

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21135 of 2014

(Arising out of Order-in-Original No. 29/2013-Commr. dated
29.11.2013 passed by the Commissioner of Customs, Bangalore.)

**M/s. Kluber Lubrication India
Pvt. Ltd.,**

No. 347A, Hebbal Industrial Area,
Mysore – 570 016.

Appellant(s)

VERSUS

Commissioner of Customs,

C.R. Building, P.B.No. 5400,
Queens Road,
Bangalore – 560 001.

Respondent(s)

With

**(i) Customs Appeal No. 21137 of 2014 (Shri. Vijay
Kumar Suhjani, General Manager (Finance), M/s.
Kluber Lubrication India Pvt. Ltd.)**

(Arising out of Order-in-Original No. 29/2013-Commr. dated
29.11.2013 passed by the Commissioner of Customs, Bangalore.)

**(ii) Customs Appeal No. 21138 of 2014
(SMT. Meherunnisa, Accounts Officer, M/s. Kluber
Lubrication India Pvt. Ltd.)**

(Arising out of Order-in-Original No. 29/2013-Commr. dated
29.11.2013 passed by the Commissioner of Customs, Bangalore.)

**(iii) Customs Appeal No. 21287 of 2014 (Shri. Nitish
Hegde, Finance Executive, M/s. Kluber Lubrication
India Pvt. Ltd.)**

(Arising out of Order-in-Original No. 29/2013-Commr. dated
29.11.2013 passed by the Commissioner of Customs, Bangalore.)

APPEARANCE:

Mr. Ravi Raghavan with Ms. Shradha Pandey, Advocates for the
Appellants

Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20249 - 20252 /2025

DATE OF HEARING: 06.09.2024

DATE OF DECISION: 04.03.2025

PER : D.M. MISRA

These appeals are filed against Order-in-Original No.29/2013 dated 29.11.2013 passed by the Commissioner of Customs, Bangalore.

2. Briefly stated the facts of the case are that the appellant were importing various brands of lubricants and lubricating preparations. They had filed Bill of Entry claiming assessment of the said goods, inter alia, additional duty of customs without declaration of RSP mentioning in the Bill of Entry as 'not for retail sale' and consequently claimed exemption from application of Section 4A of the Central Excise Act, 1944 in computing CVD component. Alleging that the imported goods are required to be declared and assessed for CVD on the basis of RSP and also alleging that the RSP declared by the appellant in certain cases not correct, as later it was sold at higher price, show-cause notice was issued to the appellant for recovery of duty short paid Rs.1,86,92,939/- along with interest and penalty, with proposal for confiscation of the goods under various provisions of the Customs Act, 1962. On adjudication, the demand was reduced to Rs.1,22,88,757/- with interest and equivalent penalty under Section 114A of the Customs Act; penalty of Rs.40.00 lakhs under Section 114AA of the Customs Act imposed on the company; penalty of Rs.5.00 lakhs imposed on Shri Vijay Kumar Sujhani and penalty of Rs.2,50,000/- each on Shri Nitish Hegde and Smt. Meherunissa under Section 112 and Section 114AA of the Customs Act, 1962 respectively. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant during the relevant period June 2008 to November 2012 had imported lubricants falling under Chapter 27 and 34 of the CTH 1975 which were used in the manufacture of finished goods as well as sold to industrial consumers as such. The goods which are meant to be used by the appellant were declared the value and applicable duties were discharged, whereas the imported goods which were to be cleared to the industrial consumers declared in the respective Bills of Entry as "not for retail sale" which were later either directly cleared to industrial consumers or were sold to distributors / dealers who in turn sold the same to industrial consumers. In certain cases, the appellant declared MRP on the imported goods even though the goods were cleared / sold to industrial consumers, but CVD was discharged on the MRP so declared. It is his contention that the entire quantity of imported goods meant for industrial consumers either directly sold by them or through 3rd party entities and not cleared for retail sale.

