IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 40932/2013

(Arising out of Order in Original No. 20157/2013 dated 29.1.2013 passed by the Commissioner of Customs, (Seaport – Import), Chennai)

VERT Equipment Pvt. Ltd. **Appellant**
No. 26, KIADB Industrial Area
Hosur Road, Attibele
Bangalore – 562 107.

Vs.

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

APPEARANCE:

Shri Sujit Ghosh, Senior Advocate and
Shri Ajinkiya Tiwari, Advocate for the Appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO.41373/2025

Date of Hearing: 22.08.2025
Date of Decision: 26.11.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant M/s. Tatra Vectra Motors Ltd. (**TVML**), against Order in Original No. 20157/2013 dated 29.1.2013 passed by the Commissioner of Customs, (Seaport – Import), Chennai (impugned order).

2. Brief facts of the case are that intelligence gathered by DRI, Bangalore Zonal Unit indicated that M/s Tatra Vectra Motor Limited (**TVML**) were filing Bills of Entry (**BOE**), for importing parts, components and accessories of Trucks by declaring that they are to

be used in the manufacture of the said trucks, but a part of their imports were diverted and sold to their customers/ dealers to cater to the after-sales/ replacement market and thereby Customs Duty was being evaded by avoiding payment of CVD on the basis of Retail Sale Price (**RSP**)/ Maximum Retail Price (**MRP**), as required under Central Excise Notification 11/2006 (N.T) dated 29.05.2006 (upto 29.02.2008) and Central Excise Notification – 14/2008 (N.T) dated 01.03.2008. The check period involved in this dispute is from January 2007 to August 2008. The said company came to be split into two entities – M/s Kamaz Vectra Ltd, that took over the manufacturing business of TVML, and M/s Vectra Advanced Engg. Pvt. Ltd, Bangalore (**VAEPL** – who has stepped into the shoes of the appellant as per the Agreement), that took over the assets, inventories and liabilities etc of TVML under a Business Transfer Agreement dated 05.08.2008. Accordingly on completion of investigations, a Show Cause Notice (**SCN**) was issued to the appellant for rejection of the valuation of the goods done under section 3 of the Customs Tariff Act, 1975 read with Section 4 of the Central Excise Act, 1944. It was proposed to redetermine the same under section 3(2) of the Customs Tariff Act read with Sectio 4A of the Central Excise Act, 1944 which attracted the provisions of the Standards of Weights and Measures Act, 1976 (**SWMA**) and the Standards of Weights and Measures Rules 1977 (**SWMR**), made thereunder. The SCN also proposed to confiscate the imported goods during the period January 2007 to August 2008, and to demand differential duties along with interest and for imposition of penalties. After due process of law, the

Ld. Commissioner passed the impugned Order-in-Original (**OIO**), confirming the proposals in the Show Cause Notice. Hence this present appeal.

3. The learned Advocate Shri Sujit Ghosh, Senior Advocate and Shri Ajinkiya Tiwari, Advocate appeared for the appellant and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

3.1 Shri Sujit Ghosh, the Ld. Senior Advocate for the appellant presented the brief facts of the case in the form of a table, which is reproduced below:

Table – I : Demand details

Particulars	Details
Period of dispute	January 2007 to August 2008
Show Cause Notice	28.12.2011
Order-in-Original	OIO No. 20157/2013 dated 29.01.2013
Demand	INR 1,58,81,401/- u/s 28(4) of Customs Act/ proviso to erstwhile Section 28(1) of the Customs Act, 1962
Penalty	Rs. 1,50,00,000/- Section 112(a) of the Customs Act, 1962
Interest	Section 28AA of the Customs Act, 1962
Issue	Whether the imported goods, i.e., parts, components and assemblies were liable for valuation on the basis of MRP/RSP or on the basis of transaction value of such goods.

He submitted that TVML started making Tatra Hemang Vehicles ("**Trucks**") specifically for use in mining and construction and not for regular road travel. These trucks are designed for heavy-duty operations in the mining and construction industry. TVML also imported various parts, components, and assemblies for these trucks from its parent company, M/s Tatra in the Czech Republic. Some of these items were used in truck manufacturing, while others were sold to customers in the mining and construction sector who had

previously bought the trucks. The declaration to Customs indicating the goods were for manufacturing was made inadvertently, without any dishonest intent. Sales could occur either directly to customers or through exclusive dealers, who would supply them to truck owners. Such sales typically happened under Annual Maintenance Contracts ('**AMC**') and were related to service or maintenance for previously sold trucks. TVML established a 'Dealership Agreement' with M/s Pushpak Associate, which reflected the standard terms found in similar agreements between TVML and its dealers. This agreement ran from 01.04.2008 until 31.03.2010. On 05.08.2008, all TVML's assets and liabilities were transferred to the Appellant (formerly "Vectra Advance Engineering Pvt. Ltd." or "**VAEPL**") under a Business Transfer Agreement. According to Clause 4.2, the Appellant took on all obligations, including annual maintenance for trucks sold before this transfer. TVML's factory closed after the transfer, confirming that its Tatra truck manufacturing operations ceased; this is noted in Paragraph 3 of the Show Cause Notice dated 28.12.2011. Following the terms of the illustrative agreement with M/s Pushpak Associates, the Appellant continued selling truck parts and components to dealers during the period covered by the agreement. He submitted that:

