# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## NEW DELHI

## PRINCIPAL BENCH

### CUSTOMS APPEAL NO. 52289 of 2019

[Arising out of Order-in-Appeal No. CC (A) CUS/D-I/GEN/SVB/243/2019-20 dated 10/06/2019 passed by The Commissioner (Appeals – II), Central New Custom House, Delhi]

**M/s Cadence Design Systems**
**(India) Pvt. Ltd.,** **...Appellant**
Plot No. 57A & B,
Noida Special Economic Zone.

**Versus**

**Assistant Commissioner of Customs,** **...Respondent**
Special Valuation Branch,
New Delhi.

**APPEARANCE:**

Shri Sparsh Bhargava, Advocate for the appellant.
Shri Vivek Pandey, Authorised Representative for the Department.

**CORAM:**
**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING: 23.03.2021**
**DATE OF DECISION: 23.03.2021**

### FINAL ORDER No. 51211/2021

**P.V. SUBBA RAO**

This appeal is filed against order-in-appeal No. CC (A) CUS/D-I/GEN/SVB/243/2019-20 dated 10/06/2019.

2. The facts of the case are that the appellant is a wholly owned subsidiary of its payment company M/s Cadence Designs Systems Inc., U.S.A. They imported a system called Palladium Computer System from their parent company for their use in their Bangalore office and filed Bill of entry No. 124919 dated 29 March

2006. Subsequently, they imported some spares and accessories related to the system filing appropriate bills of entry. Since it was a case of import from a parent company by its subsidiary in India, the assessment was referred to the Special Valuation Branch of the Customs House. The SVB returned the matter to the assessing officer without recording any findings on the effect of the relationship on valuation. On appeal by the appellant, the Commissioner (Appeals) remanded the matter to the Original Authority. Thereafter, the Original Authority, viz., Assistant Commissioner of Customs, Special Valuation Branch has passed order-in-original No. SVV/CUS/DENOVO/ 02/M.N/ 2017-18 dated 19/05/2017 holding that the importer and their foreign supplier are related persons in terms of Rule 2 (2) (v) of Customs Valuation Rules (CVR), 2007. He further rejected the declared invoice value under Rule 12 of CVR, 2007 and re-determined the value under Rule 9 of CVR, 2007 by loading a profit margin of 14.24% to the invoice value to determine the assessable value. During the proceedings, the overseas supplier (the parent company of the appellant) gave a letter explaining their pricing policy explaining that selling goods to their subsidiaries they do not add any profit margin. Therefore, the Original Authority added 14.24% which was the average profit of the supplier company.

3. On appeal, the learned Commissioner (Appeals) has, by the impugned order, upheld the order of the Original Authority. Hence, this appeal.

4. Learned Counsel for the appellant challenges the impugned order on the following grounds:-

(i) The main system was imported in 2006 before the Customs Valuation Rules, 2007 and the amended Section 14 of the Customs Act, 1962 came into force. Therefore, the un-amended Section 14 and the Customs Valuation Rules, 1988, as applicable must have been applied. The new legal provisions were wrongly applied and hence the impugned order is not sustainable.

(ii) For imports post 2007, if the declared value is rejected and the value must be determined in terms of Rules 3 to Rule 9 of Customs Valuation Rules, 2007 sequentially. Rule 9 was directly applied without either examining or recording the applicability of Rule 3 to Rule 8. On this ground also the impugned order is not sustainable.

(iii) If at all, profit margin has to be added to the invoice value it should be done by considering only the profit margin of this product line and not the profit margin of the company as a whole.

(iv) While calculating the average profit margin, the profits earned during some years were considered while ignoring the losses earned during some other years. Therefore, the average profit margin which is considered is much higher than the actual average profits. For this reason also the impugned order is not sustainable.

5. Learned Departmental Representative supports the impugned order. He submits that the relationship under Rule 2 (2) (v) of CVR, 2007 is para-materia with Rule 2 (2) (v) of the Customs Valuation Rules, 1988. Therefore, it would make no difference whether the imports were done prior to 2007 or thereafter. On the question of application of Rules 3 to Rule 9 of Customs Valuation Rules, 2007 in a sequence, he would submit that learned Counsel has not raised this point before the Commissioner (Appeals) and has, in fact, themselves asserted that Rule 8 would apply. Having found that Rule 8 does not apply in that case, learned Commissioner (Appeals) has applied Rule 9 of the Customs Valuation Rules, 2007. On the question of application of values of similar or identical products, he would argue that since these are custom made goods there cannot be any similar or identical products. On the question of profit margin, he would argue that the details of profits of the overseas supplier was supplied by the appellant themselves and they cannot now deny them on the ground that the profit margin for the product line must be considered and applied. On a specific query from the bench, he admits that the Customs Valuation Rules, 1988 and the Section 14 as applicable prior to 2007 were not considered or applied to the main system by the Commissioner (Appeals) as was required.

6. Both sides agreed that the issue needs to be remanded to the Commissioner (Appeals) to determine the valuation in terms of Section 14 and the Customs Valuation Rules, as applicable to each of the consignments.

7. Accordingly, without passing any remarks on the merits of the case and leaving all issues open, we remand the matter to the Commissioner (Appeals) to re-determine the value of the imported goods in terms of Section 14 and the Customs Valuation Rules, as applicable during the relevant periods of time after giving an opportunity of hearing to the appellant. The appellant should provide the written submissions and data on which he seeks to rely upon before the Commissioner (Appeals) within three weeks from the date of this order. The Commissioner (Appeals) shall, thereafter fix a personal hearing within a month and decide the matter within three months from the date of hearing.

8. The impugned order is set aside and the appeal is disposed of by way of remand.

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P.V. SUBBA RAO)**
**MEMBER (TECHNICAL)**

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