

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH : MUMBAI**

REGIONAL BENCH - COURT NO. I

**Customs Appeal No. 88483 of 2018**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1018-17-18 dated 08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai** **...Appellant**  
**(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099

Versus

**Reliance Jio Infocomm Ltd.** **....Respondent**

Building no. 5-C, 1<sup>st</sup> Floor, Reliance Corporate Park,  
Ghansoli, Navi Mumbai-400 071.

WITH

**Customs Appeal No. 88487 of 2018**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1001-2017-18 dated 08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai** **...Appellant**  
**(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

**Reliance Jio Infocomm Ltd.** **....Respondent**

Building no. 5-C, 1<sup>st</sup> Floor, Reliance Corporate Park,  
Ghansoli, Navi Mumbai-400 071.

AND

**Customs Appeal No. 88492 of 2018**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1004-1007-2017-18 dated 08.02.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Commissioner of Customs-Mumbai** **...Appellant**  
**(Air Cargo Import)**

Gr. VA, Air Cargo Complex, Sahar, Mumabi-400099.

Versus

**Reliance Jio Infocomm Ltd.** **....Respondent**

Building no. 5-C, 1<sup>st</sup> Floor, Reliance Corporate Park,  
Ghansoli, Navi Mumbai-400 071.

Appearance:

Shri Ramesh Kumar, Authorized Representative for the Appellants

Shri J. C. Patel with Shilpa Balani, Advocates for the Respondents

**CORAM:****HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**  
**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)****FINAL ORDER NO. A/85669-85671/2022**

Date of Hearing: 13.07.2022

Date of Decision: 29.07.2022

***Per: P. Anjani Kumar***

A bunch of appeals (No. C/88479, 88483, 88485, 88487, 88492/2018, C/87032, 87033, 87034, 87035, 87036, 87037, 87038, 87039/2019) filed by the Revenue against various Order-in-Originals passed by the Commissioner of Customs, Mumbai (Air Cargo Import) were decided by this Bench vide Final Order No. A/85571-85583/2022 dated 22.06.2022. The respondents filed a miscellaneous application seeking the rectification of the order in respect of three appeals i.e. No. C/88483, 88487 & 88492/2018 stating that though the common issue of classification of Populated Printed Circuit Boards (PPCB) for DWDM Equipment – Photonic Service Switch, common to all the appeals was decided by the above cited order, another issue of classification of Small Factor Pluggable (SFP) and alternative claim of exemption under Notification No. 24/2005-Cus dated 1.3.2005 remained to be decided in respect of the three appeals mentioned above. This Bench vide Miscellaneous Order No. M/85546/2022 dated 12.07.2022 has ordered that these three appeals be delinked and placed before the Bench for a fresh hearing on 13.07.2022. Accordingly, the hearing was held on 13.07.2022.

2. Learned Counsel for the respondents submits that SFP are parts of various telecommunication equipment viz. Alcatel-Lucent 1830 Photonic Service Switch (PSS), Ethernet Switch and eNodeB; SFPs are fitted in the said equipment and function as integral part of such equipment; SFP cannot perform any function on its stand-alone basis as a machine or apparatus by

itself; it lacks power and intelligence and derives the same from the equipment in which it is fitted as a part; function performed by the SFP is integral and inseparable from the function performed by the telecommunication equipment; SFP purchased from any Original Equipment Manufacturer (Cisco or others) are exclusively used inside the equipment of same original equipment manufactured by the same manufacturer; there is no evidence relied upon by the Department to show that the said SFP can function independently on a stand-alone basis; the grounds of appeal specifically mentioned the SFP to be parts of Photonic Service Switch.

2.1 Learned Counsel further submits that vide order dated 25.01.2017, the Commissioner (Appeals), Hyderabad has held that SFPs are classifiable as parts under CTH 8517 70 and not as complete machine or apparatus under CTH 8517 6290; the said order of the Commissioner (Appeals), Hyderabad has been accepted by the Department and no appeal has been preferred; learned Commissioner (Appeals) in the impugned order followed the order of the Commissioner (Appeals), Hyderabad; further vide Order-in-Appeal dated 30.08.2019, Commissioner (Appeals), Mumbai has also held that SFPs are classifiable as parts under CTH 8517 70. Learned Counsel submits that without prejudice to above, SFPs are exempt from duty under Sr. No. 13 of Notification No. 24/2005-Cus dated 1.3.2005; irrespective of the sub-heading the items are exempted under the Notification cited above, which exempts all goods of heading 8517 except those mentioned in clause (i) to (iv) of the notification, the impugned SFP do not fall under the said clauses.

3. Learned AR for the Revenue reiterates the grounds of appeal and submits that the above mentioned telecommunication devices are part which are devices of line equipment such as transponder, Optical Amplifier, Wavelength Tracker, Optical add-drop Multiplexer etc. are having independent and specific function and therefore, they are rightly classifiable

under sub-heading 8517 62; these are various telecommunication devices used in optical communication by transmitting digital signal/ messages in one or both directions over a single transmission path on optical fibres; firstly, wavelength of various signals are changed and such signals having different wavelength are mixed and loaded on a single optical fibre and transmitted for optimum use of fibre i.e. single fibre used for transmitting various signals together; at the receiving points, these signals were de-mixed/separated and wavelengths are then again changed to original one and used by the recipient devices. In the whole process devices such as 'Transponder', 'Muxponder', 'Wavelength Tracker', 'Amplifier', 'Small Form Factor Pluggables' etc. are used and all of them are placed on a Switch called Photonic Service Switch (PSS), which gives a platform to the devices.

3.1 Learned AR takes us through the HSN Notes for Heading CTH 8517 and submits that part 'E' of HSN for Heading 3517 describes 'Automatic switchboards and exchanges'; Switch Board incorporates various devices classifiable under 8517 62 such as analogue to digital converters, digital to analogue converters, data compression/ decompression devices, modems, multiplexers are parts of Switch Board and have specific function to perform in such switch board, even though they are classified under sub-heading 8517 6230 and 8517 6270. He submits that by applying the above logic/principles, the imported apparatus being parts of Photonic Service Switch are to be classified under CTH 8517 6290; as per Explanation 'G' for Heading 8517, it is clear that the apparatus which allows connection to communication network or the transmission or reception within such a network are to be classified under sub-heading CTH 8517 62. HSN specifically mentions that this group i.e. 851762 includes (1) Network Interface cards (e.g. Ethernet Interface cards), (2) Modems (combined modulators-demodulators), (3) Routers, bridges, hubs, repeaters and

channel to channel adaptors, (4) Multiplexers and related line equipment (e.g. transmitters, receivers or electro-optical converters), (5) Codecs (data compressors/de-compressors) which have the capability of transmission and reception of digital information, (6) Pulse to tone converters which convert pulse dialed signals to tone signals; SFPs are having rightly classifiable under 851762.

4. Heard both sides and perused the records of the case.

5. The classification of Populated Printed Circuit Boards for DWDM Equipment – Photonic Service Switch has been decided by us vide Final Order dated 22.06.2022. We adopt the arguments put-forth by us to the impugned goods i.e. SFP in this case also as may be applicable. We find that as submitted by the learned Counsel for the respondents, the learned Commissioner (Appeals), Hyderabad has gone into the issue in detail manner vide order dated 25.02.2017 and has found as below: -

"5. I have considered the submissions made by the appellant in writing as well as those made during the personal hearing. I have also perused the documents submitted in defence. The issue to be decided is the correct classification of the goods imported. To decide correct classification of goods it is necessary to decide whether the SFP modules imported are equipment by themselves which are capable of providing the essential function of transmission and reception of optical data they are merely parts of the ethernet switch/parts of telecom equipment. The chapter sub-heading 8517 of CTA is given as below.

8517	TELEPHONE SETS, INCLUDING TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VICK, AAGES 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
8517 62	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and muting apparatus
8517 62 90	Other
85177090	Other

6. The original authority has held that the impugned goods cannot be treated as parts but instead are themselves machines. The appellant has explained that the product SFP is a standalone pluggable module which can be plugged into any computer or networking such as Ethernet switch,

IP Routers etc and could act as connector providing interface between two domains i.e. electrical and optical; that it gives information about optical power levels and electrical supply parameters, but only when SFP is plugged into Ethernet switch which has the requisite software to report these values, The appellant have demonstrated that after SFP trans-receiver is inserted into the Cisco switch which has lockable front doors, the doors are to be closed and the functioning of the apparatus can start only thereafter. Therefore, it is found that the SFP trans-receiver itself does not lead to operation of the switch. The original manufacturer of impugned goods i.e. Cisco, Netherlands vide their letter dated 03.08.2015 has clarified that all Cisco nexus switches consist of a chassis with designated slots for power supply module, fan module tray, supervisor modules, fabric modules and input/output (I/O) modules and that I/O module is one of the parts of Ethernet switch providing ethernet interfaces of 1/10/40/100 Gbps using Small Form Factor Pluggable (SFP/SFP+/QSFP) to inter-connect switches, servers and routers in a data-center or campus network. It has also been stated that the I/O module cannot function on its own in a stand-alone mode because it lacks power (provided by the chassis), switching capability (provided by the fabric through the mid-plane) and the control plane for decision of switching/routing packets between ports (provided by the supervisor module). In view of the above technical details made available from the manufacturers of the impugned goods, it is evident that SFP is not equipment which on its own is capable of providing the essential function of transmission and reception of optical data. It is a part of I/O card module used as part of the ethernet switch providing Ethernet interfaces to inter-connect switches, servers and routers in a data center or campus network. The original authority has, however, concluded that as the SFP modules have Digital Optical Monitoring (DOM) capability to monitor real-time parameters of the module, such as optical output power, optical input power, temperature, laser bias current, transceiver supply voltage etc they are distinct equipment/machines having specific functions of transmission and reception of optical data. However, it has not been brought forth as to whether the SFP can independently handle the above functions without being attached to the Ethernet switch as explained by the appellant in the submissions in these proceedings. The manufacturer Le. Cisco themselves have clarified that SFPs along with I/O card module are the parts of Ethernet switch providing Ethernet interface to interconnect switches, servers and routers in a data-center or campus network. It is noted that the original authority vide para 14 of impugned order has held that SFP is a compact, hot-pluggable used for both telecommunication and data communication applications and that it interfaces a network device switch, router, media converter to a fiber optic or copper networking cable, thus accepting that SFP functions as part of a network and not otherwise. Therefore, taking into account the appellant's explanation and the clarification issued by the original manufacturer of the impugned goods who are reputed persons it is to be held that SFP is part of I/O card module of Ethernet switch apparatus which could function only when connected with Ethernet switch providing interface between two domains i.e. electrical and optical. As such, they are parts and are correctly classifiable under CTH 8517 7090 of the Customs Tariff. As regards the treatment of the impugned goods as OTN products by the original authority, I find that the original manufacturer Le. Cisco have categorically stated that the impugned goods are not OTN products and instead are interface and modules goods which is consistent with the literature on their website. It is noted that the OTN products provide for functionality of transport, multiplexing, switching, management, supervision and survivability of optical channels carrying client signals, whereas as explained by the appellant and the original manufacturer, the impugned goods do not perform such functions. Therefore, I hold that the impugned goods i.e. SFPs are classifiable as being parts of telecom equipment i.e. Ethernet switch falling under CTH

8517 7090 and thereby are entitled to the benefit of Notification 24/2005-Cus dated 01.03.2005 as claimed by the appellant. Accordingly the order passed by original authority denying the benefit of exemption is also not correct and is liable to be set aside."

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 DWDM". 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.

8. Accordingly, appeals filed by the Department are rejected.

(Pronounced in open court on 29.07.2022)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(P. Anjani Kumar)**  
**Member (Technical)**

Sinha