

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH : MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 88479 of 2018

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1014-1015-17-18 dated 08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099

Versus

...Appellant**Reliance Jio Infocomm Ltd.**Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.**....Respondent****WITH****Customs Appeal No. 88483 of 2018**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1018-17-18 dated 08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099

Versus

...Appellant**Reliance Jio Infocomm Ltd.**Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.**....Respondent****AND****Customs Appeal No. 88485 of 2018**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1008-17-18 dated 08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

...Appellant**Reliance Jio Infocomm Ltd.**Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.**....Respondent****AND****Customs Appeal No. 88487 of 2018**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1001-17-18 dated 08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)

Commissioner of Customs-Mumbai**...Appellant**

(Air Cargo Import)

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

Reliance Jio Infocomm Ltd.Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.**....Respondent****AND****Customs Appeal No. 88492 of 2018**(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1001-1007-17-18 dated
08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)**Commissioner of Customs-Mumbai****(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

...Appellant**Reliance Jio Infocomm Ltd.**Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.**....Respondent****AND****Customs Appeal No. 87032 of 2019**(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1320-1328-18-19 dated
29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)**Commissioner of Customs-Mumbai****(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

...Appellant**Reliance Jio Infocomm Ltd.**Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.**....Respondent****AND****Customs Appeal No. 87033 of 2019**(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-308-18-19 dated
29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)**Commissioner of Customs-Mumbai****(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

...Appellant**Reliance Jio Infocomm Ltd.**Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.**....Respondent****AND****Customs Appeal No. 87034 of 2019**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1312-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(ACC)**

...Appellant

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

Reliance Jio Infocomm Ltd.

....Respondent

Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.

AND

Customs Appeal No. 87035 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1311-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(ACC)**

...Appellant

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

Reliance Jio Infocomm Ltd.

....Respondent

Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.

AND

Customs Appeal No. 87036 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1313-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(ACC)**

...Appellant

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

Reliance Jio Infocomm Ltd.

....Respondent

Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.

AND

Customs Appeal No. 87037 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1310-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(Air Cargo Import)**

...Appellant

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

Reliance Jio Infocomm Ltd.

....Respondent

Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.

AND

Customs Appeal No. 87038 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1309-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(ACC)**

...Appellant

Gr. VA, Air Cargo Complex, Sahar, Mumbai-400099.

Versus

Reliance Jio Infocomm Ltd.

....Respondent

Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.

AND

Customs Appeal No. 87039 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1314 & 1315-18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai
(Air Cargo Import)**

...Appellant

Gr. VA, Air Cargo Complex, Sahar, Mumbai-400099.

Versus

Reliance Jio Infocomm Ltd.

....Respondent

Building no. 5-C, 1st Floor, Reliance Cooperate Park,
Ghansoli, Navi Mumbai-400 071.

Appearance:

Shri Ramesh Kumar, Authorized Representative for the Appellants

Shri J. C. Patel, Vipin Jain and Shilpa Balani, Advocates for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85571-85583/2022

Date of Hearing: 14.03.2022

Date of Decision: 22.06.2022

Per: P. Anjani Kumar

These set of appeals are filed by the Revenue against the orders passed by Commissioner of Customs (Appeals).

2. Brief facts of the case are that M/s Reliance Jio Infocom Ltd., the respondent herein has imported "Cards" (Populated Printed Circuit Boards) OSLM-5-100G-WL3N for DWDM Equipment-Photonic Service Switch (PSS) 1830 imported by them and have classified the same under Customs Tariff Sub-heading 8517 7010. The Department accessed the bills of entry changing the classification to CTH 8517 62 90; the appellants preferred an appeal before the Commissioner (Appeals); Commissioner (Appeals) vide impugned orders has upheld the contention of the appellants and allowed their appeals. Learned Commissioner (Appeals) has held as follows:-

- (a) *Information available from the product catalogue published by the manufacturer supplier suggests that the impugned goods are parts of Ciena's 5430 Packet Optical Switch (Platform) and therefore shall be classifiable as parts under CTH 85177010 being PCB.*
- (b) *In terms of Notification 57/2017 all goods falling under CTH 8517 are exempt from BCD unconditionally.*

Revenue preferred these appeals against the impugned orders.

3. Shri Ramesh Kumar, Authorized Representative appearing for Revenue reiterates the grounds of appeals and submits that the impugned goods are various telecommunication devices used in optical communication by transmitting digital signal/ messages in one or both directions over a single transmission path on optical fibers; firstly, wavelengths of various signals are changed and various such signals having different wavelengths are mixed and loaded on a single optical fiber and transmitted for optimum use of fiber i.e. single fiber used for transmitting various signals together; at the receiving points, the signals are separated and wavelength are again changed to the original and used in the recipient devices; in this whole process, various devices such as "Transponder", "Muxponder", "Wavelength Tracker" and "Amplifier" etc. and all these devices are placed on a switch called Photonic Service Switch (PSS), which gives a platform to these devices to perform the independent function assigned to these various devices.

4. Learned Authorized Representative further submits that the technology related to simultaneous transmission of two or more messages in one or both directions over a single path, with separated signals is called

Dense Wavelength Division Multiplexing (DWDM); he submits that some of the imported items are as follows:-

(i) Optical Transponder or Card Transponder is a device which convert the wavelength as needed so that it can be loaded on a optical fiber without getting mixed with other signals on same optical fiber. Also mentioned as TXP.

(ii) Optical Amplifier or Card Amplifier is a device which increase the strength of the optical signal. A typical fiber cable has loss of about 0.2dB per Km for 1.5 micro-meter light signal. Hence, the signal occurs loss of about 20db, if it travels a distance of 100 km. Therefore, the signal needs to be amplified in order to compensate for the losses at the regular intervals by way of 'Optical Amplifier'.

(iii) In optical fiber communications, a Muxponder (MXP) is the element that sends and receives the optical signal on a fiber in much the same way as a transponder except that the Muxponder has the additional functionality of multiplexing multiple sub-rate client interfaces onto the line interface.

(iv) Other device are 'Optical Add-Drop Multiplexers' [ROADM-Reconfigurable Optical Add-Drop Multiplexers]- The function of dropping channels (i.e., rerouting channels from the main stream) and adding channels (in the main stream) is a well-established function in communication s systems and networks. In DWDM systems, the main function of an optical adddrop multiplexer (OADM) is to selectively remove a wave length from the fiber (the data content of which is rerouted to another fiber- the drop side), pass the remaining wavelengths through the DWDM, and add the same wavelength but with different data content (from the add fiber) in the same direction.

5. Explaining on the basis of explanatory notes for HSN and relevant tariff headings, learned Authorized Representative submits that part "E" of the HSN heading 8517 explains that many automatic switch boards and exchanges incorporate analogue to digital convertors, digital to analogue convertors, data compression/ de-compression devices (CODECS), modems, multiplexors, automatic data processing machines and other devices that permit the simultaneous transmission of both analogue and digital signals over the network, which enables the integrated transmission of speech, other sounds, characters, graphics, images or other data; as per the above modems, multiplexors being parts of switch boards are having a specific function to perform in such switch boards (which is basically a platform) even though they are categorically classified under sub-heading 8517 62 30 and 8517 62 70; he submits that the imported apparatus being parts of Photonic Service Switch are to be classified under CTH 8517 62 90. Relying

on path (G) of the HSN, he submits that all apparatus which allow the connection to the communication network are the transmission or reception within such network are to be classified under the sub-heading 8517 62 90; all these apparatus are parts of a Public Switched Telephone Network or LAN or MAN or WAN. He also submits that Network Interface Cards are covered under the sub-heading 8517 62 90 and not under CTH 8517 70 10 which is meant for parts-in specific-populated, loaded or stuffed printed circuit boards; the sub-heading 8517 62 90 includes machines for, reception, conversion, transmission, regeneration, switching apparatus, routing apparatus.

6. Learned Authorized Representative further submits that Commissioner (Appeals) erred in classifying the parts under CTH 8517 70 10 for the reason that these Cards have part numbers mentioned on them and therefore they cannot be called apparatus; even a small devices like keyboard, a mouse, printer, monitor etc, have part numbers and further reason they cannot be classified under Parts; as an example hard disk though functions along with CPU, when imported its classified under 8523 and not under 8473 which is meant for parts of data processing machine. He submits that appellants' contention that they have imported PCBs is wrong; none of the documents describe in imported good as populated, loaded or stuffed printed circuit boards; the words "Cards" for Transponder/Muxponder were added in brackets only to mislead the authorities.

7. Shri J. C. Patel, Shri Vipin Jain and Ms. Shilpa Balani appeared on behalf of the appellants. Shri J. C. Patel learned Advocate submits that Photonic Service Switch "1830" is Dense Wave Division Multiplexor (DWDM) which combines optical signals of different wave lengths (colour)/ frequency for being carried simultaneously over a single optical fiber; the switches are used by the respondents in traffic originating locations for multiplexing the signals; various parts i.e. transponder, muxponder, amplifier, route channels, add-drop and wavelength tracker optical channel monitoring card are "Populated Printed Circuit Boards" and are parts of DWDM equipment. He submits that DWDM is covered by sub-headings 8517 62 70 which is specifically mention "Multiplexors, Statistical multiplexor, Chargeable to nil rate of duty; on the other hand populated, loaded printed circuit boards are specifically covered as "Parts" under sub-heading 8517 70 10 of Customs Tariff Act and are exempted under serial no. 13S of the notification no.

24/2005-Cus dated 1.3.2005; Customs Tariff as well as the notification issued clearly recognize "Populated, Loaded Printed Circuit Boards" as "Parts" under sub-heading 8517 70 10; the respondent have been claiming the same classification which was upheld by Commissioner (Appeals); the order was accepted by the Revenue; however, since September-October 2018, Revenue has been again challenging the classification contending that the said cards are "Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus" under Sub-heading 8517 62 90--- "others".

8. Learned Advocate for the respondents submits that the Department did not dispute that the cards are "Populated Printed Circuit Boards" and the fact that Photonic Service Switch is DWDM equipment and the Cards imported are further equipment; the Department has not disputed the fact that the catalogue of Photonic Service Switch (PSS) 1830 assigns specific Parts Numbers to the Cards under "Parts List". He submits that populated printed circuit boards are not by themselves complete "Machines" for reception conversion and transmission are regeneration of voice, images are other data, including switching and routing operators; the contention of Department is incorrect as the goods falling under 8517 62 90 must be Machines themselves; "Populated Printed Circuit Boards" imported with the appellants are not complete Machine or apparatus in themselves but only "Parts". He submits that it is pertinent to note that "populated, loaded or stuffed" printed circuit board are covered under the single "-" entry 8517 70 for "Parts" which means that the statute recognizes the impugned goods are part only and not complete machine of apparatus; other entries such as sub-headings 8473 3030 9027 90 20 specifically referred to mounted printed circuit boards and printed circuit assembly as part and not as machine or apparatus; similarly the very fact that while Notification No.57/2017-Cus dated 30.06.2017 mentions "Optical Transport Equipments" and "Optical Transport Network (OTN) Products" under Sr. No.20, but separately mentions "Printed Circuit Assembly (PCBA)" of Optical Transport Equipment" and Optical Transport Network (OTN) Products," under Sr. No.22 as falling under CTH 8517 7010, is again a statutory recognition of the fact that "Printed Circuit Assembly (PCBA)" are not themselves complete Machine or Equipment, but are only parts of machine or equipment.

9. Learned Advocate further submits that impugned cards do not have any independent function to receive, convert and transmit or regenerate voice, images or other data; such functions are carried out by the machine i.e. DWDM equipment; it has been held in appellants own case reported at 2019 (369) ELT 1713, that in the absence of any evidence produced by the Department to establish that the goods in question are designed to function independently as a machine, the same cannot on standalone basis be considered as machine and have to be regarded as part only. He further submits that as per HSN Explanatory notes under 84.79, if a device cannot perform any function unless mounted on or incorporated in another machine/ appliances/ entity and where such function is not distinct from the function performed by such other machine/appliances/entity and is an integral and inseparable part in the operation of such machine/ appliances/entity, then such device cannot be classified as a machine or mechanical appliance but has to be classified as part of the said other machine/appliances/entity; in the instant case, the Cards in question cannot perform any function unless incorporated in the DWDM equipment viz. Photonic Service Switch and their function is not independent or distinct from that of the said DWDM equipment but is integral and inseparable part of the said DWDM equipment. The Cards in question, therefore, cannot be classified as a Machine or apparatus and have to be classified as Parts of the said DWDM equipment. He submits that the issue is decided in the favour of the respondents by the following judgments:-

- (i) *CC v Modicom Network P. Ltd.-2005 (185) ELT 333 upheld by the Supreme Court in CC v Modicom Network P. Ltd.-2015 (320) ELT 21;*
- (ii) *CC v N. I. System (India) P. Ltd.-2010 (256) ELT 173 (SC);*
- (iii) *US Customs Ruling No. NY N027030 dated 29th May 2008 and No. NY N027023 dated 28th May 2008;*
- (iv) *Order-in-Appeal No. MUM-CUSTM-AMP-APP/003/17-18 dated 31.01.2018*

10. Learned Advocate further submits that Department relies on HSN notes under (G) other communication operator is misplaced; the other communication operators referred in the notes are operators; the Other Communication Apparatus referred to in the said HSN notes are apparatus which allows for connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such network. The apparatus referred to in these Notes are the complete apparatus and not Populated Printed Circuit Boards of such apparatus. The Cards imported in the present case are not comparable to

Network Interface Cards referred to in the said HSN Notes, Network Interface Cards are not PCBs of any Transmission or Reception apparatus of Heading 851.17 and they are not parts of any Transmission and Reception Apparatus of Heading 85.17 and instead are installed on a Computer of Heading 84.71. Network Interface Cards cannot therefore be classified as Parts under Heading 8517 70. Further, Network Interface Cards enable and allow a Computer to connect to a Network and are therefore in themselves Apparatus for transmission and reception of data between a Computer and a Network. Such is not the case with the Cards in the present case, which are incorporated in and are part of DWDM equipment. Therefore, the Cards of DWDM equipment cannot be classified as Apparatus for transmission and reception of data but are parts of DWDM equipment.

11. Learned Advocate further submits that the impugned goods are clearly eligible for exemption under serial no. 13S of notification no.24/2005-Cus dated 01.03.2005; the entry exempted all goods of heading 8517 70 10 except Printed Circuit Board Assembly (PCBA) of cellular mobile phones; understandably, the impugned goods are not PCBA of cellular mobile phones but are of DWDM equipment; the reference to notification no.11/2014-Cus dated 11.07.2014 by the Department has no relevance. He submits that India, as a signatory to the Information Technology Agreement dated 13.12.1996, entered into members states of WTO, is committed to exempt printed circuit assembly of service from custom duty; he relies on Apex Courts judgment in the case of G. M. Exports 2015 (324) ELT 209 (SC) held that an interpretation of the statute, which is in conformity with Government's commitment to international agreements; even if the Department classification under CTH 8517 62 70, which is specific for multiplexors, is accepted that tariff rate itself is nil; however, parts cannot be classified under a specific sub-heading for multiplexors.

12. Heard both sides and perused the records of the case. Brief issue for consideration before us is as to whether the goods imported by the appellants merit classification under CTH 8517 62 70 as contended by the Department or under CTH 8517 70 10 as claimed by the importer respondent. Learned Counsel for the respondent submits that they have been classifying the impugned goods under CTH 8517 70 10 and Learned Commissioner (Appeal) vide order dated 31.01.2018 has accepted their classification and the said order has been accepted by the Department.

Though there is no *res-judicator* in matters of taxation, the assessment of the impugned goods over the years would certainly have a reckoning. The respondent claims that the impugned goods are parts of 1830 Photonic Service Switch (PSS), the Department contends that the same are having independent function and hence need to be classified along with the main machine under CTH 8517 62 70. For a proper appreciation it will be useful to have a look at the relevant headings of the Customs Tariff. Relevant headings are as follows:-

After 1-1-2007 :

8517		Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528			
	-	<i>Telephone sets, including telephones for cellular networks or for other wireless networks:</i>			
	-	<i>Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network) :</i>	u	Free	
8517 61 00	--	Base stations	u	Free	-
8517 62	--	<i>Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus :</i>	u	Free	
8517 62 10	---	PLCC equipment	u	Free	-
8517 62 20	---	Voice frequency telegraphy	u	Free	-
8517 62 30	---	Modems (modulators-demodulators)	u	Free	-
8517 62 40	---	High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 62 50	---	Digital loop carrier system (DLC)	u	Free	-
8517 62 60	---	Synchronous digital hierarchy system (SDH)	u	Free	-
8517 62 70	---	Multiplexers, statistical multiplexers	u	Free	-
8517 70	-	<i>Parts :</i>	u	Free	-
8517 70	--	Populated, loaded or stuffed printed	Kg	Free	-

10		circuit boards			
8517 70 90	--	Other	kg	Free	-

13. From the above, it is clear that the instruments/telephone sets for cellular networks/wireless networks, apparatus both for transmission and reception of voice, images or other data in a wired or wireless network, and "Parts" classified under the said heading broadly placed under three categories of single dash (-). First single (-), for telephone sets, including telephones for cellular network or for other wireless network; second single dash (-), for other apparatus for transmission or reception of voice, images, or other data including apparatus for communication in wired or wireless network (such as local or wide area network); and the third single dash (-) for "Parts". We find that in respect of appeal number C/85235/2021, learned Commissioner (Appeals) finds that now coming to the item imported by the appellant i.e. OSLM-5-100G-WL3N: CARD, I find that the technical information provided in the leaflet of the supplier M/s Ciena Communications, USA, suggest that it is a part of Ciena's 5430 Packet-Optical Platform and is a five port Wavelogic-3 nano OTN services line module. It provides a physical platform and electrical interconnection for five line side. Accordingly, the impugned goods will be classified as parts of Packet Optical Switch under heading 85177010 being PCB. The function of a module has been considered by the Tribunal in the case of Modicom Network Pvt. Ltd. 2005 (185) ELT 333 (Tri-Bang) and held that

Para 6..... We find that the Main Switching Center consists of various modules in the form of PCBs. Each module will have its own function. The modules are all of standard format. There is a face plate on the front of each module with display elements, with controls and access to front connectors. The PCBs of the modules are of multi layer design and the components with which they are equipped are mainly surface mounted devices. The Main Switching Center is a machine with the provision for expansion. The modules are inserted as essential parts to attain a particular capacity. The modules on their own do not have any independent function and they cannot be dis-assembled further. Even though the numbers of modules are variable depending on capacity, each module remains as a part of the main machine, i.e. Main Switching Center. In view of the above, the Original Authority's finding that the modules cannot be considered as apparatus is correct. Hence there is no infirmity in the Order-in-Appeal confirming the Original order.....

14. Respondents in the case herein have imported various "CARDS" (Populated Printed Circuit Boards) for DWDM equipment- Photonic Service Switch (PSS) 1830. Respondent submits technical literature pertaining to

PSS 1830. Product information and planning guide for 1830 photonic service switch (PSS) relies 9.1 for 8DG-63269-JBAA-TQZZA issue 1 dated 17 February 2017 published by Nokia lists the Muxponder/Transponder as parts as below:-

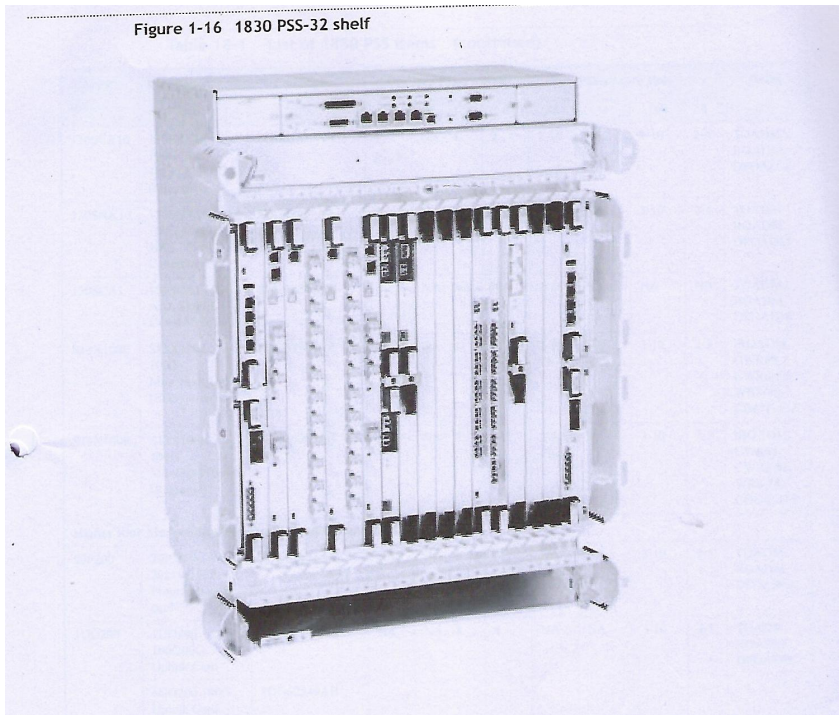
WDM product description

Parts list and ordering information

Table 18-1 List of 1830 PSS items (continued)

Abbrevia- tion	Description	Part number	Max. per PSS-xx shelf				PSS-xx card slots				OADM
			32	16	16II	8	32	16	16II	8	
130SCX10	130SCX10 100G Mux, 10CL, SDFEC Coherent	8DG61279AA	7 See 6	NA	4	2	2-16	NA	3-10	2-4	TOADM, ROADM, DFOADM
130SNX10	130SNX10 100G Mux 10CL, Flex Coherent	8DG62039AA 8DG62039AC	7	NA	4	2	2-16	NA	3-10	2-4	TOADM, ROADM, DFOADM
130SCA1	130SCA1 100G A/D, SDFEC COHERENT	8DG62229AA	8	NA	NA	NA	2-16	NA	NA	NA	TOADM, ROADM, DFOADM
S13X100E	S13X100E 100G Mux/Xpdr/Uplink (Encryption)	8DG63988AA	15 ¹⁶	NA	8	4	2-9, 11-17	NA	3-10	2-5	iROADM, CWR88, CWR8-88, WR8-88, CDC-F, C-F
S13X100R	S13X100R 100G Mux/Xpdr/Uplink (Regional)	8DG63207AA	15 ¹⁶	NA	7 ¹⁷	4 ¹⁷	2-9, 11-17	NA	3-10	2-5	iROADM, CWR88, CWR8-88, WR8-88, CDC-F, C-F
Higher Rate Muxponders/Transponders - 200G and 500G											
20P200	20P200 - 20x10G C/L Programmable card	8DG62471AA	NA	NA	8	4	NA	NA	3-10	2-5	TOADM, ROADM, DFOADM
1UD200	1UD200 100/200G Uplink Card	8DG62549AA	NA	NA	8	4	NA	NA	3-10	2-5	TOADM, ROADM, DFOADM
	1UD200 100G Uplink Card	8DG62549AB									

15. We also find that the respondents have produced a photocopy of picture of 1830 PSS 32 shelf as follows and explained that the different populated circuit boards or parts of the PSS are inserted in the slots designated for the same. Picture of the PSS is as follows:-



16. Going by the above product literature terms of the headings of the Customs Tariff, description of the product given in the respective bills of entry and the ratio of the judgment in the case of Modicom (supra), we find that the impugned goods cannot be held to have independent function themselves. We have seen the product demonstrated to us by the respondent during the course of hearing and find them to be Populated Circuit Boards. Learned Authorized Representative for the Department submits that the respondents have mentioned in the bills of entry that the impugned goods are PCBs; however, the same was mentioned after the part numbers within brackets to mislead the assessing officer. We do not find there is any merit in the submissions. When the importers have been importing for quite considerable period, it was free to Department to get the samples tested by specialized agencies or institutions. This having not been done, Department cannot simply rely on arguments advanced. Technical literature made available and description of the impugned goods in various imports documents and the findings of the impugned orders cannot be brushed aside. We find that the Department has not put forth any evidence to substantiate their contention. Therefore, in our considered opinion the impugned goods cannot function as independent machine/equipment. Therefore, we have no hesitation whatsoever holding the same to be the parts of Photonic Service Switch (PSS) 1830.

17. We also find that Revenue submits that on the basis of Explanatory notes to the HSN the items are complete machines or equipments classifiable under CTH 85176270. The Department submits alluding to the HSN that as per explanation (G) the equipment referred to therein allowed for connection to a wired or wireless communication network or the transmission or reception of speech or other sound, images or other data within such networks. A look at this explanatory notes shows us the following.

“85.17- Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including Apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 (+).
- Telephone sets, including telephones for cellular networks or for other wireless networks:
 8517.11 - - Line telephone sets with cordless handsets

8517.12 - - *Telephones for cellular networks or for other wireless networks*

8517.18

--*Other*

- ***Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):***

8517.61 - - *Base stations*

8517.62 - - *Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus*

8517.69 - - *Other*

8517.70 - *Parts*

This heading covers apparatus for the transmission or reception of speech or other sounds, images or

other data between two points by variation of an electric current or optical wave flowing in a wired

network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radiotelegraphy, local and wide area networks.

.....

(E) *Telephonic or Telegraphic Switching Apparatus.*

(1) Automatic switchboards and exchanges.

These are of many types. The key feature of a switching system is the ability to provide, in response to coded signals, an automatic connection between users. Automatic switchboards and exchanges may operate by means of circuit switching, message switching or packet switching which utilize microprocessors to connect users by electronic means.

Many automatic switchboards and exchanges incorporate analogue to digital converters, digital to analogue converters, data compression/decompression devices (codecs), modems, multiplexors, automatic data processing machines and other devices that permit the simultaneous transmission of both analogue and digital signals over the network, which enables the integrated transmission of speech, other sounds, characters, graphics, images or other data.

.....

(F) *Transmitting and receiving apparatus for radio-telephony and radio-telegraphy.*

This group includes:

(1) Fixed apparatus for radio-telephony and radio-telegraphy (transmitters, receivers and transmitter-receivers). Certain types, used mainly in large installations, include special devices such as secrecy devices (e.g., spectrum inverters), multiplex devices (used for sending more than two messages simultaneously) and certain receivers, termed "diversity receivers", using multiple receiver technique to overcome Fading.

(2) Radio transmitters and radio receivers for simultaneous interpretation at multilingual Conferences.

(3) Automatic transmitters and special receivers for distress signals from ships, aircraft, etc.

(4) Transmitters, receivers or transmitter/receivers of telemetric signals.

(5) Radio-telephony apparatus, including radio-telephony receivers, for motor vehicles, ships^ aircraft, trains, etc.

(6) Portable receivers, usually battery operated, for example, portable receivers for calling, alerting or paging.

(G) *Other communication apparatus.*

This group includes apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network. Communication networks include, inter alia, carrier-current line systems, digital-line systems and combinations thereof. They may be configured, for example, as public switched telephone networks, Local Area Networks (LAN), Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture.

This group includes :-

- (1) Network interface cards (e.g., Ethernet interface cards).
- (2) Modems (combined modulators-demodulators).
- (3) Routers, bridges, hubs, repeaters and channel to channel adaptors.
- (4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).
- (5) Codecs (data compressors/decompressors) which have the capability of transmission and reception of digital information.
- (6) Pulse to tone converters which convert pulse dialed signals to tone signals.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus, of this heading are also classified here.”

12. Corresponding Customs Tariff entries for 8517 are read as under

“ - Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

8517 61 00 -- Base stations
 8517 62 -- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:
 8517 62 10 --- PLCC equipment
 8517 62 20 --- Voice frequency telegraphy
 8517 62 30 --- Modems (modulators-demodulators)
 8517 62 40 --- High bit rate digital subscriber line system (HDSL)
 8517 62 50 --- Digital loop carrier system (DLC)
 8517 62 60 --- Synchronous digital hierarchy system (SDH)
 8517 62 70 --- Multiplexers, statistical multiplexers
 8517 62 90 --- Other

”

18. On going through the relevant HSN notes, we find that the apparatus or equipments referred in the notes are complete apparatus and not Populated Printed Circuit Boards of such apparatus. As submitted by the respondent the Network Interface Cards referred to in the notes are not PCB of any transmission or reception apparatus of heading 8517. Network Interface Cards connect the computers to the internet and therefore can be considered to have independent function. Going by the product literature

and our discussions as above, we find that the impugned cards are incorporated in and or parts of DWDM equipments.

19. We find that this Bench has gone into the issue of classification of parts or equipment while dealing with the classification of antennas imported by the very same respondent case. This Bench observed that

Now, a simple analysis of Heading 8517 effective from 1-1-2007, it is clear that the instruments/telephone sets for cellular networks/wireless net works, apparatus both for transmission and reception of voice, images or other data in a wired or wireless network, and “parts” classified under the said heading broadly placed under three categories of single dash (-). First single dash (-) for telephone sets, including telephones for cellular network or for other wireless network; second single dash (-) for ‘other apparatus for transmission or reception of voice, images, or other data including apparatus for communication in wired or wireless network (such as local or wide area network); and the third single dash (-), for “parts”. The ‘base station’ is classified under the second category under CSH 8517 61 00, to which neither side disputes.

42. Revenue, referring to the definition of ‘machine’ prescribed under Note 5 of Section XVI classified the ‘antenna’ for base station under second category, as ‘machines’ for reception, conversion and transmission or regeneration of voice, images or other data including switching and routing apparatus. The Revenue’s argument is based on the clarification issued by the Board on 1-1-2018 that antenna is an essential device of a wireless communication system; the information can travel only in the electromagnetic wave form. The antenna radiates the information in the form of electromagnetic wave in an efficient and desired manner to the base station, where the information is picked up by the receiving antenna and passed on to the receiver via transmission line. The signal is demodulated and the original message is then recovered at the receiver. Thus, the wireless communication gets established. It is the contention of the department that since the antenna can generate electromagnetic wave from current and voltages and which can convert electromagnetic wave to current and voltages with these waves impinge on it, therefore, it can be considered as a machine, which independently receives and transmits electromagnetic waves.

43. The respondent’s contention, on the other hand, is that the antenna is a passive element. It cannot function on its own unless connected to the base station, Therefore, the same does not fall within the scope and meaning of ‘machine’ prescribed at Note 5 under Section XVI.

44. In support of their contention that the antenna imported for base station is a passive element, the respondent placed on record the opinion of Vinod Gandhi & Associates, Government registered Chartered Engineer. Also, they have placed a letter dated 12-11-2018 issued by the manufacturer of antenna i.e. M/s Ace Technology, Korea i.e. antenna supplied by them are passive part of base station i.e. e Node B (Sic). It is clarified that the antenna on its own is not capable of performing any function and when connected, it only transmits and receives only the signals. It is further stated that the antenna is not performing in any other functions like conversion or regeneration of voice, images or other data signals or switching and/or routing of signals. No technical literature has been placed by the Revenue in support of their contention that the imported antenna for base stations are designed to function independently as a machine, contrary to the claim of the Respondent that these are passive elements and can function only

when attached to the base station for receiving and sending signals. The Revenue has placed the general information available on net about the multi fold use of e node antenna in 4G & 5G network in the developed wireless cellular technology. Comparing the data placed on the imported goods, we find merit in the contention of the Learned Advocate for the appellant that to be antenna as machine, it needs to be something more than a passive element of receiving and sending electromagnetic waves when attached to a base station. The meaning of 'machine' provided under Note 5 to Section XVI reads as :

"5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance in the headings of Chapter 84 or 85."

The meaning of 'machine' has to be understood in the context of Heading 8517. This is clear when we read the scope of Heading 8517 as explained under HSN which reads as follows :-

"This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks."

45. In the present case, the manufacturer of antenna as well as the chartered engineer's certificate, in clear terms clarified that the antenna in question transmits and receives only signals and not performing any other function like conversion or regeneration of voice, images or other data signals and switching/routing of signals. Therefore, the antenna stand alone cannot be considered as a 'machine', attracting classification under Heading 8517.62. Consequently, the observation of the department in the circular dated 15-1-2018 that the Antenna itself is a complete device and has capability of functioning on its own of conversion of electrical signals into electromagnetic waves and vice versa in a wireless communication system cannot be applied to the present goods as it would be complete only when connected to a base station. In the event if the antenna so designed, instead of working as a passive element, besides the above function, it also performs some more functions as in the case of other entries under the same category, its classification under sub-heading 8517 62 may be attracted considering the same as an independent of 'machine'.

46. The Revenue's contention to classify the 'antenna' for base station under sub-heading 8517 62 rests on the ground that as per Note 2(a) of Section XVI, parts which in themselves constitute an article covered by a heading of this section, in all cases are to be classified in their own appropriate heading even if specially designed to work as part of a specific machine. Further it is contended that Antenna is a part of a machine classifiable under Heading 8517, only in the situation when it is not covered by any other headings of the section. As per department, since it is classifiable under 8517 62, hence, not to be considered under sub-heading 8517 70 as 'parts'. The said Chapter note reads as follows :

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538, and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.”

47. *A simple analysis of Clause (a) of the above Note reveals that parts which are ‘goods’ required to be classified in the respective headings; in the present case, ‘Antenna’ being a part of the BTS, hence applying the said Rule, classifiable under Chapter Heading 8517. Revenue’s interpretation of the said clause (a) in the present case is that in the event if the goods are not falling under any of the sub-heading of Heading 8517, then only it will be classifiable as ‘parts’, is incorrect. Clause (b) of the said Note 2 indicates that “other parts”, by implication which are not goods, if suitable for use solely or principally with a particular kind of machine of the same heading are to be classified with the machines of that kind or the headings mentioned under the said clause (b) as appropriate. Further, it is mentioned that parts which are equally suitable for use principally with the goods of Heading 85.17 and Headings of 8517 and 8525 to 8528 are to be classified as Headings of 8517. Therefore, antenna since parts of BTS, as held by Hon’ble Supreme Court in Hutchison Essar South Ltd.’s case (supra), therefore, be classified as “parts” under Tariff Item 8517.7090.*

20. We also find that Hon’ble Apex Courts has dealt the issue of classification of parts in the case of N.I. Systems India P. Ltd. - 2010 (256) ELT 173 (SC) and held as under:-

“28. For the reason given hereinafter, we hold on the basis of technical material (including the importer’s own catalogue and webcast) that Controllers (including embedded controllers) are not merely PCs/ADPMs, but have a specialized structure and specific functions to perform and are therefore classifiable under Chapter 90.

29. Similarly, I.O. Modules and Chassis, which are the subject matter of import in this civil appeal are meant to operate as parts of industrial Process Control equipments like sensors. These I.O. Modules come with software tailored to their specific pre-defined functions. Therefore, one has to see the package in the holistic manner. The package as a whole- both hardware and software- constitutes one single functional unit. Accordingly, we hold that I.O. Modules and Chassis are classified as parts and accessories of Automatic Regulating or Controlling Instrument/Apparatus under CTH 9032.90.00.”

20. In view of the above, we find that the Department could not support their contention. No technical literature was submitted; in spite of the fact that the imports have been taking place over a period of time. Learned Commissioner (Appeals) has been upholding the contention of the

appellants. In one instance Revenue has accepted the order of Commissioner (Appeals). We find that the Department has not drawn any samples and did not obtain technical opinion to support their claim that the impugned goods are complete machines or equipment capable of independent function themselves so as to merit classification under CTH 85176270. On the contrary, the respondents could demonstrate by technical literature; samples and the ratio of judgments cited above that the goods imported by them are Populated Circuit Boards (PCBs) used in PSS 1830 and therefore, the impugned goods are parts of PSS and as such merit classification CTH 85177010. We also find that the appellants have submitted US Customs Rulings on the classification of the impugned goods, though they are not binding on us, they would certainly have a persuasive effect more so in the absence of any evidence to the contrary. In view of the discussion as above, and considering the fact that Commissioner (Appeals) has been consistent in rejecting the department's claim, we are of the considered opinion that there is no merit in the appeals filed by the Department.

21. In the result, we uphold the impugned orders and reject the appeals filed by the Department.

(Pronounced in open court on 22.06.2022)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)