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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 21st March, 2025***

+ **CUSAA 56/2025 & CM APPLs. 16529/2025 & 16530/2025**
COMMISSIONER OF CUSTOMS (AIR), CHENNAI-VII
COMMISSIONERATEAppellant

Through: Mr. Akshay Amritanshu, Senior
Standing Counsel CBIC with Ms
Drishti Saraf, and Ms Pragya
Upadhyay, Advs.

versus

M/S COMPUAGE INFOCOM LTD.Respondent

Through: None.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant- Commissioner of Customs (Air), Chennai-VII Commissionerate under Section 130A of the Customs Act, 1962 read with Section 174 of the CGST Act, 2017 challenging the impugned order in Customs Appeal No. 51824/ 2021 dated 22th August, 2024 passed by Customs, Excise & Service Tax Appellate Tribunal (hereinafter '*CESTAT*'), New Delhi.
3. The said impugned order passed by the CESTAT upheld the Order-in-Original bearing no. 08/VKP(08) ADG (ADJ)/DRI/N.D/2019-20 passed by Directorate of Revenue Intelligence (hereinafter '*DRI*').
4. The short issue that arises in the present petition is in respect of the interpretation of the word '*and*' appearing in the clause (iv) of Serial No. 13 of Notification No. 11/2014-Customs dated 11th July, 2014, i.e., "*Multiple Input/ Multiple Output (MIMO) and Long Term Evolution (LTE) Products*".



The CESTAT *vide* the impugned order has interpreted the said terms *i.e.*, MIMO and LTE in conjunction and thereby, held that the subject goods would not be covered in the exclusion clause of the exemption notification.

5. The background of the case is that a Notification was issued bearing No. 24/2005 by the Customs Department dated 1st March, 2005 in which exemptions were granted for basic customs duty for products falling under Chapter Heading '8517'. The said entry reads as under:

Notification

No. 24 /2005-Customs

New Delhi, dated the 1st March, 2005

10 Thalguna, 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.	8818 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, 8535, 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 31 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, 1995.

[F.No334/L/2005- TRU]

(V. Sivasubramanian)
Deputy Secretary to the Government of India



6. This was thereafter amended on 11th July, 2014 *vide* Notification No. 11/2014 issued by the Ministry of Finance, Government of India. The amended Entry reads as under:

NOTIFICATION
No. 11/2014-Customs

New Delhi, the 11th July, 2014

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, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 24/2005-Customs, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R.122 (E), dated the 1st March, 2005, namely: - In the said notification, in the Table,-

(a) against serial number 13, in column (3), for the existing entry, the following entry shall be substituted, namely:-

“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.”.

(b) after serial number 39 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

*40	All chapters	All goods for the manufacture of following goods, namely:- (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
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		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; 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."
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[F No 334/15/2014-TRU]

(Pramod Kumar)

Under Secretary to the Government of India

7. These notifications were further amended *vide* Notification No. 5/2021-Cus. The said notification reads as under:

5/2021-Cus.**Exemption to ITA bound goods Multiple Input/Multiple Output (MIMO) products and Long Term Evolution (LTE) products — Amendment to Notification No. 24/2005-Cus.**

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 makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 24/2005-Customs, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number G.S.R. 122(E), dated the 1st March, 2005, namely :-

1. In the said notification, in the TABLE, against S.No. 135, in column (3), for item (i), the following items shall be substituted, namely :-

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

(j) Long Term Evolution (LTE) products".

2. This notification shall come into force on 2nd February, 2021.

[Notification No. 5/2021-Cus., dated 1-2-2021]

8. The case of the Appellant is that the Respondent had imported electronic goods which it valued under Entry - CTH 85176290. According to the Department, the benefit of the Notification could not have been availed of by the Respondent.

9. Accordingly, a differential duty demand was raised *vide* Show Cause



Notice dated 27th November, 2018 for a sum of Rs. 3,54,42,995/- for the period 11th July, 2014 to 30th June, 2017.

10. The Order-in-Original was then passed on 17th December, 2019 *vide* which the Show Cause Notice dated 27th November, 2018 was dropped and the Respondents were allowed to claim exemption under the Notification No. 11/2014 dated 11th July 2014.

11. The Department had then challenged the said Order-in-Original dropping the proceedings under Show Cause Notice and allowing the exemption to the Respondents, before the CESTAT. The said appeal preferred by the Appellants was rejected by the CESTAT. The relevant portion of the order of CESTAT is set out below:

“The department has filed this appeal to assail the order dated 17.12.2019 passed by the Additional Director General (Adjudication), Directorate of Revenue Intelligence, New Delhi allowing exemption from payment of basic customs duty and, therefore, dropping the demand raised in the show cause notice dated 27.11.2018.

