CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 55214 OF 2023

[Arising out of Order-in-Original No.76/2022-23/Simmi Jain/Pr. Commissioner dated 28.03.2023, passed by Principal Commissioner of Customs, ACC (Import), New Delhi]

M/s. Trident Techlabs Pvt. Ltd. **Appellant**
A-19, Saraswati Garden, Ramesh Nagar,
New Delhi-110015

Vs.

Principal Commissioner of Customs (Import)- New Delhi **Respondent**
Air Cargo Complex, New Customs House,
New Delhi-110037

AND

CUSTOMS APPEAL NO. 55215 OF 2023

[Arising out of Order-in-Original No.76/2022-23/Simmi Jain/Pr. Commissioner dated 28.03.2023, passed by Principal Commissioner of Customs, ACC (Import), New Delhi]

Shri Sukesh Naithani, CEO & Founding Director M/s. Trident Techlabs Pvt. Ltd. **Appellant**
Corporate Office: White House, 1/18-20,
Rani Jhansi Road, New Delhi-110055

Vs.

Principal Commissioner of Customs(Import)-New Delhi **Respondent**
Air Cargo Complex, New Customs House,
New Delhi-110037

Appearance:
Present for the Appellant: Shri B.L. Garg, Advocate
Present for the Respondent: Shri Girijesh Kumar, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:**17.07.2026**
Date of Decision: 23.10.2026

Final Order No. 51626-51627/2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Trident Techlabs Pvt. Ltd.[1] and Shri. Sukesh Naithani[2] against the impugned Order-in-Original No.76/2022-23/Simmi Jain/Pr. Commissioner dated 28.03.2023, passed by Principal Commissioner of Customs, ACC (Import), New Delhi, confirming the demand of customs duty amounting to Rs.1,43,19,109/- alongwith penalty of Rs.1,43,19,109/- (Appellant No.1) and Rs.14,00,000/- (Appellant No.2) respectfully under section 112 of the Customs Act, 1962.

2. The brief facts are that the appellant is an importer and distributor of software tools and educational kits from international vendors like M/s Mentor Graphics (now known as Siemens EDA), Powersim, SKM Systems, Visual Solutions, ARM Ltd., etc.The company imported various software tools under CTH 8523, including Electronic Design Automation (EDA) software, power solution software, embedded systems software, and photonics-CAD tools, either as authorized distributors or independent importers. The Directorate of Revenue Intelligence, Bangalore Zonal Unit, initiated an investigation

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1. AppellantNo.1
2. Appellant No.2

based on intelligence that M/s Trident Techlabs Pvt. Ltd.[3] had allegedly evaded customs duties by not following MRP/RSP-based assessment procedures applicable to "packaged software" under Notification No. 30/2010-CE and Section 4A of the Central Excise Act. The investigation revealed that TTPL had imported software in packaged form (on CDs/DVDs) but neither declared the MRP/RSP on the packaging nor disclosed the same in Bills of Entry. The goods were cleared on a transactional value basis, bypassing the provisions applicable to packaged software, and supplied directly to customers without affixing "Not for Retail Sale" labels. Based on the investigation, Show Cause Notice dated 08.09.2017 was issued proposing re-determination of the retail sale price of software at Rs. 27.27 crores with a demand of differential CVD of Rs.1,43,19,109/- under Section 28(4) of the Customs Act, confiscation of goods under Section 111(m) and 111(d) of the Customs Act, and imposition of penalties under Sections 112, 114A, and 114AA on the appellant no.1 and appellant no.2. The Order-in-Original dated 30.03.2019 confirmed the demand and penalties whereby the duty demand was upheld, an equal penalty was imposed under Section 114A, and penalties of Rs. 1 crore and Rs. 14 lakhs were imposed under Section 114AA and Section 112 respectively on Shri Sukesh Naithani. M/s Trident Techlabs Pvt. Ltd. challenged the order dated 30.03.2019 before the Tribunal, and in its Final Order No. 50680/2020 dated 04.06.2020, the Tribunal held that the adjudicating authority had failed to examine the nature of individual software items and that differentiation was required between 'customized software' not liable for MRP-based assessment, and

3. TTPL

general 'packaged software'. The matter was remanded for de novo adjudication with a direction to examine each software tool individually. Vide the impugned order, the adjudicating authority re-determined MRP/RSP value as Rs. 27.27 Crore and confirmed the demand of differential duty (CVD) amounting to Rs. 1,43,19,109/-, upheld the confiscation, and also imposed penalties on M/s Trident Techlabs Pvt. Ltd. and its Director under Section 114A, and Section 112 of the Customs Act 1962, respectively. Aggrieved by the impugned order dated 28.03.2023, the Appellants have filed the present appeals (C/55214/2023 & C/55215/2023) before the Tribunal, challenging the impugned order-in-original dated 28.03.2023.

3. Learned counsel submitted that the impugned order was contrary to Tribunal's final order and passed without complying with specific directions. The impugned Order had been passed by the Principal Commissioner of Customs without considering specific observations as well as complying with the directions issued by the Tribunal vide Final Order dated 04.06.2020. Learned counsel also submitted that it is an admitted fact that the Appellants were supplying imported software to various Govt. research organizations/DRDO/Department of Atomic Energy/other departments and industries on one hand and Educational Institutions on the other. The Tribunal in Final Order Nos. 50680-50681/2020 dated 04.06.2020 had categorically observed in paragraph 14 while remanding the matter that:

> "..... We feel that such softwares cannot be considered as packaged softwares because each softwares are developed to meet the specific requirement of particular customer/ buyer and

> it cannot be used by variety of users. We also feel that such softwares cannot be put for sale off the shelf and as same has been developed for à particular customer/department for these specific requirement. Thus we feel that such softwares will certainly not fall under the, category of packaged software and, therefore, same cannot be put to the assessment on the basis of MRP Price."

3.1 Learned counsel further submitted that the Adjudicating Authority has, however, not taken into consideration the categorical findings of the Hon'ble Tribunal while passing the impugned Order. He relied on the Bombay High Court'sorder in Globus Petro additions Pvt. Ltd. vs. Union of India[4], wherein it was held that the Assistant Commissioner could not have sat in appeal against Order of the Commissioner (Appeals). The Assistant Commissioner has, therefore, not acted in accordance with law. He stated that only software supplied to educational institutions could be examined by the Adjudicating authority, in respect of software supplied to various Educational Institutions. The Tribunal in the Remand Order had observed that software meant for engineering colleges, etc. may be of a general nature and could be used by a variety of educational institutions and such software can be available for sale off the shelf. The Tribunal had remanded the matter to the Adjudicating Authority for ascertaining the details of specifications and use of each software to determine the nature whether it can be categorized as to its general and varied use and capability of being sold off the shelf. The said direction of the Hon'ble Tribunal has not been complied with while passing the impugned Order. The Adjudicating Authority has not

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4. 2022(24) GSTL 54 (Bom)

brought on record any expert opinion or evidence that educational software supplied by the appellants were of general use/ general nature and could be used by varied users and sold off the shelf. Learned counsel further submitted that instead of discussing the specifications and applicability/ usage of each type of software, the Adjudicating Authority has merely referred to various statements recorded during investigation which had been found insufficient and inadequate to determine the nature of software by Tribunal.

3.2 Learned counsel contended that the Principal Commissioner, without having any Expert Opinion or examination report of any software imported and supplied by the Appellants, has erred in her finding that the software imported from various overseas suppliers were meant for local supply to varied users and not to a specific user as per their customized requirement. The learned Adjudicating Authority has concluded that merely by referring to statements where no details of specific software had been given. Moreover, the Adjudicating Authority has completely overruled the findings of the Tribunal in its Final Order dated 04.06.2020. The Tribunal has clearly observed that software have been procured by the appellants from foreign suppliers on the basis of customized orders placed by the Institutions such as DRDO, Department of Space Technology, etc. In view of such categorical finding of the Tribunal in its Final Order, which has not been appealed against, the findings in the impugned Order are bad-in-law. He also stated that while passing the impugned Order, the Adjudicating Authority has presumed certain things without any basis and material on record. The Adjudicating Authority has mentioned that

the visit of the Appellant's team to customers' premises was to demonstrate to them the software solutions/ products available with them; that the visits were for the purpose of demonstrating their available products vis-à-vis the requirement of the buyer; that, no customizing or manipulation or modification was to be carried out. It is submitted that such a finding is completely baseless, without support of any material and without any substance. On the other hand, it was evident from the material on record that the imported software was customized software. In his statement dated 17.04.2017, George Anil D' Silva, Associate Vice President, has clearly stated that the Appellant's Technical Team visited the customers (including colleges and industries), talked to the relevant people, understood the requirements, proposed the solution and communicated the same to corporate office. The Corporate office, in turn communicated the requirements to the foreign suppliers and the price of the required product would be provided to the customers. If the customer was satisfied, they would raise Purchase Order along with End User License Agreement. Shri George Anil D' Silva also stated that the software was imported in the form of CDs. Subsequently, the software was downloaded by the customers using their customer login along with specific Site ID provided by the principal. The licenses issued were customer/system specific. He further stated that the Appellants staff visited the customers for installation and training as agreed upon with the customers. All the technical support was provided by the Appellants. He also mentioned that the price included support cost which included installation of software, training, workshop etc.

3.3 Learned counsel further submitted that Sh. Sukesh Naithani, CEO, also stated in his statement dated 25.04.2017 that Appellant's Sales executives met the customers and understood their requirement, quotation was provided to the customers by them based on their requirements. Installation and commissioning is done at the customers location along with the training. Their support included installation of software, training to the faculty/students, workshops, periodic updates, any technical queries related to supply.Sh. Sukesh Nathani also stated that there was difference between MRP and Sale Price since MRP declared on Bill of Entry was based on Purchase Order value less indirect expenses [skilled manpower, expenditure for installation, training and on-site support]. Sh. Sukesh Naithani, in his statement dated 08.01.2014, stated that based on educational institutions requirements, the Appellant raised the quotation. Establishment stated that the packaged software procured by them from the Appellant were available off the shelf.

3.4 Learned counsel stated that the Legal Metrology (Packaged Commodities) Rules was not applicable. He contended that the assessment of Central Excise duty and consequently CVD on the basis of MRP value could be done only if it was required under the provisions ofthe Legal Metrology Act, 2009 or the rules made thereunder or under any other law for the time being in force, to declare on the package of goods the retail sale price of such goods [Section 4A of the Central Excise Act]. In the instant case, the Appellant was supplying the software to various Colleges, Research Institutions and Defense establishments for their own use. The Appellants had bona-fide belief

on the basis of provisions of Rule 3(b) of the Legal Metrology [Packaged Commodities] Rules, 2011 that the provisions of Retail Sale were not applicable to them. There is no material on record that the customers of the Appellants had not used the software for their own use. As per the informationgathered by the investigating officers from Colleges, Defence Establishments and others, it is evident that the software was used in their industry/institution only. Learned counsel submitted that as per provisions of Rule 3(b), these imports/supplies were exempted from the application of provisions of Chapter-II relating to "Packages Intended for Retail Sale" of the Legal Metrology (Packaged Commodities) Rules, 2011.

3.5 Learned counsel further stated that the Appellant had declared MRP correctly for the imported Software from July 2014 onwards. It was incorrectly held in the impugned Order that the MRPs declared were low compared to the Sale Invoice Value. It has also been wrongly mentioned in the impugned Order that Sh.Sukesh Naithani, CEO and Kapil Dev Sharma, Manager of Appellant Company, had admitted to the mis-declaration of MRP/RSP of packaged software tools, whereas they had merely stated in their respective statements that there was a difference between MRP declared and the Invoice price. They had given valid reasons for the same. Shri Kapil Dev Sharma, Manager, had stated in his statement dated 24.04.2017 that MRP declared was based on purchase order/Sale Invoices (including Tax) value minus the other expenses such as travelling expenses of skilled man, training, installation and on-site support for warranty period; that these expenditures ranged from 40% to 45% of the

purchase order/Sales Invoice value. This contention was supported by the Price List of the Appellants, where there is a Note to the effect that Training & after Sales Support @ 45% is inclusive in the prices.

3.6 Learned counsel submitted that MRP Value was not required to include all these expenses as per the definition of RSP given in Section 4A of the Central Excise Act. A perusal of Explanation 1 to Section 4A of the Central Excise Act would make it very clear that MRP value does not include support service expenses at all, as given below-

> "Explanation 1.-For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale."

3.7 Learned counsel further contended that when travelling/training/installation/updation charges etc. are not part of the definition of RSP in the Central Excise Act itself, no duty can bedemanded on such expenses merely on the ground that these were not shown separately in the Sale Invoices issued by the Appellants. In this context, learned counsel stated that then Customers had confirmed of receiving the support services from the Appellant.He emphasized that the demand of duty cannot be made outside the provisions of law. He drew attention to Articles 265 of the Constitution of India, which clearly mandates that no tax can be levied without the authority of law. When the expenses do not form part of MRP/RSP, it is not legally open to department to demand duty on such expenses.Further, learned counsel contended the price determined by

the Adjudicating Authority was not as per the provisions of Central Excise (Determination of Retail Sale Price of Excisable Goods] Rules, 2008. The show cause notice proposed to determine the price directly under Rule 6 without giving any reason for not determining the price under Rule 4 (market enquiry). He submitted that the retail sale price ought to have been determined under Rule 4(ii) of the Central Excise Determination of Retail Sale Price of Excisable Goods] Rules, 2008, if at all required. There was no mention in impugned Show Cause Notice as to whether any market enquiry on sample basis was carried out whereas the Adjudicating Authority has held that the goods weremeant for sale off the shelf; hence, market enquiry could have been conducted. Without considering the Rule 4(ii), the department could not have been proceeded to determine the price under Rule 6 of the said Rules, 2008. Therefore, the retail sale price determined in the impugned Show Cause Notice was contrary to the provisions of said Rules.

3.8 Learned counsel also stated that at the time of import of the impugned goods, the Appellant had complied with all the legal requirements by filing Bills of Entry, submitting all requisite documents and the Assessing Officers had permitted clearance of goods after assessment and payment of duty. These assessment orders have not been challenged by the Department by filing appeals under Section 128 of the Customs Act. He, further, submitted that though the Bills of Entry filed during October, 2012 to 8th July, 2014 did not contain the MRP, these bills of entry were filed under EDI and the goods were cleared without any objection raised by the department. From

October, 2012 to July, 2014 the Customs Officers did not raise any objection as to why the so-called packaged software were being assessed on the basis of transaction value. Further with effect from 9th July, 2014, as per direction of the Department, the imports of the impugned goods were self-assessed and cleared on the basis of MRP/RSP declared by the Appellants on the Bill of Entry. No objection was raised by the department in respect of the quantum of MRP/RSP declared even though the investigation was in progress since December, 2013 and the Appellants had submitted documents including purchase orders and copies of invoices and statements of CEO of the Appellants had been recorded on 08.01.2014. Learned counsel further stated that once an order of assessment is passed and not challenged in appeal, duty was payable as per the assessment order. Provision of issuance of show cause notice under Section 28 of cannot be equated with the power of review of the assessment. Such power of Review was specifically provided by the Legislature in Section 129D of the Customs Act. He, therefore, submitted that as all the assessments have attained finality, the same could not be opened by issuing show cause notice under Section 28(4) of the Customs Act.

3.9 Learned counsel submitted that Sl. No. 266 of Notification No. 12/2012-C.E., dated 17.03.2012 provides NIL rate of duty in respect of any customized software. The software imported by the Appellant was not developed to meet the needs of variety of users and was not intended for general sale or capable of being sold off the shelf. The impugned software was a customized software, developed for a specific user. Hence, CVD was completely exempted.The Adjudicating

Authority had erred in invoking extended period of limitation by observing that the Appellanthad failed to declare the facts correctly in Bills of Entry. However, the Appellant has not suppressed or mis-declared any facts to the Department. Accordingly, the extended period of limitation for demanding CVD was not invocable in the present matter. He also emphatically submitted that all the facts were within the knowledge of Department. The Bills of Entry were assessed as declared and goods were allowed to be cleared out of customs charge without raising any objection over a period of years. Further, learned counsel stated that penalty was not sustainable on Appellant under Sections 114A of the Customs Act since the Appellants had not mis-declared or suppressed any fact from the department. The Appellants had made the declaration on Bills of Entry, as per their understanding in a bonafide manner. Thus bona-fide belief had been strengthened sincethe goods imported by them were allowed clearance, without any objection or resorting to provisional assessment.

3.10 Learned counsel further submitted that the impugned goods were not liable to confiscation under Section 111(d) and 111(m) of the Customs Act. He contended that the provisions of Section 111(d) are applicable only when the goods were prohibited under the Customs Actor any other law for the time being in forte. In the impugned Order, there was no finding that the impugned goods were prohibited under the Customs Act/or any other law.Hence the goods cannot be ordered to be liable to confiscation under Section 111(d) of the Customs Act.

3.11 Learned counsel further stated that interest could not be levied on additional customs duty (CVD) allegedly short-levied & penalty could not be imposed on account of short-levy of additional customs duty (CVD). He submitted that the levy of CVD flows from Section 3(1) of the Customs Tariff Act, 1975. This provision was a complete charging section and was in the nature of compensatory duties to counterbalance excise duty and sales tax/VAT on like goods manufactured domestically. These are distinct levies and not duties "leviable under the Customs Act, 1962". The law is well settled that interest and penalty are substantive liabilities and cannot be inferred by implication, interest is compensatory in character, whereas penalty is penal in nature, and unless the statute expressly provides for such levy, it cannot be fastened upon the assessee.

3.12 Learned counsel also contended that amendment was carried out in the Finance Act, 2024 to rectify the legal position regarding levy of interest and penalty against short-levy of CVD, importantly, in view of the obvious deficiencies in provisions of section 3 of the Customs Tariff act, 1975. Hence, this established that during the material time of imports effected by the Appellant (from October 2012 to March 2017), there was no power conferred by Section 3 of the Customs Tariff Act, 1975, to charge interest or impose penalties on the amount of CVD said to be short-levied against imports. He prayed that the appeal may be allowed.

4. Learned authorized representative for the Department submitted that the Department had faithfully adhered to the directions of the Tribunal, which mandated a software-wise analysis to distinguish

between customized and packaged software. The adjudicating authority had conducted a detailed examination of each category of software, including technical specifications and usage patterns. The impugned order, demonstrated the procedural propriety and reinforced that the order did not vitiate any non-compliance or lack of due diligence. Learned authorized representative contended that the evidence on record conclusively established that the software in question consists of general-purpose design and simulation tools used across multiple sectors such as education, industry, and defense. The repeated supply of identical software products to diverse customers clearly indicated that these were standardized, off-the-shelf products, which made it squarely fall within the definition of "packaged software", thereby attracting valuation under Section 4A. Learned authorized representative stated that the claim of customization had been effectively dismantled by the impugned order through cogent evidence. Further, the statements from key personnel of the importer also confirm that the interaction with customers was limited to demonstration, installation, and training and these activities did not amount to customization of software. No alteration of source code or development, tailored to specific client requirements, had been demonstrated, which was a sine qua non for classification as customized software.

4.1 In addition, learned authorized representative also submitted that the Department's case was further strengthened by independent confirmation from software suppliers and technical experts. The categorical assertion by the Technical Director of the software

developer that no customized software was ever developed for specific clients decisively negated the appellant's claim. Additionally, the end-user confirmations that the software was standard and unmodifiable also provided strong corroborative evidence that the impugned software fully satisfied the statutory definition of "packaged software", i.e., software developed for a variety of users and capable of being sold off the shelf. The uniformity in features, repeated transactions, and absence of client-specific development establish that the goods are mass-produced software products. Therefore, the denial of exemption meant for customized software is legally justified. He further submitted that the appellant's reliance on exemption provisions under Sl. No. 266 of Notification No. 12/2012-C.E. dated 17.03.2012 applicable to customized software is misplaced and contrary to factual findings. The Department had correctly demonstrated that the essential condition for availing such exemption-namely, customization for apacific client-is not fulfilled. Hence, the rejection of exemption was in strict conformity with the law.

4.2 Learned authorized representative further stated that the Department had rightly invoked the provisions relating to retail sale under the Legal Metrology framework. The absence of the mandatory declaration "Not for Retail Sale" and the nature of transactions through distribution channels to end-users clearly establish that the goods were intended for retail sale. Consequently, valuation under Section 4A of the Central Excise Act, 1944, based on RSP was correctly applied. He also stated that the investigation had revealed a significant discrepancy between the declared RSP and the actual transaction

values reflected in downstream sales. The Department had justifiably relied on sub-reseller invoices to determine the correct RSP under the applicable valuation rules.

4.3. Learned authorized representative further contended that the invocation of the extended period was justified in light of the deliberate misdeclaration and suppression of material facts by the importer. False declarations regarding the nature and intended use of the goods, coupled with undervaluation, clearly established the intent to evade duty.Even though the goods were not physically available, the adjudicating authority had correctly held them liable for confiscation due to misdeclaration in both description and value. This finding reinforces the seriousness of the violations and aligns with the statutory provisions governing improper importation.

4.4 Learned authorized representative relied on the decision of the CESTAT in the case of M/s Savi Vision Pvt. Ltd Vs. Commissioner of Customs, New Delhi[5], which had observed that "the sale of goods at price higher than the RSP declared can only lead to the conclusion that appellants had mis-declared the RSP of such goods at the time of import. The appellants are, therefore, liable to pay differential duty". Accordingly, in the instant case, the demand of differential duty on account of re-determined RSP was legal and proper.

5. We have heard Shri B.L. Garg, learned counsel for the appellant and Shri Girijesh Kumar, learned Authorised Representative of the Department.

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5. 2015(325) E.L.T. 185 (Tri. - Del.)

6. At the outset, it is important to reproduce the Tribunal's remand order to examine the contention of the learned counsel:

> "14. During the course of hearing, the learned advocate has taken us through various orders which have been received by the appellant importer from various institutions such as DRDO, Ministry of Defence, Government of India, Department of Atomic Energy, Department of Space technology etc. We find that these softwares have been procured by the appellant/importer from foreign suppliers on the basis of customised orders placed by these institutions to meet their specific needs. We find that where the customised orders have been procured by the importer appellant after detailed discussions with the concerned departments regarding their specific requirement for a particular kind of software and such software have been got prepared by the importer appellant from foreign suppliers and imported. We feel that such softwares cannot be considered as 'packagedsoftwares" because such softwares are developed to meet the specific requirement of particular customer / buyer and it cannot be used by variety of users. We also feel that such software cannot be put for sale off the shelf and as same has been developed for a particular customer/ department for their specific requirement. Thus, we feel that such software will certainly not fall under the category of packaged software and therefore, same cannot be put to the assessment on the basis of MRP price. Further, we also find that the appellant importer has also been supplying same softwares to various educational institution such as engineering colleges, universities etc. Primarily, we are of the opinion that educational software meant for engineering colleges etc. may be of a general nature. All the software meant for educational purposes and can be used by a variety of educational institutions and such software can be available for sale off the shelf, however we find from the record of the appeal that no such specifications/ details are available. We find that details of specifications and uses of each software need to ascertain specifically to determine its nature whether it can be categorized as to its general and varied use and can be sold off the shelf.
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> 15. From the detailed perusal of the impugned order in original, we find that the order-in-original has failed to analyse the nature of individual software imported by the appellant importer and has

> not determined individual as to how every consignment of a particular software can be considered as a packaged software. We are also of the opinion that Tribunal is not right forum to undertake primary examination of nature of each individual software to determine whether the same is liable for assessment on the basis of MRP price or RSP value or not. We, therefore, feel that the original adjudicating authority needs to undertake a detailed examination of the individual software and its relatedliterature, specifications etc. for determining whether they fall under the category of "packaged software" or not. And to further ascertain whether a particular software requires assessment as per the provisions of Section 4A of Central Excise Act, 1944. In view of the above, we feel that the impugned order in original is without any application of mind and therefore, we set aside the same and order that in view of the above instructions, the adjudicating authority needs to undertake re-adjudication of the matter and decide the matter afresh.
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> 16. In view of the above, the appeal is allowed by way of remand. The department is directed to re-adjudicate the matter within a period of three months from the date of receipt of the order."

7. As per the above remand order of the Tribunal, the adjudicating authority had to specifically follow the following directions:-

- Detailed examination of the individual software and its related literature, specifications etc. for determining whether they fall under the category of "packaged software".
- Ascertain whether a particular software requires assessment as per the provisions of Section 4A of Central Excise Act, 1944.

7.1 The impugned order has to be examined in the limited context of the software supplied to educational institutions. Let us avert to the facts in the present case. The appellant had imported software in CD form primarily for educational institutes and in some cases to defence organizations and industries. The Annexure to the show cause notice

alleges that that 90% of their imports were for educational institutes such as IITs, NITs, private Engineering Colleges and Universities. Some supplies were to Aeronautical development Establishment, Vikram Sarabhai Space Centre, DRDL, Defence Electronics Research Laboratory, Combat Vehicles Research and Development, Electronics and Radar Development Centre Application, Indian Institute of Space and Technology, Centre for Airborne systems CABS, Dept of Atomic Energy etc. As per the Tribunal's remand order, these softwares are not considered as "packaged software" and hence these will not fall within the jurisdiction of the remand order. It is on record that few supplies were made to private companies viz M/s Tata Power Company Ltd, M/s High Tach Robotics Systems Ltd, M/s Molex India Pvt Ltd, M/s Agnition Tech Pvt Ltd, Logic Fruit Technologies, M/s Bharat Electronics Ltd, M/s Gisecke, M/s Devrient India Pvt Ltd, M/s Cummins Technologies, M/s Aviotronics Infosystems Pvt Ltd, M/s Toshiba Transmission and Distribution system Pvt Ltd, M/s Tata Consultancy services, M/s Bajaj Electricals, M/s Larsen & Toubro etc. In the instant case, following the remand directions, we confine ourselves to the sale of 'packaged software' only.

8. We find that the impugned order has noted that the appellant had imported various Educational kits (software tools), from M/s Mentor Graphics, M/s. Powersim, M/s SKM Systems, M/s Arm Ltd, M/s Tanner, M/s Visual Solutions Inc. etc as their Distributors and also from M/s Avnet Asia Pte Ltd, M/s C.M.Electronics as Independent importers and sold them to various Educational Institutes Schools, Colleges and Universities). It has also been noted that various

Educational Kits known as Higher Education Program (HEP 1/2/3/4/5/6) were imported and marketed by M/s TTPLI to the Universities, Engineering Colleges, private Companies (and also the various centers of DRDO etc):-

S.No	Description on the Bills of Entry	Overseas Supplier's Name
1	IT Software, EDA CD/DVD set (10 units) software and services	Mentor Graphics
2	It Software-PSIM Pro 9.1.3/9.1.4 with motor/digital net-5	Powerism Inc
3	IT Software- PSIM Pro 9.3.2 with motor/ digital net-5	
4	IT Software VIS SIM/ COMM CD Rom only Academic 10 user serial# VS/ COMM/AL 801434/ 801444	Visual Solutions Inc
5	IT Software SKM Power tools software combo / updates	SKM System Analysis Inc
6	Hl per silicon perpetual network licence with lock id Ver 16.04 / HI Per PX 2D Perpetual Network	Tanner research Inc
7	CYM DIST CD ROM	CYME International T & D Inc
8	IT Software EF Vivado System NL Vivado	Avnet Aisa Pte. Ltd.

9. We note that the learned Counsel has submitted that from the material on record it was evident that the imported software was customized software. He submitted that Sh. George Anil D' Silva, Associate Vice President, in his statement dated 17.04.2017has clearly stated that the Appellant's Technical Team visited the customers (including colleges and industries), talked to the relevant people, understood the requirements, proposed the solution and communicated the same to corporate office, which in turn communicated the requirements to the foreign suppliers. The appellant no 1 then provided the price of the required product to the customers. If the customer was satisfied, they would raise Purchase Order along with End User License Agreement. The CD was imported and supplied,

and subsequently the software was downloaded by the customers using their customer login along with specific Site ID provided by the principal. He further stated that the Appellants staff visited the customers for installation, training and the technical support. It has also been contended that the provision of Section 4A of the Central Excise Act relating to valuation of goods on MRP/RSP basis are not applicable to customized software which are meant for institutions and tailormade to their specifications. The impugned order has noted that Sh D'Silva has all Software products imported by them from various suppliers like Mentor Graphics, Powersim, Avnet and others explained above are packaged softwares, which are developed to meet the needs of a variety of users. He also stated that Higher Education Program known as HEP program/ software of M/s. Mentor Graphics, sold to the universities & Collegesis a bundle of packaged software (EDA). HEP program consists of HEP 12/3/4/5/6 program bundles and each HEP bundle is targeted to different steps in the Chip/ PBC Design flow for example, HEP 1 is IC Nanometer Design consisting of packaged softwares like ADit, Eldo, Calibre, IC studio, Design Architect-IC etc, which is for the Layout phase of the Chip/PCB Design and HEP 2 is for Design, Verification & Test phase of the Chip/PCB Design, consisting of packaged softwares like Questa, Precision Synthesis, Modelsim, Design for Test etc. and so on. We find from a perusal of the information available in Wikipedia, a public website, in respect of Mentor Graphics, the supplier to the appellant, that "Mentor Graphics Corporation is a US-based electronic design automation (EDA) multinational corporation for electrical engineering and electronics, headquartered in Wilsonville, Oregon. Founded in 1981, the company distributed products that

assist in electronic design automation, simulation tools for analog mixed-signal design, VPN solutions, and fluid dynamics and heat transfer tools. The company leveraged Apollo Computerworkstations to differentiate itself within the computer-aided engineering (CAE) market with its software and hardware". As per Wikipedia, the following are the products offered by the said supplier:

Electronic design automation

- Integrated circuit layout full-custom and schematic-driven layout (SDL) tools such as IC Station or Memory Builder, a first industry tool for rapid embedded memory design that helped to develop single- or dual-port RAM (synchronous and asynchronous), as well as diffusion and metal read only memories (ROM)
- IC place and route tool: Aprisa
- IC Verification tools such as CalibrenmDRC, CalibrenmLVS, CalibrexRC, CalibrexACT 3D, CalibrexACT
- IC Design for Manufacturing tools such as Calibre LFD, Calibre Yield Enhancer, Calibre, and Yield Analyzer
- Schematic capture editors for electronic schematics such as Xpedition Designer
- Layout and design tools for printed circuit boards with programs such as PADS, Xpedition Layout, Hyper Lynx and Valor NPI
- Falcon Framework, software application framework[34]
- Component library management tools
- IP cores for ASIC and FPGA designs

Embedded systems

- Mentor Embedded Linux [35] for ARM, MIPS, Power, and x86 architecture processors
- Real-time operating systems:
    - Nucleus OS (acquired in 2002 when Mentor acquired Accelerated Technology, Inc.)
    - VRTX (acquired in 1995 when Mentor bought Microtec Research)
- AUTOSAR implementation:

- Embedded implementation VSTAR in part acquired from Mecel in 2013[36]
- Configuration tooling Volcano Vehicle Systems Builder (VSB)

- Development Tools:
  - Sourcery Code Bench and Sourcery GNU toolchains (acquired in 2010 when Mentor acquired Code Sourcery)
- Inflexion UI – (Next Device was acquired by Mentor in 2006)
  - xtUML Design Tools: Bridge Point (acquired in 2004 when Mentor acquired Project Technology)
- VPN Solutions:
  - Nucleus Point-to-Point Tunneling Protocol (PPTP) software
  - Nucleus NET networking stack
  - Nucleus implementation of the Microsoft Point-to-Point Encryption (MPPE) protocol
  - Nucleus PPP software

FPGA synthesis

- Precision Synthesis – Advanced RTL & physical synthesis for FPGAs

Electrical systems, cabling, and harness

- Capital – a suite of integrated tools for the design, validation and manufacture of electrical systems and harnesses
- VeSys – a mid-market toolset for vehicle electrical system and harness design

Simulation

- ModelSim is a hardware simulation and debug environment primarily targeted at smaller ASIC and FPGA design
- QuestaSim is a simulator with advanced debug capabilities targeted at complex FPGA's and SoC's. QuestaSim can be used by users who have experience with ModelSim as it shares most of the common debug features and capabilities. One of the main differences between QuestaSim and Modelsim (besides performance/capacity) is that QuestaSim is the simulation engine for the Questa Platform which includes integration of Verification Management, Formal based technologies, Questa Verification IP, Low Power Simulation and Accelerated Coverage Closure technologies.

QuestaSim natively supports System Verilog for Test bench, UPF, UCIS, OVM/UVM whereas ModelSim does not.

- Eldo is a SPICE simulator
- Xpedition AMS is a virtual lab for mechatronic system design and analysis
- ADiT is a Fast-SPICE simulator
- Questa ADMS is a mixed-signal verification tool

Emulation

- The Veloce product family enables SoCemulation and transaction-based acceleration to verify and rectify issues on HDL designs prefabrication.

Mechanical design

- Fluid Dynamics and Heat Transfer tools:
    - Simcenter Flotherm is a Computational Fluid Dynamics tool dedicated to electronics cooling using parameterized 'Smart Parts' for common electronic components such as fans, heatsinks, and IC packages.
    - Simcenter Flotherm XT is an electronics cooling CFD tool incorporating a solid modeler for manipulating MCAD parts.
    - Simcenter FLOEFD is a 'design concurrent' CFD tool for use in early-stage product design and is embedded within MCAD systems such as Solid works, Creo Elements/Pro, CATIA V5 and Siemens NX.
- Thermal Characterization and Thermal Interface Material (TIM) Measurement equipment:
    - Simcenter T3STER is a hardware product that embodies an implementation of the JEDEC JESD51-1 standard for IC package thermal characterization and is compliant with JESD51-14 for Rth-JC measurement.
    - Simcenter TERALED provides automation of the CIE 127:2007 standard providing total flux, chromaticity and correlated color temperature (CCT) for power LEDs. With T3Ster it provides thermal resistance metrics for LEDs based on the real dissipated heating power.
    - Simcenter DYNTIM extends T3Ster, providing a dynamic thermal test station for thermal

conductivity measurements of thermal interface materials (TIMs), thermal greases and gap pads.

- Simcenter Flomaster is a 1D or system-level CFD solution for analyzing fluid mechanics in complex pipe flow systems (from the acquisition of Flowmaster Ltd in 2012).
- CADRA Design Drafting is a 2-1/2D mechanical drafting and documentation package specifically designed for drafting professionals. It provides the tools needed to develop complex drawings quickly and easily (from the acquisition of the CADRA product in 2013).

9.1 As per the impugned order, the appellant had imported the following softwares for their of HEP 12/3/4/5/6 program bundle:-.

- ModelSim is a hardware simulation and debug environment primarily targeted at smaller ASIC and FPGA design
- QuestaSim is a simulator with advanced debug capabilities targeted at complex FPGA's and SoC's. QuestaSim can be used by users who have experience with ModelSim as it shares most of the common debug features and capabilities. One of the main differences between QuestaSim and Modelsim (besides performance/capacity) is that QuestaSim is the simulation engine for the Questa Platform which includes integration of Verification Management, Formal based technologies, Questa Verification IP, Low Power Simulation and Accelerated Coverage Closure technologies. QuestaSim natively supports SystemVerilog for Testbench, UPF, UCIS, OVM/UVM whereas ModelSim does not.
- Eldo is a SPICE simulator
- Xpedition AMS is a virtual lab for mechatronic system design and analysis
- ADiT is a Fast-SPICE simulator
- Questa ADMS is a mixed-signal verification tool

10. A perusal of the information available on the internet indicates that the software supplied by Mentor Graphics are professional, industrial grade tools priced and licensed for semi-conductor companies, foundries and electronic manufacturers. It is noted that some of these tools are available for educational institutions for

teaching and research. Hence, to broadly categorize all these softwares as specialized software, as contended by the learned Counsel would not be correct. It is evident that these softwares were for specialized purposes but were not customised for each customer, making it 'packaged software or canned software' as per the Explanation to Sl. No. 266 of Notification No. 12/2012-CE dated 17.03.2012. This finding is corroborated by Shri Ruchir Dixit, Technical Director, India for M/s. Mentor Graphics (Sales & Services) Private Limited, Bangalore in his statement dated 28.04.2017. Shri Ruchir Dixit also stated that Mentor Graphicswas in the business of providing software solutions in the area of Electronic Design Automation (EDA) tools, which is nothing but packaged software. With this packaged software solutions, the VLSI and semi-conductor companies design their semi-conductor chips and printed circuit board (PCB) products. Some of their packaged softwares product lines used in Chip design and PCB design are Questa, Tessent, Calibre, Xpedition, Hyperlynx, Valor, Oasys, Nitro etc. Their packaged softwares are designed to be used in the different steps of Chip Design flow starting from Architectural phase,Design phase, function verification phase (Questa), Synthesis phase (Oasys), Layout phase (Nitro, Physical verification (Calibre), Manufacture phase & post manufacturing final Test phase (Tessent, Design for Test (Tessent). Further, he clearly stated that all Mentor Graphics Software products are packaged softwares, which are developed to meet the needs of a variety of users. **Further, as per his knowledge, no Customised software has been created for any client/ Customer exclusively by Mentor Graphics till date.** We find that the Ld Counsel has

submitted that the statements of Shri George Anil D'Silva, Associate Vice President and Shri Sukesh Naithani, appellant no. 2 have submitted that their Sales team go for technical visit to the customers (including colleges and industries), talk to the relevant people, understand the requirements, propose the solution and communicate the same to corporate office, which in turn communicated with the suppliers and the price for the required products were provided to the customer. The process of sales and support in respect of Suppliers like Cyme International, Powersim Inc, SKM Systems Analysis, Tanner EDA, Tanner Research, Visual Solutions & ARM UK Ltd. for whom, they are the Distributors, was similar to the process explained by him as above. However, what comes out from the statement of one of their supplier's representative Shri Ruchir Dixit is that the said software sold to the appellant by M/s Mentor Graphics was not customised for their orders. We find that Shri Devender Kumar Gautam, Associate Manager of the appellant, in his voluntary statement dated 14/02/2017 has stated that their company approached various educational institutes, demonstrated their product line and based on their syllabus requirement, a quotation was raised. As soon the order is placed, the import was initiated. They intimate their customer on the readiness of the product and ship the product to the customer and their service engineers visit the institutes, install and provide the training. In case of sale of Electronic design applications (EDA) tools to Educational Institutes imported from Mentor Graphics, the products are exactly the same and there is no difference between HEP and Commercial EDA product. From the above, it is evident, the initial consultations by the Sales team of the appellant with the institutions were not to customize

the software, but was more of a general nature of enquiry. We note that the impugned order has noted that the software supplied by other suppliers such as Cyme International, Powersim Inc, SKM Systems Analysis, Tanner EDA, Tanner Research, Visual Solutions & ARM UK Ltd etc., was both for private client companies and Academic institutions. Consequently, we are of the opinion that such software cannot be termed as specialized software. Further, it is on record that such softwares was sold to various private companies of the appellant, as well as academic institutions,as stated by Shri George Anil D'Silva in his statement. It is pertinent to note that the academic institutions have also corroborated that the software was not customized for them and were 'packaged software'. We find that the impugned order has recorded the findings on this issue very succinctly in the following para:-

> "15. The Engineering colleges and other buyers vide their letters have submitted that the software tools were packaged software, cannot be manipulated / modified by the users and no labels or declaration 'not for retail sale' were present on the products. All the software imported by the appellant were general in nature and were meant to be used by varied users from educational institutes to industries. They were ready to use software, fixed solutions and were not customised to meet the requirements of the customers. Their visit to the customers' premises was to demonstrate them the software solutions/products available with them. The above underlined parts of the statements as quoted above show that the visits were for the purpose of demonstrating their available products vis-a-vis the requirement of the buyer. As per the Notification no 30/2010 CE, "packaged software or canned software" means a software developed to meet the needs of variety of users, and which is intended for sale or capable of being sold off the shelf. The impugned software were developed to meet the needs of variety of uses as admitted by Sh. D'Silva and stated by Sh.

> Ruchir Dixit of M/s Mentor Graphics and also from the nature of the software…"

10.1. Consequently, we hold that the software supplied by the appellant to the educational institutions cannot be considered as 'specialized software', since it was not customised for each User/client.

11. We now address the submissions regarding the requirement of RSP on the said products. In this context, we find that RSP is defined by Rule 2(l) of the Packaged Commodities Rules, as follows:-

> "Retail Sale, in relation to a commodity, means the sale, distribution or delivery of such commodity through retail shops, agencies or other instrumentalities for consumption by an individual or a group of individuals or any other consumer"

11.1 It has been submitted before us that the Legal Metrology (Packaged Commodities) Rules was not applicable on the appellant. Ld Counselhas contended that the assessment of Central Excise duty and consequently CVD on the basis of MRP value could be done only if it was required under the provisions of the Legal Metrology Act, 2009 or under Section 4A of the Central Excise Act. In the instant case, the Appellant was supplying the software to various Colleges, Research Institutions and Defense establishments for their own use. The Appellants had bona-fide belief on the basis of provisions of Rule 3(b) of the Legal Metrology [Packaged Commodities] Rules, 2011 that the provisions of Retail Sale were not applicable to them. In this context, we note that Sh. D'Silva has in his statement, stated that the Electronic Design Applications (EDA) tools imported from Mentor Graphics and supplied to Educational Institutes and their other clients, were exactly the same and there was no difference between HEP and

Commercial EDA product, as in when in use, both function in the same fashion. As a distributor of some of the overseas suppliers, certain responsibilities had been assigned on them, but the fact remained that the said packaged software was capable of being sold off the shelf. It is evident that the imported software sold/ distributed/delivered to varied customers was for consumption by group of individuals. The contention of the appellant that they do not have the licence to run a shop under the Shops & Business Establishment Act of the State or not having any VAT Registration from the State Government is of no relevance as the retail sale is not restricted to sale through retail shops only, but includes sale through agencies or other instrumentalities. The impugned order has noted that the appellant had, after importation, dispatched these goods as such to their customers along with the local sales invoice, without any repacking/ re-labeling on the packages and without the declaration "not for retail sale". We find that from the discussions above, established that the imported HEP software was required to be assessed on MRP/RSP basis under Section 4A of Central Excise Act, 1944, read with first proviso to Section 3(2) of the Customs Tariff Act, 1975 on such value deemed to be the retail sale price declared on such goods, less the abatement provided under said notification.

12. The contention of the learned Counsel that they were exempted from the application of Rule 3(b) of the Legal Metrology (Packaged Commodities) Rules, 2011 as their customers were covered under the definition of ‘industrial consumer’ or an ‘institutional consumer’ within the definition of Rule 2(bb) and Rule 3(bc) of the said Rules. In the

instant case, we note that the impugned order has clearly considered these submissions and held them to be not acceptable. We find that prior to 14.05.2015, the term 'industrial consumer' was defined as the consumer who buys package commodities directly from the manufacturer for use by that industry. Similarly, 'institutional consumer' was defined as the institution who hires or avails of the facilities or services in connection with transport, hotel, Hospital or other organisations which buy packaged commodities directly from the manufacturer for use by that institution. These definitions were amended with effect from 14.05.2015. Post the said amendment, 'industrial consumer' was defined as the consumer who buys packaged commodities directly from the manufacturer or from an importer or from a wholesale dealer for use by that industry and **the package shall have the declaration 'not for retail sale'.** Similarly, 'institutional consumer' was defined as the institution who hires or avails of facilities or services in connection with transport, hotel, hospital, or other organisation which buy package commodities directly from the manufacturer or from an importer from the wholesale dealer for use by that institution, and **the package shall have the declaration not for retail sale**. We find that while the scope of supplies from importer or wholesale dealer was increased to include other suppliers, a mandatory condition of a declaration on the package '**not for retail sale'** has been specifically added. It is settled law that the use of the term 'shall' in a statute makes it a mandatory requirement and cannot be called a procedural requirement. In the instant case, it is on record that the imported goods had no such specific declaration that the goods were not for retail sale. This is

corroborated by the statement dated 05.06.2017 of Sh. Kapil Sharma, Manager- F & A of the appellant. Consequently, we are unable to accept the submissions of the learned Counsel.

13. We now take up the issue of determination of value for payment of duty. It has been submitted that the Trident book price/ List price of products is fixed based on the total expected expenditure (i.e. salary, rent, travelling and other misc. expenditure incurred in relation to sale of products) divided by number of the products targeted to be sold in a year. The said number is added to the product cost to arrive at the book price/list price of the product. In respect of HEP tools supplied by M/s. Mentor Graphics, the prices were based on term base, price negotiations with the institutes/colleges, Place of end customers, no. of training required and sometimes the prices were affected by the competition while tender floated by the institutes. In respect of software imported by other suppliers such as POWERSIM INC., CYME and SKM the prices are based on type of licenses (node lock/ network), number of users and various modules. It has been submitted before us that Revenue did not follow the provisions of the Central Excise (Determination of RSP of Excisable Goods) Rules, 2008. We find that the impugned order has carefully considered the various submissions of the appellant in this regard. At this juncture, it would be appropriate to reproduce the relevant para:-

> "35. I find that in the notice, the maximum price, inclusive of all taxes and the like, at which such excisable goods in packaged form have been actually sold to the ultimate consumer or the maximum price, inclusive of all taxes and the like, during a period of one month, before or after import of such goods has been taken for arriving at the MRP/ RSP value in respect of

> Software tools imported by M/s. TTPLI, from various Suppliers M/s. Mentor Graphics, M/s. Tanner Research, M/s. Visual solutions, M/s. SKM systems, M/s. Powersim, M/s. Avnet etc. Further the Purchase order/Sales invoice value of various end Customers, received from various Educational institutions and Public and Private sector Industries, provides the sample basis for ascertaining the required retail sales price of packaged software tools based on market inquiries, where such goods have normally been sold at or about the same time of the import of such goods. The noticee has stated that the sale invoices raised by them were inclusive of product cost and support services and the cost of support services need to be deducted. This plea was unacceptable as there was no split up in the invoice and further many of the customers vide their letters placed at S.No 29 to 59 of RUDs stated that the installation of software, training etc provided by the distributors were free of charge. Therefore the sale invoice price was construed as the price of the product. Further in cases where sale invoices of the sub resellers were available for the software, the same was taken for determination of value for assessment. The noticee has contested that no market enquiry has been done under Rule 4(ii) of the Central Excise Determination of Retail Sale Price of Excisable Goods) Rules, 2008. I am of the view that with the sale invoices of sub resellers placed on record for the said software by the investigation, the evidence of market enquiry has been fulfilled. Thus I hold that the sales invoice details provided by the Distributors M/s TTPLI / M/s. CTPLI/ Sub resellers have been correctly used in arriving at the MRP/RSP of the said packaged software tools under Rule 6 of Central Excise Determination of Retail Sale Price of Excisable Goods) Rules, 2008 read with Section 4A of Central Excise Act, 1962 and Section 3(2) of Customs Tariff Act 1975. The abatement of 15% for all the packaged Software tools was extended as per Notification No. 49/2008-Central Excise (N.T.), 24.12.2008. The total revised assessable value (MRP/RSP) for calculation of CVD, in respect of the Packaged (Information Technology) software tools thus worked out to Rs.27,27,88,367/-."

We find that the appellant has not led any contrary evidence before us in order to negate the above findings. Hence, we uphold the same.

14. It has been submitted by learned counsel that the adjudicating authority has not followed the directions of the remand order. In this context, we note as follows:

> "36. Now I need to determine the duty liability of the notice. At this stage, I observe that Hon'ble CESTAT vide the impugned order dated 04.06.2020 has observed that the software supplied to DRDO, Ministry of Defence Department of Atomic Energy, Dept of Space Technology were customized software, cannot be put for sale off the shelf and do not fall under category of packaged software for the purpose of MRP based assessment. While making the above observations, Hon'ble Tribunal has remanded the matter with directions that details of specifications and uses of each software may be ascertained to determine its nature whether it can be categorized as to its general and varied use and can be sold off the shelf. It was also stated that the Tribunal is not the right forum to undertake primary examination of nature of each software to determine whether the same is liable for assessment on the basis of MRP price or RSP value or not. CESTAT thus felt that the original adjudicating authority need to undertake a detailed examination of the individual software and its related literature, specifications etc. for determining whether they fall under the category of packaged software or not and to further ascertain whether a particular software requires assessment as per the provisions of Section 4A of the Central Excise Act, 1944. While going through the above directions, I get this impression that I am required to go through each of the software be it supplied to defence organisations or to educational institutes or industrial units. I have gone through the list of various software provided to above stated defence or ganisations and observed that some of those software were standard ones such as PSIM, Questa, Model sim, VISSIM which were supplied to educational institutes and industrial units as well. Besides Sh. Ruchir Dixit of M/s Mentor Graphics (Sales) has stated that all Mentor Graphics Software products are packaged softwares, which are developed to meet the needs of a variety of users and no Customised software for any client/ Customer has been created exclusively by Mentor Graphics. Para 28.4.1 above gives the overseas supplier wise details of various software and it showed that all were meant for varied users. I thus hold that all the software imported by the noticee were packaged software for

varied uses and not customized ones as per the requirement and specifications of the customer and thus liable to MRP assessment. The duty short paid on the above re-determined value comes to Rs.1,43,19,109/."

15. As regards the invocation of extended period, we find that the despite the amendment in the Legal Metrology Rules, the goods imported by the appellant did not carry the declaration 'not for retail sale'. Further it is on record that once the department had raised the objection, the appellant started declaring the MRP on subsequent import. It is evident that the Tribunal in the remand order had mentioned that nature of the educational software was to be ascertained. However, the enquiry conducted by the department clearly established that such common software was being supplied to academic institutions, other firms etc. We find no infirmity in the order. This clearly establishes their intention to evade. Hence, we hold that the extended period has been correctly invoked. Consequently, the confiscation and the penalties are upheld.

16. In view of the above discussions, we find no infirmity in the impugned order and uphold the same. Consequently, the appeals are dismissed.

(Order pronounced on 23.10.2026)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana