CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No.2006 of 2012

(Arising out of Order-in-Original No. 03/2012 dated 16.04.2012 passed by the Commissioner of Customs, Bangalore)

M/s. Lakshmi Access Communications Systems Pvt. Ltd.,
No.79, B Lane, 6th Cross Road,
Anand Rao Extn. Gandhinagar,
Bangalore-560 009.

Appellant(s)

VERSUS

Commissioner of Customs,
Bangalore

Respondent(s)

With

Customs Appeal No.2007 of 2012

(Arising out of Order-in-Original No. 03/2012 dated 16.04.2012 passed by the Commissioner of Customs, Bangalore)

Shri. Mahendra Kumar D Jain,
Director,
Lakshmi Access Communication
Systems Pvt. Ltd.,
No.79, B Lane, 6th Cross Road,
Anand Rao Extn. Gandhinagar,
Bangalore-560 009.

Appellant(s)

VERSUS

Commissioner of Customs,
Bangalore Commissionerate
Bangalore.

Respondent(s)

And

Customs Appeal No.2008 of 2012

(Arising out of Order-in-Original No. 03/2012 dated 16.04.2012 passed by the Commissioner of Customs, Bangalore)

Shri. Durlabh Chand D Jain,
Director,
Lakshmi Access Communication
Systems Pvt. Ltd.,
No.79, B Lane, 6th Cross Road,
Anand Rao Extn. Gandhinagar,
Bangalore-560 009

Appellant(s)

VERSUS

Commissioner of Customs,
Bangalore Commissionerate
Bangalore. Respondent(s)

APPEARANCE:

Mr. B.N. Gururaj, Advocate for the Appellant

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21256 - 21258 /2025

DATE OF HEARING: 21.02.2025
DATE OF DECISION: 18.08.2025

DR. D.M. MISRA

These three appeals have been filed against Order-in-Original No.03/2012 dated 29.03.2012 passed by the Commissioner of Customs, Bangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in sales and service of navigation systems in India. They have imported 20,150 numbers of Touch Media Device (navigation system) against Bill of Entry No.227023 dated 06.04.2010 and 20,000 numbers of paper software licences against Bill of Entry No.227446 dated 12.04.2010. The receipt of 150 numbers of navigation systems/hardware free of cost was not declared to the Customs Department. On the basis of intelligence that the appellant had undervalued the imported products, investigation was initiated by DRI and incriminating documents viz. supplier invoices, bank statements etc. were retrieved; also 19,768 numbers of GPS navigation devices and 20 sheets of Software Licence found in the premises of the appellant were seized during the course of investigation; the

seized goods were provisionally released on execution of Bond and bank guarantee for Rs.5.00 lakhs pending adjudication. On completion of investigation, a show-cause notice was issued to the appellant on 02.03.2011 alleging undervaluation of imported GPS navigation systems by splitting the total value of the devices into value of hardware portion and documents titled software licence i.e. conveying right to use for the said item, availing exemption under Sl.No.157 of the Notification No.21/2002-Cus dated 01.03.2002 thereby short-payment of customs duty of Rs.62,89,752/-. It is proposed to recover the duty short paid with interest and confiscation of the goods seized under Section 111(m) of the Customs Act, 1962 and penalty on various provisions of the Customs Act on the importer and the co-noticees Shri Durlabh Chand Devraj Jain and Shri Mahendra Kumar Devraj Jain was also proposed. On adjudication, the differential duty with interest was confirmed, equivalent penalty was imposed and seized goods were confiscated with an option to redeem the same on payment of fine of Rs.56.00 lakhs; also penalty of Rs.6.00 lakhs was imposed on each of the said two individuals under Section 112(a) of the Customs Act, 1962. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant had imported 20,000 numbers of portable navigation devices with accessories and paper licence for software and accordingly, they filed Bills of Enty No.227023 dated 06.04.2010 and No.227446 dated 12.04.2010. It is submitted that the supplier M/s. Electronics Ltd., Hong Kong had also supplied 150 extra units in order to take care of transit damages and losses, which were not mentioned in the Bill of Entry. The product is essentially a Tablet which runs on Windows Operating System and as a Tablet, it can be used for any purpose for which a computer or tablet is used. Post import, the appellant also adds 'Map of India' and search engine to provide navigation facility and the buyers are mainly car owners and

taxis. The appellant as per the prevailing practice based on judicial decisions, claimed full exemption under Sl.no.157 of Notification no.21/2022-Cus on the value of software (paper licences) while filing the Bills of Entry and its value were not included in the value of the 'navigation system'. These Bills of Entry were assessed to duty and cleared on payment of declared duty. Three months thereafter, the DRI initiated investigation and issued the show-cause notice alleging undervaluation of the imported navigation system by suppressing the value of the paper licence and that of the 150 units supplied by the supplier free.

3.2. Assailing the impugned order, the learned advocate has submitted that during the relevant period, paper licence for IT software was exempt from Basic Customs Duty under Sl.No.157 of Notification No.21/2002-Cus and also exempt from Special Additional Duty of Customs (SAD) under Sl.No.1 of Notification No.29/2010 if the same were intended for retail sale. In support, he has referred to the judgment of the Hon'ble Supreme Court in the case of PSI Data Systems Pvt. Ltd. Vs. CCE [1997(89) ELT 3 (SC)]; Acer India Pvt. Ltd. Vs. CC [2004(172) ELT 289 (SC)] and the decision of Tribunal in the case of Vodafone Essar Gujarat Ltd. Vs. CC(Imports) [2009(237) ELT 458 (Tri. Mum.), wherein it has been held that the value of software is not includable in the value of the hardware; therefore, under *bona fide* belief, the value of paper licence was not included in the value of the portable navigation device. He has further submitted that there was no misdeclaration of extra units supplied by the foreign supplier since no price was charged for these units which were merely a quantity discount given in kind instead of in cash. In support, they referred to the judgment on the Hon'ble Supreme Court in the case of CCE Vs. Hindustan Lever Ltd. [2002(142) ELT 513 (SC)].

3.3. Learned advocate has further submitted that the Department's investigation was only on the basis of change of opinion and has no factual or legal basis for alleging undervaluation or misdeclaration of the imported goods. All relevant documents such as invoices, packing lists etc. were filed at the time of filing Bills of Entry and no undisclosed material was discovered by the Department during the investigation. Even though the appellant had asserted during the investigation that the goods were affixed with MRP and intended for retail sale, it has been wrongly alleged in the show-cause notice that on examination of goods under Mahazar dated 21.07.2010, it was found that the goods imported did not have any MRP. Further, he has submitted that whether the value of the software is includable in the value of hardware has been settled by the constitutional Bench of the Hon'ble Supreme Court in the case of CCE Vs. Grasim industries [2018 (360) ELT 769 (SC)]. Their Lordships have held that once software is duty-free goods, its value cannot be included in the value of the dutiable goods. Thus, mere loading of software in the hard disc cannot alter the non-dutiable character of software. Therefore, the issue is now settled in favour of the appellant and the declaration made by the appellant in the Bills of Entry are correct. Further, he has submitted that the penalties under Section 112(a) and Section 114A have been imposed in a routine manner by the learned Commissioner. Therefore, no contumacious conduct or deliberate violation of law by the appellant.

4.1. On the other hand, the learned Authorised Representative (AR) for the Revenue reiterating the findings of the learned Commissioner has submitted that during the material period, software was exempt from BCD vide Sl.No.157 of Notification No.21/2002-Cus dated 01.03.2002. He has submitted that the paper licence invoice was one of the three invoices found by the DRI at the premises of the appellant after clearances of goods. All these three invoices had same number and date. The

invoices for import of hardware and the software has come together; however, the hardware on which software was already etched / embedded (along with licence key numbers already printed) was separately cleared by the appellant filing Bill of Entry 227023 dated 06.04.2010 and the software invoice was filed separately along with Bill of Entry No.227446 dated 12.04.2010 as if it was import of software only. The appellants have made payments of both software & hardware together and it has been accepted by them that the value of software was not included and that there was undervaluation to the extent to save payment of customs duty as stated by Shri Durlabh Chand Jain in his statement dated 21.07.2010. Further Shri Durlabh Chand Jain in his statement dated 03.12.2010 furnishing explanation as to how they had changed / prepared different invoices and used to present to the Customs so that the value of 150 numbers of Portable Navigational Device received free of cost was included in the value declared vide Bill of Entry No.227023 dated 06.04.2010. In the same statement, it is explained that preparation of a second invoice with regard to software import indicating the words 'right to use' was to classify it under CTH 4907. The learned AR further submitted that none of the statements have been retracted by any of the appellants; therefore, it is evident that they have willfully and deliberately evaded customs duty by falsifying the import documents submitted to the Department. Further, he has submitted that the software which is etched / preloaded in the imported goods i.e. Portable Navigational Device and to operate, the respective licence key numbers were already printed on the same. Sl.No.157 of Notification No.21/2002 dated 01.03.2002 is available only on import of Information Technology Software and not when software is imported by way of etched / preloaded into the hardware of the imported goods i.e. Portable Navigational Device, when invoice in the present case is said to have been conveying the right to use by way of containing the information of licence key numbers, whereas the respective licence key

numbers were already printed on the hardware of imported goods; therefore, it negates the right to use, if any, and contrary to the condition laid down in the said notification. Also, in the statement dated 03.12.2010, Shri Durlabh Chand Jain has submitted that preparing of a second invoice with respect to software import was to indicate words 'right to use' for its classification under CTH 4907.

4.2. Referring to the judgment of the Hon'ble Supreme Court in the case of Dilip Kumar & Company [2018 (361) ELT 577 (SC) and Shri Hari Chand Shri Gopal [2010(260) ELT 3 (SC)], the learned AR has submitted that the appellant are not eligible to the benefit of the said notification. Further rebutting the argument of the appellant that Mahazar did not record whether the seized goods were affixed with MRP, he has submitted that Shri Durlabh Chand Jain in his statement dated 27.07.2010 has admitted that the RSP was not affixed on the imported goods. The reference of the judgment in the case of Grasim Industries (supra) is not relevant to the facts of the case in hand as the said case pertains to Central Excise, wherein the primary issue was whether packing charges, wear and tear charges, facility charges etc. realised by the assessee are liable to be taken into account for determination of assessable value in terms of Section 4 of the Central Excise Act, 1944. Perceiving a conflict between two decisions viz. UOI & Ors Vs. Bombay Tyre International Ltd & ors. [1983(14) ELT 1896 (SC)] and CCE, Pondicherry Vs. Acer India Ltd. [2004(172) ELT 289], the question was referred to the Larger Bench to answer the relationship between the nature of the duty and the measure of the levy which has been resolved by the Larger Bench of the Supreme Court in the said judgment. On the contrary, the applicable judgment to the facts of the present case is Bhagyanagar Metals Ltd. Vs. CCE, Hyderabad-II [2016(333) ELT 395 (LB)] wherein the Larger Bench of the Tribunal following various judgments of the Supreme Court on the subject held that the value of the software licence is to be

includable in the value of the hardware. Further, he has submitted that since the appellant knowingly misdeclared the quantity of import and suppressed the value of the goods seized are rightly confiscated and penalty imposed.

5. Heard both sides and perused the records.

6. The short question involved in the present appeals for consideration is whether the value of software preloaded/ etched into the imported navigation systems, be included in the assessable value of the said navigation systems and confiscation of goods and imposition of penalties sustainable.

7. Undisputed facts of the case are that the appellant had declared import quantity as 20,000 numbers (in fact 20150 numbers) of touch media device, its classification under CTH 85437099 and total assessable value as Rs.3,71,58,148/- in the Bill of Entry No.227023 dated 06.04.2010. Later imported paper software licence against Bill of Entry No.227446 dated 12.04.2010 declaring its value as Rs. 1,89,13,883/- without payment of duty availing exemption under Notification No.21/2002-Cus. dated 01.03.2002. In the impugned order, the learned Commissioner adding the value of software licence declared in the Bill of Entry dated 12.04.2010 to the assessable value of the imported hardware viz. touch media device, enhanced the value to Rs.5,60,72,031/- and confirmed differential customs duty and imposed penalties on the appellant. The crux of the arguments advanced by the learned advocate for the appellant is that the value of the software which has been imported separately cannot be added to the value of the touch media device imported earlier. In support, they have referred to various judgments on the subject. The Revenue's contention on the other hand is that the software imported along with touch media device has been etched pre-loaded; affixed with serial number of the licence in the device, hence, ought to

be included in the value of the device since the software is a part of the device itself. In support, they have referred to the judgment of the Hon'ble Supreme Court in the case of Anjaleem Enterprises Pvt. Ltd. Vs. CCE, Ahmedabad [2006(194) ELT 129 (SC)] later followed by the Larger Bench decision of this Tribunal in the case of Bhagyanagar Metals Ltd. Vs. CCE, Hyderabad-II [2016(333) ELT 395 (Tri. Bang.)].

8. From the records, we find that after import of the touch media device, the same were allowed to be cleared on payment of appropriate duty on the value declared in the Bill of Entry. The software licence later imported claiming exemption under Sl.No.157 of the Notification No.21/2002-Cus dated 01.03.2002 was assessed accordingly and allowed to be cleared. Later, on the basis of intelligence gathered, the premises of the appellant and the Directors were searched and documents including three sets of invoices were recovered by DRI. On completion of investigation, show-cause notice was issued proposing enhancement of value of touch media device by including the value of the software imported separately claiming exemption and also goods recovered from the warehouse of the appellant were seized and cleared on provisional basis on execution of bond and bank guarantee.

9. We find that more or less similar facts have been considered by the Larger Bench of the Tribunal in the case of Bhagyanagar Metals Ltd. (supra). In that case, the imported goods were Fixed Wireless Telephone (FWT), a type of cellular phones which operates under CDMA technology. These imports were made from LG electronics, Korea and M/s. Huawai Technologies Co. Ltd., China. Along with these phones, the assessee imported CD-ROMs and filed separate Bills of Entry for phones and CD-ROMs claiming phones as hardware portion and of FWT and CD-ROMs as software portion of FWT. The dispute referred to the Larger Bench was to decide the issue of inclusion

/adding of value of software portion of FWT for assessment purpose, as Customs duty was payable on phones; however, exempted on imported software. The Larger Bench taking note of the difference of opinion in the case, where the Mumbai Bench of the Tribunal held that the inclusion of value of the software in the value of the telephones imported cannot be sustained but Bangalore Bench on the same circumstances held that software necessary for functioning of the telephones is already embedded in it; hence no separate assessment and valuation for software required to be adopted for the purpose of the determination of value of said imported telephones. The Larger Bench of the Tribunal extensively referring to the precedent on the subject, particularly the judgment of the Hon'ble Supreme Court in the case of Anjaleem Enterprises Pvt. Ltd. (supra) held that Fixed Wireless phones as imported required to be classified and assessed as phones with no segregation of value assignable to the software separately as claimed by the importer in the said case. The Larger Bench held as under:-

> **32.** In *Anjaleem Enterprises Pvt. Ltd*. v. *CCE, Ahmedabad* (supra) Hon'ble Supreme Court had occasion to examine the software programme which was claimed to be in the recorded medium found inside the STD PCO unit. The Hon'ble Supreme Court held that the 'IC' or a chip cannot be compared to a floppy which is merely a storage device similar to an empty box or suitcase. The Apex Court observed :
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> > "22. The question which remains to be answered is whether a programmed EPROM is a recorded media under CH 85.24. It was argued before us that like CD-ROM or a floppy which has a programme in it, EPROM is also a programmed device. It was argued that blank EPROMs were purchased in which the appellant embodied its programme and, therefore, the recorded EPROM constituted a recorded media under tariff item 85.24.
> >
> > 23. We do not find any merit in this argument. In a disk operating system, the basic input is stored in a ROM which is transferred to RAM when the system gets started. The input/output routines are written into the IC at the factory. The point to be noted is that the ICs which contain semiconductor components like diodes etc. have got to be embedded in the mother board. The ROM chip is fixed at the factory. The chip is fixed in the computer and only then the programme works. Hence, this is basic difference between a mere floppy which is a recorded media under CH 85.24 and the IC under CH 85.42. In the former case, the

program is a software because a floppy is a storage in which software plays the dominant role whereas in the case of IC the programme is embodied in the IC which can perform various functions only when fixed to the mother board and is not removable like a floppy from VCR. According to Encyclopaedia of Technology Terms by Whatis.com, an IC can function as an amplifier, oscillator, timer, microprocessor etc. On the other hand, a floppy disk is only a storage. Moreover the essential character of IC does not change with the programme being embedded in the IC and hence the IC remains classifiable under CH 85.42. This distinction is also brought out by tariff items referred to above (See: Dictionary of Computing by Prentice Hall).

24. An embedded system is a programmed hardware device. Software written for embedded systems, especially those without a disk drive is called Firmware, the name for software embedded in hardware devices e.g. in ROM IC chips. Many embedded systems avoid mechanical moving parts, such as, disk drives, switches or buttons because they are unreliable as compared to ROM or Fast Memory IC chips. It is kept outside the reach of humans. In embedded systems, the software resides in ROM IC chips. Embedded systems are combination of hardware and software like ATMs, Cellular telephones etc. In embedded systems, the software resides in ROM IC Chip (See: www.answers.com). These chips are more than mere carriers. Example of embedded system: microwave ovens, cell phones, calculators etc."

33. The Hon'ble Supreme Court examined and distinguished their earlier findings in *PSI Data Systems Ltd*. v. *CCE* (supra) and *Sprint R.P.G. India Ltd.* v. *CC-I, Delhi* (supra) and held that in these cases the question of integrated circuit did not arise and interpretation of entry 85.42 was not at all considered.

34. The Apex Court further examined the decision in *CCE, Pondicherry* v. *Acer India Ltd*. (supra) and distinguished the same as not applicable to facts of the case of STD - PCO telephones. It was held that the software loaded in the IC Chip, constitutes the 'brain' of the system. The levy is on the unit and not on the programmed EPROM. The programme embedded is not easily removable. Hence, the Apex court held that it will not fall in the category of recorded media under Tariff item 85.24 and remains an IC under Tariff Item 85.42.

35. The present appeals deal with Fixed Wireless phones, with PCB inside, a part of which is claimed as a recorded media for software. As examined with technical literature earlier in the order, the logic/programme loaded in the said memory unit is the fundamental necessity for the function of the FW telephone. It cannot be compared to any optional or identifiable software as a recorded media. Such software as available for computers are nowhere comparable to the programme software pre-loaded in the memory chip of the PCB.

36. The appellants further relied on decisions of Hon'ble Supreme Court in *CC, Chennai* v. *Hewlett Packard India Sales (P) Ltd*. (supra) and *Commissioner* v. *Barber Ship Management (I) Pvt. Ltd*. (supra). Both these cases dealt with classification of software installed in hard disk within computer. These decisions are not applicable to the facts of the present case as already explained above with specific reference to Hon'ble Supreme Court's order in *Anjaleem Enterprises Pvt. Ltd*. v. *CCE, Ahmedabad* (supra). We are dealing with a memory unit which is part of the main PCB of the telephone, not a hard disk as a storage device/recorded media in a computer.

37. The decision of the Tribunal in *Vodafone Essar Gujarat Ltd*. v. *CC (Imports), Mumbai* (supra), relied upon by the appellant, is regarding software presented in a recorded media in the form of tapes/CDs as well as in the hard disk contained in the hardware. The software in that case is not embedded or contained in ROM or EEPROM or in the microprocessor chips. The reasoning given in the said decision is therefore inapplicable to the facts of the present case.

38. As held by the Tribunal in *Bharti Airtel Ltd*. v. *CC, Bangalore* (supra) and by the Hon'ble Supreme Court in *Anjaleem Enterprises Pvt. Ltd*. v. *CCE, Ahmedabad* (supra), in the matter of valuation, one of the important aspects to be taken into account is the condition of the goods at the time they leave the factory. The memory unit/chip is an essential part of PCB inside the telephone and is an integral functional component. Hence, in the present case there are no two items for valuation. The item of import is FWT and as such should be subjected to classification and assessment accordingly.

39. Revenue relied on the decision of the Tribunal in *Jabil Circuit India Pvt. Ltd*. v. *CCE, Pune* reported in 2014 (307) E.L.T. 891 (Tri. - Mumbai), where the Tribunal considered inclusion of the cost of software loaded in the Flash memory chip inside the Set Top Boxes (STB). The Tribunal observed :

> "5.12 The next question for consideration is with regard to the inclusion of cost of software which were downloaded and incorporated in the flash memory chip which was soldered onto the PCB of the STB. As per the literature available, flash memory is EPROM (Erasable Programmable Read Only Memory) and is an integrated chip. Thus, it is a rewriteable memory chip on which programmes are written with an external programming device before being placed on the PCBs. Thus, the flash memory is an integral part of the STB and therefore, its cost would include the cost of software loaded on to it. It is in this factual context, the decisions relied upon by the appellant have to be examined. The appellant has relied on the decisions of the Apex Court in the case of *PSI Data Systems* and *Acer India Ltd*. wherein it was held that software has independent existence and has to be classified separately as a recorded media falling under CETH 85.24. It is also contended that Note 6 to Chapter 85 also provides that "records, tapes and other media of

Heading 8523 or 8524 remain classified in those headings, when they are presented with the apparatus for which they are intended". The said note was deleted with effect from 1-1-2007 and no longer applies. *The PSI Data System* and *Acer India Ltd*. cases dealt with a situation where computer software was stored in a Hard Disk of the computer and the question arose whether the value of software could be included in the value of the hardware. In that context, the Hon'ble Apex Court held that the value of software sold along with the computer is not includible in the assessable value of the computer since there is a distinction between a computer and its software. However, these decisions of the Hon'ble Apex Court later on came to be examined in the case of *Anjaleem Enterprises Pvt. Ltd*. by the Hon'ble Apex Court where the software was recorded on an EPROM. The Hon'ble Apex Court held that EPROM cannot be compared to a floppy which is only a dump box. EPROM is basically an integrated circuit or chip and classifiable under CETH 8542. Accordingly, it was held that the value of software embedded in the programmed EPROM, which is an integral part of the system is includible in the value of the goods supplied. In the case before us, the flash memory is not the goods under clearance but it is the STB. The memory chip has been soldered onto the PCB of the STB and is not easily removable. The programme embedded in the flash memory is also not removable. Therefore, it will not fall under the category of recorded media under CETH 8424. In view of the above position, the ratio of the decision of the Hon'ble Apex Court in the case of *Anjaleem Enterprises Pvt. Ltd*. would be more appropriate and correct in the facts of the case before us. This ratio of the Apex Court was followed by this Tribunal in the case of *Avaya Global Connect Ltd*. (supra) wherein also it was held that software supplied along with system, namely, EPROM, as embedded in the system becomes an integral part and the value of such software is includible in the assessable value of the system supplied. This Tribunal further held that when the software is embedded in the system and becomes an integral part of the equipment, it is not a case of charging duty on software but it is a case of charging duty on the equipment which includes the value of such basic software. In the *Hewlett Packard Sales (P) Ltd*. case, the Hon'ble Apex Court once again reiterated the above view, wherein it was held that pre-loaded operating systems software in the Hard Disk Drive of the laptop forms an integral part of the laptop and therefore, the cost of such pre-loaded software forms part of the value of the laptop. Accordingly, the Hon'ble Apex Court held that when a laptop is imported with inbuilt preloaded operating system recorded on the hard disk, the said item forms an integral part of the laptop and has to be classified as laptop and not as computer software separately. Applying the ratio of these decisions to the facts of the present case, it becomes abundantly clear that the cost of software which has been loaded on to the flash memory which in turn has been soldered onto the PCB of the STB forms an integral part of

> the STB and therefore, the value of the STB shall include the value of such software also".

10. In the present case, undisputedly the software which was imported separately on 12.04.2010 had already been preloaded/ etched into the touch media device navigation system, a fact not disputed by the appellant in the statements furnished to the Department by the Director of the appellant on 03.12.2010. He has categorically said that the licence key number imprinted on the device and the software licence keys had already loaded into the devices when imported. Thus, it is clear that portable navigation system imported also have the licence key imprinted on them and the software licence keys are already loaded to the said system. In these circumstances, we do not see merit in the argument of the learned advocate for the appellant that there are two markings, one is serial number of the hardware itself and second one is the windows operating system and the Department had not compared these markings that the software licence numbers found in the paper licence. Further, the attempt of the learned advocate for the appellant that the issue is covered by the judgment of the Hon'ble Supreme Court in the case of CCE Vs. Grasim Industries case (supra) is also out of place as the same is inapplicable to the facts of the present case.

11. The circumstances that arose for reference, the question of law has been recorded by the 5 Member Bench of the Hon'ble Supreme Court in the said case is:

> Para 33. Perceiving a conflict between the two decisions of this court in *Union of India and Ors.* v. *Bombay Tyre International Ltd, and Ors.* - (1984) 1 SCC 467 = 1983 (14) E.L.T. 1896 (S.C.) and *Commissioner of Central Excise, Pondicherry* v. *Acer India Ltd.* - (2004) 8 SCC 173 = 2004 (172) E.L.T. 289 a two judge Bench of this Court by order dated 30th July, 2009 = (2009) 14 SCC 596 = 2009 (241) E.L.T. 321 referred the following questions for an answer by a Larger Bench :
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> > "1. Whether Section 4 of the Central Excise Act, 1944 (as substituted with effect from 1-7-2000) and the definition of "transaction value" in clause (d) of sub-section (3) of Section 4 are subject to Section 3 of the Act?

> 2. Whether Sections 3 and 4 of the Central Excise Act, despite being interlinked, operate in different fields and what is their real scope and ambit?
>
> 3. Whether the concept of "transaction value" makes any material departure from the deemed normal price concept of the erstwhile Section 4(l)(a) of the Act?"

After comparing of the development of determination of value under Section 4 by amending the provisions from time to time, their Lordships held as follows:-

> **20.** We find no room whatsoever for any disagreement with the above view taken by this court in *Bombay Tyre International Ltd.* (supra). It is a view consistent with what was held by the Federal Court and the Privy Council in *Central Provinces and Berar* (supra) *Boddu Paidanna* (supra) and *Province of Madras* (supra) and the decisions that followed thereafter including the decision in *Voltas Limited* (supra) and *Atic Industries Limited* v. *H.H. Dewa. Asstt. Collector of Central Excise and ors* - (1975) 1 SCC 499 = 1978 (2) E.L.T. (J444) (S.C.) the true purport of which was explained in *Bombay Tyre International Ltd.* (supra). Both the above opinions were clarified to mean that neither of them lay down any proposition to the effect that the excise duty can be levied only on the manufacturing cost plus the manufacturing profit only.
>
> **21.** At this stage, the amendment to Section 3 by substitution of the words "a duty of excise on all excisable goods" by the words "a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods" is conspicuous. The amendment of Section 3 to the Act not only incorporates the essentials of a changed concept of charging of tax on additions to the value of goods and services at each stage of production but also engrafts in the statute what was judicially held to be permissible additions to the manufacturing cost and manufacturing profit in *Bombay Tyre International Ltd.* (supra). This fundamental change by introduction of the concept underlying value-added taxation in the provisions of Section 3 really find reflection in the definition of 'transaction value' as defined by Section 4(3)(d) of the Act besides incorporating what was explicitly held to be permissible in *Bombay Tyre International Ltd.* (supra). Section 4(3)(d), thus, defines 'transaction value' by specifically including all value additions made to the manufactured article prior to its clearance, as permissible additions to be price charged for purpose of the levy.

Further, explaining the pronouncement in Acer India Ltd.'s case, their Lordships observed as under:

> **22.** This would bring us to a consideration of the decision of this Court in *Acer India Ltd*. (supra). The details need not detain us.

> Softwares which were duty free items and could be transacted as softwares came to be combined with the computer hardware which was a dutiable item for purposes of clearance. The Revenue sought to take into account the value of the computer software for the purposes of determination of 'transaction value' with regard to the computer. This Court negatived the stand of the Revenue taking the view that when software as a separate item was not dutiable its inclusion in the hard-disk of the computer cannot alter the duty liability of the software so as to permit the addition of the price/value of the software for the purpose of levy of duty. It is in the above context that the decision of this Court in *Acer India Ltd.* (supra) has to be understood. The observations made in paragraph 84 thereof to the effect that 'transaction value' defined in Section 4(3)(d) of the Act would be subject to the charging provisions contained in Section 3 of the Act will have viewed in the context of a situation where an addition of the value of a non-dutiable item was sought to be made to the value of a dutiable item for the purpose of determination of the transaction value of the composite item. This is the limited context in which the subservience of Section 4(3)(d) to Section 3 of the Act was expressed and has to be understood. If so understood, we do not see how the views expressed in paragraph 84 of *Acer India Ltd.* (supra) can be read to be in conflict with the decision of *Bombay Tyre International Ltd.* (supra).

Finally, their Lordships answering the reference recorded as under:-

> **23.** Accordingly, we answer the reference by holding that the measure of the levy contemplated in Section 4 of the Act will not be controlled by the nature of the levy. So long a reasonable nexus is discernible between the measure and the nature of the levy both Section 3 and 4 would operate in their respective fields as indicated above. The view expressed in *Bombay Tyre International Ltd.* (supra) is the correct exposition of the law in this regard. Further, we hold that "transaction value" as defined in Section 4(3)(d) brought into force by the Amendment Act, 2000, statutorily engrafts the additions to the 'normal price' under the old Section 4 as held to be permissible in *Bombay Tyre International Ltd.* (supra) besides giving effect to the changed description of the levy of excise introduced in Section 3 of the Act by the Amendment of 2000. In fact, we are of the view that there is no discernible difference in the statutory concept of 'transaction value' and the judicially evolved meaning of 'normal price'.

At the cost of repetition, it can safely be said that the said judgment is not applicable to the present case.

12. In view of the above, we do not find reason to interfere with the order of the learned Commissioner enhancing the value of the touch media device by including the value of the licence software imported subsequently and confirmed the differential duty demanded with interest and imposition of penalty. Also, the confiscation of the goods seized and later released provisionally in the circumstances of misdeclaration and suppression of correct value is justified. However, the penalty imposed on each of the Directors in the facts of the case is too harsh. Consequently, the same is reduced to Rs.1,00,000/- (Rupees one lakh only) in each of the appeals filed by the Directors. Thus, the appeal bearing No. C/2006/2012 filed by the appellant-company is rejected and the appeal No.C/2007/2012 and C/2008/2012 filed by the Directors are partly allowed to the extent of reduction of penalty to Rs.1,00,000/- (Rupees one lakh only) in each appeal.

13. Appeals are disposed of in above terms.

(Order pronounced on 18.08.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja…