

OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-V, APPRAISING GROUP VA. JAWAHARLAL NEHRU CUSTOMS HOUSE,

NHAVA SHEVA, TALUKA- URAN, DISTRICT- RAIGAD,

MAHARASHTRA- 400707.

SCN No.: 700 /2025-26/AC/Gr.VA/NS-V/CAC/JNCH

DIN: 2025 0878 NX 0000 66 23 06

SHOW CAUSE NOTICE

To,

M/s. Hewlett Packard Enterprises India Pvt Ltd (IEC: 0715007190)

No. 24, Salarpuria Arena, Hosur Main Road,

Adugodi, Banglore- 560030

Sub: Finalisation of Provisional Assessment of Bills of Entry under Section 18 of the Customs Act, 1962 - Regarding.

Gentlemen,

Whereas, you had imported certain goods declared under various Bills of Entry, particulars of which are annexed as Annexure B. The said Bills of Entry had been provisionally assessed under Section 18 of the Customs Act, 1962, pending investigation by the Special Valuation Branch (SVB) regarding the correctness of declared transaction value in terms of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

- Whereas, the SVB investigation has since been completed and an Investigation Report has been submitted recommending loading of the declared transaction value on account of the influence of relationship between you and the foreign supplier, along with other findings, a copy of which is enclosed herewith as Annexure A.
- Whereas, the provisional assessments of the aforesaid Bills of Entry are now required to 3. be finalised in terms of Section 18(2) of the Customs Act, 1962. In light of the findings contained in the SVB Report, it is proposed to finalise the provisional assessments by loading the value of the goods as per the methodology and additions set out therein, which would result in differential duty liability.
- Therefore, you are hereby called upon to show cause as to why the provisionally assessed 4. Bills of Entry listed in Annexure B should not be finalised by loading the assessable value of the imported goods in terms of the SVB Report (Annexure A), and why the consequential differential duty should not be levied and recovered from you under Section 18(2) of the Customs Act, 1962 along with the interest under the section 18(3) of the Customs Act, 1962.
- You are further called upon to submit your written reply within 30 days of receipt of this 5. notice, failing which it shall be presumed that you have no submissions to make and the case will be decided on the basis of evidence on record. You may also avail the opportunity of personal

hearing before the undersigned prior to finalisation, if you so desire, in terms of Section 122A of the Customs Act, 1962.

- 6. This show cause notice is issued without prejudice to any other action that may be taken against the aforesaid noticee or any other person/party connected with the case under the Customs Act, 1962 or any other law for the time being in force in India.
- 7. The department reserves the right to amend, modify or supplement this notice at any time prior to the adjudication of the case.

(GVSS Sharma)

Assistant Commissioner of Customs, Gr VA, NS-V, JNCH, Nhava Sheva.

Encl: (i) Annexure A - Copy of SVB Investigation Report.

(ii) Annexure B - List of provisionally assessed Bills of Entry.

Copy to:

- 1. The Dy./ Asstt. Commissioner of Customs, CAC, JNCH
- 2. The Dy./ Asstt. Commissioner of Customs, SVB Cell, NCH, Mumbai
- 3. The Dy./ Asstt. Commissioner of Customs, EDI, JNCH
- 4. Notice Board (CHS Section for Display)
- 5. Office Copy



भारत सरकार, वित्त मंत्रालय, राजस्व विभाग Government of India, Ministry of Finance, Department of Revenue सीमा-शुल्क के प्रधान-आयुक्त का कार्यालय,

Office of the Principal Commissioner of Customs हवाई-अड्डा एवं एअर कार्गी आयुक्तालय, देवनहल्ली, बेंगलूरु-560 300 Air Port & Air Cargo Commissionerate, Devanahalli, Bangalore - 560 300

Email: commrapacc-cusblr@nic.in svbcustomsbacc@gov.in Fax No.080-22001448 Phone No.080-22001422 / 1423

C. No. S/44/02/36/2015 SVB - BNG

E-Office File No.: CUS/SVB/162/2022-SVB

DIN: 20240872MP0000440675

IEC: 0715007190

DOV No.0012773

PAN: AADCH5900Q

Dated: 28.08.2024

INVESTIGATION REPORT NO. 18/2024

Sub: Influence of relationship on Transaction Value - Determination of Assessable Value of Imports by M/s. Hewlett Packard Enterprises India Private Limited, Bengaluru-560030 from their related suppliers viz. M/s. Hewlett Packard International, Switzerland, M/s. Hewlett Packard Asia Pacific Pte. Limited, Singapore - 119960 under Section 14 of the Customs Act, 1962, read with Customs Valuation Rules, 2007 - Reg.

Based on a reference from the Commissioner of Customs-II, Chennai in File S.

Misc/1270/2015-Gr.5 (AIR) regarding import of goods by M/s. Hewlett Packard Enterprises India Pvt. Ltd. (hereinafter referred to as "Importer" or "HPEIPL"), No.24, Salarpuria Arena, Hosur Main Road, Adugodi, Bangalore, Karnataka-560030 from their related supplier M/s. Hewlett Packard International, SARL, Switzerland (HP-Sw) in terms of Rule 2(2) of the Customs Valuation Rules, 2007, Circular No.87/2015-SVB dated 26.08.2015 in file F.No.S50/72/2015-SVB was issued by SVB, Chennai for provisional assessment with 1% EDD as per Board's Circular No. 11/2001 dated 23.02.2001. Subsequently, since the head office of M/s. HP Enterprise India Pvt. Ltd was located at Bangalore which is in close proximity to SVB, Bangalore, the case file was transferred to SVB, Bangalore vide letter F.No. S50/72/2015-SVB dated 05.10.2015 of the Assistant Commissioner of Customs (SVB), Chennai.

- Vide letter C.No.VIII/6A/01/2015 Air. Cus. Tech/2084 dated 24.08.2015 issued by the Deputy Commr (Tech.), Airport and Air-cargo Customs Commissionerate, Bengaluru, it was informed that import of M/s. HP India Sales Pvt. Ltd were being cleared under provisional assessments with bond and bank guarantee as the said case involving mis-declaration and undervaluation, was pending before the Tribunal and since M/s. HPEIPL is also a company of the same group and imports were being sourced by them from the same related affiliates, Commissioner had directed that same procedure be followed for imports by M/s HPEIPL. Therefore, vide Circular No. 20/2015-16-SVB-BNG dated 26.08.2015 issued in F.No. 44/02/36/2015-SVB-BNG pending verification of the agreements between the suppliers and the importer and their books of accounts for final determination of assessable value, their imports from related suppliers (Hewlett Packard Limited, USA/Singapore/China/Malaysia/Hong Kong) were ordered to be assessed provisionally with uniform loading of 10% on the declared value backed with a bond equal to the differential duty, and also with 25% of bond value as Bank Guarantee. The differential duty was directed to be calculated on the basis of duty payable on the enhanced value (by 10%) and the declared value, and this was only for the purpose of obtaining PD Bond and Bank Guarantee. The importer was requested to send the reply to the questionnaire as per Annexure-A along with the supporting/relied upon documents as per Annexure B & C within 30 days failing which the EDD will be increased to 5% as per the Board Circular No. 11/2001 dated 23.02.2001.
- 3. The first Circular bearing No.87/2015-SVB dated 26.08.2015 was issued by SVB, Chennai for provisional assessment with 1% EDD as per Board's Circular No. 11/2001 dated 23.02.2001 while the second Circular bearing No. 20/2015-16-SVB-BNG dated 26.08.2015 was issued for verification of the agreements between the suppliers and the importer and their books of accounts for final determination of assessable value, their imports from above-mentioned suppliers (Hewlett Packard Limited, USA/Singapore/China/Malaysia/Hong Kong) which was ordered to be assessed provisionally with uniform loading of 10% on the declared value along with a bond equal to the differential duty, and also with 25% of bond value as Bank Guarantee. The differential duty was directed to be calculated on the basis of duty payable.
- 4. In response to above said letter dated 26.08.2015, the importer submitted following documents vide their letter dated 22.09.2015 -

Details of documents as per Annexure-A:

i) Memorandum of Articles and Association of Company

- ii) PAN card copy of the company
- iii) Details of Current import along with sample copies of BE-Level A & Level B invoices and import invoices,
- iv) Details of Registered Office, Sales Office and Warehouses
- v) Details of related foreign Suppliers
- vi) Details of Director/Officer holding office in any company incorporated outside India
- vii) Shareholding Chart
- viii) Details of Supplied made directly by the other group entities to other person in India
- ix) Details of Indent Commission received

Details of documents as per Annexure-C:

- x) Statement regarding Shareholding of/in any Indian Company
- xi) Current price list of product imported from the supplier of the goods including spares and warranty parts imported by any other person.
- xii) Copy of Limited Distributor agreement
- xiii) Representative specimen invoices of procurement of identical, similar goods or connected goods made by companies associated with importer.
- 5. Later, the importer submitted following documents vide their letter dated 15.12.2015
 - i) Details of all imports made from 10.08.2015 to 31st Oct, 2015 port wise along with sample copies Bill of Entry
 - ii) Details in relation to payment made to foreign suppliers

The information contained in the Annexure's submitted by the importer's letter dated 22.09.2015 was partial and the full information was submitted subsequently in the Annexure A & B submitted vide their letter dated 06.12.2016.

6. The information submitted by the importer vide their letter dated 06.12.2016 in Annexures - A and B, as prescribed under CBIC Circular is reproduced below –

SI.No.	EXURE-A Importer	Reply	Annexure No.
1	Name & Address of the importer	Hewlett Packard Enterprise India Private Limited Registered office: No.24, Salarpuria Arena, Hosur Main Road, Adugodi, Bangalore 560030	
1.1	IEC	0715007190	Annexure 12
1.2	Central Excise Registration number if any	Not Applicable	
1.3	Service Tax Registration number if any	AADCH5900QSD00I	Annexure 13
1.4	Manyan salahan	AADCH59009	Annexure 14

2	proprietorship/partnership/private limited company/public limit company/branch office of compa incorporated outside India/who owned subsidiary etc.?	U72200KA2015FTC079699. Attached Incorporation certificate	I: Annexure
3	Whether the importer is manufactur or manufacturer cum trader or only trader?	and provider of service. Detailed information on business operation is discussed in the 'B. Statements on business overview' forming part of the covering letter.	
3.1	If the importer is a manufacturer, pleas provide address of unit(s); an jurisdictional Central Excise/Service Ta Commissionerate Division & Range	Se Not Applicable	
3.2	If the importer is a manufacturer, pleas briefly describe the manufacturin activity undertaken on principal input and description of goods manufactured)	g	
3.3	If the importer is a manufacturer cun trader, please list the goods which are imported and traded	Not Applicable	
	If the importer is only a distribution 8 marketing company or maintenance 8 services co. etc. please briefly describe the business activity and commodities traded/serviced etc.	Private Limited (HPEIPL) was	
Na se	ame address website of the foreign		Annexure 9

4.1	Whether the seller is the manufacturer of the imported goods or a trader	Manufacturer cum trader	
4.2	Please specify the clause of Rule 2(2), Customs Valuation Rules 2007 in terms of which the Buyer (importer) and Seller are related if applicable. Please provide details of the relationship	Refer to Annexure	Annexure
4.3	Please provide a gist and title of all agreements between he buyer (importer) and the seller and/or with their associates	Refer to Annexure	Annexure
	Goods		
5	Have goods identical to the goods imported under the present B.E been imported earlier? If yes, please provide details.	HPEIPL was incorporated on 07.04.2015. The matter was referred to SVB authorities on 26.08.2015 for the first time. Further, refer to submissions made vide letter dated 22.09.2015.	Annexure 1
5.1	Whether the importer has imported any capital goods, plant, machinery, equipment, etc., "The seller of the imported goods or its related or associated concerns"	Yes	
5.2	Does the seller of the imported goods supply the same directly to any other unrelated person in India? If so, please furnish details of other importers in India, if available.	No	Subsequently their supplier have started selling to unrelated parties in Indi
5.3	Has the price of the goods been settled in manner consistent with the way the price is settled by the seller with unrelated buyers?	The prices are settled as per the pricing policy and same is paid through normal banking channels via fund transfer to the supplier	2002123
5.4	Please provide the information under Rule 3(3) (b) of Customs Valuation Rules, 2007 if any		
5.5	Is the price of the imported goods determined on the basis of a price list? If yes, please provide copy of the price list and the basis of arriving at the invoice value.	company transfer price which is arrived at by deducting inter-	
5.5	If the price is not based upon a price list,	HPEIPL show the net transfer price;	
5.6	then is the price declared a "Transfer Price'?	whereas, the inter-company invoices provide for details of list price, discount and net transfer price. We have attached the sample copies of such Customs and inter-company invoices. The	

5.7	7. What is the basis on which the	methodology followed by HPEIPL is on the basis of global transfer pricing policy and the Company follows arm's length pricing principle for all the transactions carried out with the related parties. Detailed information on pricing policy is discussed in the 'C.Note on pricing policy' forming part of the covering letter.	
	been settled between the buyer and seller?	pricing policy and same is paid through normal banking channels	The same
	Other Payments (Costs & Services ur Rules, 2007)	nder Rule 10 of Customs Valuation	Red Dr
6	Whether the goods imported by the importer are sold under a trademark, design licensing /royalty agreement or patent owned or controlled by the seller of the goods or any other person*		Reply furnished vid letter dated 20.03.2024
6.1	Whether the product manufactured by the importer using the imported goods sold under a trademark, design, licensing/royalty agreement or patent owned or controlled by the seller of the goods or any other person°		
6.2	Whether any amount or any part of the proceeds of any subsequent resale, disposal or use of the imported goods accrues directly or indirectly to the seller°	No post importation proceeds accrue to the supplier	
6.3	Whether there are any other payments actually made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an Obligation of the seller°	Not Applicable	
	Is any amount paid or payable, directly or indirectly, to or on behalf of the seller of the imported goods in connection with the production of the imported goods? (for example materials, parts, components, tools, dies, moulds, engineering, development, artwork, design work, plans or sketches undertaken elsewhere than in India)	No	
1	Are any services rendered by or on behalf of the importer relatable to the goods imported or undertaken on behalf of the seller of foreign goods*	No	

6.6	Will the price paid or payable by the importer be settled by the seller at the end of defined period by means of debit note/credit note post—import price adjustment)°	
	Other Information	
7	Has the importer or any of its associates entered into an Advance Pricing Agreement with the Income Tax Authorities or obtained Advance Rulings(please enclose copy)	

ANNEXURE-B

SL.No	Details of Importer	Reply Annexure		
1.	Name of the importer with full address of the Corporate office, registered office, administrative office/factory	Hewlett Packard Enterprise India Private Limited Registered office: No.24, Salarpuria Arena, Hosur Main Road, Adugodi, Bangalore 560030		
1.1	Please attach a copy of the Annex A filed at the customs station.	Attached herewith	5 A0000401	
1.2	Please provide the copy of the bill of entry, invoice, bill of lading, packing list and LC in respect of which Annex A was filed	Statement of imports at CIF values for the period 2015-2016 is	Annexure 6	
1.3	Please provide copies of all provisionally assessed bills of entry and accompanying, invoice, bill of lading, packing list and LC since filing of Annex A at all ports	attached here with along with supporting documents		
1.4	Please provide Annual reports if any for a period of upto three preceding years	HPEIPL was		
1.5	Please provide Balance Sheets if any for a period of upto three preceding years Please provide copy of Transfer Pricing	incorporated on April 7 ^{th,} 2015 and hence	Annexure-11	
1.6	report filed before Income Tax Dept, if any or a Transfer Pricing Report prepared for Customs Purposes /Tax Purposes, if any	please refer to the Annual reports and Balance Sheets		
1.7	Please provide copy of Advance Pricing Agreement, if any	Nil		
1.8	Whether the importer has imported any capital goods, plant, machinery, equipment, etc, from the seller of the imported goods or its related or associated persons? Please furnish copies of Bills of Entry, invoice, packing list, bill of lading &LC (or remittance details), as applicable	Yes	Annexure-6	
	Details of goods imported	No		
2	Whether the imported goods are component parts of CKD/SKD sets for local	to a comment of the c	inference in	

	assembly into finished goods? If yes, furnish a complete list of the items imported in CKD/SKD condition	h n	
3	Pricing Pattern Are the imported goods or identical or	r Not applicable	
	Customs Valuation Rules, 2007 internationally quoted in any data bases, commodity exchanges, industry publications (e.g. PLATT, Public Ledger etc.)? If yes, please provide details of price listings and copies of relevant printed material		
3.1	If the imported goods are for stock & sale, please provide a price list for sale in India of the imported goods	submissions made against point 1.2 of Annexure B. Detailed information or pricing policy is discussed in the 'C' Note on pricing policy forming part of the	submitted in sheet for standard countries for sample product vide letter dated 28.03.2024.
3.2	If the imported goods are for captive consumption by the importer please provide the price list of the goods manufactured and sold in India Terms & Conditions of Sale	covering letter Not applicable	
4	Whether the imported items are exclusively supplied by the sellers to the importer in India?	Yes. The products are imported from our companies or affiliates of Hewlett Packard Enterprise USA (under intercompany distribution	
4.1	Whether the product imported is sold under a trade mark, design or patent owned or controlled by the seller of the goods or any other person? If yes, please provide details and copies of the agreements.	agreements) Not applicable	
4.2	Whether the importer is incurring any expenses on behalf of the seller or their associates? If yes please provide copies of the agreement and details of the expenses incurred.	No	
4.3	Whether any amounts are paid by the importer in the form of agency commission, overriding commission or any other remuneration, including that for services rendered by or on behalf of the seller to other importers in India or to the seller of the imported goods or their related or	No	Declaration of importer vide letter dated 20.03.2024 that they receive commission and not pay

	associated concerns or persons. If yes, please provide copies of the agreements and details of such expenses		Commission.
4.4	Is the price paid or payable by the importer to be settled with the seller at a future date by means of debit note /credit note (Post - Import price adjustment) ?If yes, please provide details	Yes. Attached intercompany credit tax invoice	Annexure 16
	Relationship Particulars		CATE LEADING
5	Specify the role if any of the seller or any of its Associate business entities in your corporate policy, design specification, quality control, marketing, sub-licensing of patent, franchise, etc?	Not applicable	
5.1	Whether any legal liabilities created by contracts or agreements entered into by the seller devolve on the importer? If so, details thereof	No	
5.2	Whether the seller is in a position directly or indirectly to exercise restraint over the importer legally or operationally, in any manner? If so, details thereof	No	
5.3	Whether the converse position for serial no.5.2 or 5.3 applies? If so, details thereof	No	
5.4	Whether any third party is in a position directly or indirectly to exercise restraint over both the importer and the seller of imported goods, legally or operationally, in any manner? If so, details thereof	No	
5.5	Whether the importer and the seller of the imported goods together are in a position directly or indirectly to exercise restraint over a third person legally or operationally in any manner? If so, details thereof	No	40

7. The importer vide their letters mentioned below submitted further documents and a brief about the contention of the importer on the issue is tabulated below -

SI.N o	Date of Importer's Reply/Correspondenc e	Documents Submitted		
1. 06.12.2016		Sample documents, Balance Sheet for 2015-16, Annexure A & B, Agreement gist, Value of Imports, List of Products, Foreign Seller details, HPE Shareholding and Relationship Chart		
2.	23.02.2017	Earlier submissions reiterated and Form 3CEB for 2015-16, Amendment to product distribution agreement and revised foreign suppliers including HP Enterprise, USA as one more supplier to earlier list submitted on 06.12.2016		
3.	27.02.2018	Statement of procurement of imported goods versus remittance as certified by Chartered Accountant, from commencement of operation to 31 st January 2017, Financial		

		statement/Auditors report-2016-17 and TP Report for 2015 16.
4.	03.06.2022	Form 3CEB for 2019-20 to 2021-22
5.	10.06.2022	3 rd Party Tax Invoice, Sample Customs and Financial Invoices of the importer, Comparison of HPEIPL import value with third party customer
6.	14.06.2022	Sample purchase orders of Ingram Micro, etc
7.	12.09.2023	Clarification on no special discount issued by the related party entities for import by HPEIPL and they don't have any standard or fixed pricing for the products. Financials Statement for 2018-19 to 2022-23, organization structure, Third Party Imports and Capital Goods for 2019-23
8.	24.11.2023	Form 3CEB 2022-23 and declaration that they don't have a price list for all imported goods as each product is priced differently based on purchase value from the Customer.
9.	05.12.2023	Samples list showing details of discounts along with sample Intercompany Invoices
10.	29.12.2023	TP Report 2019-20
11.	05.03.2024	The importer's reply to this office email dated 05.03.2024 informing that they have been importing access points, classifying the same under customs tariff item number 85176290 and availing the benefit of exemption from payment of basic customs duty in terms of Sl.13 of notification no.24/2005 - Cus. dated 1.3.2005. Accordingly, DRI has initiated the investigation into the matter and disputing eligibility of the aforesaid exemption on the ground that the access points imported by them are MIMO devices, hence covered under exclusion, clause of Notification No. 24/2005 dated 01.03.2005 amended by notification no 11/2014-Cus.dated 11.04.2014. In the light of the aforementioned view entertained by DRI in the investigation, HPEIPL has made a payment of differential duty for the import made by them from 1st Aug 2015 to 30th June 2017. Further, they have informed that that HPEIPL is not availing the benefit of Sl.No.13 of Notification No.24/2005 Cus. 01.03.2005 as amended by Notification No.11/2014 Cus. dated 11.07.2014 for the imports made from 2017.

8. Agreements:

8.1 The importer has furnished a copy of the Intercompany Product Distribution Agreement (ICPDA) dated 18th Sept.2015 and effective from 1st Aug.2015 entered between the Parent company - M/s HPE, M/s HPDC L.P, HPE Affiliated Factories, HPE Affiliated Distribution Centres, HPE Affiliate Headquarters and HPEIPL followed with Amended and Restated ICPDA which is further amended vide Amendment to Amended and Restated ICPDA. The relevant portion of the said Agreement, that concern with the valuation of the imports by the importer are extracted below –

"8. Compensation:

Principally through HPE's intercompany ("IC") pricing policies, Distributor shall receive a discount when Distributor purchases HPE Products from the Suppliers (herein after referred to Purchasing Discount) to enable Distributor to recover it's relevant value added costs, non-value added costs plus earn an arms' length return on those value added costs (hereinafter referred to as ROVAC') when Distributor resells the HP products. Distributor may also receive additional discounts by way of Lump Sum Adjustments from Suppliers in order to achieve an arm's length return. The value added costs and non-value added costs would be the costs of selling, servicing, supporting, and distributing HPE products and services - including but not limited to import customs duties, customs fees and brokerage, and warranty expenses.

Occasionally, Distributor will perform general miscellaneous activities for other legal entities ("Other Activities"). These Other Activities do not add additional value to the price of HPE Products transferred under this Agreement. For these Other Activities, Distributor has the option to 1) invoice the costs of the activities provided plus a markup of 8% to the benefiting legal entity; 2) invoice the costs of the activities provided plus a markup of 8% to HPE Headquarters; or 3) otherwise as may be agreed between the parties.

9. Prices: HPE Headquarters or HPE Factories, as the case may be, shall sell HPE Products to Distributor at prices contained in the Price List converted to U.S. Dollars, where applicable, less the purchasing discounts. Headquarters or the HPE Factories shall, in some cases, sell HPE Products to Distributor at prices based on a cost plus a markup.

HPE, HPE Factories and HPE Headquarters reserve the right to change prices published in the Price List and shall not incur any liability to Distributor as a result of such modification. HPE, HPE Factories and HPE Headquarters shall notify Distributor promptly of price changes and Distributor will be compensated for such price changes through corrective adjustments, transactional or lump sum, or through the ROVAC compensation mechanism."

8.2 The importer has also furnished a copy of the Amended and Restated Master Distributor Agreement entered between the Parent company - M/s HPEC, M/s HPED LP, Parent Affiliated Factories, Parent Affiliated Distribution Centres, Parent Affiliated Headquarters and Parent Affiliated Sales offices world-wide effective from November 1st, 2015 for distribution of HPE Products and related Services. A copy of the original Master Distributor Agreement has not been submitted by the importer, inspite of repeated requests. The relevant portion of the said Amended and Restated Master Distributor Agreement, that concern with the valuation of the imports by the importer are extracted below —

<u>"2.10.</u>

- b) Principally through Parent's intercompany ("IC") pricing policies, Distributor shall receive compensation from Factories, directly or indirectly through another Distributor, for the costs of selling, servicing, supporting and distributing Products and Services. Such compensation will, in most cases, be realized by Distributor when Distributor purchases products from a Factory or other Distributor at a discount (hereinafter referred to as "Purchasing Discount") and then resells Products to trade customers at a higher price. The goal in calculating the Purchasing Discount is to enable Distributor, following its resale of Products and Services, to recover its nonvalue added costs and relevant value-added costs, plus earn an arm's length return on such value-added costs (hereinafter referred to as "ROVAC"). For the avoidance of doubt, the value added costs of each Distributor shall include the costs of selling, servicing, supporting, and distributing Products and Services, including import customs duties, customs fees and brokerage, and warranty expenses. Distributor may also receive additional compensation from and/or repay excess compensation to another Distributor or Factory in order to achieve ROVAC.
- c). Occasionally, Distributor will perform general miscellaneous activities on behalf of another Affiliates of Parent ("Other Activities") these other activities do not add additional value to the price of the products and services transferred under this Agreement. For these other activities, Distributor has the option to 1). Invoice the costs of the activities provided plus a markup of 8% to the benefiting legal entity; 2). Invoice the costs of the other activities provided plus a markup of 8% to the applicable HQ; or 3). Not invoice the costs of the relevant activities, but allow the costs to be recovered through the ROVAC compensation mechanism."

As per Para 2.12 of the Amended and Redistributed Master Distribution Agreement (ARMDA), w.e.f 01.11.2015

2.12. Prices

- a) The price for Sale of Products and Services to a Distributor shall be the price as listed in the Price List converted to U.S. Dollars, where applicable, less the Purchasing Discount. In some cases, the sale of Products and Services to a Distributor shall be cost plus a mark up.
- b) Unless otherwise indicated, all prices charged to Distributor are inclusive of costs incurred by the Factories or another Distributor on behalf of the Distributor.
- c) If applicable, the Factories and/or another Distributor shall invoice the Distributor, as a separate line item, an amount charged by the supplier in order to recover costs such as, but not limited to, freight, duties, special handling and insurance or to reflect specific local factors but not limited to, local market conditions, exchange rate fluctuations and an appropriate division of profit.
- d) Unless otherwise indicated in the quotation, acknowledgment or invoice, all prices charged to Distributor are exclusive of freight, duties, transportation, insurance, shipping, storage, handling, demurrage or similar charges, value added or other taxes. Such items, where applicable, shall be separately invoiced to and borne by the

Distributor in accordance with payment terms as per Section 3 of the said agreement. Any special inspection services requested by Distributor shall be for its account.

- e) Notwithstanding the foregoing, in cases where a quotation, acknowledgment or invoice indicates the terms of the invoice or delivery as CIF or DAP (Inco terms 2010), then the price charged to the applicable Distributor shall be inclusive of international freight and insurance, and such costs shall not be charged or invoiced separately to such Distributor. In such cases: the invoices shall not indicate the international freight and insurance as a separate line item.
- f) The purchasing discounts will include both a trade and IC discount component. The IC discounts are documented in an IC discount table which can be found on the Parent Corporate Tax website. Revisions to the IC discount table shall be posted to this website or communicated among the Parties through electronic mail or similar medium and incorporated herein by reference.
- g) The prices published in the Price List are subject to change, and no Factory or other Distributor shall incur any liability to any Distributor as a result of such modification. Any prices changes shall be promptly notified to the Distributor and such Distributor will be a compensated for such price changes through corrective adjustments, transactional or lump sum, or through the ROVAC compensation mechanism.

2.17. Trademarks.

- (a) Subject to the terms and conditions of this Agreement, during the term of this Agreement, each Distributor may use the Trademarks solely on and in connection with marketing, promoting, advertising, and selling Products and Services in the Territory pursuant to and in the manner permitted by this Agreement. For the avoidance of doubt, the Distributor is not required to pay any consideration for the use of, or otherwise in respect of, the Trademarks. The permission granted in this Section 2.17(a) is personal to each Distributor and non-transferable.
- (b) Without limiting the foregoing, the Distributors' authorized use the Trademarks under Section 2.17(a) expressly includes:
 - (i) the right to (A) authorize third party agencies and contractors to create Marketing Materials for the benefit of the Distributor, and (B) authorize third party media organizations to display, reproduce, publish, distribute, or broadcast Marketing Materials provided by or on behalf of a Distributor and placed at a Distributor's direction; in each case of (A) and (B), solely to the extent that such use of Marketing Materials by such Distributor is permitted by this Agreement; and
 - (ii) the right to incorporate the Trademarks into the company names and "d/b/a" (doing business as) names listed in the Exhibits, or such other name as approved by Trademark Licensor (collectively, the "Trade Names"), which may be used solely in connection with the marketing, promoting, advertising, offering for sale, selling, or distribution of the Products and Services in the Territory pursuant to this Agreement and as authorized herein. All references in this Agreement to a

Distributor's use of the Trademarks (and restrictions thereon) are deemed to include a Distributor's use of its Trade Name. Upon termination or expiration of this Agreement for any reason, each Distributor will, unless otherwise expressly agreed by Trademark Licensor in writing at the time of termination or expiration, (A) promptly execute and file with all applicable authorities and in all applicable jurisdictions all documentation that is necessary to remove any and all Trademarks from any Trade Name(s) used by or associated with each Distributor and (B) furnish to Trademark Licensor, within thirty (30) days after the effective date of such termination or expiration, evidence reasonably satisfactory to Trademark Licensor of such Distributor's compliance with the obligations in this Section 2.1 7(b)(ii).

(c) As used herein, "Trademarks" means those trademarks, service marks, designs, logos, and trade dress included on or in connection with Products and Services as provided by each Factory for distribution hereunder; "Marketing Materials" means all advertising and promotional materials in all media formats now known or hereinafter invented, letterhead, business cards, cartons, containers, labels, packaging, display material, videos, online content, and other matter fixed in any medium of expression of any kind now known or hereinafter invented that are prepared or used by a Distributor to identify or promote itself, Parent, or any Products and Services in accordance with the terms of this Agreement; "Standard of Quality" means a nature and quality at least as high as those standards and reputation for quality of comparable or similar products and services being offered under the Trademarks by Parent or its Affiliates, or any other definition or quality specifications that may be set at any time by the Trademark Owners in their sole discretion; and "Trademark Owners" means HP Hewlett Packard Group LLC, HPED, Aruba Networks, Inc., or their successors and assigns.

(d) All Products and Services and all uses of the Trademarks by or on behalf of the Distributors as authorized hereunder will be and remain at all times (i) in compliance with all applicable federal, state, local, and foreign laws, rules, and regulations; (ii) governed by commercially reasonable standards of honesty, integrity, fair dealing, and ethical conduct; and (iii) in strict compliance with this Agreement and the Standard of Quality.

(e) Without limiting any of Trademark Licensor's rights in this Section 2.17 including the disapproval rights in Section 2.17(0, each Distributor's use of the Trademarks hereunder is subject to the following terms: (i) each Distributor will use the Trademarks only in the form, color, and manner shown in the then-current trademark usage guidelines for the Trademarks established by the Trademark Owners, which guidelines may be amended at any time in their sole discretion (the "Usage Guidelines"); (ii) each Distributor will include all legal designations on Products and Services and Marketing Materials as required by the Usage Guidelines and as otherwise required by applicable law or directed by Trademark Licensor; and (iii) all Marketing Materials created by or on behalf of such Distributor hereunder will (A) be professional in tone, (B) lack any message, suggestion, association, significance, or other meaning that is confusing, misleading, unsafe, or morally

repugnant or is otherwise reasonably likely to cause harm to the reputation of Parent, Trademark Licensor, Trademark Owners, their Affiliates, or the Trademarks, (C) fairly and accurately identify Products and Services and (D) fairly and accurately refer to sponsorship or endorsement arrangements by such Distributor that are then-currently in full force and effect.

Notwithstanding any other provision of this Agreement, Trademark Licensor have the right at all times to disapprove any specific use or proposed use of the Trademarks in their sole discretion (including without limitation the right to disapprove the use of Trademarks within social media account names, domain names, and other online uses). Upon receipt of notice of disapproval, the applicable Distributor will immediately cease or cause the cessation of such disapproved use without any period for cure. To the extent agreed to by Trademark Licensor and Parent or an affiliate of Parent, Parent or such affiliate will act as Trademark Licensor's agent solely for purposes of quality control and enforcing each Distributor's compliance with the provisions of this Section 2.17.

- (g) Each Distributor will promptly submit to the Trademark Licensor upon the Trademark Licensor's reasonable request examples of all uses of the Trademarks by Distributor, including samples of all Marketing Materials on which such Distributor uses the Trademarks, for the purpose of confirming compliance with the Standard of Quality.
- (h) Nothing contained in this Agreement will in any way restrict, impair, limit, or affect Trademark Licensor's rights to use, or to permit third parties to use, the Trademarks. All trademark goodwill arising from the use of Trademarks by the Distributors will accrue and inure to the sole and exclusive benefit of the applicable Trademark Owner.
- (i) The Distributors hereby stipulate and covenant not to (and not to directly or indirectly assist a third party to) contradict, challenge, or interfere with, or attempt to contradict, challenge, or interfere with (i) the great value of the trademark goodwill associated with the Trademarks and the fact that the Trademarks have acquired secondary meaning in the mind of the public, (ii) the scope, validity, registration and enforceability of the Trademarks, (iii) the validity and enforceability of this Agreement, (iv) the fact that the Trademark Owners (as applicable) currently and at all times in the future own all legal right, title, and interest in and to the Trademarks (including any variations, adaptations, and derivatives thereof and registrations and applications therefore) and all trademark goodwill arising therefrom, and (v) the fact that the right of the Distributors to use any Trademark is now and at all times in the future will remain only by virtue of this Agreement.
- (j) No Distributor will (or will directly or indirectly assist any third party to) register, attempt to register, or otherwise secure, in any jurisdiction, any trademark, service mark, trade name (except for the Trade Name as authorized in Section 2.17(b)(ii)), trade dress, logo, or other similar identifying mark, that includes all or part of any Trademark or is confusingly similar to any Trademark, and should any Distributor do

so, such Distributor agrees to assign, and hereby does assign, any such registration or identifier to Trademark Licensor free of additional consideration.

(k) Distributors will cooperate promptly, fully, and in good faith with Trademark Licensor and/or Trademark Owners for the purpose of securing, establishing, registering, perfecting, preserving the validity of, protecting, defending, and enforcing the Trademarks and Trademark Licensor's and/or Trademark Owners' rights therein, including in each case as against any Distributor and any subcontractor. Without limiting the generality of the foregoing, each Distributor will promptly execute any documents, join any action, provide any information, and take or refrain from taking any actions that Trademark Licensor may reasonably request, in order to (i) confirm the Trademark Owners' legal title in and to the Trademarks in any jurisdiction; (ii) assist with filing, prosecution, maintenance, or renewal of applications or registrations for the Trademarks in any jurisdiction; (iii) register or record any Distributor as registered/recorded users of the Trademarks whenever, in Trademark Licensor's sole judgment, such registration is appropriate; (iv) remove or de-record any Distributor as registered/recorded users of the Trademarks; or (v) enforce the Trademarks against third parties.

(1) Each Distributor will promptly notify Trademark Licensor of any actual, threatened, or attempted infringements, imitations, dilution, misappropriation, or unauthorized uses of the Trademarks or applications to register trademarks or service marks that conflict with the Trademarks (collectively, "Trademark Enforcement Matters") that may come to the knowledge of a Distributor whether in connection with this Agreement or otherwise. As between the Parties, Trademark Licensor has the sole right (but not the obligation) in their discretion to bring any action for or take any actions regarding Trademark Enforcement Matters. As between the Parties, Trademark Licensor will have the exclusive right and authority, either directly or indirectly, to defend, negotiate, or settle any claim made or any suit or proceeding brought against any Distributor insofar as it is based on an allegation that a Trademark used on or in connection with a Product or Service pursuant to this Agreement infringes a trademark or other proprietary right of a third party.

(m) Notwithstanding anything to the contrary herein, Trademark Licensor has the right to revoke any Distributor's permission to use the Trademarks pursuant to Section 2.17(a) in the event of such Distributor's material breach of its obligations under this Section 2.17. The provisions of this Section 2.17 (other than Sections 2.17(a) and 2.17(b)) will survive termination or expiration of this Agreement. Upon termination or expiration of this Agreement or termination of the right to use the Trademarks in Section 2.17(a), the rights granted to the Distributors in Section 2.17(a) will automatically and immediately terminate, and all Distributors will (i) cease and discontinue any and all use of the Trademarks within ninety (90) days after the effective date of such expiration or termination, (ii) promptly return to Trademark Licensor or its designee all Marketing Materials in such Distributor's possession, custody, or control, whether or not made available to such Distributor by Parent, the Factories, or another Distributor or created by or on behalf of such Distributor, (iii) cooperate with Trademark Licensor or its appointed agent to apply to the

appropriate authorities to cancel recording of this Agreement or any version thereof from all government records, if any, (iv) promptly execute and file with all applicable authorities and in all applicable jurisdictions all documentation that is necessary to remove any Trademarks from such Distributor's corporate name, as applicable, (v) cease using and transfer control of any domain names including the Trademarks to Trademark Licensor or its designee, including submitting any documentation required by the applicable registrar to effect any such changes, and (vi) furnish to Trademark Licensor, within ninety (90) days after the effective date of such termination or expiration, evidence reasonably satisfactory to Trademark Licensor of such Distributor's compliance with the obligations in this Section 2.17(m).

2.19 Special Sales Promotion.

The Parties may agree to have Special Sales Promotion Programs and may further agree in these cases to reduce the prices set forth in the Price List or to grant additional discounts to each Distributor's customers. In these cases, the applicable Parties shall mutually agree on how to share the reduction in price or the additional discount.

2.20 Indent Sales.

From time-to-time, trade customers in the Territory of a Distributor prefer to transact orders with an Affiliate of Parent other than Distributor. In these situations, such other Affiliate will sell directly to the trade customer ("Indent Sales"). For Indent Sales, the trade customer is generally the importer of record of the Products and is responsible for duty, taxes, transnational delivery costs, and customs clearance charges at the port of entry, in addition to inland freight to the customer's site. For these export-priced sales, Parent will advise customers regarding how to obtain export licenses, report export statistics and prepare export-shipping documentation. Since the customer is the legal importer, the customer name appears on all legal import documents.

2.21 Indent Commission.

To the extent an Indent Sale is made in the Territory of a Distributor, the Affiliate of Parent making such sale will pay a commission to such Distributor that is comparable to the compensation such Distributor would have received had such Distributor itself made the sale to the trade customer. The commission will be calculated as a percentage of the trade revenue generated from the Indent Sale or using any other method mutually agreed between the applicable Parties. The applicable percentages can be found in Table A on the Parent Corporate Tax website or can otherwise be provided upon request. Alternatively, the applicable Parties may agree that such Distributor's costs associated with. Indent Sales will be recovered through the ROVAC compensation mechanism.

2.22 Provision of Spare Parts.

(a)As appropriate, the Factories or Distributors (the "Providing Party") may wish to make available in consignment to another Distributor (the "Receiving Party") a stock of spare parts for the purpose of facilitating delivery to the Receiving Party (the "Consignment Stock"). The Providing Party shall give in consignment to the

Receiving Party the Consignment Stock, in such quantity, as such Receiving Party deems desirable from time to time, in order to facilitate the proper supply of spare parts by the Providing Party to the Receiving Party. The Providing Party shall be entitled, after notification of Receiving Party, to withdraw or replace all or part of the spare parts from the Consignment Stock. Each Receiving Party shall regularly advise the Providing Party of estimates of the Consignment Stock required. Each Receiving Party acknowledges that the Providing Party retains all rights, title and interest in the Consignment Stock until such time as title to the spare parts shall pass to Receiving Party in accordance with this Agreement. Each Receiving Party shall at no time grant any third party any right in the spare parts or vest any security interest in the spare parts."

9. The importer has also entered into various other agreements with the suppliers/affiliated entities, copies of which have been furnished and brief details are extracted below –

SI. No	Nature of Agreement	n Date	Effecti ve From	Between	Gist	Remarks
1.	Reimbursem ent Agreement- Bargain Element	09-Dec- 2015	1-Nov- 15	Hewlett Packard Enterprise Company, USA and its subsidiaries	Agreement for equity plan - to purchase shares of common stock in parent company at a price which is potentially lesser below the fair market value at the time of purchase or participants are granted shares of common stock in parent, full ownership in which is subject of certain restriction on transfer. The parties to this agreement recognize the benefits to HPE of having subsidiaries reimburse parent in an amount equal to the bargain amount arising from such transfer, etc.	importation of
	Staff Secondment Agreement		1-Nov- 15	Hewlett Packard Enterprise Company,	Secondment of employee/s by the provider to the recipients for	No Nexus with importation of goods

		NEW YORK		USA and its subsidiaries.	agreed terms and consideration	
3.	Research and Developmen t Services Agreement	22-Oct- 2015	2-Oct- 15	Hewlett Packard Enterprise Development LP, USA (licensor) and Hewlett Packard Enterprise India Pvt. Ltd. (developer)	Hewlett Packard Enterprise Development LP, USA (licensor) being owner/licensor of various technologies and product designs and intellectual property desires to have Hewlett Packard Enterprise India Pvt. Ltd. as developer to perform subcontracted research and development services to licensor	No Nexus with importation of goods
4.	Indent Sale Compensatio n Agreement		1-Aug- 15 as amend ed on 01.04.2 016	Hewlett Packard Singapore (Sales) Pte. Limited and Hewlett Packard Enterprise India Pvt. Ltd. (HPEIPL)	Hewlett Packard Singapore (Sales) Pte. Limited (HPSS) sells HPE products to the customers in the territory of India, then HPEIPL will be remunerated @ 8%	Initial agreement dated 01.08.2015 amended dated 01.04.2016 where in remuneration/ commission was fixed at 70% for Marketing services & 30% for Warranty services Support out of 8% invoiced as per terms and condition of agreement. No nexus with importation of goods.
5.	Miscellaneous Services Agreement/I C services agreement with mark up for HP India subsidiaries as service providers	2016	1-Nov- 15	Hewlett Packard Enterprise Company, USA and its subsidiaries	Provisioning of miscellaneous/cover ed services as per exhibit C at the arm's length percentage of 15% mark up on cost of all services	No Nexus with importation of goods

	(15%)		-	S. CHINOTICS IN		
6.	Miscellaneous Services Agreement (8%)(HPEC Company wide-IC Services agreement with mark up)	2016	1-Nov- 15	Hewlett Packard Enterprise Company, USA and its subsidiaries	Provisioning of miscellaneous/cover ed services as per exhibit C at the arm's length percentage of 8% mark up on cost of all services	importation of goods
7	Miscellaneou s Service Agreement for services without a Mark-up/ HPE IC services agreement without mark up		1-Nov- 15	Hewlett Packard Enterprise Company, USA and its subsidiaries	Provisioning of miscellaneous/cover ed services as per exhibit B at cost without any markup	No Nexus with importation of goods
3	Inter Company Product Distribution Agreement/ Master Distribution	18-Sep- 2015 as amende d 01- Apr- 2016 as further amende d 03- Feb- 2017	1-Aug- 15 as amend ed 01.11.2 015	Hewlett Packard Enterprise India Private Limited and affiliated entities	S (II m	Initial agreement dated 01.08.2015 amended dated 01.11.2015 wherein remuneration is according to their Intercompany pricing policies as per terms and condition of agreement. Distributor shall receive a discount when Distributor for agreement after effered to urchases HPE troducts from uppliers merein after efferred to urchasing iscount) to mable istributor to cover its levant value

						non-value added costs plus earn an arm's length return on those value added costs (herein after
						referred to as "ROVAC") when Distributor resells the HPE products. Distributor may also receive additional
						discounts by way of Lump Sum Adjustments from Suppliers in order to achieve an arm's length return. The value added
						costs and non- value added costs would be the costs of selling, servicing, supporting, and
						distributing HPE products and services - Including but not limited to import customs duties, customs fees and brokerage, and warranty
9	Cost Reimbursem ent Agreement (HPE cost Re- imbursement	05-Apr- 2016	1-Nov- 15	Hewlett Packard Enterprise Company, USA and its subsidiaries	To reimburse the costs, fee and expenses that parties have incurred on behalf Parent or a	expenses. No Nexus with importation of goods

Subsidiary on a specific understanding that the Party paying for the Expenses will be reimbursed by Parent or Subsidiary that benefited from the Expense

10. Certain clarifications with respect to Pricing methodology, invoicing method, discounting method, details of stock, commissions paid, etc. were called for, from the importer vide this office letter dated 11.03.2024 for which the importer's reply dated 20.03.2024 and 28.03.2024 is as under:

Query-Point A: As per documents submitted to this office, it is noticed that HPEIPL has mentioned the different Pricing Policies such as Product Pricing Policy, Transfer Pricing Policy, Global Pricing Policy, and pricing as per Inter-Company Product Distribution Agreement. It is requested to clarify as to how these differently nomenclature pricing policies find differential applications amongst the transactions covered in the check period of this investigation?

Reply of the importer: The importer had replied dated 20.03.2024 that product pricing policy is a terminology usage inconsistency by different team members who handled the SVB application. We have one Product transfer pricing policy which is owned by Transfer Pricing organization to manage the intercompany pricing operations. It is usually mentioned as Product Pricing policy, a.k.a transfer pricing policy or inter-company pricing policy or Global Pricing Policy. While the inter-Company Product Distribution Agreement is a business-recognized contract among all the legal entities for the distribution of goods within HPE worldwide, the pricing related articles within this agreement formalize and reflect the same as captured in the Product transfer Pricing Policy as contractual Obligations for product distribution purposes.

Query-Point B: It is observed from the documents submitted by HPEIPL that some of the transactions were invoiced by HPE, Singapore to HPEIPL through HPE, Switzerland whereas rests of them were invoiced directly by HPE, Singapore to HPEIPL. Also please clarify as to which product imports are invoiced directly by HPE Singapore and what is the methodology adopted to determine the routing of invoices?

Reply of the importer: As HPEIPL is a sales office, the major business activities conducted by HPEIPL are to resale the products to Indian partners and customers. Scenario-1: For any resale transaction-related imports fulfilled from HPE Singapore factory, the invoice will be billed by HPE Switzerland to HPEIPL, though the shipping point could be HPE Singapore, which is a factory for fulfilling APJ countries. The invoice flow will be HPE Singapore factory - HPE Switzerland-HPEIPL. The price methodology is "List Less" price.

Scenario-2: The only exception is for Aruba Intelligent Edge products (networking products) direct shipment, which will be sold through e distribution center in Singapore Hewlett Packard Asia Pacific Distribution Centre (HPE APDC) to HPEIPL. The invoice flow is HP APDC —HPEIPL. The price methodology is "List Less" price.

Scenario-3: The seller is other activities, such as imports of spare parts for repair events, and imports for internal use, the seller will be HPE APDC who will directly bill HPEIPL. The invoice flow is HP APDC-- HPEIPL. The price methodology is "Cost plus mark up".

Query-Point C: Also, the classification of HPE Entities into Level A and Level B has been spelt out indicating different routing of invoices: The same may be elaborated with documentary evidence?

Reply of the importer: HPE entities are classified into two categories: Level A entities and Level B entities for IC invoicing purposes,

Level A entities are those who can invoice directly to another entity (e.g., factories, Distribution centers, HQ's). Level B entities are normally non- US. SOs. Invoices to & fro from channel B entities are channeled through a level A HQ intermediary to combine the legal transactions which cross country boundary to reduce the number of IC reconciliations and provide a funding margin to HQ wherever applicable.

Query-Point D: Please also clarify and provide justification for issuing an IC Invoice and Customs Invoice for the same IC transaction by HPE as stated in your letter dated 16.12.2016?

Reply of the importer: The IC invoices are raised for financial purposes, including payment settlement. The IC invoices does not include the information needed for Customs declaration purposes, such as the HTS code, ECCN code, Country of Origin, shipping reference, etc. Thus, HPE adopts a Customs Invoicing engine in the SAP system to create Customs invoices for Customs declaration purposes. The product Information, billing amount, and other information ere sourced directly from SAP. The value of the Customs Invoice & intercompany invoice stands the same.

Query-Point E: It is submitted vide your letter dated 16.12.2016 that HPE's method of determining the IC (Intercompany) price is referred to as "List-Less". I.e. the IC price equals the list-price of the product less trade and/or IC discounts established as a percentage of such list price and that IC discounts are used to manage the "legal funding of purchasing/importing field entities. Please clarify as to how the cost of such legal funding is determined in advance before the IC price is generated and further as to how such legal funding is apportioned amongst the product range?

Reply of the importer: The IC discount percentage (%) is estimated for future transactions based on the actual value-added cost taken place in the earlier financial period and targeted compensations for the value-added cost. The IC discount % is assessed according to the financial result at the business segment {a group of similar kind of products, viz., networking, product, storage products, computer products, and etc.) level and will be applied to the products evenly within that specific business segment. The return of VAC target is 8% of the VAC as we elaborated in the previous submissions. To cover such a VAC amount and targeted return, a % is assessed against the forecasted revenue, which is taken as the IC discount %. The Product Transfer Pricing Policy established the process that the IC discounts are reviewed on quarter basis, and further internal approval is taken for execution of the same.

Query-Point F: As per the documents submitted vide email dated 05.12.2023, it is observed that the discounts vary from 66% to 78% from the list price on the product of HP Brand. Please provide product wise discount schedule for all the years covered in the investigation?

Reply of the importer: We would like to clarify far you that our discount percentage in our submission dated 05 Dec.-2023 stands between 55% to 90% and not 66% to 78%. The above said discount range applied to the sample transactions that were presented for SVB comparison on 06 Dec- 2023 via email consisting of an Invoice level breakup. It does not mean that the above range applies to all HPE products. A trade discount that is higher or lower than the above range could be agreed upon with the customer. HPE does not keep a discount schedule. A trade discount offered to a customer will be offered at the transaction level.

Query-Point G: As per your submissions, HP is publishing the "List-Price" of products country-wise where it is offered for sale. Please provide copies of the same?

Reply of the importer: There is a tool for managing the publication of the List Price of products. There are millions of active part numbers in HPE But we have already provided the sample of List Prices to your good office as comparison of HPEIPL Import value with third party customer on 18th September, 2023. Discounting transactions Breakdown" email on 05th December, 2023.

Query-Point H: It has been submitted by your letter dated 16.12.2016 that the IC discounts are a function of the "tax- activity" of the buyer. It is also stated that HPE factories, via HPE headquarters, will continue to compensate HPEIPL (Distributor) for its expected costs related to the purchase, sale, support, service, and distribution of HPE products and services through inter-company discounts. Please provide the workings of the same for each of the years for each product clearly indicating the applicability of the said tax-function in the Indian context?

Reply of the importer: The IC discounts are part of our trade activity, and they are explained in detail to your good office on our letter dated 23 Feb. 2017, we also explained to your good office how the Intercompany discounts are applied at transaction level through our "Discounting transaction breakdown" which consist of random samples from 2019-2022 on the submissions made by us via email on 05th Dec 2023.

Query-Point I: Please submit a quantification of all types of commission's viz., (buying, selling, warranty, marketing, etc.) paid by or on behalf of HPEIPL pertaining to the import transactions?

Reply of the importer: HPEIPL does not pay commissions for the Imported goods.

Query-Point J: Please submit the details of inventory of the imposed stock held by HPEIPL as on O1.07.2017, indicating the declared CTH, description, quantity, A.V, MRP, etc.?

Reply of the importer: As mentioned previously most HPEIPL imports are meant for resale business to India Partners and the customers. HPEIPL will deliver goods directly to the customers and partners after the importation. We do not hold stock. It is impossible to check the inventory report on 01.07.2017

Query-Point K: Please clarify as to how the HP-brand and other intangibles have been valued for inclusion in import price?

Reply of the importer: According to our clarification, all the intangibles associated with the hardware are priced inclusively within the hardware. Trademarks are authorized free of charge according to the distribution agreement in Para 2.17 of the Distribution agreement.

Query-Point L: Please submit the details of import prices of products imported by the HPEIPL under their Internal Order (Type I1) vis-a-vis (Type I2)? Reply of the importer: We would like to inform your good office that the relevant details were submitted on 18" Sep.2023 as part of capital consumable goods

Query-Point M: HPEIPL had imported goods from related parties with cost plus markup pricing methodology, majorly for spare parts. It is requested to specify the methodology adopted for all other imports: this aspect has not been specifically spelt out anywhere in your submissions?

Reply of the importer: There are two business flows where the cost-plus markup pricing method is adopted including:

spare part Imports

report.

imports for internal use

We would like to inform your good office that we have informed about the costplus markup pricing method to you good office in our letter dated 06 Dec- 2016.

<u>Query-Point N</u>: Please elaborate illustratively about the meaning of the Valuation of imports by HPEIPL for "Cross- Region" inventory balancing purposes as stated in your letter dated 06.12.2016.

Reply of the importer: Normally, HPEIPL will source spare parts directly from HPE APDC. Sometimes, there is a situation where there is no stock of required parts in HPE, APDC and to meet customer service requests within the agreed time, HPEIPL will need to source directly from the DCs (Distribution Centre) in the other regions, i.e. DCs in AMS & EMEA.

- Since the replies and submissions of the importer didn't seem to justify that the declared invoice values were true transaction values, unaffected by relationship and further since a sample check of the imports made by the importer from their related foreign supplier indicated wide variations, as high as 654.60%, therefore, vide letter dated 08.05.2024, a Notice under Rule 12 of the Customs Valuation Rules, 2007, was served to the importer seeking clarification on variation in import value of identical/similar goods in respect of 83 contemporary Bills of Entry between M/s. HPEIL and other unrelated parties. Complete details of the said 83 imports were furnished to the importer to enable them reply in a concrete and focused manner. Further, an opportunity of being heard in person was also accorded to the importer. In response, vide mail dated 20.05.2024, the importer requested to extend the personal hearing by 4 weeks and sought a fresh date. This office, vide letter dated 03.06.2024, while conveying the date for fresh personal hearing, furnished to them details of another 48 contemporary Bills of Entry, seeking their response for a wide variation of import prices as high as 1329.34% of identical/similar goods supplied by same group of foreign companies to other importers in India vis-à-vis imports by M/s HPEIL was noticed.
- 12. The importer attended the Personal Hearing on 20.06.2024. Shri Madhava Yathigiri, Partner, M/s Deloitte Touche Tomatsu India, LLP, Ms. Sangita Prakash, Director, M/s Deloitte Touche Tomatsu India, LLP, Shri Raman Gopal Jamdagni, Manager, M/s Deloitte Touche Tomatsu India, LLP and Shri Akshay Kulkarni, Sr.Manager, Global Trade-Import Policy & Compliance, M/s HPEIPL appeared on behalf of the importer. They furnished written submissions and stated that the discount from the List-Price comprises of a component called Inter-Company (IC) discount is fairly fixed for a particular period and based on the projections made from the financials for the previous year, and another component of discount (Trade-discount) that is determined on fair-negotiations with the customers in India; that there are no buying or selling commissions involved in any of the transactions; that the cost of warranty is to the account of the Indian entity, which, in turn is inbuilt in the gross margins, and that the transactions do not involve any additions of

lumpsum payments or technical know fees or royalty, or the like, as under Rule 10 of the Valuation Rules. In respect of sales to independent buyers in India, it was stated that the warranty is provided by the Indian entity on behalf of the related foreign supplier and this cost, apart from other costs incurred for third party imports are included in separate invoices for indenting commission raised on the foreign supplier. In respect of the justification of their import values under the deductive method of valuation (claimed for the first time in more than 10 years of investigation and only after the department insisted to specify the exact Rule of Customs Valuation Rules under which the value was sought to be justified by the importer) and also to furnish precise clarification with respect to variation in value of contemporaneous import data as furnished to them for the 131 imports, for which they had been put to Notice, they sought another two weeks' time.

- During the hearing, the importer vide their letter dated 20.06.2024 furnished 13. a copy of their additional written submissions which are as under: -
 - A. Basis of import or pricing policy
 - Pricing policies of intercompany transactions are governed by the Global Product Pricing Policy to ensure fair, uniform, and neutral system worldwide.
 - The pricing policies are in line with the provisions of The World Trade Organization (WTO) agreement on Customs valuation/ The General Agreement on Tariffs and Trade (GATT) Code for valuations.
 - Customs valuation methodology adopted by HPE group globally is the transaction value.
 - Import prices are determined based on the intercompany (IC) price which is the list price of the product less trade and/or IC discounts established as a percentage of such list price. The "List Price" is the published base price of a product in each country before discount. Pricing rates are generally reviewed and communicated every quarter globally.
 - Further, for administrative efficiency, IC discounts are based on the following variables:
 - Function (Tax activity) of the buyer 0
 - The tax activity is based on the function of the buying entity (e.g., factory, delivery center, headquarter or sales office). The tax activity is important in that the IC pricing methodologies associated with each function could be different.
 - Purchase classifications are based on the buyer's intended use of the products (i.e., resale, stocking for future sales, internal use, or demo units)
 - As per the pricing policies, HPEIPL receives a discount (herein after referred to purchasing discount) in order to recover its relevant value-added costs plus earn an arm's length return on those value-added costs (ROVAC), when HPEIPL resells the HPE products. The value-added costs would be the costs of selling, servicing, supporting, and distributing HPE products and services including but not limited to import customs duties, customs fees and brokerage, and warranty expenses.
 - The imports by HPEIPL can be broadly categorized as below:

- a.Trade orders (Finished Goods) The imports of trade orders are meant to fulfill trade customers, i.e., for the purpose of resale to external customers in India. HPEIPL imports these products against the confirmed purchase order(s) from the customer.
- b.Trade orders (Spares) The Spares are imported under this category for warranty support to customers. The spares were also imported under list less discount method. However, w.e.f. December 2021 the spares are imported under cost plus markup pricing methodology.
- c. Internal orders (12) In this category, HPE imports products for internal consumption/ captive consumption and these are capitalized in the books of accounts.
- d.No-charge/Free of charge (NoC/FoC) orders This category of imports are majorly samples for testing purposes. The pricing for this shipment is derived on standalone basis and are not based on the HPE IC discounting policy.

Submissions on import prices vis-a-vis valuation rules

o In substantiation of the conditions prescribed under Rule 3(3)(a), we wish to make the following submissions:

Pricing of the goods

- As explained above, HPE's IC pricing policy provides compensation to each entity for its value-added costs plus return on its value-added costs and the same is at arms' length. Within HPE, this is commonly referred to as "Return on Value-Added Costs" or "ROVAC."
- The importing entity gets the IC discount and trade discount on the list price of the product to compensate the cost of the company plus return on such costs (ROVAC).
- The discount on the list price is derived basis the sale price offered to the trade customers on the product orders (For example, a product having list price of INR 500 is sold at INR 400 to the end customers, the total trade discount on such produce would be INR 100 which would be 20% (100/500*100)). The actual trade discount on the trade transaction could differ based on the above example where the discounting is linked to end customer sale price.
- Based on the above set of facts and documentary evidence submitted, it could be deduced that the import price is derived based on the actual cost and profit of the company and not influenced by the relationship with the related parties.
- Further, the importer submitted details from the company's financial statements, which substantiate that HPEIPL has been making reasonable profits. This data has been collated for the periods 2017-18 to 2022-23:

Year	2017-18	2018-19	2019-20	2000		(INR in Lak
Revenue		-		2020-21	2021-22	2022-23
	3,37,000	3,52,596	3,55,956	3,38,702	4,26,315	5,92,352
Expenditure	3,23,126	3,39,694	3,42,943	3,29,817		
Profit/Loss	13,874				4,04,849	5,72,308
		12,902	1,3013	8,885	21,466	20,044
% of Profit	4.12%	3.66%	3.66%	2.62%	5.04%	3.38%

- From the figures above, it is evident that the importer achieved profits of 4.12%, 3.66%, 3.65%, 2.62%, 5.04%, and 3.38% for the fiscal years 2017-18 through 2022-23. Therefore, it can be said that the import price determined is at arm's length and is not influenced by the relationship between the parties.

Mark-up earned by the supplier

 As mentioned, the company has mainly imported the goods from HPE Switzerland and HPE Singapore. Summary of direct cost, sale price and gross profit of the product imported in India on sample basis is provided and transaction margin for supplier varies from 3.57% to 10.94%.

Profits earned added by HPEIPL

- The importer submitted that as HPEIPL is engaged in import and sale of products, it has been selling the trade products to unrelated customers in India making appropriate profits on such sale of imported goods. The resale of products and margins earned by the company truly reflects that the price adopted for imported goods are reasonable.
- The importer provided list of sample transactions where the products are imported and sold to unrelated customers in India. In this sample transaction, percentage of margin varies from 0.73% to 27.44%, as tabulated below –

TABLE-A

Sr.N o	BE No/ Date	Part No.	Import Price Per Unit (Rs.)	Customer Name	Sale Price Per Unit (Rs.)	% of Gross Margi n
1	8310556/18.04.20 22	HPE DL380	2001913	Redington Ltd.	2186371	9.21
2	8310551/18.04.20 22	3310551/18.04.20 HPE 736275 Ingram Micro		915188	24.30	
3 9341607/30.06.20 22		HPE NS HF20	1612553	Savex Technologies Pvt Ltd.	2055018	27.44
4	22 ATSR Te		Savex Technologies Pvt Ltd.	4490	2.37	
5	3976407/30.12.20 22	865408- B21 HPE	6638	Redington Ltd.	6993	5.34
6 3991274/31.12.20 22		JW657A ARUBA	44319	Inflow Technologies Pvt.Ltd	44641	0.73
7 4670044/16.02.20 23		Q67A HPE	364343	Savex Technologies Pvt Ltd.	367000	0.73
8	4964287/09.03.20 23	JL7106 ARUBA	370861	Ingram Micro India P.Ltd	383310	3.36
9	4830851/28.02.20	QK734A	1435	Savex	1500	4.54

	23	HP		Technologies Pvt Ltd.		
10	6061439/22.05.20 23	841730 B21 HPE	2252959	Ingram Micro India P.Ltd	2617223	16.17
11	7001379/22.07.20 23	P37009 K21 HPE	46832	Savex Technologies Pvt Ltd.	50000	6.76
12	3543857/13.04.20 21	HPE800 W FS	6966	Ingram Micro India P.Ltd	7410	6.37
13	3557655/14.04.20 21	HPE DL360	248261	Ingram Micro India P.Ltd	257840	3.66

Third-party imports

- Further, they have provided few sample transactions which are imported by third party unrelated buyers directly at or about the same commercial level and in substantially the same quantity as the goods being valued.
- The importer stated that the price considered for products imported by HPEIPL is always higher when compared with imports by third party unrelated buyers.

Accepted method under income tax

- Further, the company has adopted net margin method as per the 3CEB statements submitted under the Income Tax Act, 1961. The same may be considered appropriate to determine arm's length price for the transactions under consideration.
- C. Submissions on comparison of contemporaneous imports made by HPEIPL
- The importer summarized 131 transactions and compared the transactions as below:

Email No. of reference transactions		Details of importer with whom the import price is compared with		
9 May 2024	83	HP India Sales Private Limited (63 transactions) Hewlett Packard (India) Software Operations Pvt Ltd (12 transactions) Hewlett Packard Globalsoft Pvt Ltd (now known as EIT Services India Pvt Ltd) (7 transactions)		
6 June 2024	48	Hewlett Packard Enterprise Globalsoft Private Limited (47 transactions) Hewlett Packard (India) Software Operations Pvt Ltd (1 transaction)		

Relationship with the parties considered for contemporaneous imports

As explained above, Rule 3(3)(b) of Customs Valuation Rules 2007 provides 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 the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India ascertained at or about the same time.

- The subject imports have been compared with the contemporaneous imports carried out by the above entities.
- It is submitted that the following entities are related to HPEIPL and considered as related parties in accordance with the accounting standard and Rule 2(2) of Customs Valuation (Determination of Price of imported Goods) Rules, 2007:
 - Hewlett Packard (India) Software Operations Pvt Ltd;
 - Hewlett Packard Enterprise Globalsoft Private Limited; and
 - Hewlett Packard Globalsoft Pvt Ltd (now known as EIT Services India Pvt Ltd).
- The relationship can be verified from the financial statement submitted before your goodself at various times in previous submissions.
- O It is submitted that the comparison with identical goods or similar goods is possible only when such imports are made by unrelated buyers. However, 67 transactions out of the total subject contemporaneous imports, have been made with related party importer in India. Thus, such a comparison cannot be made as per Rule 3((3) (b) of Customs Valuation Rules, 2007.

Comparison with imports made by Hewlett Packard Enterprise Globalsoft Private Limited (HPEGS)

- In the list shared vide email dated 3 June 2024, there are total 47 import transactions compared with imports made by HPEGS.
- O At the outset, they submitted that the subject imports have been compared with imports made by a related party in India. However, as specified in Rule 3(3)(b) in conjunction with Rule 4 of the Customs Valuation Rules (Customs Valuation Rules) 2007, the transaction value of identical or similar goods should be compared with sales to unrelated buyers in India, determined at or about the same time.
- Notwithstanding the above, they submitted that the pricing methodology for the transactions compared in the subject notice is fundamentally different. It is important to note that HPEIPL serves as a non-exclusive distributor of HPE products in India. This entity imports goods based on specific customer orders and subsequently resells these goods to those customers.
- In contrast, HPEGS operates as a software services and ITES company, providing both offshore and onsite software support services. The imports by HPEGS are solely for internal consumption and are used for provision of IT services to other HPE group companies/ affiliates.
- The pricing of items imported by HPEGS is determined by a pre-determined intercompany discount. The invoice price reflects the intercompany transfer price, which is calculated by deducting the intercompany discount from the list price of the goods.
- It is submitted that different intercompany pricing models are applied to these entities. HPEGS, import goods exclusively for internal consumption and not for resale to end customers.
- The pricing model for these service entities is known as the stock/demo discount model, whereas HPEIPL employs the resale discount model.
- In the resale discount model, applicable to HPEIPL, the intercompany pricing is derived from the selling price to the customer. Conversely, in the service entity

- model, the intercompany pricing is based on the internal consumption of the products, not their resale.
- A primary distinction between the imports by HPEIPL and HPEGS lies in the trade discount offered to HPEIPL, as its imports are intended for resale to customers. Consequently, the pricing methodologies for these imports differ significantly, making a standalone comparison inappropriate.
- Further, the goods imported by HPEGS do not include the selling, marketing costs etc. as these are not borne by HPEGS. However, in case of HPEIPL being a sales entity, these costs are specifically added making these two imports incomparable. Summary of expenses which are to be added to arrive at the correct pricing is provided below for ease of reference:

(Amount in units undefined by importer)

Year	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Cost of stores, spares and services	63811	63511	70758	74108	98625	106392
Employee benefits expense	45346	45623	50564	52752	61547	66698
Finance Cost	218	136	697	756	303	399
Depreciation and amortization expense	2233	1594	3317	3334	3053	2974
Other expenses (including marketing, advertisement etc.)	30748	22648	23218	14434	16768	22675
Total	142356	133512	148554	145384	180296	199138

- It is further submitted that the imports made by HPEIPL compared under the subject notice are further sold to end customers with appropriate profits. The resale of products and margins earned by the company reflects that the price adopted for imported goods are reasonable.
- List of sample transactions where the products imported are sold to unrelated customers with margins are provided.
- Such transactions reflect that the company has made reasonable margin on the sale price. Such margin should be adjusted to derive the import price which is correspondent to the actual import price. Therefore, the price of the imported goods must be accepted considering the above deductive amount.

Comparison with imports made by HP India Sales Private Limited (HPISPL)

In the list shared vide email dated 9 May 2024, there are total 63 import transactions compared with HPISPL. Based on the usage and nature of the products, these are categorized as per below nature:

Nature of transaction	No. of transactions 10	
Trade for further sale to customer		
Spares for serving customers on warranty or AMC (internal order)	48	

Free of charge are samples for testing purposes 4

The subject imports have been compared with imports previously made by HPISPL (existed before the enterprise business was sold to HPEIPL on August 1, 2015). The products imported by HPISPL were governed by the prevailing Intercompany (IC) pricing policy applicable at that time for all business products. However, with the establishment of a new entity on August 1, 2015, a new pricing policy was introduced to align with the business environment of the enterprise sector in India and globally.

Further, as explained above, the import price is determined based on the end customer sale price, which covers HPEIPL's selling, marketing, and overhead costs (including warranty), along with a reasonable margin. Additionally, the pricing considers the Intercompany (IC) discount offered to HPEIPL, which varies based on the nature of the activity and product usage.

 In this case, the imported products serve both trade business and internal orders (spares) used for warranty purposes. Different IC discounts are applied to these imports. Therefore, comparing them with HPISPL imports is inappropriate.

Additionally, it is argued that according to Rule 4 of the Customs Valuation Rules, 2007, the value of imported goods should be based on the transaction value of identical goods sold for export to India and imported at or around the same time as the goods being valued. However, in this specific case, the imports made by HPISPL occurred prior to May 2015, which is more than 4 months earlier than the imports under consideration. Therefore, these earlier imports cannot be compared in accordance with Rule 4 of Customs Valuation Rules, 2007.

Comparison with imports made by Hewlett Packard (India) Software Operations Private Limited (HPISO)

In the list shared vide email dated 9 May 2024 and 3 June 2024, there are total 13 import transactions compared with HPEGS.

At the outset, they submitted that the subject import has been compared with imports made by a related party in India. However, as specified in Rule 3(3)(b) in conjunction with Rule 4 of the Customs Valuation Rules, 2007, the transaction value of identical or similar goods should be compared with sales to unrelated buyers in India, determined at or about the same time.

Notwithstanding the above, they further submitted that the pricing methodology for the transactions compared in the subject notice is fundamentally different. It is important to note that HPEIPL serves as a non-exclusive distributor of HPE products in India. This entity imports goods based on specific customer orders and subsequently resells these goods to those customers.

 In contrast, HPISO operates as software development company supporting activities of enterprise servers, storage, networking and software products for HPE entities located worldwide.

Similar to HPEGS, the pricing of items imported by HPISO is determined by a predetermined intercompany discount. It is submitted that different intercompany pricing models are applied to these entities. HPISO, import goods exclusively for internal consumption and not for resale to end customers.

- A primary distinction between the imports by HPEIPL and HPEGS lies in the trade discount offered to HPEIPL, as its imports are intended for resale to customers. Consequently, the pricing methodologies for these imports differ significantly, making a standalone comparison inappropriate.
- Notwithstanding the same, there are no significant difference between the import prices of both the entities. Thus, the price adopted for the subject imports are reasonable and at arms' length.

Comparison with imports made by Hewlett Packard Globalsoft Private Limited (HPGS)

- In the list shared vide email dated 9 May 2024, there are total 7 import transactions compared with HPEGS.
- At the outset, they submitted that the subject import has been compared with imports made by a related party in India. However, as specified in Rule 3(3)(b) in conjunction with Rule 4 of the Customs Valuation Rules, 2007, the transaction value of identical or similar goods should be compared with sales to unrelated buyers in India, determined at or about the same time. This regulation ensures that the comparison remains fair and accurate by eliminating potential prejudices that could arise from transactions involving related parties. Consequently, the comparison made in this case is invalid from the start.
- Notwithstanding the above, they further submitted that the pricing methodology for the transactions compared in the subject notice is fundamentally different. It is important to note that HPEIPL serves as a non-exclusive distributor of HPE products in India. This entity imports goods based on specific customer orders and subsequently resells these goods to those customers.
- In contrast, HPISO operates as a software services and ITES company, providing both offshore and onsite software support services. The imports by HPGS are solely for internal consumption and are used to rendition of IT services to other HPE group companies.
- The pricing of items imported by HPGS is determined by a pre-determined intercompany discount. It is submitted that different intercompany pricing models are applied to these entities. HPISO, import goods exclusively for internal consumption and not for resale to end customers.
- A primary distinction between the imports by HPEIPL and HPGS lies in the trade discount offered to HPEIPL, as its imports are intended for resale to customers. Consequently, the pricing methodologies for these imports differ significantly, making a standalone comparison inappropriate.

The importer further stated that that imports have been made by HPEIPL on arm's length price and no other direct/indirect benefit has been accruing to suppliers.

14. Additional Submissions on 18.07.2024

Apart from reiterating the submissions made earlier by the importer, the following was stated vide their letter dated 18.07.2024 -

A. Pricing of the goods

- As explained above, HPE's IC pricing policy provides compensation to each entity for its value-added costs plus return on its value-added costs and the same is at arms' length. Within HPE, this is commonly referred to as "Return on Value-Added Costs" or "ROVAC."
- The importing entity gets the IC discount and trade discount on the list price of the product to compensate the cost of the company plus return on such costs (ROVAC).
- The discount on the list price is derived basis the sale price offered to the trade customers on the product orders (For example, a product having list price of INR 500 is sold at INR 400 to the end customers, the total trade discount on such produce would be INR 100 which would be 20% (100/500*100)). The actual trade discount on the trade transaction could differ based on the above example where the discounting is linked to end customer sale price.
- Based on the above set of facts and documentary evidence submitted, it could be deduced that the import price is derived based on the actual cost and profit of the company and not influenced by the relationship with the related parties.
- Further, we wish to submit details from the company's financial statements, which substantiate that HPEIPL has been making reasonable profits. This data has been collated for periods 2017-18 through 2022-23: (INR in Lakhs)

2022-23 2021-22 2020-21 2019-20 2018-19 2017-18 Year 5,92,352 3,38,702 4,26,315 3,55,956 3,37,000 3,52,596 Revenue 5,72,308 4,04,849 3,29,817 3,42,943 3,39,694 3,23,126 Expenditure 20,044 21,466 8,885 1,3013 12,902 13,874 Profit/Loss 3.38% 5.04% 2.62% 3.66% 3.66% 4.12% % of Profit

- From the figures above, it is evident that the importer achieved profits of 4.12%, 3.66%, 3.65%, 2.62%, 5.04%, and 3.38% for the fiscal years 2017-18 through 2022-23. Therefore, it can be said that the import price determined is at arm's length and is not influenced by the relationship between the parties.
- B. Submissions on comparison of contemporaneous imports made by HPEIPL
 - Vide your email dated 9 May 2024 and 3 June 2024, your goodself has shared sample contemporaneous imports by other importers and comparing the same with the products imported the company. The summary of transactions and importers compared with provided below:

Email reference	No. of transactions	Details of importer with whom the import price is compared with
3 June 2024	48	Hewlett Packard Enterprise Globalsoft Private Limited (47 transactions) Hewlett Packard (India) Software Operations Pvt Ltd (1 transaction)

9 May 2024	83	HP India Sales Private Limited (63 transactions) Hewlett Packard (India) Software Operations Pvt Ltd (12 transactions)
		Hewlett Packard Globalsoft Pvt Ltd (now known as EIT Services India Pvt Ltd) (7 transactions)

Relationship with the parties considered for contemporaneous imports

- As explained above, Rule 3(3)(b) of Customs Valuation Rules 2007 provides 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 the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India ascertained at or about the same time.
- The subject imports have been compared with the contemporaneous imports carried out by the above entities.
- It is submitted that the following entities are related to HPEIPL and considered as related parties in accordance with the accounting standard and Rule 2(2) of Customs Valuation (Determination of Price of imported Goods) Rules, 2007:
 - Hewlett Packard Enterprise Globalsoft Private Limited;
 - Hewlett Packard (India) Software Operations Pvt Ltd; and
 - Hewlett Packard Globalsoft Pvt Ltd (now known as EIT Services India Pvt Ltd).
- The relationship can be verified from the financial statement submitted before your goodself at various times in previous submissions.
- We submit that the subject imports have been compared with imports made by a related party in India. However, as specified in Rule 3(3)(b) in conjunction with Rule 4 of the Customs Valuation Rules 2007, the transaction value of identical or similar goods should be compared with sales to unrelated buyers in India, determined at or about the same time. Thus, the comparison made in the subject imports are not correct.
- Notwithstanding the above, we are submitting the reason of difference for all the transactions as below:

Explanation on the transactions shared vide letter dated 3rd June 2024

No. of transactions	Explanation				
12	HPEIPL transaction value is higher than the lowest value of identical goods imported at or around the same time.				
2	Comparable products are not same. HPEGS and HPEIPL has imported different model and the value of the same are not comparable.				
1	Import made from unrelated supplier, thus at arms' length and out of purview of SVB.				
2	Product is imported as part of CTO. The price considered for comparison is total amount of the invoice, however, when compared with individual product as mentioned in the sheet, the difference is only on account of time gap and purpose of import.				
28	Transactions are not comparable as HPEIPL imports high volume of goods as compared to HPEGS and receives higher discounts (quantity discount, promotional discount, country discount) for placing the orders with the				

	supplier.
	 In addition, the comparable made in the subject letter is not correct due to following reasons: The purpose of import by HPEIPL is for resale however, the same is imported for internal consumption and not for resale to third party customers. The import under scrutiny has been compared with imports made more than a year ago. There is a change in list price of the product resulting in difference in import price
3	There is marginal difference between the comparable import prices. The difference in account of gap in time of import.

Defore delving into the detailed reasoning, we wish to address the contents of the letter dated June 3, 2024, which considered contemporaneous imports made by HPEGS. It is important to note that HPEGS's imports represent a mere 2% of the total volume of imports made by HPEIPL. Consequently, comparing these imports for the purpose of determining the arm's length value is inappropriate. The year-wise imports by HPEIPL and HPEGS are detailed below:

(Amount in Rs.)

Year	Amount (Asses	ssable value)	% of imports made by HPEGS
	HPEIPL	HPEGS	as compared to HPEIPL
2017-18	17,345,756,532	382,233,385	2%
2017-10	24,339,965,847	289,216,814	1%
2019-20	17,927,864,394	285,337,003	2%
2020-21	28,387,559,560	842,401,882	3%
2020-21	29,733,574,353	495,443,818	2%
2022-23	45,477,363,364	771,861,191	2%
2022-23	23,045,567,165	358,324,847	2%
Total	186,257,651,216	3,424,818,940	2%

 We submit that given the substantially higher volume of goods imported by HPEIPL compared to HPEGS, it is grossly incorrect and unreasonable to compare import prices based on a few sample transactions.

Without prejudice, we would like to explain the reasons behind the observed price differences as follows:

a. Comparable with identical/similar goods

 Rule 4 and Rule 5 of the Customs Valuation Rules 2007 provides that the value of imported goods shall be the transaction value of identical goods/ similar goods sold for export to India and imported at or about the same time as the goods being valued to unrelated buyers.

 Further, sub-rule (3) of Rule 4 of Customs Valuation Rules, 2007, it is provided that if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

- In this regard, we wish to submit that there are some transactions where the comparable identical products are supplied to third party customers in India by the supplier directly at lower value. Detail of such transactions along with value is provided in Annexure A. Further, copy of invoices issued by the supplier to the customer is also provided in Annexure B for reference. In such a case, the lowest value of identical goods should be considered for the purpose of identifying the transaction value.
- Considering the above, the price of the imported goods must be accepted.

b. Large order imports made by HPEIPL as against HPEGS's sample imports

 It is submitted that the lower import prices reported by HPEIPL are justified on several grounds, as detailed below:

Economies of Scale

- <u>Bulk Purchase Discounts</u>: HPEIPL, being a reseller in India, engages in the importation of larger quantities of goods compared to HPEGS. In accordance with standard commercial practice, bulk purchases qualify for volume discounts from suppliers, resulting in lower per-unit costs.
- Supplier Incentives: Suppliers often provide additional incentives and reduced pricing to purchasers of larger quantities, which directly benefits HPEIPL.

Negotiation

- Enhanced Negotiation Capabilities: HPEIPL's substantial import volumes place it in a stronger position to negotiate favorable pricing terms with suppliers. This is a legitimate business practice and aligns with principles of contracting and fair trading.
- Long-Term Supply Contracts: HPEIPL, being a non-exclusive distributor of HPE products in India, has entered into long-term agreements with its supplier, securing stable and reduced pricing over time. These contracts are legally binding and reflect prudent business judgment.

Market position, supply chain management and operational efficiency:

- <u>Logistics Optimization</u>: HPEIPL utilizes efficient logistical strategies to minimize costs associated with transportation and handling. This includes strategic shipment consolidation, which reduces overall freight costs.
- Preferred Customer Status: HPEIPL is regarded as a preferred customer by the suppliers due to its high-volume purchases. This status entitles HPEIPL to preferential pricing and terms, which are negotiated within the bounds of commercial terms.
- Advanced Procurement Strategies: HPEIPL employs advanced procurement strategies, including just-in-time inventory management and strategic sourcing. These methods are legally sound and contribute to overall cost efficiency for HPEIPL as compared to HPEGS who imports the products on sample basis for internal purposes.

- We are submitting the annual product comparison report between HPEIPL and HPEGS, detailing the volume of product imports by both entities, as outlined in Annexure C.
- Reference is made to Rule 4/5 of Customs Valuation Rules, 2007 which allows adjustment on account of quantity factors, commercial level factor or both. Considering the fact, that HPEIPL places large orders for the products as against HPEGS's sample imports, the same should be adjusted at quantity and commercial level for the import comparison.
- The import prices reported by HPEIPL are a result of legitimate and legally sound business practices, including economies of scale, enhanced negotiation capabilities, efficient supply chain management, preferred customer status, strategic supplier partnerships, and operational efficiency. These factors collectively justify the observed discrepancies in import pricing between HPEIPL and HPEGS.

c. Comparison with products not imported on or around the same time

- Additionally, it is submitted that according to Rule 4 of the Customs Valuation Rules, 2007, the value of imported goods should be based on the transaction value of identical goods sold for export to India and imported at or around the same time as the goods being valued.
- O However, in some cases, the imports made by HPEGS occurred prior to May 2015, which is more than 6 months earlier than the imports under consideration. Therefore, these earlier imports cannot be compared in accordance with Rule 4 of Customs Valuation Rules, 2007. Thus, the comparison made with HPISPL imports is not justifiable.

d. Comparison with products imported for different purpose

- We submit that for some cases the pricing methodology for the transactions compared in the subject notice is fundamentally different. It is important to note that HPEIPL serves as a non-exclusive distributor of HPE products in India. This entity imports goods based on specific customer orders and subsequently resells these goods to those customers.
- O In contrast, the entity with whom the products are compared with operates as a software services and ITES company, providing both offshore and onsite software support services. The imports by such entity solely for internal consumption and are used for provision of IT services to other HPE group companies/affiliates.
- The pricing of items imported by such an entity is determined by a predetermined intercompany discount. It is submitted that different intercompany pricing models are applied to these entities. Comparable entity, import goods exclusively for internal consumption and not for resale to end customers.
- The pricing model for these service entities is known as the stock/demo discount model, whereas HPEIPL employs the resale discount model.
- In the resale discount model, applicable to HPEIPL, the intercompany pricing is derived from the selling price to the customer. Conversely, in the service entity

- model, the intercompany pricing is based on the internal consumption of the products, not their resale.
- A primary distinction between the imports by HPEIPL and HPEGS lies in the trade discount offered to HPEIPL, as its imports are intended for resale to customers. Consequently, the pricing methodologies for these imports differ significantly, making a standalone comparison inappropriate.

Comparison with products imported for different purpose

 It is submitted that the goods imported by entity with whom comparison is made, do not include the selling, marketing costs etc. as these are not borne by such entity directly. However, in case of HPEIPL being a sales entity, these costs are specifically added making these two imports incomparable. Summary of expenses which are to be added to arrive at the correct pricing is provided below for ease of reference:

(Amount in units undefined by im

Year	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Cost of stores, spares and services	63811	63511	70758	74108	98625	106392
Employee benefits expense	45346	45623	50564	52752	61547	66698
Finance Cost	218	136	697	756	303	399
Depreciation and amortization expense	2233	1594	3317	3334	3053	2974
Other expenses (including marketing, advertisement etc.)	30748	22648	23218	14434	16768	22675
Total	142356	133512	148554	145384	180296	199138

Resale to end customer with mark up

- o It is further submitted that the imports made by HPEIPL compared under the subject notice are further sold to end customers with appropriate profits. The resale of products and margins earned by the company reflects that the price adopted for imported goods are reasonable.
- o List of sample transactions where the products imported are sold to unrelated customers with margins are provided in Annexure D.
- o Such transactions reflect that the company has made reasonable margin on the sale price. Such margin should be adjusted to derive the import price which is correspondent to the actual import price. Therefore, the price of the imported goods must be accepted considering the above deductive amount.

A detailed explanation for each of the 48 transactions is provided in Annexure E.

No. of transactions	Explanation Explanation
9	The assessable value has been calculated by incorrectly apportioning th

	freight charges listed on the invoice and disclosed in the Bill of Entry (BOE). When the import prices are correctly compared by excluding these freight charges, they are higher and reasonable. The comparable import product has been standalone import making the freight charges higher, resulting in such a difference.
4	The difference in account of purpose of import. HPEIPL has imported the product for resale however, the same is imported for internal consumption by HPISO and not for resale to third party customers.
24	The import under scrutiny has been compared with imports made over a year ago. In August 2015, there was a global restructuring of the HP Group, resulting in price changes for all products thereafter. Such a comparison is invalid under Rule 4 of Customs Valuation Rules, 2007, as it does not involve goods imported at or around the same time.
46	There is marginal difference between the comparable import prices. The difference in account of gap in time of import, change in list price and the impact of price restructuring post global business split.

Incorrect freight computation

o In some cases, the assessable value has been calculated by incorrectly apportioning the freight charges listed on the invoice and disclosed in the Bill of Entry (BOE).

O It is submitted that when the import prices are correctly compared by excluding these freight charges, they are higher and reasonable. The comparable import product has been standalone import making the freight charges higher, resulting in such a difference. Thus, the same cannot be considered for comparison.

 We are submitting the copy of invoices in Annexure F highlighting the product price and freight charges for appropriate comparison and justification.

C. Comparison with products not imported on or around the same time

Additionally, it is submitted that according to Rule 4 of the Customs Valuation Rules, 2007, the value of imported goods should be based on the transaction value of identical goods sold for export to India and imported at or around the same time as the goods being valued.

 However, in some cases, the imports made by HPISPL occurred prior to May 2015, which is more than 1 year earlier than the imports under consideration. Therefore, these earlier imports cannot be compared in accordance with Rule 4 of Customs Valuation Rules, 2007.

As submitted earlier, the subject imports have been compared with imports previously made by HPISPL (existed before the enterprise business was sold to HPEIPL on August 1, 2015). The products imported by HPISPL were governed by the prevailing Intercompany (IC) pricing policy applicable at that time for all business products. However, with the establishment of a new entity on August 1, 2015, a new pricing policy was introduced to align with the business environment of the enterprise sector in India and globally.

Thus, the comparison made with HPISPL imports is not justifiable.

D. Comparison with products imported for different purpose

- We submit that for some cases the pricing methodology for the transactions compared in the subject notice is fundamentally different. It is important to note that HPEIPL serves as a non-exclusive distributor of HPE products in India. This entity imports goods based on specific customer orders and subsequently resells these goods to those customers.
- In contrast, the entity with whom the products are compared with operates as software development company supporting activities of enterprise servers, storage, networking and software products for HPE entities located worldwide.
- O The pricing of items imported by such an entity is determined by a predetermined intercompany discount. It is submitted that different intercompany pricing models are applied to these entities. Comparable entity, import goods exclusively for internal consumption and not for resale to end customers. Consequently, the pricing methodologies for these imports differ significantly, making a standalone comparison inappropriate.
- A detailed explanation for each of the 83 transactions is provided in Annexure G.

15. Additional Submissions on 31.07.2024

The importer, vide their letter dated 31.07.2024 furnished a copy of their additional written submissions which are as under –

A. Sample transactions providing for margin of the supplier

- They have imported goods from Hewlett-Packard International SARL, Switzerland, and other related parties outside India. Further, they submitted a list of sample transactions, certified by the supplier, including the purchase price, sale price, and gross profit achieved by the supplier in respect of sample transactions for fiscal years 2022-23 and 2023-24. They further added that the costs of purchase for the supplier includes:
 - a) Cost of procurement;
 - b) Logistics costs of warehousing, handling and shipping the product;
 - c) Normal costs of localizing products for the company's geographic region; and
 - d) Recovery for the opportunity cost of holding inventory.
- The importer further added that their company has made direct imports from the suppliers located outside India, adhering to the transfer prices and claimed that the import prices are not undervalued/subsidized and are on an arm's length basis, with no additional direct or indirect benefits accruing to the suppliers. The importer claimed that the profits for the supplier entity, as detailed in sample transactions, are fair and reasonable. Therefore, the values charged on the imported goods should be considered at arm's length and acceptable for customs valuation.

B. Majority of the imports are exempted from BCD

 The importer submitted that most of the products imported by the company fall under the Information Technology Agreement (ITA), to which India is a signatory. The ITA provides duty-free status, exempting these products from BCD. Hence, over 90% of the products imported by HPEIPL are exempt from BCD. Additionally, IGST payments on these imports are creditable, rendering the transactions revenueneutral for the Government.

C. Computation under deductive value for sample transactions

The importer submitted the computation of the price under the deductive value method for the sample transactions. For this computation, they have considered the local sales value of the respective goods in India and claimed that the value is not influenced by the relationship between the related parties and should be considered the transactional value for customs valuation. The importer has produced following deductive working in order to demonstrate that the profit earned in trading business is normal which is as under:

Table-B

(Amount in Rs.)

								int in Rs
ir N	BE No/ Date	Part No.	Supplier Name	Import Price Per Unit	Customer Name	Sale Price Per Unit	Gross Margi n per unit	% of Gross Margi n
1	8579872 /02.11.2 3	P5256 0-B21	HP Intl. Sarl, Switzerlan d	179, 650	Ingram Micro India Pvt Ltd	206,31	26,66 4	15%
2	8552247 /31.10.2 3	P5256 0-B21	HP Intl.Sarl, Switzerlan d	179, 650	Savex Technologi es Pvt. Ltd.	206,31	26,66 4	15%
3	8579871 /02.11.2 3	P6073 5-B21	HP Intl.Sarl, Switzerlan d	146, 216	Savex Technologi es Pvt. Ltd.	166,489	20,27 3	14%
4	8586261 /02.11.2 3	87249 1-B21	HP Intl.Sarl, Switzerlan d	10,491	Redington Limited	12,084	1,593	15%
5	8878938 /22.11.2 3	P5075 0-B21	HP Intl.Sarl, Switzerlan d	114, 057	Ingram Micro India Pvt Ltd	133,17 6	19,11 9	17%
6	8884939 /22.11.2 3	P5075 0-B21	HP Intl.Sarl, Switzerlan d	114, 057	Ingram Micro India Pvt Ltd	133,17 6	19,11 9	17%
7	9695679 /17.01.2 4	P5075 1-B21	HP Intl.Sarl, Switzerlan d	121, 549	Ingram Micro India Pvt Ltd	140,69 9	19,15 0	16%

8	2031691 /07.02.2 4	P5075 1-B21	HP Intl.Sarl, Switzerlan d	121, 263	Ingram Micro India Pvt Ltd	140,69 9	19,43 6	16%
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DISCUSSIONS AND FINDINGS

16. I have carefully gone through the facts of the case on file, multiple submissions of the noticee before the Notice under Rule 12 of Customs Valuation Rules was issued, reply to the said Notice, submissions during the personal hearing and even later and the legal position associated with the Customs Valuation law, which is extracted at appropriate places in the discussions below.

17. <u>Issues under Investigation</u>

From an examination of documents and records submitted by the importer, the issues to be decided in this case are:

- Whether the importer and the overseas related suppliers are related in terms of Rule 2(2) of the Customs Valuation Rules, 2007.
- Whether the transaction between the importer and the foreign suppliers are influenced by such relationship and whether the circumstances of the sale of the imported goods indicate an influence in the price at which goods are imported,
- iii. Whether any additions under Rule 10 of the Customs Valuation Rules, 2007 are required to be made to the assessable value of the goods imported by the importer from foreign supplier.

Before the process for examination of the above issues is embarked upon, it would be appropriate to outline a brief profile of the company.

18. Brief Profile of the Company:

As per documents submitted by the importer, M/s. Hewlett Packard Enterprises India Private Limited (HPEIPL), Bangalore - 560030, with Registered office at No. 24, Salarpuria Arena, Hosur Main Road, Adugodi, Bengaluru 560030, having IEC 0715007190 and PAN - AADCH5900Q, was incorporated on April 7, 2015 under the Companies Act, 2013 with CIN: U72200KA2015FTC079699. The importer has registered with GST Registration No: 29AADCH5900Q1Z4.

19. HPEIPL is stated as a subsidiary of M/s Hewlett Packard Asia Pacific Pte. Limited, Singapore (holding 99.99% of paid up capital) and that during 2015, Hewlett Packard (at global level) got separated/split into two entities, comprising of Hewlett Packard Enterprise (HPE) and HP Inc. Post separation, HPE is engaged in the business of infrastructure i.e. servers, storage, Integrated Systems, networking coverage

systems, Software and Data protection solutions, providing warranty support services to their customers under various agreements and HP Inc. continues with the business of printing and personal systems globally. Thus, as a part of global separation in India, effective August 1st, 2015, Hewlett- Packard India Sales Private Limited (HPISPL) continued to engage in the business of printing and personal systems and HPEIPL was formed to carry on the business of Enterprise Services, Software, Cloud, and Financial Services which was acquired from Hewlett Packard India Sales Private Limited through a slump sale dated 29.07.2015. In India, HPEIPL imports, sells & distributes, provide warranty support services to its customer under various agreements entered with its affiliated entities.

Relationship:

20. As per the documents submitted by the importer viz., Shareholding Pattern and the Audited Balance Sheet under the head Related party disclosures for the financial year 2022-23, it is observed that M/s. Hewlett Packard Enterprises India Private Limited is wholly owned subsidiary of Hewlett Packard Asia Pacific Pte. Limited, Singapore (Holding Company, hereinafter referred as HP-AP) which is ultimately held by Hewlett Packard Enterprise Company, USA (Ultimate Holding Company). The details of shareholding of HPEIPL, as per the Annual Report for FY 2015-16 and FY 2022-23 is as under:

Shareholder name	Address of Shareholders	No. of shares held	Value (In Rs.Lakhs)	% of holding s	Indian / Foreign
Hewlett-Packard Asia Pacific Pte. Ltd. (Equity share of Rs.10 each)	450, Alexandra Road, Singapore 119960.	4,509,999	451	99.99%	Foreign
Hewlett-Packard Gouda B.V, entity under common control. (Equity share of Rs.10 each)	Startbaan, 16, 1187 XR, Amstelveen, The Netherlands	1	0	0.01%	Foreign
Total	111111111111111111111111111111111111111	4,510,000	451	100%	

21. Further the related suppliers have been declared and the nature of transactions with them are as under-

SI. No.	Name of the Foreign Supplier	Nature of Business Relationship	Nature of Transaction
1	Hewlett Packard Enterprise Singapore Pte. Ltd.	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor
2	Hewlett-Packard International SARL	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor

3	Hewlett-Packard Asia Pacific Pte. Ltd.	Holding Company	Import of Goods as distributor
4	Hewlett-Packard Enterprise Co.	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor
5	Shanghai Hewlett-Packard Co., Ltd.	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor
6	Hewlett-Packard (Cloud) Chongqing Technology Co., Ltd.	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor
7	Hewlett-Packard Marigalante Ltd.	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor
8	Hewlett-Packard Japan, Ltd.	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor
9	Hewlett-Packard Caribbean Manufacturing B.V, LLC (Puerto Rico Branch)	Group Affiliate of Hewlett Packard Enterprise, USA	Import of Goods as distributor
10	Hewlett Packard Enterprise Company	Global Parent Company	Import of Goods as distributor

It is seen from the financial statements submitted by the importer that the holding company, and the ultimate holding company mentioned above are related to M/s. Hewlett Packard Enterprises India Private Limited, Bengaluru, in terms of Rule 2(2) (iv) of the Customs Valuation Rules, 2007. The Importer has also mentioned in SI. No.4.2 of Annexure-A submitted on 06.12.2016 (attached as Annexure-9) confirming the above mentioned related suppliers. This declaration of related suppliers is also seen from all the Annual Reports/Notes to financial statements submitted by the importer. It is also seen that the transacting parties are having many Agreements amongst themselves, and certain policy documents issued by the ultimate holding company, constituting them as legally recognised partners in business.

Therefore, it is to be concluded that the importer and the foreign suppliers mentioned in Table above are related to one another in terms of Rule 2(2)(ii), (iv) and (vi) of the Customs Valuation Rules, 2007.

22. Having established the relationship between the Indian Company and the foreign suppliers, it is now to be examined as to whether the existence of the relationship between the Indian Company and the foreign suppliers is influencing or has influenced the transaction value of the imports. As per Rule 3(3)(a) of the Customs Valuation Rules, initial emphasis is on the department to examine the circumstances of sale and conclude whether the transaction value is affected by

relationship. However, once this doesn't appear, the onus shifts on the importer to demonstrate, in three specific manners described under Rule 3(3)(b) of the Customs Valuation Rules, that the transaction value is not affected by relationship. A determination of value of imported goods follows in case such a demonstration does not yield any conclusive result. The entire analysis has been done in a step-wise manner in paras foregoing -

23. <u>Examination of Circumstances of Sale, as under Rule 3(3)(a) of Customs Valuation Rules, 2007</u>:

Rule (3)(3)(a) of the Customs Valuation Rules, 2007 mandates that, where the buyer and seller are related, the transaction value shall be accepted provided the examination of circumstances of the sale of the imported goods indicate that the relationship did not influence the price. The importer was requested to provide clarifications with respect to Pricing methodology, invoicing method, discounting method, details of stock, commissions paid, etc. vide this office letter dated 11.03.2024 for which the importer submitted replies vide their letters dated 20.03.2024 and 28.03.2024 as mentioned in Para 10 above. The information provided by the importer vide the standard questionnaire and the Annexures annexed alongwith, various Agreements between the Indian importer and their foreign suppliers/parent company/holding company/etc. and other submissions were also examined. The analysis of various aspects of the circumstances follows hereunder -

23.1 Analysis of and Inference from the Multiple Agreements furnished by HPEIPL:

23.1.1 The Inter-company Product Distribution Agreement (ICPDA) executed on 18.09.2015 and effective from 01.08.2015, as amended by Amended and Re-stated Inter-company Product Distribution Agreement executed on 03.02.2017 and effective from 01.11.2015, and further amended by Amended and Restated Master Distribution Agreement executed on 09.06.2017 and effective from 01.11.2015, extracted earlier for reference, were perused, as also the Amended and Restated Master Distribution Agreement (ARMDA). A combined reading of various paras of these Agreements indicates that the sale of the products by the Suppliers viz. HPE factory, HPE HQ and HPE Distribution Centers are conducted under a maze of overlapping Agreements, with undefined terms of discounts of various nomenclatures, especially the 'trade' and inter-company' discounts. No schedules as to how these discounts are applied, to various group entities, whether on the basis of the nature of a product, or on the basis of commercial terms, or on the value/volume of orders, etc. is forthcoming from these Agreements.

23.1.2 The following extracts from the Agreements need special emphasis -

- a) In Para 8 of ICPDA, it has been stated that the Distributor shall perform warranty obligations for all HPE Products in terms of Section 12 of the Agreement on its own account and not on behalf of HPE or Suppliers. It has been further stated that any prior agreement to compensate or otherwise legally transfer risks incurred by Distributor from Distributor to another HPE entity will be considered terminated as of the effective date of the Agreement and any compensation owed to or by Distributor as the result of such termination shall be mutually agreed between the Parties to the terminated agreement.
- b) In Para 9 of ICPDA and 2.12(g) of the ARMDA, it has been stated that HPE, HPE Factories and HPE Headquarters reserve the right to change prices published in the Price List and shall not incur any liability to Distributor as a result of such modification.
- c) In Para 17 of the ICPDA and Para 2.21 of the ARMDA, it has been stated that, to the extent an Indent Sale is made in the Territory of a Distributor, the Affiliate of Parent making such sale will pay a commission to such Distributor that is comparable to the compensation such Distributor would have received had such Distributor itself made the sale to the trade customer. The commission will be calculated as a percentage of the trade revenue generated from the Indent Sale or using any other method mutually agreed between the applicable Parties. The applicable percentages can be found in Table A on the Parent Corporate Tax website or can otherwise be provided upon request. Alternatively, the applicable Parties may agree that such Distributor's costs associated with. Indent Sales will be recovered through the ROVAC compensation mechanism.
- 23.1.3 The above as well as various other clauses of the ICPDA and the ARMDA, as amended and restated would indicate that the Suppliers, as defined in the said Agreements exercise excessive control over the operations of the Indian Entity and the pricing policy, prices, discounts, mark-up on "other activities", use of trademark, mode of invoicing, warranty obligations, indent commission, management of consignment stock etc. and the transaction do not appear at arm's length. The terms of the ICPDA and ARMDA and subsequent amendments would indicate that all the commercial aspects are heavily tilted in favor of the Suppliers and that the Indian importer appears to be always at the dictates of the related foreign suppliers/holding company, who have introduced clauses in the Agreement which could be flexibly exercised either by way of amendment or by mere permissions from the related foreign supplier or the holding company.
- 23.1.4 The agreements would also indicate the usage of various terms like 'HPE software terms', 'Frame Agreement', 'Other Activities', 'Export Prices' distinct from intercompany prices, trade discount which have neither been defined nor explained by the Indian importer in any of their submissions. The ROVAC model described in

importer's reply dated 20.03.2024 further reinforces a non-transparent approach where no defined parameters describe the adjustments from the inter-company price list. It has been stated that the company follows a "list-less" pricing model and "in some cases", a "cost plus mark-up" method of invoicing. In spite of a specific query as to how these pricing models differed and as to which segments of products, the said pricing models were distinctly applied, and as to what was the criteria to apply a specific pricing method and further, as to why differential criteria of pricing were being adopted by the same suppliers, no proper reply was forthcoming. The replies, if at all, were mostly generic with no empirical data furnished to demonstrate either of the claimed two models of pricing.

23.1.5 Further, the agreements indicate that the purchasing discount consists of two components i.e Inter-company discount and Trade discount. The first component is dictated by the Suppliers and is stated as declared on their website but no mechanism as to what quantum of discounts is applicable to different transactions has been explained to comply with the circumstances of sale as required under Rule 3(3)(a) of Customs Valuation Rules 2007. The second component is neither defined in the agreement or in any of the submissions of the importer, nor any parameters appear to have been laid down for the same. Consequently, the purchasing discount is rendered as a whimsical discount which appears to have no standard and uniform application; atleast the same has not been explained.

23.1.6 Further vide submission date 05.12.2023 the importer has submitted that they import at discounts ranging from 55% to 90%. In this regard, it is seen that no methodology for the same has been spelt out. It is not clear whether the discounts vary due to nature of the product or commercial level or quantity or terms of payment or any other consideration. It is also seen that the company claims to have pricing policies, albeit with various names but the same policies do not find a disciplined application by the same company. The importer, vide their letter dated 24.11.2023 has mentioned that they don't have the "Price List" of all the products/goods as each product is priced differently based on the purchase order value from the customer. In the absence of a coded "Price List", the meaning of a discount range of 55% to 90% claimed by the Indian importer does not appear to make any sense. Further, the averment that each imported product is priced differently takes any meaning out of the claim of a "Price List". However, if there exists a "Price List", then a differential application of the same needs to be explained, which hasn't been done.

23.1.7 Notwithstanding the above, the importer has submitted an "Intercompany List-Price" of 14 line items of the products in a sample sheet indicating list-price of sample products for 8 countries, vide their letter dated 28.03.2024. The said

"Intercompany List-Price" cannot be reckoned as a "Price List" in the real sense, for a company that deals in lakhs of products. The said listing of a mere 14 items is unauthenticated, lacks the credibility of a Price-List and appears only as a comparison sheet. By no stretch of imagination, a list price of just 14 select items could be considered as a "Price List". A price-list has to be a proper document. The lack of submission of any proper price list would lead to a conclusion that either the price list doesn't exist, or, the importer is reluctant to submit the same. Further, assuming that a price list exists (but not shared with the department), the submission of inter-company list price of just 14 line items extracted from the price-list would carry no meaning to enable the department conclude this special investigation for effect of relationship on valuation in favour of the Indian importer. In any case, such a small sample size of mere 14 items to extrapolate results for millions of items dealt with by the importer and Suppliers would neither be prudent, nor legal.

23.1.8 It has been submitted by the importer that the inter-company (IC) discount percentage is "estimated" for future transactions based on the actual value-added cost (VAC) taken place in the earlier financial period and targeted compensations for the value-added cost. It has been stated that the IC discount percentage is assessed according to the financial result at the business segment (a group of similar kind of products, viz., networking, product, storage products, computer products, etc.) level and is applied to the products evenly within that specific business segment. It has been further submitted by the importer that the return of VAC target is 8% of the VAC. To cover such a VAC amount and targeted return, a percentage is assessed against the forecasted revenue, which is taken as the IC discount percentage. In this regard, it is seen that the above statements are mere submissions without the backing of any illustrated application. It is reiterated that the Inter-Company Price List has not even been shared for the impugned investigation, inspite of multiple requests. A lack of submission of the Inter-Company Price List along with any defined methodology or any criteria for discounts, defeats the exercise to justify that their import prices are not affected by their relationship. Here, the objection is not to quantum of discount and to dismiss them as abnormal; the emphasis is on the lack of defined, coherent and transparent approach for applying discount to a price-list which has neither been shared nor has credibility of the same been put forth.

23.1.9 The importer's reply that they have one product transfer pricing policy and mentioned vide different names i.e. Product pricing policy, Transfer pricing policy, List-less/Inter-company pricing policy or Global Pricing Policy is not conclusive to comment whether the different pricing policies are same or distinct from one another. The importer's contention that they route invoice via HP-Sw to APDC, Singapore for resale import transactions except Aruba products and spares which is

billed to HPEIPL from the HP-APDC, Singapore as well as their classification of HPE routing of invoices into level A & B is also not clear from their submissions/reply.

23.1.10 The contention of importer that HPE's method of determining the IC (Intercompany) price is referred to as "List-Less" i.e. the IC price equals the list-price of the product less trade and/or IC discounts established as a percentage of such list price. The IC discounts are used to manage the "legal funding of purchasing/importing field entities" is not conclusive enough to determine the correctness of valuation method adopted by the importer as per Customs Valuation Rules, 2007. The quantum of discount, claimed to be varying from 55 to 90%, is not substantiated from the reply and submissions of the importer, as no discount schedule has been shared, leave apart a justification for the same. That a 'trade discount' - higher or lower is offered to a customer as agreed upon with the customer and another discount is offered at the transaction level is an ambiguous averment without proper illustrative reasoning. Further the importer vide letter dated 18.09.2023 and email dated 05.12.2023 has submitted list price in USD contained in the spreadsheet of a sample list of a few products only which is not exhaustive. It is reiterated that submission of the said "price-list" is conflicting to the importer's claim vide their letter dated 24.11.2023 that they don't have any price list as each product is priced differently. Their submission that every order is unique in nature and the price varies for every order does not appear convincing to conclude the acceptance of value from the examination of circumstances when analysed w.r.t the Agreements between transacting parties and in a case involving investigation for effect of relationship on value...

23.2 <u>List Price not a Codified manner to Determine Value under Customs</u> Valuation Rules, 2007:

It is seen that the Indian importer has not submitted any "Price List"/"List-Price" of the products/goods and they have stated that each product is priced differently based on the purchase order value from the customer. The "sampled" "Price List"/"List-Price" for a few items cannot be given cognisance, for the reasons stated in the earlier para. It is felt that in a case of investigation involving related-party transactions, a List-Price, even if submitted, would have no meaning as it is the basis of such a List-Price that is the reason of the investigation. The first thing is that a List-Price, if claimed to exist must be shared with the investigation. The second step is that it must necessarily be justified by any of the transfer-pricing mechanisms enshrined under the Customs Valuation law – the Comparable Uncontrolled Method or the Computed Value Method or the Resale Value Method or the Transactional Net Margin Method. Here, it may be remarked that the emphasis is on a compliance with the Customs Valuation law and not on any examination of circumstances emanating from any study pertaining to direct taxes, for the simple reason that an analysis

under the Customs law proceeds on a transaction-based approach but an analysis under the direct taxes law would be on the basis of wholesome corporate financials for a check-period, both of which aim in diametrically opposite directions. A lack of submission of any "Price List"/"List-Price" and further a lack of any justification of adoption of the prices mentioned in the said "Price List" for adoption as true transaction values for purposes of levy of duty has not even been attempted to be justified by the Indian importer. Merely because a "Price List" exists, if it would, would be no sufficient reason to accept it, even if the same finds a uniform application for different importers or even different economies as such an exercise would still be non-transparent as regards it's structure and origin, and defy the arms' length principle.

23.3 Prima facie Abnormal Discounts, that remain unexplained:

The importer submitted that their method of determining the IC (Intercompany) price is referred to as "List-Less" i.e. the IC price equals the list-price of the product less trade and/or IC discounts established as a percentage of such list price. The IC discounts are used to manage the "legal funding of purchasing/importing field entities". This, itself is a bizarre and weird approach to comply with the arms' length principle. Essentially, by adjusting discounts on a method of unexplained percentages, and determined by a method of "forecasting", as stated in the Agreements implies that the "Price-List" and a "List-less" pricing is a sham model where the discounts are adjusted in a manner to offset the taxation, regulatory and operational costs in the importing country. Such, a model can never be perceived to comply with the arm's length principle.

The above argument that there is no fixed pricing model, and hence the List-Less model is rendered a sham model is further amplified from Para 8 of the ICPDA, where it has been stated that the Distributor may also receive additional discounts by way of lumpsum adjustments from suppliers, in order to achieve arm's length returns. The multiple layers of discounts – IC discount, trade discount and additional discount by way of lumpsum payment would indicate that the foreign supplier adjusts prices exploitatively, opaquely. Suppression of invoiced prices is a natural outcome.

Thus, in the absence of a "Price-List" and a "Discount Schedule" for multiple types of discounts, (IC discount alone varying from 55% to 90%) has not been justified by the importer. Here the objection is not merely to the quantum of discount per se' but the lack of any codified mechanism or structure for application of the same.

23.4 <u>Effect of the earlier Investigation by DRI and Confirmed Demand in respect of M/s HP India Sales Pvt. Ltd</u>:

M/s HPEIPL has been carved out from the same HP Inc group of which M/s. HP India Sales Pvt. Ltd. (HPISPL) was a group entity. It is reported that a case of undervaluation is pending against M/s HP India Sales on the same issue of valuation, emanating from relationship. M/s HP India Sales had also imported from HP group companies and methodology of valuations adopted was also similar as to M/s. HPEIPL. The Indian importer has declared that HPEIPL and HPISPL are two different legal entities. The declaration vide their letter dated 22.12.2023 is placed below —

Hewlett Packard Enterprise

December 22, 2023

To: The Superintendent of Customs Special Valuation Branch ("SVB") Office of Principal Commissioner of Customs Air Cargo Complex, Kempegowda International Airport Devanahalli, Bangalore – 560 300

Respected Sir,

Sub: Declaration letter clarifying relationship between Hewlett Packard Enterprise India Pvt Ltd (HPEIPL) & Hewlett Packard India Sales Pvt Ltd.

Ref: 1) Our face-to-face meeting on December 22, 2023

We, Hewlett Packard Enterprise India Pvt Ltd ("HPEIPL" or the "Company") are a company incorporated under Companies Act, 2013 having its registered office at No.24, Salarpuria Arena, Hosur Main Road, Adugodi, Bangalore 560030, Karnataka.

We refer to the ongoing SVB proceedings and our face-to-face meeting with you on December 22, 2023 to assist in the finalization of our SVB Investigation Report.

During our meeting, you had asked us to confirm on entity relationship between HPEIPL & Hewlett Packard India Sales Pvt Ltd.

Pursuant to split of HP's business on a worldwide basis, HPEIPL was created as a separate company in India with effect from July 4, 2015. Thereafter, HPEIPL has been carrying on its business independently.

Further we also hereby clarify that HPEIPL and HPISPL are two separate legal entities and are not related to each other.

Please let us know if you have any further queries.

Thanking you, Yours sincerely

Abeles Williami

Authorized signatory for Hewlett Packard Enterprise India Private Limited

Hewlett Packard Enterprise India Private Limited

Regd. Office: No. 24, Salarpuris Arena, Hosur Main Road, Adugodi, Bengaluru- 560 030, Karnataka, India
CIN: U72200KA2015FT007989

Phone No: 080 6151 5000; Website address: www.hps.com/in

However, it is seen that HPEIPL and HPISPL have a common ultimate holding company. Further, a perusal of the Annual Report of HPE, USA for the FY 2022-23, as available on their website would indicate a detailed reference of the investigation pertaining to undervaluation by HPISPL. Screenshot placed below —

HEWLETT PACKARD ENTERPRISE COMPANY AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

Approval of Class Action Settlement and Certification of Settlement Class, which was filed with the Court on September 26, 2022. On November 3, 2022, the Court granted Plaintiff's motion and preliminarily approved the terms of the class settlement, which defines the settlement class as all "[w]omen actively employed in California by Defendant at any point from November 1, 2015, through the date of Preliminary Approval" who were employed in a covered job code. The settlement class excludes certain individuals, including those who previously executed an arbitration agreement with HPE or an agreement that resulted in a release or waiver of claims, On April 28, 2023, the Court granted Plaintiffs' Motion for Final Approval of the Class Action Settlement and Certification of the Settlement Class. The Court has scheduled a compliance hearing for February 8, 2024, to assess the distribution of the settlement fund to the class members and resolve any final issues.

India Directorate of Revenue Intelligence Proceedings. On April 30 and May 10, 2010, the India Directorate of Revenue Intelligence (the "DRI") issued notices to Hewlett-Packard India Sales Private Ltd ("HP India"), a subsidiary of HP Inc., seven HP India employees and one former HP India employee alleging that HP India underpaid customs duties while importing products and spare parts into India and seeking to recover an aggregate of approximately \$370 million, plus penalties.

On April 11, 2012, the Bangalore Commissioner of Customs issued an order on the products-related notices affirming duties and penalties against HP India and the named individuals for approximately \$386 million. On April 20, 2012, the Commissioner issued an order on the spare parts-related notice affirming duties and penalties against HP India and certain of the named individuals for approximately \$17 million.

HP India filed appeals of the Commissioner's orders before the Customs Tribunal. The Customs Department filed cross-appeals before the Customs Tribunal. On October 27, 2014, the Customs Tribunal commenced hearings on the cross-appeals of the Commissioner's orders. The Customs Tribunal rejected HP India's request to return the matter to the Commissioner on procedural grounds. The hearings before the Customs Tribunal were subsequently delayed, have been postponed on several occasions since 2014, and have not yet been rescheduled.

ECT Proceedings. In January 2011, the postal service of Brazil, Empresa Brasileira de Correios e Telégrafos ("ECT"), notified a former subsidiary of HP Inc. in Brazil ("HP Brazil") that it had initiated administrative proceedings to consider whether to suspend HP Brazil's right to bid and contract with ECT related to alleged improprieties in the bidding and contracting processes whereby employees of HP Brazil and employees of several other companies allegedly coordinated their bids and fixed results for three ECT contracts in 2007 and 2008. In late July 2011, ECT notified HP Brazil it had decided to apply the penalties against HP Brazil asspend HP Brazil's right to bid and contract with ECT for five years, based upon the evidence before it. In August 2011, HP Brazil appealed ECT's decision. In April 2013, ECT rejected HP Brazil's appeal, and the administrative proceedings were closed with the penalties against HP Brazil remaining in place. In parallel, in September 2011, HP Brazil filed a civil action against ECT seeking to have ECT's decision revoked. HP Brazil also requested an injunction suspending the application of the penalties until a final ruling on the merits of the case, which was denied. HP Brazil appealed the denial of its request for injunctive relief to the intermediate appellate court, which issued a preliminary ruling denying the request for injunctive relief but reducing the length of the sanctions from five to two years. HP Brazil appealed that decision and, in December 2011, obtained a ruling staying enforcement of ECT's sanctions until a final ruling on the merits of the case. HP Brazil expects a resolution of the decision on the merits to take several years.

Forsyth, et al., vs. HP Inc. and Hewlett Packard Enterprise. This purported class and collective action was filed on August 18, 2016 in the United States District Court for the Northern District of California, against HP Inc. and Hewlett Packard Enterprise (collectively, "Defendants") alleging Defendants violated the Federal Age Discrimination in Employment Act ("ADEA"), the California Fair Employment and Housing Act, California public policy and the California Business and Professions Code by terminating older workers and replacing them with younger workers. Plaintiffs seek to certify a nationwide collective action under the ADEA comprised of individuals aged 40 years and older who had their employment terminated by an HP entity pursuant to a work force reduction ("WFR") plan. Plaintiffs also seek to certify a class under California law consisting of all persons 40 years or older employed by Defendants in the state of California and terminated pursuant to a WFR plan on or after August 18, 2012. On April 14, 2021, Plaintiffs' Motion for Conditional Class Certification was granted. The conditionally certified collective action consists of all individuals who had their employment terminated by Defendants pursuant to a WFR Plan on or after November 1, 2015, and who were 40 years or older at the time of such termination. The collective action excludes all individuals who signed a Waiver and General Release Agreement or an Agreement to Arbitrate Claims. The parties have reached an agreement to resolve this matter. Plaintiffs filed a Motion for Preliminary Approval of the Class Action and Collective Action Settlement on September 21, 2023. On November 3, 2023, the Court issued

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<u>Source</u>:https://investors.hpe.com/~/media/Files/H/HP-Enterprise-IR/documents/hpe-10k-2023.pdf

The foregoing indicates a case of gross mis-representation and misdeclaration. The importer had been stating all-along that HP Inc. and HPE had been split from the ultimate holding company and had formed into independent entities. However, here is a clear evidence that HPISPL finds a prominent mention in the Annual Report of HPE, the holding company of HPEIPL.

Data obtained from public sources also indicates the following shareholding pattern of HPE and HP Inc -

Major shareholders:	Hewlett Packard	Enterprise	Company
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Name	Equities	%	Valuation
Vanguard Fiduciary Trust Co.	163,624,199	12.59 %	3 258 M \$
BlackRock Advisors LLC	92,525,132	7.119 %	1 842 M \$
State Street Corp.	68,818,693	5.295 %	1370 M\$
Merrill Lynch International	49,415,420	3.802 %	984 M \$
PRIMECAP Management Co.	31,775,271	2.445 %	633 M \$
Geode Capital Management LLC	31,241,664	2.404 %	622 M \$
BlackRock Life Ltd.	29,764,036	2.290 %	593 M \$
Arrowstreet Capital LP	23,399,915	1.800 %	466 M \$
Pacer Advisors, Inc.	23,189,645	1.784 %	462 M \$
Teachers Advisors LLC	19,041,127	1.465 %	379 M \$

Major shareholders: HP Inc.

Name	Equities	%	Valuation
Vanguard Fiduciary Trust Co.	120,621,163	12.33 %	4 353 M \$
BlackRock Advisors LLC	79,166,626	8.090 %	2 857 M \$
State Street Corp.	47,878,267	4.893 %	1 728 M \$
Dodge & Cox	35,098,525	3.587 %	1 267 M \$
Merrill Lynch International	23,918,522	2.444 %	863 M \$
PRIMECAP Management Co.	22,451,096	2.294 %	810 M \$
Geode Capital Management LLC	22,292,514	2.278 %	805 M \$
ishares (DE) Invag Mit Teilgesellschaftsvermogen	21,065,736	2.153 %	760 M \$
Pacer Advisors, Inc.	12,729,168	1.301 %	459 M \$

The above indicates various common shareholders of HPE and HP Inc. In the circumstances, to state that HPISPL and HPEIPL are not-related, when the holding companies have common share-holders, is plain mis-declaration. Therefore, the implications of the undervaluation case of HPISPL on the instant case cannot be negated and these definitely constitute an important aspect as a part of the examination of circumstances demanded under Rule 3(3)(a) of Customs Valuation Rules, 2007. Here, the inference is being drawn only as a basis to suspect the veracity of transaction values. This aspect alone may not be a strong component in

the examination of circumstances that define Rule 3(3)(a) of Customs Valuation Rules, 2007 but definitely casts a shadow about acceptability of value from the examination of circumstances of sale when combined with other aspects, as in Para 23.1 to 23.3 above.

In view of the foregoing, the effect of relationship on the transaction value of the goods imported by the importer is not ruled out. From the examination of circumstances of sale, the transaction value declared to Customs appears to be influenced and hence, unexplained and unacceptable as per Rule 3(3)(a) of the Customs Valuation Rules, 2007.

24. Notice Served under Rule 12 of Customs Valuation Rules, 2007:

Since the transaction value appeared unacceptable on the basis of examination of circumstances of sale, as per Rule 3(3)(a) of the Customs Valuation Rules 2007, hence a Notice dated 08.05.2024 was served to the importer under Rule 12 of Customs Valuation Rules, 2007 to demonstrate with proper evidence under Rule 3(3) (b) of Customs Valuation Rules 2007 as to why the transaction values were not affected by the relationship.

25. Examination of Replies dated 20.06.2024, 18.07.2024 and 31.07.2024 for Demonstration of Proper Evidence under Rule 3(3)(b) of Customs Valuation Rules, 2007:

- 25.1 As mandated under Rule 3(3)(b) of the Customs Valuation Rules,2007;
 "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;

The imported has put forth data to make out their case in all the three prescribed methods as in Rule 3(3)(b) above. The analysis of each of these follows –

25.2 <u>Demonstration based on Third Party Imports, as under Rule 3(3(b)(i) of Customs Valuation Rules, 2007:</u>

In order to justify that the import values are not influenced by relationship in the manner prescribed under Rule 3(3)(b)(i) of the Customs Valuation Rules, 2007

viz. by comparison of transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India, the importer has submitted sample Bills of Entry as mentioned below in Table-C below.

Table-C

		by HPEIPL			3 rd Party	
Sr. No	Invoice No/Invoice Date	Part No.	Import Price Per Unit (\$)	Invoice No. / Date	Import price Per Unit (\$)	Third Party Importer Name
1	CR1438373A/ 26.02.2021	C7977 A	68.00	50145333 3 / 19.02.21	56.99	Redington Distribution Pte Ltd
2	CR1459979A/ 19.03.2021	J4859 D	129.75	50145405 5 / 01.03.21	105.16	Inflow Technologies Singapore) Pte. Ltd.
3	CR1456015A/ 16.03.2021	J9150 D	165.57	50145575 8 / 30.03.21	153,90	Inflow Technologies Singapore) Pte. Ltd.
4	CR1477265A/ 06.04.2021	J9151 E	213.73	50145698 4 / 16.04.21	196.85	Savex Singapore (Pte) Ltd
5	CR1506693A/ 06.05.21	JD092 B	287.36	50145875 9 / 12.05.21	168.79	Nokia Solutions & Networks India (P) Ltd
6	CR1537369A/ 10.06.21	A A	14.85	50146063 0 / 16.06.21	12.80	Redington Distribution Pte Ltd
7	CR1655204A/ 26.10.21	JW047 A	8.58	50147021 1/ 17.11.21	5.98	BA Continuum India Pvt Ltd
8	CR1411154A/ 26.01.21	JW119 A	3.99	50145206 3 / 27.01.21	3.10	Savex Singapore (Pte) Ltd
9	CR1595983A/ 14.08.21	C8572 A	203.94	50146501 9 / 25.08.21	137.03	Savex Singapore (Pte) Ltd
10	CR1689785A/ 17.12.21	JZ336 A	392.07	50147255 3 / 28.12.21	374.92	Savex Singapore (Pte) Ltd
1	CR1576822A/ 22.07.21	QK734 A	47.92	50146313 0 / 25.07.21	41.93	HP PPS India Operations Pvt Ltd
2	CR1640993A/	QK735	15.38	50146893	15.13	Redington Distribution

	11.10.21	A		8 / 26.10.21		Pte Ltd
13	CR1610498A/ 03.09.21	R2H28 A	199.17	50146571 5 / 07.09.21	185.00	Redington Distribution Pte Ltd
14	CR1607023A/ 30.08.21	R3J18 A	12.34	50146420 3 / 10.08.21	12.00	Redington Distribution Pte Ltd
15	CR1491296A/ 20.04.21	Q9H6 2A	427.26	50145659 4 / 12.04.21	408.10	Inflow Technologies Singapore) Pte. Ltd.

Analysis for Rule 3(3)(b)(i) of Customs Valuation Rules, 2007:

From the sample data furnished (Table-B) by the importer, the importer has tried to justify that the suppliers have supplied the identical goods having same part numbers to the related party at higher prices as compared to the other unrelated buyers in India. In this regard, it is seen that the above sample data is just a comparison sheet of miniscule number of imports and not any exhaustive sheet to extrapolate the results for the entire imports of huge numbers over the period of investigation that spans more than a decade. The SVB investigation pertaining to HPEIPL is pending since August, 2015 and the Bills of Entry provisionally cleared by the importer are huge in numbers and to take these 15 cases as a demonstration for compliance of Rule 3(3)(b)(i) of Customs Valuation Rules doesn't appear to be a rational approach. Here the intent is not to dismiss or deny the above data pertaining to 15 imports but the conclusive point here is only on the extremely small number of imports to form a basis to extrapolate from such a small sample size to lakhs of imports over almost a decade.

25.3 <u>Demonstration based on Deductive Value for Identical/Similar goods, as under Rule 3(3)(b)(ii) of Customs Valuation Rules, 2007:</u>

The importer has produced sample data as reproduced in Table-A in Para 13(B) and Table-B in Para 15(C) above in order to demonstrate that the profit earned in trading business is normal. On the basis of the same, they have attempted to comply with deductive working as required for demonstration of evidence under Rule 3(3)(b)(ii) of the Customs Valuation Rules.

Analysis for Rule 3(3)(b)(ii) of Customs Valuation Rules, 2007:

From the sample data furnished at Table-A in Para 13(B) and Table-B in Para 15(C) by the importer, it is seen that the importer has projected an average percentage of gross margin of 11.77% in respect of the 21 line items. A similar working was done from the financials extracted from the Annual Reports furnished

by the importer. From the figures taken from the Profit and Loss Statement for each of the financial years from FY 2015-16 to FY 2022-23, the gross margin is worked out as under —

TABLE-D

(Amount in INR Lakhs)

Year	2015- 16	2016- 17	2017- 18	2018- 19	2019- 20	2020- 21	2021- 22	2022- 23
(a) Revenue from operation/contr act with customers	245560	358006	323974	345828	350784	333744	418794	583110
(b) Purchase of traded goods	92419	140225	174016	210113	196563	189097	233715	404005
(c) Gross Margin (a-b)	153141	217781	149958	135715	154221	144647	185079	179105
(d) Gross Margin % (c/a*100)	62.36%	60.83%	46.28%	39.24%	43.96%	43.34%	44.19%	30.70%

The above working computed from the data available in the balance sheets indicates a Gross profit margin ranging from 30.70% to 62.36%, which is at a considerable variation from the computation of 11.77% submitted by the importer. This huge variation in Gross Margin figures submitted by the importer vis-a-vis their financial statements makes a case of unacceptable demonstration of evidence, as demanded under Rule 3(3)(b)(ii) of the Customs Valuation Rules.

25.4 <u>Demonstration based on Computed Value for Identical/Similar goods, as under Rule 3(3)(b)(iii) of Customs Valuation Rules, 2007</u>:

In order to demonstrate the compliance of Rule 3(3)(b)(iii) of Customs Valuation Rules i.e a demonstration to the effect that the declared values of the goods closely approximates to the computed values for identical or similar goods, the importer vide their letter dated 31.07.2024 has stated that the basis for valuation of <u>some of the imported goods</u> for the purpose of Customs is 'cost plus profit' method.

Analysis for Rule 3(3)(b)(iii) of Customs Valuation Rules, 2007:

The very fact that the Cost-Plus method has been stated as applicable for only some of the goods i.e spare parts and imports for internal use, and then claiming that such imports form only an insignificant part of their total import of spare parts, without declaring as to which spare parts the said method is applicable and without specifying as to why this method has been applied to only a segment of the imported spare parts, should be a sufficient cause to state that the declared prices have not been demonstrated as the true transaction values, as required under

Rule 3(3)(b)(iii) of Customs Valuation Rules. Even though a specific query was raised to this effect vide this office letter dated 20.03.2024, the reply reproduced in Para 10 above, for Query - M would indicate that no specific data has been provided to justify that the declared values approximate the computed values of identical/similar goods. The importer has also stated that the import of spare parts under Cost-Plus methodology are only limited to "cross-region, inventory balancing purposes". When the importer was specifically queried to elaborate the meaning of "valuation of imports by M/s HPEIPL for cross-region, inventory balancing purposes", as claimed vide their letter dated 06.12.2016, the importer furnished an irrelevant document titled, "list-price of products in different regions, as on 21.03.2024" of a mere 14 items, without justifying as to how the Computed-Value Method was demonstrated from the said list-price. Notwithstanding all the above, since this method has been claimed to be the basis for transaction value for only an insignificant part of the imports, which could not become the basis for true demonstration for the entire span of imports by M/s HPEIPL, the demand of demonstration under 3(3)(b)(iii) of Customs Valuation Rules fails.

Later, to demonstrate Rule 3(3)(b)(iii) of Customs Valuation Rules further, the importer submitted a tabulation of 270 imported goods, wherein procurement and sales prices of the related foreign supplier were furnished to make out a case of compliance of cost-plus-markup method. The said data was analysed and it was noticed that in atleast, the following goods, the purchase price of the foreign supplier itself was not consistent -

				Table-E			
Sr. No.	BE No/date	BE No/date Port of Part Import Numb		Invoice No./ date	Supplier Name	Unit Purchase Price of Supplier	
1	8566450/01 -11-2023	Mumbai	P56706- B21	804560826/28 -10-2023	Hewlett-Packard International SARL, Switzerland	\$ 3,357	
2	8785898/16 -11-2023	Mumbai	P56706- B21	804571946/10 -11-2023	Hewlett-Packard International SARL, Switzerland	\$ 4,810	

			Ta	ble-F		
Sr. No.	BE No/date	Port of Import	Part Number	Invoice No./ date	Supplier Name	Unit Purchase Price of Supplier
1	9205338/13- 12-2023	Bangalore	P56703- B21	804595297/11- 12-2023	Hewlett- Packard International SARL, Switzerland	\$ 10,374
2	9454202/29- 12-2023	Chennai	P56703- B21	804605999/26- 12-2023	Hewlett- Packard International SARL, Switzerland	\$ 5,057
3	9454513/29-	Chennai	P56703- B21	804606051/26- 12-2023	Hewlett- Packard	\$ 4,631

	International SARL, Switzerland	
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Table-G

Sr. No.	BE No/date	Port of Import	Part Number	Invoice No./ date	Supplier Name	Unit Purchase Price of Supplie
1	9205340/13- 12-2023	Bangalore	P28948- B21	804595697/12- 12-2023	Hewlett-Packard International SARL, Switzerland	\$ 2,701
2	9281834/18- 12-2023	Bangalore	P28948- B21	804599797/16- 12-2023	Hewlett-Packard International SARL, Switzerland	\$ 3,283

It is seen from the above Tables E - G that procurement price of the same supplier, for identical goods, is varying drastically within the same period. The importer could not furnish any justification for the same. Such a variation in the procurement price of identical goods puts a question mark on the credibility of data being put forth by the importer. Adds to this is the fact that the sample data of 270 line items is neither certified by any Certified Public Accountant, nor is it backed with any documentary support like procurement invoice(s) of supplier, the manufacturing cost data sheet, it is felt that the same cannot be relied upon.

26. Therefore, in view of the multiple conflicts, contradictions and inexplicable variations, the transaction value for imported goods/products does not stand demonstrated as under Rule 3(3)(b)(iii) of the Customs Valuation Rules, 2007.

27. (Sequential) Determination of Transaction Value:

Therefore, in view of the discussions in Paras 23 and 25 foregoing, it is concluded that neither does the value stand explained as the true transaction value from the circumstances of sale, as demanded under Rule 3(3)(a) of the Customs Valuation Rules, nor has it been demonstrated under any of the sub-rules specified under Rule 3(3)(b) of the Customs Valuation Rules. Hence, the transaction value for purposes of levy of Customs duty has to be determined sequentially under succeeding Rules 4 to 9, applied, as under Rule 3(4) of the Customs Valuation Rules.

28. <u>Determination of Transaction Value under Rule 4 of Customs Valuation</u> Rules 2007 (Based on Data for Identical Goods):

28.1 As mandated in Rule 4 (1) (a) Subject to the provisions of rule 3-

"the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

28.2 To determine the true Transaction Value under Rule of Customs Valuation Rules, the imports reflected in the National Import Database (NIDB) were called for to examine the contemporaneous imports in respect of related as well as unrelated parties for the same period. On random verification of NIDB Data, representative Bills of entry were selected and details of the same were shared vide this office letters dated 08.05.2024 and 03.06.2024 with the importer for their response as regards the huge variation in their import prices w.r.t imports by other importers in India. A sample list of 131 Bills of Entry were furnished to the importer with complete details evidencing import of identical goods at different prices by different importers in India. It is noticed that the importer has imported the goods at lesser unit price in comparison to third party imports which varies from 0.29% to 1329.34 % (Average: 98.08%). It is also placed on record here that the Indian importer had submitted a list of just 15 imports (Table - C), indicating a variation in unit price of approximately 0.21%. It is understood that the importer would have chosen only the entries favourable to them and hence these being too small in number and a prejudiced presentation cannot form the basis for determination of true transaction value under this Rule. The sample Bills of Entry from NIDB were selected randomly to verify contemporaneous imports and the details of the same as well as the ones submitted by the importer are as under -

SI. No	Bills of Entry	Total Assessable value (Rs.)	Variation in Unit price as compared to third party import	Percentage Variation (Simple Avg Method)
1.	131 (data extracted from	5,75,90,825.56	Up to 1329.34%	98.08

	NIDB)	What x E		
2.	15 (data submitted by importer)		0% to 1.19%	0.21

28.3 <u>Comparison of NIDB Data for identical/similar goods between HPEIL and its group company:</u>

Table-H

	A COLUMN	HPEIPL Imp	port						
SI. N o	Supplie r Name	B.E No. / Date	Part No	Unit_De	Supplier Name	Importer Name	B.E No. / Date	Unit_Dec I_Value	% Variation
1	Hewlett Packard Asia Pacific Pte. L	3646421 /19-12- 15	70864 3-B21	32552.26	M/ S.Hewle tt Packard Asia Pacific Pt	Hewlett- Packard India Software Operatio n Pvt Ltd	383584 9/07- 01-16	40001.08	22.88%
2	Hewlett - Packard Asia Pacific Pte. L	3618622 /17-12- 15	72671 9-B21	13131.12	Hewlett Packard Asia Pacific Pt	Hewlett- Packard India Software Operatio n Pvt Ltd	383585 0/07- 01-16	16123.67	22.79%
3	Hewlett Packard Enterpri se	2823867 /06-10- 15	71906 4-B21	680962.2	Hewlett Packard Enterpris e Sing	Hewlett- Packard Globalso ft Pvt Limited	332102 5/20- 11-15	901569.9	32.40%
4	Hewlett Packard Enterpri se Compan	6465853 /23-08- 16	73235 5-B21	68427.5	Hewlett Packard Enterpris e Com	Hewlett Packard India Software Operatio n Pvt Ltd	632276 0/11- 08-16	171068.8	150.00%
5	Hewlett - Packard Enterpri se Internat	4137082 /03-02- 16	Bench test- 001 Bench	1381.68	Hewlett Packard Enterpris e Int	Hewlett- Packard India Software Operatio n Pvt Ltd	421461 9/10- 02-16	2074.03	50.11%
6	Hewlett Packard Enterpri se Compan y	8001663 /28-12- 16	Db031 11602 Cpap- Sg154 00- Ngtp- Hpp	564399.1	Hewlett Packard Enterpris e Com	Hewlett Packard India Software Operatio n Pvt Ltd	794266 8/23- 12-16	1482606	162.69%
7	Hewlett Packard Enterpri se	2504002 /07-09- 15	Jc680 a	2666.3	Hewlett Packard Enterpris e Sing	Hewlett- Packard Globalso ft Pvt Limited	274349 5/28- 09-15	20119.99	654.60%
8	Hewlett Packard Enterpri se	2504002 /07-09- 15	Jc772 a	141721.3	Hewlett Packard Enterpris e Sin	Hewlett- Packard Globalso ft Pvt Limited	257405 4/14- 09-15	562225.5	296.71%

9	Hewlett Packard Enterpri se	2504002 /07-09- 15	Jd089 b	5057.14	Hewlett Packard Enterpris e Sing	Hewlett- Packard Globalso ft Pvt Limited	344847 3/02- 12-15	9330.46	84.50%
10	Hewlett Packard Enterpri se Compan	5572376 /09-06- 16	Jw751 a	105976.5	Hewlett Packard Enterpris e Comp	Hewlett- Packard Globalso ft Pvt Limited	564626 9/15- 06-16	211953	100.00%
11	Hewlett Packard Enterpri se Compan	7604294 /26-11- 16	Jw751 a	103425.9	Hewlett Packard Enterpris e Com	Hewlett Packard India Software Operatio n Pvt Ltd	803584 5/31- 12-16	682139.4	559.54%
12	Hewlett - Packard Interna tional Sarl	4653090 /15.02.2 023	12067 2-B21	25577.2	Hewlett Packard Asia Pacific Pte Ltd	Hewlett Packard Enterpris e Globalso ft Private Limi	483508 2/28.0 2.23	57422.38	124.51%
13	Hewlett - Packard Interna tional Sarl	6152926 /07.03.2 3	80432 6-B21	8086.1	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Limi	619644 4/31.0 5.23	44967.84	456.11%
14	Hewlett - Packard Interna tional Sarl	4117365 /08.03.2 3	80433 1-B21	62200.65	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Limi	637188 4/12.0 6.23	68948.45	10.85%
15	Hewlett - Packard Interna tional Sarl	6194164 /09.03.2 3	81510 0-B21	12584.96	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Limi	565146 9/24.0 4.23	62565.6	397.15%
16	Hewlett - Packard Interna tional Sarl	4655750 /12.03.2 3	83392 8-B21	12388.26	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Limi	686059 5/14.0 7.23	36159.22	191.88%
17	Hewlett - Packard Interna tional Sarl	7874914 /13.03.2 3	83403 1-K21	14925.81	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Limi	7e+06	55933.18	274.74%

18	Hewlett - Packard Interna tional Sarl	5475104 /15.03.2 3	84539 8-B21	17655.51	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Limi	619644 4/31.0 5.23	67054.5	279.79%
19	Hewlett - Packard Interna tional Sarl	4647261 /20.03.2 3	86174 6-B21	14930.86	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Limi	686059 5/14.0 7.23	41644.15	178.91%
20	Hewlett - Packard Interna tional Sarl	4133033 /27.03.2 3	86870 4-B21	975080.2	Hewlett Packard Asia Pacific Pte Ltd	Hewlett Packard Enterpris e Globalso ft Private Limi	404083 9/05.0 1.23	1437004	47.37%
21	Hewlett - Packard Interna tional Sarl	6403911 /31.03.2 3	87625 9-B21	563268.2	Hewlett- Packard Asia Pacific Pte. Ltd.	Hewlett Packard Enterpris e Globalso ft Private Ltd	585789 8/08.0 5.23	968836.5	72.00%

On random verification of NIDB data, it is noticed from the above that there is huge variation from 0.29% to 654.60% in import price of identical/similar goods of contemporaneous imports between the importer and that of its' other related group companies. As already apprehended in discussions and findings earlier during the stage of examination of circumstances of sale, as under Rule 3(3)(a) and demonstration under Rule 3(3)(b) of the Customs Valuation Rules, 2007, it again appears that there is no fixed pricing model, even when supplied by the foreign related supplier to a group company.

28.4 Comparison of ADVAIT Data for identical/similar goods within HPEIPL:

Table-I

			HPEIPL Other Import						
SI. No	Supplier Name	HS Code	Port	BE No/ Date	Part No	Unit Price (In Rs.)	Port Name	BE No/ Date	Unit Price (In Rs.)
1	Hewlett- Packard Internation al Sarl	8471 5000	INDE L4	884882 5/20.11. 2023	P5253 3-B21	345911.7	INDEL 4	87285 11/11. 11.202 3	437702.8 6
2	Hewlett- Packard	8471	INDE	884882 5/20.11.	P5253	355206.8	INBO	87445 38/13.	1125500.

	Internation al Sarl	5000	L4	2023	4-B21	6	M4	11.202 3	1
3	Hewlett- Packard Internation al Sarl	8471 5000	INDE L4	403479 4/04.01. 2023	P0517 2-B21	821348.0 2	INBLR 4	40320 24/04. 01.202 3	3809311. 6
4	Hewlett- Packard Internation al Sarl	8471 5000	INBL R4	851431 2/28.10. 2023	P3953 1-B21	530559.7 1	INBO M4	69831 74/21. 07.202 3	1177049. 6
5	Hewlett- Packard Internation al Sarl	8471 5000	INBL R4	403904 4/05.01. 2023	P3841 1-B2	720635.8 8	INCCU 4	75738 81/29. 08.202 3	320545.8 2
6	Hewlett- Packard Internation al Sarl	8471 5000	INBL R4	399997 4/02.01. 2023	P2213 9-B21	597314.1 1	INMA A4	78896 27/18. 09.202 3	523992.9 9
7	Hewlett- Packard Internation al Sarl	8523 5100	INBL R4	403128 1/04.01. 2023	N9Z50 A	2195065. 7	INBLR 4	40312 81/04. 01.202 3	3023484
8	Hewlett- Packard Internation al Sarl	8523 5100	INBO M4	563367 6/22.04. 2023	K2P89 B	68962.12	INBO M4	84175 06/21. 10.202 3	53818.7

On random verification of ADVAIT data, it is again noticed from the above that there is huge variation in import price of identical goods of cotemporaneous imports within HPEIL itself. It appears that even when supplied to the same Indian importer, the related foreign supplier follows a differential pricing model, that remains unexplained.

28.5 <u>Findings on 'Determination of Transaction value under Rule 4 of Customs Valuation Rules 2007'</u>:

In view of the forgoing, it is concluded that the effect of relationship on the declared transaction value for imported goods/products cannot be appraised in a manner defined under Rule 4 of the Customs Valuation Rules, 2007 due to the following reasons and hence the true transaction value for purposes of levy of Customs duty cannot be determined under this Rule -

a. the data submitted by the importer for identical goods is minimal (just 15 imports – Table-C) as compared to their actual import and the same cannot form

- a credible size to extrapolate the results for the entire import spanning almost a decade, for millions of items;
- b. the explanation submitted in respect of 131 representative imports for which a Notice under Rule 12 was issued to the importer, and where prices varied as high as upto 1329.34% are inexplicable w.r.t imports by other importers in India. This aspect gains importance since variations extend to as high as 1329% and no model for determination of price under Rule 4 for the investigation spanning almost a decade, involving lakhs of products could be worked out with unexplained and unfathomable variation in import prices;
- c. it is seen that variations for import to India from the same foreign supplier are across the board – when compared with import values for independent unrelated buyers, variations within the HP Group companies and variations when supplied to the Indian importer under investigation in this case i.e M/s HPEIPL; and
- d. no statistical mechanism of determination of a loading factor on a weighted average method, which could be applied to all other imports in a reasonable and rational manner, could be worked out from the above-stated 131 items to quantify the effect of relationship on declared import values.
- 28.6 For the cumulative reasons mentioned in Para above, even though data for huge, unexplained and inexplicable variations in import values from the same foreign supplier exist, it is felt that a determination of transaction value under Rule 4, based on import of identical goods by adopting a loading factor from the variations recorded above would not meet the requirements of law given the small sample size, huge conflicts in data, large product range, large check-period of investigation, and hence, taking a judicious call, I refrain from doing so and hold that the value cannot be determined under Rule 4 of the Customs Valuation Rules, 2007.

29. <u>Determination of Transaction Value under Rule 5 of Customs Valuation</u> Rules, 2007 (Based on Data for Similar Goods):

29.1 As mandated in Rule 5(1) of the Customs Valuation Rules –
Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods

29.2 <u>Findings on 'Determination of Transaction Value under Rule 5 of Customs Valuation Rules 2007'</u>:

It is noted in Para 28 foregoing that it would not be prudent to load the declared invoice values of millions of items with a loading factor determined by a statistical analysis of a limited data of 131 imports. Once the said exercise is not possible for identical goods, where at least some data was available, the same rationale would apply for similar goods also. Besides, at least some data for identical goods is available but data for similar goods is not available at all; data for similar goods, even if extracted, would add controversy and inaccuracy due to variation in brands, configurations, intrinsic worth, etc. Hence, it is concluded that the transaction value cannot be determined under Rule 5 of the Customs Valuation Rules, 2007.

30. Application of Rule 6 of Customs Valuation Rules, 2007:

30.1 Determination of value where value cannot be determined under rules 3, 4 and 5 states-

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

30.2 It is seen that this Rule is not meant for determination of transaction value but only provides an option to the importer to seek a reversal of application of Rules 7 and 8, which need to be applied sequentially in the normal course. The importer has not opted for any such reversal of application of Rule 7 and Rule 8. In fact, the importer has expressed their helplessness in providing data under the Computed Value Method (Rule 8) and has attempted to make out their case under the Deductive Value method (Rule 7). The application of this Rule stands rendered redundant.

31. <u>Determination of Transaction Value under Rule 7 of Customs Valuation</u> Rules, 2007 (Deductive Value Method):

31.1 As mandated in Rule 7 (1) -

Subject to the provisions of rule 3, 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), 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).

<u>Findings on 'Determination of Transaction value under Rule 7 of Customs Valuation</u> <u>Rules, 2007'</u>:

31.2 <u>Incomplete Deductive Value Presentation, With an Evident Conflict with Annual Report</u>

31.2.1 As the importer is engaged in trading of imported goods, importer has produced deductive working in order to demonstrate that the profit earned in trading business is normal. The importer has submitted only 13-line items initially vide their letter dated 20.06.2024 (Table-A) and 8-line items later, vide their letter dated 31.07.2024 (Table-B) of the products in a sample sheet indicating domestic sale price of sample products. From the sample data furnished by the importer, it is noticed that the importer has not provided comprehensive data for product wise analysis. They have not provided any details of the identical/similar goods sold in the greatest aggregate quantity to persons who are not related to the sellers in India.

31.2.2 In this regard, for ease of analysis for determination of transaction value under this Rule, the Interpretative Note to Rule 7 of the Customs Valuation Rules, 2007 is extracted below –

"6. It should be noted that "profit and general expenses" referred to in rule 7(1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in India, of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

- 8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of rule 7(l)(iii) shall be deducted under the provisions of rule 7(l)(i).
- 9. In determining either the commissions or the usual profits and general expenses under the provisions of rule 7(1), the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-bycase basis by reference to the circumstances involved. Sales in India, of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 7 goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

For the purposes of rule 7(2) the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price."

- 31.2.3 The importer has tried to justify that the percentage of gross margin averages 11.77% only (Tables A and B submitted by importer, averaged) and emphatically stated the same as "reasonable", though without giving any detailed data on commission paid, general expenses incurred in connection with sales in India of imported goods of the same class or kind, as required under the above Interpretative Note. They have not provided any detail on usual costs of transport and insurance and associated costs incurred within India; the customs duties and other taxes payable in India by reason of importation or sale of the goods, as required under the above Interpretative Note.
- 31.2.4 As the SVB investigation pertaining to HPEIPL is pending since August, 2015 and the Bills of Entry provisionally cleared by the importer are huge in numbers, therefore, to cross-verify the gross margin, the data available in the Annual Reports of the Indian importer was tabulated, as below -

Year	2015-	2016- 17	2017- 18	2018- 19	2019-	2020-	2021-	2022-
(a) Revenue from operation/contra ct with customers	24556 0	358006	323974	345828	350784	333744	418794	583110
(b) Purchase of traded goods	92419	140225	174016	210113	196563	189097	233715	404005
(c) Gross Margin (a-b)	15314 1	217781	149958	135715	154221	144647	185079	179105
(d) Gross Margin % (c/a*100)	62.36 %	60.83%	46.28%	39.24%	43.96%	43.34%	44.19%	30.70%

31.3 It is seen from the above table that by Deductive Value Method the importer had earned profit which varies from 30.70% to 62.36% for last eight years from 2015-16 to 2022-23 which is at gross variance with the Gross Margin figure, so emphatically claimed by the importer. As part of determination of transaction value under this Rule, it is also mandatory that the values be determined with a checkperiod of 90 days, as required under Rule 7(2) of the Customs Valuation Rules, 2007. Such an analysis is practically not possible when the investigation covers a period of almost a decade. It would be unfeasible to first, split the data in blocks of 90-day periods and then analyse the same with "goods of the same class or kind" for the same 90-day period, as demanded under Rule 7(1)(i) or 7(2) of the Customs Valuation Rules, 2007. Hence, given the codified legal demand of this Rule, the transaction value for imported goods/products from the related foreign suppliers cannot be determined under Rule 7 of the Customs Valuation Rules, 2007.

32. <u>Determination of Transaction Value under Rule 8 of Customs Valuation</u> Rules, 2007 (Computed Value Method):

- 32.1 As mandated under Rule 8 of the Customs Valuation Rules –
 Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of -
 - (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
 - (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

<u>Findings on 'Determination of Transaction value under Rule 8 of Customs Valuation</u> <u>Rules 2007'</u>:

32.2 <u>Incomplete Computed Value presentation with a conflict in procurement prices of the related foreign supplier:</u>

A data set was provided by the importer in order to demonstrate the compliance of Rule 3(3)(b)(iii) of Customs Valuation Rules i.e a demonstration to the effect that the declared values of the goods closely approximates to the computed values for identical or similar goods. In the analysis of the same in Para 25.4 above, it was seen from the said data that the procurement price of the same supplier was varying drastically for identical goods, within the same period. The importer could not furnish any justification for the same. The said data was also seen as neither certified by any Certified Public Account, nor backed with any documentary support like procurement invoice(s) of supplier, the manufacturing cost data sheet. Therefore, it is felt that the same cannot be relied upon. The importer has stated that they are not in a position to obtain the cost-data sheets for manufacturing of the products being imported into India. The entire discussions in Para 25 above shall be applicable to conclude that in view of the multiple conflicts, contradictions and inexplicable

variations of the furnished data and a limitation of the importer in presenting cost of manufacturing, overheads, commissions/profit and general expenses for identical or similar goods, the transaction value for imported goods/products cannot be determined under Rule 8 of the Customs Valuation Rules, 2007.

33. <u>Determination of Transaction Value under Rule 9 of Customs Valuation</u> Rules, 2007 (Residual Method):

33.1 As mandated in Rule 9 (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."

- 33.2 Since buyer and seller are related and transaction value could not be determined in any of Rules from 4 to 8 of the Customs Valuation Rules, 2007, therefore, Rule 9 is adopted as a last resort by introducing flexibility to the earlier Rules but keeping in mind the forbidden elements described under Rule 9(2). According to Rule 9, 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. Therefore, reliance is placed upon Residual Method by considering the checks and balances provided under this Rule, read with the Interpretative Notes for this Rule. The appropriate Interpretative Notes to this Rule that find justification for the application of Residual Method in the instant case are extracted below -
 - "2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

(c) Deductive method. - The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly."

33.3 Rule 9 basically provides for re-examination of each limitation specified in the preceding methods of valuation and arrive at a value by stretching of each limitation while at the same time, staying as close as possible to the method and data in the preceding method of valuation. This Rule finds a mention in the CCC Technical Committee Advisory Opinion 12.1 as regards it's flexible application and the same states as follows –

"Paragraph 2 of the Interpretative Note to Article 7 provides that the method to be employed under Article 7 should be those laid down in Articles 1 to 6 inclusive but applied with a reasonable flexibility.

However, if a Customs value cannot be determined by using these methods, even in a flexible manner, as a final resort, the Customs value may be determined using other reasonable methods, provided that such methods are not precluded by Article 7.2.

In determining the Customs values under Article 7, the method used must be consistent with the principles and general provisions of the Agreement and of Article VII of the GATT."

- 33.4 It is seen that under the Deductive Value Method, the importer has tried to justify that their percentage of gross margin averages 11.77% (simple average for 21 imports submitted by importer) in Table-A and Table-B above. They have claimed that this gross margin includes the profit earned by the Company before deduction towards general expenses including selling costs, marketing costs, administration expenses and other trading expenses.
- 33.5 The same gross margin has been computed from the data available in the Annual Reports of the Indian importer. The result is as under -

	TABLE-J					(Amo	ount in IN	NR Lakhs
Year	2015- 16	2016- 17	2017- 18	2018- 19	2019- 20	2020- 21	2021- 22	2022- 23
(a) Revenue from operation/contr act with customers	245560	358006	323974	345828	35078 4	33374 4	41879 4	58311 0
(b) Purchase of	92419	140225	174016	210113	19656	18909	23371	40400

traded goods		H. Call			3	7	5	5
(c) Gross Margin (a-b)	153141	217781	149958	135715	15422 1	14464	18507 9	17910 5
(d) Gross Margin % (c/a*100)	62.36%	60.83%	46.28%	39.24%	43.96 %	43.34 %	44.19 %	30.70 %

I note that the importer has declared a Gross Profit Margin averaging 11.77%, vide their submissions dated 20.06.2024 and 31.07.2024. The importer has firmly held this margin as a reasonable one. I am not inclined to dispute the submissions of the importer as regards the reasonableness of this Gross Profit Margin. However, it is also a matter of fact that the Gross Profit Margin, computed as in Table-J above from the Annual Reports of the same Indian importer, is at variance with the Gross Profit Margin defined as reasonable by the importer. Having held the margin of 11.77% as reasonable, the importer would have no option to go back from their averments. With a variation of this (reasonable) figure vis-à-vis the Gross Profit Margin determined from audited financial reports of the company (as in Table-J above), the excess Gross Profit Margin reflected beyond the reasonable Gross Profit Margin stated by the importer has to be construed as one that has emanated from the effect of relationship on value, and accordingly, I determine the loading factor as the excess Gross Profit Margin in Annual Reports vis-à-vis the Gross Profit Margin defined as reasonable by the importer. The loading factor is this computed and tabulated below -

Table-K

		-9-0-1	Iable	-17				
Year	2015- 16	2016-17	2017-18	2018-19	2019- 20	2020- 21	2021- 22	2022-
(a) Gross Margin % as per Audited Financial Reports	62.36 %	60.83%	46.28%	39.24%	43.96 %	43.34	44.19	30.70 %
(b) Reasonable Gross Margin Simple Average %	11.77	11.77%	11.77%	11.77%	11.77 %	11.77	11.77	11.77 %
(c) Loading % (a-b)	50.59 %	49.06%	34.51%	27.47%	32.19 %	31.57 %	32.42 %	18.93 %

33.7 Loading factor for subsequent years i.e FY 2023-24 onwards:

The Simple average for Gross Profit Margin as per audited financial reports which varies from 30.70% to 62.36% for last eight years works out to (62.36 + 60.83 + 46.28 + 39.24 + 43.96 + 43.34 + 44.19 + 30.70)/8 = 46.36%. The Gross Profit Margin defined as reasonable by the importer is determined as 11.77%. Hence, the transaction value declared to Customs for imported goods/products for the years subsequent to FY

2022-23 is determined on the basis of the variation in simple-average Gross Profit Margin as per audited financial statements for last eight years i.e 46.36%) and the simple-average Gross Profit Margin which has been claimed by the importer as reasonable (i.e 11.77%) by loading (46.36% - 11.77%) = **34.59**% to the declared transaction/invoice value of imported goods.

33.8 The above transaction value determined as per Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules shall carry usual add-ons under Rule 10(1)(c) to (e) of the Customs Valuation Rules, 2007, if any, subject to the usual check, scrutiny and verification of the declared value.

34. Analysis of Vital Financial Statistics:

34.1 The 3CEB report submitted to the Income Tax Department pertaining to the related party transaction were tallied with the purchase value from related party in the Balance sheets for the period2015-16 to 2022-23. The details are as under -

(In Lakhs)

Year	Purchases from Related party as per E	Balance Sheet	Purchases from Related party as declared in 3CEB Report	Differenc e, if any
2015- 16	Hewlett Packard International SARL. Switzerland.	87356	87356	0
	Hewlett Packard, Asia Pacific Pte., Singapore.	2618	2618	0
2016- 17	Hewlett Packard International SARL. Switzerland.	155054	155054	0
	Hewlett Packard, Asia Pacific Pte., Singapore.	2550	2550	0
2017- 18	Hewlett Packard International SARL. Switzerland.	165484	165483.56	0
	Hewlett Packard, Asia Pacific Pte., Singapore.	4818	4818.32	0
2018- 19	Hewlett Packard International SARL. Switzerland.	210113	210113.34	0
	Hewlett Packard, Asia Pacific Pte., Singapore.	11999	11999.006	0
2019- 20	Hewlett Packard International SARL. Switzerland.	231311	231310.81	0
	Hewlett Packard, Asia Pacific Pte., Singapore.	1283	1283.36	0
2020- 21	Hewlett Packard International SARL. Switzerland.	191709	208224	16515
	Hewlett Packard, Asia Pacific Pte., Singapore.	16855	340.89	-16515
2021-	Hewlett Packard International SARL. Switzerland.	236826.27	236826.27	0
	Hewlett Packard, Asia Pacific Pte., Singapore.	13036	13035.83	0

2022-	Hewlett Packard International SARL., Switzerland.	427074.49	427074.49	0
	Hewlett Packard, Asia Pacific Pte., Singapore	20468.51	20468.51	0

34.2 From the above, it is seen that though there is a difference of import value between the Balance Sheet and Form 3CEB figures for 2020-21 for both the main related foreign suppliers, based in Singapore and Switzerland, the overall effect of the same is Nil. Hence, no additions accrue from this examination.

35. Capital Goods:

- 35.1 The Indian Company has declared in the Annexure-A that they have imported Capital goods viz., Computer Servers with accessories, storage rack for computers, switches and other Networking equipment which are only meant for internal consumption and not resale and are used towards rendition of IT services to HPE group of companies. It has been stated that HPEIPL doesn't import goods for both internal use and domestic sales within the same transaction.
- 35.2 The Importer vide email dated 01.01.2024 had declared that HPEIPL categorizes the imported goods in two forms.
 - 1) Goods imported by HPEIPL for internal use purposes These goods are imported from HPE related entities, and they are purely meant for Internal usage purposes to develop the local IT infrastructure in supporting HPE's business operations. Therefore, such goods are capitalized and captured as fixed assets in HPE's financial booking.
 - 2) Goods imported by HPEIPL for sales purposes in India These goods are imported from HPE related entities and are purely meant for sales/ trading purposes in India. These goods are not capitalized in HPEIPL's financial booking.
- 35.3 However, the importer has not provided sufficient information/data to substantiate that the relationship did not influence the price. In the absence of any sufficient information and in the absence of any different pricing model spelt out by the importer for import of Capital Goods, there would be no other option but to load the import values with the loading factor determined in Para 33.6 and 33.7 above.

36. Additions under Rule 10 of the Customs Valuation Rules, 2007:

36.1 Now, it is to examine whether any addition is required to the transaction value under Rule 10 of Customs Valuation Rules, 2007. The Rule 10(1) (c) of Customs Valuation Rules, 2007 states "royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not

included in the price actually paid or payable". In terms of Rule 10(1) of the Customs Valuation Rules, 2007 -

"in determining the transaction value, there shall be added to the price actually paid or payable for the imported goods:

(a).....

(b)....

- c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods"

36.2 As per Para 2.17 of the Amended and Redistributed Master Distribution Agreement (ARMDA), w.e.f 01.11.2015

2.17. Trademarks.

(a) Subject to the terms and conditions of this Agreement, during the term of this Agreement, each Distributor may use the Trademarks solely on and in connection with marketing, promoting, advertising, and selling Products and Services in the Territory pursuant to and in the manner permitted by this Agreement. For the avoidance of doubt, the Distributor is not required to pay any consideration for the use of, or otherwise in respect of, the Trademarks. The permission granted in this Section 2.17(a) is personal to each Distributor and non-transferable.

A reading of the above Para indicates that Distributor may use the Trademarks solely for marketing, promoting, advertising and selling Products and Services in the importing country and Distributer is not required to pay any consideration for the use of Trademark. The same has been verified from Audited Annual Reports and 3CEB for last eight years and it is noticed that there is payment in foreign currency for "Purchase of fixed assets, Purchase of Miscellaneous Services, Reimbursement of expenses & Trade payable" apart from payment of purchase of traded goods and service. The clarification for the same was called for, from the importer vide this office mail dated 14.08.2024, for which the importer's reply dated 14.08.2024is as under:

Purchase of fixed assets

- The company has imported the IT products (servers) for internal use which are capitalized in books ofaccount as fixed assets.
- It is submitted that these purchases of fixed assets are already part of import register and subject to theongoing SVB investigation.

Purchase of miscellaneous services

- It is submitted that HPEIPL has availed services in the nature of call centre, IT
 consulting support services, web hosting services etc. from group companies
 across the globe. Such services are classified under miscellaneous services in the
 related party disclosure and 3CEB.
- It is submitted that these services are procured independently for specific purposes and usage from the group companies located outside India and in any way not related to the imported goods which are subject to this investigation. The importer has stated that the importing company has paid GST under reverse charge on such services during the respective year (FY 2021-22 and FY 2022-23).

Reimbursement of expenses

- The reimbursement of expenses is the cost allocation by the group entities located outside India for the common costs incurred by them for third-party license usage, software charges, relocation charges, travel expenses etc.
- It is further submitted that the company has already paid GST under reverse charge on the expenses, and these are not related to the imported goods.
- 36.3 A perusal of the Annual Report of the holding company, M/s HPE, as extracted from the website, https://investors.hpe.com/financial/annual-reports would indicate that there are intangible assets related to the products imported in India. The relavant portion of the Annual report is extracted and placed below —

HEWLETT PACKARD ENTERPRISE COMPANY AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

The Company's fiscal 2022 annual goodwill impairment analysis resulted in impairment charges for goodwill related to the HPC & Al and Software reporting units. There was no impairment of goodwill for our other reporting units.

The decline in the fair value of the HPC & AI reporting unit below its carrying value resulted from changes in expected future cash flows due to the continuation of supply chain constraints, and other operational challenges as well as an increase in cost of capital. As a result, a goodwill impairment charge of \$815 million was recorded in the fourth quarter of fiscal 2022.

The decline in the fair value of the Software reporting unit resulted primarily from a decline in market multiples. As a result, a goodwill impairment charge of \$90 million was recorded in the fourth quarter of fiscal 2022.

Based on the results of the Company's interim and annual impairment tests in fiscal 2021, the Company determined that no impairment of goodwill existed.

Intangible Assets

Intangible assets from acquisitions comprise:

As of October 31, 2023			- 6-	As of October 31, 2022							
1	Gross		Accumulated Gross Amortization Net		Gross		Accumulated Amortization			Net	
1/4					In m	Illon	S				
5	357	\$	(177)	\$	180	5	475	\$	(256)	\$	219
	1,162		(711)		451		1,163		(695)		468
	146		(123)		23		144		(98)		46
\$	1,665	\$	(1,011)	\$	654	\$	1,782	S	(1,049)	\$	733
		Gross \$ 357 1,162 146	Gross And	Gross Accumulated Amortization \$ 357 \$ (177) 1,162 (711) 146 (123)	Gross Accumulated Amortization \$ 357 \$ (177) 1,162 (711) 146 (123)	Gross Accumulated Amortization Net In mile \$ 357 \$ (177) \$ 180 1,162 (711) 451 146 (123) 23	Gross Accumulated Amortization Net In million \$ 357 \$ (177) \$ 180 \$ 1,162 (711) 451	Gross Accumulated Amortization Net Gross In millions \$ 357 \$ (177) \$ 180 \$ 475 1,162 (711) 451 1,163 146 (123) 23 144	Gross Accumulated Amortization Net Gross Accumulated Amortization In millions \$ 357 \$ (177) \$ 180 \$ 475 \$ 1,162 (711) 451 1,163 146 (123) 23 144	Gross Accumulated Amortization Net In millions Gross Accumulated Amortization \$ 357 \$ (177) \$ 180 \$ 475 \$ (256) 1,162 (711) 451 1,163 (695) 146 (123) 23 144 (98)	Gross Accumulated Amortization Net Gross Accumulated Amortization In millions \$ 357 \$ (177) \$ 180 \$ 475 \$ (256) \$ 1,162 (711) 451 1,163 (695) 695) 695) 695) 146 (123) 23 144 (98) 695)

For fiscal 2023, the decrease in gross intangible assets was due primarily to \$326 million of intangible assets which became fully amortized and were eliminated from gross intangible assets and accumulated amortization, partially offset by \$209 million of intangible assets related to acquisitions.

As of October 31, 2023, the weighted-average remaining useful lives of the Company's finite-lived intangible assets were as follows:

	Weighted-Average Remaining Useful Lives
	In years
Customer contracts, customer lists and distribution agreements	5
Developed and core technology and patents	4
Trade name and trademarks	1

As of October 31, 2023, estimated future amortization expense related to finite-lived intangible assets was as follows:

Fiscal year	In milli	ons
2024	\$	250
2025		137
2026		120
2027		86
2028		40
Thereafter		21
Total	S	654

120

<u>Source</u>:https://investors.hpe.com/~/media/Files/H/HP-Enterprise-IR/documents/hpe-10k-2023.pdf

36.4 The above indicates the Gross value of Intangible assets as USD 1,665 million and a Net value of USD 654 million after amortization as on 31.10.2023. The figures for the preceding year i.e as on 31.10.2022 are mentioned as USD 1,782 million (Gross) and USD 733 million (Net, after amortization). This is a running figure that changes every year due to fresh acquisitions of technologies, patents, etc. and their

amortization. From the above, it appears that though the amount for valuation of intangibles exist, Para 2.17 of the ARMDA extracted earlier dictates that the Distributor is not required to pay any consideration for the use thereof. This seems to constitute a breach of arm's length principle. The Indian importer, vide their letter dated 20.03.2024, in response to a specific query on this aspect, has stated that all the intangibles associated with the hardware are priced inclusively within the hardware. However, no evidence for the same has been submitted. Notwithstanding Para 2.17 of the ARMDA, only considering this statement of the Indian importer that the cost of intangibles is already included in the cost of imported goods, it is concluded that the value of intangibles, is not addable to the determined transaction value of the imported goods (as in Paras 33.6, 33.7 and 35.3 above), under Rule 10 of the Customs Valuation Rules, 2007. It is reiterated and specifically emphasized that this inference has been drawn based on the specific statement/declaration dated 20.03.2024 made by the importer. However, in case anything contrary to the Indian importer's statement is revealed to the department, the same shall be construed as a case of gross mis-declaration which shall be dealt with appropriately under the existent law in force at that time. Also, in case of such a revelation that the cost of intangibles is not included in the cost of products imported into India, as claimed by the Indian importer, the same shall become addable to the determined transaction value (as in Paras 33.6, 33.7 and 35.3) based on the cost of intangibles mentioned in the Annual Report of the holding company and a pro-rata computation of the volume of imports to India for each financial year.

37. Conclusion

In view of the above discussion, it is seen that the importer and their associated enterprises/related suppliers are related persons in terms of Rule 2(2) of the Customs Valuation Rules, 2007. Based on documents, submission, declarations and audited balance sheets submitted by the importer, it can be seen that the goods imported from the related suppliers needs to be loaded to the declared value of the imported goods and demand of differential duties to be made as per Section 14 of Customs Act, 1962 read with the Customs Valuation Rules, 2007 as per the following table -

_			
	ab	10	_
	มม		_

Year	Loading Factor
2015-16	50.59%
2016-17	49.06%
2017-18	34.51%
2018-19	27.47%
2019-20	32.19%
2020-21	31.57%
2021-22	32.42%
2022-23	18.93%

2023-24 onwards 34.59%

As a concluding note, it would be pertinent to remark that a tax-motivated profit shifting within multinational corporations (MNCs) has always been on top of the international tax policy agenda. Profit shifting means liability. Tax laws generally prescribe that the transaction prices should be at arm's length, reflecting market prices that unrelated parties would have used for similar transactions. However, due to information asymmetries vis-á-vis the tax administration, MNCs can often charge artificially low or high prices for sales between related parties in high-tax and low-tax jurisdictions, thereby shifting profits and reducing their overall tax liabilities. This is more prominently seen in cases where sales to third parties are minimal and only as pilot/test-transactions and majority of the trade happens only in a closed manner amongst the group companies. This becomes a huge challenge for tax administrators. The instant case appears to be a classic case where, from empirical evidence submitted by the Indian importer themselves and conflicts and contradictions therein have led to a demonstrated evidence that extensive profit shifting is taking place. A common way for MNCs to shift profits is through the manipulation of transfer prices, that is, the prices charged for transactions between related parties, which have been unraveled in the instant case, and a proper loading factor derived from the unimpeachable data submitted by the Indian importer themselves. Such an analysis has nothing to do with flowbacks reported in Annual Reports. The SVB investigation is aimed at unraveling such manipulations, for which no flowbacks would exist in Annual Reports. Such cases of influence of relationship on transfer prices are distinct from undervaluation by mis-declarations.

38. <u>INVESTIGATION REPORT</u>

From the above analysis of information provided by the importer to this branch for issuance of Investigation report, the following facts emerge -

- 38.1 The importer and the foreign suppliers and their associates, as listed in the Table in Para 21 (except SI.No.4 therein, due to absence of declaration of proper location for this supplier) are related companies in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- 38.2 Acceptance or Rejection of transactional value of Imported Goods:
 - i]. The Imports from related suppliers by M/s. HPEIPL as discussed above stands rejected in terms of Rule 12 of Customs Valuation Rules 2007 and same is determined by loading the declared value of the imported goods, as per the following table subject to the usual checks, scrutiny and verifications -

Table-M

Year	Loading Factor
2015-16	50.59%
2016-17	49.06%
2017-18	34.51%
2018-19	27.47%
2019-20	32.19%
2020-21	31.57%
2021-22	32.42%
2022-23	18.93%
2023-24 onwards	34.59%

To ensure uniformity in the mode of application of the above-determined loading factors and to avoid any uncertainty in the mode of application of the same, it is clarified that these loading factors shall be reckoned as per the date of Bill of Entry under final assessment and applied on the provisional assessed assessable values.

- ii) The additions under Rule 10 of the Customs Valuation Rules, 2007 shall be subject to the observations made in Para 36.4 above and no additions shall be made till anything contrary to the importer's submission dated 20.03.2024 is noticed.
- iii]. The above decision has been taken based on statements and declarations made by the importer. However, if there is any change in the method of invoicing, terms of relationship or any other material facts affecting the valuation of goods under Customs Valuation Rules, 2007 read with Section 14(1) of the Customs Act, 1962, the importer or the concerned assessing group shall inform the same to the Special Valuation Branch, Bengaluru immediately so as to enable a review of the Investigation Report in force.
- iv]. The decision will remain in force till present method of invoicing remains unchanged. Any changes, affecting the invoice prices materially, shall be informed to this Branch suo-moto by the Importer without any delay.
- v]. These findings do not consider any suppression or mis-declaration either deliberate or due to the negligence of the importer in the Statements, Declarations, Affidavit submitted and if detected at any later stage, the same shall be dealt with appropriately under the law and procedure as and when noticed.
- vi]. In case any contemporary imports at prices higher than the determined

values are noticed or there exist reasons other than the influence of relationship to doubt the value, assessing groups may appraise the value of the imported goods as per the appropriate provisions of the Customs Valuation Rules, 2007.

vii]. This I.R is issued in terms of Para 3.3 of the Board's Circular No. 05/2016-Customs dated 09.02.2016 with the approval of the Principal Commissioner of Customs, Air Port and Air Cargo Commissionerate, Bangalore.

Signed by Sanjay Kakkar Date: 28-08-2024 17:04:49

(संजय कक्कड़ / Sanjay Kakkar) सीमा शुल्क उप आयुक्त / Deputy Commissioner of Customs (विशेष मूल्यांकन शाखा / Special Valuation Branch)

To -

- M/s. Hewlett Packard Enterprises India Private Limited, Registered Office: No. 24, Salarpuria Arena, Hosur Main Road, Adugodi, Bengaluru 560030
- M/s. Hewlett Packard Enterprises India Private Limited, Sy.192, Hewlett Packard Enterprise, Whitefield Road, Mahadevapura, Bengaluru - 560048

Copy Submitted to:

The Principal Commissioner of Customs, Airport and Air Cargo Customs Commissionerate, Bengaluru – 560300

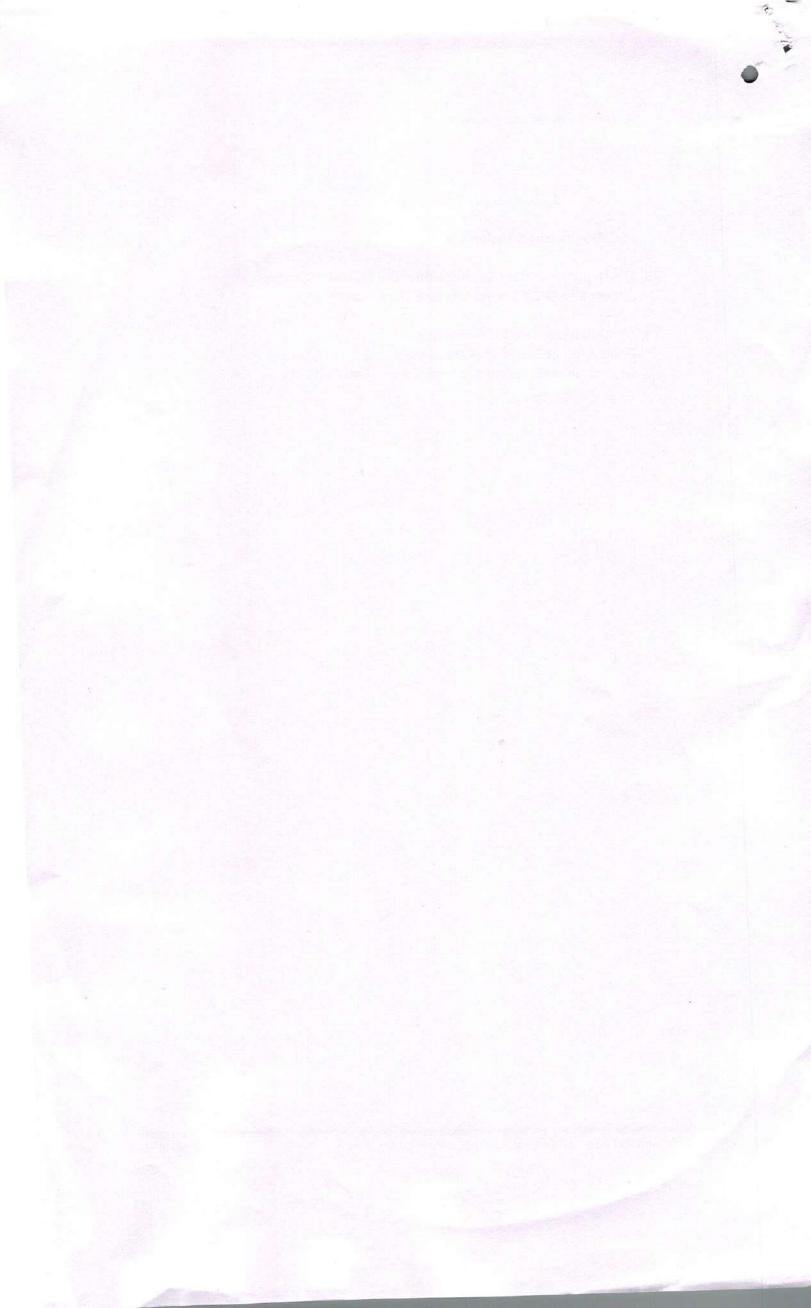
Copy to (Sl.Nos.1-24 below):

- The Directorate General of Valuation, New Custom House – Annex, 7th Floor, Ballard Estate, Mumbai-400001
- The Principal Commissioner of Customs,R. Building, Queens Road, Bengaluru
- The Joint Director, (RMD),
 O/o The Addl Director General, RMD, Directorate of Systems,
 No.13, Sir Vithaldas Thakersey Marg, Opp. Patkar Hall,
 New Marine Lines, Mumbai-400020
- 4. The Commissioner of Customs, Custom House, Panambur, Mangalore-575010

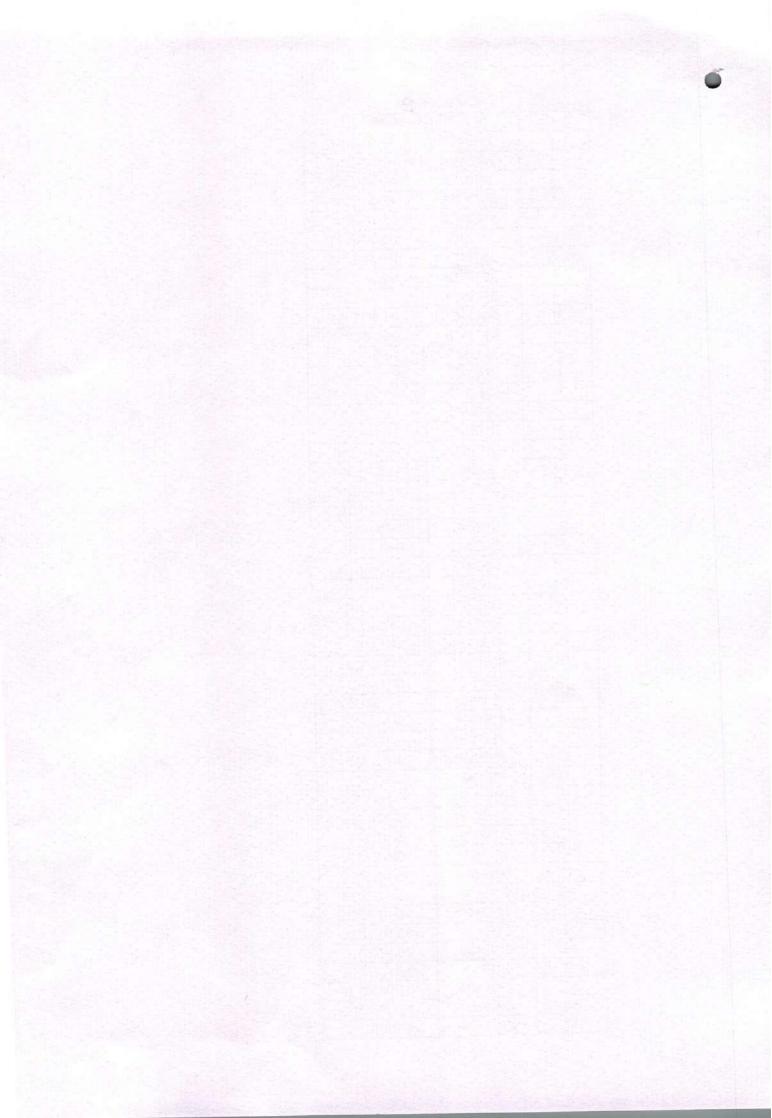
- The Principal Commissioner of Customs, Chennai-II / Chennai-VIII (ACC) and Chennai-VIII
- 6. The Principal Commissioner of Customs (Import), New Delhi
- 7. The Commissioner of Customs, ICD, Patparganj, New Delhi
- 8. The Commissioner of Customs, ICD, Tughlakbad, New Delhi
- 9. The Principal Commissioner of Customs (Import I/II), Mumbai
- 10. The Principal Commissioner of Customs, Nhava Sheva-I, II, III, IV, V, JNCH, Mumbai
- 11. The Addl. Commissioner of Customs, ICD, Whitefield, Bengaluru-560066
- The Joint Commissioner of Customs, DGoV, Southern Zonal unit,
 5th Floor, Annex Bldg., Custom House,
 Rajaji Salai, Chennai-600001
- The Joint Commissioner of Customs (SVB), JNCH, Nhava Sheva, Post, Tal-Uran, Dist. Raigad-400707
- 14. The Joint Commissioner of Customs, Cochin, Kerala- 682009
- 15. The Joint Commissioner of Customs, Custom House, Trichy
- 16. The Joint Commissioner of Customs, Custom House, Visakhapatnam
- 17. The Deputy Commissioner, Customs (SVB), NCH, IGI Airport, New Delhi -110037
- 18. The Deputy Commissioner of Customs (SVB), Custom House, 15/1; Strand House, Calcutta-700001
- 19. The Deputy Commissioner, Customs,
 GATT Valuation Cell, NCH, Ballard Estate, Mumbai-400001
- 20. The Deputy Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin
- The Joint Commissioner, Customs (SVB),
 Custom House, No. 60, Rajaji Salai, Chennai- 600027
- 22. The Deputy Commissioner of Customs (Imports),

ACC, Shamshabad, Hyderabad

- 23. The Deputy/Assistant Commissioner (All Assessing Groups), Airport and ACC Commissionerate, Bengaluru-560300
- 24. The Deputy/Assistant Commissioner, Finalization of Provisional Assessment, Airport and ACC Commissionerate, Bengaluru-560300



S. No	BE No.	
1	4349439	BE Date
2	7683098	23-02-2016
3	2216275	02-12-2016
4	6948078	23-06-2017
5	6986564	25-06-2018
6	8771966	05-10-2016
7	2544778	04-03-2017
8	9519730	23-03-2019
9	6721952	04-01-2019
10		14-09-2016
11	6673463	05-06-2018
12	4274478	05-12-2017
13	7322658	23-07-2018
14	7740237	07-12-2016
15	9567732	05-05-2017
16	5016661	31-01-2018
17	3718149	23-10-2017
18	8995992	26-11-2018
19	7595863	11-08-2018
20	2365972	11-03-2019
21	8368652	30-01-2017
22	5086547	29-04-2016
23	3521111	06-10-2017
24	8150488	22-09-2018
25	3035974	30-08-2017
26	8530667	20-10-2018
27	2790740	09-08-2017
28	4494478	21-12-2017
29	5510597	04-06-2016
	7986507	27-12-2016
30	9839591	26-05-2017
32	4162957	27-11-2017
33	6135679	26-04-2018
34	2088598	18-02-2019
35	6234094	03-05-2018
36	6463661	23-08-2016
37	7210196	24-10-2016
EAST TO SERVICE STATE OF THE PARTY OF THE PA	9083506	29-03-2017
38	5473608	06-03-2018
39	9870887	31-01-2019
40	9179855	10-12-2018
41	7162860	20-01-2022
42	3350697	30-03-2021
43	5809434	25-11-2019
44	5334709	17-10-2019
45	4334802	02-08-2019
46	4969163	19-09-2019



48	7449167	11-02-2022
49	7699460	02-03-2022
50	2061893	22-12-2020
51	5430089	14-09-2021
52	4586199	21-08-2019
53	3880514	01-07-2019
54	5913846	20-10-2021
55	7699949	02-03-2022
56	9171260	14-10-2020
57	7832800	05-06-2020
58	7311728	20-03-2020
59	3846523	06-05-2021
60	2223403	04-01-2021
61	3195998	11-05-2019
62	3358908	23-05-2019
63	8902197	22-09-2020
64	7709540	20-05-2020
65	4215554	05-06-2021
66	2951459	01-03-2021
67	6214935	24-12-2019
68	3195910	11-05-2019
69	3246252	22-03-2021
70	9942490	14-12-2020
71	7969345	22-06-2020
72	6203116	11-11-2021
73	6796678	07-02-2020
74	4776987	22-07-2021
75	7159956	20-01-2022
76	3350698	30-03-2021
77	9715999	26-11-2020
78	4414408	08-08-2019
79	4053797	18-06-2024
80	9687636	16-01-2024
81	6808407	22-11-2024
82	9586288	09-01-2024
83	2066505	09-02-2024
84	6476998	04-11-2024
85	3293450	02-05-2024

