

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87265 OF 2013

[Arising out of Order-in-Original No: 28/2013/CAC/CC(G)/PKA-CFS(M)(I) dated 22nd February 2013 passed by the Commissioner of Customs (General), Mumbai.]

Rakesh Agarwal

Padma Ceramics Pvt Ltd
B-505 Sun Swept, Lokhandwala Complex
Andheri (West) Mumbai - 400 053

... Appellant

versus

Commissioner of Customs (General & CFS)

New Custom House, Ballard Estate, Mumbai- 400001

...Respondent

WITH

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Gala No.5E, Laxmi Industrial Estate,
Andheri (West), Mumbai – 400 053

... Appellant

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New Custom House Ballard Estate, Mumbai - 400001

...Respondent

APPEARANCE:

Shri T Vishwanathan, Shri Akhilesh Kangazia, Ms Apoorva Parihar and Shri Nayan Singhal, Advocates for the appellants

Shri Deepak Sharma, Deputy Commissioner (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86364-86367/2025

DATE OF HEARING:	26/03/2025
DATE OF DECISION:	25/09/2025

PER: C J MATHEW

These proceedings were initiated in relation to import of 'ceramic tiles' between 12th June 2003 and 20th September 2005 and consequent to which duty liability of ₹ 44,66,124 and ₹ 98,48,522 respectively were fastened on M/s Padma Ceramics Pvt Ltd and M/s RAS International under section under section 28 of Customs Act, 1962 in order¹ of Commissioner of Customs (General), Mumbai. In addition, the goods were held as liable for confiscation under section 111(m) of Customs Act, 1962, besides penalty of like amount imposed under section 114A of Customs Act, 1962 on the respective importers, penalties of ₹ 10,00,000 and ₹ 20,00,000 under section 112 of Customs Act, 1962 were imposed on Shri Rakesh Agarwal, Director in M/s Padma Ceramics Pvt Ltd and proprietor of M/s RAS International. The show cause notice proposed recovery of differential duty on the ground that the value declared for the purpose of levy of 'additional duty of customs' under section 3(1) of Customs Tariff Act, 1975 had been 'under reported' inasmuch as subsequent evidence established the 'retail selling price' at which these had been sold by dealers and retailers to the ultimate consumer.

2. According to Learned Counsel for the appellant, they had, in addition, declared the actual transaction value for the purpose of levy to 'basic customs duty' in accordance with section 12 and section 14 of Customs Act, 1962, and also declared 'retail selling price' at 2.5 to 3.75

¹ [order-in-original no. 27 & 28/2013/CAC/CC(G)/PKA-CFS(M)(I) dated 22nd February 2013]

times of such declared value and, purportedly, in conformity with the practice prevailing then insofar as packages not marked with ‘retail selling price’ is concerned. According to Learned Counsel for the appellant, the re-determination of ‘retail selling price’ by computation, and without access to either the price of actual sale or of labels indicating ‘retail selling price’, is without authority of law inasmuch as, during the specific period, even section 4A of Central Excise Act, 1944 did not provide for any mechanism to undertake such exercise. He argued that a Larger Bench of the Tribunal in *Ocean Ceramics Limited v. Commissioner of Customs & Central Excise (Appeals), Rajkot [2024 (1) TMI 1280 – CESTAT AHMEDABAD – LB]* held that prior to issue of notification², no authority was vested with central excise officers for re-determination of value. Further, reliance was placed on the decision of the Tribunal in *Century Tiles Ltd and Ganpatlal Dayalal Patel v. Commissioner of Central Excise & Service Tax, Ahmedabad – III [2025 (1) TMI 64 -CESTAT AHMEDABAD]*, in *Suzuki Ceramics v. Commissioner of Central Excise & Service Tax, Rajkot [2016 (334) ELT 169 (Tri. -Ahmd)]* and in *Commissioner of Central Excise, Rajkot v. Citizen Ceramic [2016 (339) ELT 105 (Tri.-Ahmd)]*. It was further submitted, that, even ‘post-2008’, the mechanism for re-determination, either at the stage of import under section 17 of Customs Act, 1962, or subsequently, within the scope of section 28 of Customs Act, 1962, did

² [no. 13/2008-CE (NT) dated 1st March 2008]

not exist. For this, reliance was placed on the decision of the Tribunal in *ABB Ltd v. Commissioner of Customs* [2011 (272) ELT 706 (Tri.-Bang.)], in *Commissioner of Customs v. VJ Traders* [2019 (366) ELT 909 (Tri.-Del.)] and several others besides.

3. It was also argued that even the computation for arriving at the highest sale price in India, even if from the list available in the office of the appellant, was not consistent with principle of certainty of tax and especially so, when reliance was placed on the lists available for couple of years after the impugned import. It is further contended that the appellant sold the goods to actual users who, in turn, consumed the same in construction of buildings intended for further sale owing to which there was no requirement of affixation of labels and thereby, to be subjected to assessment under section 3(1) of Customs Tariff Act, 1975 by recourse to the *proviso* in section 3(2) of Customs Tariff Act, 1975.

4. We have heard Learned Authorized Representative who submitted that the investigations unearthed that the goods had, undoubtedly, been sold by the appellant at prices far above the declarations in the bill of entry. It was further submitted that these were admitted to by the dealers of both the entities and, consequently, justified both initiation of proceedings as well as the quantum of recovery ordered.

5. There is no doubt that the 'ceramic tiles' are, when cleared by the manufactures in India, subject to valuation in accordance with section 4A of Central Excise Act, 1944. In consequence, for the purpose of section 3(1) of Customs Tariff Act, 1975, they are to be re-assessed on the value of 'retail selling price' marked on the packages. It is admitted that the imported goods did not bear any such markings. It is the claim of the appellant that the goods had been sold to builders and, from the records it is not evident that this claim has not been controverted. On the other hand, at the time of investigations and issue of show cause notice on 10th June 2008, the appellant had been disposing off ceramic tiles in the market through persons other than builders. The appellant have not shown any evidence that this was not the practice insofar as the period when the impugned goods were imported and cleared. In accordance with the Standards of Weights and Measures Act, 1976, where, in the normal course, goods are required to be complied thereon the packages were required to be imprinted with appropriate markings; in the admitted circumstances of no markings having been present on the imported goods, the claim of the appellant of intent of sale to 'institutional users' or 'intermediaries' does not carry sufficient weight.

6. Nonetheless, the reliance placed on list prices that, admittedly, related to period well after the date of import of the impugned goods would not be appropriate for the purpose of re-determination of the

assessable value to levy additional duties of customs in assessment under section 17 of Customs Act, 1962, and with contingent recourse to section 28 of Customs Act, 1962, attained finality in view of the closure afforded by section 47 of Customs Act, 1962 insofar the imported goods are concerned. Tentativeness in such imports and clearance thereof under section 47 of Customs Act, 1962 is contingent upon no recovery being proposed within the normal period or within the extended period under section 28 of Customs Act, 1962. In order to propose such recovery, it was essential for the determination of value to be in consonance with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 insofar as the imported goods are concerned. The said Rules are relevant only for the purpose of assessment which draws upon 'value' in section 14 of Customs Act, 1962. Likewise, section 111(m) of Customs Act, 1962 is liable to be invoked only for the limited purpose of declaration of value to the extent that the value for assessment of any duties did have recourse to section 14 of Customs Act, 1962 as is evident from section 2(41) of Customs Act, 1962. Re-determination of value under any other provision would not justify invoking of section 111 of Customs Act, 1962.

7. It is evident from the decision of the Tribunal, in *re Ocean Ceramics*, that central excise officers themselves were not vested with the power to re-determine 'retail selling price' during the relevant period and, yet, the impugned order has held that

‘79. In view of the above, I pass the following Order :

ORDER

a. The prices at which the dealers/traders have sold the imported tiles to the final consumer/user is hereby held to be MRP/RSP, under Section 4A of the Central Excise Act, 1944, also applicable for goods imported into India, which the importer, M/s. RAS International, should have declared to the Customs authorities at the time of import and for computing the Countervailing Duty (CVD) and other duties of Customs in the respective Bills of Entry. ’

which is beyond the power of customs officers by any stretch. Furthermore, so far as the imported goods are concerned, to the extent that central excise officers themselves were not competent under section 4A of Central Excise Act, 1944, there is no scope then and even now for invoking any empowerment to re-determine ‘retail selling price’ for re-assessment. It is not without reason that the customs law has not provided for such empowerment. The importer is not bound by any restriction in stipulating ‘retail selling price’ at the time of import and cannot be held responsible for any alteration of such ‘retail selling price’ to the extent that the sale to the ultimate consumer has been effected by another entity. In accordance with the provisions of Central Excise Act, 1944, re-affixation of labels indicating ‘retail selling price’ is tantamount to manufacture and any proceedings arising, insofar as valuation based on the requirement of Standards of Weights and Measures Act, 1976 is concerned, would be for recovery of duty of

central excise. With proceeding under Central Excise Act, 1944 alone available in such events, there is no particular need to disturb the sanctity of declaration of 'retail selling price' made by the importer at the time of import and such substitution was not the legislative intend. The purpose of section 3(1) of Customs Act, 1962 was to ensure that the imported goods do not carry the advantage of excise duty not being fastened thereof. The consequence of like goods being imported without being fastened with like excise duty is compensated for by excise duty that would be leviable on 'post import' alteration of 'retail selling price' by other entities in the channel of distribution. Even the provisions of section 3(1) of Customs Tariff Act, 1975, requiring levy '*equal to excise duty on like goods produced or manufactured in India*' is related to rate of duty and not the value. This is apparent from section 3(2) of Customs Tariff Act, 1975.

8. The adjudicating authority has travelled beyond the authority of Customs Act, 1962 in ordering recovery of differential duty and imposing penalties. Consequently, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 25/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)