A) The proviso of Section 3(2) does not prescribe any mechanism for computation of RSP/MRP when RSP has not been affixed to imported goods, the Department has no authority to collect tax by adopting its own computation mechanism.

B) The imported goods were not liable for MRP based CVD as they were not meant for retail sale but meant for institutional consumers

in the mining industry. Under the Customs Tariff Act, affixation of MRP is required for levy of CVD if the goods are "packages intended for retail sale". However, since in the present case the subject goods neither qualify within the definition of "retail packages", nor are they intended for "retail sale", MRP need not be affixed on the subject goods sold to 'industrial and institutional consumer' and the CVD shall be computed based on the transaction value.

C) The demand is barred by limitation.

D) Goods are not liable for confiscation and hence no interest and penalty is leviable.

The Ld. Counsel prayed that the appeal may be allowed.

3.2 The Ld. Authorized Representative Shri Sanjay Kakkar appearing for the respondent-revenue submitted that as per Section 4A(1) of the Central Excise Act the Central Government is required to issue a notification in the Official Gazette, specifying the goods in relation to which it is required, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply under the provisions of SWMA/ LMA etc. Once this is done the process for deemed valuation for levy of CVD/ Excise duty under sub-section 4A(2) of Central Excise Act sets in with necessary abatement as under Sections 4A(3). He stated that in the course of investigation, statements were drawn from Shri G.Natarajan, Financial Controller and Sh.P.Ganesan, Manager (Accounts) of VAEPL under Section 108 of Customs Act, who stated in almost identical manner that TVML had imported pre-packaged parts/ components/ accessories for the company's (separate) trading arm (located behind

their factory), on which no further packing/labelling activities were done and were meant purely for trading for the after-sales/ service/ repair market. They accepted that they had mis-declared to Customs at the time of import that the imports were meant for manufacturing. That they did not affix any MRP labels on the prepackaged single-unit parts imported by them and also, had not declared the MRP to Customs. Hence there was a conscious and accepted mis-declaration and suppression of information by the importer/Appellant with an intent to evade duty. The Ld. A.R. vehemently contested the appellants submission that there is no machinery provision for ascertaining the RSP. He submitted that there are umpteen instances in almost all enactments where machinery provisions in the form of Rules/Regulations have not been prescribed. In the Customs Act itself. In the case of the like at hand, the RSP could be ascertained in the manner described under Section 4A of the Central Excise Act, as per the definition of 'retail selling price' in the said Section as well as the Notifications issued thereunder. He made submissions in favour of upholding the extended time limit and penalties etc. and prayed that the appeal may be rejected.

4. We have heard the parties and carefully perused the appeal and connected papers. We find that the following issues have been raised by the appellant:

A) The imported goods were not liable for MRP based CVD as they were not meant for retail sale but meant for institutional consumers in the mining industry.

B) As far as levy of CVD under Section 3 of the Customs Tariff Act is concerned, no machinery provision exists for determination of RSP in cases it was not declared.

C) The Department has wrongly calculated the CVD on the MRP.

D) The demand is barred by limitation.

E) Goods are not liable for confiscation and hence no interest and penalty is leviable.

We shall take up the issues sequentially.

5. **The imported goods were not liable for MRP based CVD as they were not meant for retail sale but meant for institutional consumers in the mining industry.**

5.1 According to section 3 of the Customs Tariff Act, 1975, any article imported into India is subject to an additional duty equal to the excise duty that would be charged on a like article produced or manufactured in India. If this excise duty is based on a percentage of the articles value, then the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article. Furthermore, in case the retail sale price of imported articles is to be declared on its packaging under the SWMA or other relevant laws and is specified by notification in the Official Gazette as per a notification issued under section 4A(1) of the Central Excise Act, 1944, then the value of the imported article shall be deemed to be the retail sale declared on the imported article less any abatement as allowed by the Central Government by notification in the Official Gazette.

5.2 As per the submissions of revenue, once the notification listing such specified goods is issued, the process for deemed valuation for levy of CVD/excise duty under sub-section 4A(2) of Central Excise Act sets in with necessary abatement as under Sections 4A(3). It was summitted that there is no liberty available to the proper officer/ authority and he is under a legal mandate to abide by the provisions of the said Notification, without adding or subtracting anything to the Section or the said Notification. According to him the necessary conditions for invocation of Section 4A of the Central Excise Act are –

i) Notification of specified products by the Central Government as per Section 4A(1) of the Central Excise Act.

ii) Prescription of an abatement, by the Central Government, as per factors mentioned in Section 4A(3) of the Central Excise Act.

iii) Determination of Value of excisable goods as per Section 4A(2) of the Central Excise Act, considering the RSP of goods, as defined in Explanation 1 thereof.

5.3 While the argument of revenue is attractive and would warrant examination, it is noticed by us though not referred to by either party at the Bar, that the Hon'ble Supreme Court by a landmark judgment in **JAYANTI FOOD PROCESSING P LTD Vs COMMISSIONER OF CENTRAL EXCISE, RAJASTHAN** [(2007) INSC 854 / 2007-TIOL-150-SC-CX], had examined the legal issue and held as under:

> "We would, therefore, first explain the interpretation and scope of Section 4A more particularly sub-sections (1) and (2) thereof. Section 4A was added by Section 82 of the Finance Act, 1997 (Act 26 of 1997) which amendment was

with effect from 14-5-1997. Section 4A, as it originally stood, and relevant for our purposes, is as under:

> "**Section 4A. Valuation of excisable goods with reference to retail sale price** - (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the **Standards of Weights and Measures Act, 1976 (60 of 1976)** or the Rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.
>
> (2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in Section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.
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> (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) If any manufacturer removes from the place of manufacture any excisable goods specified under sub- section (1) without declaring the retail sale price of such goods on the packages, or declares a retail sale price which does not constitute the sole consideration for such sale, or tampers with, obliterates or alters any such declaration made on the packages after removal, such goods shall be liable to confiscation.
>
> *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.
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> *Explanation 2.* (a) Where on the package 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 for the purpose of this section.

(b) Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale prices shall be the retail price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates."

This Section was introduced with the sole idea to end the uncertainty caused in determining the value of the goods under Section 4 and then assessing the duty under that Section. Section 4 was the basic formula for valuation of excisable goods and for the purposes of charging of the duty of excise. It provided the mechanism of determining the valuation of the goods under various circumstances, e.g., in the matter of wholesale trade or in the matter of sales being at the different prices for different places of removal or in case where the assessee sold the goods only to related persons, etc. **Section 4A of the Act, as would be clear from the language of sub-section (1), linked the valuation of the goods to the provisions of SWM Act or the Rules made thereunder by firstly providing that it would be for the Central Government to specify any goods in respect of which the declaration of price on the package was required under the provisions of SWM Act, Rules made thereunder or any law for the time being in force. In short sub-section (1) was linked with the packages of the goods in respect of which the retail sale price was required to be printed under SWM Act and the Rules made thereunder or any other law. Sub-section (2) then provides that such specified goods where they are excisable goods would be valued not on any other basis but on the basis of the retail sale price declared on such packages. The Section also provides that the assessee would be entitled to the deduction from such valuation the amount of abatement provided by the Central Government by a notification in the Official Gazette.** In short after introduction of Section 4A, the nature of sale lost its relevancy in the sense that the valuation did not depend upon the factor whether it was a wholesale or sale in bulk or a retail sale. The whole section covered the goods which were packaged and sold as such with the rider that such package had to have a retail price thereupon under the provisions of SWM Act, Rules made thereunder or under any other law. Thus, viewed from the plain language of the Section, where the goods are excisable goods and are packaged and further such packages are required to

> mention the price thereof under the SWM Act, Rules made thereunder or under any other law and further such goods are specified by the Central Government by notification in the Official Gazette, then the valuation of such goods would be on the basis of the retail sale price of such goods and only to such goods the provisions of sub-section (2) shall apply whereby it is provided that the value of such goods would be deemed to be the such retail price declared on the packages. Of course, the assessee shall be entitled to have a reduction of abatement as declared by the Central Government by the notification in the Official Gazette. **Even at the cost of repetition the following would be factors to include the goods in Section 4A(1) & (2) of the Act** :
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> (i) The goods should be excisable goods;
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> (ii) They should be such as are sold in the package;
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> (iii) There should be requirement in the SWM Act or the Rules made thereunder or any other law to declare the price of such goods relating to their retail price on the package;
>
> (iv) The Central Government must have specified such goods by notification in the Official Gazette;
>
> (v) The valuation of such goods would be as per the declared retail sale price on the packages less the amount of abatement.
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> If all these factors are applicable to any goods, then alone the valuation of the goods and the assessment of duty would be under Section 4A of the Act."
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> (emphasis added)

The judgment has found only a passing mention in the Appeal Memorandum, in the context of retail sale. As per the judgment, for the purpose of attracting Section 4A of the Central Excise Act there has to be a requirement under the SWMA and the Rules made thereunder or any other law to declare the MRP on the packet. The Hon'ble Court clarified that it is not the nature of sale which is the relevant factor for application of Section 4A but the applicability would depend upon the five factors enumerated above. That the thrust of Section 4A is on the packages and not on the commodity

and it is only where the goods are sold in the packages that the section would be attracted. Hence the view canvassed by revenue that once the goods are specified under the notification, that itself will be a deciding factor, for such goods to be valued and assessed under Section 4A of the Act, cannot be sustained. In fact, an identical view was submitted by an appellant in **JAYANTI FOOD PROCESSING** (supra), but did not find favour with the Hon'ble Court.

