
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CUSTOMS APPEAL NO.25 OF 2025

Commissioner of Customs,
(Air Cargo Import)

.. Appellant

Versus

Cisco Commerce India Pvt Ltd

.. Respondent

Mr.Ram Ochani a/w Niyati Mankad, Priyanka Singh,
Advocates for the Appellant.

Mr.Darius B. Shroff, Senior Advocate a/w Dhruvi Shah,
Kevin Gogri, Sonakshi Singh i/b Lumiere Law Partners,
Advocates for the Respondent.

**CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE : JANUARY 28, 2026

P. C.

1. The Revenue has filed the present Appeal against the order of the CESTAT dated 30th September 2024. According to the Revenue, the impugned order of the CESTAT gives rise to the following substantial questions of law:-

A. Whether in the facts and circumstances of case and in law the “Catalyst 3850 series Ethernet Switches” imported by the Appellants and classified under Customs Tariff Item 8517 6290,

are eligible for 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 and whether they fall within the exclusion clause of Notification No.02/2019-Customs dated 29th January 2019?

- B. Whether in the facts and circumstances of case and in law, the CESTAT erred in holding that the imported “Catalyst 3850 series Ethernet Switches” are “Enterprise Switches” and not “Carrier Ethernet Switches”, despite the product specifications indicating capabilities similar to carrier-grade networking equipment and in disregarding the expert classification by the Telecom Engineering Centre (TEC)?*
- C. Whether in the facts and circumstances of the case and in law, the CESTAT overlooked the binding nature of CBIC Circular No.08/2023-Customs, which clarified that networking products, including those with MPLS, MPLS-TP, and SDN-based functionalities, are ineligible for concessional duty?*
- D. Whether in the facts and circumstances of case and in law, the CESTAT was correct in holding that the Department’s failure to conduct a physical inspection of the goods invalidated the denial of concessional duty, despite sufficient documentary evidence supporting the Department’s case?*

2. The short issue in the present Appeal is whether the Assessee/Respondent’s imports of various models of CISCO

(CATALYST 3850 SERIES ETHERNET) SWITCHES falling under Customs Tariff Item 85176290 are entitled to the concessional Basic Customs Duty (“**BCD**”) at the rate of 10% *ad valorem* in terms of Notification No.57/2017-Customs dated 30th June 2017 as amended by Notification No.75/2018-Customs dated 11th October 2018 by treating the same as a “Non-Carrier Ethernet Switch”. There is no dispute as to classification. However, the Revenue denied the benefit of the notification on the ground that the switches are “Carrier Ethernet Switches”, and are therefore, specifically excluded under clause (b) of Item 21 of Notification No.75/2018. A similar position existed even in 2014 under Notification No.11/2014-Customs dated 11th July 2014 whereby all goods falling under the aforesaid customs heading were exempt, other than *inter alia* a “Carrier Ethernet Switch”.

3. It appears that the issue of eligibility of concessional BCD to Ethernet Switches was initially referred by the Department of Revenue to the Department of Telecommunication, Ministry of Communication who had clarified the issue in the Office Memorandum (“**OM**”) dated 18th November 2016. This OM, in effect stated that there was no definite technical classification between Carrier Ethernet Switches and Enterprise Ethernet Switches/ Non-Carrier Ethernet Switches based on

the supported features/services and that both types of switches may have overlapping features which may vary from Original Equipment Manufacturer (OEM) to OEM, and that Carrier Ethernet Switches and Enterprise Ethernet Switches can only be classified based on the usage by the TSP/ISP (Telecommunications Service Provider/Internet Service Provider) or Customer Location/Offices/Enterprises. The ethernet switches used by non-TSP/ISP's for aggregating the traffic in the local network can be treated as an Enterprise Ethernet Switch/ Non-Carrier Ethernet Switch, whereas Ethernet Switches which are used by TSP/ISP's to transport/carriage of Ethernet/IP traffic can be treated as Carrier Ethernet Switches. The Department of Telecommunication opined that the classification between the two types of switches can only be ascertained based on the purchase order from the ultimate consignee, and where the purchase order is from a non-TSP/ISP, the switches may be treated as an Enterprise Ethernet Switch/Non-Carrier Ethernet Switch. In cases where the purchase order is from a TSP/ISP and the TSP/ISP intend to use the switch in the network for the purposes of Transport/Carriage, then the switch may be treated as a Carrier Ethernet Switch. This OM is set out in paragraph 9.2 of the CESTAT order.

4. Based on these facts, initially, the CESTAT passed an interim order dated 18th September 2023 stating that they were of the view that technical specifications of the impugned Switches was required to be ascertained for ascertaining whether they would qualify for the concessional BCD. For this purpose, some officers from the Department having technical knowledge on the subject goods, or technical experts in the relevant field/subject duly recognized by the expert bodies, were directed to inspect the site where the same imported goods were installed for analysis and submit a report as to why, the product (s) in question should be considered differently than as claimed by the Assessee. This inspection was to be done in the presence of the Assessee's representative. The interim order has been set out in paragraph 12.1 of the CESTAT order.

5. The CESTAT found that the exercise as detailed in the above interim order had not been undertaken by the departmental authorities, despite cooperation by the Assessee and informing them about the premises where the imported goods are situated for conducting the technical examination/inspection. The CESTAT opined that had such inspection taken place, it could have been conclusively proved that the imported "Catalyst Ethernet Switch" is either a "Carrier

Ethernet Switch” or otherwise. Instead, the department merely produced a report dated 24th April 2024 provided by the Technical Engineering Centre (“TEC”). That report in fact recorded that the laboratory had opined that the imported switches did not meet the criteria of “Carrier Ethernet Switches”.

6. The CESTAT, on the other hand, noted that the Assessee had produced certifications from their customers to demonstrate that the various models of Ethernet Switches supplied by the Assessee, were purchased and were being used for enterprise/ on-campus use, in the data centres of the company for management of data centres, or in the equipment located in the internal data centre-LAN, and not in the backbone network architecture. No wide Area Network (WAN) transport/Carrier Ethernet services were offered on the imported Ethernet Switches that had been deployed in their premises.

7. In these facts, the CESTAT therefore found that there were sufficient grounds provided by the Assessee to demonstrate that the imported Catalyst 3850 Series Switches are “Enterprise Switches” and are not a “Carrier Grade Switch”, as it did not meet the various criteria as provided under the “essential requirements” as laid down by the

Technical Engineering Centre. The CESTAT therefore set aside the impugned orders and allowed the Appeals of the Assessee. Hence the present Appeal by the Revenue.

8. In this factual backdrop, Mr. Ochani, the learned counsel appearing for the Revenue, took us through the order of the CESTAT and the order of the Commissioner (Appeals) and stated that the order of the CESTAT was totally incorrect inasmuch as they have gone on the basis of the end-use of the imported goods and had brushed aside the report given by the TEC dated 24th April 2024. He submitted that the present dispute concerns eligibility to an exemption notification and the same is governed only by the language and the conditions of the notification, and not by general administrative guidance. He submitted that an Office Memorandum is an internal administrative instruction meant to guide officers and does not have any statutory force. It certainly cannot override a notification issued under the Customs Act. Consequently, it was submitted that even if the Office Memorandum suggests looking at end-use, such guidance cannot replace the legal requirement that eligibility be determined on the nature of the goods covered by the notification. To buttress the argument that the impugned Switches are in fact Carrier Ethernet Switches, the learned advocate

appearing on behalf of the Revenue relied upon the observations made by the Commissioner (Appeals) in the order impugned before the CESTAT. He, therefore, submitted that substantial questions of law arise in the above Appeal, and hence the Appeal be admitted on the questions of law reproduced by us above.

9. Mr. D. B. Shroff, the learned Senior Advocate appearing for the Assessee, took us through the CESTAT order, and submitted that the CESTAT had passed a very detailed and reasonable order after hearing both sides. The CESTAT had in fact passed an interim order directing the parties to inspect the goods and see how these goods were used. This was done especially in view of the Office Memorandum dated 18th November 2016. The department did not comply with the interim order but merely produced a report from the TEC. He submitted that how the Switches are used and understood in the trade was extremely important, especially in view of what has been stated in the aforesaid Office Memorandum. He submitted that the Assessee had produced certification from the customers to demonstrate how the switches were being used, and that they were not being used by TSP/ISP providers. He submitted that even the TEC report was in their favour. He, therefore, submitted that the issue in the present Appeal is purely factual in nature

and that no question of law arises, leave alone any substantial question of law. Consequently, he submitted that the Appeal be dismissed.

10. We have heard both sides and considered their submissions. We find that the issue as to whether the Switches imported by the Assessee are Non-Carrier Switches/Enterprise Switches, and therefore entitled to the benefit of the notification, has been answered by CESTAT in the impugned order. The CESTAT has given this finding after examining the facts of the case and the evidence produced before it. The CESTAT also noted that the arguments made by the Assessee in paragraphs 3.1 and 3.2 of the impugned order, wherein the Assessee had clearly set out the difference between the “Catalyst Ethernet Switches - CISCO 3850 Series” (the impugned Switches) and the “Carrier Ethernet Switches - CISCO ME 3800X Series”, and which are Carrier Ethernet Switches. The distinction between two switches was brought out by the Assessee as reflected in these paragraphs of the impugned order. The Tribunal also took note of the fact that the Original Equipment Manufacturer (OEM), namely, CISCO Systems International B.V. Netherlands, vide their letter dated 4th September 2015, had clearly clarified that the Switches imported by the Assessee, namely the CISCO 3850 Series Switches did not have the features whereby, “Carrier

Ethernet Switches” are used by service providers to deliver data in standard protocol for long distance transmission. Despite all this material, and to ensure that the Revenue is not short-changed, the CESTAT, by an interim order dated 18th September 2023, directed that a proper inspection be carried out by experts in the field [of the impugned Switches] to ascertain whether in fact the Switches imported by the Assessee were Carrier Ethernet Switches or Non-Carrier Ethernet Switches/Enterprise Ethernet Switches. The Department did nothing to have these Switches examined. All it did was produce a Report of the Telecom Engineering Centre (Western Region), Mumbai. As far as this Report was concerned, the same has been adequately dealt with by the CESTAT in the impugned order from paragraphs 12.3 onwards. Even on perusing the said Report, we find that the said Report categorically states as under:-

- a) *as per the test report from M/s CN Lab Bengaluru, the said Switch product has been tested corresponding to the some of the test parameters (as mentioned in TEC ER No.TEC37942403), Mac Learning and Packet Forwarding, STP, MPLS TP Requirement, TDM PWE and Service Identification, Ethernet PWE and Service Identification etc. Based on the test results, lab has summarized their results as “... the device has been classified as a Layer-3 switch with limited capabilities. It does not support any feature to classify it as a carrier-grade MPLS-TP CEN Switch”.*

11. Despite this, the Report of the TEC goes on to hold that the impugned Switches may be considered as “Carrier Ethernet Switches”. As mentioned earlier, the CESTAT also noticed the OM issued by the Department of Telecommunication. This OM was issued by the said Department of Telecommunication because this specific issue was referred by the Department of Revenue to the Department of Telecommunication. This OM in fact stated that there are overlapping features between Carrier Ethernet Switches and Non-Carrier Ethernet Switches, and in the opinion of the Telecommunication Department, classification thereof can only be ascertained based on the purchase order from the ultimate consignee. This OM is signed by the Under Secretary to the Government of India. However, the CESTAT did not rest its findings solely on the basis of this OM. As mentioned earlier, the CESTAT, to ascertain the nature of the Switches, directed the Department (vide its interim order dated 18th September 2023) to have these Switches examined by experts to determine whether they were Carrier Ethernet Switches or otherwise. This exercise was not done by the Department. It is in these facts that the Tribunal then took into consideration the evidence produced by the Assessee, including the fact that the Switches imported by the Assessee were in fact put to end-use in Data Centres for management thereof or in equipment located in the

internal data centre-LAN, and not in the back bone network architecture.

12. After going through the detailed order passed by the CESTAT, we find that the entire issue is fact based. The findings given by the CESTAT are all fact driven. The CESTAT is the last fact-finding authority. It is not even the case of the Revenue that the findings given by the CESTAT are contrary to the record. Once this is our view, in our opinion, no substantial question of law arises as projected by the Revenue. In fact, three questions of law, namely questions (A), (B) & (D) pressed before us, itself clearly establish that these questions would arise only on the basis whether impugned Switches are Enterprise Switches or Carrier Ethernet Switches. This factual finding has been given by the CESTAT and we do not find anything legally perverse in the findings rendered by the CESTAT on this issue. Hence, in our opinion, questions (A), (B) & (D) do not give rise to any substantial question of law.

13. As far as the question (C) is concerned, namely, the applicability of the Circular issued by the CBIC, being Circular No.08/2023 dated 13th March 2023, the Tribunal has, in detail, referred

to the aforesaid Circular at paragraph 9.4 of the impugned order. The Tribunal has in fact given a categorical finding that these instructions apply to imports made with effect from 1st April 2023, whereas the imports in the present case relate to the period November 2020 to February 2022. This apart, the Tribunal noted that even if the said Circular were to apply, the Switches in the present case do not fall within the exclusion as set out in the said Circular. For the sake of convenience the relevant portion of paragraph 9.4 of the impugned order is reproduced hereunder:-

“9.4 First, we find that these instructions apply to imports made w.e.f. 01.04.2023, whereas the imports in the present case are relating to November, 2020 to February, 2022, and thus these instructions do not have any application on the present case. Even if we take into consideration the three specific products/equipment which are covered under the exclusion categories under CTI 85176290 described in the aforesaid circular at Annexure-2 for ‘carrier ethernet switches’ and other items, these are Internet Protocol Multi-Protocol Label Switching (IP-MPLS) based equipment (code TEG001); Packet Transport Network (PTN) based equipment (code TEG002); Multiprotocol Label Switching-Transport Profile (MPLS-TP) based equipment (code TEG003). The product literature and the specifications/features of ‘Catalyst 3850 Enterprise Switch’ placed on record, clearly indicate that they do not support MPLS-TP feature; IP-MPLS feature and are not used in the Packet Transport Network environment for transportation of data for mobile services. Therefore, we do not find that these specified products/equipment are applicable for the impugned products covered in this case.”

(emphasis supplied)

14. In view of the above factual findings, we are of the view that even question (C) does not give rise to any substantial question of law requiring an answer by this Court.

15. In light of foregoing discussion, we find that the above Appeal does not give rise to any substantial question of law. It is therefore dismissed. However, there shall be no order as to costs.

16. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]