

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

~~~~~

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 279 of 2011**

[Arising out of Order-in-Original No. 11/SSS/CE/2010 dated 27.10.2010 passed by the Commissioner of Central Excise, Delhi III]

**M/s Socomec India Private Limited**

756, Pace City II, Sector 37, Gurgaon, Haryana

**: Appellant**

*VERSUS*

**Principal Commissioner of CGST, Gurugram**

Plot No.36-37, Sector-32, Gurugram,  
Haryana-122021

**: Respondent**

**APPEARANCE:**

Shri Deepak Suneja, CA for the Appellant

Shri Anurag Kumar and Shri Shivam Syal, Authorised Representatives  
for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60436/2025**

DATE OF HEARING: 03.02.2025  
DATE OF DECISION: 26.03.2025

**P. ANJANI KUMAR:**

Heard both sides and perused the records of the case.

2. M/s Socomec India Private Ltd, the appellants, are engaged in the manufacture of switchgears ('products'), with a range from 63A-3150A and to work on 415V and 3phase connection with a neutral, classifiable under Heading 8536 of the Central Excise Tariff Act, 1985; these switchgears are used in manufacture of electrical machinery for distribution / transmission of electricity; Appellant supplies goods to

Industrial Customers either directly or through dealers / distributors across India; appellant packs switchgears in single unit in cartons for safe transportation and every package bears a conspicuous declaration *"Specially Packed for Exclusive Use of any Industry as a Raw Material or for the Purpose of Servicing any Industry, Mine or Quarry for Industrial Use only and not Intended to be displayed for Sale at a Retailer Outlet"*; No MRP or RSP is printed on any package; though the items are notified for MRP based valuation under Section 4A of the Central Excise Act, 1944 ('Excise Act'), the appellant was of the opinion that they were not required to declare MRP under Standards of Weights and Measures (Packaged Commodities) Rules, 1977 ('PC Rules'); therefore, Appellant discharged Excise Duty on transaction value under Section 4 of the Excise Act.

2.1. On an intelligence developed by the officers of DGCEI, Delhi Zonal Unit, investigation was conducted and statement of concerned persons of the appellant and some dealers were recorded. On completion of the Investigation, Revenue entertained an opinion that the goods manufactured by the appellant are notified under Section 4A of Central Excise Act, 1944 for assessment of duty on the basis of Maximum Retail Price (MRP), vide Notification No.13/2002- Central Excise (NT) Dated 01.03.2002, as amended by 02/2006-CE (NT) dated 01.03.06, read with the provisions of "Standards of Weights and Measures Act, 1976" and "Standards of Weights and Measures (Packaged commodities) Rules, 1977", as amended from time to time. A Show Cause Notice, dated 02.04.2009, was issued to the appellants seeking to recover differential duty of Rs.1,64,71,083, along with interest and equal penalty. The

proposals in the Show Cause Notice were confirmed by Commissioner vide impugned order dated 27.11.2010. Hence, this appeal

3. Shri Deepak Suneja, Learned Counsel for the appellants submits that determination of MRP / RSP under Section 4A is without authority of law prior to 01.03.2008; valuation under Section 4A of the Excise Act is with reference to the RSP declared as per SWM Act; in the instant case, the Appellant had not declared RSP as per their understanding that they are not required to do so; in the absence of the RSP, valuation under Section 4A is not permissible; even in case there is a requirement to declare RSP, on goods in terms of PC Rules and such declaration is not there, Section 4A(4) provides for ascertainment of RSP in prescribed manner; the Rules to ascertain RSP, called the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 ('the RSP Rules') have been enacted vide Notification No. 13/2008-CE(NT) dated 01.03.2008 with prospective effect; therefore, for the period in dispute, there was no mechanism to determine valuation in cases where there was no RSP. The determination of RSP based on list price has no locus standi during the relevant period; entire demand Rs. 1,64,71,083 is prior to 01.03.2008 is liable to be set-aside on this ground only. He relies on:

- Ocean Ceramics Limited [2024 (1) TMI 1280 – CESTAT Ahmedabad – LB]
- Acer India Private Limited [2024 (5) TMI 478 – CESTAT Chennai]
- Western India Ceramics Private Limited [2024 (12) TMI 345 – CESTAT Ahmedabad]
- ABB Limited [2011 (272) ELT 706 (Tri. Bang.)]
