,486* | 225 | 16,261 |

[* This is the ELCOT Purchase Order price and not the quoted price as the Department was not able to ascertain the quoted price for imports made in 2014. Further, for these imports, provisional assessments are sought to be finalized and differential duty is sought to be demanded by deducting Rs. 225/- from ELCOT Purchase Order price. The differential duty arising on account of the same has also not been quantified in the impugned Order.]

b) *Secondly,* the MRP of imported laptops is liable to be re-determined by deducting only the purchase price of laptop bags i.e., Rs. 225/- from the quoted price as against the MRP of such laptop bags i.e., Rs. 2,500/-

c) The Department has undertaken re-determination of MRP under Section 4A (4) of the Central Excise Act, 1944 read with Rule 6 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008.

## SUBMISSIONS:

**3. MRP of imported laptops cannot be re-determined in the absence of machinery for the same in Section 3(2) of Customs Tariff Act, 1975:**

3.1 Under the Central Excise Act, 1944, predominantly the following two methods of valuation have been prescribed for levy of Central Excise duty on manufacture of goods:

- Excise Duty payable on Transaction Value based assessment (Section 4 of Central Excise Act)
- Excise Duty payable on MRP based assessment (Section 4A of Central Excise Act)

*Background to introduction of MRP based assessment in Section 4A of Central Excise Act, 1944:*

3.2 MRP based assessment was introduced in Central Excise Act, 1944 vide Finance Act, 1997. However, the provisions relating to re-determination of MRP/RSP was introduced through sub-section (4) only vide Finance Act, 2003 wherein, it was specified that MRP will be re-determined as prescribed by the Rules.

3.3 Pertinently, Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 **("RSP Rules")** to operationalise Sub-section (4) of Section 4A were framed only with effect from 01.03.2008. Thus, during the period from 2003 to 2008, no rules were prescribed for re-determining MRP of excisable goods. Resultantly, even if the MRP declared was found to be incorrect, there was no machinery which empowered the Department to redetermine the MRP for the purposes of payment of central excise duty.

3.4 In this context, for the period prior to introduction of RSP Rules, 2008, the Larger Bench of Tribunal recently, in the case of ***Ocean Ceramics*, *Interim Order No.1-23/2024 dt. 23.1.2024 in Excise Appeal No.235 of 2008*** has held that the RSP rules are substantive in nature and in the absence of any machinery prior to such period for re-determination, MRP cannot be re-determined.

*The RSP Rules have not been made applicable to Section 3(2) of Customs Tariff Act, 1975:*

3.5 Section 3 (1) of Customs Tariff Act, 1975 provides for levy of CVD equal to the excise duty leviable on a like article if produced or manufactured in India. In addition to general provision for payment of CVD on Transaction value (under Section 14 of Customs Act), the ***proviso*** to Section 3(2) (introduced vide Finance Act, 2001) provides 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 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 sub-section (1) of section 4A of the Central Excise Act, 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.

3.6 As per the Explanation, if 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.

3.7 On a perusal of the *proviso* to Section 3(2), it can be seen that Section 3 of the Customs Tariff Act, 1975 is a standalone code. It is not a legislation by reference to Section 4A of Central Excise Act, 1944 but a legislation by incorporation. Consequently, there is no provision under Section 3 for re-determination of MRP of imported goods and for application of amendments made to Section 4A [in 2003 when Section 4A (4) was introduced] and RSP Rules 2008 to bring in the methodologies for re-determination of CVD payable on imports on MRP basis.

3.8 In other words, though the Customs Tariff Act, 1975 has borrowed the Notification issued under Section 4A (1) and the provisions of sub-section (2) of Section 4A for the purposes of payment of CVD on imported goods on the basis of MRP declared, the provisions for re-determination of RSP under Section 4A (4) and the RSP Rules made thereunder have not been borrowed to Section 3 (2) of the Customs Tariff Act, 1975.

3.9 Reliance is also placed on the following decisions, wherein it has been held that MRP/RSP of imported goods cannot be re-determined with

reference to the provisions of Section 4A (4) of the Central Excise Act, 1944 and the RSP Rules, 2008:

a) ***ABB Ltd. v. CC*** [2011 (272) E.L.T. 706 (Tri. - Bang.)] – Civil Appeal No. 7147 of 2011 has been filed by Department before Supreme Court – No stay on CESTAT order

b) ***CC v. V.J. Traders*** [2019 (366) E.L.T. 909 (Tri. - Del.)] - Civil Appeal No. 844/2019 has been filed by Department before Supreme Court - No stay on CESTAT order

c) ***CC v. King Kaveri Trading Co.*** [2019 (370) E.L.T. 1049 (Tri. - Mumbai)]

d) ***DS Chandok & Sons v. CC*** [2021 (9) TMI 417 - CESTAT MUMBAI]

e) ***Legrand India Pvt. Ltd. v. CC*** [2014 (304) E.L.T. 305 (Tri. - Mumbai) – Civil Appeal Nos. 7320-7323 of 2014 have been filed by Department before Supreme Court - No stay on CESTAT order.

3.10 As above, even in the context of levy of excise duty under Section 4A of Central Excise Act, 1944, the Larger Bench in ***Ocean Ceramics*** case (supra), has held that the RSP Rules framed on 01.03.2008 is substantive and cannot be applied retrospectively for the period prior to 2008. The said decision will squarely apply to levy of CVD under Section 3(2) of the Customs Tariff Act, 1975.

3.11 Therefore, the Appellant submits that re-determination of MRP in the present case is without authority of law and the impugned order must be set aside.

**4. Without prejudice, even assuming power to borrow RSP Rules exists in Section 3(2) of Customs Tariff Act, 1975, the methodology followed by the Department for re-determination of MRP in the present case is not contemplated under Rule 6 read with Section 4A and proviso to Section 3 :**

4.1 In the impugned order, it has been held by the adjudicating authority that the imported laptops were tailor made and customized to the specifications of ELCOT and therefore, MRP cannot be re-determined in accordance with Rule 4 of the RSP Rules. Resultantly, the same has to be re-determined as per Rule 6 of the RSP Rules which provides for best judgment assessment.

4.2 It is submitted by the Ld. Counsel that the above view is erroneous. Without prejudice, even assuming that the power to borrow RSP Rules exists in Section 3 (2) of Customs Tariff Act, 1975, the methodology followed by the Department for re-determination of MRP in the present case is not contemplated under Rule 6 of the RSP Rules.

4.3 It is submitted that the following valuation Rules formulated under the Central Excise Act, 1944 and the Customs Act, 1962 provide for Best Judgment method/residual method:

a) Rule 11 of Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000.
b) Rule 9 of Customs Valuation (Determination of Price of imported Goods) Rules, 2007.
c) Rule 6 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008.

4.4 As per Rule 11 of the Central Excise Valuation Rules, 2000, *"if the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act".* It is pointed out that Rule 6 of RSP Rules, 2008 is also similarly worded.

4.5 Thus, it can be seen that even under the best judgment method, the means used to determine value must be consistent with the principles and general provisions of the Rules.

4.6 It is submitted that value cannot be determined arbitrarily by adopting methodologies alien to the principles and provisions of the Rules. Such unbridled powers cannot be assumed to be conferred for determining value under the best judgment method. If it is assumed, then it will render the provisions arbitrary and constitute a violation of Article 14 of the Constitution. Even the validity of the Rules would be brought to question. Thus, there is a purpose behind ensuring that the best judgment method is applied subject to the principles and provisions of the preceding Rules which act as reasonable guidelines.

4.7 Moreover, the best judgment method only allows some elbow room or reasonable flexibility in valuation while applying the methodology already prescribed.

4.8 In *State of Kerala v. C. Velukutty [1965 (12) TMI 32 - SUPREME COURT],* the Apex Court has held that though there is an element of guesswork in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. The same principle has also been reiterated in *SG Jayaraj Nadar & Sons v. State of Madras [1967 (7) TMI 106 - MADRAS HIGH COURT]* subsequently affirmed by Hon'ble Supreme Court in *State of Madras v. SG Jayaraj Nadar & Sons [1971 (9) TMI 156 - SUPREME COURT]*

4.9 In *Uflex Ltd. v. CCE [2016 (335) E.L.T. 376 (Tri. - All.)]*, it has been held that value of intermediate goods that were captively consumed in manufacture of final product cannot be re-determined by resorting to deductive method or best judgment assessment under Rule 11 of Central Excise Valuation Rules, 2000 as best judgment under Rule 11 of Valuation Rules does not permit such arbitrariness and imaginative valuation.

4.10 Further, Rule 9 of the Customs Valuation (Determination of Price of imported Goods) Rules, 2007 **("Customs Valuation Rules")** is in *pari materia* with Rule 11 of the Central Excise Valuation Rules, 2000 and RSP Rules, 2008. As per the Interpretative Notes to Rule 9 of the Customs Valuation Rules, the "*value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values and the methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9".*

4.11 Therefore, the application of Rule 6 of the RSP Rules to arrive at the MRP of imported laptops by deducting the price of laptop bags from the ELCOT purchase order price is arbitrary and not supported by the provisions of the RSP Rules. Section 4A and the RSP Rules attempts to arrive at the value of goods by analysing the MRP of identical goods. Deductive method of valuation has not been prescribed anywhere.

4.12 Thus, the MRP of laptops ought to have been determined based on supply of similar laptops available in market (with suitable adjustments) or supply of similar laptops made by other suppliers to ELCOT. No market enquiries were conducted by the Department at any point in time.

4.13 Even assuming but without admitting that Rule 6 of the RSP Rules provide for determination of value of imported laptops by deducting price of laptop bags from composite price charged for both laptops and laptop bags, **the deduction of the purchase price of bags i.e., Rs. 225/- is incorrect.** In other words, while computing the MRP of the laptop from the sale price/MRP of laptop + bags, the cost of bags cannot be taken as deduction. For parity, it is the MRP of the bag which should be deducted. Reliance in this regard is placed on the decisions of the Hon'ble Supreme Court in *CCE v. Acer India Ltd. [2004 (172) E.L.T. 289 (S.C.)]* and *Gannon Dunkerley and Co. and Ors. v. State of Rajasthan & Ors. [(1993) 1 Supreme Court Cases 364].* Thus, the computation methodology adopted by the Department is *ex facie* arbitrary.

*Further, the Customs Department, under the garb of re-determining MRP of imported laptops cannot question MRP of laptop bags as well as the composite supply of laptops and laptop bags.*

4.14 As noted in the impugned order, the Appellant arrived at the MRP of the imported laptops by subtracting the MRP of backpack i.e., Rs. 2,500/- from the ELCOT Purchase Order price.

4.15 It is pertinent to note that the said MRP was affixed on the laptop backpack by the local vendor itself and not at the instruction of the Appellant. This has not been controverted in the impugned order except for a plain statement that the Appellant has tried to offset loss by getting MRP of laptop bags/backpacks declared as Rs. 2,500/-.

4.16 The Appellant submits that the impugned order by ordering re-determination of MRP of laptops by taking ELCOT quoted price as MRP of laptop + bag and deducting purchase price of laptop bags from quoted price, has indirectly re-determined the MRP of laptop bags and the composite supply of laptops and bags which is impermissible as it is only the nodal authority under the Legal Metrology Act, 2011 or the Central Excise Officer

under the Central Excise Act, 1944 who is empowered to question/re-determine the same and not the Customs Department.

4.17 Thus, the methodology adopted by the Department under the best judgement method is not consonance with the powers vested with the Customs Department. Therefore, the impugned order inasmuch as it *suo-motu* re-determines the MRP of composite supply of laptop + laptop bags and disregards the MRP of the laptop bags purchased locally by the Appellant viz. Rs. 2,500/-, is improper and deserves to be set aside.

**5. Without prejudice to above, quoted price cannot be treated as the combined MRP for the Laptop and Laptop bags as it is only the Purchase Order price which can be collected by the Appellant :**

5.1 In the impugned order, differential duty has been computed by taking the price quoted by the Appellant to ELCOT for supply of laptop and laptop bags on the ground that the quoted price is inclusive of all elements of costs of the laptop and is the actual MRP of the laptop with the backpack.

5.2 Explanation to Section 4A of the Central Excise Act, 1944 defines Retail Sale Price as the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

5.3 In this regard, it is submitted that the quoted price cannot be taken as the combined MRP for the Laptop and Laptop bags as only the Purchase Order price can be collected by the Appellant for the sale of imported laptops and bags which were tailormade for supply to ELCOT. In this regard, the Appellant submits that in the case of ***PG Electroplast v. CCE*** *[2014 (307) E.L.T. 787 (Tri. - Del.)]* in the context of supply of Television Sets to ELCOT, the Tribunal has accepted the valuation of such televisions under Section 4A where MRP was declared as per the contract price/purchase order price to ELCOT.

5.4 Therefore, even assuming without admitting that it is the purchase price of bags that is to be deducted i.e., Rs. 225/-, it must be **deducted from the finally agreed ELCOT purchase order price** and not the quoted

price. Details of the quoted price (MRP affixed for supply to ELCOT) and ELCOT purchase order price during the relevant period is shown below:-

| Sl. No. | Period of Import | Quantity of Imports | Quoted Price (inclusive of VAT) | ELCOT Purchase Order Price per Unit (with VAT) (A) |
|---|---|---|---|---|
| **1.** | **May to August 2012** | 200250 | 17,586 | 13,939 |
| **2.** | **Mar-April 2013** | 96095 | 18,097 | 16,790 |
| **3.** | **May-June 2013** | 110000 | 18,097 | 16,790 |
| **4.** | **May-Jun 2014** | 130950 | Not Available | 16,486 |

**6. Without prejudice, Laptop bags sold in the normal market, are purchased by the Appellant at Rs. 460.78/- and sold with an MRP of Rs. 1,499/-. Therefore, in any case, the MRP of the laptop bags in question cannot be treated to be below Rs. 1,499/- :**

6.1 In the impugned order, it has been held that the laptop bags in question bearing MRP of Rs. 2,500/- have been purchased at a price of Rs. 225/- whereas laptop bags sold in normal market bearing an MRP of Rs. 1,499/- have been purchased by the Appellant at Rs. 460.78/-. Therefore, the MRP of the backpack procured at Rs. 225/- has been artificially hiked to Rs. 2,500/- and subtracted from the purchase order price to arrive at the MRP of the laptop***.***

6.2 In this regard, it is submitted that admittedly, the laptop bags for sale in the normal market are purchased by the Appellant at Rs. 460.78/- and sold with an MRP of Rs. 1,499/-. Therefore, in any case, the MRP of the laptop bags in question cannot be treated to be below Rs. 1,499/- and the same must be **deducted from the ELCOT Purchase Order price** to arrive at MRP of imported laptops in case of redetermination of the value.

