# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## <u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

## Excise Appeal No. 41220 of 2016

(Arising out of Order-in-Appeal Nos. 218 & 219/2015 (CXA-I) dated 12.10.2015 passed by the Commissioner of Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

**M/s. Bata India Limited** **...Appellant**
Post Box No. 39, No. 73 & 74,
SIPCOT Phase-I,
Hosur – 635 126

***Versus***

**Commissioner of GST and Central Excise** **...Respondent**
Chennai III Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

**<u>APPEARANCE:</u>**

For the Appellant : Ms. Shwetha Vasudevan, Advocate
Mr. Sheerabdinath, Advocate
For the Respondent : Mr. M. Selvakumar, Authorised Representative

**<u>CORAM:</u>**
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**
**HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)**

## <u>FINAL ORDER No. 40791 / 2025</u>

DATE OF HEARING : 25.02.2025
DATE OF DECISION : 01.08.2025

**Per Mr. VASA SESHAGIRI RAO**

This Central Excise Appeal No. E/41220/2016-DB has been filed by M/s. Bata India Limited (hereinafter referred to as the 'Appellant') directed against the Orders-in-Appeal Nos. 218 & 219/2015 (CXA-I) dated 12.10.2015 passed by the Commissioner (Appeals-I), Central Excise &

Service Tax, Chennai wherein the demand of differential duty amounting to Rs.3,19,701/- confirmed on the sale of footwear to institutional customers due to incorrect valuation of goods under Section 4 of the Central Excise Act, 1944 (CEA), along with applicable interest and penalty of Rs.5,000/- imposed was enhanced to Rs.3,19,701/-under section 11AC of Central Excise Act, 1944 for the period from January 2009 to December 2013 .

2.1 The facts briefly stated are that the Appellant is in the business of manufacturing footwear and parts of footwear falling under chapter 64 of the Central Excise Tariff Act, 1985 ("CETA"). The Appellant sold footwear to several institutional customers based on the purchase orders issued to them *viz.,* M/s. JSW Ltd., M/s. Excide Batteries Ltd., M/s. HAL, *etc.*

2.2 On verification of the accounts of the Appellant, it was found that they had cleared the impugned Goods in bulk to institutional buyers under Section 4A of the Central Excise Act, 1944. And as per Standards & Weights and Measures Act, 1976 / Rules, 1977, Section 4A clearances would not be applicable to the institutional buyers but valuation to be done under Section 4 of the CEA, 1944. Hence a Show Cause Notice was issued proposing demand of

Rs.3,19,701/- being the differential duty on incorrect valuation besides demand of interest thereon under Section 11AA and imposition of penalty under Section 11 AC of the CEA, 1944 covering the period from January 2009 to December 2013.

2.3 After the due process of law, the Original Adjudicating Authority confirmed the demand of Rs.3,19,701/- under Section 11A(4)(e) of the CEA, 1944 along with appropriate interest and imposed a penalty of Rs.5,000/- under Section 11AC of the Central Excise Act, 1944.

3. Aggrieved by the order, the Appellant went on Appeal to Commissioner (Appeals), and the Department also went on appeal against imposition of lower Penalty in the OIO. The Commissioner (Appeals) *vide* combined Orders-in-Appeal Nos. 218 & 219/2015 (CXA-I) dated 12.10.2015 disposed of both the Appeals by rejecting the Appeal filed by the Appellant and allowed the Appeal filed by the Department in enhancing the penalty equal to the duty demanded.

4. The Ld. Advocates Ms. Shwetha Vasudevan & Shri Sheerabhinath, appeared for the Appellant and their submissions are summarized as below: -

i. That the SCN is flawed for having proposed duty on MRP value for the purpose of valuation of goods, which are meant for institutional sale, whereas valuation for institutional sale arises under Section 4 of CE Act which contemplates purchase order value and not MRP based valuation.

ii. That burden of proof as to the valuation is on the Department which has not been discharged No independent verification exercise has been undertaken by the department before arriving at the demand that the MRP value was collected from the institutional customers.

iii. The Appellant had already provided the Department with the purchase orders entered into between the institutional consumers and they had not received any consideration other than the value mentioned in the Purchase Orders.

iv. The valuation proposed by the Department in the SCN and carried forward in the impugned order has the effect of adoption of Section 4A valuation for institutional customer sales without abatement. In this regard, the Appellant placed reliance on the decision in the case of *CCE Vs. A.R. Polymers Pvt Ltd. [2023 (384) ELT 512 (SC],* wherein it has been held that, mere affixation of M.R.P., does not entitle valuation under Section 4A. This decision was rendered in the context of sale made to institutional customers.