2. M/s Compugate Infocom Ltd. is engaged in the business of distribution and trading of Information Trading products and peripherals. Respondent had imported “Wireless Access Points/MIMO products” falling under Customs Tariff Item 8517 62 90, by claiming benefit of Notification dated 01.03.2005, as amended by Notification dated 11.07.2014. The view of the department is that the MIMO products, whether or not incorporating LTE technology are not entitled for benefit of the said Notification. Consequently, a show cause notice dated 27.11.2018 was issued calling upon the respondent to re-classify the subject products under CTI 8517 62 90 and for denial of the benefit of the Notification dated 11.07.2014.

3. The Additional Director General passed a detailed



order dropping the proposals made in the show cause notice dated 27.11.2018. The department has filed this appeal to assail the aforesaid order dated 17.12.2019 passed by the Additional Director General.

4. It is submitted by Shri Nagendra Yadav, learned authorized representative appearing for the department as also Shri Gokulraj, learned counsel appearing for the respondent that the matter is covered by a decision of this Tribunal in Commissioner of Customs (Air), Chennai – VII versus Redington (India) Ltd. It is, however, also pointed out by the learned authorized representative for the department that the department has filed Customs Appeal No. 44 of 2024 before the Delhi High Court which is pending but no stay order has been granted.

5. Thus, in view of the decision of this Tribunal in Redington (India) Ltd., the present appeal filed by the department would have to be dismissed and is, accordingly, dismissed.”

12. The issue raised in this particular appeal now stands covered *vide* the decision of the Coordinate Bench in **Commissioner of Customs (Air) Chennai -VII Commissionerate, Chennai v. Ingram Micro India Pvt. Ltd.** in **Customs Appeal No. 51093 of 2020**, where the following issue was decided:

“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?”

13. In the said appeal, the Court clearly came to the conclusion that the exemption applies to such devices which are both Multiple Input/Multiple Output (hereinafter, ‘MIMO’) and Long Term Evolution (hereinafter, ‘LTE’) products. The relevant paragraphs of the said judgment are extracted below:

“42. Thus, again, every technology or feature is



followed by words such as ‘products’ or a specific product such as ‘switch’.

43. It is clear from the aforesaid that the Central Government has appropriately and purposefully used terms such as ‘and’, ‘or’, ‘products’ and ‘equipment’, along with commas, to ensure precise and unambiguous categorization.

44. In this background, when entry (iv) of Serial No. 13 – which refers to “MIMO and LTE Products” – is examined, we note that there is a clear absence of word ‘products’ after ‘MIMO’, as the same has been put after the word ‘LTE’. To put it differently, the word ‘products’ has been put after the words ‘MIMO’ and ‘LTE’, thereby indicating that “MIMO and LTE Products” includes those products which work on both MIMO technology and LTE standard.

45. The interpretation advanced by the Revenue is that the phrase “MIMO and LTE Products” includes three categories – (i) products using MIMO but not LTE, (ii) products using LTE but not MIMO, and (iii) products using both MIMO and LTE. In the written submissions filed on behalf of the Revenue, it has been asserted that the grammatically, the only possible way to fulfil this intention was to add the word ‘and’ between ‘MIMO’ and ‘LTE’ and then suffix the term ‘products’ after ‘MIMO and LTE’ as the same would have the meaning of ‘MIMO product and LTE product’.

46. However, in our opinion, the aforesaid contention is unmerited. If the intention of the Central Government was to include products utilizing either MIMO technology or LTE standard or both, the phrase ‘MIMO or LTE Products’ could have been used. The use of the conjunction ‘or’ would have naturally encompassed all products with either of the two technologies/standards, and also those products which combine both. There would have been no need to use ‘and’ in place of ‘or’, as the latter would inherently fulfill the purpose of including all such categories. To explain in simpler



terms, the phrase “MIMO or LTE Products” would mean – products having MIMO technology or products having LTE standard. A product having MIMO technology can have many other technologies, standards, etc., which may also include LTE standard. Similarly, a product having LTE standard can have many other technologies, standards, etc., which may also include MIMO technology. Thus, the phrase ‘MIMO or LTE Products’ would have included the categories of products, which the Revenue is projecting before this Court.

47. Moreover, in earlier entries of the same notification, such as Serial No. 13 (ii) and (iii), the word ‘or’ has been used wherever appropriate to denote alternatives. Similarly, commas have also been employed to demarcate distinct categories of products. Had the intention been to use ‘and’ in a disjunctive manner in entry (iv) of Serial No. 13, the phraseology could also have been easily drafted as follows: ‘MIMO Products and LTE Products’, or ‘MIMO Products and/or LTE Products’, or ‘MIMO Products or LTE Products’. These products could also have been separated by use of commas, such as by drafting the same as ‘MIMO Products, LTE Products’ or ‘MIMO Products, and LTE Products’. However, the same has not been done in the exclusion entry in question.

