CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 52187 of 2018

(Arising out of order-in-original No. DLI/CUS-PREV/OPD/PR. COMMR/05/2018 dated 07.06.2018 passed by the Principal Commissioner of Customs (Preventive), New Custom House, New Delhi).

M/s M. C. Overseas **Appellant**
Through its Proprietor Manu Chopra
Shop No. 309, Building No. 2885/3
Beadon Pura, Karol Bagh
New Delhi.

VERSUS

Commissioner of Customs (Prev.) **Respondent**
New Customs House
New Delhi.

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(Arising out of order-in-original No. DLI/CUS-PREV/OPD/PR. COMMR/05/2018 dated 07.06.2018 passed by the Principal Commissioner of Customs (Preventive), New Custom House, New Delhi).

Shri Rohit Sakhuja **Appellant**
E-25, Masjid Moth
New Delhi.

VERSUS

Commissioner of Customs (Prev.) **Respondent**
New Customs House
New Delhi.

APPEARANCE:

Shri Ashish Batra, Advocate for the appellant
Shri Rakesh Kumar, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. 51675 – 51676/2019

DATE OF HEARING: 20.06.2019
DATE OF DECISION: 23.12.2019

ANIL CHOUDHARY:

This is the second round of litigation. The issue involved is whether the appellant have made misdeclaration in the bill of entry, rendering the goods liable to confiscation and whether some of the Bills of Entry for past imports are barred (by limitation) being more than twelve months prior to the show cause notice dated 14.03.2013 and whether the transaction value has been rightly rejected on the basis of contemporaneous import value and whether the impugned order is bad for not providing RUDs.

2. Brief facts of the case are that the appellant are importer of branded airconditioners and TV. They regularly imports O-General brand of airconditioners from distributors located at Singapore. On intelligence of undervaluation by the appellant, investigations were conducted. Pursuant to enquiry, show cause notice dated 14.03.2013 was issued on these appellants and two others namely Shri Ajit Singh Chadha and Shri Manu Chopra. The notice alleged that the appellant undervalued/ misdeclared the value of the goods for custom duty purposes. The value was proposed to be enhanced (including for past imports) with proposal for confiscation as well as imposition of penalties on the appellant and others. The show cause notice was adjudicated on contest by Order-in-original No. 10/KAM/Commissioner /2013 dated 31.12.2013 whereby the value of goods imported under fourteen past Bills of Entry were held to be undervalued and value redetermined. The value of the goods under seizure (from godown) was also re-determined. The MRP declared was also rejected and re-determined. Further, the goods under seizure were

ordered to be confiscated with option to redeem on payment of fine. Differential duty was determined at Rs.1,12,72,494/- under Section 28 of the Act alongwith equal amount of penalty on M/s M. C. Overseas under Section 114A and further penalty of Rs. 30 lakhs was imposed on Shri Rohit Sakhuja and two others.

3. In the earlier round vide Final Order No. 58374 -77/2017 dated 15.12.2017 in Customs Appeal No. 52005 -52008/2014-Cus., this Tribunal held as follows:-

> *"6. In the present case, the dispute is with reference to correct valuation of imported air-conditioners. Customs officers conducted certain verification on the information that comparable goods of identical nature have been imported by others with higher transaction value. The statement of various persons were recorded and details were collected regarding contemporaneous imports of identical goods. The Original Authority rejected the declared assessable value and re-determined the same based on the contemporaneous value declared for similar goods imported by other persons. The appellant contested such finding on various grounds.*
>
> *7. We notice that all the issues raised by the appellants have not been duly addressed for a detailed finding by the Original Authority. To begin with, the appellant pleaded that they were not provided with the copies of the bills of entry filed by EGPL, which was relied upon to arrive at the comparable price of equivalent models of air-conditioners. Copies of bills of entries referred to in the NIDB data were also not provided.*
>
> *8. The appellants also strongly contested the impugned order on limitation. We note that in the present case, the re-determination of value has been done based on the contemporaneous imports of similar goods. In such situation, the claim of the appellant regarding limitation requires more detailed examination. The data relating to imports by EGPL were available with the Revenue during the material time. The appellant's claim is that all these goods were physically examined and in certain cases, the value re-determined before the goods were allowed clearance. In fact, the*

appellant claimed that the MRP declared by them was higher than those of EGPL.

9. Regarding rejection of value under Rule 12 of the Valuation Rules, we note that while, prima facie, the said rule can be invoked when the appellants failed to produce manufacturer's invoice and other supporting evidence in order to substantiate their declared value, re-determination of assessable value based on contemporaneous imports is to be done, considering similar commercial level in transactions. It is the submission of the appellant that the quantities imported and the country of export were all different. The commercial levels in the transactions were also different. We are of the opinion that this requires a more detailed examination. The impugned order holds that the air-conditioners compared are of same modals. This alone will not be sufficient to satisfy the requirements of comparable commercial level of transactions.

10. One more point strongly contested by the appellant is denial of exemption under notification no.29/2010-cus dated 27.02.2010. The exemption was denied only on the ground that no supporting evidence was submitted by the appellant by way of sale bills, payment of VAT, etc. We are in agreement with the appellant that this is not one of the conditions stipulated in the said notification.

11. The appellant also pleaded that there is no violation of Customs Act, 1962 even if it is held that Shri Manu Chopra lent his IEC to other two appellants. The reference was made to the newly introduced provisions under Section 2 (3A) of the Customs Act, 1962, which defined "beneficial owner". The appellant claimed that this legal provision has no application during the material time.

12. Regarding comparison of value with reference to imports by EGPL, the appellant contested certain factual findings recorded in the impugned order. Based on a letter received from M/s. RAACO ONE, who is a non-authorized dealer of the air-conditioners, a conclusion was drawn regarding the nature of transaction of air-conditioners in India. It is submitted that EGPL provided free copper tubings, commission and installation service for the air-conditioners sold by them. We find this fact requires further examination.

13. One more important aspect is regarding confiscation of imported goods covered by 14 bills of entries. We note that the Original Authority *ordered confiscation of seized as well as 'un-seized' goods with an option to redeem on payment of Rs.2.5 crores in terms of Section 125 of the Customs Act, 1962. It is now a well settled legal principle that the Adjudicating Authority cannot order the confiscation of the goods, which were neither seized /detained nor released on a specific bond executed by the owner. In other words, the goods, which were not seized and cleared with no reference of detention or bond cannot be ordered to be confiscated. We find that the order of confiscation of all the goods covered by 14 bills of entries is not legally sustainable. Confiscation, if any, is to be with reference to seized goods only. Accordingly, the finding with reference to confiscation and redemption fine is to be re-examined for a fresh decision.*

14. In view of the above discussion and analysis, we find that the impugned order as it stands cannot be sustained. Accordingly, the same is set aside with a direction to the Original Authority to decide the case afresh after providing opportunity to the appellant to present their side of the case. The appeals are allowed by way of remand."

4. Pursuant to remand, the appellant filed further submissions dated 26.12.2017 reiterating the ground of limitation with respect to fourteen Bills of Entry which were filed and assessed during the period 09.01.2012 to 12.03.2012 being more than twelve months prior to the date of show cause notice dated 14.03.2013. Further, contended that there was no evidence of misdeclaration or suppression on their part so as to satisfy the grounds for invocation of extended period of limitation. All these fourteen consignments were duly examined by the Department before clearance and in some of the Bills of Entry the value was enhanced/ loaded wherever found necessary by the Department, that the belated charge of undervaluation is only based on the change of opinion. Reliance was placed on the ruling of the Apex Court in **Uniworth Textiles Ltd. v. Commissioner - 2013 (288) ELT 161 (SC)** and also of this Tribunal vide final Order No. 56383-56385/2017 dated 01.09.2017. Further urged

that the appellant imported airconditioners in bulk quantity from Singapore and Dubai from the distributors and payments were made through the banking channels on the basis of invoices issued by the sellers/ exporters. Further, in absence of any evidence to show that appellant had remitted any amount over that, as specified in the invoice, the rejection of transaction value is uncalled for and demand of differential duty could not be made. Further, urged that the appellant have nowhere admitted the allegation of undervaluation in the statements recorded under Section 108 of the Act.

