IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/478/2009, E/357/2010 and E/112/2011

(Arising out of Orders-in-Appeal No. 69/2008 (M-IV) dated 18.5.2009; No. 10/2010 (M-IV) dated 12.3.2010 and No.79/2010 (M-IV) dated 19.11.2010 all passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Liners India Ltd. Appellant

Vs.

Commissioner of Central Excise, Chennai – IV Respondent

Appearance

Shri M. Karthikeyan, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **15.12.2017**

Final Order Nos. 43384-43386/2017

Per Bench

The issue arising for consideration in these appeals being the same, they were heard together and are disposed by this common order.

2. Brief facts are that the appellants are engaged in the manufacture of cylinder liners and are registered with the Central Excise Department. The said cylinder liners are in the

nature of parts / components of automobiles. The said goods were brought under MRP basis levy of duty of excise with effect from 1.6.2006. The appellants cleared the said goods in bulk to State Transport Undertakings for being used by them in the maintenance of their fleet. The clearance to these transport undertakings were subject to duty of excise based on their transaction value under section 4 of the Central Excise Act, 1944. The department was of the view that the duty has to be on the basis of MRP. Show cause notices were issued proposing demand of differential duty, interest and for imposing penalties. After due process of law, the original authority confirmed the duty demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence these appeals.

3. The period involved, duty amounts are shown in the Table below:-

Appeal No.	Period Involved	Duty / Tax involved	SCN No. & Date	Remarks
E/357/2010	01/04/2007 to 31.10.2007	Rs.57,936.00	05/2008 dt. 09/05/2008	Valuation of cylinder liners cleared to State Transport undertaking under Section 4A
E/478/2009	01/06/2006 to 31.3.2007	Rs. 57,958.00	07/2007 dt. 01/05/2007	Valuation of cylinder liners cleared to State Transport undertaking under Section 4A
E/112/2011	01/11/2007 to 29.2.2008	Rs. 25,436.00	19/2008 dt. 10/10/2008	Valuation of cylinder liners cleared to State Transport undertaking under Section 4A

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4. On behalf of the appellant, ld. counsel Shri M.Karthikeyan submitted that the cylinder liners were supplied to State Transport Undertakings and therefore they are not subject to levy of duty of excise on MRP basis. The provisions of Standards of Weights and Measures (Packaged Commodities) Rules 1977 is not attracted when the goods are not intended for retail sale. The provisions of the said Act do not apply to supplies made to industrial or institutional consumers. The appellant supplied the goods to State Transport Undertakings for their consumption and not for retail sale to ultimate consumer. Therefore, there is no requirement to affix MRP on such clearances of cylinder liners. When the provisions of Standards of Weights and Measures Act and Rules do not apply, consequently the provisions of section 4A of the Central Excise Act would also not be applicable. That the appellant has rightly assessed the goods under section 4 of the Act. The authorities below have relied on sub-clause (a) of Rule 34 to state that the appellant has to affix MRP on the goods and also that the subject goods has to be levied excise duty on the basis of MRP. That the said provision in Rule 34(a) was amended with effect from 17.7.2006 thereby omitting sub-clause (a) from Rule 34. Both the lower authorities have erred in relying upon the provisions which were not in force during the impugned period. Therefore, the confirmation based on

such invalid provision of law is not sustainable. It is also argued by the ld. counsel that the goods cleared to the State Transport Undertakings being not for retail sale will not fit into the definition of retail package or retail sale in the Standards of Weights and Measures Act and therefore there is no requirement for affixing the MRP.

5. The ld. AR Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that the contention of the appellant that affixing MRP on the goods cleared to State Transport Undertakings is not required as per Rule 2A of Chapter 2 of the Standards of Weights and Measures Act and Rules is incorrect. The subject goods cleared to the State Transport Undertakings are not used as original equipment but used as replacement for their workshop for repairing damaged parts of motor vehicles. The exemption under Rule 34 is not available to any component, part or material used in any workshop, servicing station or any other place where servicing or repairing of any bicycle or tricycle or motor vehicle within the meaning of Motor Vehicles Act,1939 is undertaken. It followed therefrom that non-fixing of MRP on the subject goods namely cylinder liners cleared in bulk by appellants to State Transport Undertakings for use as replacement is in clear violation of Standards of Weights and Measures Act and Rule 34. The exemption in Rule 34 is not available to the appellant

for the reason that the subject goods are components, parts used in workshop or servicing station. That the demand, interest and penalties have been rightly confirmed and that the impugned order does not require any interference.

6. Heard both sides.

7. For better appreciation, relevant provisions of law is reproduced as under:-

" 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 <u>institutional consumers.</u>

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.'.

Definition of Retail Package and Retail sale are as follows:-

> *"retail package" means a package containing any commodity which is produced, distributed, displayed, delivered or stored for sale through retail sales, agencies or other instrumentalities for consumption by an individual or a group of individuals;*
>
> *"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;*

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Rule 34 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977, prior to amendment dated 17.7.2006, is as follows:-

> *"Exemption in respect of certain packages.-Nothing contained in these rules shall apply to any package containing a commodity if,-*
>
> *a) The marking on the package Unambiguously indicates that it has been specially packed for the exclusive use of any industry, as a raw material or for the purpose of servicing any industry, mine or quarry:*
>
> *Provided that this exemption shall not be available in respect of-*
>
> *(i) Any yarn which is sold in hanks to handloom weavers,*
>
> *(ii) Any component, part material used in any workshop, servicing 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"*

7. It is not disputed that the appellant had cleared the cylinder liners in bulk to State Transport Undertakings for their own consumption. There is no dispute that the goods were not cleared for retail sale. Chapter 2 of Standards of Weights and Measures Act and Rules 1977 provides that the said Rules do not apply when the goods are not intended for retail sale. The authorities below have relied upon Rule 34 to confirm the demand. As rightly pointed out by the ld. counsel for appellant, Rule 34 has undergone an amendment with effect from 17.7.2006 whereby clause (a) has been omitted. The authorities below have relied upon this clause to state that the exemption provided under Rule 34 is not available to the appellant for the reason that the subject goods are used in the

service station / workshop of the Transport Undertakings. As shown in the above Table, the major period involved in these appeals is after 17.7.2006. The demand confirmed on the basis of Rule 34 which is not in existence is unsustainable and requires to be set aside, which we hereby do. Moreover, for the period prior to 17.7.2006, the ld. counsel has argued adverting to the definition of "Retail Sale" and "Retail Sale Price". It is his case that the goods supplied in bulk was not meant to be sold as a retail package to the ultimate consumer and therefore it is not necessary to affix the MRP. Undisputedly, the goods were sold to State Transport Undertaking and not for retail sale. Therefore, we find that the demand prior to 17.7.2006 is also unsustainable.

8. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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17/01/18
सहायक पंजीकार / Asst. Registrar
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चेन्नै / CHENNAI