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

% *Judgment delivered on: 13.01.2025*

\+ **CUSAA 38/2023**

COMMISSIONER OF CUSTOMS AIR CHENNAI-VII COMMISSIONERATE .....Appellant

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

versus

M/S. INGRAM MICRO INDIA PVT. LTD. .....Respondent

Through: Mr Yogendra Aldak and Mr Kunal Kapoor, 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***'], impugning the order dated 12.09.2022 [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. 51093 of 2020) was dismissed.

QUESTION OF LAW

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

> Whether the word "and" as appearing in CTl 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, M/s Ingram Micro India Pvt. Ltd. [hereafter also referred to as '***the respondent***'], is a distributor of Information Technology products in India and part of the internationally recognized Ingram Micro Group. During the period July, 2014 to June, 2017, it imported Wireless Access Points (**WAPs**) from various suppliers, including M/s Cisco Systems International BV, M/s Aruba Networks International Ltd., M/s Fortinet Singapore Pvt. Ltd., 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 Phalguna, 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, VolP 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 (MPL5-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 13.12.2018, 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 differential customs duty of ₹9,10,74,505/-, 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 the respondent's director, Mr. Blaze D'Souza, 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 23.12.2019, 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 final directions issued by the Adjudicating Authority are extracted hereunder:

> "**1. In respect of charges answerable to the Principal Commissioner/Commissioner of Customs (Import), Air Customs VII Commissionerate, Air Cargo Complex, Meenambakkam, Chennai - 600027:**
>
> 1.1 The Access Points imported by M/s Ingram Micro India Pvt 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.
>
> 1.2 I do not hold impugned goods, which were imported by them during the period from 11.07.2014 to 30.06.2017, with a declared assessable value of Rs.43,22,74,439/- through Customs, ACC, Chennai vide Bills of Entry as detailed in Annexure-B to the show cause notice, as liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I do not confiscate the same.
>
> 1.3 The demand of differential Customs duty of Rs.4,85,37,039/- on the impugned imported goods by

them during the period from 11.07.2014 to 30.06.2017 as detailed in Annexure-B to the show cause notice is hereby dropped.

1.4 I hold that no interest, on the duty foregone is recoverable from them under Section 28AA of the Customs Act, 1962;

1.5 I do not impose any penalty under Sections 112/114A/ 114AA of the Customs, Act, 1962 on the Noticee No.1.

1.6 I do not impose any penalty under Section 112 and 114AA of the Customs Act, 1962 on Shri Blasé D'Souza, Director Material of M/s. Ingram Micro India Pvt. Ltd, Mumbai.

2. In respect of charges answerable to the Principal Commissioner/ Commissioner of Customs (Import), Air Cargo Complex, Sahar Road, Airport Link Road, Andheri (E), Mumbai-400099:

2.1. The Access Points imported by M/s Ingram Micro India Pvt 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.

2.2 I do not hold impugned goods, which were imported by them them during the period from 11.07.2014 to 30.06.2017, with a declared assessable value of Rs. 31,40,44,170/- through Customs, ACC, Sahar, Andheri (E), Mumbai vide Bills of Entry as detailed in Annexure-C to the show cause notice, as liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, 1 do not confiscate the same.

2.3 The demand of differential Customs duty of Rs. 3,54,42,995/- on the impugned imported goods by them during the period from 11.07.2014 to 30.06.2017 as detailed in Annexure-C to the show cause notice is hereby dropped.

2.4 1 hold that no interest, on the duty foregone is recoverable from them under Section 28AA of the Customs Act, 1962;

2.5 I do not impose any penalty under Sections 112/114A/ 114AA of the Customs, Act, 1962 on the Noticee No.1.

2.6 I do not impose any penalty under Section 112 and 114AA of the Customs Act. 1962 on Shri Blasé D'Souza, Director Material of M/s. M/s. Ingram Micro India Pvt. Ltd, Mumbai.

3. In respect of charges answerable to the Principal Commissioner/ Commissioner of Customs (Import), Air Cargo Complex, Near IGI Airport, New Custom House, Indira Gandhi International Airport, New Delhi 110037:

3.1 The Access Points imported by M/s Ingram Micro India Pvt 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.

3.2 I do not hold impugned goods, which were imported by them them during the period from 11.07.2014 to 30.06.2017, with a declared assessable value of Rs. 6,29,69,522/- through Customs (Import), Air Cargo Complex, Near IGI Airport, New Custom House, Indira Gandhi International Airport, New Delhi 110037 vide Bills of entry as detailed in Annexure-D to the show cause notice, as liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I do not confiscate the same.

3.3 The demand of differential Customs duty of Rs.70,94,472/- on the impugned imported goods by them during the period from 11.07.2014 to 30.06.2017 as detailed in Annexure-D to the show cause notice is hereby dropped.

3.4 I hold that no interest, on the duty foregone is recoverable from them under Section 28AA of the Customs Act, 1962;

3.5 I do not impose any penalty under Sections 112/114A/ 114AA of the Customs, Act, 1962 on the Noticee No.1.

3.6 I do not impose any penalty under Section 112 and 114AA of the Customs Act, 1962 on Shri Blasé D'Souza, Director Material of M/s. Ingram Micro India Pvt, Ltd, Mumbai.

12. The aforesaid Order-in-Original passed by the Adjudicating Authority was reviewed by the Committee of Chief Commissioners, New Delhi *vide* Review Order No. 20/2019-20 dated 18.03.2020, by way of which the appellant herein was directed to file an appeal against the order of the Adjudicating Authority.

13. Accordingly, the Revenue filed an appeal 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.

14. However, the learned CESTAT, by way of the impugned order dated 12.09.2022, 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:

"16. 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.

17. 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 Ingram Micro 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).

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

19. 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?"

20. It is also seen that the word 'products' is not used after the words 'Multiple Input/Multiple Output (MIMO)'. Infect, '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

21. 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.

22. 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.

23. 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.

* * *

27. 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.

* * *

29. It has been stated that the investigation by the DRI was not only against Ingram Micro 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 23.12.2019 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 appeal filed by the Department, therefore, deserves to be dismissed and is dismissed…"

15. 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.

SUBMISSIONS BEFORE THE COURT

Submissions on Behalf of the Revenue

16. The learned counsel appearing for the Revenue argued that the respondent had erroneously claimed Basic Customs Duty exemption on the import of various access points and MIMO products falling under CTH 8517 62 90, under the amended Notification No. 24/2005. The Revenue contended that the learned CESTAT erred in concluding that the WAPs imported by the respondent worked solely on MIMO technology and did not support LTE standards. It was further argued that the learned CESTAT's finding that the respondent was justified in claiming exemptions under Serial No. 13(iv) of the notification and that there was no infirmity in the Adjudicating Authority's order dated 23.12.2019, was incorrect.

17. The learned counsel for the Revenue contended that the respondent's claim of exemption rested on interpreting the word "and" in Serial No. 13 (iv) of the notification as a conjunctive term. However, it was argued that there are instances where the word "and" is used disjunctively. The learned counsel provided examples, such as the phrases "goods and passengers," "Medicinal and Toiletry," and "Ayurvedic and Unani," where the word "and" is commonly interpreted disjunctively to mean separate categories. Accordingly, the learned counsel argued that in Serial No. 13(iv) of the notification, the

phrase "Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products" should be interpreted disjunctively, excluding products based on MIMO technology, even when they do not incorporate LTE standards, from the benefit of exemption.

18. The learned counsel further argued that the exclusion entry at Serial No. 13(iv) expressly refers to "products," and the phrase "MIMO" preceding "and" must be treated as a distinct category of goods. Consequently, the exclusion applies to products based on MIMO technology, regardless of whether they also support LTE standards. It was contended that the learned CESTAT erred in concluding that only products incorporating both MIMO and LTE were excluded from the exemption.

19. The Revenue also took exception to the learned CESTAT's reliance on subsequent developments, such as the exemption granted to identical products under a later notification dated 30.07.2017. It was argued that the prevailing notification could not be interpreted in light of subsequent notifications, as the law applicable during the relevant period must govern the matter. It was further submitted that the Finance Minister's Budget Speech for the year 2014-15 and the Tax Research Unit letter dated 10.07.2014 clearly intended that products containing both MIMO and LTE were to be excluded under Serial No. 13(iv).

20. Additionally, it was contended that MIMO and LTE products, while being information technology products, were categorized as

telecommunication products under Serial No. 13(iv) of the notification. The Revenue argued that the Hon'ble Supreme Court's decision in ***Sun Export Corporation, Bombay v. Collector of Customs, Bombay & Anr.:*** *(1997) 6 SCC 564* mandates that any ambiguity in an exemption notification must be resolved in favor of the Revenue, and the burden of proving eligibility for exemption lies squarely on the assessee.

21. The Revenue also pointed out that other importers of similar products had not claimed exemptions under the notification in question, which further undermined the respondent's position. It was argued that the phrase "MIMO and LTE products" should be interpreted in its natural and ordinary sense, analogous to phrases like "boy and girl" or "hare and tortoise," which signify separate entities rather than a single one. Therefore, Serial No. 13(iv) should be read as excluding products with MIMO or LTE technologies individually, rather than jointly.

22. In conclusion, it was submitted that the learned CESTAT failed to appreciate the ordinary meaning of the exclusion clause and erred in granting the benefit of the exemption notification to the assessee. The Revenue thus sought a strict interpretation of the notification and the setting aside of the decision of the learned CESTAT.

Submissions on Behalf of the Respondent

23. The learned counsel appearing for the respondent Ingram Micro submitted that the WAPs imported by it were rightly 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.

24. It was contended that the issue of exemption eligibility for WAPs utilizing only MIMO technology had already been settled in its favor by the Chennai Bench of the learned CESTAT in an earlier case, captioned ***M/s Ingram Micro India Pvt. Ltd. v. Commissioner of Customs, Chennai:*** *Customs Appeal No. 41694/2019*. This decision had attained finality as the Revenue did not challenge the decision. It was argued that the Revenue's acceptance of the earlier decision in an identical matter bars it from taking a contrary stance in the present case. Reliance was placed on the Hon'ble Supreme Court's decisions in ***Birla Corpn. Ltd. v. Commissioner of Central Excise:*** *(2005) 6 SCC 95* and ***Jayaswals NECO Ltd. v. Commissioner of Central Excise, Nagpur:*** *(2007) 13 SCC 807*, wherein it was held that the Revenue cannot take inconsistent positions on the same issue in separate cases. The respondent submitted that allowing the Revenue to act inconsistently would lead to legal uncertainty and confusion.

25. It was next argued that the word "and" in Serial No. 13(iv) of the notification must be read conjunctively, meaning that the exclusion applies only to products incorporating both MIMO technology and LTE standards, and that such an interpretation would align with the plain, grammatical meaning of the clause. Reliance was placed on several dictionaries and legal principles, including the principle of literal interpretation, to argue that the word "and" denotes addition or

connection. It was argued that interpreting "and" disjunctively, as proposed by the Revenue, would amount to rewriting the notification and lead to absurd results. It was submitted that the language of Serial No. 13(iv) is precise and unambiguous, and any attempt to treat the exclusion as applying to either MIMO or LTE products individually would distort the legislative intent.

26. The respondent contended that exclusionary clauses in exemption notifications must be interpreted strictly and narrowly, as held by the Hon'ble Supreme Court in ***Sun Export Corporation, Bombay v. Collector of Customs, Bombay & Anr.*** *(supra)*. It was also argued that the exclusion clause must be interpreted in line with the principle of *ejusdem generis*, which mandates that general terms following specific items must be confined to items of the same nature. Based on this principle, the phrase "MIMO and LTE products" should be restricted to telecommunication products that incorporate both technologies.

27. The learned counsel next highlighted that other exclusion entries in Serial No. 13 of the notification, such as those referring to "VoIP equipment" and "optical transport equipment," consistently describe specific categories of products. The absence of the term "products" after "MIMO" in entry (iv), coupled with the use of "and", reinforces the interpretation that the exclusion applies only to products featuring both MIMO and LTE standards.

28. It was also argued that WAPs are recognized as information technology products under the Information Technology Agreement (ITA), which India is obligated to comply with. Serial No. 13 of the notification was introduced to align with the ITA's framework, and denying exemption to WAPs would contravene this international commitment. It was also the respondent's case that the legislative intent, as reflected in the Budget Speech of the Finance Minister and relevant explanatory notes, indicates that the exclusion in Serial No. 13(iv) applies only to products incorporating both MIMO and LTE technologies, whereas the Revenue's interpretation, which treats MIMO as an independent category, ignores this intent and creates unnecessary ambiguity.

29. The respondent also pointed out that similar investigations against other importers of WAPs had been dropped, and no appeals were filed against such decisions and thus, this selective approach by the Revenue highlighted the inconsistency in its stance. Finally, the respondent submitted that it had discharged its burden of proof by providing complete documentation and evidence to demonstrate that the imported WAPs worked solely on MIMO technology, and that the Revenue's allegations of misrepresentation or suppression were baseless, as the respondent had fully disclosed the nature of the imported goods.

30. In light of these arguments, the respondent prayed that the appeal filed by the Revenue be dismissed and the order of the learned CESTAT be upheld.

ANALYSIS & FINDINGS

31. 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.

32. The question, thus, pertains to the interpretation of the exclusion entry (iv) of Serial No. 13 of the amended Notification No. 25/2005, and specifically as to whether WAPs with MIMO technology but without LTE standard, would qualify for the said exemption.

33. The Revenue interprets the entry 'MIMO and LTE Products' to apply separately and individually to both MIMO-based and LTE-based products. Conversely, the respondent asserts that the said entry applies only to the products incorporating both MIMO technology and LTE standards. The Adjudicating Authority, while adjudicating the SCN, agreed with the submissions of the respondent herein, and held that the imported WAPs – while employing MIMO technology – do not support LTE standards, and therefore do not fall within the scope of Serial No. 13(iv) of the amended Notification No. 25/2005. It also held that the word 'and' cannot be read as 'or' in the present case. The learned CESTAT, by way of the impugned order, upheld the order of the Adjudicating Authority, which has now been assailed by the Revenue in this petition.

Understanding WAP, MIMO and LTE

34. Before deciding the issue in question, it would be apposite to briefly understand the three devices and technologies in question, i.e.

WAP, MIMO and LTE. In the impugned order, the learned CESTAT has understood WAP, MIMO and LTE in the following manner:

> "(i) **WAP**: It is a networking device used for wireless communication within the Local Area Network. It helps in connecting wireless enabled devices such as Laptops, Smartphone, Tablets etc., to a wired network;
>
> (ii) **MIMO**: It is a technology wherein multiple antennas are used simultaneously for transmission and multiple antennas are used simultaneously for reception;
>
> (iii) **LTE**: In telecommunication, it is a standard for highspeed cellular communication for mobile devices and data terminals. It increases the capacity and speed using a different radio interface together with core network improvements."

35. Clearly, WAP is a networking device, MIMO is a technology and LTE is a standard. The WAPs imported by the respondent utilize MIMO technology to enhance network capacity and reliability by leveraging multiple antennas for data transmission and reception. However, they do not incorporate the LTE standard.

Interpretation of the Phrase 'MIMO and LTE Products'

36. The phrase 'MIMO and LTE Products' is at the heart of the dispute, specifically the interpretation of the word **'and'**. The disagreement is whether the said phrase means and includes:

(i) only the products combining both MIMO technology and LTE standard; or

(ii) the products using either MIMO technology or LTE standard, independently.

37. A closer examination of Serial No. 13 of the amended Notification No. 25/2005 reveals that wherever the Central Government intended to specify products individually, the terms such as "products", "equipment" or the nomenclature of a specific product have been mentioned after the respective technology or feature. In this regard, we may again take note of the four exclusion entries in Serial No. 13, which are as under:

> (i) soft switches and Voice over Internet Protocol (VoiP) equipment, namely, VolP 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 (MPL5-TP) products;
>
> (iv) Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) Products.

38. For instance, the entry (i) of Serial No. 13 pertains to 'equipment' which have both 'soft switches' and 'Voice over Internet Protocol'. It is followed by a list of such products that includes (1) VolP phones, (2) media gateways, (3) gateway controllers and (4) session border controllers. Thus, it is to be noted that the word 'and' has been used between 'soft switches' and 'Voice over Internet Protocol', followed by the word 'equipment', to refer to one class of products.

39. In entry (ii) of Serial No. 13, four categories of products have been mentioned. These are:

(1) Optical Transport **Equipment**
(2) POT **Product(s)** or POT **Switch(es)**
(3) OTN **Products**
(4) IP **Radios**

40. Therefore, every technology or feature is followed by words such as ‘equipment’ or ‘product(s)’ or specific products such as ‘radios’. The word ‘or’ has been specifically used in the same entry, while referring to either Packet Optical Transport Product(s) or Packet Optical Transport Switch(es).

41. Further, the entry (iii) of Serial No. 13 pertains to three categories of products which are as under:

(1) Carrier Ethernet **Switch**
(2) PTN **Products**
(3) MPLS-TP **Products**

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.

49. At this juncture, we note that as a general rule of interpretation, when the words of a statute are clear, plain and unambiguous, it is necessary to expound those words in their natural and ordinary sense. Further, it is also well-settled that a taxing statute has to be interpreted in light of what is clearly expressed. In this regard, it would be apposite to take note of some observations of the Hon'ble Supreme Court in ***Union of India & Ors. v. Ind-Swift Laboratories Limited:*** *(2011) 4 SCC 635*, which are as under:

> "20. **A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency.** In support of the same we may refer to the decision of this Court in Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd. reported in (1961) 2 SCR 189 wherein this Court at Para 10 has observed as follows: -
>
> > "11. ..... **In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency**."
>
> 21. Therefore, the attempt of the High Court to read down the provision by way of substituting the word "OR" by an "AND" so as to give relief to the assessee is found to be erroneous. In that regard the submission of the counsel for the appellant is well-founded that once the said credit is taken the beneficiary is at liberty to utilize the same, immediately thereafter, subject to the Credit rules."
>
> (Emphasis added)

50. The Hon'ble Supreme Court in ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co and Ors.*** *(supra),* held as under:

> "21. **The well settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences.** If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature.
>
> * * *
>
> 25. At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule, though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self--contradictory.
>
> * * *
>
> 44. In *Hansraj Gordhandas v. CCE* [hereinafter referred as 'Hansraj Gordhandas Case' for brevity], wherein this Court was called upon to interpret an exemption notification issued under the Central Excise Act. … ……. **It was held that a taxing legislation should be interpreted wholly by the language of the notification**.
>
> 45. The relevant observations are: (Hansraj case, AIR p. 759, para 5)
>
> > "**It is well -established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words.** The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it

cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of *Lord Watson in Salomon vs. Salomon & Co.*, (AC p. 38):

> ' "Intention of the Legislature" is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in *Crawford v. Spooner.*

> '… we cannot aid the Legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.'

The learned Counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power looms by constituting themselves in co- operative Societies. But the operation of the notifications has to be judged not by the object which the rule making authority had in mind but by the words which it has employed to effectuate the legislative intent."

(Emphasis added)

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 disjunctive 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.

62. 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.

63. The Question of Law is accordingly answered in favour of the assessee, and against the Revenue.

64. The appeal is accordingly dismissed.

SWARANA KANTA SHARMA, J

VIBHU BAKHRU, ACJ

JANUARY 13, 2025/*at*