- Legrand (India) Private Limited [2014 (304) ELT 305 (Tri.-Mum.)]

4. Learned Counsel for the appellants submits further that the goods are not covered under the SWM Act or the PC Rules and that no demand could be confirmed till 13.01.2007 as exceptions in Rule 34 are not applicable; impugned Order alleges that the Products are less than 5 Kg in weight and are displayed in retail outlets and are sold in number; Prior to 13.01.2007, Rule 34 of the PC Rules provided an exemption that nothing contained in in the PC Rules shall apply to packaged commodities which bear specific remark on the package that it has been specially packed for exclusive use of any industry as a raw material; the packages specifically bear the remark 'for industrial use only'; therefore, the goods qualify for exemption provided in Rule 34 and thereby not covered under Section 4A of the Excise Act as held in Controls & Switchgears Contractors 2005 (183) ELT 95 (Tri.-Del.) and Revenue SLP dismissed by Hon'ble Supreme Court vide 2016 (335) ELT A109 (SC).

5. Learned Counsel for the appellants submits also that the appellant's case is not covered by exceptions to Rule 34 as most of goods are not weighing less than 5kg in any case and are not sold in retail packages; since, Appellant's goods weigh more than 5kg, irrespective whether goods are displayed for retail sale or not, they are exempted from the PC Rules; impugned goods are not sold by number or length; goods are always packed in the package of one and ultimate consumer will buy the goods based on technical parameters and depending on ultimate application for which goods will be put to use.

6. Learned Counsel for the appellants submits in addition that the impugned order alleges that the goods in question are sold in market through dealers without considering status of end consumer and are thus available for purchase by any consumer. He submits that even after 13.01.2007, no demand can be confirmed as products are meant for industrial consumers; effective 14.01.2007, Rule 2(p) and Rule 2A of the PC Rules were amended to provide that 'industrial or institutional' consumers shall be excluded from scope of PC Rules; **Industrial consumer** was defined to mean as such consumer who buys packaged commodities directly from manufacturer / packer for using the product in their industry for production etc; appellant's products are of such nature that they cannot be used by a lay consumer or individual consumer; they are high voltage switch gears and have minimum capacity 63 Amp which ranges up to 3150 Amp and minimum 415V; they are not suitable for household use at all; an affidavit to this effect is submitted; since the goods are sold to industrial consumers, therefore the goods are excluded from PC Rules and thereby Section 4A is not applicable in present case; It was held in EWAC Alloys Limited 2012 (275) ELT 193 (Kar.), where it was held that PC Rules do not apply to goods meant for the industrial consumers.

7. Learned Counsel for the appellants submits further that the impugned order alleges that the sale of switch gear products by dealers amounts to retail sales as per definition of Rule 2(a)/(q) of PC Rules; he submits that for a product to be covered under SWM Act and PC Rules, it should be sold as a retail package; in the present case, goods are

meant for industrial consumers who buy goods on the basis of technical parameters; goods are not intended for retail customer; goods are not sold by weight, measure or number; he relies on the decision in the case of Controls and Switchgears Contractors Limited (*supra*); for subsequent period also, CESTAT allowed the appeal in the case of Controls and Switchgears Contractors Limited 2006 (201) ELT 574 [affirmed by the Supreme Court *vide* Order dated 01.09.2015 in Civil Appeal No. 4449-4450/2005]. He submits that, goods cannot be held that goods are sold in retail packages only because they are packed; package was only for safe transportation; further, goods need to be opened before sale for testing purposes; they are not covered by the PC Rules and thereby Section 4A is not applicable.

8. Learned Counsel submits further that Excise department cannot decide applicability of the SWM Act or the PC Rules on its products; it is for the authorities under the SWM Act to decide whether or not Appellant's products are covered in scope of SWM Act; no objection has been raised by the SWM Authorities as to mandatory declarations on the Appellant's products; CBEC Circular No. 625/16/2002-CX dated 28.02.2002 clarified that when there is a doubt as to availability of an exemption, clarification is to be obtained from SWM department of the State; in the case of ITC Limited 2004 (171) ELT 433 (SC), it was held that once authorities administering the adherence to SWM Act have not disputed MRP declared by the assessee, it is not open for excise authorities having jurisdiction over the assessee to challenge the MRP.

9. Learned Counsel further submits on the issue of limitation that the extended period has been invoked as a matter of routine; the ingredients of Section 11A (4) are neither discussed nor applied in the present case by the revenue; It is not the case that something which was required to be declared in the returns has not been declared or something which was sought by the department was not submitted; There cannot be any other meaning of 'suppression'; the appellant believed that their products are not covered under the PC Rules and hence, did not declare MRP and had issued invoices charging Excise duty on transaction value under Section 4 of the Excise Act; in the ER-1 filed by the Appellant, they have clearly mentioned that their product is classified under CETH 8536; there is no mis-declaration of classification of goods. He submits that rather than suppression of facts, it is the disclosure of facts that has led to the controversy; mere existence of self-assessment regime does not put any demand into the bracket of 'suppression'; difference of opinion between assessee and department could not be a case of suppression by the assessee; the Appellant was subjected to regular audits from FY 2004-05 to FY 2007-08; the revenue was aware of the facts, hence it is not a case of suppression of facts.

10. Learned counsel submits that the revenue has not brought out essential ingredients for invoking extended period; in the absence of essential ingredients, extended period cannot be invoked; issue being interpretational in nature wherein appellant acting on a *bona fide* belief, extended period of limitation cannot be invoked. He further submits that since the tax is not payable, the demand for interest should also be set

aside; as extended period is not invokable, penalty under Section 11AC cannot be levied. He relies on the following.

- Uniworth Textiles Ltd 2013 (288) ELT 161 (SC);
- HMM Ltd. 1995 (76) ELT 1497 (SC)
- G.D Goenka Private Limited v. CCGST, 2023-TIOL-782-CESTAT-DEL
- Pragathi Concrete Products (P) Ltd 2015 (322) E.L.T. 819 (S.C.)
- Ericsson India Pvt. Ltd. (2024) 24 Centax 144 (Tri.-Chan)
- Thrillophilia Travel Solutions Pvt Ltd. 2023 (71) G.S.T.L. 178 (Tri.-Del)]
- Devans Modern Breweries Limited 2006 (202) ELT 744 (SC)
- Price Water House Coopers Pvt Ltd (2024) 24 Centax 134 (Tri.-Chan)
- ITD Cem Joint Venture (2024) 18 Centax 92 (Tri.-Chan)
- Pratibha Processors 1996 (88) ELT 12 (SC)
- Hindustan Steel (1978) 2 ELT J159].

7. Learned Authorised Representative for the Revenue reiterates the findings of the impugned order. He takes us through the legal provisions under Central Excise Act, 1944, provisions of the Standard of Weights & Measures Act, 1976, Standard of Weights and Measures (Packaging Commodities) Rules 1977. He submits that the switchgear products manufactured by M/s Socomec HPL are packed in cartoons affixed with labels mentioning *inter alia* the name of the product, catalogue number, ordering suffix, range and quantity (in numbers); a printed price list of the Appellant was in circulation with its authorized stock lists/dealers thus giving the said products a pre-determined value and a predetermined quantity is placed in the package; opening of the packages, for the purpose of testing, inspection etc, as it happens in the case of the products, in itself alter the position of it being packed; all the above facts taken together therefore appear to fulfil the conditions of

Rule - 2(A) of the PC Rules; the definition of Retail sale and Retail dealer is same before and after the amendment w.e.f. 13.1.07 of PC Rules. Therefore, it can be concluded that the products manufactured and sold by the appellant were in packaged form.