3.2. He has further submitted that in the impugned order, the CVD has been recalculated on the basis of MRP alleging that the goods were sold to dealers and other customers; hence packages are in the nature of those intended for retail sale to ultimate consumers. He has submitted to attract MRP based assessment for levy of additional duty of customs (CVD) is attracted when the goods are notified under Section 4A(1) of the Central Excise Act, 1944 and details of RSP was declared on the imported package under Legal Metrology Act, 2009. Under the provisions of the Standards of Weights and Measures Act, 1976 / Legal Metrology Act, 2009, RSP is required to be declared on the pre-packed commodities where the packages are intended for retail sale and quantity do not exceed 25 kgs or 25 litres and the packaged commodities are not meant for industrial consumers or institutional consumers. In the present case, the imported

packages are not meant to be sold in retail; therefore RSP on the same were not declared by the appellant. In support, they referred to the judgment of this Hon'ble Karnataka High Court in the case of EWAC Alloys Ltd. Vs. UOI [2012(275) ELT 193 (Kar.)] which has been affirmed by the Division Bench of the Hon'ble High Court vide Order dated 24.01.2020 in Writ Appeal No.1770/2012. Also, they have placed reliance on the judgment of this Tribunal in the case of Hi-Tech Computers Vs. CC, Bangalore [Final Order No.20729-20731/2024 dated 29.04.2024]; Starlite Components Ltd. Vs. CCE [2012(286) ELT 43 (Tri. Mumbai)].

3.3. Further the learned advocate has submitted that the definition of institutional consumer or industrial consumer as laid down under Rule 2(bb) of the Legal Metrology (Packaged Commodities) Rules, 2011 means those persons who procure goods directly from the manufacturers/packer and in the case of imported goods, the definition of 'industrial consumers' to be held that those persons who procure goods directly from the importer since the obligations of the importer under Legal Metrology Act in respect of imported goods is similar to that of a local manufacturer/packer in respect of manufactured goods. Further, they have referred judgment in the cases of Henkel CAP Pvt. Ltd. Vs. CC(Import), JNCH, Mumbai-II [2012(282) ELT 566 (Tri.)] and UT Starcom Inc. Vs. CC (Port-Import), Chennai [2019(370) ELT 937 (Tri. Chennai)](affirmed in 2020(371) ELT A47 (SC)) wherein it is held that importer was not required to comply with the compliances relating to retail sale as the imported goods were sold to industrial / institutional consumers. Since the imported goods are sold directly by the appellant to the industrial consumers / distributors, the same are excluded from application of Chapter II and affixation of MRP in terms of Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011. Further, he has submitted that the Legal Metrology (Packaged Commodities)(Amendment) Rules, 2011 prescribed

that industrial consumer means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use and the package shall have declaration 'not for retail sale'. He has submitted that the said amendment was brought by way of substitution of Rule 2(bb) of the Legal Metrology (Packaged Commodities) Rules; therefore, it has got retrospective effect. In support, they have referred to the judgment of the Hon'ble High Court of Karnataka in the case of CCE Vs. Fosroc Chemicals (India) Pvt. Ltd. [2015(318) ELT 240 (Kar.)] and judgment of Hon'ble Apex Court in the case of GOI Vs. Indian Tobacco Association [2005(187) ELT 162 (SC)].

3.4. Learned advocate has submitted that packages of imported lubricants containing quantities more than 25 kgs are excluded from the scope of Chapter II of the Legal Metrology (Packaged Commodities) Rules. The goods which are routed to industrial consumers through distributors are not amenable to assessment under Section 4A of the Central Excise Act, 1944 as held in the in the case ABB India Limited Vs. C,CGST, Bangalore [Final Order No.20566-20567/2023 dated 16.05.2023], which was followed in ABB India Limited Vs. CCGST, Bangalore [Final order No.20810/2023 dated 04.08.2023].

3.5. Further, the appellant has submitted that an amount of Rs.19,18,221/- confirmed on the ground that the RSP declared at the time of import was incorrect as the goods were later sold at a higher price than the RSP declared. He has submitted that since the said goods were sold to industrial consumers, duty is not required to be discharged on the MRP and the duty paid on the MRP declared at the time of import is in any case higher than the transaction value. Besides, the appellant had declared the MRP on the basis of price prevailing at the time of import and appropriate CVD was discharged. Further, he has submitted that there is no suppression of facts and the goods were cleared on

payment of applicable CVD and also on declaring the goods 'not for retail sale'; hence, invocation of extended period of limitation and imposition of penalty is unsustainable.

4.1. *Per contra*, learned AR for the Revenue has submitted that the reliance placed on the judgment of EWAC Alloys Ltd. by the appellant is misplaced as the adjudicating authority has clearly distinguished the applicability of the said judgment. It is observed in the said case that the assessee was either sold directly or through their stockists and meant for industrial use only whereas in the case at hand, it is not so. The thrust of the argument of the appellant in the said case was that industrial goods are not subjected to RSP assessments. Even in the case of CCE Vs. Madras Cements [2019(11) TMI 1784, the Revenue's appeal was dismissed; however, it was made clear that where the sale was not found to be in favour of the industrial or institutional consumers, the concession in question shall not be available. He has submitted that packages of more than 25 kgs have been excluded from the purview of the present demand notice and the amount has been calculated on the basis of the data provided by the appellant. He has submitted that in some packages, the RSP declared by the appellant was not correct as the said goods were later sold at a price higher than the RSP declared; therefore the learned Commissioner has rightly confirmed the demand in such cases. He has further submitted that even though the appellant had contended that due to repacking at their factory, there is a revision of RSP since repacking / relabelling amounts to manufacture and discharged differential Excise duty but such argument was not advanced earlier. Further he has submitted that the definition of industrial consumer and institutional consumer has been amended w.e.f. 14.05.2015 as defined under the Legal Metrology Act, 2009 which the appellant claimed as retrospective nature cannot be acceptable. In support of his contention that the notification bringing amendment to the existing definition of industrial

consumer and institutional consumer will come into force w.e.f. 14.05.2015 only, the learned AR referred the following judgments:

- i. State of Gujarat Vs. Arcelor Mittal Nippon Steel India Ltd. [2022(379) ELT 418 (SC)]
- ii. Interglobe Aviation Ltd. [2022(379) ELT 235 (Tri. Bang.)]
- iii. Martin Lottery Agencies Ltd. [2009(14) STR 593 (SC)]
- iv. Ruby Confectionery Pvt. Ltd. [2017(47) STR 160 (Tri. Hyd.)]
- v. Gujarat Sidhee Cement Ltd. [2007(216) ELT 56 (Tri. Ahmd.)]
- vi. Adecco Flexione Workforce Solutions Ltd. [2019(28) GSTL 131 (Tri. Bang.)]

4.2. Further, he has submitted that the demand for extended period is sustainable since they have suppressed the fact from the Department. Further, he has submitted that the appellant in their synopsis provided the break-up of the total demand stating that on goods packed and sold more than 25 kgs, the duty confirmed was Rs.34,23,135/-; goods sold to industrial consumers through dealers, duty confirmed was Rs.38,99,745/- and on goods directly sold to manufacturers, duty confirmed was Rs.30,47,666/- and the balance demand of Rs.19,18,221/- relates to payment of duty on MRP basis goods cleared to industrial consumers to be verified. He has submitted that the payment of SAD is required to be claimed as refund on fulfilment of relevant conditions under Notification No.102/2007-Cus dated 14.02.2007, hence the claim of the appellant that they had paid SAD at the time of import needs to be verified.

5. Heard both sides and perused the records.

6. The main issue involved in the present case relates to determination of applicability of MRP/RSP based assessment of imported goods cleared to/meant for industrial consumers as declared by the appellant in their Bills of Entry as "NOT FOR RETAIL SALE".

