



2025:DHC:118-DB



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

% *Judgment delivered on: 13.01.2025*

+ **CUSAA 30/2024**

COMMISSIONER OF CUSTOMS (IMPORT)Appellant

Through: Mr Akshay Amritanshu, Senior
Standing Counsel with Mr
Samyak Jain, Ms Drishti Safar
and Ms Pragya Upadhyay,
Advocates.

versus

BEETAL TELETECH LIMITEDRespondent

Through: Mr Srinivas Kotni and Mr
Shyam Kishor Maury,
Advocates.

CORAM

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

INTRODUCTION

1. The Revenue has preferred the present appeal under Section 130A of the Customs Act, 1962 [hereafter '*the Act*'] read with Section 174 of the Central Goods and Services Tax Act, 2017, impugning the order dated 30.10.2023 [hereafter '*the impugned order*'] passed by the learned Customs, Excise, and Service Tax Appellate Tribunal, Principal Bench, New Delhi [hereafter '*the learned CESTAT*'], by way of which the appeal filed by the Revenue (Customs Appeal No. 51875 of 2021) was dismissed.



QUESTION OF LAW

2. The principal controversy in the present case was captured by this Court in order dated 12.09.2023 (passed in CUSAA 38/2023) while framing the question of law, which is set out below:

Whether the word “and” as appearing in CTI 8517 (iv) is to be read in a disjunctive manner and thus be viewed as referring to separate products?

FACTUAL BACKGROUND

3. The facts, as discernible from the records, are that the respondent, Beetal Teletech Limited [hereafter also referred to as ‘*the respondent*’], is a distributor of Information Technology products in India. During the period July, 2014 to June, 2017, the respondent imported Wireless Access Points (**WAPs**) from various suppliers, including Avaya International Sales Ltd. (China), Huawei International PTE Ltd. (Singapore), Radwin (Israel), and others. These WAPs, which utilize Multiple Input/Multiple Output (**MIMO**) technology, were used for wireless communication within Local Area Networks (**LANs**) by connecting wireless-enabled devices like laptops, smartphones, and tablets to wired networks.

4. Under the Customs Tariff Act, 1975, these imported WAPs were classified under Customs Tariff Heading (**CTH**) 8517, and particularly Custom Tariff Item (**CTI**) 8517 62 90. A table, setting out the nomenclature of these headings and items, is as under:



8517	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
	- 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 62	-- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:
8517 62 90	--- Other

5. At this juncture, it is relevant to note that by way of Notification No. 24/2005-Cus. dated 01.03.2005 [hereafter 'Notification No. 24/2005'], the Central Government had exempted certain goods from the whole of customs duty leviable thereon, on their import into India. This included exemption to goods imported under CTH 8517. The relevant extract of the said notification is set out below:

Notification

No. 24 /2005-Customs

New Delhi, dated the 1st March , 2005

10 Phalgun, 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]



6. The aforesaid notification was amended by Notification No. 11/2014-Cus. dated 11.07.2014 [hereafter '*Notification No. 11/2014*']. The relevant portion of Notification No. 24/2005, as amended by Notification No. 11/2014 [hereafter '*amended Notification No. 24/2005*'] pertaining to CTH 8517 is extracted below:

Sr. No.	Heading, sub- heading or tariff item	Description
x	x	x
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 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.

7. Therefore, according to the amended Notification No. 24/2005, the above-mentioned four categories of products would not be entitled to the benefit of exemption from Customs Duty.



8. The respondent claimed exemption from Customs Duty under Serial No. 13, exclusion entry (iv), of the amended Notification No. 24/2005. This exemption was claimed specifically for WAPs operating solely on MIMO technology. For products utilizing both MIMO technology and Long-Term Evolution (**LTE**) standard, the respondent did not claim any exemption and paid the applicable customs duty in full.

9. The controversy began when the Directorate of Revenue Intelligence (**DRI**), Bangalore Zonal Unit, initiated an investigation in 2017, alleging that the WAPs imported by the respondent were ineligible for the claimed exemption. Pursuant to the investigation, the Additional Director General of the DRI issued a Show Cause Notice (**SCN**) dated 09.10.2018, under Sections 28 and 124 of the Act. The SCN called upon the respondent to explain why the exemption benefit claimed under the notification should not be denied. The SCN noted that the exclusion entry (iv) of Serial No. 13 in the amended Notification No. 24/2005, which mentions “MIMO and LTE products”, should be interpreted to deny exemptions to all products operating on either MIMO or LTE standards. It was also mentioned that there are only two types of products in exclusion entry (iv) and the conjunctive ‘and’ has been used without using the term ‘product’ for both the items. It was further the Revenue’s case that in case the purpose was to apply the said condition on the products having both MIMO technology and LTE standards and, therefore, Serial No. 13(iv) should have read as ‘LTE products having MIMO technology’



or ‘LTE products with MIMO technology’. The SCN also noted that between the words ‘MIMO’ and ‘LTE’, the word ‘and’ is placed, however, it is not followed by a comma. Reliance was placed on the decision in *Sree Durga Distributors v. State of Karnataka: 2007 (212) ELT 12 SC*.

10. The SCN further proposed to recover a total differential customs duty of ₹12,98,31,448/-, invoke the extended limitation period under Section 28(4) of the Act, confiscate the goods under Section 111(m) of the Act, and impose penalties under Sections 112, 114A, and 114AA of the Act. Similar notice was also issued to Mr. Ranbir Bhandari, proposing penalties for his alleged role in the claimed exemption.

11. However, the Additional Director General (Adjudication) [hereafter ‘the Adjudicating *Authority*’], *vide* its Order-in-Original dated 28.11.2019, adjudicated the SCN in favor of the respondent. The Adjudicating Authority held that the WAPs imported by the respondent, which solely utilized the MIMO technology, were eligible for exemption under the amended Notification No. 24/2005. It observed that the language of the exclusion clause was clear and unambiguous, and the phrase “MIMO and LTE products” referred exclusively to products that used both the technologies together. The Adjudicating Authority further noted that treating the phrase as encompassing three categories of products — MIMO only, LTE only, and both MIMO and LTE — would amount to a distortion of the notification’s language and intent, and would be against the principles



laid down in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co and Ors.: 2018 (361) ELT 577 (SC)*. It also held that the decision in *Sree Durga Distributors v. State of Karnataka (supra)* was not applicable since it is silent on a possible situation where a set of two words, having ‘and’ in between them, is not followed by comma but by a ‘full stop’. The Adjudicating Authority also acknowledged that the respondent had provided all the necessary information in its declarations and bills of entry, which clearly identified the imported WAPs as MIMO-enabled products. It rejected the allegations of willful suppression of facts or misrepresentation by the respondent. The conclusion of the Adjudicating Authority and the final order passed by it are extracted hereunder:

“For the charges answerable to (i) Principal Commissioner/ Commissioner of Customs (Import), Air Cargo Complex, Sahar, Andheri (E), Mumbai (ii) Principal Commissioner/Commissioner of Customs (Import), Air Cargo Complex, New Delhi (iii) Principal Commissioner / Commissioner of Customs (Import), NS-V, JNCH, Nhava Sheva Tal, Uran, Dist. Raigad, Maharashtra:

1. In respect of M/s Brightstar Telecommunications India Ltd.:

- a) The Access Points imported by **M/s Brightstar Telecommunications India Ltd.** are classifiable under 85176290 of the Customs Tariff. Since these Access Points are having MIMO technology but without LTE standard, the Basic Customs Duty (BCD) exemption claimed under Notification No. 24/2005-Cus dated 01/03/2005 as amended vide Notification No. 11/2014-Cus dated 11.07.2014 is allowed to them.
- b) I do not hold the impugned goods imported by them liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I do not confiscate the same.



- c) The demand of differential Customs duty on the impugned goods imported by them during the period from 11.07.2014 to 30.06.2017 is hereby dropped.
- d) I do not impose any penalty on M/s Brightstar Telecommunications India Ltd. under Section 112/ 114A/ 114AA of the Customs Act, 1962.
2. I do not impose any penalty under Section 112/114AA of the Customs Act, 1962 on **Shri Ranbir Bhandari**, DGM, Supply Chain Manager of M/s Brightstar Telecommunications India Ltd.”

12. Aggrieved by the aforesaid order, the Revenue filed an appeal (Customs Appeal No. 51875 of 2021) before the learned CESTAT, *inter alia* contending that the word “and” used in the exclusion entry (iv) of Serial no. 13 should be interpreted disjunctively, thereby denying exemptions to products operating either on either MIMO technology or LTE standards. It was Revenue’s case that the expression ‘products’ appearing after LTE has to be read with MIMO as well since the expression ‘products’ is a common factor for both MIMO and LTE.

13. However, the learned CESTAT, by way of the impugned order dated 30.10.2023, dismissed the Revenue’s appeal and upheld the order of the Adjudicating Authority. The learned CESTAT observed that the word “and”, as used in exclusion entry (iv) of Serial No. 13, is conjunctive and must be interpreted strictly to refer to products employing both MIMO and LTE technologies together. It noted that exemption notifications must be construed narrowly to avoid frustration of their intended purpose. The learned CESTAT further highlighted that similar exemptions had been granted for identical



products under subsequent notifications and in proceedings involving other importers. The relevant extracts of the impugned order are as under:

“17. A bare perusal of the exclusion clause (iv) under SI. No. 13 of notification shows that it covers MIMO and LTE products. The sole dispute in this appeal is whether this exclusion clause covers products having only MIMO technology and not working on LTE standard. Exclusion clause (iv) uses the conjunction 'and' and, therefore, it can be urged that the scope of clause (iv) can be restricted to those products that have MIMO and LTE both and that the product that only has MIMO technology may, therefore, not be covered by this exclusion clause and, therefore, may not be excluded from the scope of Serial No. 13.

18. The contention of the Department is that 'and' should be read as 'or' in clause (iv) so that it would cover MIMO products or LTE products. The contention advanced on behalf of Ingram Micro is that since the exclusion clause (iv) uses the conjunction 'and' its scope would be restricted to those products that have both MIMO and LTE. Thus, according to Beetal Teletech a product that has only MIMO technology would not be covered by the exclusion clause and, therefore, would not be excluded from the scope of Serial No. 13 (iv).

19. The submission advanced by learned counsel for the respondent deserves to be accepted.

20. It needs to be remembered that 'and' is a conjunctive and is used to connect and join. The dictionary meaning of 'and' is as follows.

"The New International Webster's Comprehensive Dictionary of the English Language: And: Also; added to; as well as; a particle denoting addition, emphasis, or union, used as a connective between words, phrases, clauses, and sentences; shoes and ships and sealing wax...

Or: Introducing an alternative: stop or go: red or white.

Oxford Dictionary of English, Third Edition: And: Used to connect words of the same part of speech, clauses or sentences, that are to be taken jointly; bread and butter they can read and write a hundred and fifty. Or: Used to link alternatives: a cup of tea or coffee are you coming or not either take taxis or walk everywhere...

**Collins Cobuild English Dictionary for Advanced Learners:**

And: You can use and to link two or more words, groups, or clauses. When he returned, she and Simon had already gone...

Or: You can use 'or' to link two or more alternatives. Tea or coffee?...

Cambridge Advanced Learners Dictionary, Fourth Edition:

And: Used to join two words, phrases, parts of sentences, or related statements together: Ann and Jim; Boys and Girls; Knives and Forks And/ or used to mean that either one of two things or both of them is possible: Many pupils have extra classes in the evenings and/or at weekends. Or: Used to connect different possibilities. is it Tuesday or Wednesday today?"

21. It is also seen that the word 'products' is not used after the words 'Multiple Input/Multiple Output (MIMO)'. Infact, 'and' is used after the words 'Multiple Input/Multiple Output (MIMO)'. It is seen that in entry (iii) of the same Serial No. 13 of notification, every technology is followed by the word 'products':

"Cartier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-transport Profile (MPLS-TP) products

22. Learned special counsel for the appellant contended that clause (iv) would effectively mean and cover two categories of products, namely, (i) Multiple Input/multiple Output (MIMO) products and (II) Long Term Evolution (LTE) products and that MIMO products and LTE products are products which have distinct identities. Learned special counsel also contended that the expression 'Multiple Input/Multiple Output (MIMO)' appearing before 'and' does not, by itself, mean anything unless It Is followed by expressions like 'technology' or 'products'. Since the exception carved out has to be 'goods', this expression has to be interpreted to connote products based on MIMO technology. Thus, the expression 'products', appearing after 'LTE' has to be read with 'MIMO' to mean and cover MIMO products. Further, 'products' being the common factor for both MIMO technology and LTE standard, the expression 'and' has been used in a conjunctive way to cover individually MIMO products and LTE products. Learned special counsel, therefore, contended that as there are only two types of products at Serial No. 13 (iv), the conjunctive 'and' has been used without using the term 'products' twice. There is, therefore, no ambiguity and the expression 'Multiple Input/Multiple Output (MIMO) and Long Term Evolution



(LTE) Products" denotes Multiply Input/Multiple Output (MIMO) products on the one hand and Long Term Evolution (LTE) products on the other. There is, therefore, no need to refer to the World Trade Organisation ITA.

23. 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.

24. 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.

* * *

28. This apart, what also needs to be noted is that India is a signatory to the Information Technology Agreement 18 dated 13.12.1996 by the World Trade Organization. The ITA requires each participant to eliminate and bind customs duties at zero for all products specified in the Agreement. India signed the Agreement on 01.07.1997. Pursuant to ITA, India introduced the notification. At the time of introduction, all goods falling under CTH 8517 were exempted from payment of duties. In 2014, on specified telecommunication products that were not covered under the ITA, the Government imposed customs duties by notification dated 11.07.2014. The Finance Minister's Budget Speech for the year 2014-15 and Tax Research Unit letter dated 10.07.2014 clarify that BCD on specified telecommunication products not covered under the ITA was being increased from NIL to 10%. As WAP is an Information Technology product and is specifically covered under the ITA as 'Network Equipment' in Attachment B, the intention was clearly not to exclude WAP imported by Ingram



Micro. The Network Equipment as defined in Annexure-B includes LAN and Wide Area Network 19 apparatus, 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 - including adapters, hubs, in- line repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof. Imported WAP is a networking equipment working in LAN connecting Wi-fi enabled devices such as laptops, smartphones, tablets, etc. to a wired network. Thus also, imported WAP is entitled to the exemption from the whole of the customs duties under the ITA.

* * *

30. It has been stated that the investigation by the DRI was not only against Beetal Teletech but few other importers of these goods also and the proceedings initiated against other importers was dropped but appeals have not been filed by the Department.

30. The aforesaid discussion leads to be inevitable conclusion that WAP imported by the appellant works on technology and does not support LTE standard. Ingram Micro was, therefore, justified in claiming exemption from the whole of the customs duty under Serial No. 13(iv) of the notification. There is, therefore, no infirmity in the order dated 28.11.2019 passed by the Additional Director.

31. Such being the position, it would not be necessary to examine the other contentions raised by the learned counsel for the respondent, including the submission relating to the invocation of the extended period of limitation.

32. The two Customs Appeals filed by the Department, therefore, deserve to be dismissed and are dismissed...”

14. Aggrieved by the decision of the learned CESTAT, the Revenue has filed the present appeal, challenging the learned CESTAT’s interpretation of the exclusion entry (iv) of Serial No. 13 of the



amended Notification No. 24/2005 and its findings on the eligibility of the imported MIMO-enabled WAPs for exemption from customs duty.

15. The respondent, conversely, has opposed the present appeal, *inter alia*, on the ground that the WAPs imported by it were rightly held eligible for exemption under Serial No. 13(iv) of the amended Notification No. 24/2005, as these WAPs operated solely on MIMO technology and did not support LTE standards, and there is no infirmity in the impugned order of the learned CESTAT.

THE DECISION

16. The core issue before this Court is whether the WAPs, which work on MIMO technology, imported by the respondent would qualify for an exemption from Basic Customs Duty.

17. It is apposite to note that the present appeal was heard along with *CUSAA 38/2023*, captioned ***Commissioner of Customs Air Chennai-VII Commissionerate v. M/s Ingram Micro India Pvt. Ltd.***, filed by the Revenue, assailing a similar order passed by the learned CESTAT. These appeals were admitted on the same question of law by this Court.

18. By way of judgment dated 13.01.2025 delivered today in *CUSAA 38/2023*, we have answered the question of law in favour of the respondent and against the Revenue, and held that the phrase “MIMO and LTE Products” in Serial No. 13(iv) of the amended Notification No. 24/2005 applies solely to products combining MIMO



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technology and LTE standards, and thus, the WAPs imported by the respondent, which employ MIMO technology but not the LTE standards, are entitled to the exemption from Basic Customs Duty.

19. In view thereof, we are of the opinion that the order of the learned CESTAT does not suffer from any infirmity or error and, is, therefore upheld.

20. Accordingly, in view of the detailed reasons and conclusion recorded in the judgment delivered in *CUSAA 38/2023*, the present appeal also stands dismissed.

21. Pending application also stands disposed of.

SWARANA KANTA SHARMA, J

VIBHU BAKHRU, ACJ

JANUARY 13, 2025/at