CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI
REGIONAL BENCH, COURT No. I

Customs Appeal No. 40962 of 2015

(Arising out of Order in Original No. 34730/2015 dated 30.01.2015 passed by the Commissioner of Customs (II), Chennai)

Commissioner of Customs .....**Appellant**
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai 600 001

Versus

M/s. ICMC Corporation Limited ……**Respondent**
No. 36, Ambattur Industrial Estate
Ambattur, Chennai 600 058

APPEARANCE:
Shri Sanjay Kakkar, Authorised Representative for the Appellant
Shri Shivakumar, Advocate for the Respondent

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 41137/2026

DATE OF HEARING: 02.06.2026
DATE OF DECISION: 28.10.2026

Per Mr. AJAYAN T.V.

The Revenue is in appeal against Order in Original No. 34730/2015 dated 30.01.2015 (the impugned order) passed by the Commissioner of Customs (II), Chennai, by which the proceedings initiated against M/s. ICMC Corporation Limited, Ambattur, Chennai (the respondent) by Show Cause Notice F.No. SIIB/19/2014 (S.Misc.124/2013-SIIB) dated 22.08.2014 (the notice) were dropped in their entirety. The appeal is filed pursuant to a review under Section 129D (1) of the Customs Act, 1962 (the Customs Act) by the Committee of Chief Commissioners. The

dispute pertains to the additional duty of customs leviable under Section 3(1) of the Customs Tariff Act, 1975 (the Tariff Act), which we refer to as CVD, on three lakh notebook computers imported for the free laptop scheme of the Government of Tamil Nadu.

Relevant facts

2. The respondent, in consortium with M/s. Shenzhen Hasee Computer Co. Ltd., China, was awarded a contract by the Electronics Corporation of Tamil Nadu Limited (ELCOT) for the supply of 3,00,000 notebook computers to educational institutions of the State under the free laptop scheme of the Government of Tamil Nadu. ELCOT Purchase Order No. ELCOT/PID/ICB/LTC/PII/2012-13/001 dated 14.02.2013 fixed the price at Rs.15,990/- per unit together with VAT at 5 per cent, which works out to Rs.16,790/-. The price covered the laptop with a backpack and preloaded software. The respondent invoiced the heads of the institutions and received payment from ELCOT out of funds allotted by the State Government. The students received the laptops free of cost.

3. Between February 2013 and October 2013 the respondent imported 3,00,000 laptops, of the brand Hasee and model HEC41, under 35 Bills of Entry. They were classifiable under tariff item 8471 30 10 attracting Nil Basic customs duty and CVD payable at 12 per cent. All goods falling under 8471 30, and accordingly these notebooks, were specified under Section 4A(1) of the Central Excise Act, 1944 (the Excise Act) by Notification No. 49/2008-CE (NT) dated 24.12.2008 as the goods to which the provisions of sub-section (2) of the said Section 4A shall apply and allowed the prescribed percentage of retail sale price as abatement. The respondent did not declare any retail sale price (RSP) in the Bills of Entry and self assessed CVD on the value determined under Section 3(2) of the Tariff Act, namely the transaction value under Section 14 of the Customs Act together with the basic customs duty.

4. In July 2013 the Special Intelligence and Investigation Branch (SIIB) of the Chennai Custom House took up three live Bills of Entry, Nos. 2594199, 2594203 and 2594206, all dated 02.07.2013. They covered 8,800, 16,000 and 6,500 laptops respectively, 31,300 in all, of an aggregate assessable value of Rs.39,59,23,357/-. The goods were

examined on 09.07.2013 and 10.07.2013. Each laptop was packed in a carton on which its specifications were printed together with the legends "For Supply to Govt. of Tamilnadu only" and "not intended for retail sale". No RSP was printed. A laptop switched on at random displayed the logo of the Government of Tamil Nadu, the photograph of the then Chief Minister and the name of the scheme. The goods were seized under Section 110 of the Customs Act. In his statement dated 16.07.2013 under Section 108, Shri M. Kannan, Managing Director of the respondent, explained the contract, the price and the terms of payment. He stated that MRP had not been declared because the laptops were meant for free distribution, and that, if any MRP was relevant at all, it was zero.

5. The respondent sought provisional release. By its letter dated 16.07.2013 it agreed, under protest, to a provisional assessment on the RSP basis. The Commissioner of Customs (Imports) permitted provisional release under Section 110A of the Customs Act on the respondent executing a bond and agreeing that the special additional duty of 4 per cent, which it would otherwise have claimed as refund, would be retained as a cash deposit by way of security. The consignments imported thereafter were cleared on the same basis. On 15.07.2013 the Controller of Legal Metrology, Tamil Nadu issued a certificate, No. M3/30165/2013, stating that as no retail sale was involved, declaration of RSP on the packages under the Legal Metrology (Packaged Commodities) Rules, 2011 (the PC Rules) did not arise. When the Custom House questioned that view, the Controller reaffirmed it on 25.11.2013. The Custom House in the interregnum referred the matter on 24.09.2013 to the Director of Legal Metrology, Department of Consumer Affairs, New Delhi. By letter No. WM-10(36)/2013 dated 09.04.2014 the Director opined that under Section 18(1) of the Legal Metrology Act, 2009 (the LM Act) no person shall import for sale a prepackaged commodity without the prescribed declarations, that the respondent was importing the goods for sale to ELCOT, that the respondent was neither an institutional nor an industrial consumer, and that it may be advised to declare the MRP. In May 2014 the respondent imported a further 26,000 laptops under a fresh ELCOT order and, as recorded in the notice, declared RSP on those Bills of Entry. The impugned order records that the respondent's appeal concerning those

consignments was allowed by the Commissioner of Customs (Appeals II) by order dated 20.11.2014.

6. The Department was of the view that the laptops were notified goods to be assessed to CVD on the RSP basis; that Section 18(1) of the LM Act and the PC Rules obliged the respondent to declare RSP; that neither Rule 26 nor Rule 3 of the PC Rules exempted the goods; that neither the respondent nor ELCOT was an institutional or industrial consumer; and that paragraph 5 of the General Notes regarding Import Policy in Chapter 1A of Schedule 1 to ITC (HS), read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000, required imported packages to carry the RSP. On the aforesaid basis, the Department issued the notice in which it stated that "if contract sale price of Rs. 16,790/- (inclusive of VAT 5%) is taken into consideration", CVD on all 35 Bills of Entry would amount to Rs.48,35,52,000/-, as against Rs.44,52,05,372/- actually paid. The difference of Rs.3,83,46,628/- was attributed to an intentional suppression of the sale price.

7. The notice called upon the respondent to show cause why the differential duty of Rs.3,83,46,628/- should not be demanded under Section 28(4) of the Customs Act; why an equal amount out of the special additional duty retained as cash deposit should not be appropriated; why the 35 consignments, of an assessable value of Rs.371,00,44,768/-, should not be confiscated under clauses (d) and (o) of Section 111; why interest should not be demanded under Section 28AA; and why penalty should not be imposed under Section 114A. The notice did not refer to any provision of the Customs Act, the Tariff Act or any rules under which an RSP that had never been declared could be ascertained for the purpose of CVD.

8. In its reply dated 13.11.2014 the respondent contended that the packages were specially made for a free distribution scheme and could never reach the retail market; that there was no sale to the students, who were the ultimate consumers, and hence no retail sale; that its case was squarely that of Nestle India in *Jayanti Food Processing (P) Ltd. v. Commissioner of Central Excise, Rajasthan, 2007 (215) E.L.T. 327 (S.C.)*; that Board *Circular No. 625/16/2002-CX dated 28.02.2002*

supported valuation under Section 4; that the State Controller, and not the Director at New Delhi, was the authority under the LM Act for trade within the State. It also contended that the assessments of 1,70,100 laptops cleared before July 2013 could not be reopened, that there was no suppression, and that neither interest nor penalty was attracted. The respondent was heard on 15.12.2014, during which hearing, the respondent submitted the Order of the Commissioner (Appeals) dated 20.11.2014 in their favour pertaining to the lot of 26000 Nos. laptops and also submitted a letter dated 09.05.2014 issued on behalf of the Director of legal Meterology, Department of Consumer Affairs, New Delhi, by which the Director had himself opined to the Cement Manufacturers Association that goods bought directly from the manufacturer at a contracted price need not carry an MRP.

9. The Adjudicating Authority examined the five conditions laid down in *Jayanti Food Processing* for the application of Section 4A. He found the case analogous to that of Nestle India, which supplied KITKAT chocolates to Pepsico for free distribution and was held assessable under Section 4. He drew support from *Commissioner v. Rallis India Ltd*., *2007 (212) ELT 103 (Tri-Mumbai)* and *Commissioner v. Sidmak Laboratories (India) Ltd*., *2009 (242) ELT 255 (Tri-Ahmd)*, against which the appeals preferred by the Revenue were dismissed by the Supreme Court, and further noted that the Revenue had itself appealed against *PG Electroplast Ltd. v. Commissioner*, on which the notice relied. He held that RSP is the maximum price at which the commodity may be sold to the ultimate consumer, that the students receive the laptops free, that there is no sale within the meaning of the LM Act at the stage of distribution, and that a declaration of RSP is required only on packages intended for retail sale. In his view, the absence of an exemption could not create an obligation that the law did not impose. He accepted the opinion of the State Controller as the competent authority, found no violation of the import policy and no suppression, upheld the assessment of CVD on transaction value, and dropped all the proposals.