6. Having found so we are at a dilemma in proceeding further in the matter. We find that the period of the impugned demand is from **January 2007 to August 2008**. Section 4A of the Central Excise Act at the relevant time refers to the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Rules made there under. However, para 6 of the SCN and OIO refers to specific provisions from the **Legal Metrology Act of 2009** (**New Act**), and the Legal **Meteorology (Packaged Commodity) Rules of 2011** (**New Rules**), respectively in relation to the assessment of the impugned goods. The said Act and Rules came into effect from **01.04.2011** i.e. after the period under dispute. Para 7 of the SCN refers in general to the violation of the "provisions of Legal Metrology Act, 2009 / Standards of Weights and Measures Act 1976 and the Rules made there under". It also refers to the provisions of the "Legal Metrology (Packaged Commodities) Rules 2011 (earlier Standards of Weights and Measures (Packaged Commodities) Rules, 1977)". The appellant in their reply to the SCN and recorded at para 19.6 of the impugned order, has submitted that the reference to Act and Rules which were not in effect prior to 2010-2011 could not have been relied upon for

the earlier period. The submission went unanswered in the impugned order. However, the Appeal Memorandum and the written submissions made by the appellant as well as their oral submissions made at the Bar surprisingly do not emphasize this inherent defect.

7. Ordinarily the Tribunal should only examine an issue raised by an appellant in the Appeal Memorandum. However, in the light of **Rule 10** of the **Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982** the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal. We find that important changes have been made to the provisions, especially to the placement and definition of "industrial consumer" and "institutional consumer" as per the New Rules. As per **Article 265** of the Constitution of India, "No tax shall be levied or collected except by authority of law". That being so the law that is applicable for the subsequent period cannot be applied to the past even by consent of parties and constrains us from deciding the matter on merits, for reasons stated below.

8. The Hon'ble Supreme Court in **Commissioner of Central Excise, Nagpur Vs Ballarpur Industries Ltd.** [2007 (215) E.L.T. 489 (S.C.),], held that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest and that all allegations to be met by the respondent have to be clearly spelt out in it, so that the respondent can make a proper defense of his case. The Apex Court in **Collector of Central Excise, Calcutta Vs Pradyumna Steel Ltd.** [(2003) 9 SCC 234], held that the **mere mention of a wrong provision of law when the power**

exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. However, this is a case of invoking the provisions of a new law that was non-existent during the occurrence of relevant facts, central to the disagreement between the parties and is part of the core of the SCN.

9. Further the Apex Court in **Glaxo Smith Kline PLC and others Vs Controller of Patents and Designs and Others** [(2008) 17 SCC 416] held that pre-existing right prior to coming into force of the new law continues to be governed by the old law. Also relevant is the Legal Maxim "*nova constitutio futuris formam imponere debet non praeteritis*", which means. 'a new law ought to regulate what is to follow, not the past'. It contains a principle of presumption of prospectivity of a statute. Statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested. The Hon'ble Supreme Court in **T. Kaliamurthi Vs Five Gori Thaikkal Wakf** [(2008) 9 SCC 306], held, it is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. Hence a dispute must be adjudicated in accordance with the law that was in force at the time the relevant facts, central to the disagreement between the parties, occurred. The question of statutory liability of a noticee under a provision of law would invariably depend upon its validity at the relevant time. Failure to notify the assessee of the applicable legal provisions, while making allegations based on the subsequent Act and

Rules framed there under, undermines their ability to present an effective defense and the proceeding would be vitiated.

10. We find that there is nothing in the New Act to show that it was enacted retrospectively, hence the New Rules too cannot be applied retrospectively. The impugned order passed based on a fundamentally defective notice which goes to the core of the matter, has occasioned a failure of justice and merits to be set aside. Hence although many complex and novel legal issue were raised by Shri Sujit Ghosh, Ld. Senior Counsel for the appellant and was countered with great passion and ingenuity by the Ld. A.R., Shri Sanjay Kakkar, the same are of no avail in deciding the issue due to a fundamentally defective SCN, that was overlooked while passing the impugned order.

11. In the light of the discussions above, we set aside the impugned order. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 26.11.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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