CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86427 of 2023

[Arising out of Order-in-Appeal No. GOA-CUSTM-APP(VNT)-95-2022-23 dated 31.03.2023 passed by the Commissioner (Appeals), CGST & Customs, Goa.]

Digisol Systems Limited **.... Appellants**
Plot No.L-7, Verna Industrial Estate
South Goa Salcette,
Verna Goa – 403 722.

Versus

Commissioner of Customs, Goa **.... Respondent**
Harbour Marma Goa Customs House
Vsco-Da-Gama, Goa – 403 803.

APPEARANCE:

Shri Mahesh Raichandani, Advocate for the Appellants

Shri Krishna Azad, 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/86963/2025

Date of Hearing: 20.01.2025
Date of Decision: 20.01.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Digisol Systems Limited, Goa (herein after, referred to as 'the appellants', for short), assailing the Order-in-Appeal No. GOA-CUSTM-APP(VNT)-95-2022-23 dated 31.03.2023 (herein after, referred to as 'the impugned order') passed by the Commissioner (Appeals), CGST & Customs, Goa.

2.1 Briefly stated, the facts of the case are that the appellants herein, *inter alia*, is engaged in trading of 'Networking Products' including WIFI Routers, Switches, Enterprises Wireless Solutions, Switching and IP surveillance etc. The appellants had imported various goods such as 'Ethernet Switches, Access Point and Ceiling Mount Indoor and Transceivers' by filing the Bills of Entry (B/Es) No. 8109338 dated

01.04.2022 and 8786538 dated 22.05.2022. The said goods were classified under Customs Tariff Item (CTI) 8517 6290 of the First Schedule to the Customs Tariff Act, 1975. The appellant had 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 The B/Es were marked for faceless assessment under the Customs automated EDI system. During the course of assessment, it was alleged that imported goods were not entitled for the concessional rate by virtue of the exclusion clause in Sr. No. 20 of the Notification No. 57/2017-Cus. dated 30.06.2017. For the query raised by the department, the appellants on 05.04.2022, had submitted a reply to the faceless assessment group and denied all the allegations levelled against their claim for concessional duty of BCD. Vide letter No. DSL /22-23 dated 12.04.2022 and 26.05.2022, the appellants importer had given their consent to pay duty under protest, while requesting for passing of speaking order in terms of Section 17(5) ibid. Accordingly, the adjudicating authority after giving a personal hearing in the matter on 04.05.2022 and 02.06.2022, decided the case by passing Order-in-Original No.54/2022-AC (Import) dated 30.06.2022, by holding that the appellants importer is not eligible for the benefit of concessional rate of 10% BCD under the above said notification, and confirmed the merit rate of 20% BCD paid, by discharging the protest made by the appellants importer. Being aggrieved with the said order dated 30.06.2022 of the original authority, the appellants had filed an appeal before the Commissioner of Customs (Appeals), Goa. In disposing the case, learned Commissioner (Appeals) had passed the impugned order in upholding the order of the original authority and dismissed the appeal of the appellants. Feeling aggrieved with the impugned order dated 31.03.2023, 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 *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 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.

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 (Appeals) had found that the imported goods are not supported by evidence for claiming that these are eligible for duty concession. In coming conclusion for rejection of the appeal filed by the appellants importer, he had given his findings as follows:

> *"6.3….. Though, theoretically submissions have been made in attempt to distinguish the switches imported by it from the list of exclusion by way of inferences drawn from the product catalogue merely on paper, the appellant has not been able to adduce any direct and clinching evidence to demonstrate that switches imported by them are not Carrier Ethernet switches.*
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> *6.6…… In the grounds advanced against the said finding, the appellant has stated that the imported transceivers are modules that are utilised for data transmission from one switch to another switch over LAN networks only; that the imported transceivers are used on Ethernet switch which is purely a LAN transmission device over any distance and router is a WAN transmission device over any distance and that importer transceivers cannot be considered as Optical Transport Network Products. However, I find that they have not backed its contention in its submissions by any credible documentary or technical product information pertaining to the imported goods. They have also not been able to provide the end-use of the product as contemplated in the said submission. I am therefore of the opinion that the contentions advanced lack in merit as they have not been substantiated with evidence.*
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> *xxx xxx xxx xxx*
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> *7. In view of the foregoing observations, I do not find any reason to interfere with the impugned order passed by the respondent…"*

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 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 vide letter dated 24.04.2024, on the basis of reference made by the Customs authorities, have also been examined by the Tribunal 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 had complied with the order of re-assessment and the paid the differential Customs duty under protest. However, 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. 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 the case of *Cisco Commerce India Pvt. Ltd.* (supra), we find no reason to depart from the said decision taken by the Tribunal.

10. In the result, the impugned order is set aside, and the appeal filed by the appellants is allowed in their favour, with consequential relief, if any, as per law.

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

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM