CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Miscellaneous Application No. 85971 of 2022
(on behalf of Appellant)

In

Customs Appeal No. 86992 of 2021

(Arising out of Order-in-Original No. 77/MMT(77)ADG(ADJN.)/DRI/ MUMBAI/2020-21 dated 26.02.2021 passed by the Additional Director General (Adjn.), DRI, Mumbai)

M/s Ciena Communications India Pvt. Ltd. **.... Appellant**
5th & 6th Floor, Plot No. 13 JSK Towers,
Echelon Institutional Area, Sector 32, Gurgaon,
Haryana – 122 001.

Versus

Principal Commissioner of Customs (Import), **.... Respondent**
Air Cargo Complex, Sahar,
Andheri (East), Mumbai – 400 001

Appearance:

Shri Harish Bindumadhavan, Advocate for the Appellant

Shri D.S. Mann, Authorized 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/87252/2023

Date of Hearing: 18.08.2023

Date of Decision: 18.12.2023

Per: M.M. Parthiban

1.1 Brief facts of the case are that M/s Ciena Communications India Private Limited, Gurgaon, Haryana (herein after, referred to in short as 'the appellants") is in the business of providing after sales support services of telecommunication networking equipment supplied by M/s Ciena Communications International LLC (Ciena US) to various telecommunication service providers situated in India. The appellants were also providing marketing support services to Ciena US. In order to perform such services, the appellants have imported various goods viz., line module, pluggable, controller card, pluggable, switch module, switch and control timing module, line amplifier module, wave length selectable switches module, transponder/ mux ponder, multiplexer, demultiplexer, splitter coupler, dispersion compensation module, optical time domain reflectometer module, client module etc. for providing support services in respect of telecommunication networking equipment by categorizing the same as transmission or reception apparatus/ communication apparatus. The appellants have classified the impugned goods under Customs Tariff Item (CTI) 8517 7090 as 'Parts' and under CTI 8517 6290 as 'apparatus' claiming 'NIL' rate of Basic Customs Duty (BCD).

1.2 On the basis of an intelligence developed by Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI MZU) having reasons to believe that the appellants have wrongly classified the impugned goods under import for avoiding payment of appropriate duty applicable at the rate of 10% BCD, and by claiming ineligible exemption for availing 'NIL' BCD in terms of Notification No.11/2014-Customs dated 11.07.2014, initiated investigation on their imports. Upon conclusion of detailed investigation by DRI MZU, the department had initiated show cause cum demand (SCN) proceedings by issue of SCN dated 12.07.2019.

1.3 In the summary of investigation it is indicated that the appellants have self-assessed the imported goods in terms of legal provisions of Section 17 of the Customs Act, 1962. The appellants have wrongly declared the classification intentionally. Under the self-assessment procedure, it is obligatory on the part of appellants importer to correctly declare all the particulars such as description of the goods, CTI and notifications for the claim of applicable rates of duties. While claiming any classification or exemption, it is obligatory on the part of importer to check applicability of classification/ exemption claimed by them in respect of the imported goods.

1.4 The investigation concluded that the appellants have mis-declared the nature of the goods as 'parts' and they had fraudulently evaded payment of BCD by wrongly classifying the imported goods under CTI 85177090, whereas such goods are appropriately classifiable as 'machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus' under CTI 85176290. Further, the investigation also concluded that in cases where the goods have been rightly classified, the appellants had wilfully claimed the ineligible BCD exemption through exemption entry in the notification No.11/2014-Customs dated 11.07.2014. Thus, DRI MZU investigation concluded that the manner adopted by appellants for suppressing the nature of the goods and mis-declaring the description of the goods are for the sole purpose of evading BCD is of their *mens rea*. These goods have been categorized by DRI MZU in Annexure-II & IV of SCN and differential duty was demanded in the SCN dated 12.07.2019.

1.5 Investigation further concluded that majority of the goods imported by appellants are pertaining to optical transport equipments, Packet Optical Transport Product or Switch (POTP or POTS), Optical Transport Network (OTN) products and Carrier Ethernet Switch, which are classifiable under 85176290 and are not eligible for the benefit of BCD exemption under notification No. 24/2005- Customs dated 01.03.2005 as amended, since the afore mentioned categories of goods have been excluded from the ambit of the above notification under notification No. 11/2014–Customs dated 11.07.2014. However, the appellants have by wilful mis-statement have wrongly availed themselves of the benefit of exemption notification No. 24/2005–Customs dated 01.03.2005 as amended. The list of such items on which the exemption was not available has been categorized by DRI MZU in Annexure-I & III of SCN and differential duty was demanded in the SCN dated 12.07.2019. The said SCN was adjudicated by the learned Additional Director General vide Order-in-Original No.77/MMT(77)ADG(ADJ.)/DRI, MUMBAI/ 2020-21 dated 26.02.2021 (herein after, called in short as 'impugned order') as the common adjudicating authority appointed by CBIC in terms of Notification No.37/2019-Customs (N.T.) dated 26.08.2019 issued under Section 4, Section 5(1) ibid, confirming the adjudged demands proposed in the SCN dated 12.07.2019. Feeling aggrieved with the impugned order, the appellants have preferred this appeals before the Tribunal.

2.1 Learned Advocate appearing for the appellants importer reiterated the points set out in detail in the Appeal Memorandum and the Written Submissions dated 23.01.2023, and further submitted additional Written Submissions, in maintaining brevity and to avoid prolixity, stated that the goods under dispute are to be classified as 'parts' under CTH 851770, as they are parts/components of the main equipment; and not as other 'Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus' under CTI 8517 6290, as the impugned goods cannot be categorized as 'machines' or 'switching and routing apparatus'. He further stated in brief about the goods under import along with its description and its detailed description and its function as given below:

S. No.	Product description	Detailed description and its function
1.	Line Module	Printed Circuit Board (PCB)
2.	Pluggable	Removable parts which are inserted in ports of the Line Module above and connect the optic fiber and line modules.
3.	Controller Card	Controls the overall functionality of the networking equipment by controlling the power distribution unit and fan speed based on temperature of the data collected at various line modules.
4.	Switch Module	Establishes the interconnection between the signal and line module
5.	Switch & Control time module	A combination of switch module and controller card.
6.	Line amplified module	Amplifies the signal passing through the optic fibre to enable it to travel longer distances.
7.	Transponder/ Mux ponder	In a telecommunication context, a transponder is a satellite repeater, which accepts the weak incoming signals from the Earth stations, boosts them, shifts them from the uplink to the downlink frequency, and retransmits them to the Earth station in what is known as a bent pipe network configuration.
8.	Multiplexer/ demultiplexer	Combines and splits the optical signals of different wavelengths.
9.	Splitter/Coupler	A passive device used to split the optical power and transmit to two adjacent optical fibres.
10.	Dispersion Compensation Module ('DCM')	Used to compensate the dispersion that occurs when the signal travels long distances.
11.	Optical time domain reflectometer ('OTDR') Module	Identifies the distance at which the fibre break/cut has occurred, helps detect breakage in the system.
12.	Client Module	Collects traffic from different using appropriate pluggable, works in co-ordination with controller card and switch module.

2.2 In explaining about the basis for classification of goods as apparatus, he relied upon the judgement of the Division Bench Hon'ble Supreme Court of India in the case of *Commissioner of Customs, New Delhi Vs. C-Net Communications (India) Pvt. Ltd.* reported in [(2007) 12 SCC 72], to state that the Hon'ble Supreme Court, had applied the Common Parlance Test, in classification of the product 'Decoder' in that case. The Hon'ble Court had referred to the definition of the word "apparatus" in *Stroud's Judicial Dictionary* which defines the term "apparatus" as inclusive of the distribution board of an electrical installation; decoder must be considered as an apparatus, when current is passing through and not when it is in its inanimate state. Further he stated that the term "apparatus" has been interpreted as something which is inclusive of some other appliance. Taking into consideration these definitions, the Hon'ble Supreme Court had interpreted "apparatus" as "the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use." Accordingly, he submitted that the goods imported by the appellants do not fall under the above definition of "apparatus" as defined by the Hon'ble Supreme Court.

2.3 Further, learned Advocate also submitted that all the goods imported by the Appellants categorically, without exception, fit in to the criteria adopted by the Hon'ble Supreme Court. All the goods in the instant case are parts that are (1) necessary and integral component of, and (2) essential to the operation of the following Ciena US equipment viz., (i) Ciena 5410 digital cross connect; (ii) Ciena 6500 reconfigurable optical add drop multiplexer (ROADM); and (iii) Ciena 6500 optical line amplifier (OLA). He stated that each product in question performs a specific and vital role as part of the above-mentioned equipment, without which the equipment would not be able to attain the particular capacity required to perform its destined function. Furthermore, the goods imported by the Appellant are functional only when installed in to the above-mentioned equipment. By common usage and practice the goods in question are used as 'parts' of the switching and routing apparatus in an optic fibre network. Thus he concluded that the goods in the instant case are necessary and integral components for the equipment and are correctly classifiable only as "parts" under CTH 8517 70, not as other

'Machines for the reception, conversion and transmission or regeneration of voice, mages or other day, including switching and routing apparatus' under CTI 8517 6290.

2.4 He also relied upon the decisions of the Tribunal in the following cases, which were upheld by the Hon'ble Supreme Court, in support of their stand and to state that classification of goods in terms of such judicial decisions shall be 'parts':

(i) *Commissioner of Customs, Bangalore Vs. Modicom Network Private Limited* – 2005 (185) E.L.T. 333 (Tri.- Bangalore) affirmed by the Hon'ble Supreme Court in 2015 (320) E.L.T. 21 (SC)
(ii) *Commissioner of Customs-Mumbai (Air Cargo Import) and Commissioner of Customs, Mumbai (ACC) Vs. Reliance Jio Infocomm Limited* – 2022 (6) TMI 3310513 (CESTAT Mumbai) affirmed by the Hon'ble Supreme Court in C.A. No. 000586-000598 vide judgement dated 30.01.2023.

3.1. Learned Authroised Representative appearing for the Revenue reiterated the findings recorded by the learned ADG (Adjudication) in the impugned order and stated that imported goods are rightly classifiable under CTH 8517 6290, as against appellants' claim under CTH 851770. To support the claim of Revenue with regard to classification of product, he has relied upon the Notification No. 11/2014-Cus. dated 11.07.2014 issued by the Central Government, excluding the impugned goods from the scope of BCD exemption in the above notification. Countering the arguments placed by the learned Advocate for the appellants that the case is squarely covered in their favour, in terms of the order passed by the Co-ordinate Bench in the case of Commissioner of Customs (Import), Mumbai Vs. M/s Reliance Jio Infocom Ltd. reported in 2019 I369) E.L.T. 1713 (Tri.-Mumbai), the learned AR submitted that the said decision of the Co-ordinate Bench deciding on the issue of classification of 'antenna' for base station is classifiable under CTI 8517 7090 as 'parts', is still pending in C.A. Diary No. 14979/2020, and hence the same cannot be taken as binding decision.

3.2 Learned AR further submitted that recommendations of TRAI and WCO decision about classification of parts as discussed in the impugned order should be taken into account.

3.3 Furthermore, he submitted that as the expert IIT Professor's report cannot be taken as a basis, inasmuch as the procedure prescribed for drawing samples for testing as per Section 144 and Section 18 of the Customs Act, 1962 has not been followed in this case. However, he also stated that for 4 products as per such report, the products can be considered as equipment only.

4. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper book by learned Advocate for the appellants as well as Authorised Representative for the Revenue, and the arguments advanced during the hearings of this case.

5. The issue involved in the present appeal relates to classification of goods imported by the appellants for providing support services in respect of telecommunication networking equipment. In respect of the of disputed goods pertaining to clearances made during the period i.e., from July, 2014 to July, 2018, the appellants had imported the same for different types of networking equipment like 'Ciena 5430', 'Ciena 5400', 'Ciena 6500' etc. The details of individual description of thirteen products and its functions are contained in the discussion at para 5.3 & 5.3.1 of the impugned order and the paragraph 31 of the appeal papers filed by the appellant. By treating the impugned goods either as 'parts' classifiable under CTH 8517 70 or as 'apparatus' under CTI 8517 6290, the appellants importer had claimed exemption from payment of BCD vide entry No. 13 of Notification No. 11/2014–Customs dated 11.07.2014. Thus, the issue for consideration in the present appeal is firstly the classification of impugned goods and next, whether the impugned goods are eligible for claim of notification benefit.

5. Brief issue for consideration before us is the classification of imported goods by the appellants as to whether, the same merits classification as 'parts' under CTH 8517 70 as claimed by the appellants; or, is it classifiable as 'apparatus' under CTI 8517 6290 as contended by the Department, and then deciding whether such goods are eligible for exemption under the Notification No. 11/2014–Customs dated 11.07.2014 for deciding on the appropriate levy of customs duty, in respect of imported goods cleared during the disputed period.

6. In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

*"**Section 12. Dutiable goods.** -*

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

*"**Section 1. Short title, extent and commencement.** -*

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

***Section 2. Duties specified in the Schedules to be levied.** -*

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

xxx xxx xxx xxx

THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the *complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES (GEN) TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

7. From the plain reading of the above legal provisions, it transpires that 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). 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.

8. In context with the case in hand, we note that the following are some of the important rules to be followed in the scheme of determining correct classification of imported goods:

(i) classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes; (GIR 1)

(ii) reference to an article, shall also include such article in the incomplete or unfinished state, subject to the condition that article, as presented, has the essential character of the complete or finished article. Further, reference in a heading to a material or substance shall be taken to include mixtures or combinations of that material or substance with other materials or substances, and to goods consisting wholly or partly of such material or substance; (GIR 2)

(iii)if the goods are found to be classifiable under two or more headings, then the classification shall be effected as per the rules provided under 3(a), 3(b) and 3(c) [GIR 3]

(iv) Goods which cannot be classified in accordance with the aforesaid rules, then the same shall be classified under the heading appropriate to the goods to which they are more akin. (GIR 4)

(v) For legal purposes, the classification of goods in the sub-headings shall be determined according to the terms of those sub-headings and any related sub-heading Notes (GIR 6)

(vi) When the description of the goods under a heading is preceded by 'single dash' i.e., "-", the said goods shall be taken to be a sub-classification of the article or group of articles covered by the said heading. (GEN1)

(vii) Where, however, the description of goods is preceded by "--", the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has "-" single dash. (GEN1)

(viii) Where the description of goods is preceded by "---" or "----", the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has "-" or "--". (GEN1)

9. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 8517 6290 as 'apparatus' or as 'parts' classifiable under CTH 8517 70 of the First Schedule to the Customs Tariff Act, 1975. 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:	u	Free	-
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	Free	-
8517 12 90	--- Other	u	Free	-
8517 18	-Other :			-
8517 18 10	--- Push button type	u	Free	-
8517 18 90	--- Other	u	Free	-
	- 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	Free	-
8517 62	--Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus :	u		
8517 62 10	--- PLCC equipment	u	Free	-
8517 62 20	--- Voice frequency telegraphy	u	Free	-

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
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 62 90	**---Other. . . . .**	u	10%	-
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 :			
8517 70 10	--Populated, loaded or stuffed printed circuit boards.	[u]	Free	-
8517 70 90	**--Other. . . . .**	kg	Free	-

10. It could be seen that by applying the GIR 1 - rule at (i) above, the position is made clear that Heading 8517 by description covers within its scope and ambit, mainly of two broad categories of goods for ascertaining proper classification:

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

(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.

11. Hence, in simple words, it can be put that the distinction between these two categories of goods is that the first one is 'telephone sets' and second one is 'other apparatus'. In the present case, the imported goods are not 'telephone sets' hence the classification under first category of goods as explained above under (i) of para 10 is not relevant. It is the second category of goods as explained under (ii) of para 10 that are relevant for discussion here.

12. The impugned goods on which the issue of classification is under dispute are covered under 13 different description as follows and the key functionality has been briefly described as follows:

Table - explaining the Product features of the impugned goods

S. No.	Product	Gist of detailed description and function
1	Line module	Line module is essentially populated printed circuit board (PCB) fitted on to the chassis of the Ciena 5400/Ciena 6500 digital cross connect. It processes various types of electrical signals received through fixed port or removal pluggable in coordination with controller card, and make them ready to be handed over to Switch Module for further processing.
2	Pluggable	It is a small removable part which can be inserted in ports of line module. They receive different types of optical signals through optical fibre cables connected at one end of Pluggable. Converts the desired optical signals into electrical signals that are further processed by the line module.
3	Controller Card	It contains a processor that controls timing functions and acts as a high–speed computational engine for performing switch configurations. It controls the overall functionality of the entire networking equipment.
4	Switch Module	It is the central part of the switching system and installed between two line modules in the chassis. Each switch module has paths to all line modules. Switch module directs the signals from one line module to other line module.
5	Switch and Control timing module	It has the combined functionality of both switch module and controller card i.e., to monitor the other line modules and switch signals to other line modules.
6	Line Amplifier module	These are modules which are interconnected through fibers to constitute an interconnected system to amplify the signals in multiple directions.
7	Wave Length Selectable	The function of switches is to simply transmit the optical signals into different directions. The

S. No.	Product	Gist of detailed description and function
	Switches(WSS) module	acts like a mirror that take the light and transmits it to a desired direction. WSS can dynamically route, block and attenuate all the DWDM wavelength within the network node.
8	Transponder/ Mux ponder module	It collects signals from different client port using pluggable and maps into Dense Wavelength Division Multiplexing wavelength which needs to be transported over DWDM network. It is the medium through which the incoming signal is converted from an optical signal to an electrical signal and then into the final output optical signal.
9	Splitter Coupler	It is a passive device, which is used to separate the optical power and transmit to two adjacent fibers. In the reverse direction, it connects the optical power from two fibers, combines the same and transmit to a single port.
10	Dispersion Compensation module (DCM)	It is placed between two line amplifier module at generally every 80 km to compensate the chromatic dispersion i.e. spreading of wavelengths introduced by the fiber. It is used in fiber optical high bit rate long haul transmission system.
11	Optical Time Domain Reflectometer (OTDR)module	It identifies the distance at which fiber cut has taken place.
12	Multiplexer, Demultiplexer - Mux/Demux	It is a passive device for multiplexing and de-multiplexing optical wavelengths into a single fiber pair that i.e. combining and splitting of multiple optical wavelengths
13	Client module	It is used to connect different equipment such as routers, switches and digital cross connects using appropriate pluggable.

13. In comparison of the description of the product and its functions as above, with the different category of goods listed out in the sub-heading level or the tariff item level under CTH 8517, do not provide a direct one-to-one match for classifying under any specific entry relevant to a customs tariff item.

14. Therefore, in order to decide further within the Chapter Heading 8517, whether the imported goods fall under the first category as 'apparatus' or under the second 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, provide for the list of goods that do not get covered under the said Chapters. Besides, Section Note 2 providing for classification

of 'parts' of machines or articles are also relevant here. 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."

16. The above Section Notes specify that the principal function of the machine or apparatus would be the guiding factor for determination of the appropriate classification of the goods. Though certain machines or apparatus have been listed out in the First Schedule of the Customs Tariff by specific description in CTH 8517, at sub-heading level from 851762 to 851769, the aforesaid 13 different products in the above Table, do not get covered by any specific description. Further, the coverage of the products as 'parts' are separately provided under CTH 851770.

17. 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 first single dash entry for 85.17 i.e., 8517 10 as follows:

(I) TELEPHONE SETS, INCLUDING TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS

This group includes:

(A) Line telephone sets.

Line telephone sets are communication apparatus that convert voice into signals for transmission to another device. Upon receipt of a signal, a line telephone set will convert the signal back to voice. They consist of:

(1) The transmitter,………….

(2) The receiver, ………..

(3) The anti-side tone circuit, ……….

(4) The ringer, ……….

(5) The switching device or "switch hook",………

(6) The dialing selector, …………

(B) Telephones for cellular networks or for other wireless networks.

This group covers telephones for use on any wireless network. Such telephones receive and emit radio waves which are received and retransmitted, e.g., by base stations or satellites.

These include, inter alia:
(1) Cellular phones or mobile phones.
(2) Satellite phones.

The Explanatory Notes to HSN describe what would be covered by the second single dash entry for 8517 60 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 dialed signals to tone signals."

The third single dash entry at 8517 70 covers only 'parts' and this has been described in HSN as follows:

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."

18. We have examined each of the 'single dash' entry and the goods covered thereunder as shown above. The scope of coverage of

goods under the three different single dash entries of Chapter Heading 8517 is as follows:

(I) First one at 8517 10 is 'Telephone sets, including telephones for cellular networks or for other wireless networks';

(II) Second one at 8517 60 is for 'Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or a wireless network (such as a local or wide area network)'; and

(III) Third one at 8517 90 is for 'Parts'.

19. It is obvious that as the impugned goods in this case relates to reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing function, for providing services of telecommunication networking equipment, the classification is feasible either under the 'second single dash' entries or classification under 'third single dash' entry as 'parts'. The classification under 'first single dash' entry is not relevant for the impugned goods, as these are for telephony.

20. The description of goods covered under Sub-Heading 8517 60 (second double dash) are *Base stations or other machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.* The impugned goods do not get covered under the group of 'Base stations' and thus needs to be examined for coverage under the next group of 'other machines' of sub-heading 851762 or under 'others'. The various goods specified under specific CTI of the First Schedule under 85176210 to 85176270 being PLCC equipment, Voice frequency telegraphy, Modems (modulators-demodulators), High bit rate digital subscriber line system (HDSL), Digital loop carrier system (DLC). Synchronous digital hierarchy system (SDH), Multiplexers, statistical multiplexers, these are not specifically cover any of the 13 specified products which are the impugned goods in this case. We also note that the item at Sl. No. 12 is Multiplexer, Demultiplexer - Mux/Demux by its functional input is a passive device for multiplexing and de-multiplexing optical wavelengths into a single fiber pair i.e., combining and splitting of multiple optical wavelengths, and thus these are different from the one mentioned

under 8517 6270. Similarly, the goods specified under CTI 8517 6910 to 85176970 covering ISDN System, ISDN terminal adaptor, Routers, X25 Pads, Subscriber end equipment, Set top boxes for gaining access to internet, Attachments for telephones also does not cover the impugned 13 specified products given in the above table. Thus, the only feasible alternate classification is under 8517 6290 as 'other machines' not covered under any of the CTI under 8517 6210 to 8517 6290 and under 8517 6910 to 8517 6990; or under the third single dash entry 8517 70 as 'parts'.

21. From perusal of the detailed coverage of the goods under the scope of the above entries in the second single dash entry, it would become clear that impugned goods does not match the specific description of any of the apparatus mentioned in the '--' entry of the second group at (II) above, namely 'Base stations' and various '---' entries, such as 'PLCC equipment, voice frequency telegraphy, Modems, High bit rate digital subscriber line system, Digital loop carrier system, Synchronous digital hierarchy system and Multiplexers' which are also explained in detail under paragraphs (A) to (G) of HS Explanatory Notes. Even if, one would like to attempt to bring impugned goods under second group of '-' items, treating it as an 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 a network, then the only entry that could be feasible is 'other'.

22. However, in terms of harmonious reading of GIR 1 and GIR 3, classification of goods shall be decided in terms of the headings and further in a situation where for any reason goods are, *prima facie*, classifiable under two or more headings, classification shall be preferred under the heading which provides the most specific description to the heading providing a more general description. Further, as per Section Note 5 to Section XVI, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85. The description of the impugned goods as listed in the Table and its functions at paragraph 12 above, does not indicate that they function independently as a machine or apparatus, inasmuch as they are to be fitted in the chassis of various models of Ciena networking

equipment. Thus, it is not feasible to classify the impugned goods under the heading 8517 6290 as 'other machines' for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus. Further, in terms of Section Note 2(b) to Section XVI, parts which are equally suitable for mic principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517 only. Hence, in our considered view, the appropriate classification of the imported goods at Serial No.1 of Table at paragraph 12, would be under Customs Tariff Item 8517 70 10 covering 'Populated, loaded or stuffed printed circuit boards' and for other impugned goods at Serial No. 2 to 13 of Table at paragraph 12, under Customs Tariff Item 8517 70 90 of the First Schedule to the Customs Tariff Act, 1985.

23. We also find that our such view has also been considered favourably by the Co-ordinate Bench of the Tribunal in the case *Reliance Jio Infocomm Ltd. (Supra)* where the issue of classification of goods of similar nature such as Optical Transponder, Optical Amplifier, Mux Ponder, Multiplexers etc., being parts of Ciena 5430 model Packet Optical Switch Platform was decided by holding that the goods are appropriately classifiable as 'Parts' under CTH 85177010. The relevant paragraph in the above order is extracted as 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. 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.*
>
> *xx xx xx xx xx*
>
> *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*

C/88479,88483,88485,88487,88492/2018 C/87032 to 87039/2019 20 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."

24. The aforesaid order was appealed by the department before the Hon'ble Supreme Court (Civil Appeal No. 000586 - 000598 of 2023), and the same were dismissed. The relevant paragraphs in the said judgement are extracted 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."

We also note that when the Hon'ble Supreme Court decided the issue of classification of similar goods in a particular manner, it is not feasible to decide the same issue in a different manner.

25. Learned AR for Revenue has relied upon the TRAI's recommendations on what could be considered as components/parts in paragraph 5.3.9 of the impugned order, expert opinion report of IIT Professor selectively for four products, decision of Harmonized Systems' Committee of WCO (HSC) in November, 2011 for certain goods such as digital encoder, digital multiplexer, re-multiplexer, different type of modulators and wireless headsets for classification under CTH 851762 as discussed in paragraph 5.10.3 of the impugned order, to state that the impugned goods shall be treated as 'apparatus' in support of the decision in the impugned order. In this regard, we find that the recommendations of TRAI unless these are transformed into specific directions notified by the Ministry of Finance in the context of classification and exemption from duty, the same would not directly apply to the impugned goods in this case. Similarly, the decision of HSC as mentioned above, though provide assistance in classification of goods, unless the same are implemented by way of instructions or tariff classification circulars which are issued under Section 151A of the Customs Act, 1962 for bringing in uniformity 'in the classification of goods or with respect to the levy of duty thereon', the same cannot be applied on the impugned goods. Further, it would not be relevant to follow such recommendations of TRAI or decisions of HSC, inasmuch as the goods covered under the present case, as listed in Table at paragraph 12 above, are neither demonstrated nor explained to be same, as held in the proceedings of TRAI or HSC, by the learned adjudicating authority in the impugned order. Further, the learned AR himself submitted that the expert opinion of the IIT professor cannot be taken into record as the samples has not been drawn in terms of the legal provisions and procedure prescribed under Section 144 and Section 18 ibid. Thus the same cannot be taken as a proper basis for either rejecting the classification claimed by the appellant importer or for accepting the same in favour of Revenue, in select four products.

We also note the pointed made by the learned AR that the decision of the Tribunal in the case of 'antenna' as parts in Reliance Jio Infocomm Ltd. is pending before the Apex Court in C.A. Diary No. 14979/2020. However, we find that since the products under the present dispute are different from "antenna" forming part of Basic Transmission Station dealt in that pending case, and that the factual matrix of both cases are different, we are unable to agree with the argument made by AR that the decision of Hon'ble Supreme Court in a similar case of Reliance Jio Infocomm Ltd. in C.A. No. 38695/2022 should not be followed. Accordingly, we find that these arguments do not have any force, in determining the classification of the goods, in the present case.

26. Having decided the issue of classification, now we would like to peruse the scope of exemption contained in the relevant entry in the notification No.

No.11/2014-Customs dated 11.07.2014. We find that the said notification is an amending notification to the firstly issued Notification No.24/2005-Customs dated 01.03.2005 which was subsequently amended vide Notification No.132/2006-Customs dated 30.12.2006. The relevant extracts of the above said notifications are given below:

"Notification New Delhi, *dated the 1st March, 2005*
No. 24 /2005-Customs *10 Phalguna, 1926 (Saka)*

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, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

TABLE

S. No.	*Goods falling under Heading, Sub-heading or Tariff item*
(1)	*(2)*
1.	*3818 00*
2.	*8456 91 00, 8469 11 00, 8470, 8471, 8473 21 00, 8473 29 00, 8473 30, 8473 50 00*
3.	
3.	*8517, 8520 20 00, 8523 (other than those falling under tariff item 8523 30 00), 8524 31 19, 8524 31 90, 8524 40 19, 8524 40 90, 8524 91 19, 8524 91 90, 8525 20, 8531 20 00, 8532, 8533, 8534 00 00, 8541, 8542, 8543 11 00, 8543 81 00, 8544 70*
4.	*9009 11 00, 9009 21 00, 9009 91 00, 9009 92 00, 9009 93 00, 9009 99 00, 9010 41 00, 9010 42 00, 9010 49 00, 9013 80 10, 9013 90 10, 9026, 9027 20 00, 9027 30, 9027 50, 9027 80, 9030 40 00, 9030 82 00, 9031 41 00*

5.	*All goods for the manufacture of goods covered by S. Nos. 1 to 4 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.*

[F.No334/1/2005- TRU]"

"30th December, 2006

Notification No. 132/2006-CUSTOMS

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, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.24/2005-Customs, dated the 1st March, 2005, namely:-

In the said notification

(i) in the opening paragraph for the words, figures and letters "following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below", the words "following goods of the description as specified in column (3) of the Table below and falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table" shall be substituted;

(ii) for the table, the following table shall be substituted, namely:

"Sr. No.	*Heading, sub-heading or tariff item*	*Description*
(1)	*(2)*	*(3)*
1	*3818 00*	*All goods*
xx	*xx*	*xx*
13	*8517*	*All goods*
xx	*xx*	*Xx*
39	*All chapters*	*All goods for the manufacture of goods covered by S. Nos. 1 to 38 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.".*

2. This notification shall come into force with effect from the 1st January, 2007"

"NOTIFICATION

No.11/2014-Customs

New Delhi, the 11th July, 2014

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. 24/2005-Customs, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.122 (E), dated the 1stMarch, 2005, namely: -

In the said notification, in the Table,-

(a)against serial number 13, in column (3), for the existing entry, the following entry shall be substituted, namely:-

"All goods, except the following:-

(i)soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers;

(ii)optical transport equipments, combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS), Optical Transport Network(OTN) products, and IP Radios;

(iii)Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products;
(iv)Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE) Products.

(b)after serial number 39 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

40	*All chapters*	*All goods for the manufacture of following goods, namely:- (i)soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers; (ii)optical transport equipments, combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS), Optical Transport Network(OTN) products, and IP Radios; (iii)Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products; (iv)Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE) Products: provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996."*

27. On careful examination of the exemption entry at serial No. 13, at notifications dated 01.03.2005, 30.12.2006 and amendment introduced on the said exemption entry on 11.07.2014 indicate clearly that the exemption initially extended to 'All goods' covered under the heading 8517 was restricted in its scope of coverage to 'All goods of heading 8517, other than the specified goods at (i) to (iv) above namely, (i) soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers; (ii) optical transport equipments, combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS), Optical Transport Network (OTN) products, and IP Radios; (iii) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products; (iv) Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) Products. Thus, the aforesaid specified products are not eligible for exemption under the above Serial No.13 after the amendment vide notification dated 11.07.2014. However, in terms of the exemption entry at Serial No.40, newly introduced with effect from 11.07.2014, the parts of all the goods which are excluded from the scope of entry at Serial No.13, have been made eligible for basic customs duty exemption, which enables domestic manufacture of such goods, by

allowing the parts of such goods to be imported under the duty exemption to encourage capacity building in indigenous production of such goods. Thus, viewed from this angle too, all parts of such goods at serial No.40, irrespective of its classification under any chapter of the First Schedule to Act of 1975, would be eligible for basic customs duty exemption.

28. We also find that in the impugned order the adjudicating authority has not given any justification or findings to come to the conclusion that all the impugned goods are 'Optical Transport Product or Switches', 'Optical Transport Network (OTN) products', or 'Carrier Ethernet Switch' in denying the benefit of BCD exemption. The adjudicating authority rather simply relied on the sample copy of invoice of Ciena Corporation, USA in which certain goods have been declared under sub-heading 851762. Inasmuch as, firstly the impugned goods needs to be classified under appropriate CTI and thereafter eligibility to exemption benefits has to be determined, we find that the impugned order had not followed this properly in terms of legal provisions of Customs Act, 1962 and the Customs Tariff Act, 1985. Further, inasmuch as "All goods of heading 8517, other those specified goods in (i) to (iv) above" are exempt from payment of basic customs duty (BCD), and in the absence of any conclusion that the impugned goods are of those category, which are specifically excluded by drawing proper classification and testing by authorised agencies in the form of test report or other evidences, it cannot be said that the impugned goods are excluded from availing the said duty exemption.

29. In view of the foregoing discussions and analysis, and on the basis of the judgement of the Hon'ble Supreme Court, we conclude that the impugned goods under consideration would appropriately be classifiable under CTH 8517 70 and not under CTH 8517 62 90, as claimed by Revenue.

30. Therefore, we are of the considered view that the impugned orders passed by the learned Additional Director General (Adjudication) cannot be sustained on merits. Accordingly, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

31. The miscellaneous application filed for change of cause title is also disposed of by allowing the same for incorporation of necessary changes.

(Pronounced in open court on 18.12.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha