CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 86896 of 2016

[Arising out of Order-in-Original No. COMMR/AKG/33/2016/ADJN. ACC (X) dated 13.05.2016 passed by the Commissioner of Customs-IV, Air Cargo Complex-Export, Mumbai Zone-III.]

M/s. Shairu Gems Diamonds Pvt. Ltd. .....Appellant
DE-1902, Bharat Diamond Bourse,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051

VERSUS

Commissioner of Customs-IV, (Air Cargo Complex-Export), Mumbai Zone-III .....Respondent
Sahar, Andheri (East), Mumbai – 400 099

WITH

(i) Customs Appeal No. 86568 of 2016 (Neelam Exports); (ii) Customs Appeal No. 86581 of 2016 (Sheetal Manufacturing Co. Pvt. Ltd.); (iii) Customs Appeal No. 86699 of 2016 (S Vinodkumar Diamonds Pvt. Ltd.); (iv) Customs Appeal No. 86714 of 2016 (Hari Krishna Exports Pvt. Ltd.); (v) Customs Appeal No. 86715 of 2016 (HVK International Pvt. Ltd.); (vi) Customs Appeal No. 86723 of 2016 (Kiran Gems Pvt. Ltd.); (vii) Customs Appeal No. 86745 of 2016 (Laxmi Diamond Pvt. Ltd.); (viii) Customs Appeal No. 86756 of 2016 (Shree Ramkrishna Exports Pvt. Ltd.); (ix) Customs Appeal No. 86840 of 2016 (Kapu Gems); (x) Customs Appeal No. 86414 of 2019 (Blue Star Diamonds Pvt. Ltd.); (xi) Customs Appeal No. 86851 of 2016 (Vallabhbhai Dhanjibhai & Co.); (xii) Customs Appeal No. 87302 of 2019 (Aurostar Jewellery India Pvt. Ltd.); (xiii) Customs Appeal No. 87965 of 2019 (Munjani Brothers); (xiv) Customs Appeal No. 86450 of 2016 (Mahendra Brothers Exports Pvt. Ltd.); (xv) Customs Appeal No. 86706 of 2016 (Dharmanandan Diamonds Pvt. Ltd.); (xvi) Customs Appeal No. 86834 of 2016 (K Girdharlal International Pvt. Ltd.)

[Arising out of Order-in-Original No. COMMR/AKG/11,13-23,29/2016/ADJN. ACC (X) dated 31.03.2016; MUM/CUSTM/AXP/APP/1149/2018-19 dated 26.02.2019; MUM/CUSTM/AXP/APP/51/2019-20 dated 30.04.2019 and MUM/CUSTM/AXP/APP/290/2019-20 dated 18.07.2019 passed by the Commissioner of Customs-IV, Air Cargo Complex-Export, Mumbai Zone-III.]

APPERANCE:

Shri Jhamman Singh, Advocate for the Appellant

Shri Shambhoo Nath, Special Counsel, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 85365-85381/2026

Date of Hearing: 19.12.2025
Date of Decision: 25.02.2026

PER: DR. SUVENDU KUMAR PATI

Whether value of the software and value of the hardware can be taken together to determine transaction value of Diamond Cutting and Scanning Machines for the purpose of Section 14 of the Customs Act and whether such redetermination of assessable value can be done after assessment by the proper Officer followed by clearance of goods, are the issues required to be determined in all these appeals, which were heard together as arose from a common investigation by DRI Ahmedabad, much after clearance of goods.

2. Succinctly stated, facts of the case would go to reveal that between 2009 and 2012, Appellants have imported diamond processing / scanning machines for cutting and polishing rough diamonds after importation which were exported by them after such cutting and polishing. All of them have imported those machines alongwith functional softwares from M/s. Sarin Technologies Ltd. and M/s. Galatea Ltd., both of Israel and the installation of machines, loading of software in the machines including repair, maintenance of the machines as well as training of the employees were all handled by M/s. Sarin Technologies India Pvt. Ltd., a subsidiary M/s. Sarin Technologies Ltd. – Israel. Some machines were preloaded with softwares, some were being loaded with softwares after downloading the same here in India after installation of the machines and the security key dongle was being provided to make run the software properly. All imports were made under the EPCG licence issued by the DGFT Authorities and all imports had taken place prior to self-

assessment era, commenced on and after 14.05.2011 and therefore, assessments were done by Customs Officers under EPCG scheme, who after scrutiny of the documents like Import Invoices, Bills of Lading, Country of Origin etc. had assessed the same and payment of duty on those goods were accordingly made, after which clearance of those machines were effected under Section 47 of the Customs Act.