48. As noted in the preceding discussion, MIMO is a technology and LTE is a standard. Concededly, the case of Revenue is that “MIMO and LTE Products”, inter alia, includes “products which work on LTE standard and have MIMO technology”. Thus, it is not disputed that there exist products which embody both MIMO technology and LTE standard.

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51. Further, the term “and” is a conjunction, commonly understood to connect and join words, clauses, or phrases. Dictionaries and linguistic principles affirm that “and” denotes addition or combination, unless



there is ambiguity or absurdity arising from its literal interpretation.

52. In this regard, it would be relevant to take note of the following passage from G.P. Singh's Principles of Statutory Interpretation (15th Edn.):

"The word "or" is normally disjunctive and "and" is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature"

53. In the present case, there is no such ambiguity or absurdity. In our view, when all the four entries of Serial No. 13 are analysed, it would lead to only one conclusion that the word "and" is to be read in conjunctive manner only, and the phrase "MIMO and LTE Products" would refer to only those products which have both MIMO technology and LTE standard.

54. As far as the argument of the Revenue that in the year 2021, the Notification No. 25/2005, and one Notification No. 57/2017-Customs were amended and the phrase "MIMO and LTE Products" were substituted with (i) MIMO products; (ii) LTE products', and that these amendments were clarificatory in nature, is concerned, notably, an amendment in the Notification No. 57/2017-Customs was brought vide Finance Act, 2021 which is clarificatory in nature, and, clarifies Serial No. 20 of the said notification. It states that the subject entry will now be read as (i) MIMO products; (ii) LTE products. Similar change was brought in Notification No. 25/2005 by virtue of Notification No. 05/2021-Customs.

55. Thus it is clear that the aforesaid amended entries in the concerned Notifications, in their clarificatory form, will be applicable only from the date of coming into force of these amendments i.e. 02.02.2021. As a natural consequence, the cases, which are in dispute qua the exclusion entry in question, which are pending adjudication or were adjudicated prior to the amendment brought about by clarifications, will be



amenable to interpretation and adjudication as it stood prior to the aforesaid clarification and amendment.

56. It would, therefore, mean that in cases involving disputes over interpretation of the subject entry, the amendment brought about through later clarification cannot put fetters on the powers of the Courts or adjudicating authorities, dealing with disputes prior to the amendment so as to have a binding effect on such authorities or on the Courts to hold as correct the clarification as the guiding principle to decide the entry which stood prior to such amendment in its original form.

57. We are of the view that the clarification is brought about in the Statute when there is ambiguity and disputes arise due to such ambiguities. The fact that a clarification is needed to be brought about in the subject entry by the Finance Act, 2021 would point out towards the inherent ambiguity experienced in its interpretation and application which prompted and necessitated the subject amendment and clarification. In the light of this observation and the facts of the present case as well as the judicial precedents in similarly situated cases, we are of the opinion that exclusion clause (iv) of Serial No. 13 of the amended Notification No. 24/2005, which reads as 'MIMO and LTE products', would have to be read in its original form applying the law and rules of interpretation of statutes, especially as applicable in cases of taxation.

58. While adjudicating cases of disputes over an entry attracting or not attracting customs duty, the first and foremost rule to be followed is reading it as it stands by giving it the meaning that can be understood by reading the plain language of the entry in question.

59. Coming back to the facts of the case and applying the above principle, we note that the word 'and' is suffixed with the word 'MIMO' and prefixed with the word 'LTE' and there is no punctuation mark or comma after the word 'MIMO' and before the word 'and'.



Further, 'MIMO and LTE' are followed by the word 'products'. Therefore, as a common rule of English language, the word 'and' would clearly, and in unambiguous terms, be read conjunctively. 60. To reiterate, the amendments as discussed above were introduced in the year 2021, whereby "MIMO and LTE products" were changed to "(i) MIMO products; (ii) LTE products". The word 'and' has been totally taken out from the new entry and the same is absent from the entry altogether. The absence of word 'and' between the word 'MIMO' and 'LTE', as it existed prior to the amendment brought as clarification, rather speaks and explains by its absence, about the presence of intention to read 'MIMO' and 'LTE' as conjunctive and not disjunctive.

61. In light of the above, we hold 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 technology and LTE standards. The exclusion clause cannot be stretched to encompass products featuring either one of the two technologies. Accordingly, the WAPs imported by the respondent, which employ MIMO technology but not the LTE standards, are entitled to the exemption from Basic Customs Duty. "

14. Since the question of law stands decided, no further questions of law would arise in this appeal. The present case would also be covered by the two judgments in *CUSAA 44/2024* titled *Commissioner of Customs (AIR), Chennai-VII Commissionerate v. M/s Redington (India) Limited* and *Commissioner of Customs AIR Chennai-VII Commissionerate v. M/s. Ingram Micro India Pvt. Ltd* in *Customs Appeal No. 51093 of 2020* as held by CESTAT.

15. Appeal is, accordingly, dismissed in terms of the above two



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judgements. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 21, 2025

Rahul/ck