**7. Extended period of limitation cannot be invoked in the present case:**

7.1 Show Cause Notice dated 08.08.2017 has been issued in respect of imports made during the period 09.05.2012 to 09.06.2014 by invoking extended period of limitation under Section 28(4) of Customs Act, 1962. The Appellant submits that the entire demand in the impugned order has been made by invoking extended period of limitation.

7.2 It is submitted that the Department was aware of the entire gamut of the transaction as early as July 2013. The following series of events clearly evidence that the department was aware of the supply of laptops along with laptop bags in as early as **12th July 2013.**

7.3 It is submitted that the first visit was conducted by SIIB as early as 02.07.2013 and 16331 Nos. of laptops were seized on 02.07.2013 and pursuant to request of the Appellant vide letter dated 04.07.2013, the goods were provisionally released on 23.07.2013. On 04.07.2013, Mr. Alok Dubey, Chief Financial Officer, in his statement under Section 108 of Customs Act, 1962, also submitted a brief note on their valuation methodology stating that the 16,331 laptop notebooks are meant for supply to Tamil Nadu schools; that these laptops are intended to be sold with carry case and all required software at the MRP of Rs. 16,899/- inclusive of laptop carry case. The Appellant also enclosed a working sheet involving calculation of MRP in respect of import laptops.

7.4 Pertinently, on 12.07.2013, Mr. B K Prakash, in his statement, stated that they have received orders from ELCOT for supply of 1,10,000 Nos. of laptop computers with carry bag. They purchased the backpacks at Rs, 225/- inclusive of tax to supply along with the laptops. When specifically questioned as to why they declared a low MRP of Rs. 14,399/- when the actual sale price for the laptop supplied to ELCOT is Rs. 15,990/-, he stated that the laptop sale price was inclusive of the cost of the carry bag also and therefore the combined price of the laptop and carry bag has to be taken into consideration while comparing the sale price to ELCOT. In fact, on 20.09.2013, Mr. BK Prakash was specifically questioned by the Department as to who decided on the high MRP of Rs. 2500/- for the laptop bag purchased at a low price of Rs. 225/-.

7.5 This clearly establishes that all the facts relating to procurement of bags locally for Rs. 225/-, supply of laptops along with bags to ELCOT at Purchase Order price, were within the knowledge of the Department as early as 04.07.2013/12.07.2013. Resultantly, the Appellant submits that invocation of extended period for issuance of Show Cause Notice after a period 4 years from the date Department came to know about the impugned

imports and the valuation methodology adopted cannot be sustained as no suppression can be alleged on part of the Appellant.

7.6 In ***CCE v. Essel Propack Ltd****., [2015 (323) E.L.T. 248 (S.C.)]* it was held that since all the information was already available with the department, extended period cannot be invoked. The said principle was also laid down in ***CCE v. Spicejet Ltd****. [2023 (79) G.S.T.L. 271 (Tri. - Del.)]* and ***Ajit India Pvt. Ltd. v. CCE*** *[2018 (19) G.S.T.L. 659 (Tri. - Mumbai)*.

7.7 It is argued that the impugned order must be set aside on this ground alone. In ***Highland Dye Works Pvt. Ltd. v. CCE*** *[2000 (121) E.L.T. 502 (Tribunal)*, it has been held that when all available information was supplied to the Department on the date of the search, extended period of limitation cannot be invoked. The said decision has been affirmed by the Hon'ble Supreme Court in ***Commissioner v. Highland Dye Works Pvt. Ltd****. [2006 (198) E.L.T. A66 (S.C.)].* The afore-mentioned principle has been laid down subsequently in ***Vaspar Concepts (P) Ltd. v. CCE*** *[2006 (199) E.L.T. 711 (Tri. - Bang.)]*

**8. In the absence of substantive provisions in Customs Tariff Act, 1975 interest, penalty, confiscation and fine cannot be imposed:**

8.1 In the present case, the interest, penalty, confiscation and the redemption fine has been imposed in relation to demand of additional customs duty leviable under Section 3(1) of the Customs Tariff Act, 1975. However, it is to be noted that the CTA has limited machinery provisions and therefore it borrows various provisions from the Customs Act for implementation of its provisions. Section 3(8) of the CTA (now Section 3(12) of CTA) is the borrowing provision regarding additional customs duty.

> *"(8) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."*

8.2 The Appellant submits that, on a reading of the above provision, it is clear that Section 3 of CTA which levies duties other than Basic customs duty borrows the procedural provisions of Customs Act, however substantive provisions relating to penalty, confiscation, fine and interest from the Customs Act is not explicitly borrowed.

8.3 In this regard, the Bombay High Court in ***Mahindra & Mahindra Ltd. v. Union of India*** *[2022 (10) TMI 212 - BOMBAY HIGH COURT]* has considered a similar issue on levy of interest and penalty in relation to CVD and held that in the absence of specific provisions for levying of interest or penalty due to delayed payment of tax, the same cannot be levied/charged unless the statute makes a substantive provision in this behalf. This decision of the Hon'ble Bombay High Court has been affirmed by the Hon'ble Apex Court in ***Union of India Vs Mahindra and Mahindra Ltd,*** *[2023 (8) TMI 135 - SC ORDER].* Further, the Review Petition filed by the Department has also been dismissed vide order dated 09.01.2024 in Review Petition (Civil) Diary No. 41195/2023.

8.4 Further, the Tribunal in ***Acer India Private Ltd. v. CC, Chennai,*** *2023-VIL-998-CESTAT-CHE-CU,* has also affirmed the above view and held that even in cases where differential CVD is payable, there shall be no recovery of interest or confiscation of goods or imposition of fine since the Customs Tariff Act has not borrowed the relevant provisions. Therefore, the imposition of interest, fine and penalty may set aside as being without authority of law.

9. The Ld. Authorised Representative Shri P. Narasimha Rao appeared and argued for the Department.

9.1 It is submitted by the Ld. A.R that the appellant had declared a lesser MRP at the time of import with intent to evade payment of appropriate CVD on the imported goods. Thereafter, the MRP declared on the goods has been

altered by affixing higher MRP contending that purchase order with ELCOT was for supply of laptop computers with carry bags. The definition of RSP as given in Central Excise Act, 1944 and the Legal Metrology Act, 2009 would show that it is the maximum price at which the commodity in packaged form may be sold to the ultimate consumer. The ultimate consumer in this case is the students. The goods did not have markings to mean that it is for free distribution. It is therefore incumbent upon the appellant to declared the correct MRP at the time of import. In the present case as the MRP of the imported goods was altered after import so as to evade appropriate payment of CVD, the Department has redetermined the RSP as per Central Excise (Determination of Retail Price of Excisable Goods) Rules, 2008. Rule 6 has been applied by the adjudicating authority to arrive at the redetermined MRP. Appellant had deducted Rs.2,500/- as price of carry bag from the purchase order price of the goods. However, it has come to light that they have obtained laptop bag for Rs.225/- and therefore appellant cannot deduct Rs.2500/- per bag to arrive at the MRP of the composite goods.

9.2 The decision in the case of ***Nitco Tiles Vs CC (Import) Mumbai*** – 2014-TIOL-1544-CESTAT-MUM was relied by the Ld. A.R to argue that in the said decision a similar issue was considered. It is prayed by Ld. A.R that appeal may be dismissed.

10. Heard both sides.

11. The main issue that arises for consideration is whether the rejection of MRP declared on the laptops imported by appellant and redetermination of the MRP is legal and sustainable. The other issues that arise consequently are (i) whether the order of confiscation of the impugned goods, the demand of differential Countervailing Duty (CVD) along with interest, the imposition of Redemption Fine and penalties are sustainable or not.

11.1 According to department, the appellant has undervalued the goods imported by declaring a lesser MRP and thus evaded payment of Countervailing Duty (CVD).

11.1.1 It is to be noted that the imports were registered under Special Valuation Branch as the importer and supplier were admittedly related parties. The SVB Order No.465/2013 dt. 25.04.2013 was passed accepting the transaction value with its' foreign supplier in terms of Rule 3 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. The Basic Customs duty, if any has to be discharged by appellant on the basis of the transaction value agreed by the parties. In the present case, the imported laptops were exempted from payment of Basic Customs Duty (BCD) as well as Special Additional Duty of Customs (SAD) in terms of Notification No.24/2005-Cus. dt. 17.3.2012 respectively. The laptops being goods covered under the Legal Metrology Act, 2009 read with Legal Metrology (Packaged Commodities) Rules, 2011, it is incumbent for the appellant to declare and affix the MRP on the goods at the time of import. The Countervailing Duty (CVD) becomes payable on goods imported on which MRP is required to be declared. The allegation of the Department is that appellant declared a lower MRP at the time of import and thus evaded payment of appropriate CVD.

11.2 In the SCN dt. 8.8.2017, the Annexures II and III gives the details of the imports done vide various Bills of Entry and the MRP declared for the imported laptops. In Annexure II –

(i) The details show import for the period May 2012 to August 2012 and supplied to ELCOT. The MRP declared at the time of import is Rs.12,500/- and is proposed to be redetermined as Rs.17,361/-.

(ii) Annexure II also includes imports for the period March 2013 to April 2013 and supplied to ELCOT. The MRP declared by appellant is Rs.14,399/- and it is proposed to redetermine as Rs.17,872/-.

(iii) Annexure II gives details of imports for the period May 2013 to June 2013. The MRP declared by appellant is Rs.14,399/- and it is proposed to be redetermined as Rs.17,872/-.

(iv) Annexure III gives details of imports from May 2014 to June 2014. The MRP declared by appellant is Rs.14,799/- and is proposed to be redetermined as Rs.16,486/-.

12. The facts reveal that the appellant had entered into contract with ELCOT to supply laptop with carry bag. Admittedly, appellant has not imported the carry bags. While supplying the goods to ELCOT, the appellant has altered the MRP and affixed stickers showing higher MRP on the composite supply of laptop and bag. This is the genesis of the dispute. According to appellant, as they were clearing the imported laptop with locally purchased carry bag and inclusive of its' VAT, the MRP had to be altered and had affixed the higher MRP on the goods while supplying to ELCOT.

13. As per the Tender issued by ELCOT, Para 4 of the Tender document speaks about the scope of work. Para 4.1.1 provides for the laptop computer specification. Para 4.1.2 provides for Backpack specification. Para 4.4.2 reads as under :

"Traceability Identification

The laptop computers supplied under the scheme are meant to be distributed to the students in Tamil Nadu, in order to prevent the misuse of the laptop computers screen printing / tamper-proof sticker of lay out to be specified by ELCOT (Government logo, image and scheme name) shall be marked on the top side of the laptop computers and front side of the laptop computer backpack".

14. The letter issued by ELCOT to appellant dated 17.4.2013 and the purchase order dt. 30.05.2013 is reproduced as under :

*/ LEFT BLANK WITH PURPOSE /*

ELCOT

Adding Value Through IT

ELECTRONICS CORPORATION OF TAMIL NADU LTD.
(A Govt. of Tamilnadu Enterprises)

17-04-2013

ELCOT/PID/ICB/LTC/55/2012-13/003

M/s.Acer India (Pvt) Ltd,
New No. 5, Old No.3, 2nd Floor,
1st Street, Nandanam,
Chennai 600 035.

Sir,

Sub: Distribution of Lapop Computer Scheme – Phase II – 2012-13 – Procurement of 7,56,000 numbers of Laptop Computers with Laptop backpacks – ICB Tender – Finalised – Additional Quantity of 1,10,000 numbers – Issue of Letter of Acceptance issued –Regarding.

Ref: 1) Tender Notification reference ELCOT/PID/ICB/LTC/PII/2012-13 dated 22.05.2012 opened on 10.08.2012.
2) Price Bids opened on 24.09.2012
3) Negotiation meeting held on 02.11.2012.
4) Your revised quotation Letter no. AIL/CHE/ELCOT/LTC2/061112 dated 06.11.2012.
5) Our Letter of Acceptance LOA ref. ELCOT/PID/ICB/LTC/55/2012-13/003 dated 05.02.2013 for 96,000 numbers.
6) Purchase Order ref. ELCOT/PID/ICB/LTC/PII /2012-13/3 dated 14.02.2013 for 96,000 numbers.
7) Your Letter no.AIL/CHE/ELCOT/PII/2012-13/003 dated 05.03.2013.

With reference to the above, we are happy to inform you that we have decided to allot an additional quantity of **1,10,000** number of **Laptop Computers with Laptop Backpacks** in addition to 96,000 numbers alloted vide LOA fifth cited **@ Rs. 15,990.00 (Inclusive of all duties) Plus TNVAT at 5% totalling Rs. 16,789.50** (Rupees Sixteen Thousand and Seven Hundred and Eighty Nine and Paise Fifty Only) per Laptop Computer with Laptop Backpack with one year comprehensive warranty including battery as per the Technical Specifications enclosed. You shall have to complete the supply of **1,10,000** number of **Laptop Computers with Laptop Backpacks as per the tender conditions and delivery schedule.**

As per Tender Clause, you are hereby requested to submit 3% (Three Percent) of the Purchase order value as Security Deposit and execute supply agreement on Rs. 20/- Non-judicial Stamp paper bought in Tamil Nadu as per the Tender Document within one week from the date of issue of Letter of Acceptance

Yours faithfully,
For Electronics Corporation of
Tamil Nadu Limited

Managing Director 17/4/13

Encl : As above.

Copy to :

The Principal Secretary to Government,
Special Programme Implementation Department,
Secretariat,Chennai 600 009.

The Principal Secretary to Government,
Information Technology Department,
Secretariat,Chennai 600 009.

ELECTRONICS CORPORATION OF TAMIL NADU LTD. ELCOT CHENNAI-35

THIS PURCHASE ORDER IS RELEASED BASED ON G.O.Ms No.58 DATED 16-02-1999 AUTHORIZING ELCOT AS ON OPTIONAL PROCUREMENT AGENCY FOR I.T.PRODUCTS.

| | | |
|---|---|---|
| **M/s. Acer India (Pvt) Limited ,**<br>New No.5,Old No.3, 2nd Floor,<br>1st Street, Nandanam,<br>Chennai 600 035.<br><br>**Your Ref : Your Quote against our ICB Tender No. ELCOT/PID/ICB/LTC/PII/ 2012-13 opened on 10.08.2012.**<br><br>**BILLING METHODOLOGY**<br>**Billing is to be made in favour of "The School Headmaster/ College Principal " .** | PURCHASE ORDER<br>**ELCOT/PID/ICB/LTC/PII/2012-13/004**<br>Date : **30.05.2013**<br><br>**Terms of Price.**<br>The Prices are inclusive of Basic Cost, Customs Duty, Counter Veiling Duty, Excise Duty.<br><br>**Terms of Payment:**<br>As per Terms and Conditions enclosed.<br>**F.C.No.**<br>**F.C. Amount :**<br>**Rs. 175,89,00,000.00+ T.N.V.A.T.@5%** | **ELCOT**<br>**ELECTRONICS CORPORATION OF TAMILNADU LIMITED**<br>(A Govt. of Tamil Nadu Enterprise)<br>MHU COMPLEX,II FLOOR,<br>No.692,ANNA SALAI,<br>NANDANAM, CHENNAI 600 035.<br>Phone: 044 - 65512300<br>Fax : 044-24330612<br>E-mail:ltc1@elcot.in<br>TNGST No.0640130/30-9-80<br>CST No. 33156/30-9-80<br>AREA CODE<br>0 3 3 ECC No.AAAFE1331JXM001. |

Please effect the following works in accordance with the instructions given. This Purchase Order shall be governed by our terms, conditions and instructions as per the Tender Document. As soon as the work is completed DC & INVOICE details must be given to ELCOT. Payment will be released after receipt of funds by ELCOT and as per the Tender Terms and Conditions.

| SL NO | ITEM DESCRIPTION | QTY (IN SETS) | UNIT PRICE INR (Rs.) | TOTAL VALUE INR ( Rs) |
|---|---|---|---|---|
| 1) | **Supply of Laptop Computers with one year comprehensive warranty and Laptop Backpacks as per the Technical Specifications indicated in the ICB Tender Ref.No. ELCOT/PID/ICB/LTC/PII/2012-13 opened on 10.08.2012 with the following items:**<br>**a) Laptop Computers**<br>**b) Laptop Backpacks**<br>**c) User Manual in Tamil and English in a single Booklet.**<br>**d) Do's and Don't instruction guide in Tamil and English** | **1,10,000** | **15,990.00** | **175,89,00,000.00** |
| **C.D, C.V.D., E.D., T.N.V.A.T.** | **Included** / **Extra @ 5%.** | **TOTAL** | **1,10,000** | **15,990.00** | **175,89,00,000.00** |

ORDER VALUE IN WORDS: Rupees One Hundred and Seventy Five Crores and Eighty Nine Lakhs Only.

| | |
|---|---|
| **SUPPLIER: PLEASE SIGN HERE AND RETURN**<br><br>**E. & O.E.** | **FOR ELECTRONICS CORPORATION OF TAMILNADU LIMITED**<br><br>**MANAGING DIRECTOR** |

15. The purchase price is Rs.15,990 plus 5% TNVAT (15,990 + 799.50 = 16,789.50). The above documents would show that the purchase price

agreed by appellant and ELCOT was for supply of laptop with carry bag / backpack. It also included supply of user manual in Tamil and English as a single booklet and Do's and Don'ts instruction guide in Tamil and English. The appellant has purchased backpack locally. In such circumstances the appellant, no doubt, is entitled to add this value while supplying to ELCOT. It is not a case where only the imported laptop computer is supplied to ELCOT. According to appellant, they procured the backpack which has market price of Rs.2500/- at a negotiated price of Rs.225/-. The appellant has affixed the new increased MRP on the basis of purchase price agreed with ELCOT. This purchase price includes the price of laptop computer, backpack, the booklet, instruction guide etc.

16. The appellant while declaring the MRP at the time of import has arrived it by deducting the market price of the backpack (Rs.2500/-) from the purchase price [Rs.16,789.50 (-) Rs.2500 = Rs.14,289.50]. A slightly high MRP has been declared, on each piece of laptop computer imported. The statement of Shri Alok Dubey of appellant company reads as under :

> "10. Shri Alok Dubey, Chief Financial Officer (CFO), M/s Acer India Pvt. Ltd in his statement dated 12.05.14 under Sec 108 of Customs Act, 1962 interalia elaborated his role as CPO in the M/s Acer India Pvt. Ltd.'s participation in tenders floated by Elcot, RaiComp and OCAC. When enquired about the prices quoted by them for tenders floated by the above stated state government agencies during 2011-2014, the basis for the quoted prices and the actual cost of the laptop (inclusive of duty, logistics cost, VAT and profit margins), Shri Alok Dubey stated that he would furnish all details in due course. Explaining the process of arriving at MRP of the laptop that was declared to Customs, Shri Alok Dubey stated that the MRP is decided based on Purchase Order price; that the Customer Purchase Order prices are for a bunch of items including Acer laptops; that they would deduct the MRP of bought out items from the total purchase order price to arrive at the MRP of laptops; that in case of laptops imported for the Elcot project, the MRP of the backpack , ie. Rs. 2,500/- was deducted from the ELCOT Purchase Order price of Rs. 16,789.50/- to arrive at the MRP of the laptop, ie. Rs. 14,289/-; that the MRP declared for Customs purpose was higher than this; that it was usual for the clearance department to declare a sl1ghtly high MRP in some cases for Customs purposes; that the purchase price of the backpacks was Rs 220.59 plus CST; that

> the MRP of Rs. 2500/- was decided by their vendor and that no instruction was given by them to their vendor to affix the stickers showing MRP of Rs. 2500/-."

17. It is noteworthy to mention that as per SCN itself the increased MRP was affixed as a combined MRP of both laptop and backpack as Rs.16,899/-. Investigation conducted by visit of officers to the warehouse revealed that the higher MRP is affixed as combined MRP and not of laptop computer alone. The second para of impugned order reads as under :

> "2. It was discovered by the departmental officers that there were 16,331 Nos. of "ASPIRE E1-431 Part No.NX. M8VSI.001" laptop computers with Tamil Nadu Government Logo pasted in the form of sticker on the carton boxes and a rubber stamping with the words "Box 1&2 shipped with combined MRP of Rs.16,899/-." In the said godown. On enquiry, it was confirmed that the laptop bags were purchased locally and packed in a box and that a combined MRP of Rs.16,899/- had been affixed in respect of both laptop computer and the laptop gag. Copies of several tax invoices billed to various schools in Nilgiris District were also found and detained."

18. On the basis of this combined new MRP, department has arrived at a conclusion that the appellant has misdeclared the MRP at the time of import. According to department, if Purchase Order is taken as the basis of MRP, the said MRP is to be inclusive of all taxes and costs involved. The MRP declared at the time of import was lesser than the transaction value. The department has thus rejected the MRP declared at the time of import and proceeded to redetermine the MRP to demand differential CVD. According to department, since the final bid price with M/s.ELCOT is inclusive of all cost structures, it implies that the quoted price which is inclusive of VAT 5% is to be the actual MRP with the backpack. The department thus redetermined the MRP by deducting the price of bag (Rs.225/-) from the quoted price. (i.e. Rs.17,586 (-) Rs.225 = Rs.17,361/-). The table in para 23 (xv) of the SCN gives the details of method of redetermination of MRP. The table as noticed in para 23 (xv) of SCN is as under :

| PERIOD OF IMPORT | QTY OF IMPORTS | QUOTED PRICE W/O VAT | QUOTED PRICE WITH VAT | PRICE OF BAG WITH CST | REDETERMINED MRP OF LAPTOP |
|---|---|---|---|---|---|
| APR-JUN AUG2012 | 200250 | 16749 | 17586 | 225 | 17361 |
| MAR-APR 2013 | 96095 | 17235 | 18097 | 225 | 17872 |
| MAY-JUN 2013 | 110000 | 17235 | 18097 | 225 | 17872 |

19. The Ld. Counsel appearing for appellant has vehemently argued that such redetermination of MRP is not sustainable as there is no machinery in Section 3 (2) of Customs Tariff Act, 1975 to redetermine the MRP of imported article. Let us proceed to examine this contention. Section 3 of Customs Tariff Act, is reproduced as under :

> **SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. —** (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 :
>
> **…** … …
>
> **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 sub-section (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; or
>
> (ii) the goods specified by notification in the Official Gazette under section 3 read with clause (1) of *Explanation III* of the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), 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, be notification in the Official Gazette, allow in respect of such like article under clause (2) of the said Explanation.

> ***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."

20. The above provision states that for payment of CVD on imported goods notified under subsection (1) of Section 4A, the value of the imported article shall be deemed to be the RSP declared on the imported article less such amount of abatement. The proviso to Section (3) itself stipulates how the value has to be determined for imported goods to which Legal Metrology Act, 2009 and Rules thereunder apply. There is no provision envisaged herein for redetermination of the MRP. The proviso to subsection (2) of Section 3 merely refers to subsection (1) of Section 4A to indicate the class or description of goods notified. Subsection (2) of Section 4A is referred for allowing abatement on the declared MRP to determine the value for payment of CVD. This proviso to subsection (2) of Section 3 does not use the words that 'the entire provision of Section 4A would be applicable'.

21. Though Section 4A was introduced w.e.f. 14.5.1977, there was no provision for ascertaining (or redetermining) the price (RSP) in situation of violation of the provisions. Subsection (4) to Section 4A for ascertaining or redetermining the RSP came to be introduced only w.e.f. 14.5.2003. Subsection (4) then merely said that the RSP of the goods shall be ascertained in prescribed manner. The Rules 2008 putting forth the prescribed manner or the method of ascertaining was introduced by Notification 13/2008 (NT) dt. 1.3.2008 only. The adjudicating authority has resorted to Rule 6 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules 2008. These Rules are as under :

> **RULE 1.** (1) These rules may be called the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008.
>
> (2) They shall come into force on the date of their publication in the Official Gazette.
>
> **RULE 2.** In these rules, unless the context otherwise requires, -
>
> (a) 'Act' means the Central Excise Act, 1944 (1 of 1944);

(b) 'retail sale price' means the retail sale price as defined in section 4A of the Act; and

(c) words and expressions used in these rules and not defined but defined in the Act or any other rules made under the Act shall have the meaning as assigned therein.

**RULE 3.** The retail sale price of any excisable goods under sub-section (4) of section 4A of the Act, shall be determined in accordance with these rules.

**RULE 4.** Where a manufacturer removes the excisable goods specified under sub-section (1) of section 4A of the Act, -

(a) without declaring the retail sale price on the packages of such goods; or

(b) by declaring the retail sale price, which is not the retail sale price as required to be declared under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or rules made thereunder or any other law for the time being in force; or

(c) by declaring the retail sale price but obliterates the same after their removal from the place of manufacture,

then, the retail sale price of such goods shall be ascertained in the following manner, namely :-

(i) if the manufacturer has manufactured and removed identical goods, within a period of one month, before or after removal of such goods, by declaring the retail sale price, then, the said declared retail sale price shall be taken as the retail sale price of such goods :

(ii) if the retail sale price cannot be ascertained in terms of clause (i), the retail sale price of such goods shall be ascertained by conducting the enquiries in the retail market where such goods have normally been sold at or about the same time of the removal of such goods from the place of manufacture :

**Provided** that if more than one retail sale price is ascertained under clause (i) or clause (ii), then, the highest of the retail sale price, so ascertained, shall be taken as the retail sale price of all such goods.

***Explanation.*** - For the purposes of this rule, when retail sale price is required to be ascertained based on market inquiries, the said inquiries shall be carried out on sample basis.

**RULE 5.** Where a manufacturer alters or tampers the retail sale price declared on the package of goods after their removal from the place of manufacture, resulting into increase in the retail sale price, then such increased retail sale price shall be taken as the retail sale price of all goods removed during a period of one month before and after the date of removal of such goods :

**Provided** that where the manufacturer alters or tampers the declared retail sale price resulting into more than one retail sale price available on such goods, then, the highest of such retail sale price shall be taken as the retail sale price of all such goods.

> **RULE 6.** If the retail sale price of any excisable goods cannot be ascertained under these rules, the retail sale price shall be ascertained in accordance with the principles and the provisions of section 4A of the Act and the rules aforesaid."

As per Rule 3 as above states that the Rules would apply in case of redetermination of sale price (RSP) of excisable goods under subsection (4) of Section 4A of the Central Excise Act. There is no mention that it would be applicable to Section 3 of Customs Tariff Act. Pertinently, Section 3 of Customs Tariff Act, though refers to Section 4A does not adopt it to determine the assessable value.

22. It would also be beneficial to reproduce Section 4A of Central Excise Act, 1944 as under :

> **SECTION 4A. Valuation of excisable goods with reference to retail sale price. —** (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) 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 goods, to which the provisions of sub-section (2) shall apply.
>
> (2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.
>
> (3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.
>
> **(4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer -**
>
> (a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or
>
> (b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,
>
> then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.

> ***Explanation 1.*** — For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale :
>
> **Provided** that in case the provisions of the Act, rules or other law as referred to in sub-section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.
>
> ***Explanation 2.*** — For the purposes of this section, -
>
> (a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;
>
> (b) where the retail sale price, declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;
>
> (c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates."

23. It can be seen that even though a methodology to ascertain the RSP is laid down, the same will apply only in situations of (a) and (b) of subsection (4) of Section 4A. On examining the facts, the appellant has adopted a new RSP for the combined goods of laptop computer + carry bag + booklet + Instruction guide. The department has redetermined the RSP of the imported laptop computer alleging misdeclaration of MRP. As there is no methodology or machinery for redetermining the MRP of goods imported for the purpose of payment of CVD, we hold that such re-determination of MRP is against the provisions of law.

24. The Tribunal in the case of ***ABB Ltd. Vs Commissioner of Customs, Bangalore*** – 2011 (272) ELT 706 (Tri.-Bang.) considered this issue for the period prior to 1.3.2008 (disputed period 3.1.2003 to 31.3.2007) and held that there is no machinery / provisions for ascertaining RSP, when the RSP is not declared by importer on imported articles. The differential CV Duty demand, interest and penalties were set aside. The provisions under Section 3 of Customs Tariff Act, 1975 for CVD on notified goods remain to be the

same and this case is therefore squarely applicable. The relevant paras are reproduced as under :

> **"2.** Facts of the case in brief are as follows. Pursuing intelligence that M/s. ABB Ltd., Bangalore (ABB) was importing electrical apparatus falling under Chapter Heading 85.36 of Customs Tariff Act, 75 (CTA) and Central Excise Tariff Act (CETA, '85) and selling the same from their warehouse to their channel partners (dealers) & others, mis-classifying them under 8538 of CTA & CETA in the Bills of Entry without declaring their Retail Sale Price (RSP) for the assessment of CVD under Section 3 of the CTA read with Section 4A of Central Excise Act, 1944 (CEA) and Notification No. 13/2002-C.E. (N.T.), dated 1-3-2002. They paid lower duty than the CVD due.
>
> **… … ….**
>
> **17.** We find that in view of the Central Excise (Determination of Retail Sale Price of Excisable Goods) 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 :
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> "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.

**19.** We find that the principle of purposive construction cited by the learned Special Consultant for the Revenue envisages interpretation of provisions in such a manner that an outcome intended by the legislature is not frustrated. We do not think that the said principle provides for, nor is it competent for the Tribunal, to supply by construction, a mandatory provision absent in the statute. The demand for differential duty so determined, the interest due and the penalty equal to the demand imposed are set aside. In the circumstances we do not consider it necessary to deal with other disputes and controversies. The appeal is allowed."

24.1 This decision was followed by Tribunal in the case of ***Commissioner of Customs Vs V.J. Traders*** – 2019 (366) ELT 909 (Tri.-Del.). The import was of various paint items which were liable to CVD based on MRP declared. The department entertained doubts regarding MRP declared, and proceeded to demand differential CV duty on redetermined MRP on the basis of market enquiry. The Commissioner (Appeals) set aside the demand holding that the adjudicating authority could not redetermine the MRP in absence of any enabling provisions in the Customs Tariff Act, 1975, as held in the case of ***M/s.ABB Ltd.*** Against such order, the department had filed appeal before the Tribunal. The Tribunal observed that even though department has filed appeal before Hon'ble Apex Court against the decision of Tribunal in the case of ***M/s.ABB Ltd***. (supra), the decision would not loose its precedential value and would be applicable. The relevant para reads as under :

> **"4**. On careful consideration of the grounds of appeal by the Revenue, we note that grounds of Revenue is with reference to suppression of facts on import in misdeclaring the MRP and non-applicability of the cited case laws relied upon by the Commissioner (Appeals). In this connection, we note that the Commissioner (Appeals) categorically recorded that there is no dispute in respect of description, classification and quantity of the impugned goods and the appellant had declared RSP. He, therefore, found that the adjudicating authority could not proceed to determine the MRP/RSP in absence of any enabling provisions in the Customs Tariff Act, 1975 as held by the Tribunal in *ABB Ltd.* (supra). He also relied on the other decided cases holding similar view. We note that the decision of the Tribunal has not been stayed, though the appeal is still pending before the Hon'ble Supreme Court. As such, we have no reason to interfere with the findings recorded by the impugned order, which has relied on the decision of the Tribunal not reversed by any higher authorities. Accordingly, the appeal is dismissed."

24.2 The Ld. A.R has relied upon the decision in the case of ***Nitco Tiles*** (supra). There was difference of opinion between the Members and it was referred to Third Member for resolving the difference of opinion. The Member (Judicial) has taken the view that once any RSP has been affixed by an importer and duty has been paid (based upon such affixed value) and later on, if it is found that the affixed RSP is not true and correct, even in such a situation, the duty already paid is as per law and nothing more is required to be recovered for the reason that there is no machinery in Section 3(2) of Customs Tariff Act, 1975 to redetermine the RSP.

24.3 On the other hand, the Member (Technical) had taken the view that reference to Section 4 (1) and Section 4A (2) of the Central Excise Act is fully applicable to the Explanation to Section 3(2) to Customs Tariff Act, 1975, thereby meaning that if RSP is found to be incorrectly affixed/declared, then the same can be redetermined for payment of Excise Duty and Countervailing Duty in case of imports.

24.4 The Third Member has agreed with the view taken by Member (Technical). However, it has to be seen that in the said case the facts show that the goods imported declaring RSP have been sold over and above the RSP affixed on the packages. In the present case, the goods imported have been supplied along with carry bags and it is not a case where only the goods imported are sold. Further, the Member (Judicial) in the said case had relied upon the decision of the Tribunal in the case of ***ABB Ltd***. (supra) whereas there is no reference to the said decision by the third Member to hold the view that Section 3 of the Customs Tariff Act, 1975 envisages

provisions for redetermination of RSP. We therefore hold that this issue is covered by decision in the case of ***M/s.ABB Ltd.*** (supra) and the case law relied upon by Ld. A.R is not applicable to the present case, as distinguishable on facts.

25. Similar view was taken in the case of ***Commissioner of Customs (I) Nhava Sheva Vs King Kaveri Trading Co.*** – 2019 (370) ELT 1049 (Tri.-Mumbai). The relevant para reads as under :

> **"5.** Learned Counsel for the respondent, while admitting that the demand of additional duties of customs were being effected under Section 4A of Central Excise Act, 1944, submits that the practice was given up from 9th July, 2009 after informing the Customs authorities. We also find from the decision of *ABB Ltd.* v. *Commissioner of Customs, Bangalore* [2011 (272) E.L.T. 706 (Tri.-Bang.)] that the fundamental issue is the correctness of application of the Rules framed under Section 4/4A of Central Excise Act, 1944 to an assessment of additional duties of customs under the Customs Tariff Act, 1975. It is seen from the provisions therein that, for the purpose of additional duties of customs, the default mechanism is
>
> **'SECTION 3.** xxx
>
> (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
>
> (ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 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 —
>
> (a) the duty referred to in sub-sections (1), (3) and (5);
>
> (b) the safeguard duty referred to in sections 8B and 8C;
>
> (c) the countervailing duty referred to in section 9; and
>
> (d) the anti-dumping duty referred to in section 9A:'
>
> However, the *proviso* requires that the value of the imported article be deemed to be the 'retail sale price' declared on the imported article less such amount of abetment, as by notification allowed. It is, therefore, apparent from Section 3 of the Customs Tariff Act, 1975 that no provision exists for ascertainment of 'retail sale price' in the same manner as provided for in Section 4A of Central

Excise Act, 1944. The purpose of Section 4A of Central Excise Act, 1944 has been clearly articulated when it was incorporated in the statute. On the other hand, Section 3 of Customs Tariff Act, 1975 was intended to ensure that the valuation adopted for customs purpose, would have to conform to the price at which the goods are intended to be sold in packages that are statutorily required to carry such prices on them. Hence a declaration of 'retail sale price' would suffice for acceptance as value for computation of additional duties of customs.

