

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

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40588 of 2016

(Arising out of Order-in-Appeal C.Cus.I.No. 632/2015 dated 30.09.2015 passed by Commissioner of Customs (Appeals-I), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Wipro (Infotech Group)

No. 88, S.B. Towers,
M.G. Road,
Bangalore – 560 001.

...Appellant

Versus

Commissioner of Customs

Chennai I Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. S. Muthu Venkataraman, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40187 / 2026

DATE OF HEARING : 17.11.2025

DATE OF DECISION : 04.02.2026

Per Mr. VASA SESHAGIRI RAO

An appeal has been filed by the Appellant against the Order-in-Appeal No. 632/2015 dated 30.09.2015, issued by Commissioner (Appeals-1), Chennai, confirming the Order-in-Original No. 684/2012 dated 19.12.2012, which rejected the value declared by the Appellant in respect of the networking equipment imported

during the period July 2006 to April 2010, and re-determined the assessable value. Consequently, it confirmed a demand of differential duty amounting to Rs.39,77,717/- under the proviso to Section 28(1) of the Customs Act, 1962, along with applicable interest. The goods so imported were ordered to be confiscated under Section 111(m) of the Customs Act, 1962, and a penalty equal to the differential duty was imposed on the Appellant under Section 114A of the Customs Act, 1962. The Adjudicating Authority further appropriated an amount of Rs. 40,00,000/- already paid by the Appellant during the course of investigation towards the confirmed differential duty, interest and other statutory liabilities.

2. The Appellant, Wipro Ltd., imported networking equipment from Radware Ltd., Israel during the period July 2006 to April 2010. In the Bills of Entry, the Appellant declared the imports by bifurcating the transaction value into hardware, classified under CTH 8473, and software, classified separately under CTH 85238020/85238090, and discharged customs duty accordingly.

3. A Show Cause Notice dated 03.02.2011 was issued alleging that the Appellant had undervalued the goods by splitting the value, on the premise that the software was

embedded/etched firmware, forming an integral part of the hardware, thereby constituting a single ready-to-use product classifiable entirely under CTH 8473. Accordingly, a demand of differential duty of Rs. 39,77,718/- was raised along with the invocation of extended period of limitation under the proviso to Section 28(1) of the Customs Act, along with interest and penalties under Section 114A, and proposed confiscation under Section 111(m).

4. In reply, the Appellant justified that the software was pre-loaded and not embedded or etched, and hence its value was not includible in the hardware value. The Appellant further asserted that the valuation adopted was based on a *bona fide* legal interpretation, with the split-up values transparently disclosed in the Bills of Entry and customer purchase documents, negating any allegation of suppression or wilful misstatement.

5. However, the SCN proposals came to be confirmed *vide* Order-in-Original dated 19.12.2012 without granting the Appellant an opportunity of personal hearing. Aggrieved by the same, the Appellant preferred an appeal before the Commissioner (Appeals-1), Chennai, who, *vide* Order-in-Appeal dated 30.09.2015, upheld the demand but failed to record any finding on the Appellant's specific plea

regarding denial of personal hearing and violation of natural justice. The Commissioner (Appeals-1), Chennai, further proceeded on the assumption that the software was embedded, holding that the true transaction value was the aggregate of hardware and software, without examining the technical evidences advanced by the Appellant.

6. Furthermore, during investigation, an amount of approximately Rs.40,00,000/- was paid towards the differential duty, interest and other liabilities under protest. Being, aggrieved by the confirmation of demand, invocation of extended limitation, imposition of penalties, and grave procedural violations, the Appellant has preferred the present appeal before this Tribunal

7. Heard the Ld. Advocate Mr. S. Muthuvenkataraman for the Appellant and the Ld. Authorized Representative Ms. O.M. Reena who have reiterated the findings in the impugned order.

8. On perusal of the rival submissions and appeal records, it appears that the core allegation of the Department is that the Appellant undervalued the networking equipment imported during the period July 2006 to April 2010 by artificially splitting the transaction value into

hardware and software, whereas the goods constituted a single composite product requiring assessment as a whole. The Department contended that the networking appliances were supplied as ready-to-use systems, wherein the software constituted embedded/etched firmware, forming an integral and inseparable part of the hardware, and that the equipment could not perform its intended function without such software. On this basis, it was alleged that the transaction value could not be bifurcated and that the entire value, including the value attributed to software, was required to be included in the assessable value of the hardware.

9. Whereas, the Appellant primarily contended that Firmware is one type of software that a device's hardware comes pre-loaded with. It serves as the interface between higher-level software applications and the device firmware is retrieved from a non-volatile hardware. Normally, memory device such as ROM (Read-Only Memory), EEPROM, Flash memory, and so on. Embedded software is in marked contrast to firmware because it is a type of software that is designed to work in a system that has a dedicated device; that is, computing systems inside devices that are not classified as a computer. Compared to firmware, embedded software is intricate, multifunctional, and at times, even

houses an operating system. Further that the software in question has been preloaded in the hard disk contained in the hardware. It is not etched software or embedded software and is not contained in ROM or EEPROM of the hardware.

10. A similar issue had come up before this Tribunal in the case of *Commissioner of Customs (Airport), Custom House, Chennai v. M/s. ITI Ltd. reported in 2025 (5) TMI 1935 CESTAT CHENNAI*, wherein it was held as under: -

"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 or independent software which 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."

11. Taking note of the above ratio in the case of M/s. ITI Limited case (*supra*) which takes note of various judgements on the same, following the same, we hold that the value of the software is includable in the value of the hardware imported and as such the confirmation of duty in this regard is upheld. It is also seen in the ITI Ltd. (*supra*) decision, that it has been held that there is a thin line of distinction and that the error was *bonafide*. Even in the

present case, it is not alleged that the appellants have suppressed the import of the software. Merely due to their understanding, have chosen to dissect the value of hardware from that of the software. Therefore, we are of the view that no suppression with an intent to evade payment of duty can be alleged in the facts and circumstances of the present case.

12. In our view, the issue herein is interpretative in nature therefore there is no misstatement or suppression of facts but rather it was the *bonafide* belief of the Assessee that the classification and valuation of the software done separate from the hardware by them is correct; thereby extended period of limitation cannot be invoked.

13. In this context during the dispute period, the normal period of limitation under Section 28 of the Customs Act, 1962 only can be raised, which was 1 year. Therefore, the Bill of entry and invoices considered are ranging from the period of July 2006 April 2010 whereas, the SCN is dated 03.02.2011. Therefore, other than for the period from February, 2010 to April, 2010, the demand has been raised beyond the statutory limitation and accordingly barred by limitation.

14. With regard for the imposition of penalty, in the case of *Easland Combines, Coimbatore v. Collector of Central*

Excise, reported in 2003 (3) SCC 410, the Hon'ble Supreme Court had observed that for the invocation of the extended period of limitation, duty should not have been paid because of fraud, collusion, wilful misstatement, suppression of fact or contravention of any provision. Further holding that the said ingredients postulate a positive act and therefore the mere failure to pay duty which is not due to fraud, collusion or wilful misstatement or suppression of facts is not sufficient to attract the extended period of limitation. Accordingly, penalty is set-aside. The demand for normal period is upheld and to be re-quantified for the normal period of limitation.

15. In view of the above we pass the following order: -

- i. Demand for the normal period of limitation is upheld and interest liability on such short-paid duty is payable.
- ii. Extended period of limitation under Section 28 of the Customs Act, 1962 is set-aside.
- iii. Penalties imposed are set-aside.
- iv. Remitted for re-quantification of the demand for the normal period of limitation.

(Order pronounced in open court on 04.02.2026)

Sd/-
(VASA SESHAGIRI RAO)
 MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
 MEMBER (JUDICIAL)