C/2027/2012; C/2028/2012; C/2029/2012;
C/2030/2012; C/2031/2012; C/2280/2012

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2027 of 2012

(Arising out of Order-in-Original No. 04/2012 dated 31.03.2012 passed by the Commissioner of Customs, Bangalore.)

M/s. HP India Sales Private Ltd.,
No. 24, Salarpuria Arena,
Hosur Road, Adugodi,
Bangalore – 560 030. **…….Appellant(s)**

VERSUS

Commissioner of Customs, Bangalore
Central Revenue Building,
P.B. No. 5400, Queens Road,
Bangalore – 560 001. **……Respondent(s)**

WITH

(1). Customs Appeal No. 2028 of 2012 (Mr. N.V.P. Tendulkar, Controller (Financial Accounting & Reporting), M/s. HP India Sales Pvt. Ltd.)

(2). Customs Appeal No. 2029 of 2012 (Mr. S. Srinath, M/s. HP India Sales Private Ltd.)

(3). Customs Appeal No. 2030 of 2012 (Mr. B.S. Ravishankar, Manager, Global Trade Operations, M/s. HP India Sales Pvt. Ltd.)

(4). Customs Appeal No. 2031 of 2012 (Mr. Deepak Kanti Bhowmick, Global Trade Operations Manager, M/s. HP India Sales Pvt. Ltd.)

AND

(5). Customs Appeal No. 2280 of 2012 (Commissioner of Customs Vs. M/s. HP India Sales Pvt. Ltd.)

(Arising out of Order-in-Original No. 04/2012 dated 31.03.2012 passed by the Commissioner of Customs, Bangalore.)

APPEARANCE:

Mr. V. Lakshmi Kumaran with Mr. Vasudevan, Mr. Rachit Jain, Ms. Purvi Asati, Ms. Ashwini Nag Mr. Harshdeep Khurana, Ms. Vaishavi Nair and Ms. Aditi Sharma Advocates for the Assessee-Appellants
Mr. PRV Ramanan, Special Counsel (AR) for the Revenue-Respondent

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C/2027/2012; C/2028/2012; C/2029/2012;
C/2030/2012; C/2031/2012; C/2280/2012

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

Final Order Nos. 20760 to 20765 /2026

DATE OF HEARING: 16.12.2025
DATE OF DECISION: 06.05.2026

DR. D.M. MISRA

These appeals are filed against Order-in-Original No.04/2012 dated 31.03.2012 passed by the Commissioner of Customs, Bangalore.

2. Briefly the facts of the case are that the appellant is a company incorporated in India, wholly owned by M/s. Hewlett-Packard Company, USA (HPUSA). They are engaged in the business of import and resale of Information Technology products like computers, laptops, printers, servers etc. in India during the relevant period 01.11.2004 to 19.03.2009. In carrying out the said business, the appellant also imports spare / replacement parts of the said products. The appellant was appointed as a non-exclusive distributor of HP products and spare parts in India in terms of Distributor Agreement dated 01.11.2005. The parts imported during the relevant period are classified based on its intended purpose as (i) PL91 (FT 9A) parts imported for sale in Indian Market – these parts were imported for sale in the open market 'as such' and (ii) Parts imported for after sales support services-these parts were not intended for commercial sale by the appellant but were imported solely for providing warranty and annual maintenance contract (AMC) support services. Out of the total imports, around 95% of the spare parts were used for providing warranty/ maintenance services (support services) whereas only 5% of the spare parts were sold in Indian market 'as such'. The parts imported were also categorised as 'Red parts' and 'Blue parts'. The Red parts are

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primarily comprise of computer parts viz. used in laptops, desktops and a small percentage of such parts used in high-end servers and storage devices. All the Red parts were dispatched from Singapore during the said period. The Blue parts refer to the parts manufactured under HP's brand name. These primarily comprise of printer/ scanner parts (IPG parts) and a small percentage were used in servers and storage devices. During the relevant period, the Blue parts were imported from both HPUSA as well as HP Singapore. The appellant was adopting different methodology of valuation for Red parts and Blue parts. In relation to Red parts, Cost Plus methodology has been adopted, whereas in respect of Blue parts imported from USA, they adopted Reference Price less IC discount (61%) +DCCA [for warranty/ AMC purposes] and CLCP less IC discount (61%) [for resale in India].

3. Along with the investigation relating to valuation of products by undertaking search and seizure at various premises, investigation was also initiated by DRI in relation to import of Red parts and Blue parts from HP Singapore and HPUSA. On completion of investigation, show-cause notice was issued to the appellant with the proposal for recovery of differential duty of Rs.125.26 crores along with interest and penalty; proposal for confiscation of the goods seized during the course of investigation and imposition of penalty on various employees under Section 112(a) of the Customs Act, 1962. On adjudication, the learned Commissioner reduced the demand to Rs.36.70 crores with interest; imposed penalty of equivalent amount under Section 114A and Rs.1.85 crores under Section 114AA of the Customs Act, 1962. Personal penalty on Shri NVP Tendulkar, Shri S. Srinath, Shri B.S. Ravishankar and Shri Deepak Kanti Bhowmick were imposed under Section 112(a) of the Customs Act, 1962. Hence, the present appeals are filed. Also, Revenue has filed Appeal challenging the impugned order on certain issues. All these appeals were heard along with appeals filed by the appellant relating to products. However, since the impugned orders

are different and marginal difference in the facts, separate orders are passed for products and for the parts.

4. At the outset, the learned advocate for the appellant assailing the impugned order has submitted that the appellant has correctly adopted different pricing methodology in arriving at the assessable value of spare parts are which in line with transaction value defined under Rule 3(3)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) and the value declared was not influenced with the relationship. He has submitted that their HP-Return on Value Added Cost" (ROVAC, for short) pricing policy ensures that each HP entity recovers all the post importation costs (Value Added Costs and Non-VAC) along with a reasonable profit margin (ROVAC). He has submitted that for the parts intended for resale in India, the import value was determined using the methodology of CLCP less IC discount so as to enable the appellant to recover all post-importation expenses and earn a reasonable profit. The CLCP less method is consistent with the deductive value method enshrined under Rule 7 of the CVR. For the parts imported for internal use (for e.g. warranty or support services), the import value is determined through the Reference Price (RP less IC discount Plus DCCA) method.

5. It is submitted that the reference price is basis for worldwide internal transfer pricing used to value products/ services that are sold from one entity to another entity and includes administration, marketing, sales, manufacturing, R&D investment, royalty, warranty costs and reasonable profit. Reference Price(RP) also includes worldwide average trade discount such as promotional discounts and purchase agreement discounts. Thus, the RP for spare parts meant for internal use (warranty/ AMC) is generally fixed taking into account the RVS, logistic expenses, selling overheads, reasonable margin and discount uplift, etc. Thus, the said method is consistent with the principles of computed cost methodology enshrined in Rule 8 of the CVR, 2007. He has further submitted that the valuation of

parts imported from the Singapore Distribution Center using RVS plus markup (10% or 15%) method), where RVS represent a weighted average of the cost of new and repaired parts-is also in consonances with Rule 8 of CVR which reflects computed value methodology and appropriately includes cost of materials, repair and reasonable profit margin, which reflects a transparent and cost-based valuation structure in the exporting country. Therefore, the pricing methodologies followed by the appellant were consistent with the Valuation Rules and the IC prices declared by the appellant were arrived at on arms' length basis, which is in line with Rule 3(3)(a) read with principles laid down in Rules 7/ 8 of the CVR 2007.

6. Further he has submitted that the CVR do not prohibit the use of different pricing policies for different categories of imported products or based on the source of import as long as each pricing policy results at arm's length prices consistent with the valuation principles. Blue and Red parts were distinct both technically and in terms of end use; Blue parts being printer components and Red parts relating to computer systems justifying different pricing approach to the said products. Further cost structures vary across countries due to economic conditions, making it reasonable for similar goods to have varying import prices depending on origin. Thus, rejecting declared IC prices because different pricing methodology is followed is arbitrary and not supported by CVRs. In support, he has referred to the Commentary Notes by Saul L. Sherman on GATT Customs Valuation Code, at pages 104 and 105, under the Chapter titled 'Transaction Value of the Imported Goods'. Factors that are irrelevant under Transaction Value". Reiterating the stand taken by the Appelalnt in relation to the valuation of products, he has submitted that the issue has already been addressed by the CEGAT in their own case reported as CC, Chennai Vs. Hewlett Packard Ltd. [1999(108) ELT 221 (Tri.)].

7. Further he has submitted that pursuant to the merger with Compaq, they intimated Special Valuation Branch (SVB), Chennai

that the merged entity would follow HP's pre-merger Inter-Company (IC) pricing policy (ROVAC) for the imported products, except for certain items (some of the spare parts) where Compaq's pricing policy would apply, which was accepted by the SVB authorities and orders were passed. Further, he has submitted that the impugned order has failed to demonstrate as how the declared transaction value is liable to be rejected in terms of Rule 7 of CVR. Therefore, there is no justification to reject the transaction value declared by the appellant.

8. Assailing the methodology adopted by the learned Commissioner in the impugned order adopting Rule 9 for determination of the assessable value, he has submitted that Interpretative Notes to Rule 9 allow a degree of flexibility in the determination of value, which is in line with the framework prescribed under Rules 3 to 8 of CVR. He has submitted that the learned Commissioner in adopting Rule 9 based on arbitrary ratios (between List Price and Net Import Price) for each month in respect of other parts having List Price and applying to those parts not having list price imported in a month and applied the said ratio for computing the List Price of the said parts, is contrary the valuation principles. He has submitted that Rules 4 & 5 of CVR are applicable only in cases declared when import price available for identical or similar goods imported in India. The Commissioner has not adopted any identical or similar goods instead computed a notional value as List Price for parts which were not offered for sale in India. Such extrapolated List Price had been derived on an arbitrary basis adopting list price available for some other parts and that too on a monthly weighted average basis, which cannot be considered as identical or similar to the parts whose assessable value to be determined. Further referring to Rule 7, he has submitted that there should be unit price at which the imported identical or similar goods are sold in India. Thus, price at which the goods are sold in India has to be the actual price which has been received on sale of the goods. The Rule does not prescribe fixation of any arbitrary/

notional value as a sale price for the said purpose. The methodology adopted by the learned Commissioner is not been in consonance with the methodology prescribed under Rule 8 of CVR. Therefore, the determination of assessable value by adopting the arbitrary method by the learned Commissioner is expressly prohibited under Rule 9(2)(vii) of the CVR.

