CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85567 OF 2023

[Arising out of Order-in-Original No: 15/SJ(15)/PCC(ADJN.)/MUMBAI/2022-23 dated 26th December 2022 passed by the Principal Commissioner of Customs (Adjudication), Mumbai.]

Commissioner of Customs (Import)
Mumbai-I
New Custom House, Ballard Estate Mumbai- 400 001 … ***Appellant***

versus

Reliance Retail Ltd
9th Floor, Maker Chambers IV, 222, Nariman Point
Mumbai- 400 021 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85854 OF 2023

[Arising out of Order-in-Original No: 15/SJ(15)/PCC(ADJN.)/MUMBAI/2022-23 dated 26th December 2022 passed by the Principal Commissioner of Customs (Adjudication), Mumbai.]

Reliance Retail Ltd
Building No. 5-C, CA-22, Reliance Corporate Park
Ghansoli, Navi Mumbai- 400 701. … ***Appellant***

versus

Principal Commissioner of Customs (Import)
New Custom House, Ballard Estate Mumbai- 400 001 ***…Respondent***

APPEARANCE:

Shri J C Patel, Advocate, Shri Vipin Jain, Advocate and Ms Shilpa Balani, Advocate for the assessee-appellant

Shri Shambhoo Nath, Special Counsel for Revenue

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85807-85808/2025

DATE OF HEARING: 21/10/2024
DATE OF DECISION: 17/04/2025

PER: C J MATHEW

M/s Reliance Retail Ltd found themselves locked in confrontation with customs authorities over classification of telecommunication equipment imported by them that, undisputedly, is covered by

> *'Telephone sets, including smartphones and other 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*

corresponding to heading 8517 of First Schedule to Customs Tariff Act, 1975 and which again, it is common ground, are not

> *'Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks:'*

or among such of those 'transmission or reception apparatus' specified as headings that are excluded from 'apparatus for communication in wired or wireless network' which itself is included among 'apparatus for transmission or reception of voice, images, or other data' leaving very limited scope for dispute in assessment of 'routers', 'subscriber end equipment', 'IP set top box', 'small form pluggable (SFP)', 'optical network unit (ONU), 'optical network transceivers (ONT)', 'wi-fi mesh extender' and 'multiport ISAM ONT' to duties of customs chargeable under section 12 of Customs Act, 1962. That ‘telephone sets, smartphones and other telephones’ have turned out to be reference point assures of a certainty that is not so frequent. Yet, that the seeds of discord did fester even in such infertile ground has more to do with consequential claim for eligibility to exemption than with the sophistication of engaging in an exercise of logic and analysis that classification usually is. The order[1] concluding proceedings before Principal Commissioner of Customs (Adjudication), Mumbai is under challenge here from both sides.

2. The appellant, M/s Reliance Retail Ltd had staked claim to exemptions from duties of customs in obligatory filing under section 46 of Customs Act, 1962 owing to conformity of description imported goods conformed variously to that corresponding to tariff items 8517 6930, 8517 6950, 8517 6960, 8517 6990 and 8517 7090 of First Schedule to Customs Tariff Act, 1975 which was objected to jurisdictional customs authorities who posited the description, and very obviously a residual ‘others’, corresponding to tariff item 8517 6290 of First Schedule to Customs Tariff Act, 1975 for recovery of duty foregone by recourse to section 28 of Customs Act, 1962. The imports had been effected in several jurisdictions across the country and several show cause notices of each proposed recovery of ₹ 103,97,34,908 on imports through Jawaharlal Nehru Customs House (JNCH), Nhava

[1] [order-in-original no.15/SJ(15)/PCC(ADJN.)/MUMBAI/2022-23 dated 26th December 2022]

Sheva valued at ₹ 7,40,13,49,918 on which duty liability of ₹ 1,25,99,10,008 had been discharged at the time of import, on imports through Air Cargo Complex (ACC), Mumbai valued at ₹ 7,83,96,24,828 on which duty liability of ₹ 1,13,30,87,904 had been discharged, on imports through Inland Container Depot (ICD) Gharhi, Harasaru valued at ₹ 4,52,83,84,198 on which duty liability of ₹ 75,37,03,379 had been discharged, on imports through Chennai Sea Port valued at ₹ 4,71,28,53,077 on which duty liability of ₹ 78,94,00,977 had been discharged, on imports through Air Cargo Complex (ACC), Delhi valued at ₹ 3,61,02,24,361 on which duty liability of ₹ 49,34,41,747 had been discharged, on imports through Air Cargo Complex (ACC), Chennai VII valued at ₹ 2,32,61,01,865 on which duty liability of ₹ 32,35,57,201 had been discharged, on imports through Kolkata Sea Port valued at ₹ 1,53,11,31,665 on which duty liability of ₹ 27,24,59,773 had been discharged and on imports through Air Cargo Complex (ACC), Kolkata valued at ₹ 1,44,91,06,606 on which duty liability of ₹ 20,07,74,558 had been discharged. Consequently, the appellant herein was called upon to respond to notice for recovery of differential duty of ₹ 424,11,34,837, on imported goods valued at ₹ 33,39,87,76,519 and assessed to duty liability of ₹ 5,22,63,35,546 at the time of import.

3. The liability to differential duty was attributed to incorrect

availment of exemption intended by notification[2] under section 25 of Customs Act, 1962 for such goods corresponding to tariff item claimed by the importer but were not. The adjudicating authority confirmed the demand insofar as 'small form pluggable (SFP)', 'wi-fi mesh extender', 'ISAM ONT', 'HDMI dongle' etc. was concerned by accepting the correctness of classification proposed in the notice even while limiting the recovery to the normal period of limitation and dropped the rest of demands by accepting classification of 'routers' against tariff item 85176930, of 'subscriber end equipment' against tariff item 8517 6950 and of 'IP set top boxes' against tariff item 8517 6960 in First Schedule to Customs Tariff Act, 1975. Consequently, the liability was limited to ₹ 23,46,032 in relation to imports at Nhava Sheva, ₹ 2,60,48,726, in relation to imports at Mumbai and ₹ 10,094,971 in relation to imports at New Delhi which is under challenge by M/s Reliance Retail Ltd while the dropping of demands are assailed – both for classification having been accepted and, even where it was not, for restricting recovery to the normal period of limitation – by the jurisdictional Commissioner of Customs.

4. Learned Counsel for the appellant submitted that 'small form pluggable (SFP)', being 'parts' specific to telecommunication equipment and incapable of independent functioning, merited the classification claimed at the time of import. He contended that the

[2] [no. 11/2014-Cus dated 1st July 2014]

description corresponding to sub-heading 8517 70 of First Schedule to Customs Tariff Act, 1975 had been erroneously interpreted in the impugned order as to refer only to 'optical transceivers' and 'electro optical converters' and that decision of the Tribunal in *Commissioner of Customs, Mumbai (Air Cargo Import) v. Reliance Jio Infocomm Ltd [2022-TIOL-708-CESTAT-MUM]* which settled the appropriateness of the classification claimed had attained finality upon dismissal of the appeal of Revenue before the Hon'ble Supreme Court. He submitted that 'wi-fi mesh extender' had been incorrectly held as ineligible for exemption from basic customs duty in accordance with notification[3] (at serial no. 20) on the ground of incorporation of 'multiple input/multiple output (MIMO)' technology and pointed out that the exclusion in the the exemption notification was limited to 'long term evolution (LTE)' products which 'wi-fi mesh extender', admittedly, is not. He cited the decision of the Tribunal in *Commissioner of Customs (Air) Chennai v. Ingram Micro India Pvt Ltd [2022 (TIOL-882-CESTAT-DEL]* interpreting the said exemption which attained finality with dismissal of appeal of Revenue before the Hon'ble Supreme Court. He argued that the impugned order, by holding ISAM ONT is 'subscriber end equipment' covered by tariff item 8517 6950 of First Schedule to Customs Tariff Act, 1975, demonstrated inconsistency with the finding of duty liability arising therefrom. It was contended that, in any case,

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[3] [no. 57/2017-Cus dated 30th June 2017]

alternative exemption, limiting the duty liability to 10%, was undeniable and that the equipment only enables the subscriber to access internet without aggregating the traffic for linking network modes for long distance communication.

5. Learned Special Counsel submitted that the adjudicating authority had, to the extent of accepting the classification claimed by the importers, erred as also by limiting the demand pertaining those substituted to the normal period envisaged in section 28 of Customs Act, 1962. According to him, ‘machines for the reception and conversion of transmission or regeneration of voice, images or other data including switching and routing apparatus’ corresponding to sub-heading 8517 62 of First Schedule to Customs Tariff Act, 1975 makes it very clear that the goods do not find placement elsewhere. He relied upon rule 6 of the General Rules for Interpretation appended to Customs Tariff Act, 1975 with particular reference to the General Explanatory Notes on the manner in which the sub-classification in terms of ‘-’ and ‘- -' are deployed. He contended that the adoption of appropriate tariff item at ‘- - -’ level requires that the description corresponding to ‘- -’ should also be in consonance whereas the original authority had gone directly to the description at the tariff item level. He submitted that routers are specifically included in sub-heading 8517 62 and, therefore, should rightly find place at the ‘- - -’ level corresponding to ‘others’ therein. He submitted that though

'routers' are included in the subsequent sub-heading too, the latter intended for equipment 'relating to transmission or reception' could justifiably find 'reception, conversion or transmission or re-generation' as appropriate. Insofar as 'GPON home gateway (HGW)', 'optical network terminal (ONT)' and 'optical network unit (ONU)' were concerned, it was contended by Learned Special Counsel for Revenue that the cause for the adjudicating authority to find 'subscriber end equipment' to be covered by description corresponding to tariff item 8517 6950 of First Schedule to Customs Tariff Act, 1975 is incorrect. He contended that these covert 'optical signals' to 'electrical' and that enhanced with MIMO features supports wireless connectivity owing to which conformity with sub-heading 8517 62 of First Schedule to Customs Tariff Act, 1975 would be breached. It is contended that the decision of the Advance Ruling Authority had failed to ascertain sub-classification in terms of ' – '. It was further contended that the 'IP set top boxes' should have been classified by taking into account the hierarchical structure of '-', '- -' and '- - -'. Accordingly, he placed reliance on

> *'3.7.4 Small Form Fac:*
>
> *3.7.4.1The SCN in para 7.10 Has alleged that SFP (Small Form Factor Pluggable) - electro optical convertors are classifiable under CTH 85176290 whereas the Noticee has claimed the classification under CTH 85177090 as parts and cleared availing benefit of Notfn No. 58/2017 dated 30.6.2017. The SCN has alleged that these goods are electro*

optical convertors and therefore, should be classified under 85176290. The Noticee in their reply has stated that SFPs are parts of equipment such as routers, servers, home getaway, etc. and has specific part number and therefore can be used only in respective equipment. The SFP cannot perform its function on a stand alone basis, since it lacks power and intelligence which it gets from the equipment in which it is fitted. In support of their contention they relied upon the Commissioner (Appeals), Mumbai Order dated 30-8.2018 and Commissioner (Appeals), Hyderabad Order dated 25.1.2017 wherein the goods described as Small Form Factor Pluggables ware held to be classifiable under CTH 851770.90 as parts of telecom equipment viz- ethernet switch. On going through the impugned goods and the goods covered under these Commissioner (Appeal)'s Order dated 25.1.2017 and 30.8.2018, I find that following goods were under dispute in Commissioner (Appeals)

6.

a	*FVOA,*	F-EVOA SFP, SAL	32068AA/ 2001607520
b	XL-8*	W, XFP DWDM TW	fABLEC (50GHZ 10GXFP) TAB375650046 / 2001607521
c	XPF-]	.64, 10GBE BASE-L	X,3AL82045AA / 2001628622
d	Port,	11G Quad Piuggabl	e Anyrate, 11QPA4, 8DG60349BA/ 2001598555

Whereas, the goods under dispute in Commissioner (Appeals) Order dated 25.1.2017 were as follows :

7.

