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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st February, 2025

+ **CUSAA 40/2025 & CM APPL. 4834/2025**

NOKIA SOLUTIONS AND NETWORKS INDIA PRIVATE LIMITED

.....Appellant

Through: Mr. Kamal Sawhney, Mr. Deepak Thackur, Ms. Aakansha Wadhvani, Mr. Rishabh Mishra, Advs. (M:9818849573)

versus

CUSTOMS AUTHORITY FOR ADVANCE RULINGS, NEW DELHI & ORS.

.....Respondents

Through: Mr. Aditya Singla, SSC CBIC with Mr. Ritwik Saha & Mr. Umang Misra, Advs. (M: 8851493323)

34

AND

+ **CUSAA 41/2025 & CM APPL. 4835/2025**

NOKIA SOLUTIONS AND NETWORKS INDIA PRIVATE LIMITED

.....Appellant

Through: Mr. Kamal Sawhney, Mr. Deepak Thackur, Ms. Aakansha Wadhvani, Mr. Rishabh Mishra, Advs.

versus

CUSTOMS AUTHORITY FOR ADVANCE RULINGS NEW DELHI & ORS.

.....Respondents

Through: Mr. Aditya Singla, SSC CBIC with Mr. Ritwik Saha & Mr. Umang Misra, Advs. (M: 8851493323).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. These two appeals have been filed by M/s. Nokia Solutions and Networks India Private Limited under Section 28KA of the Customs Act



challenging the impugned ruling of the Customs Authority for Advance Rulings (hereinafter '*Authority*') dated 26th September, 2024. Both the appeals arise from two different rulings passed by the same Advance Ruling Authority on identical issues.

3. The short issue that arises is whether the Small Form Factor Pluggable (hereinafter '*SFP*') is a part of a machinery and is liable to be classified under *CTH 8517 7990* or whether it is to be classified as an apparatus/ machine under *CTH 8517 6290*.

4. The case of the Appellant is that the issue is no longer *res integra* and is fully covered by two Rulings of Customs, Excise and Service Tax Appellate Tribunal ('*CESTAT*'), as also orders passed by the Supreme Court in the matters where the challenge was raised from the said rulings of CESTAT.

5. The Court has heard the Counsel for the parties. A perusal of the CESTAT order dated 29th July, 2022 in *Commissioner of Customs-Mumbai (Air Cargo Import) vs. Reliance Jio Infocomm Ltd.* would show that after a detailed consideration of the matter in respect of identical parts *i.e.*, SFPs, the CESTAT Mumbai Bench had upheld the order of the Commissioner (Appeals), in the following terms :

"6. We also find that learned Commissioner (Appeals), Mumbai vide order dated 30.08.2018 found after discussing the relevant Chapter Heading of 8517 of Customs Tariff Act, 1975 as follows: -

"11. I find that the above information as available in the product catalogue published by the manufacturer supplier clearly suggests that all four items are parts of Alcatel Lucent 1830 Photonic Service Switch-32 (PSS-32) and therefore shall be classifiable as parts under 85177090 and 85177010. I also find that for other



parts and cards imported in the same consignment the Deputy Commissioner of Customs has assessed the goods under heading 85177090 and 85177010 respectively. The Deputy Commissioner of Customs ought to have extended the same treatment to the impugned goods. Even in the catalogue goods have been shown as parts/spares with exact part numbers of PSS-32 and the appellant in its submission has given details where on invoice/packing list the impugned goods have been mentioned as parts with specific part number. I also find that goods have been subjected to 100% examination and the examinations report confirms all goods to be as per import invoice. It also endorses "card for DWD". **Besides, presently in terms of Customs Notification 24/2005 dated 01 03 2005 Sr. No. 13S goods of heading 85177010 and in terms of Customs Notification 57/2017 Sr. No. 5, goods of heading 35177090 are exempted from BCD unconditionally. All these details are sufficient to assume the legislative intension to exempt parts of Telecommunication Equipment which themselves are not machine and from BCD and therefore the action on the part of assessing officer to classify the impugned goods i.e. "Parts" as "Other Machine" under CTH 85176290 cannot be held As legal and proper."**

7. We also find that the department has not filed any appeal against the order passed by learned Commissioner (Appeals), Hyderabad and whereas no appeal has been filed against the order passed by Commissioner (Appeals), Mumbai. We find that it is not open that the Department to take a different stand on the same issue in Mumbai and Hyderabad. Such a differential classification of the impugned goods imported at different places would negate the very purpose of the Tariff Act on the one hand and would



cause avoidable litigation for the importers on the other. We find that the findings given by the Id. Commissioner (Appeals) vide the order cited above are quite elaborate and reasoned which were followed by the learned Commissioner (Appeals), Mumbai in the impugned order. Therefore, we find that no case has been made out by the Department against the impugned orders and accordingly, we find that the impugned orders do not require any interference by this Bench.”

6. The Commissioner (Appeals) in the said matter had categorically observed that the goods are fully exempted from Basic Customs Duty *vide Notification Nos. 24/2005* and *57/2017* under heading Entry 35177090. This order of CESTAT was challenged before the Supreme Court by the Commissioner of Customs in *Civil Appeal Nos. 1475-1477 Of 2023*. The Supreme Court passed order dated 27th February, 2023 to the following effect

“Delay condoned.

Mr. Balbir Singh, learned Additional Solicitor General, would submit, after getting instructions, that the classification as has been done in the impugned order, has been accepted by the Department-Revenue (See order dated 25.01.2017 passed by Commissioner of Customs and Central Excise (Appeals), Hyderabad).

In view of the aforesaid fact, the civil appeals are dismissed.

Pending applications stand disposed of.”

7. Similarly in *IBM India Private Limited vs. Commissioner of Customs(Import)* CESTAT, Mumbai had again considered the same products *i.e.*, Transceiver for Ethernet Switch/ Transceiver modules of different models and had relied upon the *Reliance Jio Infocomm (Supra)* and had observed



that the SFP's Optical Transceivers 9.1 were entitled to exemption from Basic Custom Duty and would be classified as held in **Reliance Jio Infocomm (Supra)**. The operative portion of the said order, wherein the Mumbai CESTAT Bench clearly held that the SFP's are classifiable under 85177090 reads as under :

10. In view of the foregoing discussions and analysis, as well as on the basis of the judgement of the Hon'ble Supreme Court, we conclude that the product under consideration i.e., 'Small Form-factor Pluggable Optical Transceiver' of various models are classifiable under Customs Tariff Item (CTI) 8517 7090, and not under CTH 8517 62 90, as claimed by Revenue. Accordingly, the impugned goods are eligible for exemption/duty concession under Serial No. 5(a) of Notification No. 57/2017-Customs dated 30.06.2017, as amended. Therefore, we are of the considered view that the impugned order passed by the learned Commissioner (Appeals) in confirmation of the adjudged demands in the original order cannot be sustained on merits.

8. The Civil Appeal against the said order passed in **IBM (Supra)** was also dismissed by the Supreme Court on 06th January, 2025.

9. It is not in dispute that **Custom Entry 85177090** is now **85177990**. This is also recorded in the impugned ruling dated 26th September, 2024 in paragraph 2.7.4 (ii) which reads as under :

2.7.4 In light of the new emerging facts post the Commissioner (Appeals), Hyderabad's order dated 25.01.2017 and the fact that principles of res judicata is not applicable in taxation matters, department is contemplating steps to reverse the aforesaid order of the Hon'ble CESTAT, Mumbai. Currently, in a number of cases, the matter is under adjudication by CESTATs as



detailed below:

(i) Departmental Appeal by ACC, Mumbai: Order in Original No. CCGSS/11/2023-24 Adj. (1) ACC dated 14.08.2023 was passed by the Commissioner of Customs, Import, ACC, Mumbai, in the case of M/s Reliance Jio Infocomm Ltd. Vide the said order, adjudicating authority held the SFP classifiable under sub-heading 8517.70 as parts. However, on review, the Committee of Chief Commissioners directed the AA to file an appeal against the order. An appeal has accordingly been preferred before CESTAT, Mumbai and the same is pending.

*(ii) Party appeal before CESTAT, Chennai: **SEP transceiver Modules imported by M/s. Savex Technologies Pvt Ltd vide Bill of Entry no. 6183721 dated 09.11.2021 were self-classified by the importer under CTI 85177090 as parts.** The classification declared by the importer was rejected by the Assessing Authority and the goods were reclassified under CTI 85176290. The party filed an appeal before the Commissioner (Appeals), Chennai, wherein they agreed with the classification 85176290 but contended that they were eligible for the duty exemption vide serial number 20 of the notification 57/2017 Cus dated 30.06.2017, as amended. **Commissioner (Appeals), relying on the order dated 29th July 2022 of CESTAT, Mumbai in case of Reliance Jio Infocomm, ordered classification of the SFP Transceivers under CTI 85177090(now 85177990).** Department has filed an appeal against the OIA in CSTAT, Chennai.*

10. Entries have also been perused by the Court. In view of the fact that the classification of SFP's has already been decided in various decisions and has also been accepted by the Department, the impugned ruling dated 26th September, 2024 by which the Authority has observed that SFP's would be classifiable under 85176290 with Basic Customs Duty Act of 20% would not



2025:DHC:1147-DB



sustain and the same is liable to be set aside. The goods i.e., SFPs shall stand covered under Entry 85177990 and shall also be entitled to applicable exemptions.

11. Accordingly, the impugned rulings are set aside.

12. Both the appeals are allowed in the above terms and disposed of. Applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

FEBRUARY 21, 2025/dk/Am