CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 59641 OF 2013

(Arising out of Order-in-Appeal No. CC(A) CUS/350/2013 dated 25.06.2025 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi)

M/s Solution Infotech (I) Pvt. Ltd. **...Appellant**
714, Vikas Deep Building
Plot No. D-18, Laxmi Nagar District Centre
Delhi – 110 092

VERSUS

Commissioner of Customs (Import & General) …Respondent
New Customs House, IGI Airport
NEW DELHI

APPEARANCE:

NONE for the appellant
Shri Girijesh Kumar, authorized representative of the department

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

DATE OF HEARING : 09.07.2026
DATE OF DECISION : .07.2026

FINAL ORDER NO. 51217/2026

DR. RACHNA GUPTA:

The present order disposes of an appeal filed to assail the order-in-appeal bearing no. CC(A) CUS/350/2013 dated 25.06.2025.

2. The facts, succinctly, as are relevant for the present disposal, are that M/s Solution Infotech India Private Limited[1], the importer, filed a Home Consumption bill of entry no. 476276 dated

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1 **the appellant**

08.06.2009 through their authorized CHA M/s ECM Services Pvt. Ltd. for clearance of Hardware against Software Piracy[2] declaring as Hardware Locks imported from M/s Aladdin Knowledge Systems Ltd., Israel. The FOB value of each lock was declared as US$ 3 per piece and the total assessable value for the whole consignment as Rs. 1,19,219.20. On being inquired, the importer/appellant vide letter dated 22.06.2009 conveyed that they had been regularly downloading DCM software licenses for the imported hardware locks (dongles) through internet. They were not paying the duty on the cost of the software. However, had undertaken to make the payment of customs duty accordingly. Based on the said submission, the aforesaid bill of entry was got reassessed @ US$ 8 per hardware lock after including the value of DCM software license downloaded from internet. The goods were cleared on payment of duty amounting to Rs. 7,67,474/- on the enhanced value along with interest of Rs. 48,457/- as was paid on 17.07.2009, however, under protest.

3. The department noticed that the appellant/importer had imported the impugned goods during the period April 2007 to June 2009. Since the value of said DCM software was never included in the assessable value, the undervaluation in the entire import has been alleged. Hence, show cause notice bearing no. 100/09/2103 dated 15.04.2011 was served upon the appellant proposing the demand of differential duty amounting to Rs. 23,73,310/- on the value of Rs. 1,88,81,348/- for the software license downloads. The amount already deposited on 17.07.2009, as mentioned above, was proposed to be appropriated towards the said duty liability.

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2 HASP

Interest in terms of section 28AB of Customs Act, 1962 and penalty under section 112(a) of the Act was also proposed. The proposal was initially confirmed vide order-in-original bearing no. 100/2009/26254 dated 17.10.2012. Appeal against the said order had been disposed of with certain modifications. The order, enhancing the value, has been upheld. It has also been observed that the intimation of each download of software license is held to have not been sent to the correct assessing authority. Being aggrieved of the said order that the appellant is before this Tribunal.

4. The appellant was not present on the date of hearing. Earlier the matter was finally heard on 03.07.2025 and the order was reserved. However, after it got relisted, the learned counsel for the appellant had requested for e-hearing and the appeal was allowed to be heard by virtual mode for final submissions on 09.07.2026. Non-appearance of appellant in the said circumstances for an appeal of the year 2013 was observed to be a sufficient reason to proceed to hear the submissions on behalf of the department in the absence of the appellant and to dispose of the appeal in compliance of decision of Hon'ble Supreme Court in the case of **Shri Balaji Steels Re-rolling Mills** vs **Commissioner of Central Excise & Customs**[3]. The synopsis and case compilations on behalf of the appellant is well on record, however, opportunity of filing the written submissions was given to the appellant. No written submissions got filed by the appellant. From the perusal of submissions already on record, it is observed that the inclusion of value of DCM software license downloaded from internet in the

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3 2014 (310) E.L.T. 209 (S.C.)

assessable value has been objected by the appellant with the mention that the license fee for the software was not an amount required to pay directly or indirectly as a condition of the sale of dongle. The software in question is otherwise meant for security against unauthorized copy of data on software developed by the clients of the appellant. However, it is acknowledged that the security software allows access to software data which otherwise is not assessable. It is also mentioned in the said written submissions that the license fee is not the condition of sale to buy the dongle and the code or security is an integral part of the dongle. The application of Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is mentioned, therein, to have been wrongly invoked. Decision of the Supreme Court in the case of **Commissioner** vs **Oracle India Pvt. Ltd.,** reported as **2016 (342) ELT A-40 (SC)** and of this Tribunal in the case of **Kruger Ventilations Industries (North India) Pvt. Ltd.** vs **Commissioner of Customs (General)** reported as **2022 (382) ELT 541 (Tri. Del)** are relied upon. The later decision is mentioned to have been affirmed by the Hon'ble Supreme Court in the decision reported as **2023 (386) ELT 13 (SC)**. Finally it is alleged that the demand in question is time barred for the reason that intimation regarding downloading of software licenses has duly sent to the department well in time. That the order under challenge has thus been prayed to be set aside.

5. Learned authorized representative appearing for the department has also reiterated the submissions filed at the time of previous hearing and the findings arrived at in the impugned order. In addition, the decision of the Hon'ble Supreme Court in the case

of **Commissioner of Customs, Chennai** vs **Hewlett Packard India Sales (P) Ltd.,** reported as **2007 (215) ELT 484 (SC)** is relied upon. Impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

6. We have heard Shri Girijesh Kumar, learned authorized representative of the department and perused the record.

7. It is an admitted fact that the imported goods i.e HASP were imported without the DCM software which is simultaneously been purchased from the same exporter/supplier, M/s Aladdin Knowledge Systems Ltd. It is also acknowledged that the imported product is a hardware lock which cannot be activated without the said software license. It is also an admitted fact that the appellant has been paying US$ 3 per piece on the imported goods HASP/dongle and US$ 5 for the DCM software download and that the software is specific to the respective hardware lock/dongle. The original adjudicating authority has categorically recorded about the acknowledgement of the Director of the appellant, Shri V.K. Mittal to the effect that to encrypt the imported dongles, the appellants were required to download the vendor code or HASP DCM software license for each dongle hardware. The said software license was downloaded from internet site from M/s Aladdin Knowledge Systems Ltd., the supplier/exporter and M/s Aladdin raised the bill of these software licenses to the appellant against the payment for these downloads to be remitted through the banks. It becomes clear that the hardware as well as the software has been imported from the same vendor, though at a different point of time, but are customized and specific to each other.

8. Whether in the facts and circumstances value of both i.e HASP hardware and DCM software license in question collectively form the assessable value, as alleged by the department, or it is the value of imported hardware only which is subjected to customs duty, as claimed by the appellant. Foremost, we have perused section 14 of the Customs Act which deals with valuation of imported goods. Section 14 reads as follows:

> "**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:
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> 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:
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> Provided further that the rules made in this behalf may provide for. -
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> (i) the circumstances in which the buyer and the seller shall be deemed to be related:
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> (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;
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> (ii) 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."

9. The principle of unamended provision was to find the valuation of goods "by reference to their value”. It introduced a deeming/fictional provision by stipulating that the value of the goods would be the price at which such or like goods are "ordinarily sold, or offered for sale". Under the above mentioned amended provision, however the valuation is based on the transaction price namely, the price "actually paid or payable for the goods". Even when the old provision provided the formula of the price at which the goods are ordinarily sold or offered for sale, at that time also if the goods in question were sold for a particular price, that could be taken into consideration for arriving at the valuation of goods. In fact, this fundamental concept is retained even now while introducing the concept of "transaction value" under the amended provision. More importantly, the rules viz. Valuation Rules, 1988 had incorporated this very principle of "transaction value" even under the old provision. No doubt, as per this provision existing today generally the price mentioned is to be accepted as it is the

transaction value. However, this very provision stipulates the circumstances under which that price can be discarded.

10. In any case, having regard to the question with which we are concerned in the present appeal, such a change in the provision may not have much effect. This Section also provides that normal price would be the sole consideration for the sale. However, this may be subject to such other conditions which can be specified in the form of Rules made in this behalf.

11. From the above statutory position of law and the admitted facts, it becomes clear that each DCM software being the integral and specific part of the respective imported product, both being purchased from the same supplier at same point of time. It is, accordingly, held that the transaction value in the present case is the value of hardware as well as respective software. Hence, the value of software is includible in the assessable value. We draw once support from the decision of the Hon'ble Supreme Court in **Hewlett Packard India Sales (P) Ltd.** (supra) wherein the laptop with or without operating system was in question. Hon'ble Apex Court has held that when a laptop was imported with incomplete preloaded operating system recorded on HDD, the said item forms an integral part of the laptop (computer system). The department has been held right in treating the laptop and operating system as one single unit imported by the respondents. The Court held that the laptop which cannot work without the software which is an integral part of the laptop, the laptop is nothing but just a vacant building/structure. The Principal Bench of this Tribunal also has held in the case of **Atul Kaushik** vs **Commissioner of Customs (Export), New Delhi,** reported as

2015 (330) ELT 417 (Tri. Del) that the software even in its intangible form downloaded from a software located abroad amounts to import of goods.

12. The software herein is equally an integral part of the imported product. Both the goods have been imported from the same supplier. The hardware has no existence in the absence of the downloaded software. Relying upon **Hewlett Packard India Sales (P) Ltd.** (supra), the value of downloaded software has rightly been included in the assessable value. The appellant was well aware of the nature of the products being imported and was importing those goods from the same supplier. The findings about giving intimation of downloading the software to an authority which was not competent to receive the said information is rightly held to be a reason for invoking the extended period of limitation. Non-inclusion of value of both the imported goods has no other consequence than the evasion of duty. Hence, we do not find any infirmity in the impugned order and when differential amount of customs duty has been confirmed against the appellant. when penalty has been imposed upon the appellant.

13. With these observations, we hereby uphold the order under challenge. Consequent thereto, the appeal stands dismissed.

(Pronounced in the open Court on .07.2026)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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