CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 41169 of 2015

(Arising out of Order-in-Original No.35635/2015 dated 27.02.2015 passed by Commissioner of Customs, Chennai-III, Custom House, No.60, Rajaji Salai, Chennai 600 001.)

M/s.BEML Ltd. **.... Appellant**
BEML Soudha,
23/1, 4th Main Road,
S.R. Nagar,
Bangalore 560 027.

VERSUS

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

APPEARANCE :

Shri D. Santhana Gopalan, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40794/2025

DATE OF HEARING : 13.03.2025
DATE OF DECISION : 04.08.2025

Per: Shri P. Dinesha

This appeal is filed by the Appellant-Importer against the **Order-in-Original No.35635/2015 dated 27.02.2015** whereby the Commissioner of Customs, Chennai-III has demanded the differential duty on the spares/components imported by the Importer-Appellant since these were in the nature of pre-packaged commodity and there was no MRP/RSP label as these parts/components were meant for after sales or replacement. The cause of action for the above demand is as described in the **SCN** dated **30.05.2013**; and the period involved is April 2010 to November 2011.

2. Heard Sri D. Santhana Gopalan, ld. Advocate, for the Appellant-Assessee and Sri Anoop Singh, ld. Joint Commissioner for the Respondent-Revenue.

3. Sri Santhana Gopalan invited our attention to documents placed on record viz., 2 Show Cause Notices [dated 05.04.2013 & 22.04.2013] issued for the period **April 2010 to November 2011** by the DGCEI proposing to demand duty alleging that the activity of packing and re-

packing amounted to 'Manufacture'. Insofar as the SCN dated 22.04.2013 is concerned, the proposed demands came to be confirmed *vide* **Order-in-Original No.60/2013 dated 22.11.2013** by the Commissioner of Central Excise, Bangalore-I. The other SCN was adjudicated by the Commissioner of Central Excise, Mysore who also confirmed the proposed demands *vide* **OIO** No. **MYS-EXCUS-000-COM-013-13-14 dated 26.02.2014**. It was contended in the synopsis filed by the Appellant these orders came to be challenged by the importer-appellant before CESTAT; vide **Final Order Nos.21005 to 21008/2014 dated 16.06.2014**, the **OIO No. 60/2013 dated 22.11.2013** was modified by confirming duty liability to the normal period alone. He would thus contend that at the very outset, there cannot be any case of suppression as the Department was aware of the activities of the Appellant based on the analysis of which, the demands came to be confirmed. Hence, the extended period of limitation is invoked without any fresh material and therefore, the demand is liable to be set aside.

3.1 Without prejudice to the above, he would contend on merits that there is no doubt that the imported goods are specified Under Notification No. 49/2008 dated 24.12.2008, however that itself is not sufficient to warrant MRP based assessment under Section 3 of the Customs Tariff Act. There should be a requirement in the first place mandating the declaration of RSP on the imported packages under the Legal Metrology Act, 2009 (LM Act, for short). In this regard, our attention was drawn to the provisions of LM Act as per which, the RSP is required to be declared on the pre-packed commodities where '…. *the packages are intended for retail sales; The packages do not contain quantity of more than 25 kgs or 25 litres; the packaged commodities are not meant for industrial consumers or institutional consumers ....'*

3.2 It is his case that the imported goods were not required to be affixed with RSP label since none of the above conditions was fulfilled. He would explain that the imported goods were not retail packages as they were sold after repacking, relabeling etc. Moreover, the imported goods were sold to 'industrial consumers' after repacking / re-labelling which activity was held to be 'manufacture' and hence, MRP/RSP based assessment of the imported goods is not sustainable.

3.3 It was further argued that the provisions of Standards of Weights and Measures Act (SWM Act, for short) and LM Act would apply only in such cases where the goods are imported for retail sales only without there being any activity post-importation, which is not the case here and the imported goods are necessarily subjected to repacking / relabeling and hence, the provisions of SWM Act & LM Act would not apply. Reliance in this regard is placed on the following orders:

(i) **Phil Marketing Services Pvt. Ltd. Vs CC & C.Ex (Goa)** - 2012 (286) ELT 582 (Tri.-Mumbai)

(ii) **Starlite Components Ltd. Vs CCE** – 2012 (286) ELT 43 (Tri.-Mumbai)

3.4 He would thus contend that since the activities of the Appellant in respect of the imported goods amounted to 'manufacture' with effect from April 2011, the Appellant having discharged the Excise Duty thereon for the period April 2010 to November 2011 on the RSP thereof, the Additional Customs Duty on the MRP basis as confirmed in the impugned order does not survive. He would hence pray for setting aside the demands in the impugned order.

4. *Per Contra,* Shri Anoop Singh relied on the findings in the impugned order. He also invited our attention to paras 21 and 22 of the Order-in-Original in his support to the effect that the Appellant never affixed the MRP/RSP label on the imported packages which suggests that the imported goods which were in fully packed condition, were meant only for retail sales. The other contentions of the Appellant as to the undertaking the activity of manufacture has been discussed in the OIO and therefore the arguments of the Appellant has no legal force. He would place reliance on the following judicial pronouncement:

> **NITCO Tiles Ltd. Vs Commissioner of Customs (Import) Mumbai** - 2015 (8) TMI 192 – CESTAT Mumbai (LB) = 2015 (325) ELT A202

5. We have heard the rival contentions and perused carefully the documents placed on record. Upon hearing both sides, we find that the issues to be decided by us are:

(1) Whether the demand confirmed on the MRP basis in the impugned order is sustainable? And

(2) Whether there was sufficient material for the Revenue to allege suppression & to demand duty by invoking the extended period of limitation?

6. Rule 3 of the Standards of Weights & Measures (Packaged Commodity) Rules, 1977 mandates that the provisions of Chapter II shall apply to packages intended for retail sales; Chapter II *supra* provides that the provisions contained therein including Rule 6 would be applicable to packages intended for retail sales; the necessary implication therefore is that the requirement of affixing MRP provided under the Rule 6 *supra* would be applicable only to packages intended for retail sales. Further, Rule 2(p) defines "Retail Package" to mean that which is intended for retail sales to the ultimate consumer for the purpose of consumption, which includes imported packages as well and "ultimate consumer" as defined under the said statute excludes 'industrial or institutional consumers'. 'Retail sales' has also been defined to mean the sale, distribution or delivery of such commodity through retail sales agencies or other instrumentalities for consumption by an individual or a group of individuals or any other consumer. The cumulative reading of the above provisions indicate that the only packages which are intended for retail sales to consumer or the retail

packages that requires affixation of MRP and it goes without saying that such consumer is to be understood in the context of SWM / LM Act to whom consumer protection legislation is applicable. By means of an Exclusion Clause under Rule 34, the application of Rule 6 has been specifically excluded insofar as a package containing a commodity indicating the specific packaging for the exclusive use of any industry as raw material or for the purpose of servicing any industry, mine or query is concerned. There is no dispute that the Appellant affixes on all the packages the stamp 'for industrial use only'.

7. The Appellant in this regard has relied upon the decision of the Hon'ble High Court of Karnataka in the case of **EWAC Alloys Ltd. v. Union of India** [2012 (275) ELT 193 (Kar)] wherein, it was held that the SWM Act/LM Act being a consumer protection legislation as evidenced by the objects and reasons of the Act, the term 'consumer' shall be construed in its ordinary meaning so as to extend the benefit of the legislation; that the Act is meant only for an individual consumer or a group of individuals who purchase packaged commodities from a retail dealer; that the protection under the Act is confined only to individuals and persons who are eking out livelihood by self-employment and not to

institutional and industrial consumers or consumers who purchase gods in large quantities.

8. Reliance in this regard is also placed on **Commissioner of Customs, Chennai Vs M/s.Acer India Pvt. Ltd.** [2023 (8) TMI 266-CESTAT CHENNAI]. The Tribunal dealt with a similar issue wherein the imported goods were sold to institutional consumers. The issue to be decided was whether the imported goods are to be assessed under Section 4 or Section 4A of the Central Excise Act for payment of CVD. The Tribunal held that the sale is not to an ultimate consumer and is only to the institutional consumer and hence, the assessment has to be made under normal transaction value under Section 4 of the Central Excise Act.

9. Rule 2A(3) of the PC Rules provides for an exception from affixation of MRP in respect of packages & commodities containing quantity of more than 25 kgs. In this case there is no denial that all the packages imported were of more than 25 kgs. The demand on account of non-affixation of MRP has been raised on packages of imported goods containing quantity of more than 25 Kgs is therefore not sustainable.

10. Viewed from settled legal position as above, we find that the demand of duty confirmed in the impugned order by invoking the extended period of limitation cannot sustain as it is clear a case of interpretation.

11. The extended period of limitation could be invoked in terms of the proviso to Section 28 of the Customs Act, where a duty of customs has been levied or paid or has been short levied or short paid by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of the Act or Rules issued thereunder.

12. The larger period of limitation is not invokable in the instant case inasmuch as the Appellant has not suppressed or misdeclared any facts much less with an intention to evade payment of duty. Bonafide / good faith by a Government PSU cannot be doubted, especially when there was *lis* although on a different issue. The other beneficial finding is also available in the Final Order of CESTAT wherein it has been held that for the very same period, there cannot be any duty liability other than for the normal period.

13. In view of the above, the Revenue has not made out a prima facie case for fastening the duty liability by invoking the extended period of limitation and hence, the duty liability if at all, is justified only for the normal period.

14. In view of the above discussion, we do not find any merit in the impugned order insofar as the duty liability fastened by invoking the extended period of limitation. Consequently, we set aside the impugned order and allow the Appeal with consequential benefits, if any, as per law.

(Order pronounced in open court on 04.08.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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