

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

WEST ZONAL BENCH

**CUSTOMS APPEAL NO: 85209 OF 2014
WITH
CUSTOMS APPLICATION (MISC) NO: 85992 OF 2024
(on behalf of respondent)**

[Arising out of Order-in-Original No: 29 to 35/SK/M.I/2013 dated 14th October 2013 passed by the Commissioner of Central Excise, Mumbai– I.]

Larsen & Toubro Ltd
E&A-F&A, Powai Works, Saki Vihar Road
Powai, Mumbai - 400072 *... Appellant*

versus

**Commissioner of Central Excise
Mumbai – I**
115 Central Excise Building, MK Road, Churchgate
Mumbai - 400020 *...Respondent*

WITH

**CUSTOMS APPEAL NO: 85210 OF 2014
WITH
CUSTOMS APPLICATION (MISC) NO: 85993 OF 2024
(on behalf of respondent)**

[Arising out of Order-in-Original No: 29 to 35/SK/M.I/2013 dated 14th October 2013 passed by the Commissioner of Central Excise, Mumbai– I.]

R N Mukhija
501 Varsa, Janki Kutir, Juhu Road, Vile Parle West
Mumbai - 400049 *... Appellant*

versus

**Commissioner of Central Excise
Mumbai – I**
115 Central Excise Building, MK Road, Churchgate
Mumbai - 400020 *...Respondent*

AND

CUSTOMS APPEAL NO: 85211 OF 2014
WITH
CUSTOMS APPLICATION (MISC) NO: 85994 OF 2024
(on behalf of respondent)

[Arising out of Order-in-Original No: 29 to 35/SK/M.I/2013 dated 14th October 2013 passed by the Commissioner of Central Excise, Mumbai– I.]

Prakash B Shet

A2/B15 Avadhoot Nagar, Shivaji Road, Dahisar (E)
Mumbai - 400068

... Appellant

versus

Commissioner of Central Excise

Mumbai – I

115 Central Excise Building, MK Road, Churchgate
Mumbai - 400020

...Respondent

APPEARANCE:

Shri Prakash Shah, Sr Counsel with Shri Mohit Raval, Advocate for the appellants
Shri Shamboo Nath, Special Counsel for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86410-86412/2025

DATE OF HEARING:	18/03/2025
DATE OF DECISION:	17/09/2025

PER: C J MATHEW

The limited issue to be resolved in this dispute of M/s Larsen &
Toubro Ltd, who have assailed the fastening of differential duty of

customs amounting to ₹ 4,18,39,392 under section 28 of Customs Act, 1962, along with interest thereon under section 28AB of Customs Act, 1962, besides penalty under section 114A of Customs Act, 1962 even as the goods, upon confiscation under section 111 of Customs Act, 1962, were permitted to be redeemed on payment of fine of ₹ 1,06,00,81,080 under section 125 of Customs Act, 1962, is the empowerment vested in officers of customs, under section 17 of Customs Act, 1962, to re-determine value, as set out in section 3(2) of Customs Tariff Act, 1975, for levy of additional duty under section 3(1) of Customs Tariff Act, 1975. The other appellants, Shri Prakash B Shet and Shri RN Mukhija, assail the penalties imposed on them for alleged role in import of goods liable to confiscation. The proceedings pertained to import of 'switchgear parts' effected between April 2003 and March 2008 and impugned in seven show cause notices disposed off by single order¹ of Commissioner of Customs (Adjudication), Mumbai.

2. As several decisions of the Tribunal have decided on the competence of customs authorities to take recourse to section 28 of Customs Act, 1962 in the absence of machinery provision for revision of declared 'retail sale price (RSP)' at stage of assessment and upon legislative design of the levy of 'additional duty of customs' being

¹ [order-in-original no. 29-35/SK/M-1/2013 dated 14th October 2013]

completed in all respects upon clearance of goods for home consumption under section 47 of Customs Act, 1962, we take disposal of this appeal only within the narrow compass of jurisdiction vesting in the original authority in like manner.

3. The appeals were filed in 2014 when such judicial determination was unavailable; several decisions of the Tribunal, pertaining to demands of differential duty of central excise prior to notification of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 since then, came up before a Larger Bench in *Ocean Ceramics Limited v. Commissioner of Customs & Central Excise (Appeals), Rajkot [2024 (1) TMI 1280 – CESTAT AHMEDABAD –LB]*.

4. The contention of Learned Senior Counsel for appellant is that the machinery provisions, such as they are, is limited to goods cleared domestically and under the authority of section 4A of Central Excise Act, 1944 which not only is not appended to section 3(2) of Customs Tariff Act, 1975, except with reference to notification itemizing the goods covered by that valuation scheme and the abatement thereto, but also no less essential for levy of duty of central excise without which the enabling provision in section 4A of Central Excise Act, 1944 is toothless. He conceded that the appellants had neither declared nor affixed any of the particulars prescribed by the Standards of Weights & Measures (Packaged Commodity) Rules, 1976 owing to exemption in

chapter II therein for supplies effected to ‘industrial consumers’ elaborated upon in the *Explanation* therein. He further submitted that reliance placed in the adjudication order on statements of dealers/stockists was incorrect for not being compliant with the pre-requisites in section 138B of Customs Act, 1962.

5. According to Learned Special Counsel for respondent-Commissioner, the goods were despatched to dealers/stockists with markings reflecting exclusion from retail sale channel but, continuing to be in possession of the importer and sold at prices in lists provided by the importer, the assessment of additional duty should have been on such value as in the price list, adjusted for abatement.

6. It would appear that assessable value under section 3(2) of Customs Tariff Act, 1975 was sought to be inserted in purported accord with *proviso* therein drawn from price lists that were purportedly adoptable as ‘benchmark sale price’ of the imported goods. It is not clear from the records if investigation was able to ascertain that these prices had been marked on the packages as mandated by Standards of Weights & Measures (Packaged Commodity) Rules, 1976 or was merely presumed to be so. Even so, it was also necessary to ascertain the mandate of law to do so on.

7. The requirement for conformity with ‘retail sale price (RSP)’ valuation for levy of additional duty of customs is the mandate

of Standards of Weights & Measures (Packaged Commodity) Rules, 1976 and not mere lack of agency with the dealer/stockist to determine price. It was held by the Hon'ble Supreme Court, in *Commissioner of Central Excise & Service Tax, Kanpur v. AR Polymers Pvt Ltd* [2023-TIOL-21-SC-CX], that

'8. In the present case at hand, the respondent entered into a sale with the paramilitary and military as per the terms of agreement signed. While the goods in the impugned sale were notified under Section 4(A) of the Act by way of an official notification in the gazette, what is most relevant to us is Rule 3(b) of the Legal Metrology (Packaged Commodities) Rules, 2011 which exempts the sale to institutional consumers from its purview.

9. The purchasers in this case are military and paramilitary institutions, both of whom purchase the goods in bulk from the respondent, and then further distribute it to their employees. In this entire process from the sale of the goods to the goods Actually being used by the end consumer, the purchaser military and paramilitary institutions become industrial consumers, as they serve as an intermediary between the end consumer and the original purchaser.

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.

11. Further, even if we were to assume that Section 3(b) of the Legal Metrology (Packaged Commodities) Rules, 2011 is

inapplicable to the present purchaser, the impugned sale still fails the test of point (iii) of the Jayanti Foods judgment.

12. For the sale of goods to take refuge under Section 4(A) of the Act and pass the test of point (iii) in the Jayanti Judgment, there must be a requirement in the the Legal Metrology Act, 2009 or the rules made thereunder to declare the price of such goods relating to their retail price on the package. In simpler terms, it would mean that for a sale of goods to take assessment benefits under Section 4(A) of the Act, it must be a retail sale, and there must be a mandate of law that directs the seller to affix a retail price on the goods for a sale to be considered a retail sale.

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.

14. Apart from the exemption granted by way of Section 3(b) that automatically removes the mandate of law to affix an MRP on the sold goods, the said sale still cannot be considered a retail sale because the sale of the goods must be done to a consumer.

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.’

8. The peculiar construct of the proceedings is not that the allegation of short-payment of duties is assailed with claim that, additional duty of customs is not chargeable under section 3(1) of Customs Tariff Act, 1975. It is not the construct of the grounds for recovery that the imported goods did not bear ‘retail sale price (RSP)’ therein for, in consignments already cleared, that, admittedly, is not verifiable. In the construct of grounds of appeal, the mandate of affixing, among other particulars, retail sale price (RSP)’, is sought to be delinked from their obligations upon import. The proceedings were initiated for recovery of ‘additional duty of customs’ under the authority of section 3(1) of Customs Tariff Act, 1975 on the ‘retail sale price (RSP)’ instead of on the ‘transaction value’ to which ‘basic customs duty (BCD)’ had been added and liability discharged thereon by the appellant. There is, however, no provision under Customs Act, 1962 requiring the importer to affix ‘retail sale price (RSP)’ on the impugned, of for that matter on any, goods and Customs Tariff Act,

1975 is applicable, for the purpose of this dispute, only to

‘.....(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, 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:

XXXXX

Explanation--In this sub-section, the expression the excise duty for the time being leviable on a like article if produced or manufactured in India means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under sub-sections (1) and (3), the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of --

(i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include--

(ii) *any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962).....*

Provided that in case of an article imported into India,--

(a) *in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010)] 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 article; and*

(b) *where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is--*

(i) *the goods specified by notification in the Official Gazette under subsection (1) of section 4A of the Central Excise Act, 1944 (1 of 1944), the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article under sub-section (2) of section 4A of that Act;*

***Explanation--Where on any imported article 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 purposes of this section...'* (emphasis supplied)**

in section 3 therein and, in the context of claim of the appellant, leaving no room for doubt that value, for determination of additional duty of customs on such goods, shall be deemed to be, and as exception to the

general basis of assessment on value mandated by section 14 of Customs Act, 1962 adjusted for ‘basic customs duty (BCD)’, the ‘retail sale price (RSP)’ declared and, further, that Customs Tariff Act, 1975 is merely hitched to Legal Metrology Act, 2009 for access to notification, enumerating goods intended for coverage by special scheme of valuation for central excise and adjustment for price prevailing at other than ‘place of removal, under section 4A of Central Excise Act, 1944 which itself is a marriage of convenience that, from rigour and robustness of oversight envisaged in the latter till the last point of retail, offers price inoculated against the infection of misdeclaration as value for assessment to duties of central excise.

9. This dichotomy was not always so. The *proviso* in section 3(2) of Customs Tariff Act, 1975 *supra*, carving out exception from the valuation scheme prevailing till then for all imported articles, was incorporated by Finance Act, 2001² and to keep up with the treatment accorded to domestic manufacture for levy of duties under Central Excise Act, 1944 by incorporation of section 4A³ therein. Under the authority of this latter provision, notifications enumerating the articles carved out for segregation from standard valuation mechanism and abatement from ‘retail sale price (RSP)’ came to be issued and which, in turn, was, by the construct *supra* in the *proviso*, to be deployed for

² [Finance Act, 2001 (Act 14 of 2001), section 116 with effect from 1st March 2001]

³ [Finance Act, 1997 (Act 26 of 1997), section 82 with effect from 14th May 1997]h

assessment of imported goods to additional duty of customs. The proceedings are premised on such authority for ‘post-clearance’ revision, as empowering ‘proper officer’ for recovery of duties, not paid or short-paid, under Central Excise Act, 1944, vesting also in ‘proper officer’ of section 28 of Customs Act, 1962. In context, we note that Central Excise Valuation (Determination of Retail Sale Price of Excisable Goods) Rules, 2008, notified⁴ under the authority of enablement incorporated⁵ in section 4A of Central Excise Act, 1944, and the lack of machinery provision between 14th May 2003 and 1st March 2008, let alone for any prior period, was considered by a Larger Bench of the Tribunal in *re Ocean Ceramics Ltd*⁶ to bar recovery thus

‘90. The reference made by the Division Bench to the Larger Bench of the Tribunal is, accordingly, answered in the following manner:

(i)...It is not permissible to ascertain the retail sale price of goods removed from the place of manufacture, without declaring the retail sale price of such goods on the packages or declaring a retail sale price which is not the retail sale price or tampering with, obliterating or altering the retail sale price declared on the package of such goods after their removal from the place of manufacture, in respect of clearances made prior to 01.03.2008, on which date the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 came into force;’

and, in response to contention of legal authority for recovery of duties

⁴ [notification no. 13/2008-CE (NT) dated 1st March 2008]

⁵ [Finance Act, 2003 (Act 32 of 2003), section 137 with effect from 14th May 2003]

⁶ [2024 (1) TMI 1280 – CESTAT AHMEDABAD]

of central excise for earlier period. Furthermore, the notification issued under section 4A of Central Excise Act, 1944 is central to the fastening of liability to additional duty of customs – both for abatement and the goods intended to covered by the special method *supra*; here, in the prevailing notification⁷ ‘retail sale price (RSP)’ has been clarified as the *‘maximum price at which the excisable goods in **packaged form may be sold to the ultimate consumer** and includes..... and the price is the sole consideration for sale.’* (emphasis supplied). It may also be borne in mind that section 28 of Customs Act, 1962 permits recovery of duties short-paid or not paid at the time of assessment under section 17 and clearance under section 47 of Customs Act, 1962 owing to which the ‘proper officer’ exercises authority only to the extent vested then in the assessing authority to re-determine rate of duty and value. Therefore, the scope of adjudication in the present dispute was circumscribed by the constraints binding the assessing officer at the time of import.

10. It is evident from a harmonious reading of section 3(1) of Customs Tariff Act, 1975, and section 3(2) therein, that additional duty of customs *‘equal to the excise duty for the time being leviable on a like article if produced or manufactured in India’* was not intended to be the amount of duty to be discharged by a domestic manufacturer on clearance of like goods but only for applicable rate of duty of central excise to be charged on the value of the imported goods; thus, till

⁷ [notification no. 49-CE (NT) dated 24th December 2008]

section 3(2) of Customs Tariff Act, 1975 was varied in the manner *supra*, there was no scope for dispute over valuation for assessment of ‘additional duty of customs’ except in consequence of controversy attending on assessment of ‘basic customs duty (BCD)’ on imported goods. The central legislation on legal metrology, enacted by Parliament as Standards of Weights and Measures Act, 1956, dates back to preparation for signing the Convention of the Metre by adoption of the metric system for uniformity after re-organization of the states of the Union and which, though intended for standardizing units of mass and measure initially that was also extended to physics, was broadened by substituting enactment⁸ providing for ‘packaged commodities’ to be regulated through detailing of particulars thereon. The rules framed thereunder as well as the later enacted Legal Metrology Act, 2009, viz., Standards of Weights and Measures (Packaged Commodity) Rules, 1977 and Legal Metrology Rules, 2011, provided for obligations to provide specified details on ‘pre-packaged commodities’ as measure of consumer welfare to be enforced by or eponymous agency empowered for ensuring compliance by physical inspection till final sale. This assurance of integrity of declaration on packages, among which is ‘retail sale price (RSP)’ as ceiling, by intervention-driven deterrence breach combined with statutory chargeability to central excise duties upon any subsequent alteration - ‘deemed to be manufacture’ -

⁸ [Standards of Weights and Measures Act, 1976]

persuaded legislative sanction for assessment by resort to 'retail sale price (RSP)' in levy of duties of central excise at stage of clearance by manufacturer that may well be several stages away from final sale. The perceptible benefit of convenience and reduction in disputes over valuation may have prompted this variant in the valuation mechanism of 'normal price' prevailing then.

11. After all, in a tax statute designed for charging duties on manufacture of goods to be collected at the stage of sale, the transfer of possession, at a price not more than that printed on the packaged commodity along with attendant invoicing and assumption of duty liability, should have sufficed as earnest of compliance of intent in both statutes which, combined with regulatory oversight and enforcement authority vesting in legal metrology officials, offered adequate wherewithal for subsequent dutiability, if any, on deemed manufacture. That disputes of a new *genre* did emerge has more to do with inexorable instinct for revenue maximization venturing beyond the range intended by section 4A of Central Excise Act, 1944 to benchmarking of goods against prescriptions in legal metrology statutes for directed compliance. It may not be gainsaid that assessment to additional duty of customs is amenable to such transactional delineation as to permit grafting and that it is more attributable to legislative design of empowerment not traversing beyond ascertainment of conformity of declared 'retail selling price (RSP)' with such particular printed on

package of imported goods. The stipulations in legal metrology statute does not bind seller in international transaction. Even if imported goods are not in compliance thereof, it devolves on importer to make good the deficiency before clearance for home consumption in accordance with section 47 of Customs Act, 1962. The importer, thus, makes a declaration of 'retail selling price (RSP)' either from having instructed seller to print such on the package or from having had to undertake such printing after arrival; either way, it is not externally determined and occurs well before any transaction of further sale. Such 'price' lacks the rigour of an independent 'transaction value' contemplated in section 14 of Customs Act, 1962 both by provenance as well as by absence of benchmark and want of surrogate. When legislative sanction is for self-assessment to be effected against declaration with no benchmark for ascertainment compliance until after clearance and any discrepancy thereafter to be cause for charging duties of central excise as deemed manufacture, there is no scope for revisit of assessment effected at the time of clearance of imported goods.

12. Moreover, in the absence of provisioning for surrogate value akin to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the lack of machinery provision for re-assessment before clearance for home consumption handicaps equally any attempt to do so under section 28 of Customs Act, 1962 after clearance. This is the ratio of the decision, in *re Ocean Ceramics Ltd*, of a Larger Bench of

the Tribunal *supra*. Recourse cannot be had to any of the specific options in Central Excise (Determination of Retail Selling Price of Excisable Goods) Rules, 2008 which, having been framed under Central Excise Act, 1944, is not exercisable by officers of customs, let alone rule 6 therein offered as justification by adjudicating authority

13. Emerging from this backdrop of law, set out in section 3(1) of Customs Tariff Act, 1975 read with section 3(2) therein, is the proposition that declared value, whether of 'retail sale price (RSP)' or 'transaction value' in terms of section 14 of Customs Act, 1962, should, for levy of additional duty of customs, be accepted and intervention warranted, insofar as the former is concerned, only to assure conformity of declaration with particulars of price on the 'pre-packaged commodities' under import. Insofar as such articles being found, after clearance, to be without such details on package as is stipulated in Legal Metrology (Packaged Commodity) Rules, 2011 are concerned, detriment in accordance with section 111 of Customs Act, 1962 alone may be contemplated. Section 28 of Customs Act, 1962 does not merit invoking in the absence of empowerment to re-determine surrogate price through legislated mechanism; neither is the interests of the exchequer, in the context of nature and purposes of the levy, prejudiced sufficiently to sanction supply of any contrived lack with some price under authority of another law or without any validation. The disputed valuation in the impugned proceedings is secondary to, and contingent

upon, fitment of the impugned goods within coverage of notification issued under the authority of section 4A of Central Excise Act, 1944.

14. The appellant contends that the impugned goods, viz. parts of forklift trucks or other cargo moving equipment, are neither 'pre-packaged' nor meant for 'sale, distribution or delivery' to customers unaware of the commodity. The adjudicating authority held that the importer was obliged to declare 'retail sale price (RSP)', as marked on the package, to determine levy of additional duty of customs. In the factual matrix of claim of the appellant, such marking did not exist on the commodities; at best and in the circumstances of imported goods having been consumed no purpose is served by fastening 'retail sale price (RSP)', such as it is, on the goods and 'transaction value' adjusted for 'basic customs duty (BCD)' may be deemed to be the 'retail sale price' on which duty has already been discharged. No evidence of impugned goods having been sold at the price other than that adopted for computation of duty in the impugned show cause notice is available for affirmation of differential duty as being in accordance with law and procedure.

15. It is noted that applicability of chapter 2 of the Legal Metrology (Packaged Commodities) Rules, 2011 is limited to 'packages intended for retail sale' and it has not been evidenced that the impugned goods did pass through channel that conforms to 'retail sale' set out in rule 2(l) of the said Rules. Neither can it be discountenanced that the

impugned goods were not supplied to customers of original equipment supplied by them and, hence, within the ambit of exclusion extended to 'industrial consumer' exempted from stipulatory marking under rule 3 of Legal Metrology (Packaged Commodities) Rules, 2011.

16. Consumers of the appellant are either rendering service or are manufacturers. It is not in dispute that the customers of the appellant would be using the impugned goods for incorporation in 'forklift trucks' or 'material handling equipment' which are used either in factory of production or for servicing of customers. They cannot, therefore, not be excluded from the category of institutional customers or industrial customers as set out in rule 3 of Legal Metrology (Packaged Commodities) Rules, 2011. It was for the customs authorities to demonstrate that the buyers for whom the intended goods were procured are not institutional consumers or industrial consumers. The adjudicating authority has not adjudged so but rejected the claim as the impugned goods were not used in production of 'forklift trucks' or other material handling equipment for sale; though 'manufacturer' is found in the relevant provision, reference is not restricted to central excise point of view.

17. From submissions of Learned Special Counsel, the thrust of the proceedings appear to be intended for recovery on the ground that the trade channel, being entirely under the control of the appellant, the

statutory obligations manifest from legislative intent of consumer protection was to be complied with them till final sale. That would have been compellingly tenable if the impugned order had set out to examine the nature of sale for controverting the claim of appellant that industrial consumption was their intent at the time of import and discharge of duties of customs before clearance for home consumption being in accordance. The purpose of levying additional duty of customs is to accord national treatment to the goods. There is no authority under Customs Act, 1962 or Central Excise Act, 1944 to stipulate price of sale or marking thereto. That is legislated by legal metrology statutes and any deficiency thereto in the channel over which the two tax laws are not vested with enforcement oversight is to be left to legal metrology authorities with proceedings for recovery of duty not paid or short-paid as mere consequence thereto and for that limited purpose. Authority to enforce affixing of marks stipulated in Standards of Weights & Measures (Packaged Commodity) Rules, 1976 may lie with officers of customs only within the empowerment in section 47 of Customs Act, 1962 and not beyond and not with central excise officers beyond clearance on payment of duty. Price lists thus remain price lists and in line with decision of the Hon'ble Supreme Court in *re AR Polymers Pvt Ltd* do not mandate proviso in section 3(2) of Customs Tariff Act, 1975 coming into play.

18. All of these is academic in the light of lack of machinery provision for re-determination of 'retail sale price (RSP)' that impedes

re-visit of assessment of additional duties of customs. Such negation of authority is not of prejudice, as pointed out supra, to the interests of the exchequer or to the purpose of law. No case has been made out that the enforcement authority under Legal Metrology Act, 2009 had found these goods to be covered by statute and, thereby, in breach of the statute. There is no evidence that the goods had, at any stage, been sold at a price which was forced on their customers through lack of dissemination. There is no authority drawn from the provisions of Customs Act, 1962 or any of the rules framed thereunder to appropriate empowerment to re-assess value of impugned goods. The authority to re-assess the value under Customs Act, 1962 is limited to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and refers only to transaction value which is of relevance only to section 14 of Customs Act, 1962.

19. Accordingly, the appeals are allowed and impugned order set aside.

(Order pronounced in the open court on 17/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)