v. The Department has adopted the MRP price to value the goods which were sold to institutional customers thus adopting value of Section 4A and has confirmed the demand contrary to law. Reliance was placed on the decision rendered in the case of *Hindustan Unilever Limited vs. Commr. GST and CE., Puducherry [2024 (5) TMI 771 - CESTAT CHENNAI]*, for the principle that when there is no statutory requirement under the law for declaring MRP on the packages, the assessment is to be done under Section 4 of the Excise Act. The Department should have at best resorted to valuation under Section 4 using the transaction value i.e., purchase order value, or under Rule 7 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000.

vi. It is further submitted that the Circular No. 354/81/2000-TRU, dated 30.06.2000 issued by the CBEC wherein vide paragraph 4 and 5 it was clarified that the transaction value to be considered for the purpose of valuation under Section 4 of the Central

Excise Act must be purely a commercial consideration charged by a non-related buyer and seller, where the price is the sole consideration for sale. Further, it was also clarified therein that valuation of goods for excise purposes on value charged as per commercial practices rather than looking for a notionally determined value.

Thus, the impugned order merits to be set aside on this ground alone since the Respondent erroneously considered MRP as the transaction value, without discharging their burden as to whether MRP based valuation is the consideration charged to the customers. No independent enquiry has been conducted in the market or with the customers of the Appellant.

vii. The appellants further submitted that the Department ought to have reckoned the purchase order value to arrive at differential duty if any. In fact, the Appellant had provided the details of the purchase order value, the tax payable thereon, *vis-à-vis* the tax paid.

viii. The invoice clearly sets out the MRP value and the assessable value. The Appellant has paid excise duty on the assessable value which is duly disclosed in the invoice. Further the Appellant also periodically submits copies of invoices to the Department. Hence there can be no case of any suppression made out against the Appellant.

ix. While the very demand is based on incorrect presumption of the value, the said values are also picked up from the invoices maintained by the Appellant.

x. It was finally submitted that the demand of Excise Duty is unsustainable, and therefore the question of imposing interest under Section 11 AA of the CE Act and penalty under Section 11A(4)(e) & 11AC of the CE Act does not arise.

5. *Per Contra*, the Ld. Authorized Representative Shri M. Selvakumar reiterated the findings in the impugned order passed by the Commissioner (Appeals) and made a plea for dismissing the Appeal file by the Appellant.

6. We have heard both sides and carefully considered the submissions and evidences on record.

7. We find that the issue for determination in this appeal is in a short compass:

> Whether the MRP price can be adopted for valuation of the goods sold to institutional customers when purchase orders price exists and whether Section 4A

or Section 4 of CEA is applicable when MRP is fixed on the packages cleared to institutional customers?

8.1 Before we dwell on the issue of valuation, it is important to appreciate the provisions of Sections 4 and 4A of the Central Excise Act, 1944 in brief. Both of these deal with the valuation of excisable goods for the purpose of charging Central Excise duty. Section 4 provides for valuation based on the transaction value, while Section 4A provides valuation based on the MRP declared on the package. Section 4A is applicable when the Central Government specifies goods where the MRP/RSP is required to be declared on the package. Here's an analysis of each section and its applicability:

Section 4: Valuation based on Transaction Value

This section is the default method for valuing excisable goods for excise duty purposes. It generally uses the transaction value, which is the price at which the goods are sold by the assessee to a buyer, as the basis for valuation. This section is applicable unless the Central Government specifies otherwise, making Section 4A applicable.

Section 4A: Valuation based on Retail Sale Price (RSP)

This section is specifically applicable to goods where the Central Government has mandated the declaration of a retail sale price on the package. The government can also allow for abatements (deductions) from the RSP to arrive at the assessable value for excise duty. This section is applicable to goods covered under the Legal Metrology Act, 2009, or any other law that requires the declaration of RSP on the package. If a manufacturer fails to declare or tampers with the RSP, the goods may be confiscated, and the value will be determined by other prescribed methods. The declared RSP is the maximum price at which the commodity in packaged form may be sold to the ultimate consumer, inclusive of all taxes.

**In essence:**

Section 4 is the general Rule for valuation, based on the transaction value. Section 4A is a specific rule for goods where the RSP is declared on the package, and it allows for valuation based on that RSP less any allowed abatements. The applicability of Section 4A depends on whether the Central Government has notified specific goods for which the RSP must be declared.

8.2 We observe that in Para 9.3 of the impugned order, it was concluded by the FAA that "*knowing well that the Impugned Goods were sold to the institutional buyers, M/S Bata raised the invoices under the cover of MRP, for the sake of making the claims for assessment under Section 4A of the CEA, 1944 and thereby evaded duty. Thus, the* *suppression of facts and intent to evade duty are more than evident in this case".*

8.3 As regards the issue, there is no dispute that the clearances of the impugned goods were made to institutional supplies or to Industrial Customers and that there exists purchase orders and sales invoices. The Appellant states that the purchase orders and invoices were provided to the Department and it is also forms part of the Appeal paper book. The Appellant submits that they sold footwear to several institutional consumers based on the purchase orders issued to them by the institutional customers.

8.4 It had further been contended by the Appellant that the Department has completely overlooked the CBEC Circular No. 354/81/2000-TRU, dated 30.06.2000 wherein it was clarified that the transaction value to be considered for the purpose of valuation under Section 4 of the Central Excise Act must be based upon purely commercial consideration charged by a non-related buyer and seller, where the price is the sole consideration for sale. Further, it was also clarified therein that valuation of goods for excise purposes will be the value charged as per commercial practices rather than looking for a notionally determined value.

8.5 We have perused the above Circular and find that the contents of the same are squarely applicable in the instant case. This circular issued by the Board is binding on the Department officials and they have failed to implement the instructions/directions. Board circulars, issued under statutory powers, are binding on departmental officers as long as they remain in effect.

8.6 In *Paper Products Ltd. Versus Commissioner of Central Excise [1999 (8) TMI 70 - SUPREME COURT]* it was held by the Supreme Court that the Departmental circulars are binding on the revenue authorities and as the circular was in force at the relevant point of time, the demand against the appellants is not sustainable.

8.7 We find that the Department in this issue have gone beyond the contents of this Circular and imported the provisions of Section 4A to this case to demand the differential duty on MRP Value.

8.8 We find that for computing the Duty demand, the department has taken the MRP value of the goods as assessable value without extending the benefit of Abatement and worked out the Duty demand. The institutional supplies were covered by purchase orders and the values in the same were ignored by the department. It is noted that the Department has adopted a mix of the values under Section 4A (MRP Price) without abatement and ignored the value shown in the purchase order to arrive at an inflated Duty demand beneficial to the Revenue. The reasoning shown by the department in rejecting the purchase order value is not on a sound footing. Flowback of money from the Customers was not established by the department to prove that the higher value i.e., MRP price is collected from the Institutional Customers. The burden of proof that MRP value has been collected from the institutional customers in this case is on the Department and no investigation has been done by the department in support of their claim to reject the transaction value. The SCN and the orders flowing out of it are therefore fundamentally flawed and the demand is not sustainable.

8.9 To strengthen their arguments, the Appellants have placed reliance upon the following case Laws: -

i. *CCE Vs. AR Polymers [2023(384) ELT 512 (SC)]*
ii. *M/s. Surya Roshini Limited Versus Principal Commissioner of CGST, BHOPAL [2024 (1) TMI 980 - CESTAT NEW DELHI]*

iii. *Hindustan Unilever Limited vs. Commr. GST and CE., Puducherry 2024 (5) TMI 771 - CESTAT CHENNAI*
iv. *Commissioner of Customs v. Acer India Private Limited 2023 (8) TMI 266 - CESTAT CHENNAI.*

All the cases relate to Non applicability of MRP value for institutional sales under the relevant provisions of Central Excise Act.

8.10 We have perused the above decisions of the Apex Court and various Tribunals.

i. We note the observation of the Hon'ble Supreme Court in the case of *CCE Vs. AR Polymers [2023 (384) ELT 512 (SC)]* as follows which is applicable to the facts of the appeal: -

> *"**10**. Due to the purchasers, on account of them being institutional consumers, are exempt from the Legal Metrology (Packaged Commodities) Rules, 2011, and since Section 4(A) of the Act mandates the applicability of the abovesaid rules, the transaction automatically becomes ineligible to claim refuge under Section 4(A) of the Act.*
>
> *….*
>
> ***13**. It would also mean that a mere affixation of the MRP on a good does not qualify it to claim benefits under Section 4(A) of the Act, and that there must be a "requirement" for the affixation of such MRP. Therefore, even if there is affixation of MRP in the goods, what must be looked at it is whether such affixation was mandated by law.*
>
> *….*
>
> ***15**. A consumer, as clarified by the Jayanti Foods Judgment, is the final consumer of the product, and not the intermediary. In the present case at hand however, the purchaser institutions, as*

*discussed above are intermediaries, who after the purchase of the said goods, distribute it further to the final consumer.*

***16**. In such a circumstance, where the purchaser institution is deemed to not be a consumer, the sale also cannot be held to be a retail sale as per the Act. Further, since the impugned sale is not a retail sale as per the Act, there exists no mandate of law on the Respondent herein to affix an MRP on the goods sold, and hence the said impugned transaction cannot claim benefit under Section 4(A) of the Act.*

***17**. Again, at the sake of repetition, we find it important to clarify that the mere affixation of MRP does not make goods eligible to find refuge under Section 4(A) of the Act, and what is required along with such affixation is a mandate of law that directs the seller to affix such MRP.*

ii. The Appellant has also relied upon the decision in the case of *M/s. Surya Roshini Limited Versus Principal Commissioner of CGST, Bhopal [2024 (1) TMI 980 - CESTAT NEW DELHI]* which has held: -

*"23. In our considered view, in the factual matrix of the case, if the Metrology Rules are interpreted to include the bulbs sold to EESL, it means that very conditions of the contract of the scheme implemented by the EESL which mandates that the RSP shall not be indicated on the bulbs supplied to it and further, the condition to be printed on the bulb and the packing that it was not meant for retail sale would be violating the requirement of the Metrology Rules which require the RSP to be printed on the goods. Evidently, the purpose of not printing the RSP and further prohibiting their retail sales by printing it on these bulbs is to prevent their diversion and sale in the market. If the retail sale price in the market of a bulb is about Rs. 225/- and it is being supplied by the EESL through its network for about Rs. 75/-, some checks are required to prevent the EESL bulbs from being diverted and sold in the market for profit. If we interpret that the Metrology Rules to cover these bulbs, it would mean that RSP should have been printed on them and the very*

*condition of the contract issued by EESL is illegal. At any rate, it is not in dispute that these bulbs were not sold in the market and were only distributed through EESL (though after collecting some price). If that be the case, to say that the RSP should have been printed is incongruous. How can a retail price be printed on the goods whose retail sale is banned? We, therefore, find that LED bulbs sold by the appellant to EESL were not covered by Metrology Rules and hence section 4A of the Act will not apply and self-assessment has been correctly done by the appellant on the basis of transaction value as per section 4."*

iii. The Ld. Counsel further placed reliance on paragraph 10 of the decision in the case of *Hindustan Unilever Limited v. Commr. GST and CE., Puducherry [2024 (5) TMI 771-CESTAT CHENNAI*], that when there is no statutory requirement under the law for declaring MRP on the packages, the assessment is to be done under Section 4 of the Excise Act. The relevant portion of the decision extracted is as follows: -

*"10.*
*d) Though, the commodity is notified under Section 4A, there is no statutory requirement under the law for declaring the MRP on the packages cleared by the manufacturer.*
*(e) The packages in which the assessee clears the goods namely mono-carton and shipper bags cannot be treated as multi-piece packs but only as wholesale packs.*
*(f) Therefore, the assessment under Section 4 is in order."*

iv. Reliance was also placed on paragraph 5.4 of the decision in the case of *Commissioner of Customs v.*

*Acer India Private Limited [2023 (8) TMI 266 - CESTAT CHENNAI]* in this regard for the principle that Section 4A has no application in a circumstance where sale is meant for industrial/ institutional customers. The para 5.4 of the decision is as follows:

*"5.4 The department has not doubted that the import is for sale to the RGKUT. This being so, the sale is not to an ultimate consumer and is only to institutional consumer. The view taken by the Commissioner (Appeals) that the assessment has to be made under normal transaction value under Section 4 is indeed legal and proper. Our view is supported by the decision of the Tribunal in the case of M/s UT Starcom Inc (Supra) as affirmed by the Hon'ble Apex Court and the decision of the Apex Court in the case of A.R. Polymer and Pvt. Ltd. (Supra)."*

9. Appreciating the ratio of the above decisions as applicable to the facts of the present appeal, the impugned Orders-in-Appeal No. 218 & 219/2015 (CXA-I) dated 12.10.2015 passed by the Commissioner of Central Excise (Appeals I), Chennai cannot be sustained and as such, is liable to be set aside which we do so. As such, both the demand of Excise Duty and penalties confirmed in the impugned Orders-in-Appeal are set aside.

10. As the Appellant succeeds on the grounds of merit itself, it follows that the demand of interest and penalty will automatically fail to survive.

11. In the result, the impugned Orders-in-Appeal Nos. 218 & 219/2015 (CXA-I) dated 12.10.2015 are set aside, and the Appeal No. E/41220/2016 is allowed with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 01.08.2025)

Sd/-
**(AJAYAN T.V.)**
MEMBER (JUDICIAL)

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

MK