2.1 On the basis of information gathered by the Officers of DRI, Ahmedabad investigation was conducted in the late part of 2013 and Appellants were put to show-cause notice to justify allegedly undervaluation of goods cleared by suppressing the invoices of software purchased and clearing goods only on the basis of invoices raised in respect of hardwares namely the machines, after alleged artificial splitting of composite invoices into two separate invoices in the ratio of nearly 1/3 : 2/3 value of both hardware and software respectively. Matter was adjudicated after replies were received in respect of the show-cause notices issued to them (these Appellants) with individual allegations and ultimately the proposal given in the show-cause notices on differential duty, interest, penalties, redemption fine in lieu of confiscation etc. in respect of all, got confirmed in all these 17 appeals, the detail description of which is reproduced below in a tabular form, as furnished by learned Counsel for the Appellant M/s. Shairu Gems Diamonds Pvt. Ltd. Mr. Jhamman Singh, whose case is taken up as a lead case as he led the argument on behalf of M/s. Shairu Gems Diamonds Pvt. Ltd. and Others, on whom duty confirmation etc. were made in respect of 13 diamond scanning machines imported through 10 Bills of Entry during the relevant period. The table submitted in these appeals is reproduced herein below:-

Sr. No.	**Party Name**	**Order-in-Original No.**	**Total Duty Demanded (Only on past consignment)**	**Redemption fine imposed**	**Penalty imposed**	**CESTAT Appeal No.**
1	Sheetal Manufacturing Co. Pvt. Ltd.	COMMR./AKG/18/ 2016/ADJN.ACC(X)	59352620	36000000	59352620	C/86581/2016

2	Dharmanandan Diamonds Pvt. Ltd.	COMMR./AKG/19/ 2016/ADJN.ACC(X)	35520292	22500000	35520292	C/86706/2016
3	Neelam Exports	COMMR./AKG/23/ 2016/ADJN.ACC(X)	9104021	5600000	9104021	C/86568/2016
4	Hari Krishna Exports Pvt. Ltd.	COMMR./AKG/15/ 2016/ADJN.ACC(X)	17188706	10000000	17188706	C/86714/2016
5	HVK International Pvt. Ltd.	COMMR./AKG/14/ 2016/ADJN.ACC(X)	14888284	9000000	14888284	C/86715/2016
6	Kiran Gems Pvt. Ltd.	COMMR./AKG/16/ 2016/ADJN.ACC(X)	45560440	29000000	45560440	C/86723/2016
7	Shree Ramkrishna Exports Pvt. Ltd.	COMMR./AKG/17/ 2016/ADJN.ACC(X)	13885337	9500000	13885337	C/86756/2016
8	Kapu Gems	COMMR./AKG/22/ 2016/ADJN.ACC(X)	6108483	3700000	6108483	C/86840/2016
9	Blue Star Diamonds Pvt. Ltd.	MUM/CUSTM/AXP/ APP/1149/2018-19	1617937	942995	1617937	C/86414/2019
10	Aurostar Jewellery India Pvt. Ltd.	MUM/CUSTM/AXP/ APP/51/2019-20	4662468	2500000	4662468	C/87302/2019
11	S Vinodkumar Diamonds Pvt. Ltd.	COMMR./AKG/13/ 2016/ADJN.ACC(X)	7411424	4500000	7411424	C/86699/2016
12	Laxmi Diamond Pvt. Ltd.	COMMR./AKG/20/ 2016/ADJN.ACC(X)	23902890	14000000	23902890	C/86745/2016
13	Vallabhbhai Dhanjibhai & Co.	COMMR./AKG/21/ 2016/ADJN.ACC(X)	7724027	4700000	7724027	C/86851/2016
14	Mahendra Brothers Exports Pvt. Ltd.	COMMR./AKG/11/ 2016/ADJN.ACC(X)	6916525	4000000	6916525	C/86450/2016
15	K Girdharlal International Pvt. Ltd.	COMMR./AKG/29/ 2016/ADJN.ACC(X)	11133062	6600000	11133062	C/86834/2016
16	Shairu Gems Diamonds Pvt. Ltd.	COMMR./AKG/33/ 2016/ADJN.ACC(X)	6009626	3800000	6009626	C/86896/2016
17	Munjani Brothers	MUM/CUSTM/AXP/ APP/290/2019-20	3509337	2147800	3509337	C/87965/2019

3. During course of hearing of the argument learned Counsel for the Appellant M/s. Shairu Gems Diamonds Pvt. Ltd. Mr. Jhamman Singh, on behalf of all other Appellants argued that issue concerning exclusion of the value of software from the hardware (machines) for assessment of Customs duty and the theory of 'essentially for functioning' of machines without software has been well settled at the

Hon'ble Apex Court level through series of judgments including those passed by the Constitution Bench. He further submitted that Hon'ble Supreme Court of India in the case of PSI Data Systems Limited had given a clear finding that value of softwares sold alongwith the computer is not includable in the assessable value of computers since there is a distinction between computer and its software, though it may not be capable of functioning without the software but it would not change its position that cost of software etched to the computer is not included. Bringing further development of law on record, learned Counsel also submitted with reference to the Constitution Bench decision of the Hon'ble Supreme Court passed in the case of *Commissioner of Central Excise, Pondicherry Vs. ACER India Ltd.* as reported in *2004 (172) ELT 289 (SC)* that affirmed the decision of *PSI Data Systems Ltd. Vs. Collector of Central Excise,* reported in *1997 (89) ELT 3 (SC),* which matter was taken further to another Constitution Bench constituted in the case of *Commissioner of Central Excise, Indore Vs. Grasim Industries Limited*, reported in *2018 (360) ELT 769 (SC),* in which decision of ACER India Limited was referred and received approval thereby giving finality to the ratio of the judgment laid in PSI Data Systems Limited. Referring all those judgments this Tribunal in the case of *Manjit Singh Vs. Commissioner of Customs (Import), Nhava Sheva,* as reported in *2015 (323) ELT 377 (Tri. Mum.)* has given a clear finding that hardware and software are to be assessed independently whether they were imported together or separately (same finding as in PSI Data Systems Ltd.) and therefore, allegation concerning such splitting of value for software and hardware artificially would be of no consequence since duty is leviable only on the value of hardware and not on software.

3.1 Though issue of classification of software was agitated before the Commissioner by the Appellant claiming no duty on such software which is covered under Chapter Note 6 to Chapter 85 under Heading 85 23 (as reveal from para 5.12.1 to 5.12.8 of learned Commissioner’s order), it is not argued before us apparently for the reason that issue

of no duty of Customs on software downloaded from internet or email has been well settled to have no duty liability but Appellant had argued on the point that through email transfer, no media as movable article to have been stated to be crossing the international boundaries as it is not a transfer of movable property but transfer of information and/or ideas or knowledge, which India as a signatory to the Geneva Ministerial declaration on global electronics commerce documents [WT/MIN (98)/DEC/2, dated 25.05.1998 (98-2148)] is duty bound to follow its current practice of not imposing Customs duty on electronic transactions. His further argument has also been led on the point of non-application of any specific sub-Rule of Rule 3 of the Customs Valuation Rules and unnecessary addition of cost and service under Rule 10(1)(e) of Customs Valuation Rules, 2007 by the Commissioner that travelled beyond the scope of the show-cause notice.

3.2 On the point of re-opening of assessment, learned Counsel for the Appellants has argued that such a re-opening on finally assessed goods made under Section 17 as well as clearance under Section 47 of the Customs Act that allowed for home consumption is impermissible in law without Department having preferred an appeal against such assessment order as has been held in several decisions of this Tribunal including the one passed in the case of *Junaid Kudia Vs. Commissioner of Customs*, as reported in *2024 (16) CENTAX 503 (Tri.-Bom.)* apart from the fact that all detail having available with the Department through which import clearance was effected, such re-opening after 5 years of finalisation of assessment allegedly on mis-declaration of the value of software downloaded by the suppliers subsidiary company in India after clearance of machines/hardwares is not at all legal, proper or sustainable in law since such re-opening can’t be done except in cases of fraud, misrepresentation, collusion, etc. and it has been clearly held by Hon'ble Supreme Court in the case of *Uniworth Textiles Limited Vs. Commissioner of Central Excise, Raipur* as reported in *2013 (288) ELT 161 (SC)* that non-payment of duties is not equivalent to collusion, mis-declaration, wilful misstatement and

suppression of fact otherwise there would be no situation in which ordinary limitation of six months would apply and the said ratio of the judgment is squarely applicable to the Appellants' case, since nothing more was shown to construe that the Act of the Appellants would meet the applicability of the said proviso dealing with invocation of extended period. Further he added during the course of argument that the DGCI had issued show-cause notice to the subsidiary company of Exporter in India and also demanded Service Tax from one of the Importers M/s. Kiran Jems Pvt. Ltd. under the Finance Act, 1994 on reverse charge basis considering suppliers Sarin Technologies, Israel as a foreign supplier and therefore, apart from the fact that it would be a double taxation, impermissible under any circumstances, it would further establish knowledge of the Respondent-Department concerning supply of software by the Importer, that would dispel the allegation of the Department that bills of software were hided from the authority to evade payment of duty/tax.

3.3 Learned Counsel for the Appellant Mr. Singh also has contested the penalty imposed under Section 114AA of the Customs Act as well as redemption fine imposed in lieu of confiscation as no specific provision of either the Foreign Trade Development Act, 1992 or Export-Import Policy or any Notification was stated to have been violated or any restriction or prohibition was in force for such importation of goods, that would enable the Customs Authority to proceed under Section 111(m) of the Customs Act since higher quotation of price *vis. a. vis.* invoicing at a lessor amount can never be considered as mis-declaration of value. He questioned the legality of confirmation of interest and penalty also when duty itself was not payable on importation of software.

4. In response to such submissions, learned Special Counsel for the Respondent-Department Mr. Shambhoo Nath argued in support of the reasoning and rationality of the order passed by the Commissioner and took us to the Larger Bench decision of Tribunal passed in the case of

Bhagyanagar Metals Ltd. Vs. Commissioner of Central Excise Hyderabad, reported in *2016 (333) ELT 395 (Tri.- LB)*, that had taken note of the order passed by the Hon'ble Supreme Court in PSI Data Systems Ltd. and ACER India (Respondent), both cited supra and given a finding that in respect of fixed wireless telephones (FWT), in which there were no separate/distinct goods for classification and assessment was available, both software & hardware (FWT) are to be considered as single goods for assessment without any segregation of value for software, apart from the fact that Customs duty plus CVD and ADD are imposable on canned software where no customer specific programme was designed in view of Notification No. 20/2002-Cus., Notification No. 20/2006-Cus. and Notification No. 6/2006/C, as confirmed through final order passed by this Tribunal in the case of *BPL Telecom Pvt. Ltd. Vs. CCE Customs & Service Tax, Trivandrum*, reported in *2019 (369) ELT 1189 (Tri.- Bang.)* and he pointed out that documents available on record including written submissions would reveal that those softwares were downloaded from internet in India and loaded in those imported diamond scanning machines. Further, with reference to the invoices available in Volume-II of the appeal paper book at page 142, 144 in respect of Galaxi 1000 scanning machine *vis. a. vis.* invoice for hardware, packing list as available at page 129, 130, 131 for Dia Exporter SL System hardware and software, he wanted to justify variance of the same with the price list that was seized during investigation and reproduced by the Commissioner in his order at para 10.1 that runs from page 22 to page 29, so as to establish that the allegation concerning pricing of the product that is hardware at 1/3 of the value and pricing of its software at 2/3 of the value, though was made for the purpose of invoicing, the price list indicates a composite price for both the items, for which duty was appropriately demanded taking into account the value of both hardware and software that got confirmed by the Commissioner through a reasoned order. He further has drawn our attention to the proceedings held before the Settlement Commission before whom the Indian subsidiary of Exporter namely M/s. Sarin Technologies India

Pvt. Ltd. had settled its dispute by paying differential Customs duty of ₹1,30,86,878/- demanded under Section 28 of the Customs Act alongwith its interest that would further go to justify undervaluation of goods imported in a designed manner by the Appellants with the help and assistance of the Importer and therefore, the order passed by Commissioner is not required to be interfered with.

5. We have gone through the appeal memo, relevant documents placed on record, relied upon judgments submitted by the parties as well as written note and additional note presented in this case during the hearing and subsequent thereto. At the out set it is to be placed on record that it is admitted by both the sides and supported by provision of Tariff Act *vis. a. vis.* judicial decisions that software meant for use in the computer are not subjected to Customs duty at the time of importation and not also subjected to Central Excise duty for the purpose of determination of assessable value but the dispute centers around the interpretation of the provision concerning determination of assessable value of a computer system, in which software is preloaded or required to be subsequently loaded to make it functional. Before delving into further detail on the issue, it would be worthwhile to reproduce para 8.2.1 and 8.2.2 of the order passed by learned Commissioner that would further clarify the real dispute required to be determined in this appeal. It reads:

> *"8.2.1 I find that contention of the noticee is misplaced for the simple reason that in the instant case it is not the import of software per se (which is downloaded from electronic medium) which is sought to be subjected to Customs duties. What is sought to be subjected to Customs duties is the import of Diamond Scanning machines and the value of software which formed part and parcel of the value of machines (along with value of hardware), which escaped assessment due to genius and dubious means employed by the Importer, is sought to be included in the assessable value. The evidence on record clearly indicates that the Diamond Scanning Machines could not function*

without the software and the act of downloading of software per se had no relevance in the context of the case. What is relevant is the fact that value of the machine included the value of software and the value of software was artificially delineated and separate invoice issued for the purpose at the request of the importer. The machine becomes fully functional only when connected with the software downloaded on a computer and the computer is connected to the machine with the HASP key provided along with the machines. The machines without the HASP Key Software were of no use and would not be a functional machine and for this reason the price of software is inbuilt at the time of invoicing.

8.2.2 It has been clearly brought out in the SCN that the invoicing was done to show hardware and software component separately. The value at the time of negotiations and in the price list was all inclusive one and after discount a lumpsum value was arrived at. This arrived value, at the request of the importer, was artificially bifurcated into hardware (1/3 of total value) and software (2/3 of the total) value for which separate invoices were issued. Only the invoice representing the artificial value of hardware was presented for Customs Assessment. It is such an assessment that is being sought to be taken up for re-assessment and rightly so. I hold that the goods at the time of import were undervalued deliberately to avoid payment of appropriate duties. The case laws relied upon by notices are distinguishable on facts and thus cannot give any relief to the notices."

5.1 From the above observation made by the Commissioner acknowledging the fact that import of software is *per se* not subjected to Customs duty but when it has formed part and parcel of the value of the machines namely the hardware which in the instant case is diamond scanning machine, it ought to have included the value of software being part of a composite machine but Appellant had bifurcated the amount of hardware and software by splitting it into two

invoices for each machine imported and presented only the invoice of hardware before the Customs Authority for clearance and thereby escaped proper assessment though the pricelist and the negotiated amount after discount would suggest the lump sum value of the product. He, therefore, concluded that imports were undervalued deliberately to avoid payment of appropriate duties but going by the investigation report, as noted in the show-cause notice as well as order passed by the Commissioner at para 2.4.1.3 it would reveal that the General Manager of M/s. Sarin India (Exporter's subsidiary) Mr. Rajesh Kothari had categorically stated in his statement that the practice of splitting the total cost of all the machines imported from M/s. Sarin Technologies Limited, Israel or M/s. Galatea Ltd., Israel was adopted in all cases of imports made through M/s. Sarin Technologies, India and he further added that software of Galaxy and Solaries machines were never sold separately (same as being alleged by the Respondent) but bifurcation of the cost of the machine for software portion and hardware portion was decided by M/s. Sarin Technologies Ltd., Israel, and in certain events basing on requirements, additional software were purchased by the customer separately for optimum use of their machines. This being the evidence on record and there having been no trace of evidence that software price was kept at a higher range to get more benefit from non-payment of Customs duty on the same and in the absence of any contemporary import at that price being placed on record, it can't be conclusively held that bifurcation of hardware and software price in the ratio of 1:2 proportion was done to clear hardware on payment of lessor duty of Customs and evade applicable duty in undervaluing the imported goods.

5.2 Now at this juncture, it is also required to be analysed as to if value of software is required to be added to the value of hardware for the purpose of demanding Customs duty on the diamonds scanning machine? In this regard both sides have placed judicial decisions favouring Appellant in rejecting such inclusion and also in acceptance of the claim of the Department that such value of software should be

included so as to consider the goods as single unit and therefore, there is a requirement of judging the precedent value on the issue only instead of delving into the detail of the intricacies of the issue. To start with, in going through the precedent decision cited on behalf of Appellant mainly passed by the Hon'ble Supreme Court in PSI Data System Ltd. which still holds the field as being reaffirmed subsequently through several decisions of the Hon'ble Apex Court including that of the Constitution Bench finally in 2018 in the case of M/s. *Grasim Industries Limited* (Respondent), *cited supra* in which it was clearly held that value of software sold alongwith computer is not includable in the assessable value of computers since there is a distinction between computer and its software. In the said judgment also the claim of the Respondent-Department that computer may not be operatable without a software for which cost of software etched into the computer is to be included, has well been negated by Hon'ble Supreme Court by giving example of typewriting machine and its ribbon in which distinction is drawn in citing reference to the judgment passed by the Hon'ble Supreme Court in the case of *State of Uttar Pradesh Vs. M/s. Kores (India) Ltd.* to justify that without ribbons, when typewriters were sold, ribbon can't be considered as essential part to attract tax on it. It would be of substance be reproduced para 13 of the order passed by Hon'ble Supreme Court in *M/s. PSI Data Systems Ltd. cited supra* that would offer better clarity to the issue at hand, though passed in respect of Excise Laws. It reads:

> *13. Secondly, that a computer and its software are distinct and separate is clear, both as a matter of commercial parlance as also upon the material on record. A computer may not be capable of effective functioning unless loaded with software such as discs, floppies and C.D. rhoms, but that is not to say that these are part of the computer or to hold that, if they are sold along with the computer, their value must form part of the assessable value of the computer for the purposes of excise duty. To give an example, a cassette recorder will not function unless a cassette is inserted in it; but the two are*

> *well known and recognised to be different and distinct articles. The value of the cassette, if sold along with the cassette recorder, cannot be included in the assessable value of the cassette recorder. Just so, the value of software, if sold along with the computer, cannot be included in the assessable value of the computer for the purposes of excise duty.*
>
> *(Underlined to emphasise)*

5.3 Though the said order was passed in respect of applicability of Excise duty, the ratio available in the same order is well applicable to the instant case and therefore, it has been followed by this Tribunal in several decisions passed by it including the one cited by learned Counsel for the Appellant in the case of Manjit Singh, in which affirmation was given to the order of the Commissioner in dropping the show-cause notice issued for clubbing of values of software and hardware. Further, in this contest, the judgment passed by Hon'ble Supreme Court in *O.R.G. Systems Vs. Collector of Central Excise, Vadodara*, reported in *1998 (102) ELT 3 (SC)* is also required to be noted here for the reason that clear distinction was made in the said judgment concerning a computer and a computer system, in ultimately holding that computer and not computer systems are covered in the erstwhile Central Excise Tariff Act.

5.4 On the contrary, apart from decisions of Division Bench of this Tribunal, learned Special Counsel has placed on record a decision passed by Larger Bench of this Tribunal in the case of Bhagyanagar Metals Ltd., *cited supra* to justify that when software could not be presented as a separate media and identifiable from the computer, assessment has to be done without any segregation of the value of software considering them as single goods for assessment. He further justified applicability of these decisions, though passed in case of Fixed Wireless Telephone with CDMA FWT Mechanism, into the instant case as the Larger Bench had rightly taken note of the order passed in PSI Data Systems Ltd. as well as ACER India Ltd. that was subsequently

approved by the Constitution Bench and had given the findings which is squarely applicable to this case and therefore, inclusion of value of software in the value of diamond scanning machine is the proper way of assessment that was rightly concurred by the Commissioner.

5.5 Before analysing the precedent value of this judgment *vis. a. vis.* the judgment cited on behalf of Appellant, we are inclined to go through para 4 of the said Larger Bench decision that has provided the justification for constitution of Larger Bench that would go to reveal that Mumbai Bench of this Tribunal had decided against inclusion of value of software in the value of telephone while Bangalore Bench, in a set of other appeals, had concluded that software necessary for functioning of the telephone is already embedded in it, but ultimately the Larger Bench has decided that when there is no separate software for assessment and valuation of the CDMA phone, assessment has to be done considering the same as single goods but in the instant case separate invoices exist for such assessment and the mode of Transportation of software is noted in the said invoice as "via email". Therefore, distinct price tag is available for both hardware and software separately, in which case this Larger Bench's decision can't be said to have covered the issue at hand. On the contrary, going by the value of precedent decision and the way it is required to be followed, it would be worthwhile to refer to another Larger Bench decision of this Tribunal passed in the case of *Mira Silk Mills Vs. Commissioner of Central Excise, Mumbai,* reported in *2003 (153) ELT 686 (Tri.-LB)*, in which clear guideline was laid down by the Larger Bench itself that if there is conflict between law laid down by a High Court and the ratio of the decision of this Tribunal, whether it is of a Larger Bench or not, the Hon'ble High Court's decision will prevailed over the Tribunal's decision unless the same is in conflict with a decision of the Hon'ble Apex Court. Therefore, when in the instant case this Larger Bench decision is found to be contrary to the findings of the Hon'ble Supreme Court, whose decisions are regarded as law of the land in view of operation of Article 141 of the Constitution of India,

its ratio can't be taken as an aid to the determination of this appeal and on this score alone Appellants would succeed in their appeals.

6. Appellants also have questioned the legality of initiation of re-assessment, invocation of extended period by the Department without resorting to appeal provision in these cases when assessment was done by proper officer, duties were duly discharged and goods were released and it is not a case of the Department that invoice price is not correct or any additional sum is paid to the foreign supplier over and above the invoice price or similar or identical goods have been sold to other buyers at a price higher than the invoice price of the Noticees/Appellants and therefore, they are justified in claiming that redetermination of assessable value of diamond scanning machine under Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is not sustainable.

6.1 In the course of argument and in the written submission of learned Counsel also in citing several decisions of the Tribunal, one of it being reported in *(2024) 16 CENTAX 503 (Tri.-Bom.)* in the case of *Junaid Kudia cited supra,* he placed on record that proposal for such reassessment of value could never be proceeded without rejection of declared value under Section 14 of the Customs Act, apart from the fact that re-opening of such assessment for the period from 2009 to 2012, when limitation period available with the Department was only for 6 months/one year as the case may be, is unsustainable in law when all the detail were being available before the Department as was being presented at the time of import clearances. He pointed out the fact that no specific provision under Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 was pressed into service in the show-cause notice to effect such re-valuation which we find to be not without substance and also we fully endorse his views that penalties and redemption fine imposed in lieu of confiscation are not in conformity to law for the reason that goods proposed to be confiscated were not imported in violation of DGFT Regulations, or

EPCG Scheme or Foreign Trade Development Act or Exim Policy or in violation of Customs Act in the sense that softwares, be embedded in the machines or subsequently installed into the same post importation clearance, are not subjected to levy of Customs duty. Hence the order.

THE ORDER

7. The appeals are allowed and the orders passed by the Commissioner of Customs-IV, Air Cargo Complex-Export, Mumbai Zone-III on dated 13.05.2016, 31.03.2016, 26.02.2019, 30.04.2019 and 18.07.2019 *vide* Orders-in-Original, noted above are hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 25.02.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Prasad