

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Customs Appeal No. 208 of 2007

(Arising out of Order-in-Original No.781/2006 (ACC) dated 29.11.2006
passed by Commissioner of Customs (Airport), Air Cargo Complex,
Meenambakkam, Chennai 600 027)

Commissioner of Customs (Airport) Appellant
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

VERSUS

M/s.ITI Ltd., ... Respondent
Dooravani Nagar,
Bangalore 560 008.

APPEARANCE :

Ms. Anandalakshmi Ganeshram, Authorized Representative
for the Appellant
None for the Respondent (On merits)

CORAM :

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

FINAL ORDER No.40543/2025

DATE OF HEARING : 03.02.2025
DATE OF DECISION : 28.05.2025

Per: Shri P. Dinesha

The importer-assessee had imported parts of Mobile Switching Centre [MSC], Base Station Controller [BSC], Base Trans Receiver Station [BTRS] and sub-assemblies of BTS, BSC and MSC vide Bill of Entries dated 03.07.2004 and 23.08.2004; during the course of investigation by DRI, Bangalore and upon enquiry by them, the importer appears to have responded that parts required for manufacture of MSC, BSC and BTS covered under list No. 22 of Customs Notification No. 21/2002 dated 01.03.2002 were cleared on payment of CVD by availing exemption from payment of BCD under Sl. No. 242 of the above Notification No. 21/2002.

2. It was the case of the Revenue that the imported goods were declared by splitting the value of hardware and software separately and duty was evaded by claiming exemption towards the software value; the rate of duty applied was 'nil' rate of BCD; and 16% CVD plus cess and in so far as software value is concerned, no Custom Duty was paid since the software was Information Technology Software, attracting 'nil' rate of duty under the above

Notification vide Sl. No. 157. Upon further enquiry, it appears that the importer agreed to pay the Customs Duty on the value of software by treating the same as forming part of the hardware value, voluntarily within the meaning of Section 28(2B) of the Customs Act, 1962. It appears that the importer also informed that non-supply of the software due to supplier's fault at the time of shipment of cargo and accordingly the duty level on the software for clearance effected through ACC, Chennai was computed, and paid along with interest.

3. It appears that during the course of investigation, the DRI recorded statements of DGM (Finance Taxation) and DGM (Technical Support) from the importer and based on the above, it appears that the DRI issued SCN dated 21.02.2005 alleging various irregularities in so far as the declaration of the imported consignments was concerned and consequently proposal was made in the SCN, rejecting the declared value of hardware and the same be determined under Rule (4) of the Customs Valuation Rules, 1988 by adding the value of software, which was separately declared; the benefit of exemption claimed under the notification (supra) was also proposed to be denied and the differential

duty be demanded under proviso to Section 28(1) of the Customs Act, 1962 along with interest under Section 28AB *ibid*. Apart from the above, it was also proposed to confiscate the hardware imported and levying of penalty under Section 114A and / or Section 112(a) *ibid*.

4. It appears that the importer filed a detailed reply through its representative, which was considered during adjudication and vide Order-in-Original No.781/2006 (ACC) dated 29.11.2006, the Original Authority having accepted the explanation along with the supporting documents as well as the judicial ruling, dropped proceedings initiated vide the above SCN. It is against this order that the present appeal has been filed before us.

5. Heard Smt. Anandalakshmi Ganeshram, Ld. Assistant Commissioner for the Appellant-Revenue; Ld.Advocate for the respondent-assessee has sent his detailed written submission and has requested for passing an order in his absence by considering the written arguments filed on behalf of the respondent.

6. After hearing the counsel for the appellant and after going through the written submission filed on behalf of the respondent, we find that the following issue is required to be addressed to by us:

“software whether it is preloaded or brought separately in the form of the Media, its value is to be excluded and separately assessed under Heading 8524?”

7. We have carefully perused the impugned order and we have also considered the various judicial rulings relied upon by the parties. The Commissioner has observed that upon verification of Bill of Entry No. 4079 dated 03.07.2004, it was found that the software value had already been declared at Sl. No.15 which was referred to DRI, Bangalore for clarification and vide reply letter S/IV/26/04 (Chennai Air/B) dated 10.02.2006, it was stated that an error had occurred by adding the software value component again to the already declared value of ₹1,56,95,868/- that, the actual value was only ₹1,56,95,868/- and that the duty was correctly calculated only on the value of software which was required to be added to the value of hardware and hence, only ₹11,37,404/- was demandable.

8. In the Grounds of Appeal as well as the contentions of the Departmental Representative, the Revenue is of the view that the importer had deliberately not declared the fact that the software was already preloaded in the hardware imported and deliberately split the invoice value. Further from the brief facts of the case, as submitted by the Revenue, it is also argued that "...it is an admitted position that the software is preloaded in the hardware imported by the noticee and the value of the software was clearly mentioned in the relevant Bill of Entry No.4079 dated 03.07.2004; that they have correctly declared the evaluation and classification of such software..."

9. The mistake or the misdeclaration alleged by the Revenue, according to us, is on a very thin line; it is the case of the importer that they under good faith believed that the software was liable to rate of duty and its value was not required to be included in the value of the software imported by them but it is not the case that they did not declare the value and remit the duty. On the other hand, it is the case of the Revenue that the software which is embedded/etched on the hardware which is a firmware/embedded software, is different from the add-on or independent software which are

traded independently. The exemption in the notification is not extendable to the subject software, in order to avail the above exemption, the importer had deliberately misdeclared the software component. The Revenue has relied upon the decision of Hon'ble Apex Court in **Anjaleem Enterprises Private Limited Vs CCE Ahmedabad** - 2006 (194) ELT 129 (SC), wherein the decision of **Acer India Ltd. Vs CCE** – 2004 (172) ELT 289 (SC) was distinguished by the Apex Court itself.

10. From the perusal of the Grounds of Appeal as well as the Review Order, however, we do not see any whisper about reply dated 10.02.2006 by the DRI, admitting the payment of duty by the assessee and that an error had occurred by adding the software value component again. In view of the specific observation which goes to the root of the issue, we are of the view that the question of adding the value of software separately as declared in **Acer India Ltd.** (supra) or **Anjaleem Enterprises Private Limited** (supra) does not arise.

11. In view of the above discussions, we do not find any merit in the appeal filed by the Revenue and hence, we dismiss the same.

(Order pronounced in open court on 28.05.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)