CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL NO. 86054 TO 86067 OF 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1739 to 1754/2020-21 dated 28.02.2021 passed by the Commissioner of Customs (Appeals) Mumbai Customs-Zone III)

Cisco Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II No 6
Bruton Road, Bengaluru, Karnataka-560001.

Versus

Commissioner of Customs, Mumbai **... Respondent**
(Air Cargo Import)
Commissioner of Customs, Air Cargo Complex,
Mumbai.

WITH

CUSTOMS APPEAL NO. 86021 & 86071 TO 86092 OF 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1923 to 1952/2020-21 dated 24.03.2021 passed by the Commissioner of Customs (Appeals) Mumbai Customs-Zone III)

Cisco Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II No 6
Bruton Road, Bengaluru, Karnataka-560001.

Versus

Commissioner of Customs, Mumbai **... Respondent**
(Air Cargo Import)
Commissioner of Customs, Air Cargo Complex,
Mumbai.

AND

CUSTOMS APPEAL NO. 85135 to 85160 & 85162 OF 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-876 to 902/2020-21 dated 29.10.2021 passed by the Commissioner of Customs (Appeals) Mumbai Customs-Zone III)

Cisco Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II No 6
Bruton Road, Bengaluru, Karnataka-560001.

Versus

Commissioner of Customs, Mumbai **... Respondent**
(Air Cargo Import)
Commissioner of Customs, Air Cargo Complex,
Mumbai.

AND

CUSTOMS APPEAL NO. 85366 & 85465 to 85467 OF 2023

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1990/2022-23 dated 13.12.2022 passed by the Commissioner of Customs (Appeals) Mumbai Customs-Zone III)

Cisco Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II No 6
Bruton Road, Bengaluru, Karnataka-560001.

Versus

Commissioner of Customs, Mumbai **... Respondent**
(Air Cargo Import)
Commissioner of Customs, Air Cargo Complex,
Mumbai.

AND

CUSTOMS APPEAL NO. 85942 to 85944 OF 2023

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-2723 to 2725/2022-23 dated 23.03.2023 passed by the Commissioner of Customs (Appeals) Mumbai Customs-Zone III)

Cisco Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II No 6
Bruton Road, Bengaluru, Karnataka-560001.

Versus

Commissioner of Customs, Mumbai **... Respondent**
(Air Cargo Import)
Commissioner of Customs, Air Cargo Complex,
Mumbai.

APPEARANCE:

Shri T. Vishwanathan a/w Shri Akhilesh Kangsia & Ms. Payal Nahar, Advocates for the Appellants

Shri D.S. Mann, Authorized Representative for the Respondents

CORAM:

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

FINAL ORDER NO. A/86011-86081/2024

Date of Hearing: 22.04.2024
Date of Decision: 30.09.2024

PER: M.M. PARTHIBAN

These appeals have been filed by M/s Cisco Commerce (India) Private Limited, Prestige Solitaire, Level-II, No.6 Brunton Road, Bengaluru (herein after, referred to as 'the appellants', for short), assailing five Order-in-Appeal Nos. MUM-CUSTM-AMP-APP-1739 to 1754/2020-21 dated 28.02.2021; MUM-CUSTM-AMP-APP-1923 to 1952/2020-21 dated 24.03.2021; MUM-CUSTM-AMP-APP-876 to 902/2021-22 dated 29.10.2021; MUM-CUSTM-AMP-APP-1990/2022-23 dated 13.12.2022 and MUM-CUSTM-AMP-APP-2723 to 2725/2022-23 dated 23.03.2023 (herein after, referred together as 'the impugned orders') passed by Commissioner of Customs (Appeals), Mumbai-III, Mumbai.

2. The common issue involved in these group of appeals relates to dispute in classification of various models of CISCO "Catalyst 3850 series Ethernet Switches" imported by the appellants through Customs Commissionerate of Air Cargo Complex, Sahar, Andheri (East), Mumbai. The appellants have classified the imported Ethernet switches under Customs Tariff Item (CTI) 8517 6290 and claimed the concessional Basic Customs Duty (BCD) @10% *ad valorem* in terms of S. No. 20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, treating the same as 'Non-carrier Ethernet Switch'. There is no dispute in the classification of the imported goods adopted by the appellants. However, the Department had re-assessed the aforesaid imported goods under various Bills of Entry (B/Es) and denied the benefit of concessional BCD calimed under the said Notification No. 57/2017-Customs, thereby re-assessing the imported goods with BCD payable as 20% *ad valorem*. It has been stated by the appellants that despite the explanations and clarifications provided in support of their classification, claim for concessional BCD and several requests made for issuance of Speaking Order in terms of Section 17(5) of the Customs Act, 1962, no such speaking orders were issued by the department. Feeling aggrieved with the above re-assessment in denial of concessional BCD, the appellants had filed appeals challenging the assessments made in the said B/Es before the Commissioner of Customs (Appeals). In the first appellate proceedings of the case, the learned Commissioner of Customs (Appeals) had confirmed the decision taken at the original stage, on the main issue of eligibility to exemption, in re-assessment of the imported goods at 20% BCD without extending the benefit of concessional BCD under Notification No.57/2017-

Customs dated 30.06.2017. Besides this, in few appeals he gave a finding that those are time barred, and mandatory speaking orders have not been passed under Section 17(5) *ibid.* Feeling aggrieved with the above impugned orders of the learned Commissioner of Customs (Appeals), the appellants have filed these bunch of 71 appeals before the Tribunal.

3.1 Learned Advocate appearing for the appellants, stated the imported 'Catalyst 3850 Ethernet Switches' are a non-carrier Switch and thus are leviable to 10% BCD in terms of S.No.20 of Notification No.57/2017-Customs, as amended; further, he stated despite the appellants request for issue of speaking order for re-assessment, the proper officer of Customs in re-assessment of the impugned goods have not issued any Speaking Order which is mandatory under Section 17(5) *ibid*. Thus, he claimed that the re-assessment orders are not sustainable in law.

3.2 Learned Advocate stated that the dispute in all 71 cases relate to the imports made during the period from November, 2020 to February, 2022. He stated that the imported switches are "enterprise switch" and hence the same are eligible for concessional BCD in terms of S.No.20 of Notification No.57/2017-Customs, as amended and are not covered by the exclusion category of goods, mentioned in such notification. The Department had incorrectly interpreted and denied the exemption by treating the imported goods as 'Carrier ethernet switch' which are excluded from the exemption benefit of the said notification. He further stated that for denying the exemption benefit, the departmental authorities have compared the imported goods viz., "Catalyst 3850 series Ethernet Switches" with "Catalyst ME 3800X series Carrier Ethernet Switches". In this regard, he stated that both the aforesaid products are entirely different inasmuch as the imported goods are enterprise switch which are not having capabilities/ specifications of the carrier ethernet switch. The catalogues of the aforesaid products submitted as part of the appeal papers make a distinction between these two different type of switches as follows:

Essential future	**Carrier Ethernet Switches – CISCO ME 3800X series**	**Catalyst Ethernet Switches – CISCO 3850 series**
MPLS – TP (Traffic Profile) facility	Supported	Not Supported
MEF Certification: (a) MEF 9 & 14 (b) MEF CE 2.0	Certified	Not Certified
Multi Gig Interface	Not Supported	Supported
PoE/PoE+ & UPoE	Not Supported	Supported
Stack Power	Not Supported	Supported
Multitenant Services	Supported	Not Supported

Essential future	**Carrier Ethernet Switches – CISCO ME 3800X series**	**Catalyst Ethernet Switches – CISCO 3850 series**
Standard Services	MEF 6.2/ MEF 51/ MEF 33	None
Synchronous Ethernet (SynchE) & Pseudo wire Redundancy	Supported	Not Supported
Placement/ Deployment	Pre-aggregation for mobile applications, mobile backhaul, Metro aggregation, Service provider	Data Centre, Branch and Campus
Examples of various models produced by CISCO	ME 3750 Metro series switch ME 1200 series switches ME 3800X series switches	Catalyst 3850 Catalyst 2960 Catalyst 3650 Catalyst 9200 Catalyst 9K series

By relying on the above specific features of the both the products, he stated that the imported goods viz., "Catalyst 3850 series Ethernet Switches" are of an enterprise switch which have application in campus and data centre, whereas "Catalyst ME 3800X series Carrier Ethernet Switches" have application in mobile backhaul and supports interfacing with long-distance transmission protocol like MPLS-TP, SDH/SONET etc., which is absent in the imported goods. In support of the above, the appellants had submitted the clarification given by the manufacturer abroad i.e., CISCO Systems International B.V., Netherlands vide their letter dated 04.09.2015, stating that the imported goods do not have the features whereby "Carrier Ethernet Switches" are used by service providers to deliver data in standard protocol for long-distance transmission.

3.3 He further submitted that Telecommunication Engineering Centre (TEC) is the technical body functioning under the Department of Telecommunication, Government of India providing for specification of common standards with regard to Telecom network equipment, services and interoperability. They had published specifications of three types namely Generic Requirements (GRs), Interface Requirements (IRs) and Service Requirements (SR) for network elements in field of telecommunication. In respect of Local Area Network (LAN) switches they have published the GR vide No. TEC/GR/IT/LSW-01/05/MAR2014 and ER vide No. TEC 37942207. As per these requirements, there are four categories of LAN switches as given below:

S. No.	GR description to LAN Switch categories	Application as mentioned in GR
1	High Functionality & High redundancy	Suitable for aggregation network
2	High Functionality & Low redundancy	Suitable for Metro Ethernet Edge Node (Metro Ethernet Switches)
3	Low Functionality & High redundancy	Suitable for Data Centre application
4	Low Functionality & Low redundancy	Suitable for Intranet etc.

In comparison with the above GRs and the product catalogue of imported goods viz., "Catalyst 3850 series Ethernet Switches", he stated that it can be correlated that the imported goods can be used only for data centre and campus deployment, and therefore they are covered under S. No.3 above. Whereas, carrier grade ethernet searches having application in Metro Ethernet (ME) edge, falls under the S. No.2 above. Therefore, learned Advocate submitted that going by application deployment, the imported Catalyst 3850 series switches are of 'enterprise switch' and are not a 'carrier grade switch', as it does not meet the requirements of the same in terms of the requirements laid down by the government authorities. Further as per the ER requirements for Carrier ethernet switch, particularly in respect of the following features such as MPLS TP requirement, TDM PWE and service identification, Ethernet PWE and service identification, manageability SNMP Qx Management protocol, Interface 11:Mbps-E2; Interface 13: STM-1 Optical; Interface 14: STM-16 Optical; Interface 15: STM-4 Optical, the imported goods do not support or has such essential requirements. Thus, they submitted that from the above specified essential features of the Carrier ethernet switch, which the imported goods do not support of or have such facility, it is clearly demonstrated that these are not carrier ethernet switches used in telecommunication sector. In addition to the above, from the various representative invoices raised by the appellants, they claimed that the imported goods are used not by telecom service provider, but by various industries themselves who are not the telecom service providers. Even in the case of telecom service providers, wherever they require the switches for data centre for the purpose of LAN, they use the imported goods for management of data centre equipment. However, if the telecom service provider requires switches which is for deployment for Wide area network, they use Carrier ethernet switches of Metro Ethernet category, for transportation of data for long distance.

3.4 Learned Advocate also submitted that "switches" are covered under the category of network equipment in Appendix-B of the Information Technology Agreement (ITA) of the WTO to which India is a signatory, and therefore the duty exemption benefits extended under the international agreements cannot be denied, particularly when such exemptions have been specifically brought out to implement the obligations arising from such ITA agreements, by issue of customs duty concessions. In this regard, they placed reliance on the WTO ITA agreement, letter addressed to CBIC dated 18.09.2020 for addressing the concerns of the industry, technical expert opinion about coverage of networking equipment under duty concession submitted by them as a part of appeal papers.

3.5 Learned Advocate further stated that in terms of the commitments made under the ITA, all goods covered under chapter heading 8517 were provided with full basic customs duty exemption vide Notification No.24/2015-Customs dated 01.03.2005; subsequently during budget changes in the year 2014, the rates of import duty on certain specified electronic goods for telecommunication was enhanced, to promote domestic production. Such changes were introduced vide Notification No.11/2014-Customs dated 11.07.2014, where 'Carrier ethernet switch' falling under chapter heading 8517 was also mentioned as one of the items on which BCD of 10% was imposed by excluding the same from the scope of exemption under Serial No.13 of the aforesaid notification. However, the exemption provided from the whole of BCD for all goods of chapter heading 8517, other than those goods for which 10% BCD was imposed, continued to be extended under the Notification No.24/2015-Customs, as amended. Therefore, learned Advocate stated that the imported goods which are basically 'enterprise switch' are eligible for concessional BCD, and they cannot be equated with 'Carrier ethernet switches' for which such concessional duty is not applicable.