7. Undisputed facts of the case are that during the relevant period June 2008 to November 2012, the appellant had imported lubricants and lubrication preparations of various brands. They have declared in their Bills of Entry filed against the said imports 'not for retail sale' and claimed assessment of additional customs duty (CVD) on assessable value + BCD instead of MRP/RSP based assessment. It is alleged that in terms of Notification No.14/2008-CE(NT) dated 01.03.2008 as amended, lubricant oils and lubrication preparations falling under Chapter heading 2710 and 3403 are assessable to duty under Section 4A of CEA, 1944 for payment of additional duty of customs(CVD) under sub-section (1) of Section 3 of Customs Tariff Act, 1975. The appellant by declaring the goods in the Bills of Entry 'not for retail sale' claimed exemption from application of Section 4A of CEA, 1944 claiming that these goods were cleared to industrial consumers directly or through their stockists/distributors. In the impugned order, the learned Commissioner referring to the definition of 'industrial consumer' and 'institutional consumer' under the Legal Metrology (Packaged Commodities) Rules, 2011 held that since the goods are not directly purchased by the industrial consumers from the manufacturer and the appellant being an importer, the sales/clearances made directly or through their distributors to the industrial consumers cannot fall within the definition of 'industrial consumers' even if such goods are ultimately consumed by industrial consumers. Against the said finding of the adjudicating authority, the categorical plea of the appellant through their reply to the show-cause notice as well as before the adjudicating authority was that at the time of import itself in the Bills of Entry, it has been categorically made clear through the declaration that the imported goods are not meant for retail sale; hence they were not required to affix the RSP on the packages even though in some packages the RSP was affixed at the time of clearance as insisted by the department.

8. We have carefully analysed the allegation in the show-cause notice and finding recorded by the Ld. Commissioner. It is nowhere alleged in the notice that even though the appellant had made a declaration in their Bills of Entry that the goods are 'not for retail sale'; however, the goods, instead of clearance to industrial consumers, have been sold in retail to the ultimate consumers. On the contrary, it is alleged in the show-cause notice that the importer in relation to the goods covered under the Bill of Entry was not an industrial/institutional consumer hence the goods imported by them attract application of Legal Metrology (Packaged Commodities) Rules, 2011. Consequently, the goods imported by the appellant and sold to the dealers / industrial customers liable to be assessed to additional duty of customs(CVD) on the basis of RSP/MRP. We find that in the respective statements of the employees recorded by the department during investigation as well as later in their reply to the notice, the appellant all along have been contending that the goods are meant and sold to industrial consumers only either directly or through their distributors/stockists.

9. The learned Commissioner in the impugned order made an attempt to distinguish the ratio laid down by the Hon'ble Karnataka High Court in the case of EWAC Alloys Ltd. (supra) observing that in the said case, the manufacturer of welding electrodes sold the goods through their stockists to industrial consumers which is not the present case as the appellant being an importer sold the imported goods through their dealers; hence the ratio laid down in the said judgment is not applicable to the facts of the present case.

10. We find that the learned Commissioner has misinterpreted the said judgment of the Hon'ble Karnataka High Court which was later upheld by the Apex Court in Writ appeal No.1770/2012 on 24.01.2020. In the said judgment, Hon'ble Karnataka High Court was confronted with the interpretation of the definition,

scope and meaning of industrial consumer and institutional consumer as prescribed in Rule 2A of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. Their lordships held as follows:-

"24. Therefore, Rule 34 expressly exclude the application of Rule 6 to any package containing a commodity if the marking on the package unambiguously indicates that it has been specially packed for the exclusive use of any industry as raw material or for the purpose of servicing any industry, mine or quarry. Therefore the intention is clear. The packages meant for industry, mine or quarry, did not fall within these Rules. After deleting the said provisions, Rule 2-A has been introduced. It reads as under :

"2-A Applicability of the Chapter. - The provisions of this Chapter shall not apply to:-

(a) packages of commodities containing quantity of more than 25 Kg or 25 litre excluding cement and fertilizer sold in bags up to 50 Kg; and

(b) packaged commodities meant for industrial consumers or institutional consumers.

Explanation. - For this purpose of this rule.

(a) Institutional consumer.- Means those consumers who buy packaged commodities directly from the manufactures/packers for service industry like transportation [including airways, railways] hotel or any other similar service industry.

(b) Industrial consumer.- Means those consumers who buy packaged commodities directly from the manufacturers/packers for using the product in their industry for production, etc.]"

25. Therefore, while interpreting these provisions, one has to keep in mind what was the law prior to deletion to clause (a) of Section 34 and what is the law after introduction of Rule 2-A and substituting the definition 2(p)-'retail package'. As is clear from Rule 2-A, Chapter II deals with provisions applicable to packages intended for retail sale. This provision is not applicable to two categories of packaged commodities, as mentioned in clause (a) and (b). As the words industrial consumer or institutional consumer were used in clause (b) of Rule 2-A, in the explanation, the meaning of those two terms have been expressly stated. As is clear from the explanation, those consumers, who buy packaged commodities directly from the manufacturers/packers for service industry like transportation including airways, railways, hotel or any other similar service industry or others for using product in

their industry for production, etc., they are excluded from the application of this Rule. In other words, the protection given to the consumer under the Act was not extended to these institutional consumers and industrial consumers. Consequently, the persons who are manufacturing or producing these packaged commodities meant for institutional consumer and industrial consumer were not required to comply with the requirement of Rule 6. Similarly, in the definition of retail package. It was made clear that it is only those packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein and includes the imported packages, Rule 6 is attracted. The proviso makes it clear that the expression, 'ultimate consumer' used in the definition 'retail package' did not include industrial or institutional consumer. Therefore, the legislature has again expressly excluded from the operation of these Rules, the industrial or institutional consumer.

26. Now the dispute is, are the words, industrial or institutional consumer used in proviso to Section 2-A(b) to be given the same meaning as given in the explanation to Rule 2-A. In case of Rule 2-A, as is clear from the explanation, the consumers who buy packaged commodities directly from the manufacturers are excluded from the purview of Chapter II. In other words, the requirement of Chapter II are not attracted to the packages purchased directly from manufacturers. However, in the case of retail package, it is not necessary that the industrial or institutional consumer should purchase the packaged commodities from the manufacturer. By adding the proviso, explaining the meaning of the word, 'ultimate consumer', it has been made clear that a retail package which is meant for ultimate consumer excluded industrial or institutional consumer.

27. In fact, Revenue relied on the judgment of the Bombay High Court in the case of *Larsen & Toubro Limited v. The Union of India* in W.P. No. 5856/07 disposed of on 29-2-2008 [[2012 \(275\) E.L.T. 153](#) (Bom.)], where, after noticing Rule 2-A and the definition of 'retail package' as contained in Rule 2(p), it was held that the explanation of institutional and industrial consumer in Rule 2-A must also be read into the proviso to Rule 2(p), for the purpose of Chapter II. While construing Rule 3, only purchasers of packages who are institutional or industrial consumer as explained under Rule 2-A would be excluded. Every other retail sale by a retail dealer of a pre-packed commodity would be covered.

28. With great respect, I find it difficult to fully agree with the reasoning in the aforesaid judgment because, as is clear from Rule 2-A, the explanation expressly states that 'For the purpose of this rule' and then gives the meaning of institutional consumer and industrial consumer. On the date of Rule 2A was introduced by way of amendment into the Rules, Rule 2(p) was also substituted introducing the

very same words 'industrial consumer and institutional consumer' in the proviso. If the intention of the legislature that the same meaning given in the explanation is to be attributed to the definition clause also, they would not have used the word, 'this rule', they would have used the word 'Rule'. Thus it amounts to re-writing the Rules by the Court which is not permitted in law. Keeping in mind the object with which this enactment was passed, there is a need to protect an individual consumer and certainly not the industrial consumer. When the legislature, for the purpose of Rule 2-A only, explained the meaning of institutional consumer and industrial consumer, such legislative intent is to be respected. If the interpretation sought to be placed by the Revenue is accepted, it would do violence to the Rules. The difference between the definition of institutional consumer and industrial consumer in Rule 2-A and Rule 2(p) appears to be thus :

29. In Rule 2-A industrial consumer or the institutional consumer are purchasing the packaged commodities directly from the manufacturer. In the case of retail package, the manufacturer of goods meant for industrial use may not be able to supply the goods directly. Therefore, they may take the assistance of a stockist. If the customers are spread over the country and if the manufacturing unit is in one part of the country and they want to concentrate on manufacturing activity, they may not have resource or ability to arrange for the sale of their product through out the country. In those circumstances, it is quite but natural that they need middle men or stockist as distributors, through whom they would distribute their product or sell their products to an industrial or institutional user. In such an event, that packaged commodity cannot be construed as a retail package. Therefore, after deleting Rule 34(a), in the very definition of 'retail package', the legislature while defining the meaning of 'ultimate consumer' to whom a retail package is meant, excluded institutional or industrial consumer.

30. Therefore, a harmonious reading of these provisions, keeping in mind the object with which the Act is passed, it is reasonable to arrive at the conclusion that the meaning assigned to industrial consumer and institutional consumer in the explanation 2-A cannot be attributed to the meaning of those consumers in proviso to Rule 2(p). Rule 2(p) and Rule 2-A operate in distinct and separate fields. Therefore, the object is very clear. This Act is meant only for an individual consumer or a group of individuals who purchase packaged commodities from a retail dealer. To protect their interest, this Act and Rules are enacted and compliance of Rule 6 was made mandatory. The proviso contained in the definition of 'retail package' as per Rule 2(p) defines the ultimate consumer, which shall not include industrial or institutional consumers. Therefore, it is clear that the protection under this Act is confined only to individuals and persons who are eking out livelihood by self employment and not to institutional and industrial consumers or

consumers who purchase goods in large quantities. Therefore, requirement of Rule 6 is not required to be complied with by a manufacturer who sells his packaged goods to an industrial or institutional consumer through a stockist.

11. The learned Commissioner has concluded interpreting the relevant provision of Legal Metrology (Packaged Commodities) Rules, 2011 that since the appellant is an importer and not an industrial or institutional consumer, even though declared in each and every Bills of Entry that the goods were not meant for retails sale and cleared to industrial consumers, hence the goods imported by them attract the provisions of Legal Metrology (Packaged Commodities) Rules, 2011. As observed earlier it is clear that the respective employees whose statements recorded have not admitted to the fact that the Appellant have sold the goods in question to customers other than industrial consumers though declared in the respective Bills of Entry "not for retail sale". Shri Vijay Kumar Suhjani, General Manager (Finance) in his statement dated 09.03.2012 categorically stated that the goods imported are either sold directly to the consumer or to through a distributor. All of them disclosed that they were of the view that RSP was not necessary to be affixed. Thus, it is clear from the evidences on record that all the goods were cleared/sold to industrial consumers directly or through their distributors/stockists by the appellant. Since, all the imported goods in dispute were cleared to industrial consumers only, revision of RSP declared at the time of import will also have no significance.; hence, the demand on this count cannot be sustained.

12. This Tribunal in the case of **Hi-Tech Computers (supra)** following the judgment of this Tribunal in the case of **Starlite Components Ltd. (supra)** in similar circumstances held that the goods imported and cleared to industrial consumers cannot be assessed to CVD under Section 4A of the Central Excise Act, 1944.

13. On the issue of demand confirmed on SAD, though not separately mentioned in the Order, we find that the claim of the appellant is that in most of the cases, they have cleared the imported goods on payment of SAD; however, in few/stray cases even though, they have not paid SAD at the time of its import but later cleared on payment of applicable Sales Tax on sale of such goods, hence the demand on this count also not sustainable. The Notification allowing exemption from SAD as was in force during the relevant time reads as follows:-

Special CVD — Exemption to all goods when imported for subsequent sale

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).

2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled :

(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;

(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) the importer shall, *inter alia*, provide copies of the following documents alongwith the refund claim :

- (i) document evidencing payment of the said additional duty;
- (ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
- (iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled.

[Notification No. 102/2007-Cus., dated 14-9-2007]

12. From the records, since it is not clear as the extent of imported goods cleared on payment of SAD at the time of import and the procedure followed later under the said Notification No.102/2007, the matter is remanded to the adjudicating authority to examine the demand relating to SAD. The appellant all along has been clearing the goods declaring in the respective Bills of Entry that the goods are not meant for retail sale and in fact no evidence brought on record indicating that the goods are ultimately not sold to industrial consumers. Therefore, invocation of extended period of limitation cannot be sustained. Also, on the same ground, penalty imposed on the company as well as on other appellants cannot be sustained. Therefore, the demand attributable to differential additional duty(CVD) applying MRP/RSP based assessment cannot be sustained. However, the issue relating to demand of SAD component is remanded to the adjudicating authority only for the limited purpose to examine the same for normal period, if any, payable by the appellant on the basis of evidences. Needless to mention a reasonable opportunity of hearing be afforded to the appellant to present their case.

13. In the result, appeal C/21135/2014 is remanded to the adjudicating authority. Appeals C/21137/2014, C/21138/2014 and C/21287/2014 are allowed.

(Order pronounced in Open Court on 04.03.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...