**6.** The respondent herein has taken a position that the goods are not required, under the provisions of Standards of Weights and Measures Act, 1976 or the Rules made thereunder, to declare so on the packages of import. There is, therefore, no provision for determination of retail sale price in the event of disagreement by the proper officer of customs with the declaration. In these circumstances, and in the absence of declaration of retail sale price, the adoption of another price by the proper officer of customs does not constitute the appropriate assessment. For this reason, we find no merits in the appeal of Revenue, which is dismissed."

26. The Larger Bench of the Tribunal in the case of ***M/s.Ocean Ceramics Ltd. Vs Commissioner of Customs, Central Excise (Appeals) Rajkot*** Interim Order Nos.01-23/2024 dt. 23.01.2024 had occasion to analyse the issue and held that the Central Excise (Determination of RSP of Excisable Goods) Rules, 2008 are not procedural in nature and cannot be given retrospective effect. Further, that the RSP cannot be ascertained by any other methodology. This case though rendered under issue arising under Central Excise Act is relevant to appreciate the applicability of Rules, 2008. The relevant paras are as under :

"89. Thus, for the reasons stated above, it is not possible to accept the views expressed by the Division Bench of the Tribunal in **Schneider Electrical.**

**Conclusions**

**(i)** When sub-section (4) of section 4A of the Central Excise Act, as substituted in 2003, specifically provides that the RSP shall be ascertained in the prescribed manner and the prescribed manner is the manner to be prescribed by the rules to be framed under section 37 of the Central Excise Act read with sub-section (4) of section 4 of the Central Excise Act, the RSP has to be ascertained only in terms of the 2008 Rules;

**(ii)** It is a settled principle of law that a tax or a cess or a duty can be levied strictly in accordance with law and a taxing statute has to be strictly construed. In the present case, the words used in sub-section (4) of section 4A are that the RSP shall be ascertained in the prescribed manner. Thus, any duty of excise which is collected not in accordance with the manner prescribed, would be without authority of law;

**(iii)** **It, therefore, follows that it would be impermissible for any adjudicating authority to ascertain the RSP by any other methodology, for such an ascertainment would be contrary to the statutory prescription contained in sub-section (4) of section 4A and would have the effect of empowering an adjudicating authority to determine the manner of ascertaining the RSP;**

**(iv)** **The 2008 Rules are not procedural in nature and cannot, therefore, be given any retrospective effect;**

**(v)** Even, otherwise a rule framed by the delegatee of the legislature does not have retrospective effect, unless the statutory provision under which it is framed allows retrospectivity, either by use of specific words to that effect or by necessary implication; and

**(vi)** It is, therefore, not possible to accept the views expressed by the Division Bench in **Schneider Electrical** that the 2008 Rules are procedural in nature and, therefore, can be applied retrospectively.

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

**(ii)** In view of the answer to the first question, there is no necessity of answering the second question; and

**(iii)** It is not necessary to answer the third question as both learned counsel for the appellant and the learned special counsel appearing for the department have stated that this question may not be answered by the Larger Bench."

(emphasis supplied)

27. Moreover, in the present case, though the adjudicating authority has stated that Rule 6 of 2008 is applied to redetermine RSP, it can be seen that the method of arriving at the redetermined MRP is not within the principles or provisions of Section 4A of the Central Excise Act & Rules. The methodology adopted by adjudicating authority is to deduct the negotiated price of the backpack (Rs.225/-) from the Purchase order price. The Purchase order Price or bid price is inclusive of items which are not imported. Further, the department has no case that such backpack can be obtained at Rs.225/- from market. All these factors would lead to the conclusion that the redetermined MRP cannot be sustained. Consequently, the demand of differential duty also cannot be sustained and require to be set aside. Ordered accordingly.

28. The Ld. Counsel had adverted to the decision in the case of ***PG Electroplast Ltd. Vs Commissioner of Central Excise & Service Tax, Noida*** **- 2014 (307) ELT 787 (Tri.-Del.)** to argue that in the said case, it was held that for the supplies made by appellant therein to M/s.ELCOT, the MRP was required to be declared and provisions of Section 4A would be applicable even though the goods are intended for free supply to poorer sections of population of Tamil Nadu on behalf of Government of Tamil Nadu.

29. The Ld. Counsel has put forward arguments on the grounds of limitation also. The show cause notice is dated 08.08.2017. the imports are made during the period 09.05.2012 to 09.06.2014. The facts reveal that the officers have visited the warehouse on 2.7.2013 and 16331 numbers of laptops were seized. The Department was thus aware of the entire situation in 2013 itself. The statements were also recorded in 2013. Thereafter, show cause notice has been issued after 4 years alleging suppression of facts with intent to evade payment of Customs duty invoking the extended period. In ***CCE v. Essel***

***Propack Ltd***. (supra) it was held by the Hon'ble Supreme Court held that when all the information was already available with the department, the extended period cannot be invoked. The said decision has been followed in the case of ***CCE Vs Spicejet Ltd.*** (supra) and other cases. So also, in the present case, the issue is with respect to redetermination of MRP of the composite supply of laptop and laptop bags. The issue as to whether there is undervaluation of MRP when the goods are in a composite supply form is debatable and is interpretational in nature. Taking all these aspects into consideration and following the decision of the Hon'ble Apex Court in ***CCE Vs Essel Propack Ltd.*** (supra), we are of the considered opinion that there are no grounds for invoking the extended period. The show cause notice is time-barred and the demand cannot sustain on the ground of limitation also.

30. The appellant has argued that confiscation of goods, interest demand, penalty and redemption fine imposed cannot be sustained in relation to CVD leviable under Section 3 (1) of Customs Tariff Act, 1975. The Hon'ble Bombay High Court in the case of ***Mahindra & Mahindra Ltd. v. Union of India*** (supra) had considered the said issue and held that interest and penalty in relation to CVD cannot be demanded in the absence of specific provisions for levy of interest, penalty in the Customs Tariff Act, 1975. The said decision was upheld by Hon'ble Apex Court as reported in 2023 (8) TMI 135-SC. Following the same, we hold that the confiscation of goods, interest on CVD, redemption fine and penalties cannot sustain on this ground also.

31. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Order pronounced in open court on 08.05.2024)

sd/-
**(VASA SESHAGIRI RAO)**
MEMBER (TECHNICAL)

sd/-
**(SULEKHA BEEVI C.S.)**
MEMBER (JUDICIAL)

MK/gs