8. Learned Authorised Representative submits also that even if the packages were with exclusive marking for use of any Industry as raw materials or for the purpose of servicing industry, they would have to affix MRP if the contents in the packages were 5 kilogram or 5 litre or less and displayed for sale at the retail outlet; such packages need MRP to be affixed if they were sold by number or length and displayed for sale at the retail outlets; some of the dealers located in and around Delhi stated that the products manufactured by the appellant were being sold in retail with reference to price list, in numbers; Shri Rohit Bansal, Authorized Signatory of M/s Balaji Switchgear Pvt Ltd stated that the switchgears were sold in course of normal trade to any customer coming to their shop; the practice of sale before and after 13.1.2007 was the same.

9. Learned Authorised Representative submits further that up to 12.1.2007 sale to industrial users packages were required to be sold directly from the company (as not being sold as displayed in retail outlet); after the amendment from 13/01/07, the same concept has been shifted from Rule -34 to Rule -2A, and explained categorically stating that this sale has to be made directly from the factory; the only exclusion after amendment is the exclusion of packages containing quantity more than 25 kg or 25 Ltr (except cement) (in Rule 2A); in

other words, before 13.01.2007, even packages more than 25 kg were covered under PC Rules subject to other conditions provided they were packaged commodities; no exemption from affixing MRP on packages was available in the PC Rules for the products which are produced on the recommendation of technical experts; it is not stipulated that the PC Rules is only applicable for house hold products; exclusion of products for use in industry are conditional and the notice does not appear to have fulfilled as discussed above; these goods would attract provisions of the Standards of Weights & Measures Act, 1976 as well as the Standards of Weights & Measures (Packaged Commodities) Rules, 1977; there was no exemption available from marking of Maximum Retail Price inclusive of all taxes, on the said products in terms of Rule 2A & 34 of the Standards of Weights & Measures (Packaged Commodities) Rules, 1977, before & after the amendment.

10. Learned Authorised Representative submits in addition that for the period effective from 13/01/2007, as mentioned in Stay Order dated 17/11/2011, the appellant have admitted the liability effective from 13/01/2007 as the amendment made effective from this date requires that for getting exemption from fixing MRP under PC Rules, the goods were required to be sold directly to the Industrial or Institutional consumer. Whereas, in the present case the appellant was not selling goods directly, but were selling the same through retailers/dealers. He submits that the appellant suppressed fact of clearing goods without marking MRP, otherwise on which MRP was required to be affixed; therefore, extended period was invokable under Section 11A of the Act

and the appellant was liable for penal action under Section 11AC of the Act. He relies on the following judgements:

- Larsen & Toubro Limited 2012(275) ELT153(Bom.)
- HPL Electric & Power Limited 2018 (12) G.S.T.L. 36 (Tri. - Del.) (affirmed by the Apex Court 2018 (12) G.S.T.L. J33 (S.C.))
- Controls & Switchgears Contractors Ltd 2005(183) ELT95(Tri Del). [affirmed Apex Court [2011 \(274\) E.L.T. A109](#) (S.C.)].
- Schneider Electric India Pvt Ltd 2014 (311) E.L.T. 113 (Tri. - Mumbai)

11. Heard both sides and perused the records of the case. Brief issues that require our consideration in the instant case are as to whether:

(i). switchgears manufactured by Appellant are liable to valuation under Section 4A of the Central Excise Act, 1944 on MRP basis as held in the impugned order or under Section 4 of the Central Excise Act, 1944 as contended by the appellants?

(ii). Whether extended period of limitation under proviso to Section 11A is invocable and as to whether Interest under Section 11AB and Penalty under Rule 25 read with Section 11AC are leviable in the present facts?

12. We find that the appellants manufacture of switchgears with a range from 63A-3150A and to work on 415V and 3phase connection with a neutral, classifiable under Heading 8536 of the Central Excise Tariff Act, 1985; the appellant pack them in boxes which bear an endorsement that the goods are intended for sale to Industrial consumers; however, the appellants sells these goods through dealers /

distributors across India also who display these goods along with other items of other manufacturers which they sell. The appellants contend that:

- The impugned goods are not covered under the SWM Act or the PC Rules;
- the Rules to ascertain RSP called the have been enacted vide Notification No. 13/2008-CE(NT) dated 01.03.2008 with prospective effect; therefore, for the period in dispute, there was no mechanism to determine valuation in cases where there was no RSP;
- Even after 13.01.2007, no demand can be confirmed as products are meant for industrial consumers
- For a product to be covered under SWM Act and PC Rules, it should be sold as a retail package; in present case, goods are not intended for retail sales; goods are packaged only for safety; they are meant for industrial consumers.
- Excise department cannot decide applicability of the SWM Act or the PC Rules on its products; it is for the authorities under the SWM Act to decide whether or not Appellant's products are covered therein.

13. It is the case of the Revenue that:

- the switchgear products manufactured by M/s Socomec HPL are packed in cartoons affixed with labels mentioning inter alia the name of the product, catalogue number, ordering suffix, range and quantity (in numbers); a printed price list of the Appellant was in

circulation with its authorized stock lists/dealers; fact of opening of the packages for the purpose of testing, inspection etc does not alter the status; they are sold through dealers and in numbers; conditions of Rule - 2(A) of the PC Rules are fulfilled;

- Even if the packages did contain a marking for use by industrial consumers or for service industry it would not be exempted from the purview of provisions of Rule 34 of the PC Rules;
- Goods sold/displayed in retail outlets and in many cases were less than 5 kg; they are required to declare MRP;
- There was no change in the process of sales of the impugned products manufactured by the appellant at the dealer level irrespective of the amendment of the PC Rules effective from 13.01.2007

14. We find that it would be beneficial to have a look at the relevant provisions of law in order to appreciate the issue.

14.1. Section 4A of the Central Excise Act, 1944 provides that:

**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) remove 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 packages of such goods after their removal from 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, as the case may be, 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) required 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 packages of any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price;

(b) Where the retail 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 declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail 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.

#### 14.2. Relevant terms as defined under Standards of Weights and Measures (Packaged Commodities) Rules, 1977 are as under:

##### Rule 2 - Definitions

In these rules, unless the context otherwise requires, --

...

(p) "retail package" means the 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:

Provided that for the purposes of this clause, the expression "ultimate consumer" shall not include industrial or institutional consumers.

(q) "retail sale", in relation to a commodity, means the sale, distribution or delivery of such commodity through retail sales agencies or other instrumentalities for consumption by an individual or a group of individuals or any other consumer;

(r) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer and where such price is mentioned on the package, there shall be printed on the packages the words Maximum or Max, retail prices..... inclusive of all taxes or in the form MRP Rs..... inclusive of all taxes."

Explanation--For the purpose of the clause "maximum price" in relation to any commodity in packaged form shall include 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

#### 14.3. The provisions of Rule 2A of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 are as follows.

##### 2A. 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 the purpose of this rule, -

'a) Institutional consumer- Means 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.

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.'.

Rule 2(A) (period up to 12.01.07):

Pre Packed commodity with its grammatical variations and cognate expressions, means a commodity or article or articles which, without the purchaser being present, is placed in a package of whatever nature, so that the quantity of the product contained therein has a predetermined value and such value cannot be altered without the package or its lid or cap, as the case may be, being opened or undergoing a perceptible modification and the expression "package" whatever it occurs, shall be construed as a package containing a pre packed commodity.

Rule 2(A) w.e.f.13.01.07:

prepacked commodity means commodity, which without the purchaser being present is placed in a package in a package of whatever nature, whether sealed or open, so that the commodity contained therein has a predetermined value, and includes those commodities which could be taken out of the package for testing or examining or inspecting the commodity.

14.4. Rule 34 of these Rules provides for exemptions/ exceptions, which in different periods are as follows.

**Prior to 13.01.2007**

Rule 34. Exemptions in respect of certain packages.

Nothing contained in these rules shall apply to any package containing commodity if, -

The marking on the package unambiguously indicates that it has been specifically packed for the usage of any industry as a raw material for the purpose of servicing any industry, mine or quarry:

Provided that this exemption shall not be available in respect of –

any yarn which is sold in hanks to handlooms weavers;  
any component; part or material used in any workshop, service station or any other place where servicing or repairing of any bicycle, tricycle or motor vehicle within the meaning of Motor Vehicles Act, 1939 (4 of 1939), is undertaken;

any package containing a commodity of net content of 5 kilogram or 5 litre or less and displayed for sale at the retail outlet

any package containing a commodity to be sold by number or length and displayed for sale at the retail outlet

the net weight or measures of the commodity is twenty grams or twenty milliliters or less, if sold by weight or measure:

Provided that the declaration in respect of maximum retail price and net quantity shall be declared on packages containing 10g or 20g or 10ml to 20 ml

Omitted

any package containing fast food items packed by restaurant / hotel and the like

it contains scheduled formulations and non-scheduled formulations covered under the Drugs (Price Control) Order, 1995 made under Section 3 of the Essential Commodities Act, 1955 (10 of 1955)

agricultural farm produces in packages of above 50kg after 13.1.2007

Rule 34. Exemptions in respect of certain packages.

Nothing contained in these rules shall apply to any package containing commodity if, -

omitted

the net weight or measure of the commodity is ten gram or ten millilitre or less, if sold by weight or measure.

omitted

any package containing fast food items packed by restaurant / hotel and the like

it contains scheduled formulations and non-scheduled formulations covered under the Drugs (Price Control) Order, 1995 made under section 3 of the Essential Commodities Act, 1955 (10 of 1955)

agricultural farm produces in packages of above 50kg

15. Revenue finds that the product falls under the Packaged Commodity Rules as it satisfies that conditions that each package is less than 15Kg; they are sold in numbers; they are sold through dealers who display the; they are not sold directly to Industrial or institutional buyers but to anyone who approaches the dealers/distributors; the fact the packages are opened for testing before purchase does not take away their characteristics of being a packaged commodity. As the goods fall under Packaged Commodity Rules, valuation under section 4A is a natural corollary. On the other hand, the appellants contend that the goods are intended for sale to industrial customers; they are usable as inputs by only industrial users; they cannot be used by common

customers for house hold purposes; mere fact that the impugned goods are sold through dealers and not directly to industrial or institutional users does not alter the situation. They also contend that in case they have violated any provisions of "Standards of Weights and Measures Act, 1976" and "Standards of Weights and Measures (Packaged commodities) Rules, 1977", it is for the concerned authorities to take action but not the Central excise authorities; In case of doubt the department should have sought clarification from the concerned state authorities in terms of the board circulars; there was no provision to arrive at MRP value by the department, before Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008, were notified by Notification No. 13/2008-CE(NT) dated 01.03.2008; the notification being with prospective effect, for the period in dispute, there was no mechanism to determine valuation in cases where there was no declared RSP.

16. In the impugned case, it is the argument of the revenue that the appellant sells the goods through distributors/dealers and stockists all over India and are displayed by them on the counters and anybody can purchase them. This averment of the Revenue is based on the statements of certain dealers. The fact that the packages contain a declaration to the effect that the goods are meant for industrial consumers. The appellants also contend that the technical specifications of the impugned goods render them unusable by individuals for individual or domestic purposes. We find that it was held by Hon'ble Karnataka High court in the case of Ewac Alloys Ltd 2012 (275) ELT 193 (Kar.) that even if the goods meant for industrial use are displayed at

retail counters and sold, they are not chargeable to duty on the Basis of MRP. Hon'ble Court held that

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 throughout 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 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.

31. In the instant case, it is not in dispute that the petitioner is a manufacturer of industrial product. On the packet, it is expressly stated that it is meant for industrial use. The product which is manufactured by him is high end industrial welding products, such as electrodes, brazing rods, powders and fluxes. Petitioner

No. 2 is their selling agent. Petitioner No. 2 is selling these through a network of stockist spread all over India, 90% of the sales are generated through the involvement of core team of sales/service engineers of petitioner No. 2 who are trained in specialized Eutectic Castolin Welding Process. These products are used in the process of reconditioning, remaking, rejuvenation and restoration of the machinery or equipment. Depending on the surface of the machinery to be welded, the particular specialized type of welding electrodes and fluxes are recommended to the customer. The sales team suggests the mix of the products, the price and the stockist from whom these can be purchased. Therefore, in the facts of this case, it cannot be said that the person to whom these petitioners are selling the products are customers in the sense it is understood under the Customer Protection Act for whose protection this particular Act and Rules were enacted. Therefore, the impugned notices issued are one without authority, illegal and contrary to the express provisions contained in the enactment and cannot be sustained....

17. Tribunal in the case of Legrand (India) Pvt Ltd (supra) held that goods meant for industrial use, though packaged for ease of transportation can not be assessed to duty under Section 4A. Tribunal held that

6.2 So far as MCCBs are concerned undisputedly the MCCBs imported by the appellants are not commodities in packaged form and the packing is meant only for the purpose of ease of transportation. From the capacity rating of the MCCBs also it is revealed the MCCBs are not intended for retail sale. The persons on whose statements the department relied upon in the cross-examination/re-examination they stated that the MCCBs were not sold by them in retail. From the three invoices relied upon also the department could not establish that the goods were meant for retail sale.

6.2.1 Admittedly the appellant made the following declaration on the packages of MCCBs:-

"Imported & specially packed for the exclusive use in any industry as a raw material for the purpose of servicing any industry, mine or quarry and not intended for retail sale."

The department could not rebut the above aspect. So far as the department's grievance that the declaration ought to have been made on the packages while the goods were in the custody of the Customs, in this

regard we agree with the contention of the appellant that the declaration in the appellants' warehouse before the sale in the market is a due compliance of law and show the intention of the appellants that the imported MCCBs were not intended for retail and that they rightly claimed the exemption under erstwhile Rule 34 of the PC Rules.

6.2.2 This Tribunal in the case of Controls & Switchgears Contractors Ltd. (supra) involving the similar goods held that the claim under Rule 34 of the PC Rules is available once the declaration is made on the package and the appeal filed by the department against the said order of this Hon'ble Appellate Tribunal was dismissed by Hon'ble Apex Court.

6.2.3 Undisputedly no retail sale price was declared by the appellants on the package of the MCCBs. Secondly no retail sale price was required to be declared on the plugs and sockets as they were not in the packaged form. Admittedly there is no provisions in law to determine the retail sale price in the event of the retail sale price is not declared on the package. This Tribunal in the case of ABB Ltd. (supra) held that there is no provision in CTA enabling the proper officer to determine RSP in a case where the importer does not declare RSP on the imported

18. In view of the above, we find that as far as the appellant's goods are intended for industrial use and declaration to that effect is available on the packages, a fact which is not contradicted by Revenue, there is no infirmity in the appellant's assessing the same under Section 4 of Central Excise Act, 1944. Revenue has not made out any case for assessment under Section 4A, despite the fact that they are sold through retail outlets/dealers/ stockists. Further, it is the argument of the appellant that even in cases where MRP was not declared, revenue had no mechanism to determine the same before the enactment of Central Excise valuation Rules w.e.f. 1.3.2008. We find that Larger Bench of the Tribunal in the case of M/s Ocean Ceramics Ltd, vide Interim Order Nos.01-23/2024 dated 23.01.2024 [[2024 \(1\) TMI 1280 - CESTAT AHMEDABAD - LB](#)], had an occasion to analyse the issue. Larger

bench has gone in to all aspects of the case, history of legislation and various judicial pronouncements in this regard held that the Central Excise (Determination of RSP of Excisable Goods) Rules, 2008 are not procedural in nature and cannot be given retrospective effect and further, that the RSP cannot be ascertained by any other methodology. The judgement of the Larger Bench was followed by tribunal in the cases of followed in M/S. ACER India (Pvt.) Ltd 2024 (5) TMI 478 - CESTAT CHENNAI and Western India Ceramics Pvt Ltd 2024 (12) TMI 345 - CESTAT AHMEDABAD.

19. Larger Bench of held in the case of M/s Ocean Ceramics Ltd, inter alia. That

86. It is also not possible to accept the contention advanced by the learned special counsel for the department that sub-section (4) of section 4A would become redundant or otiose if what is contended by the department is not accepted. Even for the period prior to 01.03.2008, sub-section (4) of section 4A would not become redundant in connection with an assessee who either failed to declare the RSP or mis-declared the RSP. The department could absolutely confiscate the offending goods. What changed after the coming into force of the 2008 Rules w.e.f. 01.03.2008 is that in addition to the confiscation of goods, the department could also demand and recover additional duty on such goods by ascertaining the RSP. It is, therefore, not possible to accept the contention of the learned special counsel nor is it possible to accept the view taken by the learned third member in Schneider Electrical that absurd consequences would flow if the 2008 Rules are not applied retrospectively or that the executive would be left powerless

.....

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;

20. Learned Counsel for the appellants submits that the impugned order is issued contrary to the circular issued by the CBEC to the effect that in case of any doubt on the applicability of Standards of Weights and Measures Act, 1976 or Standards of Weights and Measures (Packaged Commodities) Rules, 1977, made thereunder, the Central Excise authorities should refer the matter to the Jurisdictional Officers empowered to implement that Act. We find that CBEC, vide Circular No.625/16/2002-CX, dated 28/02/2002, clarified that *the Standards of Weights & Measures Act, 1976, and the rules made there under, are administered by the State Governments. Instances of dispute could arise between the department and the assessee as to whether, in respect of a particular commodity/transaction, the assessee is exempted from declaring the retail price or not. In case of such doubt a clarification may be obtained from the concerned Department (generally the Metrology Department) of the State Government.*

21. Now we turn our attention to the issue of limitation. The appellants argue that they believed that their products are not covered under the PC Rules and hence, did not declare MRP. All the invoices issued by them were clearly showing that they were charging Excise duty on transaction value under Section 4 of the Excise Act. They were regularly filing ER-1 returns clearly mentioned that their product is classified under CETH 8536. The Appellant was subjected to regular audits from FY 2004-05 to FY 2007-08. They submit that there is no mis-declaration of any kind;

extended period has been invoked as a matter of routine; the ingredients of Section 11A (4) are neither discussed nor applied in the present case by the revenue. It is not the case that something which was required to be declared in the returns has not been declared or something which was sought by the department was not submitted. He submits that rather than suppression of facts, it is the disclosure of facts that has given rise to the dispute. He further submits that the issue being interpretational in nature extended period of limitation cannot be invoked.

22. We find that there is considerable force in the submission of the appellants. The appellants are regular assesses and were filing returns regularly. Since they have declared the classification of the products under CETH 8536, department could have caused necessary verification and issue the Show Cause Notice in time. Revenue had no reason to wait for the anti-evasion team to visit the appellant's premises and find out what they have been declaring regularly. We are of the considered opinion that the department cannot hide the fact of non-scrutiny of the returns in even time and take shelter under the argument that the appellants were in the regime of self-assessment and allege suppression etc with intent to evade payment of duty, without adducing any evidence. The appellants were very much on the dash board of the department and audit was being conducted regularly. Failure of the jurisdictional officers and audit teams to detect anomaly if any, cannot be mitigated by alleging suppression on the part of the appellant. In view of the facts and circumstances of the case, we hold that extended period cannot be invoked. As we have held the issue in favour of the

appellants on merits too, we find that since the duty is not payable, the demand of interest penalty cannot be sustained.

23. In view of the above, the appeal is allowed.

(Order pronounced in the open Court on 26/03/2025)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**

*PK*