9. It is submitted that the methodology adopted following Rule 7 read with Rule 9 of the CVR by adopting a list price-minus approach by allowing limited post-importation deductions to arrive at the assessable value may be appropriate for PL91 parts which were actually resold and a resale price exists.; its application to support service parts used for warranty/ AMC, which were never offered for sale, is contrary to Rule 7. Therefore, the method followed by the appellant (e.g. RVS plus or RP minus) is valid under CVR and be accepted. Since the methodology adopted in the impugned order is unsustainable, the demand is liable to be set aside and it cannot be sustained by the appellate authority adopting any alternate methodology which has not been proposed in the notice. In support, he referred to the following judgments:-

i. Saci Allied Products Ltd. Vs. CCE, Meerut [2005(183) ELT 255 (SC)]
ii. Hindustan Polymers Co. Ltd. Vs. CCE, Guntur [1999(106) ELT 12 (SC)]
iii. Reckitt & Colman of India Ltd. Vs. CCE [1996(88) ELT 641 (SC)]
iv. CCE Vs. Gas Authority of India Ltd. [2008(232) ELT 7 (SC)]

10. Advancing an alternate argument, learned advocate has submitted that deductions towards trade discount should be allowed @ 50% from the list price. He has submitted that the appellant was selling only 5% of the imported parts as such in the market, whereas remaining 95% of spare parts were used by the appellant for providing support services. For the parts sold (PL91), the list price/CLCP was available, which is the starting point for computation of the import price. From this price, trade discounts offered to the buyers (channel partners / end-customers) are deducted to arrive at

the net resale price of the products. The learned Commissioner accepting the contention of the appellant has allowed a discount of only to the extent of 30% of the List Price even though he has observed that the discount under the Discount schedule in the Master Parts Reseller Agreement is linked to the net value of committed purchase by the Master Parts Resellers (MPRs)and there are three variables in Discount Schedule viz. 30%, 35% and 38% depending on the volume of purchases. He has allowed the least trade discount considering the majority of sale of spares are bundled transaction of sale plus service and rejected excess of 30% observing that nature of additional quantity discounts based on committed offtake by MPRs cannot be a factor relevant for spares sold as part of AMC/warranty. He has submitted that the appellant has offered discount of 38% from the List Price to MPRs who purchased parts having net purchase value of USD 1 million or more in a year. Therefore, the entire calculation should be done assuming the percentage of discounts that the appellant would have offered had they sold parts worth USD 35-40 million in India in a year. Therefore, in view of the difference in the quantum of sales, the appellant is entitled to a discount of 50% from the said price.

11. Responding to the appeal filed by the Revenue challenging the admissibility of 30% discount from the List Price, the appellant has submitted that in case of valuation of products where the learned Commissioner has allowed trade discount of 30% to Supply Chain Replenishment Fulfillment and Reinvention (SRFR) products in addition to SRFR discount, the Department has accepted the admissibility of such discounts and no appeal was filed. Therefore, the principle that trade discount should be allowed even in case of goods not meant for sale as such has been accepted by the Department in case of SRFR products; hence, a contrary stand cannot be taken in the case of valuation of spare parts. Further, as an alternative argument, accepting deductive method of valuation adopted by the adjudicating authority, learned advocate has submitted that deductions must be allowed to the extent of 5% from

the List Price towards trading, marketing, administrative and other general expenses along with reasonable profit. Assailing the finding of the learned Commissioner that there is no rationale in considering the expenses such as marketing, administrative expenses etc., he has submitted that these expenses were incurred basically towards the sale of products in India; hence, admissible as deduction. He has submitted that while determining the revised assessable value for parts, deductive methodology has been adopted for all the parts whether sold or not; that a fiction has been created that all the parts are sold and has proceeded to determine the value of the parts on the said basis. Therefore, it is mandatory to give deduction on account of post-importation expenses and reasonable profit that would be incurred, if the imported products are resold in India as such to arrive at the deduced assessable value from the fictional resale price or list price in India. The GPSC (Global Parts Supply Chain) expenses represent only the expenses incurred by the appellant in connection with physically importing, transporting, storing, warehousing, distribution etc. of the parts. Such expenses merely include the costs incurred in performing the supply chain function for the parts and do not include expenses like selling, marketing, administration and other general expenses which also qualify as post-importation expenses. Even though there is no sale is involved with respect to parts imported and internally consumed in providing support services, once deductive methodology has been adopted in arriving at assessable value of these parts, the marketing expenses, the appellant would have been incurred for sale of these parts in the Indian market, ought to be deducted.

12. Responding to the appeal filed by the Revenue against the impugned order allowing deductions towards certain GPSC expenses from the List Price, the learned advocate has submitted that the learned Commissioner has rightly allowed deductions towards expenses like stock loss /write off, excess and obsolescence, scrap-good inventory and scrap-defective inventory, observing that these expenses should be calculated on a yearly basis instead of monthly

basis as proposed in the show-cause notice. The Logistic department of the appellant undertakes the job of warehousing and distribution of spare parts, the expenses are incurred in connection with transportation, storage, warehousing, customs duties, logistics etc., of the spare parts. Certain expenses were allowed by the DRI but the aforesaid heads of expenses were proposed to be denied but allowed by the learned Commissioner. Explaining the nature of these expenses he has submitted that it must be allowed as post-importation expenses and a reasonable profit (8% / 10%) on such GPSC expenses also admissible as deduction from the resale price.

13. The learned advocate has further submitted that the learned Commissioner has denied the benefit of cum-duty and also ROVAC on the customs duty even though in the show-cause notice, there is no specific proposal for denial of ROVAC on the customs duty. He has submitted that the cum-duty benefit ought to be allowed in view of the judgement of the Larger Bench of the Tribunal in the case of UOI Vs. Sri Chakra Tyres Ltd. [1999(108) ELT 361 (Tri. LB)] and the Hon'ble Supreme Court's judgment in the case of CCE Vs. Maruti Udyog Ltd. [2002(49) ELT RLT 1 (SC)].

14. Assailing the impugned order to add freight and insurance even though the sale are on CIF/DDU basis, the learned advocate has submitted that the grounds on which freight and insurance to CIF /DDU, particulars has been made while confirming the demands are similar to the products for which they made a detailed submissions would be applicable to the present case also.

15. On the issue of directing confiscation and penalty relating to import of refurbished spare parts observing that the same were restricted in terms of Foreign Trade Policy (FTP) read with Handbook of Procedures and for that, the appellant was required to obtain licence from the DGFT, the learned advocate has submitted that the learned Commissioner on the basis of new allegation of non-furnishing of a Chartered Engineer certificate; such an allegation has

never been alleged in the show-cause notice proposing confiscation and penalty. Thus, the learned Commissioner has travelled beyond the scope of show-cause notice; hence, directing confiscation and imposition of penalty for non-production of Chartered Engineer certificate cannot be sustained. In support, he has relied upon the following judgments:-

i. Dristy Communication Pvt. Ltd. Vs. CCE&ST [2018(10) TMI 1326]
ii. Precision Rubber Industries (P) Ltd. Vs. CCE, Mumbai [2016(334) ELT 577 (SC)]
iii. Principal Commissioner of C,CE&ST, Nagpur Vs. Fabrimax Engg. Pvt. Ltd. [2018(359) ELT 43 (Bom.)]

Further, he has submitted that the learned Commissioner's finding based on the valuation methodology that whether part is new or refurbished does not alter the condition of the goods is unsustainable in law.

16. Further, on the issue of limitation, he has submitted that entire demand is barred by limitation as the extended period cannot be invoked in this case. He has submitted that all disclosures were made by the appellant before the SVB, Commissioner(Appeals) and CEGAT in the earlier round of litigation wherein the Tribunal has accepted the pricing policy which would demonstrate that all primary facts have been disclosed by the appellant. Further, he has submitted that HP acquired Compaq Computer Corporation on a worldwide basis in the year 2002, as a result of which, Compaq Computer Corporation, USA, was merged into Hewlett-Packard Co., USA. Following the merger with Compaq Computer (India) Pvt. Ltd., the Appellant intimated SVB, Chennai, via letter dated August 20, 2004, that the merged entity would follow HP's pre-merger inter-company pricing policy (ROVAC) for imported products, except for certain items (some of the spare parts) where Compaq's computed cost policy would apply. The Appellant also requested SVB to issue a fresh order accepting the invoice values of imported goods. He has referred the letter dated August 20, 2004, written to the SVB. The

Ld. Joint Commissioner of Customs, SVB, Chennai passed Order-in-Original No.2988/2004 dated October 12, 2004, accepting the invoice prices of the imported goods based on the inter-company pricing policy based on ROVAC, as extensively discussed and approved by CEGAT earlier. Further, the computed cost policy of erstwhile Compaq proposed to be used by the merged entity for some of the imports was also accepted by the SVB authority, as the same had been already accepted by them earlier for pre-merger Compaq entity. In this regard, he referred to letter dated January 3, 1997, submitted by erstwhile Compaq to SVB, Chennai Customs in which it has been expressly mentioned that Company imports "Units" (i.e. products) as well as spares (which are primarily for warranty replacement) and that a separate application dated 22.9.1995 has been made before the SVB Chennai in respect of import of spares. He referred to the letter dated January 3, 1997, sent to the SVB. As these submissions were very old and that too made by erstwhile Compaq entity, the Appellant did not have copies of the applications filed by Compaq before SVB Chennai in their records and hence, could not produce the same either during DRI investigation or during the subsequent proceedings. However, the said letter clearly shows that pricing policy followed by pre-merger Compaq for spare parts was duly disclosed to and approved by the SVB. Hence, the is no basis for the DRI in the SCN or for the Ld. Commissioner in the impugned order to allege suppression or misstatement on the part of the Appellant.

17. Further the appellant has submitted that specific provisions relating to levy of interest, penalties, confiscation and redemption fine, since not borrowed for CVD and SAD demand, submissions relating to Section 138B penalties on individuals as submitted in their argument /written submissions relating to demand on products be mutatis mutandis applied to the present appeals also.

18. *Per contra*, the learned Special Counsel for the Revenue, reiterating the findings of the adjudicating authority, has submitted

that as a result of the investigation by the DRI, the facts revealed indicated that the appellant has grossly undervalued the imports parts sold as well as used by them for internal purposes. He has submitted that the following facts not been brought to the notice of the Customs including SVB are:-

(i) the Distributor Agreement effective from 1-11-2002 & 1-11-2005 entered between HPISPL (merged entity being HPISPL) and the parent company along with a host of other Service related agreements entered with various sister units of Hewlett-Packard Co., USA which had a definitive bearing on the determination of Customs value;

(ii) existence of 4 different pricing methodologies adopted by them in determining the Customs value;

(iii) the compilation of GPSC expenses at HP, Singapore for all the spares imported by HPISPL;

(iv) periodical ROVAC review process; and

(v) the existence of Master Parts Reseller (MPR) Price Lists in INR for majority of spares imported by HPISPL.

19. It is his contention that since these facts and documents were not submitted to the Customs Department/ SVB, there was no occasion for the Department to examine and ascertain the correct value of the imported spares by the appellant. He has submitted that from the submissions now advanced on behalf of the appellant, the following facts emerged:-

> (i) in the case of fabricated parts depending on the development of the parts by the buyer or seller, the use of Cost plus 15% or Cost plus 30% is used;
>
> (ii) further, in the case of replacement part, it is the use of list less method as described for product pricing which is followed.
>
> However, there is no mention of RVS plus 10% or 15% to the SVB /Customs;

(iii) further, there is also no mention of Reference price less 61% or CLCP less 61% uniformly being applied for all the parts consistently for all the years which was in the knowledge of SVB /Customs. There is no basis or rationality for adopting the 61% discounts throughout when using the list less methodology apart from non-disclosure of the different pricing methods to the SVB/Customs;

(iv) the Distributor agreement dated 1st Nov 1994 was not produced/disclosed anytime to SVB or Customs;

(v) the said agreement was produced during the course of PH, which clearly depicted the different products listed under different categories for 'resale', 'stock' and 'internal use' showing different discounts for each category; if this 'Distributor agreement' dated 01.01.1994 had been produced to the SVB authorities by HPISPL at the relevant time, the Customs department would have had an opportunity to examine the nature, quantum and reasons for variation etc. relating to import transactions of HPISPL;

(vi) bills of entry filed by HPISPL for the import of subject goods, in the columns meant for 'discount amount' and 'discount rate' the declaration is '0' i.e. zero' even though the price indicated on the Customs Invoice accompanying the consignment was actually derived from the 'list price' after applying the relevant funding discounts;

(vii) the above information is available in the corresponding EIFFEL invoice for every blue part coming from C- 200 (HP-USA); given the existence of such an EIFFEL invoice for each of the consignments, the declaration as above does constitute gross misdeclaration;

(viii) further, the existence of pricelists was suppressed before the Customs /SVB so that effective and corrective mechanism would have been effected to value the spares in accordance with the Customs valuation rules.

(ix) the defence of Appellant is that there is no requirement to indicate the list price and the discount since the price paid or payable is not the list price but the net price; section 46 of the Customs Act, 1962, requires an importer of goods to file an Entry i.e. the B/E in the prescribed form providing full information about the goods under import – which contains the aforesaid columns and shall make and subscribe to a declaration as to the truth of the contents of such B/E and shall also make available the invoice; in the light of this statutory requirement, Appellant ought to have made full disclosure of the list price, discount or the various pricing methodology including RVS plus method in arriving at net price to the Customs department in the Bills of entry and accordingly, mentioning of 'zero' in the discount column is a positive act of misdeclaration.

These facts, which were mis-declared and suppressed earlier, led to reopening of the assessment completed earlier. Further, he has submitted that the value declared by the appellant cannot be considered as transaction value.

20. The learned Special Counsel has also made the following submissions responding to the argument of the above about the acceptability of the value declared as transaction value in the light of the CEGAT's decision:-

i. The Hon'ble CEGAT was not presented with the correct purport of the Rule 4(3)(a) /3(3)(a) and Rule 7 of CVR and the relevant Interpretative Notes. But the fact remains that the Hon'ble CEGAT found that the 'actual cost of stock and sale activities of HPI on its own account plus 10 % margin of profit thereon does not constitute an unfair practice'.

(ii) The HPISPL never made true and full disclosures about the deductions on account of other factors and the same was never the subject matter of discussion or analysis by either the Commissioner (Appeals) or the Hon'ble CEGAT. It is a fact that the decision of the

Hon'ble CEGAT has been accepted by the Department and acted upon for subsequent SVB reviews. However, res-judicata does not apply to tax matters.

21. The adjudicating authority has set out the following facts to infer in deviating from the earlier CEGAT order or reopening of the settled issues:

(a) At the time of passing of the CEGAT order, the Distributor Agreement of 1989 and Amendment Agreements to the same, which alone were presented before the CEGAT, related to HPI acting as a Representative of HP, Hong Kong. Under this Agreement, the compensation Agreement given to HPI was of the nature of an overriding commission. The terms of this Agreement are vastly different from the terms of subsequent Agreements.

(b) Even though it was submitted by HPISPL that there existed a Distributor agreement dated 01.11.1994, the same was not placed before the CEGAT or any other authorities. As per the copy of the Agreement produced just before the conclusion of the hearings, the quantum of total funding discount in favour of HPI was indicated therein. HPI did not share the said information with the CEGAT, obviously because it could have adversely affected their case. All the same, because of non-disclosure, CEGAT did not have an opportunity to examine the actual facts flowing from the said Agreement.

(c) CEGAT primarily examined the question whether on the basis of commission earned by HPI on a few direct sales, the value declared by HPI in respect of their own imports could be enhanced to the level of the prices charged in respect of such direct sales.

(d) After, 2002, another company, viz. 'Compaq' merged with HPI. Two Agreements were entered into by HPI (HPISPL) with other HP entities, one in 2002 and another in 2005. Both these Agreements were not produced before any of the

authorities. The terms of these Agreements were vastly different from the terms of the Agreement placed before the CEGAT.

(e) The pricing policy adopted by Compaq was based on 'Cost plus' method and this policy which was followed by Compaq was followed by HPISPL for majority of the spares imported by HPISPL.

(f) Even though the ROVAC policy per se was /is fair to HPISPL and Revenue in some respects, in its application in respect of HPISPL's imports into India, DRI's investigations revealed several deviations and aberrations, which were not denied by the employees of HPISPL. These deviations and aberrations impacted the assessable values of the imports by HPISPL.

(g) The complex nature of fixation of CLCP, devolution of uniform discount of 61% or a mark-up of 15% or 10% for all the years could not have been based on commercial consideration and nevertheless the same was also never disclosed to SVB /Customs as well as appellate authorities including CEGAT.

(h) CEGAT, had, in its order, held that 'the actual cost of stock and sale activities of HPI on its own account plus 10% margin of profit thereon does not constitute an unfair practice.' From this it is clear that CEGAT had, on the basis of submissions made by HPI, gained the impression that the working of the stock and sale activities of HPI on its own account were on actual basis. In practice, HPISPL had no visibility on this score as the same was determined by the parent HP entity.

22. Summarising his arguments on issues, the Special Counsel has submitted as:-

i. The appellant had imported spare parts, from HP Singapore and HP USA. These spares included both new and refurbished parts. However, the said refurbished spares were imported

along with new parts consisting of the same part nos. without any declaration /intimation to the Customs.

ii. The appellant followed a dual pricing policy, wherein prices of parts imported from Singapore were significantly lower than the prices of identical parts imported from USA. The value declared for Customs purposes in respect of specified part nos. remained constant over a period of time. There is no explicit remark on the Customs invoice to distinguish the spares meant for sale or for warranty purposes. The value of refurbished parts was the lowest among all the prices for the same parts.

iii. The basic ground for reopening of assessments is non-disclosure and suppression of material particulars, details are set out in Para 2.4 above. Besides, there was misdeclaration in the B/Es, non-disclosure of Distributor and other agreements. Notably, the practice of valuation of spare parts imported from Singapore, based on Refurbished Value Standard (RVS) plus 15% plus DCCA for blue parts and RVS plus 10% for red parts and the practice of valuation of spare parts imported from USA, based on RP less I/C discount of 61% plus DCCA for blue parts and RVS plus 10% for red parts for warranty and AMC purposes and CLCP less IC discount of 61% was never disclosed to SVB or Customs. Voluntary statements given by various employees about disclosures made and not made to SVB /Customs, when shown the documents obtained from HPISPL indicate that HPISPL deliberately suppressed material particulars. They also did not disclose the applying of a different pricing methodology for the imports of pre-merger HP parts and pre-merger Compaq parts, the existence of price lists in respect of spares imported being generated in Singapore, and the list of goods for which the computed cost method would be followed.

iv. In view of the facts and circumstances of the case, the Master Parts Reseller (MPRs) price list was rightly taken as the basis

and various abatements and discounts were allowed on the list prices to arrive at the Customs value. This is permissible under Rule 8/9 of CVR. Further, in respect of warranty supplies and AMC supplies there is no warrant to give abatement on account of selling and marketing expenses.

v. The results of investigation as summed up in Paras 2.1 to 2.5 and Paras 3.1 to 3.9 above, and issue-wise findings recorded by the AA clearly indicate a deliberate default on the part of HPISPL as far as imports of spare parts during the period of dispute are concerned.

23. Further, challenging the impugned order to the extent it has dropped the demand, he has submitted that the reduction in the differential duty is mainly due to (a) allowing abatement of trade discount of 30% from the base price, as per the Master Parts Reseller (MPRs) price list and (b) allowing of the GPSC expenses as deductions from the said MPR price list. He has submitted that the learned Commissioner has failed to take cognizance of the statement of Shri Vivek Dwivedi on the fact of standard discount of 30% only to Blue parts and special discounts to meet customer's price points on order-to-order basis was given to red parts. This statement of fact has not been contradicted by HPISPL. The adjudicating authority has extended 30% trade discount to all imported spares- both red and blue parts- without considering the following aspects:

(i) The AA has taken the view that in the case of spares used for Warranty /AMC purposes there is a deemed sale. This finding has no statutory basis.

(ii) Even in respect of 4/5% of sales, the AA has found that majority of sale of spares are bundled transactions of sale plus service. There appears to be no independent sale of spares for which discount was extended.

(iii) Apparently, no sales invoice showing sales of spares was produced before the investigating Agency or the AA.

24. Responding to the argument of the appellant that 30% reduction adopted by the adjudicating authority instead of 38%, he has submitted that even though the appellant had claimed that the Cost (i.e. RVS) Plus method has been adopted by them, but the facts remained that this method has not been uniformly adopted. Besides, they did not provide details of RVS, the reasons for adopting two different mark-up percentages thereon for Blue and Red parts and non-addition of DCCA for Red parts. For Blue parts imported from USA, the practice of arriving at the assessable value was: Base price (RP or CLCP) less 61% discount; no breakup of 61% discount was provided. Further, he has submitted that since local market prices charged by the appellant for identical goods was available in MPRs list prices, which were also available with HP Singapore, the said prices were taken as the Base Price and abatements in respect of average / standard discounts not linked with the quantity purchased was allowed. Department is not in acceptance of the said discount allowed by the Commissioner.

25. Further, Revenue has objected to the abatements allowed by the adjudicating authority in respect of the items of expenses viz., (i) DCCA- Distribution Centre Cost Allocation expenses incurred by HP Singapore. Obviously, such expenses are incurred before import, (ii) Freight-includes transportation charges for international and domestic movement of goods, (iii) Actual Duties and taxes paid, (iv) other trading expenses, (v) warehousing charges, (vi) logistic overheads, (vii) total material cost of spares imported by HPISPL and (ix) stock and write-off, scrap-good as well as defective inventory and excess and obsolescence. These are not post-importation expenses; hence not admissible.

26. Heard both sides and perused the records.

26. The principal question involved in the present appeals, relates to determination of assessable value of parts imported for sale as well as for internal use to meet AMC / warranty obligation.

27. Undisputed facts of the case are that the appellant has been importing pre-merger HP parts (PMHP) and pre-merger Compaq (PMC) parts. The PMHP is termed as Blue parts which are primarily used in printers and a small percentage used in servers and storage devices. PMC parts are termed as Red parts, primarily used in laptops, desktops, servers etc., small percentage of Red parts used in high-end servers and storage devices. They have adopted different pricing methodology for Blue parts and Red parts imported from HPUSA and HP Singapore. The Blue parts imported from HP Singapore were applied the method of Refurbished Value Standard (RVS) + 15% + Distribution Centre Cost Allocation (DCCA) and in respect of Red parts, RVS+10% was applied. The Blue parts for warranty and AMC purposes imported from HP USA follows the pricing policy of Reference Price (RP) less IC Discount(61%) + DCCA and Blue parts imported from HPUSA for resale in India follows CLCP less IC discount (61%). Besides the fact of adopting different pricing methodologies adopted for the parts imported, during investigation, it revealed that they were also having price list generated in Singapore for the spares sold in India which is similar to CLCP available for products which are basically trade customer price. However, in the Bills of Entry filed for the parts imported, only the net price was reflected. Also, the appellant had not disclosed adoption of different pricing methodology for the imported parts meant for resale as well as for its use for warranty and AMC purposes. Out of the total import of spare parts, admittedly 95% are used in providing warranty/AMC, whereas 5% are meant for resale in the market. The Department alleging that since the declared value in the respective Bills of Entry filed failed the test of transaction value prescribed under Rules 4(3)(a) / 3(3)(a) of CVRs

1988/2007 being influenced by the relationship, rejected the same and proposed to redetermine the assessable value under Rule 8/9 of the CVR 1988/2007 read with Rule 7 of the CVR.

28. Before analysing the rival claims on merits of the case, it is essential to address the preliminary objections raised by the appellant during the hearing viz. (i) the methods of valuation now questioned by the DRI has already been considered and settled by this Tribunal by order dated 10.07.1998 in their own case, and subsequently followed in SVB orders passed from time to time, hence raising the same issue again is bad in law; and (ii) the statements of various persons recorded under Section 108 of CA,1962 cannot be relied upon as the provisions of Section 138B have not been complied with.

29. We find that initially the matter was adjudicated by the Special Valuation Branch (SVB). The appellant aggrieved by the said order challenged it before the learned Commissioner(Appeals), who allowed their appeal. On Revenue's Appeal, the Tribunal, inter-alia, analysing the issues raised upheld the Order of the Ld. Commissioner(Appeals). The learned advocate heavily relied on the following observation of the Tribunal:

> **"23.** We also note that it is clearly provided in the notes to Rule 4(2)(b) that the activities relating to the marketing of the imported goods by the buyer on his own account shall not result in reduction of the transaction value. Therefore, in this case also merely because HPI aggressively markets the goods imported from HP USA, on this ground alone the transaction value declared by HPI cannot be rejected. Note 1 to Rule 4(3) explains that Rule 4(3)(a) and 4(3)(b) provides different means of establishing the acceptability of a transaction value. It further provides that under Rule 4(3)(a) where the proper officer of customs carries a doubt that the price declared may have been affected the relationship between the importer and exporter, he should examine all relevant aspects of the transaction including the way in which the buyer and seller organise their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price. In the discussions above, we have carefully considered the marketing policy adopted by HP USA vis-a-vis HPI in view of these explanatory notes. And doing so, we have found that since in this case the price is

> declared to ensure recovery of all the cost incurred by HPI plus a profit, therefore, we have found that the price has not been influenced. This approach is clearly consistent with the following explanatory note to Rule 4(3)(a) :-
>
> "As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g., on a annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced."
>
> Therefore, we find that our discussions above are clearly supported by these explanatory notes because we have held that the actual cost of stock and sale activities of HPI on its own account plus 10% margin of profit thereon does not constitute an unfair practice.

30. The learned advocate has argued that aforesaid order of the Tribunal wasn't challenged by the department and hence attained finality. Also, the pricing policy followed by the appellant time and again has been subjected to periodical review by SVB, Chennai and consistently orders were passed accepting the said pricing policy and the Order of the Tribunal. Thus, the impugned order reopening the assessments already finalised based on the SVB/CEGAT's Order is illegal and without justification.

31. The contention of the Department, on the other hand is that the appellant, while declaring the assessable value for their imports had never made true and full disclosure about the discounts & deductions on account of other factors in their declarations to the department; different methodologies adopted for determination of value of Blue parts & Red parts, hence the admissibility of said Discounts/deductions, methodologies for valuation could never be the subject matter of scrutiny/adjudication by SVB or Appellate authorities i.e. Ld. Commissioner(appeals) or CEGAT. In the earlier proceeding the question before the authorities/CEGAT was whether the Commission earned by the appellant on Indent sales to third party buyers/purchasers be loaded to the their(Distributor's) net price for stock and sale traded goods Imported by them. Besides, the merger with Compaq, subsequent agreements entered in 2002 and 2005, the complex nature of fixation of CLCP, devolution of

funding discount based on global/regional averages and the Country Specific adjustments(CSAs), etc. were never disclosed to SVB and CEGAT, hence no deliberation could be made on these issues. Hence, Revenue is justified in reopening the assessments.

32. We find that even though CEGAT in its order referred to the ROVAC pricing policy followed by the appellant and commented that the same is reasonable and did not influence transaction value with related overseas supplier HPUSA, however, it is in the context of the facts of the said case brought before them, that is, whether indent commission be loaded to the net import price of the Appellant for stock and sale goods. Further, after the said Judgment was passed fresh agreements have been entered; the investigation carried out by DRI brought on surface some new facts that different methodologies of valuation is adopted for Blue and Red parts resulting in distortion of declared value. In these circumstances, it is quite necessary and also relevant to re-examine the gamut of issues in the light of the fresh developments pursuant DRI investigation including the fact whether the ROVAC pricing policy adopted by the Appellant has influenced the transaction value with the related overseas seller or otherwise.

33. On the issue of compliance of the provisions of Section 138B of Customs Act, 1962, it is their contention that it is mandatory to follow the procedure laid down under the said Section 138B whose statements were recorded under Section 108 of the Act i.e. (i) the person who made the statement during the course of inquiry has to be examined as a witness first in the case before the adjudicating authority; and (ii) thereafter, the adjudicating authority to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice or otherwise. In support, they have referred to the judgment in the cases of J&K Cigarettes Ltd. Vs. Collector [2009(242) ELT 189 (Del.); CCE, Meerut-I Vs. Parmarth Iron Pvt. Ltd. [2010(260) ELT 514 (All.)]; Jindal Drugs Pvt. Ltd. Vs. UOI [2016(340) ELT 67 (P&H);

G-Tech Industries Vs. UOI [2016(339) ELT 209 (P&H)] and Surya Wires (P) Ltd. Vs. Commissioner [2025 SCC OnLine CESTAT 989]. Resisting the said argument, the Special Counsel for the Revenue has submitted that around 150 statements were recorded under Section 108 of CA,1962 and the show-cause notices were issued in the year April 2010. All these statements were annexed to the show-cause notice and the adjudicating proceedings were completed on 31.03.2012. He has further submitted that during the course of hearing before the adjudicating authority, the appellant has never raised any objection alleging non-compliance with the procedure of accepting evidences of witnesses to be followed by subjecting them first to examination in-chief, thereafter cross-examination, if requested, and hence raising such objections at this stage should not be accepted. He has further submitted that besides, the statements recorded under Section 108 of the Customs Act, 1962 had never been retracted by any of the witnesses, hence admissible in evidence. In support, he referred to the judgment in the case of Commissioner of CGST and CE, Howrah Vs. Ashirwad Foundries Pvt. Ltd. [(2023) 4 Centax 265 (Cal.)]. Further, he has submitted that the jurisdictional High Court in the case of Commissioner of Customs, Bangalore Vs. Jyothi Jain & Ors. 2025(9)TMI-1525-Karnataka High court observed that Section 138B of the Customs Act, 1962 is not applicable to the Departmental adjudications. The said judgment is binding on this Tribunal being an Order of the jurisdictional High Court as opined by the Larger Bench of this Tribunal in the case of Collector of Customs & Central Excise, Chandigarh Vs. Kashmir Conductors 1997(96)ELT257(Tri-LB) and endorsed by another Larger Bench in the case of JK Tyre & Industries Vs. Asst. Commissioner of Central Excise, Mysore 2016 (340) ELT 193(LB).

34. We are of the view that the contention of the appellant against admitting the oral evidence in the form of statements recorded under Section 108 of CA,1962 cannot be accepted at this stage, inasmuch as the appellant had participated in the

adjudication proceedings by subjecting certain witnesses to cross-examination without raising any objection about conducting first their examination-in-chief, and thereafter for cross-examination; also, not raised objection about the admissibility of evidence of other witnesses who have not been called for examination-in-chief/cross-examination. Hence, their submission not to accept the statements as evidence of the witnesses for the purpose of deciding the appeal filed against the impugned order, at this juncture, for not following the procedure of conducting examination-in-chief first and thereafter admitting the same as evidence is devoid of merit, hence cannot be accepted. Also, we find that the impugned Order does not rest its finding only on the statements of various persons recorded during the course of investigation, but also on scrutiny and analysis of voluminous documentary evidence as referred to in passing the Order which are relied upon and enclosed with the show cause Notice issued to the Appellant. Besides, the jurisdictional Karnataka High Court in Jyothi Jain's case (supra) held that Section 138B of the Customs Act, 1962 is not applicable to Departmental proceedings. The said judgment of the Jurisdictional High court is binding on this Tribunal by virtue of Larger Bench decision in Kashmira Conductor's case and JK Tyres' case(supra).

35. To apply the principles of customs valuation to the facts of the present case, it is necessary to read the relevant provisions of Customs Act,1962 and the customs Valuation Rules as was in force during the relevant period:

> **Provisions of the Customs Act, 1962 (prior to amendment in 2007)**
>
> **SECTION 14.** Valuation of goods for purposes of assessment.- (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where –

(a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of the other, and the price is the sole consideration for the sale or offer for sale

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of his behalf.] imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), if the Board is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the 3[Board], or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

[(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);.

Provisions of the Customs Act, 1962 (post amendment in 2007)

SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work,

> royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:
>
> Provided further that the rules made in this behalf may provide for,-
> (i) the circumstances in which the buyer and the seller shall be deemed to be related;
> (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
> (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:
> Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.
>
> (2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.
>
> **Explanation.** --For the purposes of this section--
> (a) "rate of exchange" means the rate of exchange—
> (i) determined by the Board, or
> (ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
> (b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

36. A Plain reading of the aforesaid provisions reveal that Section 14(1) of the Customs Act, 1962, till it is amended, laid down emphasis on a ‘deemed value’ stating to be a ‘price’ at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation in the course of international trade; and one of the conditions was that the seller and the buyer are not to be related persons. The said provision has been amended w.e.f. 10.10.2007 which instead of deemed value, concept of

'transaction value' has been introduced in Section 14; it lays down that the imported goods shall be the 'transaction value' of such goods i.e. to say, the price actually paid or payable for the goods when sold for export to India for delivery and at the time of importation where the buyer and seller of the goods are not related and the price is the sole consideration for sale. Under Class (ii) of the second proviso, it is laid down that when there is no sale or the buyer and seller are related or price is not the sole consideration for sale the value shall be determined in accordance with the Valuation Rules made thereunder.

37. The relevant provisions of Customs Valuation Rules, 1988 / 2007 are reproduced below:

> **Customs Valuation (Determination of Price of Imported Goods) Rules, 1988**
> In exercise of the powers conferred by Section 156 of the Customs Act, 1962 (52 of 1962), read with Section 22 of the General Clauses Act, 1897 (10 of 1897), and in supersession of the Customs Valuation Rules, 1963 except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:
> **1. Short title, commencement and application. … … …**
>
> **2. Definitions.**
> (1) In these rules, unless the context otherwise requires,–
> (a) "computed value" means the value of imported goods determined in accordance with rule 7A of these rules;
>
> (aa) "deductive value" means the value determined in accordance with rule 7 of these rules;]
>
> (b) to (e) … …
>
> (f) "transaction value" means the value determined in accordance with Rule 4 of these rules.
>
> (2) … … …
>
> **3. Determination of the method of valuation.**
> For the purpose of these rules,–
> (i) subject to rules 9 and 10A, the value of imported goods shall be the transaction value;
> (ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.]

4. Transaction value.

(1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

(2) The transaction value of imported goods under sub-rule (1) above shall be accepted:

Provided that–

(a) the sale is in the ordinary course of trade under fully competitive conditions;

(b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;

(c) the sale does not involve special discounts limited to exclusive agents;

(d) objective and quantifiable data exist with regard to the adjustments re- quired to be made, under the provisions of rule 9, to the transaction value;

(e) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(f) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(g) no part of the proceeds of any subsequently resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

(h) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3)(a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time–

(i) the transaction value of identical goods or similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.]

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related;
(c) substitute value shall not be established under the provisions of clause (b) of this sub-rule.

5. Transaction value of identical goods…. … …
6. Transaction value of similar goods. … … …
6A. Determination of value when transaction value is not available. … …

7. Deductive value. (1) Subject to the provisions of Rule 3 of these rules, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions:
(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
(ii) the usual costs of transport and insurance and associated costs incurred within India;
(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1) of this rule, be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.
(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1) of this rule.

7A. Computed value. … …. …

8. Residual method. –(1) Subject to the provisions of Rule 3 of these rules, where the value of imported goods cannot be determined under the provisions of any of the

preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962) and on the basis of data available in India.
(2) No value shall be determined under the provisions of this rule on the basis of–
(i) the selling price in India of the goods produced in India;
(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
(iii) the price of the goods on the domestic market of the country of exportation;
(iiia) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 7A.
(iv) the price of the goods for the export to a country other than India;
(v) minimum customs values; or
(vi) arbitrary or fictitious values.

9. Cost and services. ... ...

10. Declaration by the importer. ... .

10A. Rejection of declared value. --- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 4.
(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

11. ... .
12. ....

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
Rule 1. Short title, commencement and application.- ... ...
Rule 2. Definitions.-
(1) In these rules, unless the context otherwise requires, -
(a) "computed value" means the value of imported goods determined in accordance with rule 8.
(b) "deductive value" means the value determined in accordance with rule 7.

(c) to (f) … … ….
(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;
(2) For the purpose of these rules, persons shall be deemed to be "related" only if -
(i) they are officers or directors of one another's businesses;
(ii) they are legally recognised partners in business;
(iii) they are employer and employee;
(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding
voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family.
Explanation I. - The term "person" also includes legal persons.
Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole
distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.
Rule 3. Determination of the method of valuation.-
(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;
(2) Value of imported goods under sub-rule (1) shall be accepted:
Provided that -
(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions
which -
(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;
(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.
(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.
(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that

the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Rule 4. Transaction value of identical goods. - ... ...

Rule 5. Transaction value of similar goods.- ... .

Rule 6. Determination of value where value can not be determined under rules 3, 4 and 5.- ... ...

Rule 7. Deductive value.- ... ...

Rule 8. Computed value.- ... ...

Rule 9. Residual method.- (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of -

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

Rule 10.Cost and services. -... ... .

Rule 11. Declaration by the importer. - ... ...

Rule 12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

Rule 13. Interpretative notes.- … … …

38. Under the CVR, 1988, Rule 3 lays down that the value of the imported goods be the 'transaction value' and in the event the transaction value cannot be determined, the value shall be determined proceeding sequentially from Rule 5 to 8 of the said

Rules. Rule 4(2)(h) prescribes that the transaction value shall be accepted if the buyer and seller are not related; where the buyer and seller are related, the transaction value is acceptable for Customs purposes under the provisions of sub-rule (3) of the said Rules. Clause (a) of sub-rule(3) prescribed that where buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price. Clause (b) of sub-rule(3) further lays down that in a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued closely approximates to one of the values ascertained at or about the same time; (i) the transaction value of identical or of similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods and (iii) the computed value for identical goods or similar goods. It further prescribes that while applying comparative method, due account should be given to difference in commercial levels, quantity levels, adjustments and in accordance with provisions of Rule 9 of CVR and cost incurred by the seller in sales in which he and the buyer are not related.

39. The new Customs Valuation Rules, 2007 made effective from 10.10.2007 defines transaction value at Rule 2(g) as referred to in Section 14 of the Customs Act, 1962. Rule 3 of the said Rules prescribes that value of imported goods shall be the transaction value adjusted in accordance with sub-section (1) with provisions of Rule 10; however, it is made subject to Rule 12 of the said Rules. Sub-rule (2) prescribes the circumstances where a transaction value shall be accepted. Under Clause (iii) of the said sub-rule says that the transaction value shall be accepted where the buyer and seller are not related, for Customs purposes under provisions of sub-rule (3) of the said Rules Clause (a) of sub-rule (3) prescribes that where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of

the sale of the imported goods indicate that the relationship did not influence the price; clause (b) of the said sub-rule(3) lays down that in a sale between related persons, the transaction value shall be accepted whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the values ascertained at or about the same time narrated under the said sub-rule viz. (i), the transaction value of identical goods or similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods and (iii) the computed value for identical goods or similar goods. The proviso lays down that in determining the values by comparative methods, due account should be taken of the difference in commercial levels, quantity levels etc. in accordance with provisions of Rule 10 and cost incurred by the seller in sales in which the buyer and seller are not related.

40. The Circumstances under which the declared transaction value could be rejected has been prescribed at Rule 10A/12 of the CVR1988/2007. The said provision has been interpreted by a three Member Bench of the Honourable Supreme Court in the case of Century Metal Recycling Pvt. Ltd. Vs. UOI 2019 (367) ELT 3(SC). Their Lordships observed as:

> **14.** Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (iii) of Explanation to Rule 12 states that the proper officer can on 'certain reasons' raise doubts about the truth or accuracy of declared value. 'Certain reasons' would include conditions specified in clauses (a) to (f) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-

declaration of parameters such as brand and grade etc. and fraudulent or manipulated documents. Grounds mentioned in (a) to (f) however are not exhaustive of 'certain reasons' to raise doubt about the truth or accuracy of the declared value. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

15. The requirements of Rule 12, therefore, can be summarised as under :

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

16. Proper officer can therefore reject the declared transactional value based on 'certain reasons' to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or

> accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the 'reason to doubt' exists. **The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared**.(emphasis supplied)
>
> **17.** The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'.

41. We find the commissioner in the impugned Order, after analysing evidence on record observed that the value declared by the appellant of the goods imported from the related supplier cannot be accepted as true transaction value uninfluenced with their relationship, under Rule 4(3)(a)/3(3)(a) of CVR being not in consonance with Customs Valuation provisions.

42. Now coming to the merit of the case, the learned Commissioner had rejected different methodology adopted by the appellant for the same parts, observing as under:-

> 46.1 As per my findings above, it has been clearly brought out that the use of different pricing methods for the same parts imported by HPISPL has led to distortion in Customs values and payment of lower Customs duties. This fact was noticeable from the various email exchanges and various statements of of the employees of HPISPL during the course of investigation conducted by DRI. Further, DRI during the investigation has pointed out that HPISPL were having price lists for most of the spares imported by them from their overseas HP entity. Therefore, these pricelists were taken cognizance of by DRI during investigation and based on the product pricing method, the genuine post import expenses which were certified by the employees of HPISPL were allowed to be deducted from such price list to arrive at the import value and later the differential

duty has been demanded. In my view, taking the Pricelist as the base price as in the case of product pricing, any regional disparity or arbitrariness in arriving at the import price are totally removed. Further, this method was also tacitly approved by the Global Trade Manager of HPISPL. Shri B.S. Ravishankar, Global Trade Manager, in his statement dated 9-12-2009 who stated inter alia as under

> "I agree that the spares pricing can also be based on the principle of ROVAC product pricing methodology adopted by HP entities. All the expenses relating to the spares incurred in the country and a reasonable return of 8% on such expenses have to be invariably deducted from the LP if the product pricing methodology is made applicable for spares import. Since majority of the spares are used for warranty purposes there is no funding mechanism applicable to spares imports. In other words, unlike the product imports wherein the value added costs are being reimbursed by the funding discount mechanism, there is no such policy as far as spares imports are concerned".

46.2. Further, I also rely on the decision of CEGAT Special Bench decision in the case of Joy Foam Private Ltd. Vs. Collector of Customs, Madras reported in 1984(18) E.L.T 73(Tri) where in at para 5 it has been held as under:

> "5. We have given our very careful consideration to the submissions made by both sides. In the normal course, a price list for goods is adopted as basis for valuation of the goods, more so, when the said price list is produced by the importers themselves. Having produced the price list, the appellants cannot take the plea that they had produced the literature to the Customs authorities only with regard to specifications of the machine and its spares and not for the purposes of valuation of the goods with to the prices shown in the same literature. It appears to us that the appellants are trying to wriggle out of the situation created by themselves in producing the literature which goes against their stand".

In the instant case also, I find that during the course of investigation by DRI, HPISPL produced the pricelist generated at their Singapore office meant for sale to Master Parts Resellers (MPRs) in India. Though majority of the parts are not sold as such in the local market, I find that these could form the basis for determining the Customs value after considering genuine deductions. In fact I find that in the case of product pricing also, the LCP which is converted to CLCP by the pricing rate is used by HPISPL to determine the import price for all category of imports (i.e., for stock & sale orders, resale orders and internal orders). The DRI in the SCN has adopted this list price as the basis to arrive at the Customs value by using the residual method of valuation, which according to me is fully justified on account of misdeclaration/suppression as discussed by me in the findings above.

43. The appellant, on the other hand, has submitted that for the parts intended for resale in India, the methodology of CLCP less IC discount which enables to recover all post-importation expenses and a reasonable return (ROVAC method) adopted in relation to valuation of products which is consistent with the deductive value principles enshrined under Rule 7 of the CVR could be applied. However, for parts imported for internal use viz. warranty / AMC services, the value of the imported goods should be determined through RP (RP less IC discounts + DCCA) method. It is their contention that the Reference Price (RP) is the basis for worldwide internal transfer pricing used to value products/ services that are sold from one HP Entity to another HP Entity and it includes administration, marketing, sales, manufacturing, R&D investment, royalty, warranty costs and a reasonable profit. RP also includes worldwide average trade discount, such as promotional discounts and purchase agreement discounts. Thus, the RP for spare parts meant for internal use (warranty/ AMC) is generally fixed taking into account the RVS, logistics expenses, selling overheads, reasonable margin and discount uplift, etc. Therefore, computation of import price on RP less IC Discount basis will yield a result that is consistent with the principles of computed cost methodology enshrined in rule 8 of the Customs Valuation Rules. This methodology is adopted by them for arriving at the prices of the parts imported is in line with Rule 3(3)(a) read with principles enshrined in Rules 7/8 of the CVR. It is also their contention that Customs Valuation Rules do not prohibit adoption of different pricing policies for different categories of imported parts and parts imported from different sources, if each of the methodology resulted in arm's length price.

44. We find that as recorded by the Commissioner in the impugned order, the appellant had been adopting different pricing methodology for the transaction between overseas related entity HP USA, the supplier in the present case to the appellant, for resale of the parts as well as for internal use. It is not that the same parts

that were sold to different customers against different transactions but same parts for different use by the appellant. Thus, in absence of any identical or similar goods, the Department proposed to adopt the uniform principles of deductive method prescribed under Rule 7 adjusting to the extent of non-availability of aggregate quantity of goods sold resorting to Rule 8/9 of the CVR 1988/2007. In adopting the said methodology, the Department took recourse to the List Price maintained at the Singapore office for majority of the goods to be sold in India called MPRs List Price retrieved during the course of investigation by the DRI. The said MPRs List Price is considered as the deemed sale price in India for the imported goods under the deductive method and necessary expenses as prescribed under the said Rule allowed to be deducted in arriving at the assessable value. Rule 7 of CVR reads as follows:-

> **7. Deductive value**.
> (1) Subject to the provisions of Rule 3 of these rules, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions:
>
> (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
> (ii) the usual costs of transport and insurance and associated costs incurred within India;
> (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.
>
> (2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1) of this rule, be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.
>
> (3)…….

45. We do not find any discrepancy in the said methodology adopted by the Department in ascertaining the assessable value of those parts which are included in MPRs Price List after adjusting as per the deductions prescribed under Rule 7 of the CVRs 1988/2007. However, the imported parts which do not figure in the MPRs, the Department has adopted the methodology applying a ratio between the declared value and the value shown in the price list and applied to such parts on monthly basis. The learned Commissioner in the impugned order approved the said methodology observing as follows:-

> 47.2. …. …. ….
>
> In the present case, the transaction value declared by HPISPL was found to be distorted as per findings and therefore the adoption of value based on the spares having list price appears plausible. Therefore in the light of Apex Court decisions, I hold that DRI's method of arriving at the Customs value in respect of some spares which do not have list price is consistent with the principles of Customs Act and Customs Valuation Rules.

46. We do not find any justification for adoption of such methodology taking shelter of Rule 8 / 9 of the CVR 1988/2007. It is also not clear as to which are the spare parts not included in the MPRs Price List and not the quantum thereof either in the impugned order or from the submissions of the appellant. Rule 8 /9 of the CVR, 1988/2007 which is a residuary method has to be applied in consistency with the principles laid down under the rules mentioned for determination of the valuation viz. Rule 3 to 7 of the CVR 1988/2007. None of these provisions allowed to extrapolate the data to determine hypothetical selling price in determining the assessable value under deductive method where there is no sale price is available for the imported goods under assessment. In the absence of selling price of those parts, as submitted by the learned advocate for the appellant, the appropriate method to be adopted is computed method prescribed under Rule 8 of the Customs Valuation Rules.

47. On the issue of admissibility of trade discounts from the MPRs List Price, we find that the different slabs of quantity discount have been prescribed in the Master Parts Reseller Agreement on purchase of the products . The learned Commissioner in the impugned order against the three slabs 30%, 35% and 38%, allowed least discount and disallowed the discount given in excess, which is in the nature of additional quantity discount based on committed purchase by the MPRs. We do not find merit in the said observation of the learned Commissioner restricting the discount to 30% as quantity discount is an admissible discount from the gross price i.e. MPRs in arriving at the net price before abating other general expenses and profit as prescribed under Rule 7 of the CVR. Thus, the appellant are entitled to the discount of 38% from the price.

48. On the issue of deduction of GPSC expenses, the Commissioner has allowed deductions of GPSC expenses viz. Stock Loss/Write Off, Excess and Obsolescence, Scrap-Good Inventory and Scrap-Defective Inventory observing as follows:-

> 47.1. I find that the DRI in determining the Customs value from the price lists has only considered the actual GPSC expenses without considering specifically the following expenses (i) Stock loss/write off (ii) Scrap-Good inventory (iii) Scrap-Defective inventory and (iv) Excess & Obsolescence which was also part of GPSC expenses. The Ld. Counsel for HPISPL vehemently argued that these are also actual expenses which needs to be considered while arriving at the Customs value. In the course of Personal Hearing, the Ld. Special Counsel for DRI indicated that the said expenses need to be considered. In my view, all the actual GPSC expenses need to be considered in arriving at the actual total expenses incurred by HPISPL. Accordingly, I hold that the additional expenses as above need to be considered in arriving at the Customs value. Further, Ld. Counsel during the Personal Hearing pointed out the incongruencies in taking monthly GPSC expenses leading to anomaly of expenses overshooting several times the gross value of list price for certain months. The Ld. Special Counsel had also during the PH proceedings considered taking the GPSC expenses on annual basis, which in my view is also correct. Therefore, the actual GPSC expenses as provided by HPISPL and also taking these expenses on annualised basis seems appropriate. Accordingly the revised working as per my findings is to be carried out and the same are part of the final order.

49. The Department has challenged the said deduction of the expenses from the net price; which, in our opinion, cannot be sustained in view of the clear provisions under Rule 7 of the CVR 1988/2007 which allows deduction of general expenses and profit from the sale price. Also, the in their Appeal, department has assailed the standard Discount of 30% from the List price allowed by the Commissioner. We find that when such discount was allowed in connection with valuation of products, the department has accepted the same and not raised any objection; besides, we are of the view that the standard quantity discounts allowed by the commissioner from the List price to arrive at the Net price is admissible.

50. On the issue of deduction of expenses towards selling, marketing and other general expenses to the extent of 5% of the List Price, the learned Commissioner has denied the same observing that there is no rationale in considering the expenses such as marketing, administrative etc. which were incurred basically towards the sale of products in arriving at the spares value and these expenses *per se* while arriving at the value of the of products imports cannot be deducted. We do not merit in the said findings of the Commissioner inasmuch as under the principles of deductive methodology prescribed under Rule 7 of CVR 1988/2007, profits and general expenses in connection with sales in India of imported goods qualify for deduction. Therefore, the said expenses incurred in connection with the sales of goods in India are eligible for abatement as general expenses under the said Rule 7 of the CVR.

51. On the issue of addition of international freight charges and insurance to the price, in the impugned order, the learned Commissioner has reasoned as follows:_

> 49. From the language of the CVR 1988/2007, it is clear that it does not matter whether the amount towards transportation & insurance costs for the imports of the goods into India are paid by the overseas principal at their end or anybody else. So long as the imported goods are transported into India, the cost incurred towards international freight or insurance at actuals is to be included in the Customs value. Again it does not matter

> whether or not the freight forwarders are charging specifically & recovering from HPISPL towards freight and insurance costs. The recovery of freight & insurance by the freight forwarders from HPISPL or their principals is the subject matter of agreement between them and the determination of Customs value is not entirely dependent on the agreement between HPISPL/principals and the freight forwarders. However, if for some reason the actual freight & insurance is not ascertainable, the same needs to be included in terms of the express provisions of the CVR 1988/2007. The specific inclusion of international freight & insurance at specified rates as envisaged in the CVR 1988/2007 is to cover when these elements as above were not found to be included and/or ascertainable at the time of import into India.

52. The appellant had claimed that the import being on CIF basis indicated into invoices, the transport and insurance charges being borne by the exporter; therefore, adding the transport charges i.e. international freight and insurance, is contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of UOI Vs. Mohit Minerals Pvt. Ltd. [2022(61) GST 251 (SC)]. Further, it is submitted that once the transaction value is rejected and value is determined under deductive method, resorting to Rule 10(2) is bad in law.

> The said Rule 10(2) of the CVR is reproduced below:-
>
> **10. Cost and services.** — (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, —
>
> (a) .. ..:-
>
> (b) ... ...
>
> (2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include -
>
> (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
>
> (b) the cost of insurance to the place of importation :
>
> **Provided** that where the cost referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods :
>
> **Provided** further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum :
>
> **Provided** also that where the cost referred to in clause (b) is

> not ascertainable, such cost shall be 1.125% of free on board value of the goods :
>
> **Provided** also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum :
>
> … …
>
> … …

53. We find that in the present case, after rejection of the transaction value, deductive method as per Rule 7 of CVR has been adopted in determining the assessable value of the imported goods. The MPRs/CLCP is considered as the fully duty delivered price by the appellant on its sale to customers at the first commercial level in India. Since the international freight and insurance are already part of the fully duty delivered price, no further amount on account of freight and insurance is required to be added the said value as laid down under Rule 10(2) when the value is determined adopting deductive method principle under Rule 7 of CVR 1988/2007. Thus, the Commissioner's order adding international freight and insurance resorting to Rule 10(2) of the CVR which prescribed addition of the cost of transportation and insurance to the transaction value incurred by the buyer if not included, to the value arrived at by adopting the deductive method, cannot be sustained.

54. On the issue of treating the customs duty in the determination of value, the appellant has submitted that in the show-cause notice, it is proposed to allow certain GPSC expenses including customs duty along with reasonable profit thereon (ROVAC). The Show-cause notice did not contain any proposal to disallow only customs duty as part of Value Added Cost. The impugned order has travelled beyond the scope of show-cause notice by disallowing customs duty as part of ROVAC. We find merit in the contention of the appellant inasmuch as customs duty payable on the imported goods has been specifically mentioned as deduction of the said expenses under clause (iii) of Rule 7 of CVR, hence, we do not find merit in the finding of the Commissioner in not including

these expenses in the VAC for calculating the ROVAC observing that customs duty constitute an element of cost and cannot be regarded as value added costs in as much as once the customs duty and customs brokerage fees have been considered as a part of general expenses being post-importation charges under Rule 7, then non-inclusion of the said expenses in computing ROVAC would be contrary to the principles of valuation, also such a proposal is not made in the show-cause notice, hence the order of the Commissioner is beyond the scope of the show-cause notice; hence, bad in law.

55. On the issue of applicability of exemption Notification No.89/1982-Cus dated 25.03.1982 to SAD, the appellant's contention is that after introduction of SAD in 2005 vide Section 3(5), Notification No.89/1982 was not amended; therefore, the appellant are entitled to the benefit of the said Notification. Once they discharged CVD on the imported goods, then all other duties levied under Section 3 of the Customs Tariff Act would stand exempted. Rebutting the said argument, the learned Special Counsel for the Department has submitted that as laid down by the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)], an exemption notification has to be strictly construed and in case any ambiguity, the issue be decided in favour of the Revenue. Further, he has submitted that Additional Customs Duty and SAD operate in their own sphere and in 1982 only ACD equal to the excise duty was leviable and neither the levy under Section 3(3) nor 3(5) was in existence; therefore Notification no.89/1982-Cus dated 25.03.1982 cannot be referred to any levy other than excise duty. We find merit in the contention of the learned Special Counsel inasmuch as the said Notification No.89/1982 was issued in the year 1982 keeping in mind the circumstances as was sought to be addressed i.e. once additional duty of customs on imported goods equal to excise duty is paid, the other duties are exempted. Since SAD was introduced in the year 2005 while issuing the said

Notification, it could not be visualised about exemption from SAD. Therefore, the appellant's contention that SAD is exempted by the said Notification is unsustainable. Besides, in view of the ratio of judgment of the Hon'ble Supreme Court in Dilip Kumar & Co.'s case, in the event any ambiguity in the exemption notification, it is to be decided in favour of the Revenue. It is held as:

> **52.** To sum up, we answer the reference holding as under -
> (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
> (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
> (3) The ratio in *Sun Export* case (supra) is not correct and all the decisions which took similar view as in *Sun Export* case (supra) stands overruled.

56. On the issue of limitation, the appellant assailing the impugned order on the issue of confirming demand invoking extended period of limitation prescribed under Section 28(4) of the Customs Act stated that all disclosures were made by them before Special Valuation Branch (SVB), Commissioner(Appeals) and CEGAT in the earlier round of litigation; their pricing policy has been accepted by CEGAT; thus, they have disclosed the full facts to the Department; hence, allegation of misdeclaration or suppression of facts on the part of the appellant cannot be sustained. Therefore, the allegation of suppression or misstatement on the part of the appellant is not sustainable. The learned Special Counsel for the Department responding to the argument of the appellant has submitted that during the course of investigation by the DRI relating to import of products and parts, statements of various employees have been recorded and other documentary evidences were retrieved from the appellant revealed that appellant during the period May 2005 to April 2009 they were following different methods of valuation relating to Blue parts and Red parts revealed as a result of investigation which were never brought to the notice of the SVB and also before CEGAT. Further, he has submitted that the basis for the mark-up of 10% or

15% on RVS methodology in valuing spares imported by the appellant is not established and not visible to employees of the appellant. The appellant have never provided dated relating to Reference Price (RP) for each spare so that the aspects of relative pricing of various spares could never be effectively analysed. Further, non-mentioning of 'discount rate', 'discount amount' in the Bill of Entry, instead declaring the discount column as '0' led to the positive act of misdeclaration on the part of the appellant. Also, it is submitted that earlier before the CEGAT, the issue was of loading of sales commission amount up to 20% for the products imported by the appellant in contrast to indent sales, whereas in the present case, the cumulative funding discount was up to 61% of the CLCP, a fact was never disclosed to the Customs Department. We find force in the contention of the learned Special Counsel for the Revenue as the said submissions are duly supported by documentary as well oral evidences discussed by the learned Commissioner in the impugned order. Further, as discussed above, we reached a conclusion that the facts and circumstances of the present case revealed post-DRI investigation are different from the facts considered by the CEGAT, even though broadly the ROVAC policy was argued before the Tribunal and the judgment was passed holding that loading of indent commission to the net distributor's price declared by the appellant for assessment, is in accordance with the principles of valuation and accordingly such loading was considered to be bad in law and the declared related transaction value was accepted. The appellant has been following different methodologies in arriving at the value which was declared to the Customs without disclosing the details of the methods followed for the same parts; also deduction of 61% as funding discount from CLCP reflected in their EIFFEL invoices never brought to the notice of the Department. Therefore, the appellant has not made a true and full disclosure of the pricing pattern either before the SVB or in the earlier proceedings before CEGAT; accordingly, the allegation of suppression of facts, misdeclaration by the Department is in

accordance with law, hence invocation of extended period in confirming the demand is sustainable.

57. The Ld. Commissioner in the impugned Order though observed that no License is required for import of the refurbished parts under the Foreign Trade Policy(FTP) 2004-09, but directed confiscation of the goods under Section 111(d) of the customs Act,1962 observing that the appellant had failed to produce the chartered engineers certificate as required under Handbook of procedures(HBP). The Ld. advocate for the appellant assailing the said finding submitted that no such proposal nor any such allegation has been advanced in the show cause notice, hence direction of confiscation, is bad in law. We find merit in the contention of the learned advocate for the appellant that in absence of such an allegation in the show cause notice, directing confiscation on the ground of non production of chartered engineer certificate is bad in law, hence cannot be sustained.

58. On the issue of applicability of penal provisions, confiscation and levy of interest, to the major portion of demand which relates to CVD/SAD, the appellant had submitted that the CVD/SAD are levied under Section 3(1) and 3(5) of the Customs Tariff Act, 1975. The duty defined under Section 2(5) of the Customs Act 1962 and dutiable goods defined under Section 2(14) is only to levy of customs duty (i.e. BCD) under Section 12 of the Customs Act since the provisions of levy of interest, imposition of penalties and confiscation under Section 28AB, Sections 114A and Section 114AA and Section 111(d) & 111(m) have not been borrowed under the Customs Tariff Act, therefore demand of interest, confiscation and imposition of penalty cannot be sustainable.

59. The relevant provisions of Customs Act, 1962 are as below:-

> Section 2(14) —dutiable goods means any goods which are chargeable to duty and on which duty has not been paid;
>
> Section 2(15) —duty means a duty of customs leviable under this Act;

Section 3(12) of the Customs Tariff Act, 1975 reads as follows:-

> Section 3(12) - The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.

60. It is their argument that the issue is no more *res integra* and covered by the judgement of the Hon'ble Bombay High Court in the case of Mahindra & Mahindra Limited Vs. UOI (supra) which has been upheld by the Hon'ble Supreme Court and Review Petition filed later was dismissed by the Supreme Court vide order dated 09.01.2024. The learned advocate for the appellant fairly submitted that the same was not before the learned adjudicating authority. We find that the Hon'ble Bombay High Court in Mahindra & Mahindra's case, after analysing the relevant provisions of Customs Act and Customs Tariff Act on the applicability of penal provisions and interest to levy of CVD/SAD, held as follows:-

> **26.** Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 does not provide for any interest or penalty. Neither Section 90 of the Finance Act, 2000 provides for the same. Therefore, no interest and penalty can be levied on the portion of payment pertaining to surcharge, CVD and SAD.
> We must also note that sub-section (8) of Section 9A of the Customs Tariff Act, 1975, prior to the 2004 amendment, did not include interest and penalties. By Section 76 of Finance (No.2) Act, 2004, the words in sub-section (8) of Section 9 of the Customs Tariff Act, 1975 "relating to non levy, short levy, refunds and appeals" were replaced with "relating to, the date for determination of rate of duty, non levy, short levy, refunds, interest, appeals, offences and penalties". No such amendment to include interest and penalty was inserted in sub-section (6) of Section 3 or sub-section (4) of Section 3A of the Customs Tariff Act, 1975. Therefore, the intention of the legislature was very clear that it wanted to include interest and penalties only with regard to anti-dumping duty on dumped articles and not for CVD, *i.e.,* levy of additional duty equal to excise duty and SAD, *i.e.,*, special additional duty. No such insertion or amendment was made in Section 90 of the Finance Act, 2000 relating to surcharge. Therefore, interest and penalty cannot be levied on the portion of demand pertaining to surcharge under section 90 of the Finance Act, 2000 or additional duty of customs under section 3 or special additional duty of customs under the Customs Tariff Act, 1975.

27. Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 makes applicable to the duty chargeable under section 3 and Section 3A the provisions of the Customs Act, 1962 and the rules and regulations made thereunder including those relating to drawbacks, refunds, exemptions from duties so far as it applies to Section 3 and so far as Section 3A is concerned, it is relating to non levy, short levy, refunds and appeals. Similarly, sub-section (4) of the Finance Act, 2000 makes applicable the provisions of the Customs Act and the rules and regulations thereunder in relation to the levy and collection of surcharge. Both sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 or sub-section (4) of the Finance Act, 2000 make no reference to interest or penalty. There is no substantive provision in Section 3 or Section 3A under the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 requiring payment of penalty or interest. There is, therefore, no substantive provision which obliges a party to pay interest or penalty on CVD, *i.e.,* the additional duty equal to excise duty or SAD, *i.e.,* special additional duty to be levied at a rate having regard to the maximum sales tax or local tax or any other charges leviable on a like article or surcharge to be levied under the Finance Act, 2000.

28. A perusal of sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 show that the breach of the provisions has not been made penal or an offence. It only provides for application of the procedural provisions of the Customs Act, 1962 and the rules and regulations made thereunder so far as it apply to the duty chargeable under section 3 or Section 3A of the Customs Tariff Act, 1975 or levy and collection under section 90 of the Finance Act, 2000. As stated earlier, if penalty or interest has to be levied on CVD or SAD or surcharge, the authority has to be specific and explicit and expressly provided. The Customs Tariff Act, 1975 provides for additional customs duty and special additional duty but creates no liability for penalty or interest for additional duty or special additional duty. Likewise the Finance Act, 2000 under section 90. That being so imposing penalty or interest on additional duty and special additional duty or surcharge which is not connected to the basic customs duty is unwarranted or without authority of law.

29. Further the Customs Act, 1962 under section 28 provides for recovery of dues and under section 28AB provides for interest on delayed payment of duty. Both are separate provisions and in our view, the incorporating provisions would apply only to the duty leviable under the Customs Act and not interest on delayed payment of duty or penalty because as time and again Courts have held that taxing statute have to be incorporated strictly and tax can be imposed only when the language of the statute expressly provided for it. The authority has to be provided specifically, explicitly and expressly. Moreover, CVD, SAD and surcharge are in addition to the basic customs duty. Sub-section (5) of Section 3 and sub-section (3) of Section 3A of Customs Tariff Act, 1975

> provide that the duty chargeable under the said sections will be in addition to any other duty imposed under the Customs Tariff Act, 1975 or any other law for the time being in force. Sub-section (3) of Section 90 of the Finance Act, 2000 say the surcharge shall be in addition to any duties of customs under the Customs Act or under any other law for the time being in force.
>
> 30 to 36 … …… …
> **37.** In view of the above, imposing interest and penalty on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction.

Following the aforesaid judgment, we are of the view that imposition of penalty, confiscation of the goods seized and levy of interest as far as the demand relating to CVD/SAD concerned, the same cannot be sustained. However, levy of interest on the amount of BCD payable as per Section 28AB of Customs Act, 1962 cannot be faulted. Since the BCD payable has been confirmed invoking suppression of fact, accordingly interest under section 28AA and penalty under Section 114A of Customs Act, 1962 equivalent to BCD are also payable; penalty under section 114AA is set aside.

61. The learned Commissioner besides imposing penalty on the appellant-company also imposed penalty on other individual appellants working in different capacities during the relevant period under Section 112(a) of the Customs Act, 1962. The appellants in their submissions emphasised that they have carried out the pricing policy followed by the appellant and they do not have any personal interest for incorrect implementation of the pricing policy in determination of the assessable value of the products. The pricing policy is formulated at head quarter level and they were only executing the policy, hence imposing personal penalty on each of them alleging aiding and abetting to the incorrect determination of assessable value resulting in short payment of duty is bad in law. We find substance in the argument of the individual employees that the pricing policy formulated at the headquarter level was ultimately implemented by them without deriving any personal benefit out of implementation; nor suppressed any facts in their personal level

exposing them to penal actions. Therefore, penalty imposed on the individual employees does not merit to be sustained and consequently, liable to be set aside.

62. Our findings/conclusions and directions are summarized as below:-

i. Rejection of the declared transaction value of the imported parts in the impugned order under Rule 10A / 12 of the CVR 1988/2007 is upheld.

ii. On rejection of the transaction value, the assessable value be determined adopting the principles of deductive principle prescribed under Rule 7 read with Rules 8/9 of CVR 1988/2007 wherever spare parts list price is available. In implementing the deductive method read with residuary method, first the admissible discounts be deducted from the gross List price to arrive at the net sales price; general expenses viz. customs duty, customs brokerage and fees and the mark-up/profit earned by the appellant on sale of the imported goods during a Financial Year are to be deducted to arrive at the assessable value. Where List Price of the spare parts are not available, the valuation of the parts be carried out following the computed method under Rule 7A / 8 of CVR 1988/2007.

iii. The cost of freight and insurance as prescribed under Rule 10(2) cannot be added to the determined value under Rule 7 read with Rule 10A/12 of CVR 1988/2007.

iv. The assessable value be re-determined as mentioned above and consequently, the differential duty relating to Basic Customs Duty (BCD), Additional Customs Duty (CVD) & Special Additional Duty (SAD) are to be calculated accordingly for the disputed period; interest on BCD is leviable under Section 28AA of Customs Act, 1962, but not on CVD/SAD.

v. Penalty relating to CVD/SAD portion of the demand cannot be imposed; Penalty of equivalent to BCD amount under Section 114A of the Customs Act, 1962 is imposable and penalty under Section 114AA of the Customs Act, 1962 is set aside;

vi. Confiscation of the goods directed under Section 111(d) & 111(m) of Customs Act, 1962 are set aside;

vii. Penalty on individual-employees imposed under Section 112(a) of the Customs Act, 1962 are set aside;

60. In the result, the impugned Order is modified to the extent mentioned above. Appeal No. C/2027/2012 filed by M/s. HP India Sales Pvt. Ltd. is disposed of in the above terms. Revenue's appeal No. C/2280/2012 is also disposed of. Appeals No. C/2028 to 2031/2012 filed by the individuals are allowed.

(Order pronounced in Open Court on 06.05.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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