CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 40803 of 2016

(Arising out of Order-in-Appeal No.23/2016 (CXA-II) dated 28.01.2016 passed by Commissioner of Central Excise (Appeals-II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

M/s.Wipro Ltd. **.... Appellant**
R.S. No.49/5, 56/1,
Thiruvandarkoil Village,
Thirubhuvanai, Villianur,
Puducherry 605 102.

VERSUS

The Commissioner of GST &
Central Excise, **... Respondent**
No.1, Gobert Avenue,
Puducherry 605 001.

APPEARANCE :

Shri M.N. Bharathi, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

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

FINAL ORDER No.41183/2025

DATE OF HEARING : 26.05.2025
DATE OF DECISION :29.10.2025

Per: Shri P. Dinesha

Brief and relevant facts as could be gathered from the orders of lower authorities and upon hearing both the sides are that the Appellant is a manufacturer of laptops falling under Chapter 84 of the Central Excise Tariff Act, 1985. It appears that during July 2012 to December 2012, the Appellant had cleared about 4,661 laptops in bulk to ELCOT Electronic Corporation of Tamil Nadu Ltd.) by adopting the transaction value under Section 4 of the Central Excise Act, 1944 which did not find favour with the Revenue as the Revenue felt that the said laptops should have been assessed on the basis of Retail Sale Price (R.S.P) in terms of Section 4A ibid and the above resulted in issuance of the Show Cause Notice dated 28.05.2013 proposing to demand the differential duty. After due process, the Adjudicating Authority vide the Order-in-Original No.76/2014-CE dated 15.07.2014 appears to have confirmed all the demands proposed in the SCN and the Appellant aggrieved by the above demands approached the First Appellate Authority by filing an Appeal and the First Appellate Authority also having rejected their Appeal vide the impugned Order-in-Appeal

No.23/2016 (CXA-II) dated 28.01.2016, the present Appeal has been filed before us.

2. Heard Shri M.N. Bharathi, ld. Advocate for the Appellant and Shri M. Selvakumar, ld. Assistant Commissioner for the Respondent who defended the impugned order. We have carefully perused the documents placed on record including the judicial pronouncements relied upon in support during the course of arguments and upon hearing both the sides, we find that the only issue to be decided by us is, "whether the Revenue was correct in demanding the differential duty by holding that laptops in question are to be assessed on Retail Sale Price basis in terms of Section 4A ibid ?".

3. Facts as could be gathered from the documents reveal that the Appellant had cleared the laptops in dispute to ELCOT which is a Government undertaking which was to be issued to the school students free of cost, which fact is not disputed. In this context, we find that the order of Principal Bench, New Delhi in the case of **PG Electroplast Ltd. Vs CCE & ST, Noida** – 2014 (307) ELT 787 (Tri.- Del.) relied upon by ld. Advocate is very apt, wherein it has been held as under :

"6. We have considered the submissions from both the sides and perused the records. There is no dispute that the color television sets are notified under Section 4A of the Central Excise Act, 1944 and accordingly in respect of the sales of CTV sets by a manufacturer, which are other than the sale referred to in Rule 2A(b) of the SWM Rules, there would be requirement of declaring the MRP on the packages and assessable value of the goods in such cases would have to be determined under Section 4A i.e. MRP minus abatement as notified under the Notification issued under Section 4A. The appellant have paid duty on the CTVs, in question, sold to M/s. ELCOT on the basis of value determined under Section 4A i.e. declared MRP minus abatement. The Department's contention is that in respect of the sales to M/s. ELCOT, the provisions of Section 4A would not be applicable as M/s. ELCOT are an "Institutional Consumer", as defined in Explanation of Rule 2A(b) of the SWM Rules and, hence, there is no requirement to declare the MRP on the packages of CTVs sold to M/s. ELCOT.

7. In terms of Rule 2A(b) of the SWM Rules, the provision of Chapter II of these Rules would not apply to the packaged commodities meant for "Industrial Consumer" or "Institutional Consumer". In terms of explanation to this Rule, "Institutional Consumers" means those consumers who buy packaged commodities directly from manufacturers/packers for service industry like transportation including airways, railways or any other similar service industry and "Industrial Consumers" means those consumers who buy packaged commodities directly from manufacturers/packers for using the same in their industry for production etc. The Department's contention is that M/s. ELCOT, Tamil Nadu, a Govt. of Tamil Nadu Undertaking, engaged in the manufacture of electronic products, who have been roped in by the Govt. of Tamil Nadu for procurement of CTVs and their free distribution on its behalf, are an "Institutional Consumer", as they have provided the services of free distribution of CTV sets to the Govt. of Tamil Nadu. In our view the 'service' referred in the definition of "Institutional Consumer" is the service industry like airlines, railways and other similar services and as such the activity of free distribution of CTVs among poorer section of the population of Tamil Nadu on behalf of the Govt. of Tamil Nadu, cannot be called service

> industry as it is not a commercial activity. "Industrial Consumers" also, as the CTVs purchased by them were not meant for use in their factories for production. Since M/s. ELCOT are neither institutional consumer nor industrial consumer, in respect of sale of CTVs by the appellant to them, MRP was required to be declared in term of SWM Rules and accordingly, the provisions of Section 4A would be applicable. The Appellant have paid duty on this basis only i.e. on the value determined under Section 4A. In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed."

4. The reasons for demanding the differential duty has been answered by the Principal Bench in the above case (*supra*) and hence, we are of the view that the demand upheld in the impugned Order-in-Appeal cannot sustain for which reason we set aside the same.

5. Resultantly, the Appeal stands allowed with consequential benefit, if any, as per law.

(Order pronounced in open court on 29.10.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

gs