

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH - COURT NO. 01

**Customs Appeal No. 86186 of 2022**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1670/2021-22 dated 15.02.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**M/s Huawei Telecommunication (India)  
Company Private Limited** **.... Appellant**

9<sup>th</sup> Floor, Capital Cyberscape,  
Gurugram Manesar Urban Complex,  
Sector-59, Ullahawas, Gurugram - 122 011, Haryana.

Versus

**Commissioner of Customs (Appeals),  
Mumbai-III** **.... Respondent**

Awas Corporate Point (5<sup>th</sup> Floor), Makwana Llane  
Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai-400759.

**Appearance:**

Shri Kartik Sundaram, Advocate for the Appellant

Shri D.S. Maan, Auth. Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**  
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86763/2023**

Date of Hearing: 06.06.2023

Date of Decision: 05.10.2023

**PER : M.M. PARTHIBAN**

This appeal has been filed by M/s Huawei Telecommunication (India) Company Private Limited, Gurugram (herein after, referred to as 'the appellants') being aggrieved against the Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1670/2021-22 dated 15.02.2022 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai-III.

2.1 Briefly stated, the facts of the case are that the appellants herein have filed Bill of Entry No. 9315138 dated 19.12.2018 for import of goods,

namely '36-Port-100GE Interface Card (FG, QSFP28)'. The goods were self-assessed by the appellants classifying the imported goods as Populated Printed Circuit Board Assembly (PPCBA) under customs tariff item 85177010. During post-clearance audit verification of self-assessment, the department did not agree with the classification adopted by the appellants, and a show cause notice dated 13.12.2019 was issued for reclassifying the imported goods under customs tariff item 8517 6290 for reassessment and consequently demanding differential duty under Section 28 of the Customs Act, 1962, besides proposing for confiscation of imported goods and for imposition of penalties under Sections 112(a), 117 ibid. The original authority upon receiving written submission dated 14.02.2019 and after giving the appellants a personal hearing on 26.10.2020, had passed an order rejecting the classification under tariff item 8517 7010 claimed by the appellants and reclassified the goods under Customs tariff item 8517 6290. Further, the original authority vide Order-in-Original dated 24.11.2020 confiscated the imported goods and imposed penalty of Rs.2,30,000/- on the importer under Section 112(a) of the Customs Act, 1962.

2.2 Feeling aggrieved of the above order, the appellants had preferred an appeal before the Commissioner of Customs (Appeals), Mumbai-III. The learned Commissioner (Appeals), after giving a personal hearing to the appellants on 24.01.2022, had passed the impugned order dated 15.02.2022, holding that the imported goods are covered under the category of Optical Transport Network (OTN) which are mentioned in exclusion product list under the entry Sl. No.20 of notification No.75/2018-Customs dated 11.10.2018 as amended by notification No.02/2019-Customs dated 29.01.2019. Accordingly, learned Commissioner (Appeals) rejected the appeal filed by the appellants and upheld the original authority's order. Being aggrieved against the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. The learned Advocate appearing for the appellants stated that the imported goods are 'interface cards' which is a kind of Populated Circuit Board Assembly (PCBA) and forms a part of Packet Optical Transport Switch (POTS). It is used in cloud engine switches providing the function of data packet processing and traffic management on 36 100GE optical ports. He further stated that the imported goods are distinguishable with 'network interface cards' inasmuch as the 'interface cards' works as intermediate component in the network, and it will not initiate or terminate data

communication; whereas, 'network interface cards' is an interface connecting the computer to transmission medium through LAN connection through RJ45 port, and works as terminal component in the network and all network data will be initiated or terminated by it. In support of their stand they also claimed that they had obtained a technical opinion from Professors of IIT, Delhi. Further, learned Advocate claimed that the description of the goods has been declared in the Bill of Entry correctly as per the product description in the catalogue '36-port 100GE interface card (FD1, QSFP28)' bearing part no. 03024UCT with card name 'CE-L36CQ-FD1' as well as there is no case of undervaluation or any other mis-declaration and thus the order confiscating the imported goods under Section 111(m) *ibid*, is not sustainable. Thus, he pleaded to set aside the impugned order by allowing their appeals.

3.2. In support of their claim for classification of imported goods, learned Advocate relied upon the order of the Tribunal in the case of *Commissioner of Customs, Mumbai Vs. Reliance Jio Infocomm Ltd.* reported in (2023) 3 Centax 96 (Tri.-Bom) in which import of goods viz., 'cards (Populated Printed Circuit Boards)' were classified under CTH 85177010 rejecting the department's for classification under CTH 8517 6290. He further submitted that the said order of the Tribunal was upheld by the Hon'ble Supreme Court in Civil Appeal Diary No.31965 of 2022 stating that they did not think it appropriate to interfere in the impugned order and consequently dismissed the appeals filed by the Revenue. Thus, learned Advocate submitted that the imported goods cannot be classified as a machine or apparatus under CTH 8517 6290 and have to be classified as parts of Packet Optical Transport Switch (POTS) and appropriately classifiable under CTH 8517 7010. He also submits that the issue has also been decided in their favour by the following judgements:

- (i) *Commissioner of Customs, Bangalore Vs. N.I. Systems (India) Pvt. Ltd.* – (2010) 11 S.C.C. 638
- (ii) *Inter Continental (India) Vs. Union of India* – 2003 (154) E.L.T. (Guj.)

4. Learned Authorised Representative appearing for the Revenue reiterated the findings of the impugned order and stated that since there is misclassification of the imported goods, the imported goods are liable for confiscation and imposition of penalty. He also submitted that in terms of exemption entry at Sl. No. 20 of notification No.75/2018-Customs dated 11.10.2018 as amended, Optical Transport Network (OTN) products are classifiable under tariff item 85176290. The Order-in-Appeal had confirmed the

imported goods as OTN products and thus rightly classified the same under customs tariff item 8517 6290 attracting 20% BCD. Hence, he stated that the impugned order is sustainable and the appeal is liable to be rejected.

5. Heard both sides and perused the records of the case, written submissions made in the form of paper book by both parties.

6. In the impugned order, the learned Commissioner (Appeals) has concluded on the issue of classification and applicable rate of duty on imported goods, as follows: The relevant paragraphs 6 to 8 of the impugned order, for ease of reference, is extracted as below:

*"6. In view of the above, I hold that the impugned goods imported by the appellants falls under the category of OTN (Optical Transport Network) product covered in exclusion product list of impugned notification and thus are not eligible for exemption under serial No.20 of the notification No.57/2017, dated 30.06.2017 by virtue of notification No.75/2018-Customs, dated 11.10.2018 and notification No.02/2019-Customs, dated 29<sup>th</sup> January, 2019.*

*7. Under the circumstances as discussed above, I do not find any reason to interfere with the impugned order of the Revenue and the appeal filed by the appellant is liable to be rejected and I accordingly reject the same.*

*8. The appeal is disposed of accordingly."*

Learned Commissioner (Appeals) in the impugned order had confirmed the reclassification of imported goods under tariff item 85176290, besides confirming the adjudged demands, penalty as held in the original order on the basis of following findings:

- (i) The imported goods i.e., 'interface card', indubitably, deals in optical transportation; these cannot be treated as mere PPCB, but are a complete module having various kind of ports and indicators and can be installed in the cabinet/rack indicating that it is a ready to use item.
- (ii) Expert opinion has been obtained by the appellants ex-parte, and from electrical engineers. As the item is telecommunication item, and it does not explain in detail as to how they have concluded the imported goods as PPCB, he declined to accept the same.
- (iii) The imported goods, even if, considered as optical circuit switch or optical switching and routing device will be covered in exclusion product list of impugned notification or PPCB of CTH 8517 7010, as they are nothing but OTN (Optical Transport Network) product.

7. In the case before us, the brief issue for consideration is the classification of imported goods as to whether, the same merits classification under Customs Tariff Item 8517 7010 as claimed by the appellants; or, is it classifiable under Customs Tariff Item 8517 62 90 as contended by the Department, for deciding on the appropriate levy of customs duty, in respect of such imported goods under the First Schedule to the Customs Tariff.

8.1 From careful perusal of the legal provisions of the Customs Tariff Act, 1975, it transpires that imported goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. For legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes.

8.2 In terms of the above legal provisions, in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act, by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS or HSN). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS

explanatory notes, the trade parlance theory to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

9. We find that the contending classification of imported goods discussed in the impugned order are either under 8517 7010 or 8517 62 90 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter and Heading level i.e., Chapter 85 and Heading 8517, there is no difference of opinion among the appellants and the department. The dispute in classification lies in the narrow compass of the Sub-headings and the respective Tariff Items falling there under. Now, we may closely examine the scope of the contending Sub-headings and Tariff Items thereof for determining correct classification of the imported goods. The relevant tariff entries in the First Schedule to the Customs Tariff Act are extracted as below:

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
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 a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525,8527 or 8528			
	- Telephone sets, including telephones for cellular networks or for other wireless networks:			
8517 11	-- Line telephone sets with cordless handsets:			
8517 11 10	--- Push button type .....	u	Free	-
8517 11 90	--- Other .....	u	Free	-
8517 12	-- Telephones for cellular networks or for other wireless networks :			
8517 12 10	--- Push button type .....	u	20%	-
8517 12 90	--- Other .....	u	20%	-
8517 18	-Other :			-
8517 18 10	--- Push button type .....	u	Free	-
8517 18 90	--- Other .....	u	20%	-
	- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wireless network (such as a local or wide area network) :			
8517 61 00	-- Base stations .....	u	10%	-
8517 62	--Machines for the reception, conversion and transmission or regeneration of voice, images or	u	20%	-

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
	other data, including switching and routing apparatus :			
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	-
<b>8517 62 90</b>	<b>---Other. . . . .</b>	<b>u</b>	<b>20%</b>	-
8517 69	---Other:			
8517 69 10	---ISDN System. . . . .	u	Free	-
8517 69 20	---ISDN terminal adaptor. . . . .	u	Free	-
8517 69 30	---Routers. . . . .	u	Free	-
8517 69 40	---X25 Pads. . . . .	u	Free	-
8517 69 50	---Subscriber end equipment. . . . .	u	Free	-
8517 69 60	---Set top boxes for gaining access to internet. .	u	Free	-
8517 69 70	---Attachments for telephones. . . . .	u	Free	-
8517 69 90	---Other. . . . .	u	10%	-
8517 70	-Parts :			
<b>8517 70 10</b>	<b>--Populated, loaded or stuffed printed circuit boards. . . . .</b>	<b>[u]</b>	<b>Free</b>	-
8517 70 90	--Other. . . . .	kg	15%	-

10. It could be seen that on applying the GIR 1 – rule that classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes, and by reading the description given in the Heading 8517 for ascertaining proper classification, it is made clear that the chapter heading 8517 covers within its scope and ambit, mainly of three broad categories of goods:

(i) first one i.e., "Telephone sets, including telephones for cellular networks or for other wireless networks" ;

(ii) the other, second one i.e., "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)", which are other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; and

(iii) the third one i.e., "parts" of the above both category of goods.

The first set of goods since cover telephone sets, which are finished goods by which sound (such as speech) is converted into electrical impulses and

transmitted (by wire or radio waves) to one or more specific receivers. it is not relevant for the classification of imported goods which are 'interface cards' and not complete finished goods of the type of telephone. Thus, the classification of the imported goods can be either be under the second category as 'apparatus' or under the third category as 'parts'.

11. Therefore, in order to decide further within the Chapter Heading 8517, whether the imported goods fall under the second category as 'apparatus' or under the third category 'parts', one needs to look further into relative Section or Chapter notes. In this regard, we find that Section Note 1 to Section XVI covering Chapters 84 and 85, as well as Chapter Note 1 to Chapter 85 provide for the list of goods that are excluded from the scope of coverage under the said Chapters. As there is no specific note relevant to the imported goods, this Section Note 1 / Chapter Note 1 are not relevant. Section Note 2 provide for classification of 'parts' of machines or articles falling under these Chapters and rest of the Notes 3 to 5 provide for specific basis for classification of machines/apparatus. Thus, we find that Section Notes 2 to 5 to Section XVI generally guide classification of goods under Chapter 84 and 85. The relevant Section Notes are extracted as below:

**"SECTION XVI**

*MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF;  
SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS  
AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES*

**NOTES :**

1. *This Section does not cover : .....*

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.*

*3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.*

*4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.*

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

In terms of the above Section note 2(a), it is clearly brought out that 'parts' of Chapter Heading 85.17 would be covered under the same heading at relevant sub-heading i.e., 851770 which covers 'parts' specifically by the description of goods covered under its scope. As per Section note 2(b), 'other parts', which are used solely or principally with a particular machine of specified sub-headings i.e., 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548 would get classified therein. As the first part of this note does not enumerate the machines of chapter heading 8517, this is not relevant here for the purpose of classification in this case; however, the second part of this note which specifically provide that irrespective of the 'other parts' being used in machines of heading 8517 and 8525 or 8526 or 8527 or 8528, would continue to be classified under heading 8517, then more specifically under sub-heading 851770. Further, in terms of Section notes 3 to 5 describing about the classification of machines, state three aspects i.e., (a) 'machine' means all types of machine so as to include in its ambit all machinery, plant, equipment, apparatus or appliances of chapter 84 or 85; (b) machine consists of individual components which are intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85; and (c) the classification of machines, shall be determined by its principal function; further, in case of combination of machines, by clearly defined function to which such machines contribute together as combination of machines. From the reading of the above Chapter notes, we are of the considered view that the imported goods namely 'interface cards', which are concluded in the impugned order as product of Optical Transport Network (OTN), and is being used in cloud engine switches

providing the function of data packet processing and traffic management, would not be categorised as an 'apparatus or machine' but it could only be a part of the apparatus, namely cloud engine switches. Thus prima facie, the imported goods would get covered under the scope of sub-heading 851770.

12. In order to further examine the classification in terms of HS explanatory notes of the WCO, which describe in detail the scope and coverage of the goods under the Customs classification, the extract of HS classification in respect of heading 8517 is given below:

"Harmonized Commodity

Description and Coding System

Explanatory Notes

*"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 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, radio-telegraphy, local and wide area networks."*

The Explanatory Notes to HSN describe the goods that are being covered by the second and third single dash entry for 85.17 i.e., 8517 60 and 8517 70 as follows:

*(II) 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)*

*(A) Base stations.*

*The most common types of base stations are those for cellular networks, which receive and transmit radio waves to and from cellular telephones or to other wired or wireless networks. Each base station covers a geographical area (a cell). If the user moves from one cell to another while telephoning, the call is automatically transferred from one cell to another without interruption.*

*(B) Entry-phone systems.*

*The systems usually consist of a telephone handset and keypad or a loudspeaker, a microphone and keys. These systems are usually mounted at the entrance of buildings housing a number of tenants. With these systems, visitors can call certain tenants, by pressing the appropriate keys and talk to them.*

*(C) Videophones.*

*Videophones for buildings, which are a combination consisting principally of a telephone set for line telephony, a television camera and a television receiver (transmission by line).*

*(D) Apparatus for telegraphic communication other than facsimile machines of heading 84.43.*

*These apparatus are essentially designed for converting characters, graphics, images or other data into appropriate electrical impulses, for transmitting those impulses, and at the receiving end, receiving these impulses and converting them either into conventional symbols or indications representing the characters, graphics, images or other data or into the characters, graphics, images or other data themselves.*

*Examples are....*

*(E) Telephonic or Telegraphic Switching Apparatus. ....*

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

*(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 dialled signals to tone signals."*

*(III) 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."*

In this regard, we find that the Show Cause Notice dated 13.12.2019 alleges at para 4 and 6, that by application of Para II(G) of HSN Explanatory Notes to the heading 8517 covering "other communication apparatus", and as in the present case, the impugned goods 'interface card' refers to Ethernet interface cards which is specifically covered under the category of 'other communication apparatus', and therefore the imported goods are rightly classifiable under CTH 85176290. However, we find that the original authority though quoted such allegation in para 4 of the order, did not give any specific finding or conclusion on this aspect for arriving at the conclusion for classification of goods under CTH 85176290. Similarly, learned Commissioner (Appeals) had also not discussed these aspects for upholding the original order. From the reading of the above HSN Explanatory notes, it is clear that products covered under II(G) category are the 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 and such networks include carrier-current line systems, digital-line systems and combinations thereof. In the present case, the imported goods are 'interface cards' for use in cloud engine switches providing the function of data packet processing and traffic management. From the function performed by the 'interface cards', it can be concluded that it cannot form by itself into a networking system. Thus, it cannot be brought under the scope of 'other communication apparatus'. Further, on the aspect of specific mention of 'network interface cards' i.e., 'ethernet interface cards' these have been distinguished with the imported product 'interface cards' and it has been explained by the appellants through a technical opinion that it works as intermediate component in the network, and it will not initiate or terminate data communication; whereas, 'network interface cards' is an interface connecting the computer to transmission medium through LAN connection through RJ45 port, and works as terminal component in the network and all network data will be initiated or terminated by it. There is no detailed discussion either in the original order or in the impugned appellate order on this aspect and it simply declined to

examine this aspect on the basis that the technical opinion was given by electrical engineers. Hence, we find that the conclusion arrived in the original order and the impugned appellate order on the classification of imported goods under CTH 85176290 is not legally sustainable.

13.1 We further find that the learned Commissioner in the impugned order for classification of the imported goods under CTH 85176290 had relied upon the exemption entry in serial No.20 of the notification No.57/2017-Customs dated 30.06.2017 as amended by notification No.75/2018-Customs dated 11.10.2018 and notification No.02/2019-Customs dated 29.01.2019, and concluded that such entry covers in its ambit the 'interface cards' being a part of or belonging to the category of OTN (Optical Transport Network). In order to examine the legality of the above conclusion, we find it is necessary to examine the exemption entries in the said notification. The relevant entry in the above notification which cover Optical Transport Network (OTN) products are extracted below:

*"[TO BE PUBLISHED IN THE GAZETTE OF INDIA,  
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]*

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

*Notification No. 75/2018 -Customs*

*New Delhi, the 11<sup>th</sup> October, 2018*

*G.S.R. (E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act,1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 57/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R. 798 (E), dated the 30th June, 2017, namely:-*

*In the said notification, in the Table, for serial number 20 and the entries relating thereto, the following serial number and entries shall be substituted, namely: -*

<b>S. No.</b>	<b>Chapter or Heading or Sub-heading or tariff item</b>	<b>Description of goods</b>	<b>Standard Rate</b>	<b>Condition No.</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
20	8517 62 90	All goods other than following goods, namely: - (a) Wrist wearable devices (commonly known as smart watches) (b) Optical transport equipment (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS) (d) Optical Transport Network (OTN) products (e) IP Radios	10%	-

<b>S. No.</b>	<b>Chapter or Heading or Sub-heading or tariff item</b>	<b>Description of goods</b>	<b>Standard Rate</b>	<b>Condition No.</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
21	8517 69 90	All goods other than following goods, namely: - (a) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers (b) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products (c) Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products	10%	-

2. This notification shall be effective from the 12th October, 2018."

Subsequently, vide amending notification No.02/2019-Customs dated 29.01.2019, the exemption entries 20 and 21 were merged by a single entry, without any change in the scope of goods covered under the exemption, as follows:

"V. for serial number 20 and the entries relating thereto, the following serial number and entry shall be substituted, namely

<b>S. No.</b>	<b>Chapter or Heading or Sub-heading or tariff item</b>	<b>Description of goods</b>	<b>Standard Rate</b>	<b>Condition No.</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
20	8517 62 90 or 8517 69 90	All goods other than following goods, namely: - (a) Wrist wearable devices (commonly known as smart watches) (b) Optical transport equipment (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS) (d) Optical Transport Network (OTN) products (e) IP Radios (f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers (g) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products (h) Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products	10%	-"

13.2 On careful perusal of the above exemption entries, we are of the view that it could be concluded that the government had provided concessional

rate of basic customs duty of 10% on all products covered under the scope of tariff item 8517 6290 or 8517 6990, except for eight specified products specified therein. These include Optical Transport Network (OTN) products under entry 20(d). The said exemption notification does not *per se* provide for any aid for classification of goods. Hence, we are not in agreement with the conclusion arrived at by the learned Commissioner (Appeals) in the impugned order for excluding the classification of the imported goods under CTH 8517 7010 and for deciding the classification under CTH 8517 6290 on the basis of entries under exemption notification.

14. In this regard, we find that it is a settled law that while statutory notifications may be looked at for the purpose of ascertaining the scope of goods covered under the exemption notification, they cannot be used to determine the classification of goods. Our above views is supported by the decision of the Tribunal in the case of *Collector of C. Ex. Vs. Roha Dye Chem Pvt. Ltd.*, reported in 1989 (41) E.L.T. 667 (Tribunal) and which is also upheld by the Hon'ble Supreme Court in Civil Appeal No. 2927 of 1989 with C.A. No. 4992 of 1995, holding that no interference is called for in the judgement of the Customs, Excise and Gold (Control) Appellate Tribunal under appeal by the Revenue, by dismissing the appeal filed by the Revenue. The relevant portion of the above cited order of the Tribunal in the case of *Roha Dye Chem Pvt. Ltd.* (supra), is extracted below:

*"14.... It is settled law that while statutory notification may be looked at for the purpose of ascertaining the scope of entries in tariff schedules, they cannot be used to determine or settle disputed classification of goods for which the relevant headings and section notes and chapter notes read with relevant judgments, if any, are the guides."*

15.1 Learned Authorised Representative for Revenue had submitted that reliance placed by the appellants on the judgement of the Tribunal in the case of *Commissioner of Customs, Mumbai (Air Cargo Import) Vs. Reliance Jio Infocomm Ltd.* – (2023) 3 Centax 96 (Tri.-Bom) cannot be taken as a basis since the Hon'ble Supreme Court had dismissed the appeal filed by Revenue on the submissions of Revenue that in similar matter as mentioned in the order has not been challenged. He further, stated that in respect of another case of *Reliance Jio Infocomm Ltd.* – 2019 (369) E.L.T. 1713 (Tri.-Mumbai) against the order of the Tribunal for which Revenue has filed an appeal, the matter is pending in the Apex Court in Civil Appeal Diary No.14979/2020. Hence, he claimed that the case law cited by the appellants

should not be taken into consideration for deciding classification of the imported goods.

On careful examination of the above, we find that the Co-ordinate Bench in the case of Commissioner of Customs (Import), Mumbai Vs. Reliance Jio Infocom Ltd., reported in 2019 (369) E.L.T. 1713 (Tri.-Mumbai) had dealt with the product 'antenna' used with Base Transmission Station (BTS) for mobile telecommunication network, in which the matter is shown as pending in the Apex Court; whereas, in the case in hand, we are dealing with 'interface cards', whose features are entirely different than the products dealt with by the Co-ordinate Bench. Hence, the ratio of the judgement of Co-ordinate Bench does not apply to the facts of this case. Thus, we are unable to accede to the argument placed by learned AR in this regard.

15.2. Furthermore, the decision of the Tribunal in the case of Commissioner of Customs, Mumbai (Air Cargo Import) Vs. Reliance Jio Infocomm Ltd. (supra), deals with classification of 'cards i.e., Populated Printed Circuit Boards (PCBs)' incorporated in photonic service switch. Thus, the imported goods in the present case 'interface cards' being functionally similar, the decision of the Co-ordinate Bench of the Tribunal, which has been upheld by the Hon'ble Supreme Court in Civil Appeal No.000586-000598/2023 arising out of Diary No.31965/2022, by holding that they do not think it is appropriate to interfere in the impugned order, is relevant to the present case. The relevant paragraphs of the above order of the Tribunal are extracted below:

*"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.*

XX            XX            XX            XX

*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.*

*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."*

The above said order of the Tribunal was also upheld by the Hon'ble Supreme Court, by dismissing the appeal filed by the Revenue. The extract of the said order is given below:

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No(s). \_\_\_\_\_ OF 2023  
(Arising out of Diary No(s). 31965/2022)**

**COMMISSIONER OF CUSTOMS (IMPORT)**

**Petitioner(s)**

**VERSUS**

**M/S RELIANCE JIO INFOCOMM LTD.**

**Respondent(s)**

**O R D E R**

**Mr. Balbir Singh, learned Additional Solicitor General, after getting instructions, fairly submits that the revenue has not indeed challenged the order(s) in the similar matters as mentioned in the Order(s) impugned.**

**Therefore, we do not think it is appropriate to interfere in the impugned order(s).**

**Consequently, the Appeals are dismissed.**

**Pending applications, if any, are disposed of.**

.....J.  
[K. M. JOSEPH]

.....J.  
[B. V. NAGARATHNA]



**New Delhi  
30th January, 2023**

16. In view of the above detailed discussions and the conclusions arrived at paragraphs 11 to 14, and on the basis of the decision of the Tribunal which was upheld by the Hon'ble Supreme Court as discussed in paragraph 15.2, we are of the considered view that the impugned order is not sustainable. Accordingly, we set aside the impugned order passed by the Commissioner of Customs (Appeals), Mumbai-III and allow the appeal in favour of the appellants.

(Order pronounced in open court on 05.10.2023)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**

Sinha