

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI**

**Custom Appeal No. 443 of 2011 And
Custom CO 81 of 2011**

**Arising out of Order-in-Appeal No. 133 (Gr.VB)/2011 (JNCH)/IMP/98,
Dated: 24.03.2011**

Passed by the Commissioner of Customs (Appeals), Nhava Sheva

Date of Hearing: 28.11.2018

Date of Decision: 28.11.2018

**COMMISSIONER OF CUSTOMS (I)
NHAVA SHEVA, JAWAHARLAL NEHRU CUSTOMS HOUSE
NHAVA SHEVA, TALUKA URAN, DISTRICT RAIGAD**

Vs

**M/s KING KAVERI TRADING COMPANY
A-19/1, MAITRI PARK, SION TROMBAY ROAD
CHEMBUR, MUMBAI**

**Appellant Rep by: Shri Bhushan Kamble, AC AR
Respondent Rep by: Shri T Vishwanathan, Adv.**

**CORAM: C J Mathew, Member (T)
Suvendu Kumar Pati, Member (J)**

Cus - The assessee-company imported trailer parts such as wheel rims, axle & suspension - Provisional assessment was done as the proper officer intended to compute the levy of additional duties of Customs by adopting the maximum retail price - The order of the assessing officer was quashed by the Commr.(A), with the latter holding that the Packaged Commodity Rules 1977 were inapplicable to goods which were not pre-packaged - Hence the Revenue's appeal.

Held - Section 3 of Customs Tariff Act clarifies that no provision exists for ascertaining Retail Sale Price in same manner as provided for u/s 4A of the CEA 1944 - Section 4A has a clearly articulated purpose since its incorporation into the statute - Section 3 of the Customs Tariff Act 1975 was intended to ensure that valuation adopted for Customs purposes would conform to the price at which the goods are intended to be sold in packages that are statutorily required to carry such prices on them - Hence a declaration for Retail Sale Price would suffice for acceptance as value for computing additions duties of Customs - Therefore, there is no provisions for determining retail sale price in the event of disagreement by the proper officer of Customs with the declaration - Hence the adoption of another price by the proper officer of Customs does not constitute appropriate assessment - Thus, the Revenue's appeal lacks merit: CESTAT

Revenue's appeal dismissed

Case laws cited:

HPL Electric & Power Ltd v. Commissioner of Central Excise, New Delhi - 2017-TIOL-3625-CESTAT-DEL... Para 4

ABB Ltd v. Commissioner of Customs, Bangalore - 2011-TIOL-792-CESTAT-BANG... Para 5

FINAL ORDER NO. A/88424/2018

Per: C J Mathew:

This appeal of Revenue lies against order-in-appeal no. 133 (Gr.VB)/2011 (JNCH)/IMP/98 dated 24th March 2011 of Commissioner of Customs (Appeals), Nhava Sheva pertaining to the import of trailer parts viz. wheel rims, axle, suspension etc. by M/s King Kaveri Trading Co and which was assessed provisionally as the proper officer intended to compute the levy of additional duties of customs by adoption of the 'maximum retail price.' The order of the assessing officer was set aside by the first appellate authority who held that the Packaged Commodity Rules, 1977 would not apply to goods that are not pre-packaged.

2. Learned Authorised Representative contends that goods imported against 80 bills of entry were required to conform with the prescription for declaring the 'maximum retail price' under section 2B of Standard of Weight & Measures Act, 1976. Learned Authorised Representative contends further that notification no. 2/2006-CE (NT) dated 1st March 2006 incorporated sl.no.97 vide notification no. 11/06-CE dated 29th May 2006 to cover 'any heading and parts component and assemblies of automobiles.' It is his further contention that the strict interpretation of definition of commodity in pre-packaged form was incorrect and that, to the extent that the goods are covered by an appropriate notification issued under section 4A of Central Excise Act, 1944, the first appellate authority was not required to rely upon other statutes.

3. Learned Counsel for the respondent contends that goods are not packed and that these parts are of heavy weight and thereby excluded under coverage of rule 2B of Packaged Commodity Rules, 1977. It is also informed that the importer manufactures product out of these imported parts and that the trailer is not an automobile that can be covered under the said notification as claimed by the Learned Authorised Representative.

4. We find that sl.no. 97, which came into force from 1st June 2006, pertains to the valuation for levy of additional duties of customs on 'parts, components and assemblies of automobiles.' It is seen that the definition of 'commodity in packaged form' in Standard of Weight & Measures Act, 1976 covers any sort of packing if the commodity itself is distinguishable as units suitable for sale, whether wholesale or retail. The decision of the Tribunal in *HPL Electric & Power Ltd v. Commissioner of Central Excise, New Delhi [2018 (12) GSTL 36 (Tri- Del.)] = 2017-TIOL-3625-CESTAT-DEL* cited by Learned Authorised Representative pertains to switchgears. It is an

admitted fact that these are parts of trailers and trailers would need to be assembled before it can be put to use as product. In rule 2A of Packaged Commodity Rules, 1977, 'industrial consumer' defined as

'means consumers who buy packaged commodities directly from the manufacturers/packers for using the product in their industry for production, etc.'

are privileged for exemption from the mandate of affixing 'maximum retail price'.

5. Learned Counsel for the respondent, while admitting that the demand of additional duties of customs were being effected under section 4A of Central Excise Act, 1944, submits that the practice was given up from 9th July 2009 after informing the custom authorities. We also find from the decision of *ABB Ltd v. Commissioner of Customs, Bangalore [2011 (272) ELT 706 (Tri-Bang)] = 2011-TIOL-792-CESTAT-BANG* that the fundamental issue is the correctness of application of the Rules framed under section 4/4A of Central Excise Act, 1944 to an assessment of additional duties of customs under the Customs Tariff Act, 1975. It is seen from the provisions therein that, for the purpose of additional duties of customs, the default mechanism is

'SECTION 3. xxx

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

(i) the value of the imported article determined under subsection (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under subsection (2) of that section, as the case may be; and

(ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include -

(a) the duty referred to in sub-sections (1), (3) and (5);

(b) the safeguard duty referred to in sections 8B and 8C;

(c) the countervailing duty referred to in section 9; and

(d) the anti-dumping duty referred to in section 9A :'

However, the proviso requires that the value of the imported article be deemed to be the 'retail sale price' declared on the imported article less such amount of abatement, as by notification allowed. It is, therefore, apparent from section 3 of the Customs Tariff Act, 1975 that no provision exist for ascertainment of 'retail sale price' in the same manner as provided for in section 4A of Central Excise Act, 1944. The purpose of section 4A of

Central Excise Act, 1944 has been clearly articulated when it was incorporated in the statute. On the other hand, section 3 of Customs Tariff Act, 1975 was intended to ensure that the valuation adopted for customs purpose, would have to conform to the price at which the goods are intended to be sold in packages that are statutorily required to carry such prices on them. Hence a declaration of 'retail sale price' would suffice for acceptance as value for computation of additional duties of customs.

6. The respondent herein has taken a position that the goods are not required, under the provisions of Standard of Weight & Measures Act, 1976 or the Rules made thereunder, to declare so on the packages of import. There is, therefore, no provision for determination of retail sale price in the event of disagreement by the proper officer of customs with the declaration. In these circumstances, and in the absence of declaration of retail sale price, the adoption of another price by the proper officer of customs does not constitute the appropriate assessment. For this reason, we find no merit in the appeal of Revenue, which is dismissed.