CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85877 of 2020

[Arising out of Order-in-Original No. CC-VA/03/2020-21 Adj.(I) ACC dated 08.05.2020 passed by the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Mumbai.]

Ingram Micro India Private Limited **.... Appellants**
5th Floor, B-Block, Godrej IT Park
LBS Road, Vikhroli (West)
Mumbai – 400 079.

Versus

Commissioner of Customs (Import) **.... Respondent**
Air Cargo Complex, Sahar, Andheri (East)
Mumbai – 4030 099.

APPEARANCE:

Shri Akhilesh Kangsia along with Ms.Apoorva Parihar, Advocates for the Appellants

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

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86966/2025

Date of Hearing: 23.01.2025
Date of Decision: 23.01.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Ingram Micro India Private Limited, Mumbai (herein after, referred to as 'the appellants', for short), assailing the Order-in-Original No. CC-VA/03/2020-21 Adj.(I) ACC dated 08.05.2020 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Mumbai.

2.1 Briefly stated, the facts of the case are that the appellants herein, *inter alia*, is engaged in import and distribution of Information Technology (IT) and telecommunication products; predominantly networking products viz., switches, routers, access points for supply in Indian market. One of the product imported by the appellants is 'Enterprise class/Non-carrier Ethernet Switches' from their global technology partner M/s CISCO Systems International BV, Amsterdam, Netherlands. For importation of

"Ethernet Switches – CISCO Catalyst 3850" through the Air Cargo Complex Customs Import Commissionerate, the appellants had filed various Bills of Entry (B/Es), and classified the said imported goods under Customs Tariff Item (CTI) 8517 6290 of the First Schedule to the Customs Tariff Act, 1975. The appellant had also claimed the benefit of concessional rate of Basic Customs Duty (BCD) of 10% *ad valorem* under Sr. No. 20 of Notification 57/2017–Customs dated 30.06.2017 in self-assessment of imports for payment of customs duty on such goods.

2.2 However, by citing the changes made in the Notification No. 57/2017–Customs dated 30.06.2017, the department had interpreted that the imported ethernet switches shall be classifiable under CTI 8517 6990 and is chargeable to 20% BCD and issued consultative letter dated 15.03.2019 requesting the appellants to voluntarily pay the differential duty. Vide reply letter dated 06.06.2019, the appellants had justified the classification of the imported goods under CTI 8517 6290 with applicable 10% BCD. Accordingly, show cause proceedings was initiated by the department.

2.3 Learned Commissioner of Customs after giving personal hearing to the appellants had vide impugned order dated 08.05.2020, had accepted the classification of the impugned goods under CTI 8517 6290; however, he denied the benefit of concessional rate of 10% BCD under the above said notification, and confirmed the merit rate of 20% BCD payable with duty demand of Rs.1,76,53,610/- along with interest under Section 28 of the Customs Act, 1962 and also imposed penalty for Rs.17,00,000/- under Section 112(a) ibid on the appellants. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3. Learned Advocate appearing for the appellants submitted that the issue involved in the present appeal is squarely covered in their favour by the decision of the Tribunal in the case of self-same appellants i.e., *Ingram Micro India Private Limited Vs. Commissioner of Customs, Chennai* – 2020 (11) TMI 9 - CESTAT Chennai and in the case of *Cisco Commerce India Pvt. Ltd. vs. Commissioner of Customs, Mumbai (Air Cargo Import)* - (2024) 25 Centax 275 (Tri.-Bom), and the facts, circumstances and issues are identical to those involved in the present case. Therefore, he requested

that the appeal filed by them may be allowed in providing concessional BCD eligible in respect of the goods imported by them.

4. On the other hand, learned Authorised Representative for Revenue reiterated the findings of Commissioner (Appeals) in the impugned order. He further relied upon the letter dated 24.04.2024 of the Telecom Engineering Centre (Western Region), Department of Telecommunications Mumbai, wherein they had expressed opinion of Cisco product stating that functionally there is no difference between a Carrier Ethernet Switch and Enterprise Switch/non-Carrier Ethernet switch, in order to deny the concessional BCD on the goods imported by the appellants.