3.6 Learned Advocate also pointed out that in compliance with the interim order No.33-103/2023 dated 18.09.2023 passed by the Tribunal, the appellants had written to the jurisdictional customs authorities vide their letter dated 02.11.2023, providing the details of the premises in Mumbai where the imported "Catalyst 3850 series Ethernet Switches" were available for enabling inspection of the subject goods by the technical experts, in order to provide the factual report for enabling proper classification of the imported goods for the purpose of determining the appropriate rate of customs duty payable on such imported goods. However, the jurisdictional customs authorities have not preferred to conduct such inspection, and on the other hand have submitted the specification of the product to the Telecommunication Engineering Centre-TEC (West), who on such basis have provided their opinion in the form of letter dated 24.04.2024 reiterating their earlier opinion of 18.01.2024, stating that the subject imported goods maybe considered as Carrier ethernet switch, since they have certain features and capabilities as are available in carrier ethernet switches. In this regard, learned Advocate pleaded that since the matter was heard at length and the order in the case was reserved on 22.04.2024, such additional submission made by Revenue vide TEC's letter dated 24.04.2024 without complying with the directions in the Interim Order of the Tribunal, and without inspection of the impugned goods should not be taken into account for deciding the case by the Tribunal.

4.1 Learned Authroised Representative (AR) appearing for the Revenue reiterated the findings recorded by the learned Commissioner (Appeals) in the impugned orders and stated that there are 71 appeals covered by five Orders-in-Appeal covering the common issue. The details of these were provided by him as follows:

(i) In the Orders-in-Appeal No. MUM-CUSTM-AMP-APP-1739 to 1754/2020-21 dated 28.02.2021, relating to total 15 B/Es, all dated 30.12.2020 and No. MUM-CUSTM-AMP-APP-1923 to 1952/2020-21 dated 24.03.2021, relating to total 30 B/Es, 27 B/Es dated 28.01.2021 and 3 B/Es dated 23.02.2021, the issues have been disposed on merits, even though the requirement of passing of speaking order by the proper officer of customs have not been undertaken;

(ii) in respect of Orders-in-Appeal Nos. MUM-CUSTM-AMP-APP-876 to 902/2020-21 dated 29.10.2021 covering total 27 B/Es – 2 B/Es dated 24.03.2021, 23 B/Es dated 02.07.2021, 2 B/Es dated 24.08.2021, covering 27 appeals, in 21 cases the issues have been disposed on merits, even though original authority did not pass speaking order under Section 17(5) ibid; in 4 appeals the B/Es have been provisionally and hence learned Commissioner (Appeals) disposed of the case as pre mature; and in rest of 2 appeals were held as time-barred;

(iii) in Order-in-Appeal No., MUM-CUSTM-AMP-APP-1990/2022-23 dated 13.12.2022 covering total 5 B/Es, all dated 04.10.2021, by considering it as not proper on account of mandatory re-assessment order having not passed by proper officer remanded the matter to original authority, without deciding the merits of the issue; and

(iv) in Order-in-Appeal Nos. MUM-CUSTM-AMP-APP-2723 to 2725/2020-21 dated 23.03.2023, covering total 3 B/Es – 1 each dated 20.12.2021, 17.01.2022 and 13.02.2022, the appeal was disposed by the learned Commissioner (Appeals) on the basis of earlier original order passed on the same issue, by holding that there is no need to pass any further order by him.

4.2 Learned AR submitted that the B/Es covering the imported goods in all 71 appeals relates to the period subsequent to the imports for which assessments have been ordered on merit rate of BCD at 20%, by denying the exemption of customs duty under Serial No. 20 of Notification No.57/2017-Customs, as amended. In view of such assessment of imported goods, the subsequent imports covered in 71 appeals, no speaking order under Section 17 (5) ibid have been issued. Further, in terms of the product literature available in CISCO website titled as 'configuring Multiprotocol Label Switching (MPLS) Configuring Guide', the imported goods shall be treated as switches for IP-MPLS equipment.

4.3 In explaining about the imported goods, Learned AR stated that Carrier ethernet is an application of ethernet technology that allows network providers to offer internet services to their customers and to use ethernet technology. It enables internet access and communication among local area networks (LAN) of business, academic, private and government organizations. He further submitted that the attempt of the appellants to distinguish between carrier and the non-carrier ethernet switches is futile, as the technology is actually ethernet technology. The products such as routers/switches can be configured for use as carrier level as well as enterprise level and are capable of performing. As the appellants were not submitted any evidence or certificate which can prove that the impugned goods are not capable of operating as carrier ethernet switches, the impugned order in denying the Customs duty exemption is proper in sustainable. Further, CBIC circular No.08/2023-Customs dated 13.03.3023 had clarified that customs duty exemption under Notification No. 57/2017-Customs dated 30.06.2017 are not eligible for the following products viz., (i) IP-MPLS based equipment (ii) MPLS-TP based equipment (iii) SDN based MPLS equipment (iv) PTN products for Carrier ethernet network for access and recreation network applications. Further, learned AR also pleaded that the opinion given by the Regional Technical Engineering Centre (Western Region), Mumbai dated 24.04.2024 stating that functionally there is no difference between a carrier ethernet switch and enterprise ethernet switch, and therefore he stated that the imported goods are not eligible for customs duty exemption.

4.4 Learned AR also stated that concessional benefit of the notification should be subjected to strict interpretation by relying on the judgement of Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company* – 2018 (361) E.L.T. 577 (S.C.).

5. 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 Advocates for the appellants as well as Authorised Representatives for the Revenue, and the arguments advanced during the hearings of this case.

Issue to be decided:

6. Brief issue for consideration before us is as follows:

> (i) whether the impugned goods viz., "Catalyst 3850 series Ethernet Switches" imported by the appellants and classified under Customs Tariff Item 8517 6290, are eligible to concessional Basic Customs Duty (BCD) in terms of goods covered under Serial No. 20 of Notification No.57/2017-Customs, as amended through subsequent notifications; or,
>
> (ii) whether such goods are not eligible for concessional BCD, as contended by the Department,

for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period starting from November, 2020 to February, 2022.

7. In order to address the above issue of eligibility to exemption under the said Notification No.57/2017-Customs, as amended, we would like to refer the relevant legal provisions contained in Sections 12, 25 of the Customs Act, 1962; Section 2 of the Customs Tariff Act, 1975 and notifications issued thereunder for consideration of proper duty applicable on 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.*
>
> *….*
>
> ***Power to grant exemption from duty.***
>
> ***25.*** *(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon…."*

"***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:

xxx xxx xxx xxx

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 "--". …"*

Tariff items and Notifications issued under Section 25 ibid in respect of imported goods, during the relevant time:

8.1 In order to address the issue of eligibility to exemption of imported goods, we would also like to refer to the relevant Customs Tariff heading, sub-headings, tariff items and the notifications issued over a period of time, in order to identify the scope of goods covered under such classification in chapter heading 8517, CTI 8517 6290 and the notification issued for providing exemption from Basic Customs Duty, which is the subject matter of dispute in the present appeals before us. The First Schedule of the Customs Tariff in respect of Chapter heading 8517 as it stood at the time of extending whole of customs duty exemption initially for the first time and the relevant Notification No. 24/2005-Customs dated 01.03.2005 is extracted and given as below:

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8517	ELECTRICAL APPARATUS FOR LINE TELEPHONY OR LINE TELEGRAPHY, INCLUDING LINE TELEPHONE SETS WITH CORDLEWSS HANDSETS AND TELECOMUNICATION APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS; VIDEOPHONES			
	- *Telephone sets; videophones:*			
8517 11	-- *Line telephone sets with cordless handsets:*			
8517 11 10	--- Push button type	u	Free	-
8517 11 90	--- Other	u	Free	-
8517 19	-- Other:			
	--- *Telephone sets:*			
8517 19 11	---- Push button type	u	Free	-
8517 19 12	---- Rotary dial type	u	Free	-
8517 19 19	---- Other	u	Free	-
8517 19 20	--- Videophones	u	Free	-
	Facsimile machines and teleprinters:			
8517 21 00	-- Facsimile machines	u	Free	-
8517 22 00	-- Teleprinters	u	Free	-
8517 30 00	- Telephonic or telegraphic switching apparatus	u	Free	-
8517 50	- *Other apparatus, for carrier-current line systems or for digital line systems :*			
8517 50 10	-- PLCC equipment	u	Free	-
8517 50 20	-- Voice frequency telegraphy	u	Free	-
8517 50 30	-- Modems (modulators-demodulators)	u	Free	-
8517 50 40	-- High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 50 50	-- Digital loop carrier system (DLC)	u	Free	-
8517 50 60	--Synchronous digital hierarchy system (SDH)	u	Free	-
8517 50 70	--Multiplexers, statistical multiplexers	u	Free	-
	---Other :			
8517 50 91	----ISDN terminals	u	Free	-
8517 50 92	----ISDN terminal adaptor	u	Free	-
8517 50 93	----Routers	u	Free	-
8517 50 94	----X25 Pads	u	Free	-
8517 50 99	- Other			
8517 80	---- Other apparatus:			
8517 80 10	---Attachments for telephones	u	Free	-
8517 80 20	---Subscriber end equipment	u	Free	-
8517 80 30	---Set top boxes for gaining access to internet	u	Free	-
8517 80 90	---Other			
8517 90	-Parts :			
8517 90 10	---Populated, loaded or stuffed printed circuit boards	Kg.	Free	-
8517 90 90	---Other	Kg.	Free	-

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.	8517, 8520 20 00, 8523 (other than those falling under tariff item 8523 30 00), 8524 31, 8524 40, 8524 91, 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]

(V. Sivasubramanian)
Deputy Secretary to the Government of India

8.2 The aforesaid notification extending full exemption was introduced as a part of the budget proposals made in the Union Budget 2005. The relevant explanatory notes, issued in explaining the budget proposal vide letter in D.O.F.No.334/1/2005-TRU dated the 28.02.2005 stated as below:

> *"84.9 Customs duty is being exempted on the specified tariff lines covered under the Information Technology Agreement (ITA). With this reduction,* ***customs duty*** *will be* ***exempt on all 217 tariff lines of ITA****. All goods imported for the manufacture of ITA bound items, subject to end-use condition will also be exempt from customs duty (notification No. 25/98-Customs as amended by notification No. 18/2005-Customs, No. 24/2005-Customs and No. 25/2005-Customs refer)."*

8.3 On plain reading of the tariff items covered under chapter heading 8517 and the exemption entry in serial No.3 of the said Notification No.24/2005-Customs dated 01.03.2005, it transpires that initially 'all goods covered under chapter heading 85.17' were wholly exempt from the basic customs duty leviable under the First Schedule to the Customs Tariff Act, 1975. Further, it also transpires that at the time of initial introduction of exemption to ITA bound items in the year 2005, vide notification No.24/2005-Customs dated 01.03.2005, there was no specific tariff entry for classification of goods covered under the description "machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus", and these were covered under the residual entry as 'others'. Further, as all goods covered under entire chapter heading 8517 was exempt, at that time, there was no basis for disputing eligibility of any goods under the aforesaid exemption.

8.4 From the documents placed on record, it is noted that the aforesaid notification No.24/2005-Customs was subsequently amended by issue of an amending notification No.11/2014-Customs dated 11.07.2014, so as to exclude certain specified tariff items, which was proposed to attract the tariff rate of basic customs duty of 10%. Such proposal of imposing 10% BCD was explained by the Union Finance Minister in the Union Budget, 2014 as follows:

"Budget 2014-2015
Speech of Arun Jaitley
Minister of Finance
July 10, 2014

xxx xxx xxx

215. *The demand for electronics is growing very fast. To boost domestic production and reduce our dependence on imports, I intend to take the following steps:*

- *Impose basic customs duty at 10 percent on specified telecommunication products that are outside the purview of the Information Technology Agreement;*
- *Exempt all inputs/components used in the manufacture of personal computers from 4 percent special additional duty (SAD);*
- *Impose education cess on imported electronic products to provide parity between domestically produced goods and imported goods;*
- *Exempt 4 percent SAD on PVC sheet and ribbon used for the manufacture of smart cards."*

8.5 Further, the above budget proposal was also explained to the customs field formations by the Ministry of Finance, in its explanatory notes issued vide D.O.F.No.334/15/2014-TRU dated 10.07.2014, as follows:

> *"Basic Customs Duty on **specified telecommunication products not covered under the ITA (Information Technology Agreement) is being increased from NIL to 10%.** Clause 87 of the Finance (No.2) Bill, 2014 refers. Notification No.24/2005-Customs, dated 1st March, 2005 is being **amended** vide notification No.11/2014-Customs, dated 11th July, 2014 so as **to exclude these specified tariff items**, which will **henceforth attract the tariff rate of basic customs duty of 10%**. However, all goods required for the manufacture of the aforesaid telecommunication products would continue to enjoy the exemption from basic customs duty. Notification No.11/2014-Customs, dated 11th July, 2014 may be referred to for details."*

In terms of the aforesaid budgetary changes, certain specified goods, which are not covered under the international obligation for extending tariff concession under the Information Technology Agreement (ITA), was enhanced with applicable basic customs duty without extending the duty concession under Notification No.24/2005-Customs, as amended, which was earlier available to all goods covered under chapter heading 8517 with effect from 11.07.2014. 'Carrier Ethernet Switch' which is under dispute in the present case, was one such item for which the duty concession was removed as above. The extract of the amending Notification No. 11/2014-Customs dated 11.07.2014, and the subsequent Notification No. 57/2017-Customs dated 30.06.2017, amended by Notification No. 75/2018-Customs dated 11.10.2018, No. 02/2019-Customs dated 29.01.2019 are extracted and given 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. 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 1st March, 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.".

[F.No.334/15/2014-TRU]

Pramod Kumar

(Pramod Kumar)
Under Secretary to the Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section-3, Sub-section (i), *vide* number G.S.R. 122(E), dated the 1st March, 2005 and last amended by notification No. 132/2006-Customs, dated the 30 December, 2006, *vide* number G.S.R.793(E), dated 30th December, 2006.

[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. 57/2017 – Customs

New Delhi, the 30th June, 2017

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 goods of the description as specified in column (3) of the Table below, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate as specified in the corresponding entry in column (4) of the said Table subject to any of the conditions, as specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (5) of the said Table.

TABLE

S.No.	**Chapter or Heading or Sub-heading or tariff item**	**Description of goods**	**Standard rate**	**Condition No.**
(1)	(2)	(3)	(4)	(5)
20.	8517 62 90	All goods other than wrist wearable devices (commonly known as smart watches)	10%	-";

[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 11th 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: -

(1)	(2)	(3)	(4)	(5)
"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%	-
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.

[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. 02/2019 – Customs

New Delhi, the 29th January, 2019.

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 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:-

1. In the said notification, in the TABLE, -

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

(1)	(2)	(3)	(4)	(5)
"20	8517 62 90 or 8517 69 90	All goods other than the 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%	-" ;

VI. serial number 21 and entries relating thereto shall be omitted.

2. This notification shall be effective from the 30th January, 2019.

[F.No.354/418/2018-TRU]

8.6 From plain reading of the above notifications issued subsequent to 11.07.2014, it also transpires that the specified items which are outside the scope of ITA bound items, under the international obligations agreed to by India as a Member country or signatory to ITA agreement, were continue to attract the BCD of applicable rate as it existed during the relevant time. Initially this was 10% tariff rate and when the tariff rate was enhanced to 20%, the effective rate of 10% was specified as applicable rate of BCD in the said notifications.

8.7 From the above analysis of the tariff schedule and exemption notifications, it has become clear that the scope of goods covered under the exemption Notification No.57/2017-Customs dated 30.06.2017 which was issued as successor to Notification No.24/2005-Customs, as amended, *inter alia*, include 'Carrier Ethernet Switch' which are not covered by the ITA agreement.

8.8 In terms of the HS Commodity Description and Coding System WCO, which describe in detail the scope and coverage of the goods under the Customs classification, the goods covered under chapter heading 851762 are stated as follows. Further, amongst such goods, the scope of coverage of communication networks, where ethernet switches are used are explained as given below:

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

8.9 It is further noticed that in the year 2022, in order to align the customs tariff along with the changes introduced in terms of HS Commodity Description and Coding System WCO, *inter alia*, the goods covered under chapter heading 8517 was amended with effect from 01.02.2022 as follows: (changes indicated in red-coloured letters/figures)

8517		TELEPHONE SETS, SMARTPHONES AND OTHER TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS: OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VICE, 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* smartphones and other telephones *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 13 00	--	Smartphones	u	20%	-
8517 14 00	--	Other telephones for cellular networks or for other wireless networks	u	20%	-
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 wired or wireless network (such as a local or wide area network):*			
8517 61 00	--	Base stations	u	**20%	-
8517 62	--	*Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:*			

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(1)		(2)	(3)	(4)	(5)
8517 62 10	---	PLCC equipment	u	Free	-
8517 62 20	---	Voice frequency telegraphy	u	Free	-
8517 62 30	---	Modems (modulators-demodulators)	u	Free	-
8517 62 40	---	High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 62 50	---	Digital loop carrier system(DLC)	u	Free	-
8517 62 60	---	Synchronous digital hierarchy system(SDH)	u	Free	-
8517 62 70	---	Multiplexers, statistical multiplexers	u	Free	-
8517 62 90	---	Other	u	20%	-
8517 69	--	*Other:*			
8517 69 10	---	ISDN System	u	Free	-
8517 69 20	---	ISDN terminal adaptor	u	Free	-
8517 69 40	---	X 25 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	*20%	-
	-	*Parts:*			
8517 71 00	--	Aerials and aerial reflectors of all kinds; parts suitable for use therewith	u	20%	-
8517 79	--	Other:			
8517 79 10	---	Populated, loaded or stuffed printed circuit boards	u	20%	-
8517 79 90	---	Other	u	15%	-

Thus, on perusal of the above details, we find that right through the disputed period of November, 2020 to February, 2022 covering the imports over the said period, the scope and coverage of the goods under chapter sub-heading 8517.62 remained the same and there was no change even after the HS changes for technological changes of goods such as 'smart phones' that were introduced in the year 2022, and made effective from 01.02.2022.

9.1 In the above back ground, we had examined the scope of coverage of the goods under Information Technology Agreement (ITA) which is also known as ITA-1 as provided under the government website of the Ministry of Commerce. It is stated therein that India is a signatory to ITA, which is a plurilateral agreement of WTO. India joined the ITA on 25th March 1997. As on date, there are altogether 75 member signatories, including 27 EU member countries, accounting for about 97 percent of the world trade in Information Technology (IT) products, which adhere to ITA for the purpose of international trade, which include the purpose classification and levy of duty under respective Customs statute. Though, the proponents of ITA expansion have prepared a consolidated list containing IT products (combining products of interest of all proponents of ITA 2), on which tariff reductions are being sought has been prepared and circulated amongst WTO members, which is also under active discussions in the WTO, with India's adverse experience with respect to local IT industry, no further expansion of the list of the items under ITA has been considered. In respect of the products covered under ITA, there are two attachments to the Annex of the ITA, called Attachment A list and Attachment B list. Attachment A lists the HS headings or parts thereof to be covered under ITA. Similarly, Attachment B lists specific products to be covered by an ITA wherever they are classified in the HS. The specific group of products covered in respect of chapter heading 8517.60 are as below:

> "*851762 -- (2007-) -- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus*"

On perusal of the above list of items under ITA, we find that there is no specific restriction in the scope of goods covered under the ITA inasmuch as the entire goods covered the sub-heading 8517.62 are included in the eligible list of goods to be considered under the exemption extended for goods covered under ITA agreement. Further, there has been no change in the scope of coverage of items either under HS classification or under the First Schedule to the Customs Tariff Act, 1975.

9.2 We also find that the issue of eligibility to concessional BCD to Ethernet switches was initially referred by the Department of Revenue to the Department of Telecommunication, Ministry of Communication, who had clarified the issue in the O.M. dated 18.11.2016, as follows. The relevant extract of the said reference is given below:

> *"The undersigned is directed to refer to the Department of Revenue's OM INC 332/12/2016-TRU dated 29.07.2016 on the subject mentioned above and to furnish the comments of this department as under:*
>
> *a. Layer 2 unmanaged Ethernet switches & half managed Ethernet switches are non-carrier Ethernet switches and appear to be not covered by the notification 11/2004-Custom dated 11.07.2014.*
>
> *b. Managed Ethernet switches & web managed Ethernet switches can be carrier Ethernet switches or non- carrier Ethernet switches /Enterprise Ethernet switches.*
>
> *C. There is no definite technical classification between Carrier Ethernet switches and Enterprise Ethernet switches/Non carrier Ethernet switch based on features/services supported. As carrier Ethernet switches and enterprise Ethernet switches may have overlapping features and may vary from OEM to OEM. Carrier Ethernet Switch and Enterprise Ethernet Switch can only be classified based on usage by TSP/ISP (Telecommunications Service Provider/ internet Service Provider) or customer location/offices/ Enterprises.*
>
> *d. The Ethernet switches used by non TSP/ ISP's for aggregating the traffic in their local network can be treated as Enterprise Ethernet switch/Non-Carrier Ethernet switch whereas the Ethernet switches which are used by TSP/ISP's to transport/carriage of Ethernet /IP traffic can be treated as carrier Ethernet switches.*
>
> *e. Based on the reasons cited above in our opinion the classification of the Ethernet switch in to carrier Ethernet switch and non-carrier Ethernet switch can only be ascertained based on the purchase order from the ultimate consignee.*
>
> > *i. In case the ultimate purchase order is from non TSP/ISP then such switch may be treated as Enterprise Ethernet Switch/Non-Carrier Ethernet switch.*
> >
> > *ii. In case the purchase order is from TSP/ISP and the TSP/ISP intend to use the switch in their network for the purpose of Transport/Carriage then the switch may be treated as carrier Ethernet switch.*
> >
> > *iii. In case the purchase order from TSP/ISP and the TSP/ISP intend to use the switch in their customer premises then the switch may be treated as Enterprise Ethernet Switch/Non-Carrier Ethernet Switch. For this a certificate may also be obtained from the TSP/ISP."*

9.3 Further, on careful reading of the entries under Sl. No. 13 of the notification No. 11/2014-Customs dated 11.07.2014 and Sl. No. 20 Notification No.57/2017-Customs dated 30.06.2017, as amended, we find that 'Ethernet Switches' as a part of the network equipment to the extent that they are used either in Local Area Network (LAN) or Wide Area Network (WAN), including those products dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units for physical incorporation into automatic data processing machines and units thereof, alone are eligible for concessional BCD. If the 'Ethernet switches' are meant for or used for the purpose of telecommunication, along with various items listed therein under (i) to (iv) of the entry at Serial No.13, then such goods are not eligible for concessional BCD, as these have been excluded from the scope of such exemption in terms of specific description of goods. Thus, 'Carrier Ethernet Switch' used for telecommunication purpose is not eligible for the concession provided in such exemption entry of the aforesaid notifications.

9.4 We have also carefully perused the instructions issued by the Central Board of Indirect Taxes & Customs (CBIC) vide Circular No.08/2023 dated 13.03.2023. It is clearly stated therein that the CBIC, on being made aware of the various technology related descriptions used for products and equipment covered in the exclusion categories (b) to (h) of the exemption entry in Notification No.57/2017-Customs and No.02/2019-Customs in respect of tariff items under 8517 2690 and 8517 6990, have consulted with the Department of Telecommunication, and have identified the list of products/equipment covered under those exclusion categories. Accordingly, CBIC had decided that the specific product descriptions for which customs duty exemption are excluded will be captured in the bills of entry with effect from 01.04.2023 in terms of Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. Therefore, CBIC had directed the field formations to make the stakeholders, including importers, to be made more aware of the matter, by requiring them to declare the specific alpha numeric code/ identifier code, relevant to the products/equipment covered under the exclusion categories. Firstly, we find that these instructions apply to imports made w.e.f. 01.04.2023, whereas the imports in the present case are relating to November, 2020 to

February, 2022, and thus these instructions do not have any application on the present case. Even if we take into consideration the three specific products/equipment which are covered under the exclusion categories under CTI 8517 6290 described in the aforesaid circular at Annexure-2 for 'Carrier ethernet switches' and other items, these are Internet Protocol Multi-Protocol Label Switching (IP-MPLS) based equipment (code TEG001); Packet Transport Network (PTN) based equipment (code TEG002); Multiprotocol Label Switching-Transport Profile (MPLS-TP) based equipment (code TEG003). The product literature and the specifications/features of 'Catalyst 3850 Enterprise Switch' placed on record, clearly indicate that they do not support MPLS-TP feature; IP-MPLS feature and are not used in the Packet Transport Network environment for transportation of data for mobile services. Therefore, we do not find that these specified products/ equipment are applicable for the impugned products covered in this case.

10. It is also seen that the learned Commissioner (Appeals) had decided on the issue of eligibility to BCD concession in respect of the imported goods as follows. The relevant paragraphs of impugned order are extracted and given below as follows:

> *"8. The main contention made by the appellant in the impugned case is that the imported Catalyst 3850 Ethernet Switch are a non-carrier Switch and thus are leviable to 10% Basic Customs duty in terms of S.No.20 of Notification No.57/2017-Cus, as amended and no Speaking Order was issued by the proper officer under Section 17(5) of the Customs Act, 1962.*
>
> *xxx xxx xxx*
>
> *10. It is known that data flows through network based on the standards set up by a globally recognised body i.e. Institution of Electrical and Electronics Engineers (IEEE), which are referred to by CISCO itself in its manuals found on its website (www.cisco.com) Ethernet has evolved from a LAN (Local Area Network) technology to a much more robust, carrier-grade transport technology for metropolitan service networks. Ethernet is the dominant LAN technology in most offices used to interconnect high-speed corporate networks. However, some of the attributes that make Ethernet simple and inexpensive for office LANs impede its use for carrier-grade data services over larger metropolitan networks. The amount of corporate, home, and internet data traffic has increased exponentially. Therefore, the capacity and configuration is highly relevant to determine the classification as Carrier Ethernet Switch. Basically, Carrier Ethernet is extension to Ethernet to enable users such as telecommunications network providers to provide Ethernet services to customers and to utilize Ethernet technology in their networks.*
>
> *xxx xxx xxx*

12. IEEE 802.1Q Virtual LANs (Serial No. 15 above, of specification of Catalyst 3850): Virtual LANs, also known as 802.1Q, provides a method for assigning a "Virtual Identifier" or VID tag to each Ethernet frame. Within an office, VIDs allow different organizational groups to be connected together in virtual LANs, improving overall network efficiency and performance (i.e., engineering VID=100, marketing VID=200,sales VID=300). For a carrier the VID becomes a useful tag for identifying services from a specific customer.

13. It is further seen that the Operating System (CISCO IOS XE) of CISCO Catalyst 3850 meets the requirements of the carrier Ethernet equipment. This version of Operating System is clearly certified by the Metro Ethernet Forum in other devices. A list of all devices of CISCO certified by MEF is available on website of MEF (www.mef.net), which mentions the Word of operating system of CISCO IOS XE. The certification of operating system clearly indicates that software of the imported goods is certified by Metro Ethernet Forum (MEF) which is a non-profit international industry consortium, Dedicated to adoption of assured services across a global system of automated Networks. The forum makes recommendations to existing standard bodies.

14. The datasheet of a well established carrier ethernet switch of CISCO namely ME 3800X is obtained from website www.cisco.com which vide Table 9 specifies the networking standards. These standards were compared with That of CISCO CATALYST 3850 and it is seen that 10 standards of the carrier ethernet Switch are in common with IEEE standards of goods imported vide impugned Bs/E mentioned above. This commonality of specifications is strongly indicative of the Fact that the goods imported actually are carrier ethernet switches even if not Described so in Bs/E.

15. The technical specifications and software of imported goods is supported by configuration guide of catalyst 3850 which specifically provides the functionality of configuration of catalyst 3850 as carrier ethernet Switch as per its title which clearly reads as "CARRIER ETHERNET CONFIGURATION GUIDE, CISCO IOS XE RELEASE 3SE (CATALYST 3850 SWITCHES).

xxx xxx xxx

17. Thus in view of all the above, it is clearly inferable that Catalyst 3850 switch is carrier Ethernet switch despite its non-statement as such by the Metro Ethernet Forum.

18. The appellants have highlighted the differences between carrier and non-carrier switches available on their website, which was published only on 31.07.2019. However, I find that the appellants have ignored the information which were available earlier for the same goods in their won website showing it as "carrier Ethernet switch". Hence I do not accept the contention of the appellant that impugned (CATALYST 3850 SWITCHES) items are "non carrier grade" one. As such, the duty as per exclusion clause (g) of Notfn. 02/2019-Cus, Sr 20 will be applicable and the goods shall be liable for BCD-@20%."

11.1 We find from the above, that the authorities below including the learned Commissioner (Appeals) have not examined the issue of eligibility to exemption of impugned goods in detail and on the basis of factual data about the imported goods in question. In respect of Orders-in-Appeal No. MUM-CUSTM-AMP-APP-1923 to 1952/2020-21 dated 24.03.2021 and No.MUM-CUSTM-AMP-APP-2723 to 2725/2020-21 dated 23.03.2023, learned Commissioner (Appeals) besides the above findings having been reiterated therein, he had *inter alia* found that the imported goods also supports high capacity of 10 GBPS with mac addresses running into huge number, being indicative of that catalyst 3850 switch is capable of creating wide area network running into kilometers. Further, by relying on certain product literature of CISCO in the earlier period, prior to 31.07.2019, he had stated that enterprise switches also meets the requirements of carrier ethernet; configuration guide specifically provide enhancing the functionality of carrier ethernet, and thus he did not accept the contentions of the appellants that the imported goods are non-carrier grade switches and denied concessional BCD for the imports under various B/Es.

11.2 In respect of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1990/2022-23 dated 13.12.2022, learned Commissioner (Appeals) besides the above common findings on merits of the case, he had *inter alia* found that in respect of the B/Es where re-assessment ordered by the department is contrary to the self-assessment made by the appellants claiming concessional BCD, no speaking orders have been passed as required under Section 17(5) ibid. Against such re-assessment done by the department for payment of higher BCD, the appellants had paid such duty under protest. Further, even though these appeals had been filed beyond the stipulated time for filing the appeal before learned Commissioner (Appeals) under Section 128 ibid, he had taken up these for consideration on the ground that Hon'ble Supreme Court had clarified that on account of the impact of the surge of the virus on public health and adversities faced by the litigants in the prevailing conditions, the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation, in Misc. application No. 665 of 2021 in SMW(C) No. 3 of 2020. However, in respect of Order-in-Appeal No. MUM-CUSTM-AMP-APP-876 to 902/2020-21 dated 29.10.2021, while dealing with the merits of the case on the basis of above findings, learned Commissioner (Appeals) had also held in 6 B/Es the filing of appeal is time barred and in 4 B/Es the assessments are provisional. In this regard, we are unable to appreciate such decision of learned

Commissioner (Appeals), when he had accepted a part of the appeals filed beyond the prescribed period for filing the appeals before him on the basis of the Hon'ble Supreme Court's order, for the same period i.e., 2021, how such contradictory stand could be taken in the self-same appellants assessee's case for certain other part of the imports. Hence, such contrary stand taken by the learned Commissioner (Appeals) is not legally sustainable. Further, when re-assessment for payment of higher BCD on the imported goods have been ordered by the departmental authorities contrary to the self-assessment, we are also unable to appreciate how such assessments were considered as provisional and for what reasons it was done so, as these have not been explained or discussed for taking a proper view in the matter. Hence, we find that the same is also not legally sustainable.

11.3 We also find that it is clearly on record that the main contention in all these appeals remains the same i.e., eligibility to concessional BCD under Sl. No. 20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, and therefore such common issue for all these appeals needs to be addressed by the Tribunal in the present case before us.