a)	*10 Base - SR SFP Module Part No. SFP-10G-SR*
b)	*10 Base - SR SFP Module Part No. SFP-10G-SR*
c)	*10 Base - SR SFP Module Part No. SFP-10G-SR*
d)	*j 10 Base - LR SFP Module Part No. SFP-10G-SR*
e)	*1000 Base - LX LH SFP Transceiver Module, MMF/SMF, 131 ONM, DOM part No. GLCLH SMD*
	Catalyst 4948E 300 WAC Power Supply Part No. PWR-C$9E 300AC-R

9)	*1000 Base - LX LH SFP Transceiver Module, MMF/SMF, 850 ONM, DOM part No. GLC-SX-MMD*
h)	*Nexus 7000.M2 Series 6 Port 40 GBE with XL Option (Req.QSFP) Part No.N7K-M206FQ-23L (Card)*
i)	*QSFP 40 GBASE LR4 Transceiver Module, LC, 10KM Part No.QSFP 40GE PR4*
j) ..	*Nexus 7000 M2 Series 24 Port 10 GE with XL Option (Req.SFP Plus) Part No,N7K M224XP-23L (Card)*
k)	*10 GBASE-LR SFP Module Part No.SFP 10G LR*
m)	*10 GBASAE SR SFP Module Part No.SFP 10G SR*
	QSFP Bidi Short Reach Transceiver Part No.QSFP 40G SR BD

3.7.4.2 In the present case the goods described as Small Form-Factor Pluggable are mentioned in para 7.10.5 of the SCN as –

xxxxx

3.7.4.4 As can be seen the goods in the current SCN are totally different from the goods covered under the Commissioner (Appeals) Orders dated 30.8,2018 and 25.1.2017 In terms of specifications, features, technology, uses and also supplier. Therefore, these orders of the Commissioner (Appeals) cited by the Noticee in their defence cannot be made applicable in this case. In any case, when there is no specific heading in the first schedule of the Customs Tariff Act, 1975 for the item description 'Small Form-Factor Pluggable' / one has to go through the complete details of the goods in order to ascertain its classification. Ongoing through the description of the impugned goods mentioned above as well as their datasheets provided by the Noticee (RUD - 66, 67 and 68), it is clear that, these goods are nothing but 'transceivers' (specifically optical transceivers) having different specifications with basic function being of reception and transmission of signals and also conversion of one form of signal to another and vice *versa. The "Small Form-Factor Pluggable" only denotes its physical form in which it is presented or sold. As per Wikipedia "Form factor is a hardware design, aspect that defines and prescribes the size, shape, and other physical specifications of components, particularly in electronics. A form factor may represent a broad class of similarly sized components, or it may prescribe a specific standard, It may also define an entire system, as in a computer form factor", The advantage of using SFPs compared to fixed interfaces (e.g. modular connectors in Ethernet switches) is that individual ports can be equipped with different types of transceiver as required,*

3.7.4.5 In case of electronic/IT product reference to "small form factor pluggable" is to its physical form including the facility of being plugged (and removable easily compared to fixed one) in compatible slot of a device. As such, small form factor pluggable does not refer to any particular product but to a form in any product is presented. In this case I find that the goods under reference are transceivers presented in the form of small form factor and are easily jgable to the system in which they are used. These products viz. "Optical Transceivers" are known to transmit and receive signal in an optical environment. The CTH 851762 covers machines for transmission and reception of voice, image or other data, such as modems, multiplexers, etc. As per explanatory notes to HSN, the communication apparatus of sub heading 851762 includes multiplexer and related line equipment (e.g. transmitters, receivers or electro-optical converters). In absence of any specific heading for either SFPs or for Optical Transceivers, I find that these goods are appropriately classifiable under CTH 85176290 as 'others'. The only argument which remains to be answered, could be that the impugned goods are not *machines as they cannot function on their own and has to be plugged to the switches for providing necessary functions. It is not necessary that for a product to be called as machine/ it has to be always independently working. It may be a case that it may work in conjunction with other machines / equipment or apparatus to achieve its functionality and still it remains a machine by itself. This is also clear from the description of the goods mentioned in various 8 digit sub-headings under CTH 871562, such as multiplexers (85176270), modems (85176230) which also cannot work on their own unless connected to power and other input output devices. Therefore, I conclude that these Optical Transceivers are correctly classifiable under CTH 85176290 and for the reasons that they are supporting optical fibre connectivity and compliant with GPON standards, will be excluded for the benefit of exemption Notification No. 24/2005 dated 1.3.2005 as amended, under excluded category of products.*

3.7.5

3.7.5.1 The Noticee has also imported Wi-fi Mesh Extender and classified them under CTH 85176290 under the heading "Others". SCN proposes the classification of these products under CTH 85176290 as "others." However, the benefit of Notifications dated 11.7.2014 and 11.10,2018 are proposed to be denied on the ground that these products incorporate MIMO technology. I find that there is no classification dispute in respect of this product and only aspect to be seen is whether they are eligible for exemption notifications dated 11.7.2014 and 11.10.2018 or otherwise. I find that these products incorporate MIMO technology which is one of the excluded categories of the product from the Notification and as such they are not entitled for the benefit of exemption notification. In the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and

Ors [MANU/SC/0789/2018], the Hon'ble Supreme Court observed that -

> *" 52, To sum up, we answer the reference holding as under - (1) Exemption notification should be Interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause exemption notification.*
>
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation the benefit of such ambiguity cannot be claimed by the subject assessee and it must be interpreted in favour of the revenue."*

3.7.5.2 In view of above, I find that the exemption Notification claimed by the Noticee in respect of these goods is not available to them.

3.7.6 ***HDMI Dongle:***

3.7.6.1 The Noticee has also imported HDMI Dongle and classified them under CTH 85176990 under the heading "Others", the SCN proposes the classification of these products under CTH 85176290 as "others." The reasoning given in the SCN for classifying them under 85176290 is based on their technical details / functionality as product supporting MIMO technology. When there is no specific heading in the first schedule of the Customs Tariff Act, 1975 for the item description HDMI Dangle, one has to go through the complete details of the goods in order to ascertain its classification. On going through the description of the impugned goods mentioned as well as their datasheets provided by the notice, I find that these are HDMI stick dongle which acts as Digital Media Renderer (DMR) devise and with telecommunication operators mobile network, it can support wireless tethering service with LTE 4G network. These goods incorporate MIMO technology. Ongoing through these functionalities, I find that these dongles can be inserted in HDMI port for displaying the digital media.

This function Involves reception/conversion and transmission of the image, data or video. As the CTH 85176290 provides for other machines for reception, conversion and transmission of data, image or video, these HDMI dongles are appropriately classifiable under CTH 85176290 and in view of incorporation of MIMO and LTE technology there will not be eligible for the exemption Notification claimed by the Noticee. The details of these Notifications have been discussed earlier also and so are not being repeated here.

3.7.7 ***MULTIPORT ISAM ONT***

3.7.7.1. The Noticee has also imported MULTIPORT ISAM ONT and classified them under CTH 85176290 under the heading "Others". SCN proposes the classification of these products under CTH 85176290 as '"others." However, the benefit of Notifications dated 11.7.2014 and 11.16.2018 are proposed to be denied on the ground that these products being Optical Transport Equipments, I find that there is no classification dispute in respect of this product and only aspect to be seen Is whether they are eligible for exemption notifications dated 11.7.2014 and 11.10.2018 or otherwise. I find that these products being Optical Transport Equipments which is one of the excluded categories of the product from the Notification and as such they are not entitled for the benefit of exemption notification. I rely upon the observations made by the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and Ors [MANU/SC/0789/ 2018] Court as already discussed in Para 3.7.5.1 above.

3.7.7.2. In view of above, I find that the exemption Notification claimed by the Noticee in respect of these goods is not available to them.'

in the impugned order.

8. It emanates from submissions of both sides that, notwithstanding earlier decisions, certain items of import continued to be in dispute. We find from exemption notification[4] that all goods covered by 8517 of First Schedule to Customs Tariff Act, 1975 are exempted except following

> *'13 8517 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 Optica Transport Product or Switch (POTP or POTS), Optical TransportNetwork(OTN) products, and IP Radios;*
>
> *(iii) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multi protocol Label Switching-Transport Profile (M PLS-TP) products;*
>
> *(iv) Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE)'*

9. The enumeration *supra* was amended by notification[5] including several tariff lines that were entitled to exemption without any exclusion as far as the claimed classification is concerned.

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[4] [no. 24/2005-Cus dated 1st March 2005]
[5] [no. 58/2017-Cus dated 30th June 2017]

10. It is evident that the heading itself comprises 'other apparatus for transmission of voice, images or other data, including apparatus for communication in a wired or wireless network' and coverage of impugned goods therein is not in dispute. However, customs authorities considered the goods to be 'machines for reception, conversion and transmission or re-generation of voice or images or other data' with the next sub-heading pertaining other than 'printed circuited boards' being out of question. Nonetheless, even without the benefit of distinction in terms of '-', the 'other' corresponding to sub-heading 8517 69 of First Schedule to Customs Tariff Act, 1975 includes 'routers' and 'subscriber end equipment' and 'set top boxes' as specific incorporation. The show cause notice, as well as the grounds of appeal of the jurisdictional Commissioner of Customs, are bereft of any explanation for the goods for purpose other than transmission or reception of voice, images or other data at '- -' level are distinguishable from several others including the residual entry corresponding to tariff item 8517 6290 of First Schedule to Customs Tariff Act, 1975 as also the sub-heading 8517 69 of First Schedule to Customs Tariff Act, 1975 including several below at '- - -' level with corresponding description of 'other' among which are specific enumerations of 'routers', 'subscriber end equipment' and 'set top boxes' in dispute here. The General Rules for Interpretation of Import Tariff appended to First Schedule to Customs Tariff Act, 1975 are abundantly clear that, in addition to perceiving the structure through the prism of 'four-, six- and eight-digit' hierarchy there is no less of a

requirement for simultaneous inclusion within the sub-classification designated by '- -' or '- - -', as the case may be. Insofar as sub-heading 8517 62 of First Schedule to Customs Tariff Act, 1975 is concerned, and which is also a sub-classification, with corresponding description for both as 'machines for reception, conversion and transmission or re-generation of voice or images or other data' but within others too are several enumerations of the same description. Consequently, this 'others' encompasses not only 'switches' and 'routers' but the others too, in the absence of specific enumeration within sub-heading 85617 62 of First Schedule to Customs Tariff Act, 1975. The adjudicating authority was correct in not restricting the classification to sub-heading 8517 62 of First Schedule to Customs Tariff Act, 1975 in the context of deployment of '- - -'. Likewise, the presence of 'subscriber end equipment' as well as 'IP set top boxes' within the lines below the sub-classification would erase the primary heading otherwise will be of within sub-heading 8517 62 of First Schedule to Customs Tariff Act, 1975 owing to the ordinal hierarchy espoused by the General Rules for Interpretation appended to Customs Tariff Act, 1975.

11. The decision of the Tribunal in *re Ingram Micro India Pvt Ltd* which went into the scope of exclusion, in so far as 'long term evolutionary (LTE)' equipment is concerned, held that

> *'22. Though it is correct that clause (iv) would effectively mean include two categories of products namely MIMO and LTE and*

that they have distinct identities, but it is not possible to accept the contention advanced by learned special counsel for the Department that MIMO does not by itself mean anything unless it is followed by the expressions 'technology' or 'products' and, therefore, since the exception carved out has to be 'goods', this expression has to be interpreted to connote products based on MIMO technology.

23. What needs to be remembered is that MIMO is a technology and cannot be treated as an independent product. If the intention was to exclude even products having only MIMO technology, then the word 'products' should have been used after MIMO as well as after LTE. It, therefore, follows that the scope of 'products' excluded by entry (iv) would be products which use both MIMO and LTE. Thus, the term 'Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) Products' means products which contain both MIMO and LTE. This view finds support from the following decisions.

24. In British Health Products, a Division Bench of the Tribunal held as follows:

> *"7. We have carefully considered the pleas advanced from both sides. From a reading of Tariff Heading 19.01, we observe that the expression used in relation to food preparation of milk and cream is "milk" and "cream". The word `and' is generally used in the sense of conjunctive word. Therefore ld. Advocate submits rightly that the word has been used in conjunctive sense in the tariff heading. This sense is also apparent if we look into the first part of the Tariff heading where a reference has been made to the disjunctive word `or' in the expression preparation of flour, meal, starch or malt extract under Tariff Heading 19.01. Hence the expression "milk and cream" in the second portion of the Tariff Heading 19.01 would mean that both milk and cream should be present in the food preparation classifiable under the said heading. We do not agree with the plea of the ld. JDR that by use of "whole milk powder" and "cream" being necessarily contained in the whole milk powder, the preparation should be deemed to have contained both milk and cream. The two products, viz., "milk" and "cream" are commercially known differently. When the Tariff heading uses names of two different commercial commodities joined by a conjunctive word, the preparation must contain those commodities in their natural form as available in the market. There are preparations which are made of both milk and cream. One of the examples given by the ld. Advocate, is, `Gulab Jamum' being a preparation of milk and cream." (emphasis supplied)*

> *25. The Punjab and Haryana High Court in Kulcip Medicines also observed as follows:*
>
> > *"11. The question which falls for consideration is whether word 'and' used after the word 'clearing' but before the word 'forwarding' at two places in clause (j) be considered in a conjunctive sense or disinjunctive sense. It appears to be fairly well settled that the context and intention of legislature are the guiding principles. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of Mazagaon Dock Ltd. v. CIT (1958) 34 ITR 368. By necessary intendment the expression 'a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner' contemplates only one person rendering service as 'clearing and forwarding agent' in relation to 'clearing and forwarding operations'. To say that if, one person has rendered service as 'forwarding agent' without rendering any service as 'clearing agent' and he be deemed to have rendered both services would amount to replacing the conjunctive 'and' by a disjunctive which is not possible." (emphasis supplied)*
>
> *26. A Division Bench of the Tribunal in Ingram Micro India in the matter of the appellant also confirmed the classification of identical product (i.e. WAP) under CTI 8517 62 90 and extended the benefit of the subsequent notification dated 30.07.2017. The Department has accepted the Order passed by the Tribunal. Therefore, once the benefit has been granted to Ingram Micro in the subsequent notification for an identical product, the benefit under the notification dated 01.03.2005, as amended on 11.07.2014 should also be extended to Ingram Micro.'*

12. Having held that 'subscriber end equipment' was covered by tariff item 8517 6290 of First Schedule to Customs Tariff Act, 1975, the attempt by the adjudicating authority to shift 'wi-fi mesh extender', and solely by reference to the exemption notification, is not correct in law. Insofar as 'small form pluggable' is concerned, the decision of the Tribunal in *re Reliance Jio Infocom Ltd*, upholding the order of the original authority, found no reason to entertain the plea of Revenue for classification other than under 8517 7090 and consequent non-entitlement to the benefit of the exemption as inapplicable.

13. Time and again, we have referred to the rules of engagement, insofar as classification is concerned, which was enunciated by the Hon'ble Supreme Court, in *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]*, thus

> *'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'*

and in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]* thus

> *'28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue……'*

and, as no less essential for resolution of classification disputes, to have held that onus for displacement of the claim on classification lies with the customs authorities and that such revision would find approval in law only if the description is appropriate by reference to rule (1) of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. From the grounds of appeal as well as the submissions of the Learned Special Counsel for Revenue, we find that insofar as routers, subscriber end equipment and set top boxes the plea in the appeal of Commissioner of Customs would not sustain. That wi-fi mesh extender and HDMI dongle also subscriber end equipment is not in dispute and consequently the inconsistency in the impugned order would suffice for discarding the denial of the said classification. Moreover, the decision in the case of *re Reliance Jio Infocom Ltd* has settled the issue insofar as small form pluggable are concerned. The finding of the adjudicating authority insofar as ISAM ONT is concerned is inappropriate considering other optical network terminals are also subscriber end equipment.

14. For the above reasons, we find no merit in the appeal of Revenue which is dismissed. In accordance with our finding *supra* the appeal of M/s Reliance Retail Ltd is allowed and we set aside the impugned order to that extend.

(Order pronounced in the open court on 17/04/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*