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper books for this case.

6. In the impugned order, the learned Commissioner of Customs had found that the imported goods, 'Ethernet Switch: CISCO Catalyst' can be used for both the purposes i.e., for use in network as transport/carriage switch known as 'carrier ethernet switch', as well as Enterprise switch for use in customer's premises known as 'non-carrier ethernet switch'. Therefore, in the impugned order it was held that since these can also be used for telecommunication equipment, for which concessional rate of duty is not applicable, he confirmed the differential duty on the appellants

7. The issue that was dealt in the above referred *Cisco Commerce India Pvt. Ltd.* (supra) is whether the "Ethernet Switches" classifiable 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 not. In examining the disputed issue thoroughly, this Co-ordinate Bench of the Tribunal in the case of *Cisco Commerce India Pvt. Ltd.* (supra), had considered the scope of goods covered under CTI 8517 6290 and the various notifications issued for providing exemption from Basic Customs Duty, vide Notification No. 24/2005-Customs dated 01.03.2005, 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. Further, the Tribunal had also examined the

issue on the basis of the proposal introduced in the Union Budget, 2014 for imposing 10% BCD as was explained by the Union Finance Minister, and the instructions issued by the Ministry of Finance explaining the budget proposal to the customs field formations vide D.O.F.No.334/15/2014-TRU dated 10.07.2014. Furthermore, the scope of goods covered under HS Commodity Description and Coding System WCO; clarification provided by the Department of Telecommunication, Ministry of Communication, in their O.M. dated 18.11.2016 and CBIC Circular No.08/2023-Customs; technical opinion of the Telecom Engineering Centre (western region), Mumbai dated 24.04.2024, on the basis of reference made by the Customs authorities, before coming to the following conclusion. The relevant paragraphs of the said order is quoted below:

> *"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.*
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> *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."*

8. It is also a fact on that the importer-appellants were allowed to clear the goods at concessional BCD at 10% by the jurisdictional Customs authorities and later on account of audit conducted on such import transactions, raising certain objections on the availment of concessional duty, the SCN and adjudication proceedings were initiated. Further, there was no testing of the imported product or any other evidential document to prove that the product in dispute, is not covered by the exemption entry in Sr. No. 20 of the Notification No. 57/2017-Cus. dated 30.06.2017.

9.1 Further, we also find that the Co-ordinate Bench of the Tribunal at Mumbai in the case of self-same appellants in the case of *Ingram Micro India Pvt. Ltd.* vide Final Order No.85758-85760 dated 17.04.2023 have held as under:

> *"4.2 Vide final order No. 40817/2020 dated 26.10.2020, as further rectified by miscellaneous order No. 40007/2021 dated 12.01.2021, following has been held:-*

"4. Heard both sides and perused the records of the case. We find that the impugned goods have been classified under 85176290 by the appellant in the past and learned counsel has submitted evidence to the effect that the same are being classified under same heading even afterwards at various customs locations and exemption is being allowed as claimed. We also find that ADG (Adjudication), DRI has passed a comprehensive order holding the classification of the goods in favour of the appellants. Learned counsel has demonstrated that US and German Customs have given rulings classifying the goods at six digit level as claimed by the appellants. We find that department has not made out any case for reopening of the classification of the impugned goods. We find that classification of the imported goods should be based on specific headings, section notes and chapter notes and General Rules of Interpretation of Tariff and HSN. The department has tried to change the classification of the goods being imported by the appellants from CTH 85176290 to CTH 85176990 on the basis of a notification without making any case for revising the classification of the goods. We find that this is not permissible. We also find that department's reliance on Notification No.2/2019 which is subsequently issued is misplaced; cannot be made applicable retrospectively and therefore, not applicable to the present facts of the case. We find that while Revenue was free to decide on the eligibility of the impugned products for exemption under any notification. It is to be noted that the learned counsel for the appellant submits that they are discharging duty, at the merit rate, on carrier Ethernet Switches when they are imported for supply to telecom service providers, even though classified under CTH 85176290. However, it is not open to them to change the classification on the basis of an exemption notification when there is no change in the Customs Tariff Act, 1975. Therefore, we find that the impugned goods are rightly classifiable under CTH 85176290 in view of the past and present practice of the department, Rulings of US and German Customs and the order by ADG (Adjudication), DRI. Department has not adduced any evidence to show that the said order has been stayed by any competent authority.

5. In view of the above, we hold that the impugned goods "(a) Access point (b) Enterprise class Ethernet switches (other than carrier Ethernet switches) and (c) Networking appliances" are classifiable under CTH 85176290. Therefore, the appeal is allowed with consequential relief, if any, as per law."

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."

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5.1 In view of the above decisions, we do not find any merits in the impugned order and set aside the same allowing the appeals."

9.2 Furthermore, we also find that the Co-ordinate Bench of the Tribunal at Chennai in the case of self-same appellants in the case of *Ingram Micro India Pvt. Ltd.* (supra) vide Final Order No.40817 dated 26.10.2020 have also upheld the classification of Enterprise class ethernet switches under 8517 6290 and extended the notification benefit to such importers. The relevant paragraphs is the said order is quoted here under:

> *"4. Heard both sides and perused the records of the case. We find that the impugned goods have been classified under 85176290 by the appellant in the past and learned counsel has submitted evidence to the effect that the same are being classified under same heading even afterwards at various customs locations and exemption is being allowed as claimed. We also find that ADG (Adjudication), DRI has passed a comprehensive order holding the classification of the goods in favour of the appellants. Learned counsel has demonstrated that US and German Customs have given rulings classifying the goods at six digit level as claimed by the appellants. We find that department has not made out any case for reopening of the classification of the impugned goods. We find that classification of the imported goods should be based on specific headings, section notes and chapter notes and General Rules of Interpretation of Tariff and HSN. The department has tried to change the classification of the goods being imported by the appellants from CTH 85176290 to CTH 85176990 on the basis of a notification without making any case for revising the classification of the goods. We find that this is not permissible. We also find that department"s reliance on Notification No.2/2019 which is subsequently issued is misplaced; cannot be made applicable retrospectively and therefore, not applicable to the present facts of the case. We find that while Revenue was free to decide on the eligibility of the impugned products for exemption under any notification. It is to be noted that the learned counsel for the appellant submits that they are discharging duty, at the merit rate, on carrier Ethernet Switches when they are imported for supply to telecom service providers, even though classified under CTH 85176290. However, it is not open to them to change the classification on the basis of an exemption notification when there is no change in the Customs Tariff Act, 1975. Therefore, we find that the impugned goods are rightly classifiable under CTH 85176290 in view of the past and present practice of the department, Rulings of US and German Customs and the order by ADG (Adjudication), DRI. Department has not adduced any evidence to show that the said order has been stayed by any competent authority.*
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> *5. In view of the above, we hold that the impugned goods "(a) Access point (b) Enterprise class Ethernet switches (other than carrier Ethernet switches) and (c) Networking appliances" are classifiable under CTH 85176290. Therefore, the appeal is allowed with consequential relief, if any, as per law."*

10. Considering the factual matrix of the case and that the dispute involved in the present case has already been decided in favour of the appellants in extending the concessional BCD at 10% in two cases of self-same appellants in *Ingram Micro India Pvt. Ltd.* (supra) and in the case of *Cisco Commerce India Pvt. Ltd.* (supra), we find no reason to depart from the said decision taken by the Tribunal.

11. In the result, the impugned order is set aside, and the appeal filed by the appellants is allowed in their favour.

(Operative portion of the Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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