5. It was also urged that Revenue has not brought any cogent evidence to support the allegation of undervaluation. The allegation based on import value by M/s EGPL and on the basis of NIDB data, are not reliable as the import is from different sources and country and not of matching quantity. It is further urged that transaction value can be rejected under Section 14 of the Act only if there is any cogent material to suggest that the imports have been undervalued. Further urged that in view of ruling of Hon'ble Supreme Court in the case of **Eicher Tractors Pvt. Ltd., Vs. Commissioner of Customs -2000 (122) ELT 321 (SC)**, it is settled law that if transaction value is rejected then value has to be arrived by following the Valuation Rules in seriatum, i.e. going serial numberwise from Rule 4 onwards. Further, Rule 4(3) of the Valuation Rule provides that in case more than one transaction value of identical goods is available, then the lowest of such value shall be taken for the purpose of determining the value of imported goods. The value proposed in the show cause notice being in violation of Rule 4(3), cannot be relied for enhancement of declared value.

6. It is further urged that appellant had relied on the Bill of Entry of another importer M/s Krishna –Capital, as well as on the NIDB data, copy of which was filed. Further, in respect of import of identical airconditioners from the same exporter/ distributors by M/s Star Aircon which is controlled by Shri Rohit Sakhuja (appellant), a show cause notice dated 19.07.2013 was issued by the Additional Commissioner of Customs (Imports) JNCH, on identical allegation. Further, the show cause notice of JNCH was also relied upon in the instant show cause notice, and the value of identical airconditioners was sought to be re-determined by relying on the import undertaken by M/s EGPL. It is urged that the learned Commissioner of Customs (Appeals-II), Mumbai, JNCH vide order in appeal No. 127-129 (Adj.-Imp.)/2016 (JNCH)-Appeal-II dated 29.04.2016 was pleased to allow the appeal filed by Shri Rohit Sakhuja and M/s Star Aircon. It is further urged that the identical show cause notice of JNCH for similar and identical goods, relied upon in the instant case, the present show cause notice was also fit to be dropped.

7. It is further urged that there is no misdeclaration of value/MRP as per the statement dated 19.03.2012 of Shri Ajit Singh, Business Associates of Shri Rohit Sakhuja in view of the following data:-

Sl. No.	*Description of airconditioner*	*Approximate Selling price as per statement of Shri Ajit Singh (in INR)*	*MRP declared in the Bill of Entry (in INR)*
1	*2 Ton Window AC*	*21,000*	*32,990 (at S. No. 28 of Annexure A)*
2	*1.5 Ton Split AC*	*30,000*	*34,000 (at S. No. 1 of Annexure A)*
3	*2 Ton Split AC*	*34,000*	*45,900 (at S. No. 17 of Annexure A)*

8. It was further urged that the MRP declared in the Bill of Entry was much higher than the sale price on which the goods were actually sold. Further, there is no evidence brought on record by Department that the appellant have sold the imported goods/ airconditioners at higher retail price than the declared MRP.

9. Learned Commissioner vide the impugned order observed that the directions in the Final Order of this Tribunal, in remand are as follows:-

> "*(i) Copies of Bills of Entry filed by M/s EGPL and data records of NIDB were not provided to the Noticee despite request for the same made by them.*
>
> *(ii) MRP declared by the Noticee was higher than those of M/s EGPL.*
>
> *(iii) That comparison with the same model of air conditioners was not sufficient and the requirement of comparable level of transactions should have been fulfilled.*
>
> *(iv) Exemption of Notification No.29/2010-Cus dated 27.2.2010 (exemption from additional duty of customs) was denied on insufficient grounds"*.

10. Further observed that the issue for determination are as follows:

> *"(i) Whether the declared value is liable to be rejected and the same required to be re-determined as per provisions of Customs Act and the Customs Valuation Rules, 2007,*
>
> *(ii) Whether the declared MRP is liable to be rejected and re-determined as per Rules.*
>
> *(iii) Whether the goods are liable to be confiscated.*
>
> *(iv) Whether exemption from Additional Customs Duty leviable under Section 3(5) of the Customs Tariff Act, 1975 under Notification No. 29/2010-Cus dated 27.2.2010 was available to them."*

11. As regards the ground of limitation, the learned Commissioner observed that as regards past import, only in few cases the value was loaded by the Department, and data of import by M/s EGPL was also

available to the Department. Further observing that Shri Ajit Singh Chadha in his voluntary statement dated 19.03.2012 had admitted that they were selling O-General brand window airconditioner of two tonne capacity at Rs.21,000/- and split airconditioner of 1.5 tonne and two tonne at Rs.30,000/- and Rs. 34,000/- respectively. It was further observed that the appellant during investigation failed to submit the copy of sale invoices. Availability of declared value by other importers with the Department cannot be a ground to argue that precludes the Department from invoking the extended period, for suppression of facts. The fact remains that the appellant had misdeclared the true value of the airconditioner being of the same model that were imported by others from the manufacturer at higher value. The suppression of value is established; hence extended period of limitation is rightly invoked.

12. As regards the issue of rejection of transaction value, the learned Commissioner referring to Rule 14 of Valuation Rules alongwith explanation observed that the rules demonstrates that where the proper officer has reason to doubt the truth and accuracy of the value declared in relation to imported goods he may ask the importer to further information/ documents/ other evidence. Further, if the proper officer is not satisfied and has doubt about the truth and accuracy of the declared value than the value can be determined as per the Valuation Rules. In the instant case, the appellant failed to furnish the manufacturers invoice, catalogue and sales invoices. Further, the investigation reveal import of identical goods by M/s EGPL at significantly higher prices. Thus, there was enough justification for doubting the truth and accuracy of the declared value and thus the value was rightly rejected.

13. As regards the issue of determination of value of the imported goods the value has been proposed to be re-determined under Rule 4 which is the first rule in sequence. Therefore, question of not following the sequence as urged by the appellant is not found. Further, the goods imported by the appellant are identical to those imported by M/s EGPL. Further, the declared value of M/s EGPL as regards to contemporaneous import have been disputed on the ground that terms of import/ sale were different. Further, the source of import is different as M/s EGPL has imported from the manufacturer whereas these appellants have imported from distributors located at Singapore /Dubai. Further, M/s EGPL was providing to the customers free copper tubing, free installation and commissioning and therefore the terms of sale was different. Further, the commercial level in the transaction of the appellant as compared to M/s EGPL is different. Learned Commissioner observed that the argument of the appellant is not supported by any evidence - documentary or otherwise. Investigation from one of the dealers of O-General showed that such free services were not included in the price charged by them. Further, from RUD Sl. No. 21, is part of the show cause notice clearly shows that no warranty was provided by M/s EGPL, similar to the appellant. Thus, there is no substantial difference in the terms of sale by the appellant and M/s EGPL. It was further observed that M/s EGPL imported about 1500 pieces of split airconditioners as per Annexure-A to the show cause notice, whereas number of ACs imported by the appellant in each Bill of Entry is much less. It is further observed that greater the level, the lower would be the price. As the commercial level of import by M/s EGPL is higher than that of the appellant, then adoption of declared

value of M/s EGPL is not going to effect the appellant pre-judicially. Further, the argument of the appellant that during the relevant period the NIDB values were lower than the declared value is not convincing, since appellant have failed to point out specific instance having the same commercial level and substantially same quality.

14. So far the reliance placed by the appellant on ruling of the Commissioner (Appeals-II) at JNCH, it was held that the enhancement of value was on the basis of NIDB data and e-mail quotation and therefore the value adopted was not inconformity with Rule 4(3) of Valuation Rules, 2007. In the present case, no e-mail, quotation has been adopted. Rather reliance is placed by the Revenue on the contemporaneous import made by M/s EGPL who are also the authorised dealer/ distributor of the manufacturer of O-General brand.

15. Further, the learned Commissioner with regard to imports made by the appellant vide the following three bills of entries-

Sl. No.	Bill of Entry No.	Date
1	5882881	01.02.2012
2	5906002	06.02.2013
3	6141472	01.03.2012

Learned Commissioner observed that the value declared in the Bill of Entry was already enhanced by the Department at the time of assessment, hence, it would be improper under law as well, to once again re-assess the value of these three Bills of Entry.

16. Accordingly, the learned Commissioner worked out the enhanced value with regard to eleven Bills of Entry, as regards the past imports, adopting the assessable value as per the contemporaneous import by M/s EGPL. Against a total declared assessable value of Rs. 6,35,98,877/- and thus worked out the differential duty at Rs. 18,19,448/-. Learned Commissioner also rejected the declared MRP and re-determined the same based on the higher MRP of identical goods by M/s EGPL. Further, observed that the MRP or selling price stated by Shri Ajit Singh Chadha in his statement dated 19.03.2012 is an average sale price and not the actual sale price. Further, observed that the actual retail sale price in absence of documents is not possible to examine vis-a-vis the declared MRP. Learned Commissioner further on comparing the MRP as declared by the appellant as per Annexure-A, to the show cause notice found the same to be higher in many cases than MRP declared by M/s EGPL. He was pleased to hold that the allegation of declared lower MRP is unsubstantiated and cannot be sustained, thus dropped the said allegation.

17. As regards exemption from payment of SAD, in view of the VAT/ Sales Tax under Notification No. 29/2010-Cus. it was observed that the appellant have not produced any sales bills / evidence to show that they were depositing the VAT with the Department. Further, observed that there is no such stipulation in the said notification with respect to all goods which are covered by MRP provision.

18. As regards confiscation, it was observed that it is settled legal position that only seized goods can be confiscated, even if they are released provisionally. Therefore, learned Commissioner held that the

goods pertaining to eleven past bills of entry are liable to confiscation, only to the extent, these have been seized. It was further observed that in the instant case, investigation has shown that the declared value by the appellant were far less vis-a-vis a contemporaneous value of import of the identical goods. As such charge of undervaluation and misdeclaration is established. Accordingly, the goods are liable to confiscation under Section 111(m) of the Customs Act and consequently penalty is also imposed under Section 114A of the Act on M/s M. C. Overseas. It is further held that Shri Rohit Sakhuja and Shri Ajit Singh Chadha who are the main persons behind M/s M. C. Overseas, controlling its operation. Further, Shri Ajit Singh Chadha in his statement had admitted that he was responsible for selling the imported ACs and payment for all imports were arranged by him alongwith Shri Rohit Sakhuja. Further, from the statement of Shri Rohit Sakhuja and Shri Ajit Singh Chadha, it is clear that Shri Manu Chopra, Prop. of M/s M. C. Overseas was dummy only. Moreover, Shri Manu Chopra in his statement has admitted that he was getting reimbursement in respect of petrol expenses etc. Accordingly, learned Commissioner passed the following operating order vide the impugned order:-

(i) Rejected the declared assessable value at Rs. 6,35,98,877/- with respect to the eleven Bills of Entry and determined the value of Rs.8,12,63,416/-;

(iii) Held that the goods imported vide eleven Bills of Entry having re-determined value at Rs. 8.13 crores approximately are liable to be confiscated under Section 111(m) and further the goods namely 550 pieces of ACs having value at Rs. 1,65,00,000/- which were seized vide seizure memo dated 30.03.2012 at the godown located at A-59, Adhyapak Nagar, Nangloi, New Delhi, are confiscated under Section 111(m) with option to redeem the said confiscated goods under Section 125 of the Customs Act on payment of fine of Rs. 25 lakhs. Further observed that since the goods relating to the three Bills of Entry have not been revalued, seizure of 306 pieces pertaining to these bills of entry is not sustainable;

(iii) Differential duty of Rs. 18,19,448/- was confirmed under Section 28(4) alongwith interest and further appropriating Rs.11,70,865/- deposited during investigation. Further, penalty of Rs.18,19,448/- was imposed on M/s M. C. Overseas under Section 114A. Further, penalty of Rs. 20 lakhs each on Shri Rohit Sakhuja and Shri Ajit Singh Chadha was imposed under Section 112(a) of the Act.

19. Being aggrieved, the appellants are before this Tribunal.

20. Learned Counsel Shri Ashish Batra appearing for the appellant urges that the show cause notice is time barred as regards the fourteen past 14 Bills of entry which were filed and assessed more than twelve months prior to the date of show cause notice. The allegation of suppression of valuation by Revenue is based on change of opinion and based on the information which was already on record. For change of opinion, extended period is not available to Revenue. It is further urged that the Bills of Entry were filed based on the documents of import. None of the documents have been found to be sham or forged. The Bills of Entry were assessed on the price declared, then cleared by concurrent audit, countersigned by the proper officer. There is no case or allegation of any manipulation or concealment of facts. Further, there is no allegation that

the appellant have paid anything over and above the invoice price/ declared value. Thus, Revenue has not brought any cogent evidence for rejection of the declared value/ transaction value.

21. As regards the issue of valuation, it is urged that Revenue has sought to reject the declared value on the basis of higher declared value of identical product by M/s EGPL from the manufacturer. M/s EGPL is also a regular importer. Their import price was always available with the Department and there can be no presumption that such data was and/or not considered at the time of original assessment. Further, rejection of the declared value is bad solely on the basis of alleged higher declared value by M/s EGPL. The same is also not permissible in view of the provisions of Section 14 of the Customs Act. The said rejection is wholly against the concept of transaction value. In the absence of any allegation of fraudulent transaction between the appellant and the exporter located at Singapore/ Dubai. Thus, rejection of transaction value in absence of cogent evidence is bad and fit to be set aside.

22. As regards dropping of the revaluation with respect to three Bills of Entry, wherein the declared value was loaded or enhanced and further rejecting the declared value of the other 11 past Bills of Entry is erroneous, as the declared values are similar in these Bills of Entry as compared to the other past 11 Bills of Entry. Thus, acceptance of the same price in respect of three Bills of Entry and rejecting the similar price in respect of other 11 Bills of Entry is bad and perverse, reflecting total non application of mind by the learned Commissioner. Thus, the rejection of declared value with respect to the 11 Bills of Entry is bad and fit to be set aside. It is further urged in the facts and circumstances, in the

present appeal that with respect to the show cause notice dated 19.07.2013 by JNCH, the refusal to rely on the order of Commissioner (Appeals-II), JNCH, is bad as the JNCH show cause notice have been relied and referred to in the instant show cause notice. In the JNCH show cause notice the value of identical ACs, was sought to be redetermined by relying on similar materials/data.

23. It is further urged that Rule 4 prescribes for consideration of the import value of identical goods during the relevant period pursuant to rejection of transaction value. Further, Rule 4(3) provides that in case of more than one transaction value of identical goods is available, then the lowest of such value shall be taken. Further, from the NIDB data for the relevant period, it is evident that identical goods were cleared at a price lower than the price declared by the appellant. Thus, the reliance by Revenue on the price declared by M/s EGPL is perverse and thus the enhancement is erroneous and fit to be set aside.

24. Learned Authorised Representative for the Revenue have relied on the impugned order.

25. Having considered the rival contentions, we find that the facts on the basis of which the allegation of undervaluation have been made, like NIDB data or import value of M/s EGPL were available to Revenue all throughout. It is admitted that M/s EGPL is also a regular importer of O-General ACs directly from the manufacturer located at Thailand. Accordingly, the demand with respect to 11 past bills of entry which were filed and assessed prior to 13.03.2012 is held time barred and accordingly

set aside. Consequently, the revaluation and confiscation is also set aside with respect to these 11 bills of entry.

As regards the rejection of transaction value with respect to the live bill of entry and the goods found and seized in the godown, it has to be seen in terms of the provisions of Section 14 of the Act. Section 14 provides that value of the imported goods shall be the 'transaction value' of such goods, i.e. to say, the price paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or, as the case may be, where the buyer and seller of the goods are not related and price is the sole consideration for the sale, subject to such other conditions as the case may be, specified in the rules made in this behalf. It is further provided that transaction value shall include in addition to the price, any amount paid or payable for cost and services including commissioning and brokerage etc. to the extent and in the manner specified in the rules made in this behalf. Admittedly, in the facts of the case the buyer and seller are not related. Further, there is no allegation by Revenue that the appellant have remitted any amount directly or indirectly to the seller and shipper of the goods other than through normal banking channel, than the amount mentioned in the import documents. Accordingly, rejection of transaction value by Revenue is held to be against Section 14 of the Customs Act and the same is set aside. Further, the differential duty worked out and demanded from the appellant based on MRP of M/s EGPL is also bad and untenable for the reason that the goods are not manufactured in India. Thus, there is no prescribed MRP by the manufacturer under the legal Metrology Act read with the rules thereunder. In case of import, the importer is free to determine his retail selling price or MRP. There is no law under which the present appellants are bound to sell the goods at the retail selling price or MRP by M/s EGPL. Further distinguishing features in the sales made by M/s EGPL like providing of free installation, providing of copper tubing etc and after sales service are not being done or provided by the present appellants. In this view of the matter, the MRP of the appellant is not comparable with the MRP of M/s EGPL. Further, it is admitted fact that the imported goods found in the godown of the appellant have been imported by filing proper bills of entry which have been duly assessed by the competent officer of the customs. In this view of the matter, we hold that the impugned order suffers from impropriety and at the same time is erroneous. Accordingly, we set aside the impugned order and allow both the appeals of the appellants. The penalty imposed on Shri Rohit Sakhuja is also set aside.

(Pronounced on 23.12.2019)

(Anil Choudhary)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

Pant