12.1 By taking into account the above discussed various factors into consideration including the contrary claims made by the appellants and the findings in the impugned orders, and in order to provide an evidential basis for deciding the above common issue of eligibility of imported 'Catalyst 3850 Ethernet Switches' to concessional BCD, during the course of hearing these appeals, this Tribunal had passed an Interim Order No.33-103/2023 dated 18.09.2023, and had ordered for conducting technical inspection of the imported goods in the presence of officers having expertise/technical knowledge of the subject goods or by technical experts in the presence of representative of the appellants. The extract of the said order is as follows:

> *"The issue involved in this batch of appeals relates to eligibility of concessional rate of Basic Customs Duty (BCD) in terms of Sr No. 20 in the Notification No. 57/2017-Cus dated 30.06.2017. The Department has denied the duty exemption in the said notification, holding that the goods in question should be classified as "Carrier Ethernet Switch", instead of the classification claimed by the appellant as "Enterprise Switch". On perusal of impugned order passed by the learned Commissioner of Customs (Appeals), we find that vide paragraph 14 in the said order, he has held that 10 standards of the Carrier Ethernet Switch are in common with IEEE standards of goods imported by the appellant and accordingly, the said goods should appropriately be classified as Carrier Ethernet Switch.*

> *2. On perusal of the case records and considering the submissions made by both sides, we are of the view that technical specification of the product is required to be ascertained for proper classification of the goods and for that purpose, we are of the view that some officers from the Department having technical knowledge on the subject goods or technical experts in the relevant field/subject, duly recognized by Expert bodies should inspect the site, where the same imported goods have been installed for analysis and submission of the report as to why, the product(s) in question should be considered differently, than as claimed by the appellant in the Bills of Entry filed by them. If on examination, it is observed that the classification of the product is different than the classification claimed by the appellant, the reason should be assigned by the testing agency/officers to such effect.*
>
> *3. Therefore, the jurisdictional Commissioner of Customs is directed to depute the officer(s) having technical knowledge on the subject goods or the technical expert as explained above, to inspect the product and for submission of the report with regard to the actual classification of the goods for purpose of payment of the customs duty. Inspection should be done in presence of the appellant's representative. It is expected that the report should be submitted by the Department within a period of 30 days from the date of passing of the order. Accordingly, the matter is adjourned to 06.11.2023 for reporting compliance and for a decision on merits on the appeal filed by the appellant."*

12.2 In pursuance of the above, the departmental authorities have belatedly submitted the report, which the appellants had objected to it. From the report submitted by the jurisdictional Customs authorities addressed to the learned AR, which have been submitted as a rejoinder to the Revenue's written submission on 03.05.2024, we find that firstly such an exercise as detailed in the above interim order has not been undertaken by the departmental authorities, despite cooperation from the appellants informing the premises where the imported goods are situated for conducting the technical examination/inspection. On the contrary, it is found that the technical opinion of the Telecom Engineering Centre (western region), Mumbai, on the basis of letter No. CUS/APR/IPR/3/2023 Gr.5A/ACC dated 04.04.2024 providing details of the product, had alone was obtained to state that the imported goods may be considered as 'Carrier Ethernet Switches'.

12.3 From the details placed on the public domain/website, it transpires that Telecommunication Engineering Centre (TEC), under Department of Telecommunications (DoT), is the authorised agency/Telegraph Authority for the purpose of Testing and Certification of telecommunication infrastructure. They have notified a Simplified Certification Scheme (SCS) for Mandatory Testing and Certification of Telecommunication Equipment (MTCTE). Any telegraph equipment which is used or capable of being used with any telegraph authority established, maintained or worked under the license granted by the Central Government in accordance with the provisions of section 4 of the Indian Telegraph Act, 1885, shall have to undergo prior mandatory testing and certification in respect of parameters as determined by the telegraph authority from time to time. The testing and certification envisaged in amended MTCTE Procedure v3.0 (TEC 93009:2024) ensures that the equipment meets all TEC prescribed Essential Requirements. The quality and reliability of equipment is not part of this procedure, hence, the same is not guaranteed through this certification. OEMs / dealers themselves will be responsible for necessary quality and reliability criteria claimed by them. Any equipment to be used in the network of Licensed Telecom Service Providers/Internet Service Providers/Virtual Network Operators etc. may have to undergo additional tests as specified in License.

12.4 In the above context, we are of the considered view, that if testing of the imported goods would have been conducted as elaborated in the interim order dated 18.09.2023, either at the premises/place offered by the appellants or in any other premises/place, where the TEC or the customs authorities desired to conduct field inspection of the imported equipment, then it could have been conclusively proved that the imported 'Catalyst Ethernet Switch' is either 'carrier ethernet' type or not. Further, if such test could have been conducted in any premises of the telecommunication service provider, then it could have been easily identified by TEC as they are the authorised agency, that whether such imported 'Catalyst Ethernet Switch' formed a part of the electronic asset infrastructure to prove the Revenue's arguments that these are used for 'carrier ethernet' or telecommunication purpose. In the absence of any such efforts having been taken by the customs authorities, either by themselves through some officers from the Department having technical knowledge on the subject goods or through TEC, we are unable to accept the various arguments made by the learned AR and the findings arrived at by the learned Commissioner (Appeals) in the impugned order, on the basis of certain specifications or features of the imported goods. Therefore, we are of the considered view that such findings are not sufficient to give a different treatment to the imported goods for denying the concessional basic customs duty exemption available under the notifications No.

11/2014-Customs dated 11.07.2014 and No.57/2017-Customs dated 30.06.2017, as amended.

13. On the basis of the above factual details of the imported goods, and inasmuch as the report dated 24.04.2024 and the earlier report dated 18.01.2024 provided by TEC does not fulfill the requirements of the directions given in the interim order dated 18.09.2023, we are not able to consider the same having any merits for treating it as an expert opinion based on the technical examination of the working or functioning of the imported product, which as discussed in the preceding paragraphs 8.1 to 9.2 are essential to decide the issue on hand.

14. On the other hand, the appellants have produced certification from their customers such as M/s Cyient DLM Private Limited, Mysore; M/s Vodafone Idea Ltd., etc., to demonstrate that the various models of Ethernet Switches supplied by the appellants were purchased and used for enterprise/on campus use, in the data centre of the company for management of data centre or in equipment located in internal data centre-LAN and not in the back bone network architecture. Further, no wide network (WAN) transport/carrier ethernet services were offered on these imported Ethernet switches that have been deployed in their premises.

15. We find that there are sufficient grounds provided by the appellants to demonstrate that the imported Catalyst 3850 series switches are of 'enterprise switch' and are not a 'carrier grade switch', as it does not meet the various criteria as provided under the "Essential requirements" as laid down by the government authorities like Technical Engineering Centre and as elaborated in the arguments made by the learned Advocates for the appellants which have been captured at paragraphs 3.1 and 3.2.

16. In view of the foregoing discussions and analysis, we conclude that the product under consideration i.e., various models of CISCO "Catalyst 3850 series Ethernet Switches" imported by the appellants classified under CTI 8517 6290 are eligible for concessional Basic Customs Duty (BCD) @10% in terms of Sl. No. 13 of the notification No. 11/2014-Customs dated 11.07.2014 and Sl. No. 20 Notification No.57/2017-Customs dated 30.06.2017, as amended.

17. Therefore, we are of the considered view that the impugned orders passed by the learned Commissioner (Appeals) cannot be sustained on merits. Accordingly, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in open court on 30.09.2024)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha