

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Cross Application No. 50292 of 2020
And
Customs Miscellaneous Application No. 50081 of 2022
In
Customs Appeal No. 50719 of 2020 [DB]

[Arising out of Order-in-Original No. 04/VKP(04)ADG(Adj.)/DRI/N.Delhi/2019-20 dated 28.11.2019 passed by the Additional Directorate General (Adjudication), Directorate of Revenue Intelligence, New Delhi]

**Principal Commissioner of Customs
(Import), New Delhi**

Air Cargo New Customs House,
Near I.G.I. Airport,
New Delhi - 110037

...Appellant

VERSUS

M/s. Go IP Global Services Pvt. Ltd.

H-68, Sector-63,
Noida, U.P.- 201307

...Respondent

APPEARANCE:

Shri Nagendra Yadav, Authorized Representative for the Department
Shri A.K. Prasad and Ms. Surbhi Sinha, Advocates for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 04.09.2023
DATE OF DECISION: **03.01.2024**

FINAL ORDER No. 50009/2024

DR. RACHNA GUPTA

Department has filed present appeal to assail the Order-in-Original No. 04/ADG/DRI/2019-20 dated 28.11.2019/02.12.2019. Cross objections have also been filed by the assessee-respondent. Facts relevant for the purpose are as follows:

1.1 The respondents are engaged in providing end to end technology solutions and services within the infrastructure domain to Telecom Operators, Services Providers, Government, Large and

SME Customers. The Officers of Directorate of Revenue Intelligence, Bangalore (hereinafter referred as DRI) received an information that the appellants were importing Ubiquity Access Points/MIMO products (products having Multiple Input / Multiple Output Technology) and are wrongly claiming Basic Customs Duty (hereinafter referred as BCD) exemption under Notification No. 24/2005-Cus. dated 01.03.2005 as was amended vide subsequent notification and thereby are evading payment of appropriate customs duties. As per the amended Notification No. 11/2014-Cus., following products falling under CTH 8517 were not exempted from BCD payment:

(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.

All the above products are telecommunication or Information & Communication Technology products. Those are the medium for communication / transfer of data, signs, signals, images or sounds

by wire, radio, optical or other electromagnetic systems by using standard protocols.

1.2 As per the department there is difference between MIMO technology and LTE standards as has been reproduced in the show cause notice in the table as reproduced below:

Sl.No.	MIMO	LTE
1.	MIMO is a radio communications technology or RF technology, that uses multiple antennas to enable a variety of signal paths to carry the data, to provide gains in channel robustness and throughput.	LTE (both radio and core network evolution) is a standard for the next generation cellular network technologies. LTE is the latest standard while older standards are GSM/CDMA & 3G.
2.	MIMO is an independent technology and can be used as an add-on wireless technology to existing wireless networks like Wireless Data Communication (wifi) within campus/building/floor, Cellular Networks – Wimax/3F/4G – LTE (Long Term Evolution) etc.	LTE was designed using MIMO, so as to take advantage of multiple data streams feature which enables for better user experience.
3.	While MIMO is an optional & not mandatory feature for LTE	If device does not support MIMO, then LTE operators in non-MIMO modes
4.	The MIMO technology was introduced in wi-fi in 802.11n standard and	LTE standard was developed and introduced by 3GPP in Release 8

	approved/certified by IEEE.	
5.	MIMO technology operates on unlicensed frequency bands i.e. 2.4GHz & 5/5.8 GHz	LTE standard operates only in frequencies which are regulated by governments and some of the popular frequencies in India are 850 MHz, 1800 MHz & 2300 MHz
6.	MIMO the maximum data rate can be as high as 6.93 GBps	In LTE the highest theoretical peak data rate on the transport channel in the downlink, can be as high as 300 Mbps
7.	MIMO operates in the channel bandwidth range of 20 to 80/160 MHz	Bandwidth available in LTE standards are starting with 1.4 MHz up to 20 MHz.
8.	MIMO is a technology used to increase the throughput between the transmitter and receiver	LTE is a standard used in cellular/Telecom network for enhanced cellular communication
9.	MIMO is one of the subset technology used in 802.11n/802.11ac Standards	The products supporting MIMO technology and products working on LTE standards are different, however the MIMO technology can be a subset technology in LTE products
	Since MIMO technology can be adopted in LTE standards, some features may be similar in both.	

1.3 Department formed the opinion that as per the notification, the products of MIMO technology whether or not those products have LTE technology and the LTE technology products whether or not those have MIMO technology, are not eligible for duty exemption. Both these kind of products were excluded from the scope of exemption from payment of duty given to the products/goods of Chapter heading 8517. With these observations Show Cause Notice No. 38/2018 dated 08.10.2018 was served

upon the appellants alleging that the products imported by the appellants fall under the exclusion to exemption of duty. Resultantly, the following total amount of duty was proposed to be recovered from the appellants along with interest and the proportional penalties:

Name of the place of import	Value of the imported APs (Rs.)	Differential Duty payable (Rs.)
ICD, Tuglakabad, New Delhi	411608582	48488057
Customs ACC, New Delhi	23053375	2567594
Nhava Sheva Port, Mumbai	7130873	813796
Customs ACC, Sahar Andheri (E), Mumbai	3288597	369967
Total	445081427	52239414

The said proposal has not been confirmed by the original adjudicating authority. Hence the department is in appeal pursuant to the Review Order No. 135/2019-20 dated 28.02.2020.

2. We have heard Shri Nagendra Yadav, learned Authorized Representative for the department-appellant and Shri A.K. Prasad and Ms. Surbhi Singh, learned Advocates for the respondent-assessee.

3. Learned Authorized Representative for the department has relied upon Board's Circular issued in the context of the Notification No. 57/2017-Cus. dated 30.06.2017 which was further amended vide Notification No. 02/2019 dated 29.01.2019, the entry at Sl. No. 13 of the said No. 57/2017 has been discussed in the said circular. The circular clarifies that the machines and apparatus covered under these categories i.e. MIMO and LTE products 'include' 4G and 5G products and its elements, 4G and 5G enabled NB IoT devices and equipment incorporating technologies beyond 5G. The relevant portion of the circular is as under:-

(h)	Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products	<p>The Machines/apparatus covered under these categories include-</p> <p>i. 4G(LTE) products and their Elements, namely- eNode B, RRH, CU, DU, RU, BBU, EPC, MME, SGW, PGW, HSS, IMS, Network In a Box (NIB), 4G CPE, etc.;</p> <p>ii. 5G products and its Elements, namely- gNodeB, RRH, CU, DU, RU, BBU, 5GC, IMS, Network In a Box (NIB), 5G CPE, etc.;</p> <p>iii. 4G and 5G enabled NB IoT devices;</p> <p>iv. Equipment incorporating technologies beyond 5G.</p>
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3.1 It is trite law that the usage of the word "include" enlarges the meaning of the expression defined. When the word 'include' is used, it must be construed as comprehending not only such things

as they signify but also those things which the interpretation clause declares they shall include. Learned Authorized Representative submitted that in this case, the description of (h) in Sl. No. 20 of amending Notification No. 02/2019-Cus reads as "Multiple Input/Multiple Output (MIMO) and LTE products. Therefore, the products and equipment covered under (h) will include all products which use MIMO technology. Use of the word "include" in the Circular in the column for identification of products/equipment covered, implies that not only the products listed there will be covered but all products which have MIMO technology will also be covered under the said clause. It is evident from the technical specifications of the Access Points imported by M/s. Go IP Global Services and the *admissions made by the personnel of M/s. Go IP Global Services that, the Access Points imported by them are only MIMO products as they support 802.11n/802.11ac standards specified in IEEE which is specifically for MIMO/MU-MIMO products.* Therefore, these products will be covered under clause (h). The Importer is misrepresenting the clause (e) of Annexure 1 of the Circular 08/2023 wherein it is mentioned that Wi-Fi Access Point Equipment will be covered under the category Internet Protocol Radios to misguide the Tribunal despite having submitted during investigation that said devices are MIMO technology products.

3.2 It is submitted that Board has also accepted about the impugned goods be MIMO only and not LTE products. The claim of the Respondent appears to stem from a misinterpretation of the Board's Circular. The products covered under clause (e) "Internet Protocol (IP) Radios" are not products having MIMO technology

because they have been mentioned separately under clause (e) in the Circular. All MIMO technology products are covered under clause (h) and not under clause (e). There is no dispute that the impugned goods imported by M/s. Go IP Global Services are MIMO products i.e. the Access Points imported have the presence of MIMO technology. Therefore, by virtue of the usage of the word "include" while describing the products in Column 3 of clause (h), it is to be construed that the Access Points imported by the Respondent which are admittedly MIMO products, will get covered under clause (h) and not under clause (e). It is also to be noted that the clause (h) of Sl.No. 20 was further amended vide Notification No. 03/2021-Customs dated 01-02-2021 as follows:

(xii) against S.No. 20, in column (3), for item (h), the following items shall be substituted, namely:-

"(h) Multiple Input/Multiple Output (MIMO) products;

(i) Long Term Evolution (LTE) products";

Therefore, it is evident that the intention of the Legislature has always been to include all MIMO products and LTE products having or not vice-versa technology, within the purview of the clause (h) of Sl.No 20 of Notification No. 57/2017-Cus dated 30.06.2017 as amended by Notification No. 02/2019-Cus dated 29.01.2019.

3.3 It is mentioned that the original adjudicating authority has failed to take into consideration several amendments to the impugned entry and the intent of legislature behind the same. Hence, the findings that, 'the BCD exemption claimed on import of access points with MIMO technology but without LTE standards are

admissible', is liable to be set aside. A strict interpretation was supposed to be given to the language of the notification. The order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. Per contra learned counsel for the respondent has submitted that the respondents had imported a number of networking products such as routers, switches, Wireless Access Points, controllers, fiber optic products etc. The issue in the present case is with reference to classification of Wireless Access Points and whether these were eligible for exemption under Notification No. 24/2005-Cus dated 01.03.2005, as amended by Notification No. 11/2014-Cus dated 11.07.2014. Wireless Access Point is a networking device used for wireless communication within the LAN and extending the LAN. It helps in connecting wireless enabled devices such as laptops, smart phones, tablets and other network products at remote places to a wired network. It is different from products having LTE technology.

4.1 During the course of adjudication the respondents sought cross-examination of Shri Adesh Vashisht, Shri Brijesh Shah and Shri Raj Malik. Cross-examination was also sought of Shri Anoop Kumar Kujur, SIO, DRI, who had conducted the investigation including recording of statements. The request for cross-examination was allowed by ADG (Adj.), DRI, New Delhi, the adjudicating authority. Shri Adesh Vashisht and Shri Brijesh Shah were cross-examined on 04.04.19 but the other two persons did not appear despite being summoned twice by the adjudicating

authority. The respondents furnished a reply dated 31.05.2019 to the show cause notice and raised a number of issues before the adjudicating authority on classification, eligibility to the exemption notification as also of time bar. Technical opinion from an expert was also filed before the adjudicating authority to substantiate the claim that the imported access points could not be considered as MIMO products. A plea was also raised in the reply to the show cause notice that the exclusion from exemption under Notification No. 24/2005-Cus dated 01.03.2005, as amended, was in respect of products based on MIMO and LTE, both the technology. Thus the access points were based on MIMO technology and those were not LTE products, those cannot be excluded from the exemption.

4.2 The said plea has rightly been accepted by the original adjudicating authority. The demand has rightly been dropped. There is no infirmity when no goods are held liable for confiscation and no penalty has been imposed either on the respondents or on the two employees of the respondent company. While relying upon the technical report submitted by the respondent's expert Shri Ravindra Kumar Mishra, it is mentioned that he was also offered for being cross-examined by the department but the department opted to not to cross-examine him and also could not bring on record any evidence contrary to the said technical opinion. Finally it is impressed upon that word 'and' used in entry no. 20 of the impugned notification has to be read as conjunctive as has been rightly been done by the original adjudicating authority. Impressing upon no infirmity in the order under challenge, appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, we observe and hold as follows:

5.1 The respondent-assessee while importing the access points/MIMO products has availed the duty exemption of Notification No. 24/2005-Cus dated 01.03.2005 as amended on the ground that the product imported by them is merely a MIMO product as different from MIMO products and LTE products which are mentioned to be excluded from the benefit of duty exemption. The department was however of the view that the MIMO products irrespective they do not have LTE technology and LTE products irrespective they do not have MIMO technology, both are excluded from the duty exemption benefit given under entry no. 20 of the said notification.

5.2 In view thereof, what need to be observed in the present appeal is about the availability of the exemption from the whole of customs duty under Notification No. 24/2005-Cus. dated 01.03.2005 as amended vide Notification No. 132/2006-Cus. dated 30.12.2006, 11/2014-Cus. dated 11.07.2014, 58/2017-Cus. dated 30.06.2017, 38/2018-Cus. dated 02.04.2018, 76/2018-Cus. dated 11.10.2018, 36/2019-Cus. datd 30.12.2019, 5/2021-Cus. dated 01.02.2021 and 57/2021-Cus. dated 29.12.2021. Hence the question to be adjudicated is:

“Whether the exclusion from duty exemption clause of the said notification, as amended, also covers products having only MIMO technology and not working on LTE

standard and vice-versa or just the products having both the technologies?

5.3 To decide the same, we observe that the Central Government, by the said notification, exempted the goods described in column (3) of the Table when imported into India, from the whole of the duty of customs leviable thereon. Serial No. 13 of heading 8517 exempts all goods, except those mentioned in (i), (ii), (iii) and (iv). Ingram Micro had claimed exemption under Serial No. 13 (iv) which is:

“(iv) Multiple Input/Multiple Output (MIMO) **and** Long Term Evolution (LTE) Products.”

5.4 A bare perusal of the exclusion clause (iv) under Sl. No. 13 of notification shows that it covers MIMO and LTE products. Said exclusion Clause 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, may not be excluded from the scope of duty exemption benefit given at Serial No. 13 of the impugned notification as amended.

5.5 The contention of the Department is that '**and**' in clause (iv) should be read as 'or' so that it would cover MIMO products or LTE products as well. 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 as well as LTE technology. Thus, a product that has only MIMO technology would be out of the scope of the exclusion clause

and at Serial No. 13 (iv) of the impugned notification and should be available with the customs duty exemption benefit given under said notification.

5.6 Thus we need to first interpret the meaning of word '**and**' used between MIMO products/LTE products in the impugned entry of the notification. For the purpose, we first look into the Rules of Interpretation:

RULES OF INTERPRETATION

*While interpreting a statutory provision, it is to be considered that the legislature chose every word deliberately and intended that every word to be legally binding, no other words can be added or used. No modifications can be made while interpreting the statute. It was stated in Nand Prakash Vohra v. State of H.P **AIR 2000 HP 65***

*If there is nothing to modify and the meaning of the statute is clear then ordinary meaning should be assigned to the words of the statute else the literal meaning of the words therein is to be observed. Literal construction should be applied only if there is any ambiguity or inconsistency in the statute otherwise the plain meaning is sufficient. **In Tata Consultancy Services vs State Of Andhra Pradesh of 5 November, 2004 In Appeal (civil) 2582 of 1998** it was held that literal construction should be applied only if there is any ambiguity or inconsistency in the statute otherwise the plain meaning is sufficient. However, The court cannot apply its own bias. This rule assumes that words used in law have a fixed meaning. Words, in fact, are imprecise and their meaning can change over time. It was clarified by Hon'ble Supreme Court that if the literal meaning of the law defeats the purpose of the statute, the law should be understood keeping in mind the intention with which it was drafted. The judges should give that interpretation to the law which gives effect to the intention of the legislature.*

*In Tirath Singh v. Bachittar Singh, **1955 SCR (2) 457** the court stated that if the language of the statute leads to absurdity or injustice then a construction may be put upon it which modifies the meaning of the words used in the statute.*

The most fair and rational method for interpreting a statute is by exploring the intention of the legislature through texts, the subject matter, the effect and consequences or the spirit and reason of law.

If it doesn't work than process of construction is to be employed. Construction, in strict sense, is the process by which the court assign the meaning to the ambiguous provision which is beyond the letter of law for the purpose to resolve the inconsistency. The judges after taking into consideration the factual circumstances before the court give a particular meaning to the expression or word or phrase in question. Although, such meaning must be within the ambit of the objective of statute and could not be directly explained by the statute. The word interpretation and construction are used interchangeably but there is thin line of difference between both the concepts.

Interpretation is the art of finding out the true sense of any form of words and enabling others to drive from them the same meaning which the author intended to convey, whereas, construction is the process of drawing conclusions, respecting subjects that lie beyond the direct expression of the text, which are in the spirit though not within the letter of law.[3] Basically, interpretation is a process of discovering, from permissible data, the meaning and intension of the legislature and if interpretation discloses clear meaning and intention of the legislature it will be directly applied to factual circumstances but if interpretation doesn't disclose clearly the meaning in context of factual circumstances, then construction will undergoes to seek to assign meaning or intention to the words used by the legislature.[4] It is clearly drawn that construction is more concerned with applying the meaning to the factual circumstances than mere ascertaining the meaning of the words of provision. It was clarified that the difference between "and" and "or" is usually explained by saying that "and" stands for the conjunctive, connective, or additive and "or" for the disjunctive or alternative. The former connotes "togetherness" and the latter tells you to "take your pick". So much is clear. that there is a corresponding, though less frequent, uncertainty in the use of "and". Thus, it is not always clear whether the writer intends the several "and" (A and B, jointly or severally) or the joint "and" (A and B, jointly but not scvcrally). This uncertainty will surprise some, because "and" is normally used in the former sense.

5.7 From the perusal of above rules, we are of the opinion that since legislature has used word '**and**' instead of '**or**', it being conjunctive appears to be used to connect and join. We also look into the dictionary meaning of word '**and**'. Oxford Dictionary defines '**and**' as a word which is used to connect words of the same parts of speech, clauses or sentences, that are to be taken jointly,

for example:- 'Bread and Butter' whereas word '**or**' is used to link the alternatives.

As per Cambridge Dictionary word '**and**' is used to join two words, phrases, parts of sentences or related statements together whereas '**or**' mean either one of the two things.

5.8 The meaning of word '**and**' has also been considered by Hon'ble High Court of Punjab & Haryana in the case of **Commissioner of Central Excise, Panchkula Vs. Kulcip Medicines (P) Ltd. reported as 2009 (14) S.T.R 608 (P&H)**, wherein it was 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 disjunctive sense. It appears to be fairly well settled that 17 C/51093/2020 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."

5.9 We also observe that in the Serial no. 13(iv) of the Notification No. 57/2017-Cus. as amended the word 'products' is

used only once. It is not used with Multiple Input/Multiple Output (MIMO) as well as Long Term Evolution (LTE). Whereas it is used once after both the products are being mentioned, same is not true for the other entries of the same notification. 'Products' being the common factor for both, MIMO technology and LTE standard, again corroborates that expression '**and**' as used in the impugned entry has been used in a conjunctive way. From the above discussion we hold that '**and**' used between Multiple Input/Multiple Output (MIMO); Long Term Evolution (LTE) is a conjunctive joining of both the said terms (MIMO/LTE). Hence it can reasonably be interpreted that the word '**and**' in the impugned entry means that those products which contain both MIMO technology and LTE standards are excluded from the benefit of exemption of duty given to the goods classifiable under Chapter 8517 in view of the said entry no. 13 of Notification No. 57/2017-Cus.

5.10 We also place reliance upon decision of Hon'ble Supreme Court in the case titled as **Pappu Sweets & Biscuits Vs. Commissioner of Trade Tax, Uttar Pradesh, Lucknow**, wherein it was held:

"Even though the word used in exclusionary part of an exemption notification has a wide dictionary meaning or connotation, only that meaning should be given to it which would achieve rather than frustrate the object of granting exemption and which does not lead to uncertainly or unintended results."

5.11 From the entire above discussion, it becomes clear that in the clause (iv) of Sl. No. 13 of Notification No. 57/2017-Cus. which

amended clause (h) of Sl. No 20 of Notification 02/2019-Cus. '**and**' is a conjunctive. Hence the goods imported by the appellant since admittedly works on the MIMO technology only but do not support the LTE standard, they are held to be out of the scope of the impugned exclusion clause and thus are held eligible for the exemption from whole of the customs duty under Serial no. 13(iv) of the notification. The similar issue has earlier been deal with by this Tribunal vide Final Order No. 50831/2022 dated 12.09.2022 in the case titled as **Commissioner of Customs (Air) Chennai – VII Commissionerate, Chennai Vs. Ingram Micro India Pvt. Ltd. in Customs Appeal No. 51093 of 2020.**

6. In the light of above discussion, we do not find any infirmity in the order under challenge. The department appeal is therefore dismissed. Cross objection and miscellaneous application filed by the respondent are also disposed of accordingly.

[Order pronounced in the open court on **03.01.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)