Submissions on behalf of the appellant Revenue

10. Shri Sanjay Kakkar, Learned Authorised Representative, reiterated the grounds of appeal. Section 18(1) of the LM Act forbids the import for sale of a prepackaged commodity without the prescribed

declarations, and the laptops are not exempted by Rule 26 or Rule 3 of the PC Rules. Retail sale, as defined in the PC Rules, takes in sale, distribution or delivery through retail sale shops, agencies or other instrumentalities for consumption by an individual, a group of individuals or any other consumer. Distribution by an instrumentality is therefore itself a retail sale, and monetary consideration from the ultimate consumer is not a criterion. There was in any event a sale for consideration from the respondent to ELCOT, and the later free distribution does not alter that character.

11. The Adjudicating Authority, he would argue, stopped short in *Jayanti Food Processing* at the KITKAT portion and failed to notice paragraphs 32 and 33, where telephones bought by the Department of Telecommunications, MTNL and BSNL and supplied to subscribers without sale were held to be in retail packages assessable under Section 4A. Ld. A.R. would further submit that the Adjudicating Authority erred in setting the opinion of the Director of Legal Metrology, New Delhi; who had considered the State Controller's view; aside, since an import cannot be classed as intra State or inter State. Reliance was placed on *PG Electroplast Ltd. v. Commissioner of Central Excise and Service Tax, Noida, 2014 (307) E.L.T. 787 (Tri. - Del.), Butterfly Gandhimathi Appliances Ltd. v. Commissioner, 2014 (11) TMI 920 - CESTAT Chennai, 2015 (327) E.L.T. 115 (Tri. - Chennai), Wipro Ltd. v. Commissioner of GST and Central Excise, Puducherry, 2025 (11) TMI 76 - CESTAT Chennai and Mexim Adhesive Tapes Pvt. Ltd. v. Commissioner, 2013 (291) E.L.T. 195 (Tri. - Ahmd.)*. Ld. A.R. urged that other importers supplying laptops to ELCOT, such as Acer India and United Telecom, had declared RSP. At the hearing the Ld. A.R. also relied on *Gujarat Ambuja Cements Ltd. v. Union of India, 2006 (3) S.T.R. 608 (S.C.)*, and on *Orissa State (Prevention and Control of Pollution) Board v. Orient Paper Mills, (2003) 10 SCC 421*: *2003 (3) TMI 711-Supreme Court*, for the proposition that the absence of rules does not render a statutory power inoperative, as well as *Butterfly Gandhimathi Appliances Ltd. v. Commissioner, 2014 (11) TMI 920 - CESTAT Chennai, 2015 (327) E.L.T. 115 (Tri. - Chennai),* and *Wipro Ltd. v. Commissioner of GST and Central Excise, Puducherry, 2025 (11) TMI 76 - CESTAT Chennai*, in support of his contentions. It was urged that the grounds also assert that the demand was rightly made under Section 28(4) on account of wilful suppression.

Submissions on behalf of the respondent

12. Shri. G. Sivakumar R, Learned Counsel for the respondent commenced his arguments on the matter first on jurisdiction. The notice, he argued, does not disclose under what provision the proper officer may discard transaction value and determine an RSP that was never declared. Neither the Customs Act nor the Tariff Act confers such a power. Sub section (4) of Section 4A of the Central Excise Act and the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 (the RSP Rules) operate only under the Excise Act and have not been borrowed into Section 3 of the Tariff Act. Without such a power, the demand offends Article 265 of the Constitution. Reliance was placed on *ABB Ltd. v. Commissioner of Customs, 2011 (272) E.L.T. 706 (Tri. - Bang.): 2010 (12) TMI 1027- CESTAT, Bangalore, Commissioner of Customs v. V.J. Traders, 2019 (366) E.L.T. 909 (Tri. - Del.), Commissioner of Customs v. King Kaveri Trading Co., 2019 (370) E.L.T. 1049 (Tri. - Mumbai), DS Chandok & Sons v. Commissioner of Customs, 2021 (9) TMI 417 - CESTAT Mumbai, Acer India (Pvt.) Ltd. v. Commissioner of Customs (Audit), Chennai, 2024 (5) TMI 478 - CESTAT Chennai* and *M/s. Ocean Ceramics Ltd. v. Commissioner, 2024 (1) TMI 1280 - CESTAT Ahmedabad - LB*. Ld. Counsel stated that the Revenue's appeals against *ABB* and *V.J. Traders* are pending before the Supreme Court without any stay. Where what was done by the Department was done with or without power, he urged, has to be decided at first, and only then the question of what the importer ought to have been done, or has not done, would arise for consideration.

13. Without prejudice, Ld. Counsel argued that even if the RSP Rules could be borrowed, the notice does not say which rule was applied; Rule 5 deals with post removal alteration and does not apply; Rule 4 requires the price of identical goods or a retail market enquiry, neither of which was attempted; and Rule 6 is residual and cannot be used to adopt a contracted institutional price as an RSP. The contract price also covered a backpack bought locally at Rs.372 and software, while only laptops were imported. Even if a reasonable value of the bag were deducted, as Acer India had done for the same scheme, the CVD paid on transaction value would equal or exceed the CVD on the resulting figure, and there would be no short payment.

14. On merits, Ld. Counsel submitted that goods meant for free distribution and not for retail sale need not bear an RSP, and their valuation falls under Section 4 of the Excise Act. He relied on paragraphs 20 to 30 of *Jayanti Food Processing, 2007 (215) ELT 327 (SC)*, *Commissioner v. Rallis India Ltd., 2010 (254) E.L.T. A73 (S.C.), Commissioner v. G.S. Enterprises, 2015 (321) E.L.T. A131 (S.C.), Commissioner v. Sidmak Laboratories (India) Ltd., Civil Appeal Nos. 5316-5317 of 2009, Bajaj Food Products (P) Ltd. v. Commissioner, 2015 (317) E.L.T. 116 (Tri. - Del.), as affirmed, Commissioner v. Sun Pharmaceutical Industries Ltd., 2015 (12) TMI 670 - Supreme Court, Commissioner v. Chordiya Food Products Ltd., 2011 (272) E.L.T. 378 (Tri. - Mumbai)*, *Jewel Consumer Care Pvt. Ltd. v. Commissioner, 2023 (3) TMI 534 - CESTAT Ahmedabad, Contemporary Target Pvt. Ltd. v. Commissioner, 2019 (10) TMI 633 - CESTAT Ahmedabad, JOCIL Ltd. v. Commissioner, 2019 (2) TMI 747 - CESTAT Hyderabad, Modern High Tech India v. Commissioner, 2007 (9) TMI 162 - CESTAT Chennai, Calcutta Chemical Company Ltd. v. Commissioner, 2016 (4) TMI 13 - CESTAT Chennai, Board Circular No. 625/16/2002-CX dated 28.02.2002*; and paragraph 42 of the FAQs issued by the Department of Consumer Affairs on 09.05.2022. The Chennai decisions cited by the Revenue, he said, turned only on whether the buyer was an institutional consumer and never addressed the anterior question whether an RSP was required at all for goods meant exclusively for free distribution. Paragraphs 32 and 33 of Jayanti Food Processing are based on the admitted fact that the telephones were also sold in the retail market in the same package. He also pointed out that in its appeals before the Supreme Court against *PG Electroplast, Butterfly Gandhimathi* and *LLM Appliances* the Revenue had contended that goods supplied for free distribution are to be valued under Section 4, which is the opposite of its stand here.

15. Ld. Counsel also pointed out that ELCOT was only the implementing agency of the scheme; that the supplies were invoiced to the heads of the institutions for free distribution to students; and that if a declaration were insisted upon at all, a truthful declaration such as "free supply" or "not for sale" would itself satisfy the law, so that a nil RSP could yield no demand. It was further argued that the matter turned on the interpretation of the law, the respondent had disclosed every fact

from the outset, and there was neither suppression nor any ground for confiscation, interest or penalty.

Analysis

16. We have heard the rival submissions and perused the materials available on record.

17. The following issues arise for our determination:

i. Whether, for the levy of CVD on an imported article under Section 3 of the Tariff Act, the proper officer had authority in law to discard the value adopted by the importer and to assess CVD on an RSP that was never declared, by adopting the price under the ELCOT contract as that RSP?

ii. Whether the laptops were required under the LM Act and the PC Rules to bear a declaration of RSP, so as to attract the proviso to Section 3(2) of the Tariff Act at all?

iii. Whether the extended period of limitation under Section 28(4) of the Customs Act was available to the Revenue?

iv. Whether the goods were liable to confiscation under Section 111(d) and (o)? and

v. Whether interest under Section 28AA and penalty under Section 114A were attracted?

18. We take up the issues in seriatim. The first issue goes to the root of the demand, since a demand made without authority of law cannot stand however strongly the facts may favour the Revenue. The second question cannot be avoided, even if the answer to the first were to dispose of the demand. The proposal to confiscate the goods under Section 111(d) depends on whether the respondent was under a legal obligation to declare an RSP. The impugned order rests entirely on that question, and every ground of appeal is targeted at it. We therefore decide it as well. Limitation, confiscation and penalty follow.

Issue (i). Whether the proper officer could determine an undeclared RSP for the levy of CVD

19. The point was not taken before the Commissioner, who decided the matter on merits. It is a pure question of law. It arises on the face of the notice and needs no fresh fact. A respondent who defends the order under appeal is entitled to support it on such a ground, and the Revenue had full opportunity to meet it at the hearing.

20. CVD is levied by Section 3(1) of the Tariff Act on every imported article at a rate equal to the excise duty leviable on a like article if produced or manufactured in India. Section 3(2) prescribes the measure. By default the value for CVD is the aggregate of the value determined under Section 14(1) of the Customs Act, or the tariff value, and the basic customs duty and other sums chargeable in the same manner. To this Section the proviso admits an exception. As it stood during the period of import, the proviso read, in so far as is material, thus.

> "Provided that in case of an article imported into India,-
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> (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 sub-section (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."

21. A careful reading of the proviso indicates three noticeable features. It operates only where there is a legal requirement to declare the RSP on the package. It borrows from Section 4A of the Excise Act only two things, namely the list of goods specified under sub section (1) and the abatement allowed under sub section (2). Most significantly, the deeming fiction attaches to "the retail sale price declared on the imported article". The only situation that the proviso itself anticipates beyond a single declaration is that of more than one declared price, and the Explanation resolves it by taking the maximum. The proviso is silent on a case where no RSP is declared or where the RSP declared is said to be wrong, and on how a correct RSP is to be found in either case.

22. Section 4A of the Excise Act shows that Parliament knew how to provide for those cases when it wished to. As enacted in 1997, Section 4A contained no such provision. Sub section (4), inserted in 1999, provided only for confiscation. The sub section substituted with effect from 14.05.2003 provided, for the first time, that where the manufacturer removes specified goods without declaring the RSP, or declares an RSP which is not the one required to be declared, or tampers with the declaration after removal, the goods shall be liable to confiscation "and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section". The prescribed manner came only with the RSP Rules notified on 01.03.2008. Rule 3 of those Rules confines them to the determination of RSP of excisable goods "under sub-section (4) of section 4A of the Act", and the Act there means the Central Excise Act, 1944. Rule 4 prescribes a sequence, beginning with the declared RSP of identical goods removed within a month and, failing that, a retail market enquiry. Rule 5 deals with post removal alteration, and Rule 6 is the residuary rule.

23. Nothing in Section 3 of the Tariff Act takes in sub section (4) of Section 4A or the RSP Rules. Section 3(8), as it then stood, applied the provisions of the Customs Act and the rules and regulations made under it, including those relating to drawback, refunds and exemptions, to the duty chargeable under Section 3. The Customs Act and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provide for the determination of transaction value under Section 14, and for surrogate methods when that value cannot be accepted. They

contain no method for ascertaining the RSP of an imported article. The notice does not dispute the transaction value declared by the respondent. In 2003, when the Parliament supplied a power of ascertainment under the Central Excise Act, it did not supply a corresponding power in the Tariff Act, though the proviso to Section 3(2) has stood on the statute book even prior. That omission must be taken to be deliberate. It is not for an adjudicating authority, nor for this Tribunal, to fill it by construction.

24. The Larger Bench of this Tribunal in *M/s. Ocean Ceramics Ltd. v. Commissioner, 2024 (1) TMI 1280 - CESTAT Ahmedabad – LB*, examined the question under the Excise Act itself. It held that once sub section (4) of Section 4A requires the RSP to be ascertained in the prescribed manner, the RSP can be ascertained only under the RSP Rules and in no other manner. It further held that the RSP Rules are substantive and not procedural, and so cannot apply to clearances before 01.03.2008. The Larger Bench drew on the Constitution Bench in *Mohammad Hussain Gulam Mohammad v. State of Bombay, AIR 1962 SC 97*, and on the decisions of the Supreme Court in *Consumer Online Foundation v. Union of India* and *Municipal Corporation of Greater Mumbai v. Property Owners Association*. On that footing it observed thus.

> "46. It, therefore, follows that it would be impermissible for any adjudicating authority to ascertain the RSP by any other methodology, for such an ascertainment would not only be contrary to the statutory prescription contained in sub-section (4) of section 4A, but would also amount to substituting the words 'in the prescribed manner' and would have the effect of empowering an adjudicating authority to determine for itself the manner of ascertaining the RSP…..
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> …….
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> 52. ... Thus, any excise duty collected not in accordance with the manner prescribed i.e. in accordance with the 2008 Rules would be without authority of law."

25. If that is the position under the Excise Act, which has an enabling provision and rules framed under it, the position under the Tariff Act,

which has neither, follows *a fortiori*. *Ocean Ceramics* was rendered under the Excise Act, and we refer to it for its reasoning on the nature of the power and not as a decision on Section 3 of the Tariff Act.

26. The Tribunal has consistently so held in relation to CVD. In *ABB Ltd*. the importer had not declared any RSP. The Bangalore Bench held that in the absence of a machinery in the Tariff Act to determine the RSP, no demand of differential CVD could validly be raised. It rejected the plea of purposive construction in these words.

> "19. ... We do not think that the said principle provides for, nor is it competent for the Tribunal, to supply by construction, a mandatory provision absent in the statute."

27. *ABB* was followed in *V.J. Traders*, where the Principal Bench held that the pendency of the Revenue's appeal before the Supreme Court, without any stay, did not detract from its precedential value. In *King Kaveri Trading Co.* the Mumbai Bench held that "no provision exists for ascertainment of 'retail sale price' in the same manner as provided for in Section 4A of Central Excise Act, 1944" and that, in the absence of a declaration, "the adoption of another price by the proper officer of customs does not constitute the appropriate assessment". In *DS Chandok & Sons* the Mumbai Bench found that while the Excise Act empowered revaluation from 01.03.2008, there was no corresponding power under the Customs Act or the Tariff Act, and that the revision of the declared RSP was without authority.

28. A coordinate Bench of this very Bench decided the point in *Acer India* in respect of laptops supplied to ELCOT under the same free laptop scheme, imported during 2012 to 2014. The facts there, were in one respect, less favourable to the importer than here, for Acer India had declared an RSP, and the Revenue sought to redetermine it under Rule 6 of the RSP Rules. The Bench held that the proviso to Section 3(2) refers to Section 4A(1) only to identify the goods and to Section 4A(2) only for abatement, that Rule 3 of the RSP Rules confines them to the Excise Act, and concluded thus.

> "23. ... As there is no methodology or machinery for redetermining the MRP of goods imported for the purpose of payment of CVD, we hold that such re-determination of MRP is against the provisions of law."

29. *Acer India* binds us as a decision of a coordinate Bench on the very scheme and the same kind of goods. We do not see any reason to doubt its correctness. The Revenue has not pointed to any decision of a larger Bench or of a superior court that takes a different view.

30. More recently, in *Larsen & Toubro Ltd. v. Commissioner of Central Excise, Mumbai I, 2025 (10) TMI 498 - CESTAT Mumbai*, the Mumbai Bench held that Section 28 of the Customs Act permits recovery only within the authority that the assessing officer possessed at the time of assessment. It then observed thus.

> "13. ... 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."

31. The Bench also held that recourse cannot be had to the RSP Rules, which, framed under the Excise Act, are not exercisable by officers of customs. The Revenue's civil appeals against that order were dismissed by the Supreme Court on 01.10.2026 in *Commissioner of Central Excise, Mumbai I v. Larsen & Toubro Ltd., Civil Appeal Nos. 13304-13306 of 2026, 2026 (10) TMI 490 - SC Order*. The order of dismissal gives no reasons, and we do not treat it as a declaration of law under Article 141. The order of the Tribunal has nonetheless been affirmed in a civil appeal, and the line of decisions we have referred to remains undisturbed by any superior forum.

32. These decisions rest on principles laid down by the Hon'ble Supreme Court. A taxing statute has four components, namely, the taxable event, the person on whom the levy is imposed, the rate at which the levy is imposed, and the measure or value to which the rate is applied. The Supreme Court restated them in *Union of India v. Mohit Minerals Pvt. Ltd., 2022 (61) G.S.T.L. 257 (S.C.),* at paragraph 88, drawing on *Govind Saran Ganga Saran v. Commissioner of Sales Tax, AIR 1985 SC 1041: 1985 Supp SCC 205*. The measure is thus as much

a part of the levy as the charge itself. In *Commissioner of Income Tax v. B.C. Srinivasa Setty, AIR 1981 SC 972: (1981) 2 SCC 460*, a Bench of three Judges held as follows.

> "... the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section."

33. In *R & B Falcon (A) Pty Ltd. v. Commissioner of Income Tax, (2008) 12 SCC 466*, the Supreme Court noticed the explanatory circular of the Central Board of Direct Taxes on fringe benefit tax, which proceeded on the settled principle that where the computation provisions fail, the charging section cannot be effectuated, and held that such executive construction ordinarily binds the department. In *Commissioner of Central Excise and Customs, Kerala v. Larsen & Toubro Ltd., 2015 (39) S.T.R. 913 (S.C.)*, the Supreme Court held that before 01.06.2007 service tax could not be levied on indivisible works contracts, because the Finance Act, 1994 provided neither the charge nor the machinery to separate the service element.

34. The Hon'ble Supreme Court applied the same principle only this August in *Commissioner of Service Tax, Chennai v. Diebold Systems (P) Ltd., 2026 INSC 808*, decided on 06.08.2026 in Civil Appeal Nos. 4708-4711 of 2008. The Revenue there had attributed 33 per cent of the price of turnkey contracts for automated teller machines to installation and commissioning. Rejecting the attempt, the Court said thus.

> "20. ... machinery or valuation provisions facilitate the computation of a tax validly imposed and they do not create or enlarge the charge itself.
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> ...
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> xxx
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> 34. ... The absence of a legislatively sanctioned mechanism for such segregation assumes particular significance in the field of taxation, where both the charge and the measure of tax must have clear statutory authority. ... Unless the Finance Act, 1994 authorised the segregation of the service element embedded in an indivisible composite contract, no percentage, however scientifically determined, could confer jurisdiction

upon the Revenue to levy service tax. The existence of a valid charging provision must precede the determination of value and it cannot be derived from the valuation exercise itself. …"

35. In *Adani Power Ltd. v. Union of India, 2026 (395) E.L.T. 369 (S.C.), decided on 05.01.2026*, the Supreme Court, in paragraph 59, held that a tax can be levied only where there is a clear charging provision, an identifiable taxable event and a statutory rate making mechanism, and that "neither machinery provisions nor exemption notifications can substitute for the absence of a charge". It added that "a deeming fiction cannot be pressed beyond the purpose for which it was enacted". The deeming fiction in the proviso to Section 3(2) is confined to a declared RSP. To extend it to a price that the officer considers ought to have been declared is to press it well beyond its terms.

36. *Wipro Ltd. v. Assistant Collector of Customs, 2015 (319) E.L.T. 177 (S.C.)*, decided on 16.04.2015, points the same way. Proviso (ii) to Rule 9(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, as amended on 05.07.1990, added loading, unloading and handling charges at 1 per cent of the FOB value whether or not the actual charges were ascertainable. The Hon'ble Supreme Court held in paragraph 26 that "wherever actual cost of the goods or the services is available, that would be the determinative factor. Only in the absence of actual cost, fictionalised cost is to be adopted". A provision that "introduces fiction ... even in those cases where actual cost paid on such an account is available and ascertainable" was held contrary to Section 14 of the Customs Act, ultra vires, and arbitrary in violation of Article 14 (paragraph 31). The Court read the proviso down to apply only where the actual charges were not ascertainable (paragraph 36). At paragraph 35 it approved the observation in *Kunj Behari Lal Butail v. State of H.P., (2000) 3 SCC 40*, that a general power to make rules for carrying out the purposes of an Act cannot be exercised "to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself". If a fiction cannot displace the actual value even when it is prescribed by a rule framed under the Act, it plainly cannot do so when no rule or provision prescribes it at all. Here the transaction value is neither

disputed nor shown to be unascertainable, and it has been displaced by a figure that is not authorized under any statute.

37. *Steel Authority of India Ltd. v. Commissioner of Central Excise, Raipur, 2019 (366) E.L.T. 769 (S.C.)*, was decided by a Bench of three Judges of the Honourable Supreme Court. In paragraph 21 the Court set out the observations of the Constitution Bench in *J.K. Synthetics Ltd. v. Commercial Taxes Officer, (1994) 4 SCC 276*. While the charging section is construed strictly and machinery provisions are construed to effectuate the statute, the Constitution Bench cautioned that a provision empowering the authority to levy and collect interest, "even if construed as forming part of the machinery provisions, is substantive law". The same reasoning applies here. A power to set aside the value adopted by the importer and to substitute a deemed value that yields a larger duty is not a mere matter of procedure. It enlarges the burden of the subject, and is substantive. That is precisely why the Larger Bench in *Ocean Ceramics* refused to give the RSP Rules retrospective operation. A substantive power of that kind cannot be implied into the Tariff Act from the purpose of the levy.

38. Taxing statutes are not construed as other statutes are. In *Union of India v. Rajeev Bansal, 2024 INSC 754*, a Bench of three Judges reiterated, at paragraphs 34 and 35, that in a taxing statute there is no room for intendment; that it can impose a liability only if it frames appropriate provisions to that end; that courts cannot plug a loophole by a strained construction; and that "it would not be an unjust result if a taxpayer escapes the tax net on account of the legislature's failure to express itself clearly". A regulatory enactment may be read so as to advance its object and to suppress the mischief. A taxing enactment imposes a compulsory exaction, and under Article 265 nothing may be exacted without authority of law. That difference is decisive in examining the authorities on which the Revenue relies.

39. Ld. A.R. has relied on the Judgement in *Orissa State (Prevention and Control of Pollution) Board v. Orient Paper Mills,* which arose under the Air (Prevention and Control of Pollution) Act, 1981. Section 19 of that Act itself empowered the State Government to declare an air pollution control area by notification. The Court held that the words "in

such manner as may be prescribed" did not make the framing of rules a condition precedent, and that the power could be exercised in the absence of rules. The decision pertained to a regulatory power in a pollution control law, enforced by criminal prosecution. The power itself was conferred by the statute and the rules were to regulate only the manner of its exercise. Nothing was exacted from the citizen. Here, no provision of the Tariff Act confers on the proper officer any power to ascertain an RSP. The question is not whether a statutory power may be exercised before rules are framed. It is whether a power that the statute does not confer at all may be assumed. Moreover, under the Central Excise Act, where sub section (4) of Section 4A did confer the power to ascertain the RSP in the prescribed manner, the Larger Bench in *Ocean Ceramics* held, on the strength of Article 265 and of *Mohammad Hussain Gulam Mohammad*, that the prescription was a condition of the levy. *Orient Paper Mills,* in our view, does not assist the Revenue.

40. *Gujarat Ambuja Cements Ltd. v. Union of India, 2006 (3) S.T.R. 608 (S.C.)*, decided on 17.03.2005 and cited by the Ld. A.R., is with respect to service tax on the services of goods transport operators. In *Laghu Udyog Bharati v. Union of India, (1999) 6 SCC 418:1999 (112) ELT 365 (S.C)*, the Hon'ble Supreme Court had struck down Rules 2(1)(d),(xii) and (xvii) of the Service Tax Rules, 1994, which made the customers liable, because they conflicted with the charging provisions of the Finance Act, 1994. Parliament then amended the charging provisions themselves, with retrospective effect, by Sections 116 and 117 of the Finance Act, 2000 and Section 158 of the Finance Act, 2003. Upholding the amendments, the Court explained at paragraph 23 that the rules had been held illegal "only because the charging provisions of the Act provided otherwise", that "the charging section itself has been amended so as to make the provisions of the Act and the Rules compatible", and that "a legislature is competent to remove infirmities retrospectively and make any imposition of tax declared invalid, valid". The Ld. A.R. emphasized on paragraphs 28 and 35, which distinguish the object of a tax, its incidence and the machinery for its collection, and hold that the point at which collection is made is a matter of legislative convenience. Those observations concern the stage and the person from whom a tax validly imposed by Parliament is collected. They were made after Parliament had itself enacted the machinery. They say

nothing about the measure of the tax, which, as *Mohit Minerals* holds, is an essential component of the levy. Read as a whole, the decision shows that where an exaction lacks a statutory foundation, the remedy lies with Parliament and not with the officers who administer the law. We are of the firm opinion that this decision does not help the Revenue.

41. At this juncture, it would be apposite to note the Judgement of the Honourable Apex Court in *New India Assurance Co. Ltd. v. Dolly Satish Gandhi, 2026 INSC 498*. The Apex Court, upon finding that contrary positions had been taken by Benches of the same High Court, some of them in ignorance of pronouncements of Benches of higher strength, went on to observe that such inconsistencies, when left unaddressed, lead to judicial inconsistency and uncertainty, that so long as opposing views exist it becomes a matter of choice to follow one and leave aside the other and no longer a matter of law, and that settled precedents ensure definitive outcomes and judicial efficiency. Thereafter, the Apex Court in its sagacity, held in paragraph 14 that, though counsel owe a duty to bring to the Court's notice judgments both for and against them, the Court itself bears an independent threefold duty, to apply the correct law even if counsel does not cite it, to ensure consistency with precedent, and to avoid per incuriam decisions. Undoubtedly, therefore, it should be the continuous endeavour of this Tribunal to be aware of the decisions of the coordinate Benches of this Tribunal, as well as those rendered by higher judicial forums, on any issue of law, so as to adhere to judicial discipline and not to render decisions at variance with the view already taken earlier. Therefore, in deference to the aforesaid duty cast upon us by the Hon'ble Apex Court and to abide by the same, we proceed to embark on an examination and analysis of the import of the following decisions, which appear to possibly lend some support to Revenue's stand on this issue at first blush, and thus have a bearing on the merits of this issue before us.

42. *Great Eastern Shipping Co. Ltd. v. Union of India, 2002 (150) E.L.T. 1403 (Del.)*, pertaining to the confiscation of a vessel under Section 115(2) of the Customs Act. The vessel had been used for smuggling, and the master had failed to show that he took reasonable precautions. The Delhi High Court held that the mere non framing of rules under Section 115(2) did not make an inadequate search reasonable. The power of confiscation was conferred by the section

itself, and the rules were only to guide the precautions expected of the master. *Rupani Spinning Mills Pvt. Ltd. v. Union of India, 1992 (60) E.L.T. 77 (Guj.)*, was a writ petition by importers of rags. Section 24 of the Customs Act enabled rules for permitting mutilation of imported goods at the importer's request. In the absence of such rules the High Court directed the customs authorities, in the spirit of Section 24, to permit mutilation at the port so that the imports could continue. That was a direction for the importer's benefit. It permitted a relaxation, and imposed no exaction. We are of the view that neither decision touches the levy of a tax, nor supports the proposition that an officer may assume a power of valuation that the taxing statute withholds.

43. In *Mahim Patram Private Ltd. v. Union of India, 2007 (7) S.T.R. 110 (S.C.)*, the question was whether central sales tax could be assessed on the transfer of property in goods involved in a works contract, though the Central Government had not framed rules under Section 13 of the Central Sales Tax Act, 1956 for determining turnover. The Court answered it in the affirmative because Section 9(2) of that Act expressly empowered the State authorities to assess and reassess central sales tax “as if” it were tax under the State law, with all their powers under the State law. The Court held that the expression assessment comprehends the power to compute the amount chargeable in terms of the procedure prescribed under the State Act, and that Section 13(3) and the State rules made the State machinery applicable (paragraphs 30, 31 and 33 refers). Section 13(1) was only an enabling provision. The machinery thus existed by express legislative incorporation. The Court did not hold that machinery may be assumed where the legislature has provided none. Indeed it acknowledged, at paragraph 27, that the measure of the tax is one of its components and that the charging and computation provisions constitute an integrated code. The Tariff Act does not contain any provision corresponding to Section 9(2) of the Central Sales Tax Act. Section 3(8) borrows the Customs Act, which has no RSP machinery, and does not borrow Section 4A(4) of the Excise Act or the RSP Rules. We are of the considered view that *Mahim Patram* is therefore not of any assistance to the Revenue in this context.

44. *Union of India v. Rajeev Bansal, 2024 INSC 754* is regarding the time limits for reassessment under the Income Tax Act, 1961 as relaxed by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. At paragraphs 37 and 38 the Court reiterated that machinery provisions must be construed so as to make the charge workable. That principle presupposes that a machinery exists and requires it to be read so as to work. It does not permit the creation of a machinery that the legislature did not enact. The same judgment, at paragraph 34, forbids courts from plugging a loophole in a taxing statute by strained construction. *Rajeev Bansal* does not have any bearing on the levy of CVD on the RSP basis. Nothing in it supports the Revenue's contention that an undeclared RSP may be ascertained without a statutory mechanism.

45. The latest pronouncement of the Hon'ble Supreme Court on residual valuation is *Directorate General of Goods and Services Tax Intelligence v. Gameskraft Technologies Pvt. Ltd., 2026 (110) G.S.T.L. 97 (S.C.)*, decided on 27.05.2026. There the Court upheld recourse to Rule 31 of the CGST Rules, 2017 and best judgment methods in the absence of reliable records (paragraphs 82.4 to 83.8 and 86). It did so because Section 15(4) of the CGST Act, 2017 and the rules framed under it expressly provide a residual method of valuation, which the Court construed purposively as a machinery provision (paragraphs 60 to 61.1). *Gameskraft* thus confirms that a residual or best judgment valuation must be traceable to the statute. Under the Central Excise Act such a method exists in Rule 6 of the RSP Rules. Under the Customs Tariff Act there is none.

46. M/s. *Nitco Tiles Ltd v. C.C., Mumbai, 2015-TIOL-1544-CESTAT-MUM*, was relied upon by the Revenue in *Acer India* in support of its stand. The importer there had declared an RSP on the tiles and, as admitted in the statements of its officers, sold them at prices higher than the declared RSP. The Member (Technical), with whom the Third Member agreed, held that the declared RSP could be displaced by the highest price at which the importer itself had sold the goods, using a first in first out correlation. *Nitco Tiles* is distinguishable on three grounds. First, it pertained to an RSP actually declared and admittedly breached by retail sales at higher prices, so that the importer's own sale prices furnished the measure the Explanation to Section 4A of the Excise

Act contemplates. Here no RSP was declared, and there is no retail sale at all. Secondly, *Nitco Tiles* was decided by a Division Bench whose Members differed, the difference being resolved on a reference to a Third Member. Its precedential weight is not that of a Larger Bench. We discuss that question in the next paragraph. Thirdly, it preceded *Ocean Ceramics*, and its reasoning that RSP may be redetermined without a legislated mechanism cannot survive the principles laid down there. Further, in *Acer India* this Bench distinguished Nitco Tiles on its facts, and we respectfully agree.

47. Whether *Nitco Tiles* carries the authority of a Bench of three Members, is a question that is now rendered moot. In *Larsen & Toubro Ltd. v. Commissioner of Service Tax, Delhi, 2013 (32) S.T.R. 410 (Tri. - Del.)*, the Principal Bench, applying *P.C. Puri v. Commissioner of Income Tax, (1985) 151 ITR 584 (Del.)*, held at paragraph 14 that where a difference of opinion in a Division Bench is resolved on a reference to a Third Member, "the resultant judgment must be considered the judgment of a Full Bench, as if it were a judgment of a Larger Bench (three ld. Member) sitting en banc". That order was made on a miscellaneous application by a Bench of two Members, the President and a Member (Technical). In *Pankajakshi v. Chandrika, 2017 (345) E.L.T. 438 (S.C.)*, the Constitution Bench answered a question on Section 23 of the Travancore Cochin High Court Act, 1125 and Section 98(2) of the Code of Civil Procedure, 1908. In his concurring opinion commencing from paragraph 53, offered for guidance, Kurian Joseph, J. observed at paragraph 62 that where the point of difference is referred to a third Judge, "the opinion on the point of law is formed only by one Judge, the third Judge", which is "actually against the very principle of reference on difference", since "reference is always made to a larger coram". Relying on *Pankajakshi*, a learned Single Member in *Alberto Bestonso v. Commissioner of Customs (NS-V), JNCH, Nhava Sheva, 2019 (370) E.L.T. 791 (Tri. - Mumbai)*, declined to treat a decision rendered on a reference to a Third Member as that of a Larger Bench, and referred the question before him to a Larger Bench. The question was then settled for this Tribunal by the Larger Bench in *Ocean Ceramics*, constituted by the President comprising of three Members. The Revenue's special counsel there raised a preliminary objection, relying on *Larsen & Toubro, 2013 (32) S.T.R. 410 (Tri. - Del.)*, that a decision rendered on a reference to a Third Member is a decision of three Members, so that a

Bench of greater strength was needed. The Larger Bench considered *Larsen & Toubro (2013)*, *Pankajakshi* and *Alberto Bestonso*, and held at paragraph 18 that "even if a third member decides the issue referred to in a case where contrary views are expressed by the two members constituting the Division Bench, the ultimate decision would continue to remain that of the Division Bench of the Tribunal". That pronouncement of a duly constituted Larger Bench binds us. *Nitco Tiles* is therefore the decision of a Division Bench. It stands on the same plane as *Acer India* and is earlier in time. Our conclusion would not change even if *Nitco Tiles* were treated as the decision of three Members, for, in any event, it is distinguishable on the first and third grounds stated above.

48. The decisions in *Butterfly Gandhimathi, PG Electroplast* and *Wipro*, relied upon by the Ld. A.R., have no bearing on this issue. Each involved the question whether an RSP had to be declared, and in each the assessee had itself declared the RSP. None considered how an RSP that was never declared could be ascertained. We shall examine them under the next issue discussed infra.

49. We turn to the notice. It does not state any provision of law under which the proper officer could ascertain the RSP of the laptops. It neither invokes the RSP Rules nor attempts any of the methods they prescribe. It simply proceeds, in its own words, "if contract sale price of Rs. 16,790/- (inclusive of VAT 5%) is taken into consideration". That price was a contracted institutional price. On the notice's own record, as stated by the Managing Director, it included a backpack and preloaded software that formed no part of the import, and the VAT payable on the local sale. A price of that composition cannot be the RSP of the imported article within the meaning of the proviso. Even under the Central Excise Act it would not answer the description of a price found by a retail market enquiry. Under the Tariff Act there is no provision for finding any such price at all. A duty computed on that basis is, in the words of *Ocean Ceramics*, collected without authority of law.

50. The notice does record, in its account of the examination on 09.07.2013 and 10.07.2013 that the goods were found to be notebook computers and backpacks for those laptops. That remark was taken no further. The notice does not allege that backpacks were imported, or that any import was misdeclared on that account. It does not include their value in the value of the imported goods, and it does not propose

any duty on them. Its computation proceeds entirely on the laptops. The Managing Director's statement, on which the notice relies, says that the price was inclusive of the backpack and software. The respondent's case throughout has been that the backpacks were bought locally, and it has produced purchase invoices of a local vendor for backpacks for the ELCOT project. The sample commercial invoice of the foreign supplier and the Bill of Entry in the paper book describe only the laptops with their accessories and preloaded software, and does not mention of a backpack. On this material, the preponderance of probability favours the respondent's version that the backpacks were not imported. The stray remark in the examination paragraph cannot be read as a finding to the contrary. It only confirms that the contract price adopted in the notice was the price of a composite supply, of which the imported laptop was one component.

51. We are constrained to observe that an exaction of more than three crores of rupees was proposed against an importer without a single reference to the provision of law that authorised the valuation. The notice treated the opinion of an officer under another enactment as if it were the source of the taxing power. A show cause notice is the foundation of the proceeding. It must tell the noticee the provision that empowers the action proposed, so that the noticee may meet it. Where, as in the instant case, the notice does not, then the defect is not one of form, but that which goes to the root of jurisdiction.

52. We accordingly hold that the proper officer did not have any authority in law to assess CVD on the laptops on an RSP that had not been declared, by adopting the ELCOT contract price as that RSP. The demand of differential duty of Rs.3,83,46,628/- cannot be sustained for this reason alone. The respondent's alternative submissions on the application of Rules 4 to 6 of the RSP Rules, on the deduction of the value of the backpack, on the computations showing that no short payment would result even on the Revenue's method, and on a nil RSP were urged, but do not arise in view of this finding, and we do not express any opinion upon them.

Issue (ii). Whether the laptops were required to bear a declaration of RSP

53. Section 18(1) of the LM Act prohibits any person from manufacturing, packing, selling, importing, distributing, delivering, or offering, exposing or possessing for sale, any prepackaged commodity unless the package bears the declarations and particulars "as may be prescribed". The section does not itself require an RSP. It requires the prescribed declarations, and their content depends on the PC Rules. Chapter II of the PC Rules bears the heading "Provisions applicable to packages intended for retail sale". Rule 6(1)(e), within that Chapter, requires the retail sale price of the package to be declared. Rule 3 excludes from the Chapter packaged commodities meant for industrial or institutional consumers. Rule 2 defines a retail package as a package intended for retail sale to the ultimate consumer for consumption of the commodity it contains. It defines retail sale as "the sale, distribution or delivery of such commodity through retail sales shops, agencies or other instrumentalities for consumption by an individual or a group of individuals or any other consumer", and retail sale price as "the maximum price at which the commodity in packaged form may be sold to the consumer".

54. In *Jayanti Food Processing* the Hon'ble Supreme Court construed the corresponding provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, which do not differ in any respect material to this case. In paragraph 2 the Court laid down five conditions for the application of Section 4A, of which the third is that "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". In paragraph 12 it held that "if there is no such requirement under the Act and the Rules, there would be no question of application of Section 4A", and that even a voluntary display of the MRP "would be of no use if otherwise there is no requirement". In paragraph 27 it added that the mere fact that goods are specified under Section 4A(1) "will not be a be all and end all of the matter".

55. Nestle India's appeal is the part of the judgment closest to the present case. Nestle sold KITKAT chocolates to Pepsico at an agreed price of Rs.4.80 a piece, and Pepsico gave them free with a bottle of Pepsi. The Revenue contended, exactly as it does here, that free distribution through an instrumentality is itself a retail sale. The Court rejected the contention in paragraph 29 thus.

> "29. It was then suggested that the free gift by Pepsi to its customers would amount to distribution and would, therefore, be amounting to 'retail sale' and the package of KITKAT would be 'retail package'. However, what is material is the definition of 'retail sale price'. The requirement of Rule 6(1)(f) is specific. It requires the retail sale price of the package be printed or displayed on the package. If there is no sale involved of the package, there would be no question of Rule 6(1)(f) being attracted. ... Therefore, unless there is an element of sale, as contemplated in Section 2(v), Rule 6(1)(f) will not be attracted and thus such package would not be governed under the provisions of SWM (PC) Rules which would clearly take such package out of the restricted arena of Section 4A(1) of the Act and would put it in the broader arena of Section 4 of the Act."

56. It bears emphasis that in Nestle's case there was a sale for consideration between the manufacturer and Pepsico. Yet the Court held that RSP was not required, because there was no sale of the package to the ultimate consumer. The Revenue's argument that the sale by the respondent to ELCOT for a price brings the case within the PC Rules is the very argument that failed in Nestle's case. In paragraph 28 the Court also held that "the thrust of Section 4A is on the packages and not on the commodity", and that the assessee in such a case is not exempt from duty but is assessable under Section 4.

57. The Revenue relies on paragraphs 32 and 33, concerning telephones sold to the Department of Telecommunications, MTNL and BSNL. Those paragraphs must be read with the facts on which they are based. In every one of those appeals the manufacturer had declared the MRP on each package and paid duty under Section 4A, and it was the Revenue that sought assessment under Section 4. More importantly, the Court recorded in paragraph 33 that "it was not and indeed cannot be disputed that these telephones are also sold in the retail market in the same form and the same package and that there is a requirement of printing the MRP on each package". It was on that admitted footing that the Court held that bulk purchase by the telecom undertakings did not take the packages out of the PC Rules, and that those undertakings,

which used the instruments to serve their subscribers, were themselves ultimate consumers. The ratio is that the nature of the sale does not matter where the package is one that is required to carry an MRP. It does not hold that every package must carry an MRP whenever there is a sale somewhere in the chain. The Revenue's grounds quote from paragraph 33 but omit its premise. The Adjudicating Authority did not err in preferring the KITKAT portion of the judgment as the one that fits these facts.

58. The facts in the instant case that bears recapitulation, are these. The notice itself records that the cartons were printed with the words "For Supply to Govt. of Tamilnadu only" and "not intended for retail sale", and that each laptop displayed the State emblem, the photograph of the then Chief Minister and the name of the scheme. The laptops were made to the specification of the tender, invoiced to the heads of the institutions, paid for by ELCOT out of State funds, and given to the students free. The notice nowhere alleges that laptops of this model, in this package, were sold or available for sale in the retail market. Nor does it allege that any of the 3,00,000 laptops was diverted to such sale. The students, who alone consumed the goods, did not pay anything. There was no sale of the package to the ultimate consumer, and no price at which it "may be sold" to the consumer. In terms of paragraph 29 of *Jayanti Food Processing*, Rule 6(1)(e) of the PC Rules is not attracted to such a package.

59. The Supreme Court has since reaffirmed this reading in a reasoned judgment. In *Commissioner of Central Excise and Service Tax, Kanpur v. A.R. Polymers Pvt. Ltd., 2023 (384) E.L.T. 512 (S.C.),* footwear was sold under contract in bulk to military and paramilitary institutions, which distributed it to their personnel. The manufacturer had affixed MRP stickers and claimed assessment under Section 4A. The Revenue contended that Section 4 applied, and it succeeded. The Court held in paragraph 12 that for Section 4A to apply "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", and that mere affixation of an MRP does not suffice (paragraphs 13 and 17 refers). It further held in paragraph 15 that "a consumer, as clarified by the Jayanti Foods Judgment, is the final consumer of the product, and not the intermediary". Since the institutions were intermediaries who distributed the goods to the final

consumer, the sale could not be held to be a retail sale, and "there exists no mandate of law on the Respondent herein to affix an MRP on the goods sold" (paragraph 16 refers). The Court reached this conclusion independently of the exclusion in Rule 3(b) of the PC Rules, assuming that exclusion to be inapplicable (paragraph 11 refers). ELCOT and the educational institutions stand in the same position here as the institutions in A.R. Polymers. They are intermediaries through whom the goods reach the students without any sale. The Revenue, which succeeded on that proposition there, cannot be heard to contend for the opposite here merely because, on these facts, the opposite yields more duty.

60. The Board has understood the law the same way. Paragraph 6 of Circular No. 625/16/2002-CX dated 28.02.2002 clarifies that goods not statutorily required to carry an RSP are to be valued under Section 4 even if notified under Section 4A. It recognises that the same notified commodity may be assessed partly under Section 4A and partly under Section 4. The situations it lists include supplies in bulk against contracts to Government departments and items supplied free. In paragraph 26 of *Jayanti Food Processing* the Supreme Court held that circular binding on the department, following *Commissioner of Central Excise, Vadodara v. Dhiren Chemical Industries, 2002 (139) E.L.T. 3 (S.C.)*. After that judgment the Board, by Circular No. 873/11/2008-CX dated 24.06.2008, withdrew only the illustrations relating to telephones and ice cream in paragraphs 3 and 4 of the 2002 circular. Its remaining parts, including paragraph 6, continue to bind the Revenue. The FAQs of the Department of Consumer Affairs dated 09.05.2022 relied on by the respondent postdate the period in dispute, and we do not base our findings on them.

61. The appellate history supports the same view. In *Rallis India* the Tribunal held that pesticides supplied to a seed seller for free distribution to farmers were assessable under Section 4, and the Supreme Court dismissed the Revenue's appeal on 14.05.2008, after the Judgement in *Jayanti Food Processing* was rendered, holding that there was no ground to interfere. In *G.S. Enterprises* the Revenue's appeal against an order holding razors given free with shoe polish to be assessable under Section 4 was dismissed on 28.04.2015, with the observation that the matter was covered against the Revenue by *Jayanti Food Processing*. As

recorded in the impugned order, the Revenue's appeal against *Sidmak Laboratories*, concerning physician samples, was dismissed on 27.07.2009. In *Bajaj Food Products* the Principal Bench held that biscuits supplied to the Municipal Corporation of Delhi for a nutrition programme in schools need not carry an MRP. The dismissal of the appeal against that order by the Supreme Court on 25.08.2017 is seen reported as *Lords Chloro Alkalies Ltd. v. Commissioner - 2017 (356) E.L.T. A82 (S.C.)*. The Tribunal has taken the same view in *Chordiya Food Products, Contemporary Target, Jewel Consumer Care, JOCIL, Modern High Tech* and *Calcutta Chemical*. In each, goods supplied for free distribution and not meant for retail sale were held to be outside Section 4A. In *Sun Pharmaceutical Industries* the Supreme Court held that physician samples sold to distributors were to be valued on the price between the assessee and the buyer, and that the buyer's later distribution was irrelevant to the valuation. We treat these orders of dismissal as affirmances of the particular orders and not as declarations of law, for the law is declared in *Jayanti Food Processing* and *A.R. Polymers*.

62. The decisions on which the Revenue relies stand on a different premise. *PG Electroplast Ltd. v. Commissioner of Central Excise and Service Tax, Noida, 2014 (307) E.L.T. 787 (Tri. - Del.)*, was decided by the Principal Bench by Final Order No. A/51670/2014-EX(DB) dated 12.03.2014. The appeal came up on the stay application and was disposed of finally with the consent of both sides, the Bench observing in paragraph 3 that “only a short issue is involved”. The manufacturer had supplied colour television sets to ELCOT for free distribution among the poorer sections of the population. It had declared on the packages, as the MRP, the per unit contract price at which it supplied them to ELCOT, and it paid duty under Section 4A on that declared price less abatement (paragraphs 1.1 and 4 refer). It was the Revenue that contended that ELCOT was an institutional consumer within the Explanation to Rule 2A(b) of the 1977 Rules, so that no MRP was required and duty was payable under Section 4 on the contract price. That was the only point argued (paragraph 5 refers). The Bench held that the “service” in the definition of institutional consumer means a service industry such as airlines and railways, that free distribution on behalf of the State Government is not a commercial activity of that kind, and that ELCOT was not an industrial consumer either. It concluded in

paragraph 7 that MRP was required and that Section 4A applied. *Butterfly Gandhimathi* pertained to mixers, grinders, fans and rice cookers supplied to the Tamil Nadu Civil Supplies Corporation for free distribution. It followed *PG Electroplast* on the same question, again at the instance of assessees who had declared the RSP and sought assessment under Section 4A. In *Wipro* the assessee had cleared laptops to ELCOT on transaction value and the Revenue demanded duty on the RSP basis. The Bench reproduced *PG Electroplast* and, in a short order, set aside the demand. The decision does not give any reasons that could support the Revenue's case here.

63. None of these decisions considered whether a package meant exclusively for free distribution, in respect of which there is no sale to the ultimate consumer, is a package intended for retail sale at all. The parties did not raise that question. The only issue was whether the buyer fell within the exclusion in Rule 3, which arises only if Chapter II of the PC Rules otherwise applies. A decision is an authority for what it actually decides, and not for what may logically seem to follow from it. In *Haryana Financial Corporation v. Jagdamba Oil Mills, (2002) 3 SCC 496*, the Supreme Court warned that one additional or different fact may make a world of difference between the conclusions in two cases. The present case turns on a question that those decisions did not decide.

64. We notice that *Mexim Adhesive Tapes* does touch the anterior question. The assessee there manufactured self adhesive tapes notified under Section 4A, printed the MRP on the packages and paid duty under Section 4A. It sold the tapes to oil companies and other industrial users and to traders, and the packages bore the words “for industrial use” and “not to be sold loose”. It was the Revenue that contended that Rule 34 of the 1977 Rules exempted the packages, and that duty was payable under Section 4 (paragraphs 1, 2 and 5 refer). The Ahmedabad Bench held that Rule 34 confers a choice on the manufacturer and cannot be applied compulsorily by the Revenue against one who has chosen to print the MRP (paragraph 6). It also rejected the plea that the goods were not meant for retail sale. Relying on the Tribunal's decision in *ITEL Industries Pvt. Ltd. v. Commissioner, 2004 (163) E.L.T. 219 (Tribunal)*, it observed in paragraph 7 that the definition of retail sale covers distribution otherwise than by sale, and held that “unless an assessee claims exemption from printing MRP under Rule 34 of SWM Rules, the

MRP is required to be printed". This decision is distinguishable for the following reasons. First, the tapes were sold, and sold in the market to traders as well as industrial users, by an assessee who had itself chosen to print the MRP. There was a sale of the package to the ultimate consumer and no free distribution at all. Secondly, the observation that *Mexim Adhesive Tapes* drew from *ITEL Industries* does not survive the judgment of the Supreme Court. *ITEL Industries Pvt. Ltd. v. Commissioner of Central Excise, Calicut, 2004 (163) E.L.T. 219 (Tri. - Bang.)*, pertained to telephone instruments sold under contract to the Department of Telecommunications and MTNL, which lent them to subscribers. The Members of the Division Bench differed, and the matter was decided on a reference to a Third Member. The manufacturer had marked the MRP on the instruments and sought assessment under Section 4A. It was the Revenue that argued, through its representative, that sale in retail was a requirement for Section 4A and that goods sold in bulk for consumption or distribution fell outside it (paragraph 20 of ITEL refers). The Third Member found that the telephones "were packed and cleared like any other instruments in consumer packing with MRP marked". In that context he observed that there is no requirement that the goods "should actually be sold in retail", and that the definition of retail sale extends to disposal otherwise than through sale (paragraph 22 of ITEL). For that view he relied on the Tribunal's decision in *Jayanti Food Processing Pvt. Ltd. v. Commissioner, 2002 (141) E.L.T. 162 (Tri. - Del.)*, which had held that packages not exempt under Rule 34 must be valued under Section 4A (paragraphs 21 and 22 of ITEL). The Supreme Court allowed Jayanti Food Processing's appeal against that very decision. It held that the four litre packs were not retail packages and that "all this has been completely missed in the order of the Tribunal" (paragraph 14 of *Jayanti Food Processing, 2007 (215) ELT 327 (SC)* refers). In paragraph 29 the Supreme Court held that "unless there is an element of sale, as contemplated in Section 2(v), Rule 6(1)(f) will not be attracted". The Supreme Court did affirm the result in ITEL Industries, but it did so in paragraph 33 on the admitted fact that the telephones were also sold in the retail market in the same form and the same package. It did not adopt the entirety of the Third Member's observation. The premise borrowed by *Mexim Adhesive Tapes* is thus one whose source the Supreme Court set aside and whose generality it did not endorse. Paragraph 7 of *Mexim Adhesive Tapes* does not refer to paragraph 29 of *Jayanti Food Processing,* and *A.R. Polymers* had not

then been decided. Thirdly, the proposition that the MRP must be printed unless an exemption is claimed assumes that Chapter II applies in the first place. Where the package is not intended for retail sale, Chapter II does not apply and there is nothing to be exempted from. As the Adjudicating Authority rightly observed, the absence of an exemption cannot create an obligation that the law does not impose. To our mind therefore, *Mexim Adhesive Tapes*, does not assist the Revenue.

65. We have noticed that the Revenue's civil appeals against *PG Electroplast* and connected matters were dismissed by the Supreme Court on 06.08.2026 in *Commissioner of Customs, Central Excise and Service Tax, Noida v. P.G. Electroplast Ltd., Civil Appeal No. 517 of 2015 with Civil Appeal Nos. 771-776 of 2016 and Civil Appeal No. 6170 of 2023, 2026 (8) TMI 644 - SC Order*. Neither side referred to it, and we have considered it for completeness. The order, after hearing learned senior counsel for the appellant Revenue, records only that the Court found "no good ground to interfere with the impugned orders", and dismisses the appeals. The summary that accompanies the order in the reporter is the publisher's, not the Court's. The dismissal of a civil appeal affirms the order under appeal, and the result in *PG Electroplast* is therefore final. That result was that an assessee who had itself declared the MRP, and paid duty on it, could not be compelled by the Revenue to pay on the transaction value instead, ELCOT not being an institutional consumer. The order does not give any reasons, and nothing in it shows that the anterior question arising here was raised or considered, namely whether a package meant solely for free distribution, with no sale to the ultimate consumer, is a package intended for retail sale at all. That question was not argued before the Tribunal in *PG Electroplast*. In *D.J. Malpani v. Commissioner of Central Excise, Nashik, 2019 (366) E.L.T. 385 (S.C.)*, the Supreme Court held that a decision rendered without argument, without reference to the crucial words of the rule and without citation of authority is not a binding precedent. The reasoned judgments in *Jayanti Food Processing* and *A.R. Polymers* govern the question before us. For the same reason, the respondent's plea that the Revenue had taken an inconsistent stand in those appeals is inconsequential, since that stand failed there.

66. *PG Electroplast* has a further feature that bears on the first issue. The figure accepted there as the MRP was the contract price to ELCOT, but it was a figure the manufacturer had itself declared on the packages, and the deeming fiction in Section 4A(2) operated on that declaration. It is not an authority for the proposition that, where no RSP is declared, the proper officer may adopt the contract price as the RSP. The proviso to Section 3(2) of the Tariff Act, like Section 4A(2), attaches to the retail sale price declared. It does not accord a power to supply a price that was not declared, as we have held under the first issue.

67. The respondent also contended that the educational institutions were themselves institutional consumers within Rule 3(b). In *A.R. Polymers* the Supreme Court treated military and paramilitary institutions that bought footwear in bulk and distributed it to their personnel as falling within that exclusion (paragraphs 8 to 10 refer), which lends some support to the contention. On the other hand, the Explanation to Rule 3 speaks of service institutions that buy packaged commodities directly from the manufacturer "for use by that institution", and the laptops here were meant for the students and not for the institutions. Since our conclusion rests on the independent ground in paragraphs 11 to 16 of *A.R. Polymers*, we need not decide this contention and therefore aren't expressing any view upon it.

68. The remaining grounds are being dealt with briefly. The opinion of the Director of Legal Metrology dated 09.04.2014 rests on Section 18(1) of the LM Act and on the finding that the respondent was not an institutional or industrial consumer. It does not address whether the packages were intended for retail sale, which is the question that governs this case. The State Controller took the contrary view on 15.07.2013 and reaffirmed it on 25.11.2013. Circular No. 625/16/2002-CX itself directs that doubts of this kind be referred to the metrology department of the State Government. The Adjudicating Authority was right to treat neither opinion as conclusive and to decide the question himself on the law. The fact that Acer India and United Telecom declared an RSP on their laptops is not of any consequence. A voluntary declaration does not create a legal requirement, as paragraph 12 of *Jayanti Food Processing* makes clear, and the practice of other importers cannot create one either. The General Notes regarding Import Policy and the DGFT notification require compliance with the PC Rules only for

products that are subject to those Rules. They do not cast any additional obligation than otherwise cast under Chapter II of the PC Rules.

69. We hold that the Revenue has failed to establish that the respondent was required, under the LM Act or the PC Rules or any other law, to declare an RSP on the packages of these laptops. Clause (a) of the proviso to Section 3(2) of the Tariff Act was not attracted. CVD was rightly paid on the value determined under the main part of Section 3(2), and the Adjudicating Authority's conclusion is correct. This finding furnishes an independent reason for setting aside the demand, in addition to our finding on the first issue.

Extended period of limitation

70. The notice invoked Section 28(4) of the Customs Act on the allegation that the respondent intentionally suppressed the sale price with intent to evade duty. The Revenue's grounds seek a finding that the demand was properly made on that basis. The respondent pleaded the bar of limitation for the 1,70,100 laptops cleared before July 2013, and submitted before us that there was no suppression. The Commissioner did not record a finding on limitation, since he dropped the demand on merits. Our findings on the first two issues dispose of the whole demand. Since the Revenue has specifically pressed the allegation of suppression in appeal, we record our finding on it.

71. The record does not evidence suppression of any kind. The Bills of Entry themselves showed that RSP was not declared and that CVD was self assessed on transaction value, so the omission was apparent on the face of every assessment. The respondent asserted its legal position from the outset in its letters of 15.07.2013, 16.07.2013, 17.07.2013 and 04.09.2013. It produced the certificate of the State Controller of Legal Metrology. The Managing Director's statement of 16.07.2013 disclosed the contract, the price, the composition of the supply and the mode of payment, and the notice relies on that very statement. The price said to have been suppressed is the price set out in the purchase order and the sale invoices that the respondent produced. Between September 2013 and April 2014 the Revenue itself sought opinions from two authorities under the LM Act, who disagreed with each other. A dispute of that nature is one of interpretation. In *Uniworth Textiles Ltd.*

v. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.), and earlier in *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 401 (S.C.)*, the Supreme Court held that suppression connotes a deliberate withholding of facts with intent to evade duty, and that the mere non payment of duty does not amount to it. In *Acer India*, on materially similar facts arising out of the same scheme, this Bench held that the extended period could not be invoked where the department was aware of the facts and the issue was interpretational. The allegation of suppression fails, and the extended period was not available to the Revenue.

Confiscation, interest and penalty

72. The proposal to confiscate the goods under Section 111(d) rested on the premise that their import without an RSP contravened the LM Act, the PC Rules and the import policy. In view of our finding on the second issue, that premise fails, and no import contrary to any prohibition is made out. The invocation of Section 111(o) is unsupported by any allegation in the notice that the goods were exempted from duty subject to a condition which was not observed. A proposal to confiscate must identify the contravention on which it rests, and the notice is bereft of details of any such exemption. The goods are not liable to confiscation under either clause.

73. Since we have found in favour of the Respondent that there was no short levy of duty, there is no basis for interest under Section 28AA or for penalty under Section 114A. The latter provision presupposes a short levy by reason of collusion, wilful misstatement or suppression, and we have held that none is established. In *Acer India* this Bench further held, following *Mahindra & Mahindra Ltd. v. Union of India, 2022 (10) TMI 212 - Bombay High Court*, affirmed in *Union of India v. Mahindra & Mahindra Ltd., 2023 (8) TMI 135 - SC Order*, that Section 3 of the Tariff Act, as it then stood, did not borrow the substantive provisions of the Customs Act relating to interest, penalty and confiscation in relation to CVD. That conclusion furnishes a further reason against the proposals.

74. To sum up, we find that the appeal of the Revenue fails on all aspects. The demand of differential CVD was raised without any statutory authority to ascertain an RSP that had not been declared, and it rests on a contracted institutional price that included goods not imported and local tax. The respondent was in any event under no legal obligation to declare an RSP on packages meant exclusively for free distribution to students, there being no sale of those packages to the ultimate consumer. The allegation of suppression is not borne out by the record, and the proposals for confiscation, interest and penalty fall with the demand. The Adjudicating Authority's conclusion is correct and accords with Jayanti Food Processing and A.R. Polymers. We dismiss the appeal because the facts on record and the settled law both lead to that result.

75. One consequence of our findings must be stated. The notice and the impugned order record that the three live Bills of Entry dated 02.07.2013, and the consignments cleared thereafter, were assessed provisionally, the goods being released on a bond and on the retention of the special additional duty as security. Nothing on record shows that those provisional assessments have been finalised. They must now be finalised under Section 18 of the Customs Act. In view of our findings, the finalisation can only be on the value determined under the main part of Section 3(2) of the Tariff Act, on which CVD has already been paid, so that no deficiency can arise. The security retained, and the bond, must be dealt with accordingly. We give a direction to that effect as a consequential relief.

76. In light of our aforesaid discussions and analysis, the appeal of the Revenue is dismissed. The Order in Original No. 34730/2015 dated 30.01.2015 is upheld, for the reasons recorded in this order. The provisional assessments of the Bills of Entry concerned, including Bill of Entry Nos. 2594199, 2594203 and 2594206 dated 02.07.2013, to the extent still pending, shall be finalised under Section 18 of the Customs Act in conformity with this order, on the value under the main part of Section 3(2) of the Customs Tariff Act, 1975, within three months from the date of receipt of this order. The special additional duty retained as security shall be dealt with under Section 18(2) and in accordance with law, and the bond executed by the respondent shall stand discharged

upon such finalisation. The respondent shall be entitled to consequential reliefs, in law, if any.

(Order pronounced in open court on 28.10.2026)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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