प्रधान आयुक्त कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन, ऑल इंडिया रेडियो के पास, नवरंगपुरा, अहमदाबाद 380009

दुरभाष (079) 2754 46 30 फैक्स (079) 2754 23 43

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD

CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009

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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-34/Commr./O&A/2022-23

DIN- 20251171MN000000C3B5

आदेश की तारीख/Date of Order : 20.11.2025

जारी करने की तारीख/Date of Issue : 20.11.2025

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**

Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No.: AHM-CUSTM-000-PR.COMMR-34-2025-26 dated 20.11.2025 in the case of M/s. Zen Exim Private Limited (IEC-0801004845), 2nd Floor, Shakti-404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat- 380054.

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियोँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ *(उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।*

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षो के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां सिर्फ जुरमाना के बारे मे विवाद है उसका भुकतान करके अपील की जा सकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: - Show Cause Notice No. VIII/10-34/Commr./O&A/2022-23 dated 01.02.2023 issued by the Commissioner of Customs, Ahmedabad to M/s. Zen Exim Private Limited (IEC-0801004845), 2nd Floor, Shakti-404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat- 380 054.

BRIEF FACTS OF THE CASE:

M/s. Zen Exim Pvt. Ltd. (IEC No. 0801004845), 2nd Floor, Shakti 404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat 380054 (hereinafter referred as "Importer" for the sake of brevity), had declared and cleared goods vide Bills of Entry, as detailed in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice (hereinafter referred to as 'impugned goods') at Ahmedabad Port (INAMD4) through its authorized Customs Broker M/s. Nippon Express (India) Pvt. Ltd., by classifying them under the Customs Tariff Item 85176290 of the First Schedule to the Customs Tariff Act, 1975 and by availing the benefits under Serial No. 20 of Notification No. 57/2017-Cus dated 30.06.2017, as amended.

2. The Serial No. 20 of Notification No.57/2017-Customs dated 30.06.2017 was inserted vide Notification No.22/2018-Customs dated 02.02.2018. The same was further amended vide Notification No.75/2018-Customs dated 11.10.2018 and Notification No.02/2019–Customs dated 29.01.2019. Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017 after amendment vide Notification No.02/2019-Customs dated 29.01.2019, reads as under:

S.No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
20	8517 62 90 or 8517 69 90	All goods other than the following goods, namely: - (a) Wrist wearable devices (commonly known as smart watches); (b) Optical transport equipment; (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS); (d) Optical Transport Network (OTN) products; (e) IP Radios; (f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers; (g) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products; (h) Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products	10%	--

2.1 It is clear from the above that the Basic Customs Duty @ 10% at Serial No. 20 is chargeable to all items other than the following: -

Wrist wearable devices (commonly known as smart watches), Optical transport equipment, Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS), Optical Transport Network (OTN) products, IP Radios , Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers, Carrier Ethernet Switch, Packet Transport Node (PTN) products Multi-protocol Label Switching Transport Profile (MPLS-TP) products and Multiple Input/ Multiple Output (MIMO) and Long Term Evolution (LTE) products.

3. The details of goods cleared by the Importer by availing the duty benefit under Serial No. 20 of Notification No. 57/2017-Cus dated 30.06.2017, as amended, are tabulated below:

BE Number and dated	CTH Assessed	Item Description	BCD Notification Number and Sr. No. availed	Total Assessable Value	Duty paid @30.98
As Detailed in Annexure "A"	85176290	Wireless Access Point	Noti. No. 57/ 2017-Cus Sr. No. 20	33,60,89,386.8	10,41,56,101.9
		Network Gateway		15,31,55,896.7	4,68,01,484.2
		Network Controllers		1,02,00,744.58	31,47,670.9
		Ethernet Switches		17,67,58,478	5,47,16,109.7
Total				**67,62,04,506**	**20,88,213,66.7**

4. It has been observed during post clearance audit that the Importer wrongly availed the benefit of concessional rate of duty under Serial No. 20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, as the impugned goods seem to be coming under the category of excluded goods as specified under Serial No.20 of the said Notification and therefore liable for assessment at merit rate of duty i.e. @20% Basic Customs Duty. The Importer was informed about the short levied/short paid Customs duty in respect of the goods imported vide Bills of Entry, as mentioned in Annexure 'F' to this Show Cause Notice (as received from Chennai Audit Commissionerate for short payment of Customs Duty amounting to Rs.67,59,214/-) vide Consultative letter dated 16.07.2021 and 30.09.2021.

5. The reply of Importer dated 03.10.2022 (received on 06.10.2022), point-wise, is mentioned in detail in the Table below:

Sr No.	General Description of Product	Justification given by the Importer for availment of benefit of Notification No.57/2017-Cus dated 30.06.2017.
1	Wireless Access Point (MIMO)	The Wireless Access Point in question is a Multiple Input/Multiple Output (MIMO) product only. It is not Long Term Evolution product at all. The product imported by the Importer is not a MIMO and Long Term Evolution Product at all which is excluded from the purview of Notification No. 57/2017-Cus dated 30.06.2017, as amended.
2	Ethernet Switch	Sr. No. 20(g) of Notification No. 57/2017-Cus excludes the "Carrier Ethernet Switch". Our imported switches are Enterprise and SME segment switches which are used to provide Ethernet networking Local Area Network within campus. Since our switches under import are only Enterprise Class Ethernet switches, they are eligible to pay BCD @ 10% only.
3	Wired Controller	Wired Net- working Controller are not falling within exclusion list. Sr. No. 20(g) of Notification No. 57/2017-Cus, as amended excludes the Gateway controllers and Session Border Controller which are related to Voice Over Internet Protocol equipment.
4	Network Traffic Gateway	"Network Traffic Gateway is not falling within exclusion list. Sr. No. 20(g) of Notification No.57/2017-Cus excludes the Media Gateway, Gateway controllers and Session Border Controller which are related to Voice Over Internet Protocol equipment. BIG-IP ADC appliances can simplify network and reduce TCO by offloading servers, providing a consistent set of comprehensive application services, and consolidating devices, saving management, power, space, and cooling costs in the data centre."
5	Wired Network Accessories	These accessories items are not mentioned in exclusion list mentioned in Sr.No.20(g) of Notification No. 57/2017-Cus dated 30.06.2017.

6. Further, Bills of Entry for the period from 30.01.2019 to 01.02.2021 have also been taken for post clearance audit and it was found that there are broadly five types of category of goods which were imported in these Bills of Entry. Details of five categories are as under:

Sr. No.	General Description of Product
1	Wireless Access Point (MIMO)
2	Ethernet Switch
3	Wired Network Controller
4	Network Traffic Gateway
5	Wired Network Accessories

7. The data sheet, catalogue and end use of the products were thoroughly studied and it appeared that the impugned items imported are: -

7.1 **Item No. 1 of Table mentioned in para 5 above**: Wireless Access Point (various models viz. R710, R720, R730, R610, R510, R310, H320, T610, T310, M510 etc.; Features of some models are as under:

***H320**: The H320 is an entry-level Wave2 802.11ac (MU-MIMO-capable) Wi-Fi access point with integrated switch in a wall-plate form factor.*

H320 features Ruckus' patented Beam Flex + adaptive antenna technology to deliver high-speed 802.11ac WiFi in a low-profile design that can be discretely installed over a standard electrical junction box. H320 allows a range of wired & wireless services to be delivered in hotel guest rooms, student residences, and multi-dwelling unit switch just a single cable pull per room and eliminates the need for additional switches and power supplies.

H320 has dual-band concurrent 2x2:2 on 5GHz and 1x1:1 on 2.4GHz with MU-MIMO support.

With a 1Gbps Eth0 link to switched network, there are 2 Ethernet ports for in-room access, to connect a range of wired network devices such as IPtv set top boxes, IP telephones, or networked minibars while simultaneously providing dual band 802.11ac wireless LAN coverage. The H320 itself may be powered via standard PoE (802.3af), and can be deployed as a standalone device or centrally managed by SmartZone, Zone Director, or Flex Master management platforms.

***R510**: The Zone Flex R510 brings cutting edge 802.11ac Wave 2 to the mid-tier segment. It improves aggregate network throughput and benefits both Wave 2 & non-Wave 2 clients. It combines Ruckus patented technologies and best-in-class design with the next generation of 802.11ac features to deliver outstanding Wi-Fi performance and reliability. It future proofs the customer for emerging Internet of Things (IoT) technologies.*

With throughput capacities of 300Mbps (2.4GHz) and 867 Mbps (5GHz), the Zone Flex R510 brings cutting edge Wave 2 technology for the mid-tier segment. 802.11ac Multi-User MIMO (MU-MIMO) support allows the R510 to simultaneously transmit to multiple client devices, drastically improving airtime efficiency, overall throughput, and availability.

Zone Flex R510 is purpose-built for medium density, high performance and interference-laden environments such as schools, universities, small-medium businesses, hotels, MDUs and conference centers.

7.1.1 In view of the above, it appeared that all the models of Wireless Access Points imported by the Importer supports Multi-User MIMO (MU-MIMO) and increases network throughput by transmitting to multiple clients simultaneously. Thus, Wireless Access Point appeared to fall in the exclusion list i.e. Item (h) of Serial No. 20 of Notification No.57/2017-Customs, as amended and therefore do not eligible for the benefit of concessional rate of Customs Duty of 10% BCD as per Serial No. 20 of Notification No. 57/2017-Customs, as amended. It, therefore, attracts merit rate of BCD @ 20% under Customs Tariff Item 85176290, as detailed in Annexure B to the show cause notice and it appeared that the Importer short paid Customs Duty amounting to Rs. 4,35,88,792/- (Rupees Four Crore, Thirty Five Lakh, Eighty Eight

Thousand, Seven Hundred and Ninety Two Only) which is recoverable from the Importer.

7.2 **Item No. 2 of Table mentioned in para 5 above**: Ethernet Switches of different models viz. ICX 7150, ICX7750, ICX 7250, ICX 7650, ICX7450 etc. Features of the some models are as under:

ICX7450: *RUCKUS ICX 7450 delivers unprecedented scale-out density with enterprise-class availability. With SDN support, a service module for IPsec VPN, and 40 GbE ports for uplinks all in a stackable design, these switches enable services to be added anywhere in the network. The ICX 7450 is an ideal network solution for campus networks requiring 1 GbE access or small aggregation deployments with upgradeable 1GbE, 10 GbE or 40 GbE uplink modules. The switch also makes a suitable data center Top-of-Rack (ToR) solution, providing a ToR access-layer that can be upgraded to run on 10GbE/40GbE in the future with minimum costs and changes to cabling.*

The modular design of the switch enables deployment of additional services such as high-performance IPsec encryption to meet increasing compliance and data security requirements.

- *Up to 3 uplink modules with 4 x 1 GbE, 4 x 10 GbE, or 1 x 40 GbE ports.*
- *40 GbE standards-based stacking links – no proprietary cables needed.*
- *PoE/PoE+/PoH (95W) to power video surveillance, VDI terminals, and HD displays.*
- *Expansion slots accept modules with different uplink speeds and services.*
- *Site-to-site IP sec VPN service module eliminates dedicated encryption devices.*
- *Programmable hardware technology, enabling more features to be added to IPsec VPN deployments.*
- *Suite B algorithms and support for 128-bit and 256-bit AES.*
- *10 Gbps throughput per service module.*
- *Up to 12 switches per stack.*
- *Up to 10km between stacked switches.*
- *Stacking connectivity through open standard SFP+ or QSFP+ ports – no special cables needed.*
- *Stack level ISSU for continuous operations.*
- *Works seamlessly with RUCKUS Wi-Fi access points.*
- *RUCKUS Smart Zone and RUCKUS Cloud support delivers unified wired & wireless management.*

ICX7750: *RUCKUS ICX 7750 delivers chassis performance in the network's aggregation and core switching operations. The switch's premier speed and reliability in a flexible scale-out design enables a small deployment to add capacity as needs grow and deliver mission critical application services with complete confidence.*

The ICX 7750 provides the capabilities of a chassis with the flexibility and cost-effectiveness of a stackable switch. The switch delivers faster network response time via wire-speed, non-blocking performance across all ports to support latency-sensitive applications such as real-time voice or video streaming and Virtual Desktop Infrastructure. Up to 12 ICX 7750 switches can be stacked together to provide terabytes of aggregated stacking bandwidth with full redundancy, eliminating inter-switch bottlenecks.

- *Industry-leading 10/40 Gbps Ethernet port density and flexibility.*
- *Up to 32x40 GbE or 96x10 GbE ports per unit.*

- *Up to 5.76 Tbps of aggregated stacking bandwidth with full redundancy.*
- *Up to 10km between stacked switches.*
- *6 full-duplex 40 Gbps stacking ports per switch..*
- *Software updates without downtime with In-Service Software Upgrades (ISSU).*
- *Instantaneous hitless failover.*
- *Redundant power supplies with hot-swappable, and load-sharing capabilities*
- *Flexible distributed chassis stacking architecture.*
- *Start small and add capacity via stacking as needs grow.*
- *1U form factor saves rack space and power in wiring closets.*
- *Works seamlessly with RUCKUS Wi-Fi access points.*
- *With RUCKUS Smart Zone support delivers unified wired & wireless management.*

7.2.1 In view of the above, it appeared that all the models of Ethernet Switches (stackable access switch) imported by the Importer fall in the exclusion list i.e. Item (g) of Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended and therefore do not eligible for the benefit of concessional rate of Customs Duty of 10% as per Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended. It, therefore, attracts merit BCD @ 20% under Customs Tariff Item 85176290, as detailed in Annexure 'C' to the show cause notice and it appeared that the Importer short paid Customs Duty amounting to Rs.2,29,86,917/- (Rupees Two Crore, Twenty Nine Lakh, Eighty Six Thousand, Nine Hundred and Seventeen Only) which is recoverable from the Importer.

7.3 Item No. 3 of Table mentioned in para 5 above: Wired Controller of different Models viz. ZD 1205, SZ 100, etc. Features of the models are as under:

ZD1205:

- *Provides WLAN-wide network, security, RF, and location management.*
- *Smart Mesh wireless meshing that is self-organizing, self-optimizing, and self-healing Adaptable Hybrid Smart Mesh extends the wireless network through Ethernet-connected APs, increasing system performance through better spatial reuse.*
- *Elegant guest networking without the hassle.*
- *Dynamic Pre-Shared Key (PSK) that are automatically installed on clients.*
- *Support for 802.1x, LDAP (captive portal), native Active Directory, and RADIUS*
- *authentication and dynamic VLAN assignment capabilities.*
- *Multi-site authentication to scale large deployments.*
- *Automatic traffic redirection using WISPr for multi-site authentication for large-scale deployments.*
- *Automatically ensures predictable performance for voice, video, and multimedia through the use of Layer 3 tunneling and using key caching techniques when roaming*
- *Bandsteering, load balancing, and airtime fairness to optimize Wi-Fi spectrum.*
- *Users access policies provide rich WLAN control.*
- *Traffic thresholds for users on a specific SSID to ensure fairness*

- *Maximizes data throughput by sending all data traffic directly from the access points to the wired network.*
- *Seamlessly integrates with existing network, security, and authentication infrastructure.*
- *Automatically discovers and configures Zone Flex APs, which become instantly manageable.*
- *Dynamic RF controls over transmit power and channel assignments.*
- *Supports 256 WLANs mapped to specific APs or VLANs.*
- *Is easily configured in minutes through point-and-click web-based wizard.*
- *Customizable dashboard provides comprehensive at-a-glance network snapshot and allows drill down to troubleshoot wireless problems*

7.3.1 In view of the above features of Controller, it appeared that the said Network Controller falls in the exclusion list i.e. Item (f) of Serial No.20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended and therefore do not eligible for the benefit of concessional rate of Customs Duty of 10% as per Serial No. 20 of Notification No.57/2017-Customs dated 30.06.2017, as amended. It, therefore, attracts merit BCD @ 20% under Customs Tariff Item 85176290, as detailed in Annexure 'D' to the show cause notice and it appeared that the Importer short paid Customs Duty amounting to Rs. 13,36,576/- (Rupees Thirteen Lakh, Thirty Six Thousand, Five Hundred and Seventy Six Only) which is recoverable from the Importer.

7.4 **Item No. 4 of Table mentioned in para 5 above**: Wired Networking Access Gateway of different models viz. F5 BIG ASM I4600, I7600, LTM I 2600, LTM I 7800, AWF I 5800 etc. feature of the some models are as under:

F5 BIG ASM:

F5's next-generation, cloud-ready Application Delivery Controller (ADC) platform provides DevOps-like agility with the scale, security depth, and investment protection needed for both established and emerging apps. The new F5® BIG-IP® iSeries appliances deliver quick and easy programmability, ecosystem-friendly orchestration, and record breaking, software-defined hardware performance. As a result, customers can accelerate private clouds and secure critical data at scale while lowering total cost of ownership (TCO) and future proofing their application infrastructure.

Reduce TCO and the infrastructure footprint by consolidating app and security services on to a unified, high-performance platform. Deliver the SSL capacity required to protect critical data—including offload of elliptical curve cryptography (ECC) processing to hardware— enabling forward secrecy scaling. Simplify operations and improve customer confidence with the fastest way to an SSL Labs A+ rating.

Deliver the most effective protection with integrated, one-pass, full stack (L3–L7) security, including an ICSA Certified firewall, high-capacity distributed denial-of-service (DDoS) mitigation, contextual access management, and more. In cloud or container environments, save time with a simple, out-of-the-box native integration with leading private cloud, interconnects, and container environments.

The I Series' software-defined hardware includes unique F5 Turbo Flex™ FPGA technology that enables on-demand optimized performance for specific use cases such as DDoS protection or UDP traffic processing. Eliminate forklift upgrades and extend the lifecycle of app delivery hardware with software-upgradeable performance.

Ensure your critical infrastructure is built on reliable, carrier-grade hardware with hot-swappable components, redundant power supplies and fans, and always-on management integrated with a full baseboard management controller (BMC) with IPMI support.

7.4.1 In view of the above features of Network Gateway (Application Delivery Controller) that allows data prioritization for simplified integration, reduced commissioning time and optimized performance, it appeared that the impugned items fall in the exclusion list i.e. Item (f) of Serial No.20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended, as they are Gateway /Gateway Controllers and therefore do not eligible for benefit of 10% BCD under Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended. Therefore, it attracts merit BCD @ 20% under the Customs Tariff Item 85176290, as detailed in Annexure 'E' to the show cause notice and it appeared that the Importer short paid duty amounting to Rs. 2,05,25,848/- (Rupees Two Crore, Five Lakh, Twenty Five Thousand, Eight Hundred and Forty Eight Only) which is recoverable from the Importer.

7.5 Item No.5 of Table mentioned in para 5 above i.e. Wired Network Accessories are not mentioned in the exclusion list mentioned at Serial No.20(g) of Notification No.57/2017-Customs dated 30.06.2017, as amended.

8. With the introduction of the Self-Assessment Scheme, the onus is on the Importer to comply with the various laws, determine his tax liability correctly and discharge the same. The Importers are required to declare the correct description, value, classification, Notification number, if any, of the imported goods. Self-assessment is supported by Sections 17, 18 and 46 of the Customs Act, 1962. As per Section 46 of the Customs Act, 1962, the Importer was required to file a Bill of Entry in the proforma prescribed under Bill of Entry (Form) Regulations, 1976 or Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, before the proper Officer in respect of the goods imported by them. In terms of the said provisions, the Importer, while presenting the Bill of Entry shall make and subscribe to a declaration, as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper Officer, the invoice, if any, relating to the imported goods. As a part of self-assessment by

the Importer, it was the duty of the Importer to declare classification, description and nature of goods, exemption Notification etc. correctly in the Bill of Entry and other documents viz. invoices, packing list etc. But despite knowing the fact that they were not eligible to avail the benefit of Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, the Importer deliberately and wrongly availed the benefit of the same by suppressing the fact that the impugned goods fall under the exclusion list as specified at Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, from the Department. In view of the above, it appeared that the Importer has violated the provisions of Section 12 of the Customs Act, 1962 by not paying the duty at applicable rate under the Customs Act, 1962 by way of wrongly availing the concessional rate of duty benefit under Serial No. 20 of Notification No. 57/2017-Customs, as amended, which resulted in short payment of Customs Duty.

8.1 The Importer intentionally and knowingly adopted the modus operandi by way of collusion, willful mis-statement and suppression of facts to avail benefit of concessional rate of Customs Duty as per Serial No.20 of the Notification No.57/2017-Customs dated 30.06.2017, as amended, for which they were not eligible, with an intent to evade Customs Duty. They have availed the benefit of Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended, to avoid payment of duty at the appropriate rate. Had the audit of the Importer not been conducted, these acts/omissions done by them would not have come to the notice of the Department. These acts of omissions on the part of the Importer tantamount to willful mis-statement and suppression of facts on the part of the Importer. The Importer M/s. Zen Exim Pvt. Ltd. had imported the subject goods under 205 Bills of Entry, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, by availing the benefit of concessional rate of Customs duty of 10% BCD as per Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended, at Port of ACC, Ahmedabad (INAMD4) despite being very much aware of the fact that these imported goods are not eligible for benefit of 10% BCD under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, as these goods fall under the exclusion list of Serial No. 20 (f), (g) and (h) of the said Notification. This fact provides sufficient ground to invoke the proviso of Section 28(4) for extended period upto five years for issuance of Demand of Duty-cum-Show Cause Notice, for willful mis-declaration and suppression with intent to short pay Customs Duty, as the Importer has never informed the Department that they were not eligible for the benefit of concessional rate of BCD of 10% as per Serial No.20 of Notification

No.57/2017-Customs dated 30.06.2017, as amended. Therefore, total Customs Duty of Rs.8,84,38,134/- (Rupees Eight Crore, Eighty Four Lakh, Thirty Eight Thousand, One Hundred Thirty Four Only) short paid by the Importer in respect of the Bills of Entry, as listed in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, and as mentioned in brief in the Table below, is required to be recovered from the Importer in terms of Section 28(4) of the Customs Act, 1962.

BE Number and date	CTH Assessed	Item Description	BCD Notification Number and Sr. No. availed	Total Assessable Value Assessed	Duty paid @30.98 (BCD @10% SWS@10% IGST@18%)	Duty payable @43.96 (BCD 20% SWS@10% IGST@18%	Differential Duty
As Detailed in Annexure "A"	85176290	Wireless Access Point	Noti. No. 057/ 2017-Cus Sr. No. 20	336089386.8	104156101.9	147744894.4	43588792.52
		Network Gateway		153155896.7	46801484.2	67327332.21	20525848.01
		Network Controllers		10200744.58	3147670.9	4484247.317	1336576.417
		Ethernet Switches		176758478	54716109.7	77703026.91	22986917.21
Total				**6762,04,506**	**20,88,21,366.7**	**29,72,59,500**	**8,84,38,134**

8.2 It also appeared that the short paid/short levied Duty, on goods, as detailed in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, arising from correct levy of BCD @20% and denial of benefit of Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017 as amended, amounts to Rs.8,84,38,134/- and is liable to be demanded and recovered from the Importer under Section 28(4) of the Customs Act, 1962, along-with applicable interest thereon in terms of the provisions of Section 28AA of the Customs Act, 1962.

8.3 The Importer appeared to have willfully mis-stated and suppressed the facts and wrongly availed benefit of 10% BCD under Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended, as discussed in the earlier paras, and short paid the Customs Duty to the tune of Rs.8,84,38,134/-. Hence, the impugned goods imported under 205 Bills of Entry with declared assessable value of Rs. 67,62,04,506/- (Rupees Sixty Seven Crore, Sixty Two Lakh, Four Thousand, Five Hundred and Six only), as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, which were self-assessed and cleared, appeared liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962. However, the goods so cleared, are not physically available for confiscation.

8.4 Therefore, it appeared that the said act of omission, willful misstatement, suppression of facts resulting in wrong utilization of benefit of Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, made the aforementioned imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and this act on the part of the Importer renders themselves liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962.

8.5 Section 114A of the Customs Act, 1962, stipulates that where the duty has not been levied or has been short-levied by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the Duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined. It appeared that the Importer has deliberately suppressed the fact that they were not eligible to avail the benefit of concessional rate of Customs Duty at 10% BCD under Serial No.20 of the Notification No.57/2017-Customs dated 30.06.2017, as amended, from the Customs Authority. Such an act of deliberation appeared to have rendered them liable to penalty under Section 114A of the Customs Act, 1962.

8.6 Further, the Importer has knowingly and intentionally made false declaration in their Bills of Entry regarding availment of benefit of concessional rate of Customs Duty as per Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, for which they were not eligible which resulted in short payment of Customs Duty for which they appeared to be liable to penalty under Section 114AA of the Customs Act, 1962.

9. Regulation 10(d) of the Customs Brokers Licensing Regulations, 2018, states that it is the obligation of the Customs Broker that he shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be.

9.1 From the above, it is found that the Custom Broker M/s. Nippon Express (India) Pvt. Ltd. failed to advise his client to comply with the provisions of the Act, other allied Acts and the Rules and regulations thereof, and in case of non-compliance, did not bring the matter to the notice of the Deputy Commissioner of Customs of Air Cargo Complex, Ahmedabad. This resulted into wrong availment of benefit of concessional rate of Customs Duty as per

Serial No.20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended, in respect of the impugned goods, as detailed in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, and short payment of Customs Duty amounting to Rs.8,84,38,134/-by the Importer. For this act on the part of the Customs Broker, no express penalty has been provided elsewhere under the Customs Act, 1962. It therefore appeared that M/s. Nippon Express (India) Pvt. Ltd. were liable to penalty under Section 117 of the Customs Act, 1962.

10. Therefore, a Show Cause Notice bearing F. No. VIII/10-34/Commr./O&A/2022-23 dated 01.02.2023 was issued to the Importer viz. M/s. Zen Exim Pvt. Ltd. (IEC No. 0801004845), 2nd Floor, Shakti 404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat 380054, asking them to Show Cause to the Commissioner, Customs House, Ahmedabad, having his office at 1st Floor, Custom House, Navrangpura, Ahmedabad, Gujarat 380009, as to why:

(i) the incorrect claim of Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, in respect of impugned goods, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, should not be denied and the said goods should not be assessed at merit rate of Basic Customs Duty;

(ii) total Customs Duty amounting to Rs. 8,84,38,134/- (Rupees Eight Crore, Eighty Four Lakh, Thirty Eight Thousand, One Hundred and Thirty Four Only), short paid on the impugned goods imported vide the Bills of Entry, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with the applicable interest thereon as per Section 28AA of the Customs Act, 1962;

(iii) all the goods imported vide the Bills of Entry, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, valued at Rs. 67,62,04,506/- (Rupees Sixty Seven Crore, Sixty Two Lakh, Four Thousand, Five Hundred and Six only), which were self-assessed and have already been cleared, should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962. Since the same are not physically available for confiscation why fine in lieu of confiscation should not be imposed upon them under Section 125 of the

Customs Act, 1962;

(iv) penalty should not be imposed upon them under Section 112(a)(ii) of the Customs Act, 1962 for the reasons discussed in paras supra;

(v) penalty should not be imposed upon them under Section 114A of the Customs Act, 1962 for the reasons discussed in paras supra and

(vi) penalty should not be imposed upon them under Sections 114AA of the Customs Act, 1962 for the reasons discussed in paras supra.

11. The Show Cause Notice bearing F.No. VIII/10-34/Commr./O&A/2022-23 dated 01.02.2023 was also issued to the Customs Broker viz. M/s. Nippon Express (India) Pvt. Ltd., 201, 2nd Floor, Citizen Arena, Opposite Nidhi Hospital, Near Stadium Cross Roads, Navrangpura, Ahmedabad – 380009, asking them to show cause to the Commissioner, Customs House, Ahmedabad, having his office at 1st Floor, Custom House, Navrangpura, Ahmedabad, Gujarat 380009, as to why penalty should not be imposed on them under Section 117 of the Customs Act,1962 for the reasons discussed in paras supra.

12. Thereafter, the above show cause notice dated 01.02.2023 was transferred to Call Book, as the Customs Appeal No. 38/2023 filed by the department in an identical issue in the case of Commissioner of Customs, AIR, Chennai-VII Comm'te Vs. M/s. Ingram Micro India Pvt. Ltd. was pending before the Hon'ble High Court of Delhi for decision. The information regarding transferring of the subject show cause notice to Call Book was also intimated to the Importer vide letter dated 31.05.2023. The Hon'ble High Court of Delhi vide Judgment dated 13.01.2025 has dismissed the appeal filed by the department. Therefore, the show cause notice dated 01.02.2023 is retrieved from call book for adjudication.

DEFENCE:

13. M/s. Zen Exim Private Limited, Ahmedabad vide letter dated 24.03.2023 have submitted their defence reply to the above show cause notice dated 01.02.2023, under which they have interalia submitted that: -

13.1 It is not in dispute, that all the bills of entry involved were assessed and duty was deposited and goods were cleared out of the customs charge. The

Assessment Order had not been challenged by the department by filing appeal under Section 128 of the Customs Act. Therefore, the assessment of all bills of entry have attained finality and the same cannot be re-opened by issuing a show cause notice under Section 28 of the Customs Act. In this regard they have relied on the judgment of the Supreme Court in the case of ITC Ltd. Vs. CCE [2019 (368) ELT 216 (S.C.)].

13.2 The contention in show cause notice that in self-assessment, onus is on them to determine the tax liability correctly is without any substance. The self-assessment is subject to verification by the Proper Officer who has the power to reassess the goods under Section 17 (4) of the Customs Act. Further claiming a particular classification or claiming exemption under a Notification is a matter of belief of the importer.

13.3 The show cause notice has been issued to deny the benefit of Serial No. 20 of Notification No. 57/2017, since the Wireless Access Points is having MIMO Technology. The exclusion clause (h) will apply only when the imported product is both MIMO and LTE product as the word "and" has been used in between MIMO and LTE.

13.4 The issue has been set at rest by the Hon'ble Tribunal in the case of Commissioner of Customs (AIR) Chennai Vs. Ingram Micro India Pvt. Ltd. 2022-TIOL-882-CESTAT-DEL by dismissing the appeal filed by Revenue against Order-in-Original dated 23.12.2019 passed by ADG (Adj), DRI, New Delhi and by holding that Exclusion Clause uses the conjunction "and" the word "product" is not used after the words "MIMO". The Tribunal decided that "Thus the term Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) Products means products which contain both MIMO & LTE".

13.5 The Tribunal has observed that 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 & LTE both and that the product that only has MIMO technology may, therefore, be not covered by this exclusion clauses.

13.6 The Tribunal has, further, observed that "and" is a conjunctive and is used to connect and join. Moreover, the word "products" is not used after the words "Multiple Input/Multiple Output (MIMO)".

13.7 Admittedly Wireless Access Points imported by them are having only MIMO Technology and not having LTE Standard. Further, the Exclusion clause is similarly worded. Therefore, the decision of the Hon'ble Tribunal is squarely applicable to the import of Wireless Access Points imported by them and the benefit of Notification No. 57/2017-Cus dated 30.06.2017 [Sl. No. 20] is available. The Exclusion clause (h) is not applicable as Wireless Access Point, imported by them, works on MIMO technology and does not support LTE Standard.

13.8 The clause (h) excludes MIMO and LTE products only. It is, thus, apparent that only if imported product consists of both MIMO technology and LTE standard, then such product will be not eligible for concessional rate of duty. If the imported product consists only MIMO technology and not LTE standard, the exclusion clause would not apply. This view is strengthened from the fact that in clause (h), word "AND" has been used which clearly shows that the imported product must have both MIMO technology and LTE standard.

13.9 As the issue of availability of benefit of exemption notification to Wireless Access Point having only MIMO Technology and not having LTE Standard, has been decided by the Hon'ble Tribunal, the demand of Rs. 4,35,88,792/- relating to Wireless Access Point is liable to be dropped.

13.10 The exclusion clause (g) of Serial No. 20 of Notification No. 57/2017-Cus dated 30.06.2017 excludes "Carrier Ethernet Switch", Pocket Transport Node (PTN) products, Multiprotocol Switching Transport Profile (MPLS-TP) products. No Technical Opinion or Laboratory Report is on record to prove that the Ethernet Switches imported by them fall in any of the products specified in Exclusion Clause (g). In view of this, the show cause notice is vague and as such bad in law.

13.11 They have imported Enterprise Networking Ethernet Switch and not Carrier Ethernet Switch. The main function of the impugned product is Enterprise Networking Switch which is used in Wired Networks distribution and routing of data packs. Ethernet Switches are of different types. The Clause (g) of Serial No. 20 of Notification only excludes "Carrier Ethernet Switch" and not "all types of Switches" from the benefit of partial exemption. The Enterprise Networking Switches imported by them are Enterprise and SME Segment Switches which are used to provide Ethernet networking to Local Area Network within campus whereas Carrier Ethernet Switches are used by

provider of Telecommunication Services for providing Metro Ethernet Services within the city.

13.12 It is settled law that the burden is on the department to prove that the imported switch are Carrier Ethernet Switch. This burden has not been discharged by the Department by bringing any Test Report or Technical Opinion. In this regard, they have relied on the judgment passed by the Hon'ble Calcutta High Court in the case of CC Vs. Hindalco Industries Ltd., 2007 (217) ELT 343 (Cal).

13.13 The question of eligibility to Sl. No. 20 of Notification No. 57/2017-Customs in respect of Enterprise Ethernet Switches has been considered by the Customs Authority for Advance Ruling, Mumbai in Re: Ingram Micro India Pvt. Ltd. The Authority for Advance Ruling has then Ruled that the impugned products do not appear to be falling under the exclusion list appended to Sl. No. 20 of Notification No. 57/2017-Customs and they are eligible for benefit under the said Notification.

13.14 There are different types of Ethernet Switches and Exclusion Clause (g) only mentions Carrier Ethernet Switches and not 'Ethernet Switches". This fact has been affirmed by Tribunal in Ingram Micro India Pvt. Ltd. Vs. Commissioner of Customs [2020-TIOL-1724-CESTAT-MAD] by holding that Enterprise class Ethernet Switches (other than Carrier Ethernet Switches) are classifiable under CTH 85176290.

13.15 In view of the above submissions, no differential duty is payable in respect of Ethernet Switch and the demand of Rs. 2,29,86,917.00 is required to be dropped.

13.16 It has been alleged that as per feature of Wired Controller, the said product falls in the Exclusion Clause (f) of Sl. No. 20 of Notification No. 57/2017-Customs. It is apparent that for any product to be covered by exclusion clause (f), it must not only be soft switches and voice over Internet Protocol (VoIP) equipment, it must also be one of the products mentioned in clause (f) namely VoIP phones, media gateways, gateway controller and session border controller. There is no evidence on record to prove that wired controller, imported by them, are one of the VoIP equipment, mentioned in clause (f). The burden to prove that clause (f) is applicable in respect of wired controller, is on the department which has not been discharged. In this regard, they have relied on the judgment passed by the Hon'ble Supreme Court in the case of

Hewlett Packard India Sales Pvt. Ltd. Vs. Commissioner of Customs (Import) reported in 2023 (383) ELT 241 (S.C.).

13.17 The department has not brought on record any Technical Opinion/Test Report to show that the Wired Controller in question is one of the VoIP equipment specified in clause (f) of Serial No. 20 of Notification No. 57/2017-Customs. In absence of any such evidence on record, it cannot be alleged by the department that clause (f) is applicable. Thus, there is no substance in the show cause notice.

13.18 They have obtained the technical opinion of the Chartered Engineer who after examining the products, has specifically opined in his Report dated 06.03.2023 that the "product does not have any features and is not capable to deliver any end use features in connection with Soft Switch/VoIP equipment and the Wired Controllers are not covered under Sl. No. 20(f) of Notification No. 57/2017-Cus dated 30.06.2017, as amended."

13.19 It has been alleged that as per feature of Wired Networking Access Gateway, the said product falls in the Exclusion Clause (f) of Sl. No. 20 of Notification No. 57/2017-Customs. It is apparent that for any product to be covered by exclusion clause (f), it must not only be soft switches and voice over Internet Protocol (VoIP) equipment, it must also be one of the products mentioned in clause (f) namely VoIP phones, media gateways, gateway controller and session border controller. There is no evidence on record to prove that Network Traffic Gateway, imported by them, are one of the VoIP equipment, mentioned in clause (f). The burden to prove that clause (f) is applicable in respect of Network Traffic Gateway, is on the department which has not been discharged. In this regard, they have relied on the judgment passed by the Hon'ble Supreme Court in the case of Hewlett Packard India Sales Pvt. Ltd. Vs. Commissioner of Customs (Import) reported in 2023 (383) ELT 241 (S.C.).

13.20 The department has not brought on record any Technical Opinion/Test Report to show that the Network Traffic Gateway in question is one of the VoIP equipment specified in clause (f) of Serial No. 20 of Notification No. 57/2017-Customs. In absence of any such evidence on record, it cannot be alleged by the department that clause (f) is applicable. Thus, there is no substance in the show cause notice.

13.21 They have obtained the technical opinion of the Chartered Engineer who after examining the products, has specifically opined in his Report dated 06.03.2023 that the "product does not have any features and is not capable to deliver any end use features in connection with Soft Switch/VoIP equipment and the Networks Traffic Gateway commonly known as Application Delivery Controller/Local Traffic Manager are not covered under Serial No. 20(f) of Notification No. 57/2017-Cus dated 30.06.2017, as amended." Therefore, the demand of differential duty amounting to Rs. 2,05,25,848/- in respect of Wired Networking Access Gateway is required to be dropped.

13.22 The duty computation has not been correctly made in respect of following seven Bills of Entry, since the goods imported thereunder were imported against Service Exports from India Scheme (SEIS) under Notification No. 25/2015-Customs dated 08.04.2015:

Sl. No.	Bill of Entry No.	Date	Description of Imported Goods
1.	6104108	16.12.2019	Wired Networking Access Gateway
2.	6180465	21.12.2019	Wired Networking Access Gateway
3.	6354443	04.01.2020	Wired Networking Gateway
4.	6385810	07.01.2020	Wired Networking Controller
5.	6733660	03.07.2020	Wired Networking ADC Platform
6.	6792073	07.02.2020	Wired Networking ADC Platform
7.	8056300	02.07.2020	Wired Networking Switch

13.23 They had purchased the SEIS Scrip No. 0819054871 dated 10.10.2019 from M/s. Goalseek Shared Services Pvt. Ltd., Ahmedabad and they used the said Scrip, which is transferable, in respect of imports under the above mentioned 7 Bills of Entry and availed full exemption from payment of Basic Customs Duty under Notification No. 25/2015-Customs.

13.24 In respect of these Bills of Entry, there was no short payment of duty as alleged in show cause notice since basic customs duty was wholly exempted. Thus, there is excess duty demand of Rs. 15,13,205/- out of differential duty demanded of Rs. 16,51,101/-, which is not payable by them.

13.25 The entire demand of duty is beyond the normal period and extended period of limitation is not invocable as neither there was any wilful mis-statement nor any suppression of facts.

13.26 It is settled law that when the department is aware of the facts, wilful mis-statement and suppression of facts cannot be alleged. The Supreme Court has held in Pushpam Pharmaceuticals Company Vs. CCE, 1995 (78) ELT 401 (S.C.) that "when facts are known to both the parties, the omission by one to do what he might have done and not that he must have done, does not render it suppression of facts."

13.27 They have bona fide belief that the impugned goods imported by them are eligible for the benefit of concessional rate of duty. This belief has been upheld by the Hon'ble Tribunal and Quasi-Judicial Authorities in the department. It is settled law that when the assessee holds the bona fide belief, mala-fide intention cannot be alleged. The Supreme Court has held in Chamundi Die-Casting (P) Ltd. Vs. CCE, 2007 (215) ELT 169 (S.C.) that there is no intent to evade duty as the assessee acted on bona fide belief that these goods were covered by exemption notification.

13.28 The goods imported by them are not liable for confiscation under Section 111(m) of the Customs Act since there was no mis-statement and suppression of facts with regard to classification of goods. There was no submission of false declaration and the benefit of concessional duty under Serial No. 20 of Notification No. 57/2017 has been rightly and legally availed of. The stand taken by them has been found to be correct by the Hon'ble Tribunal and by the Quasi-judicial authorities in department.

13.29 Penalty under Section 112(a) can be imposed only if the goods are liable to confiscation. Since provisions of Section 111(m) are not applicable in the present matter as both description of goods and value of the goods have been declared correctly, penalty under Section 112(a) is not imposable. Further claiming an exemption would not amount to a false declaration under Section 114AA of the Act.

13.30 It is settled law that when issue involved is one of interpretation, penalty is not imposable. The Supreme Court in Uniflex Cables Ltd. Vs. CCE, 2011 (271) ELT 161 (S.C.), has held that in a case of interpretational natures, no penalty could be and is liable to be imposed upon the Appellants.

13.31 In view of the above submissions and in view of the decisions of the Hon'ble Tribunal, they have prayed that the show cause notice may please be vacated and all further proceedings against them may please be dropped. The Importer wished to be heard before the adjudication of show cause notice.

14. M/s. Nippon Express (India) Private Limited, Ahmedabad, the Customs Broker, submitted their defence reply to the above show cause notice dated 01.02.2023, vide letter dated Nil on 12.04.2023, wherein they have interalia stated that –

14.1 This is a case in which classification or description of the goods imported is not called to question, but the issue is on the claim for the benefit of Notification No. 57/2017-Customs (Sl. No. 20). The said notification distinguishes the product based on their technical characteristics of IT connectivity technology. As a Customs Broker dealing with such technical products, they were guided by the declarations of the importer on the technical nature of the goods and the same was also being accepted by the department, on different occasions. Moreover, the precise technical nature of the goods imported and their coverage in the scope of the Notification, is not a matter of fact, but a matter of opinion. The Importer has consistently maintained in the course of different proceedings that the technical nature of their goods does not get covered by the exclusion clauses of the Notification. As such, it cannot be held that there is any offence made out and for which they can be charged with any offence and be liable for any Penalty.

14.2 It has also been held in several judicial pronouncements that a Customs Broker or CHA cannot be penalized for errors in classification or when no evidence is cited about their knowledge or any manipulation of documents. In this regard, they have relied on various case laws viz. Brijesh International Vs. Commr. of Customs (Import & General), New Delhi reported in 2017 (4) TMI 601-CESTAT, New Delhi; Him Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi reported in 2016 (4) TMI 925-CESTAT etc.

14.3 There is no allegation anywhere in the notice, alleging any manipulation of documents or any manipulation of description. The notice also does not render any evidence to suggest there was any wrong advice, or any advice flowing from Customs Broker to mis declare the goods or not to comply with any law. It has also been specifically held that Penalty under Section 117 is not leviable as a matter of routine, unless any offence is made out. In this regard, they have relied on various case laws viz. CC (Port-Export), Chennai Vs. Shri P. Illangovan, Shri V. Sridharan reported in 2017 (6) TMI 743 –CESTAT Chennai; M/s. Vijender Singh CHA Vs. Commissioner of Customs & Central Excise, Noida reported in 2017 (7) TMI 272 – CESTAT Allahabad; etc.

14.4 M/s. Nippon Express (India) Private Limited, Ahmedabad, have submitted their further submission vide letter dated 27.10.2025 wherein they have reiterated the above submissions.

PERSONAL HEARING:

15. Personal hearing in the instant case was held on 09.10.2025 wherein Shri V.K. Agrawal, Advocate appeared for personal hearing virtually (online mode) on behalf of the Importer. He reiterated the contents of their written submission dated 24.03.2023 and requested to consider the said submissions. He further submitted that he would send copy of the judgements passed by the Hon'ble Delhi High Court in respect of the product Wireless Access Point, wherein the Hon'ble High Court has dismissed the appeals filed by the Department. Accordingly, the importer vide email dated 16.10.2025 has submitted copy of the following judgments:

(i) Commissioner of Customs, AIR Chennai-VII Commissionerate Vs. Ingram Micro India Pvt. Ltd. [(2025) 26 Centax 347 (Del.)]

(ii) Commissioner of Customs, AIR Chennai-VII Vs. Redington (India) Ltd. [(2025) 28 Centax 173 (Del.)]

(iii) Commissioner of Customs (Import) Vs. Beetal Teletech Ltd. [(2025) 29 Centax 52 (Del.)]

(iv) Principal Commissioner of Customs Vs. Go Ip Global Services Pvt. Ltd. [(2025) 29 Centax 319 (Del.)]

(v) Commissioner of Customs, AIR Chennai-VII Vs. Compuage Infocom Ltd. [(2025) 31 Centax 131 (Del.)]

(vi) Advance Ruling No. CAAR/Mum/ARC/60/2021 dated 12.10.2021 in the case of Ingram Micro India Pvt. Ltd.

(vii) CISCO Commerce India Pvt. Ltd. Vs. Commissioner of Customs (Air Cargo Import), Mumbai [2025 (392) E.L.T. 441 (Tri.-Bom)]

(viii) OIA No. AHD-CUSTM-000-APP-397-23-24 dated 29.01.2024 passed by the Commissioner of Customs (Appeals), Ahmedabad in the case of Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad Vs. M/s. Zen Exim Pvt. Ltd.

15.1 Opportunity of personal hearing was also given to the Customs Broker M/s. Nippon Express (India) Private Limited, Ahmedabad, on 09.10.2025. M/s. Nippon Express (India) Private Limited, Ahmedabad vide letter dated 07.10.2025 requested for three week's adjournment. Therefore, 2nd opportunity of personal hearing was given on 28.10.2025 wherein Shri Satish Sharma, Senior Manager of M/s. Nippon Express (India) Private Limited,

Ahmedabad appeared for personal hearing virtually (online mode). He reiterated the contents of their written submissions submitted on 12.04.2023 and 27.10.2025 and requested to consider the said submissions.

FINDINGS:

16. I have carefully gone through the show cause notice dated 01.02.2023, defence reply submitted by the Importer and the Customs Broker and relevant case records.

17. The core issues before me for decision in the present case are as under:

(i) Whether the claim of Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, in respect of impugned goods, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, should be denied and the said goods should be assessed at merit rate of Basic Customs Duty?

(ii) Whether total Customs Duty amounting to Rs. 8,84,38,134/- (Rupees Eight Crore, Eighty Four Lakh, Thirty Eight Thousand, One Hundred and Thirty Four Only), short paid on the impugned goods imported vide the Bills of Entry, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, should be demanded and recovered from the Importer under Section 28(4) of the Customs Act, 1962 along with the applicable interest thereon as per Section 28AA of the Customs Act, 1962?

(iii) Whether all the goods imported vide the Bills of Entry, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, valued at Rs. 67,62,04,506/- (Rupees Sixty Seven Crore, Sixty Two Lakh, Four Thousand, Five Hundred and Six only), which were self-assessed and have already been cleared, should be held liable for confiscation under Section 111 (m) of the Customs Act, 1962 and since the same are not physically available for confiscation, fine in lieu of confiscation should be imposed upon the Importer under Section 125 of the Customs Act, 1962?

(iv) Whether penalty should be imposed upon the Importer under Section 112(a)(ii), Section 114A and Section 114AA of the Customs Act, 1962?

(v) Whether penalty should be imposed upon M/s. Nippon Express (India) Pvt. Ltd., the Customs Broker under Section 117 of the Customs Act, 1962?

18. The brief issue involved in the instant case is that during post clearance audit, it was observed that the Importer had imported goods viz. Wireless Access Points with MIMO facility, Ethernet Switches, Network Controller and Network Gateway falling under Customs Tariff Item 85176290 of the First Schedule to the Customs Tariff Act, 1975 and filed Bills of Entry, as detailed in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice (hereinafter referred to as 'impugned goods') at Ahmedabad Port (INAMD4) through its authorized Customs Broker M/s. Nippon Express (India) Pvt. Ltd. and cleared the imported goods on payment of Basic Customs Duty at the concessional rate of 10% by wrongly availing the benefit of concessional rate of 10% BCD under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended. As per Items (f), (g) and (h) of Serial No. 20 of Notification No.57/2017-Customs, dated 30.06.2017, as amended, the benefit of concessional rate of BCD is not available to the impugned goods imported by the Importer. Therefore, it was alleged that the imported goods viz. Wireless Access Points with MIMO facility, Ethernet Switches, Network Controller and Network Gateway are not eligible for concessional rate of BCD and the importer is required to pay BCD @ 20% in respect of the Bills of Entry, as detailed in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice.

19. Now, I proceed to examine the issues to be decided by me one by one in the light of the records of the case and the submissions made by the Importer.

19.1 The important issue before me for decision is whether the imported goods viz. Wireless Access Points with MIMO facility, Ethernet Switches, Network Controller and Network Gateway imported under the Bills of Entry, as detailed in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, are eligible for the benefit of concessional rate of duty under Serial No. 20 of Notification No.57/2017-Customs, dated 30.06.2017, as amended or otherwise. I would like to discuss the issue product-wise.

19.1.1 **Wireless Access Points with MIMO Technology**:

19.1.1.1 I find that the Importer has imported Wireless Access Points (WAP) with MIMO Technology which do not support LTE, under Bills of Entry, as mentioned in Annexure-B to the show cause notice. It would, therefore, be appropriate to describe about WAP, MIMO and LTE:

(i) WAP : Wireless Access Point (WAP) is a networking device that creates a wireless local area network (WLAN) by broadcasting a wireless signal, allowing Wi-Fi-enabled devices like laptops and smart phones to connect to a wired network without cables.

(ii) MIMO: Multiple-Input Multiple-Output (MIMO), is a wireless communication technology that uses multiple antennas at both the transmitter and receiver to improve signal quality, increase network capacity, and boost data rates. This increases the chances of the data reaching the receiver without being corrupted by fading, leading to a higher signal-to-noise ratio, lower error rates, and a more reliable and faster connection.

(iii) LTE: Long-Term Evolution (LTE) is a standard for wireless broadband communication for cellular mobile devices and data terminals. The main goal of LTE is to provide a high data rate, low latency and packet optimized radio access technology supporting flexible bandwidth deployments.

19.1.1.2 As per Item (h) of Serial No. 20 of Notification No.57/2017-Customs, dated 30.06.2017, as amended, the benefit of concessional rate of BCD is not available to "Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products". However, the importer has contended that Wireless Access Points imported by them are having only MIMO Technology and not having LTE Standard; that the Item (h) of Serial No. 20 of Notification No.57/2017-Customs, dated 30.06.2017, as amended, excludes MIMO and LTE products only i.e. the products which contain both MIMO and LTE, therefore, the exclusion clause (h) is not applicable to their imported product viz. Wireless Access Point, as their product works on MIMO technology and does not support LTE Standard.

19.1.1.3 I find that in an identical issue, the Additional Director General, DRI, Bangalore Zonal Unit had issued a Show Cause Notice dated 13.12.2018 to M/s. Ingram Mirco India Pvt. Ltd. (M/s. IMIPL) after conducting an investigation. In the said case, M/s. IMIPL had imported Wireless Access Points with MIMO facility availing the benefit of exemption under Serial No. 13 of Notification No. 24/2005-Customs dated 01.03.2005, as amended by Notification No. 11/2014-Customs. As per exclusion clause (iv) of Serial No. 13 of Notification No. 24/2005-Customs, as amended, "Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) Products" are not eligible for exemption of BCD. Therefore, it was alleged that the imported goods viz.

Wireless Access Points with MIMO facility falls under the said exclusion clause (iv) and hence the said goods are not eligible for the exemption benefit of BCD under Serial No. 13 of Notification No. 24/2005-Customs dated 01.03.2005, as amended. However, M/s. IMIPL contended that their product Wireless Access Points works on MIMO technology, but does not support Long Term Evolution (LTE), therefore, the said product does not fall under the exclusion clause (iv). The said Show Cause Notice dated 13.12.2018 was adjudicated by the Additional Director General (Adjudication), DRI, New Delhi, vide Order-in-Original dated 23.12.2019 wherein the proceedings initiated against M/s. IMIPL under the Show Cause Notice was dropped. The adjudicating authority in the said Order-in-Original has held that the WAPs imported by M/s. IMIPL, which solely utilized the MIMO technology, were eligible for exemption under Serial No. 13, Exclusion Entry (iv), of Notification No. 24/2005-Customs dated 01.03.2005, as amended. The adjudicating authority 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 also acknowledged that M/s. IMIPL had provided all the necessary information in its declarations and bills of entry, which clearly identified the imported WAPs as MIMO-enabled products, therefore, rejected the allegations of wilful suppression of facts or misrepresentation by M/s. IMIPL.

19.1.1.4 The aforesaid Order-in-Original dated 23.12.2019 was reviewed by the Committee of Chief Commissioners, New Delhi vide Review Order No. 20/2019-20 dated 18.03.2020. Accordingly, the department filed an appeal before the Hon'ble CESTAT, New Delhi, 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 MIMO technology or LTE standards and 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. The Hon'ble CESTAT, New Delhi, vide Final Order No. 50831/2022 dated 12.09.2022 [2023 (383) E.L.T. 455 (Tri.-Del)] dismissed the appeal filed by the department and upheld the Order-in-Original dated 23.12.2019 passed by the Additional Director General (Adjudication), DRI, New Delhi. The Hon'ble CESTAT, New Delhi under the said Final Order 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.

19.1.1.5 Being aggrieved by the above Final Order No. 50831/2022 dated 12.09.2022 passed by the Hon'ble CESTAT, New Delhi, the department filed an appeal before the Hon'ble High Court of Delhi, challenging the Hon'ble 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. The Hon'ble High Court of Delhi, vide Order dated 13.01.2025 [(2025) 26 Centax 347 (Del.)] dismissed the appeal filed by the department and upheld the Final Order No. 50831/2022 dated 12.09.2022 passed by the Hon'ble CESTAT, New Delhi. The Hon'ble High Court of Delhi under the said order held that "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, accordingly, the WAPs imported by M/s. IMIPL, which employ MIMO technology but not the LTE standards, are entitled to the exemption from Basic Customs Duty. The relevant paras of the said order are reproduced hereunder:

"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, 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 (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) VoIP 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 taxpayer 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 cooperative*

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. 13of 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."

19.1.1.6 The above Order dated 13.01.2025 passed by the Hon'ble High Court of Delhi, has been accepted by the department, in view of letter dated 26.05.2025 of the Additional Director, I/c. of Customs, ACC, Chennai, addressed to the Additional Commissioner of Customs, NS-IV, Nhava-Seva, received under email dated 13.11.2025 from Legal & Review Cell, Chennai VII Commissionerate, Air Cargo Complex, Meenambakam, Chennai, in reply to this office letter dated 07.11.2025.

19.1.1.7 The Hon'ble High Court of Delhi, based on the above judgment, has also dismissed the appeals filed by the department in the following identical cases, wherein the Hon'ble High Court has held that the WAPs

imported by the respective respondent, which employ MIMO technology but not the LTE standards, are entitled to the exemption from Basic Customs Duty under Serial No. 13(iv) of the amended Notification No. 24/2005:

(i) Commissioner of Customs, AIR Chennai-VII Vs. Redington (India) Ltd. [(2025) 28 Centax 173 (Del.)]

(ii) Commissioner of Customs (Import) Vs. Beetal Teletech Ltd. [(2025) 29 Centax 52 (Del.)]

(iii) Principal Commissioner of Customs Vs. Go Ip Global Services Pvt. Ltd. [(2025) 29 Centax 319 (Del.)]

(iv) Commissioner of Customs, AIR Chennai-VII Vs. Compuage Infocom Ltd. [(2025) 31 Centax 131 (Del.)]

19.1.1.8 The ratio of the above judgments passed by the Hon'ble High Court of Delhi in respect of the product Wireless Access Point with MIMO technology, is squarely applicable to the present case on hand. I, therefore, find that the issue involved in the instant case in respect of the product Wireless Access Point with MIMO technology, has attained finality and the same is no more *res-integra.* Moreover, the above judicial rulings on the subject issue are having binding precedents on all lower judicial/quasi-judicial authorities as held by the Hon'ble Supreme Court in case of M/s. Kamlakshi Finance Corporation Ltd. as reported in 1991 (55) ELT 433 (S.C.).

19.1.1.9 I, therefore, hold that the importer is eligible for concessional rate of BCD @10% available under Serial No. 20 (h) of Notification No. 57/2017-Customs, dated 30.06.2017, as amended, in respect of the product 'Wireless Access Point with MIMO facility' imported under the Bills of Entry mentioned in Annexure-B to the show cause notice.

19.1.2 **Ethernet Switches**:

19.1.2.1 I find that the Importer has imported Ethernet Switches under Bills of Entry, as mentioned in Annexure-C to the show cause notice, availing the benefit of concessional rate of BCD under Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended. As per Item (g) of Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended, "*Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products*" are excluded from the benefit of concessional rate of BCD. However, the Importer has contended that the imported Ethernet Switches are Enterprise Class Ethernet switches and not Carrier Ethernet Switches and the said switches are used to provide

Ethernet networking in Local Area Network within campus. I, therefore, proceed to check whether the imported Ethernet Switches are Enterprise Class Ethernet switches or Carrier Ethernet Switches.

19.1.2.2 I find that the Importer has imported Ethernet Switches of different models viz. ICX 7150, ICX7750, ICX 7250, ICX 7650, ICX7450 etc. As per the product brochure, these switches can be deployed in a traditional three-tier access/aggregation/core architecture with layer 2 or layer 3 links between the layers at 10, 40 and 100 Gbps link speed and these switches can also be upgraded. Further, the maximum switching capacity of these switches is 120 Gbps to 2.56 Tbps and aggregated stack bandwidth is 240 Gbps to 5.76 Tbps. Therefore, I find that the Ethernet Switches imported by the Importer have capacity to be used as Carrier Ethernet Switches also.

19.1.2.3 The Customs Authority for Advance Ruling, Mumbai vide Ruling No. CAAR/Mum/ARC/40/2022 dated 05.11.2022 in respect of the Importer viz. Ingram Micro India Pvt. Ltd. [(2023) 5 Centax 4 (A.A.R. - Cus. - Mum.)] has ruled that as Data Centre Switch (DCS) can function as carrier-class ethernet switches, they are excluded from Sl. No. 20 of Notification No. 50/2017-Cus., dated 30-6-2017. In the application filed by the Importer, they had argued that the DCSs imported by them are mainly used to function as non-carrier ethernet switches within an enterprise network, therefore, they are eligible for concessional rate of BCD under Sl. No. 20 of Notification No. 50/2017-Cus., dated 30-6-2017. The relevant paras of the above Advance Ruling are reproduced hereunder:

> *"9. As regards the question of eligibility for the benefit under Sr. No. 20 of Notification No. 57/2021- Customs, dated 30-6-2017, as amended; it is available to all goods falling under sub-headings 85176290 and 85176990 other than certain goods mentioned under Sr. No. 20 of the said notification. Such excluded goods are already mentioned in paragraph 2.2. Goods specified in clauses (a) and (e) are not relevant. Therefore, we need to examine whether the products can function as a carrier ethernet switch. Carrier Ethernet is an application of ethernet technology that allows network providers to offer ethernet services to their customers and to use ethernet technology. It enables internet access and communication among local area networks (LANs) of business, academic, private and government organizations. The TEC in their technical opinion has stated that these products are capable to be used as carrier ethernet switches. As the goods under consideration can function as carrier-class ethernet switches, they are excluded from the said notification.*
>
> *9.1 The applicant has stated that the intended use and the undertaking of the applicant for the same should be considered for the notification benefit. The Delhi Tribunal in the case of Guest Keen William 1987 (29) E.L.T. 68/1987 taxmann.com 74 (CEGAT - New Delhi) has observed that is an accepted position that a notification should be interpreted on the basis of the*

language used therein and not on the basis of intendment or by supplying words or ignoring them. Further, in the case of Commissioner of Cus. (Import), Mumbai v. Dilip Kumar & Company, 2018 (301) E.L.T. 577 (S.C.)/[2018] 95 taxmann.com 327 (SC)/[2018] 69 GST 239 (SC), the Hon'ble court observed that indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in the interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Therefore, the indentation or undertaking would not influence the interpretation of the notification.

9.2 The applicant has opined that exclusionary clauses in an exemption notification must be strictly construed and must be given a narrow meaning so as to not frustrate the intention behind the exemption notification. However, it is a settled position of law, as observed in the case of Commissioner of Cus. (Import), Mumbai v. Dilip Kumar & Company, 2018 (361) E.L.T. 577 (S.C.), that the notification should be read and construed strictly. The notification clearly excludes carrier ethernet switches from the purview of the duty benefits. As per the TEC, a technical expert agency of the Government of India, these goods are carrier-grade ethernet switches. Accordingly, the benefit of Sr. No. 20 of Notification No. 57/2021 -Customs would not be available in the instant case.

10. In view of the foregoing discussions, I rule that the Data Centre Switch models specified in para 2 are classifiable under sub-heading 85176290 of the first schedule to the Customs Tariff Act, 1975 and would not be eligible to avail benefits of Sr. No. 20 of Notification No. 57/2021-Customs, dated 30-6-2017."

19.1.2.4 The ratio of the above Advance Ruling in respect of the Importer's own case is squarely applicable to the present case on hand.

19.1.2.5 Further, I find that the Department of Telecommunication has issued clarifications regarding the classification of carrier and non-carrier ethernet switches, in the context of customs duty exemption, *vide* office letter bearing F. No. TEC/IT/TecDisc/2015, dated 3-5-2016 and office memorandum No. 18-33/2013-1P, dated 18-11-2016. It was clarified that there is no definite technical classification between carrier ethernet switches and enterprise ethernet switches based on features or services supported. Classification can only be ascertained based on the purchase order from the ultimate consignee. They can be classified based on the usage of such devices by TSP/ISP or the customer location where these devices will be used. The ethernet switches used by non-TSP/ISPs for aggregating the traffic in their local network can be treated as enterprise Ethernet switch/non-carrier ethernet switches whereas the Ethernet switches which are used by TSPASPs to transport/carriage of Ethernet/IP traffic can be treated as Carrier ethernet switches. In their opinion, the Department of Telecommunication stated that the classification of the Ethernet switch into carrier Ethernet switch and non-carrier Ethernet switch

can only be ascertained based on the purchase order from the ultimate consignee. However, in the instant case, the Importer has not produced any purchase order or the details of the end user of imported Ethernet Switches to establish that the said products have been used as Enterprise Ethernet Switches.

19.1.2.6 In view of the above, I hold that the importer is not eligible for concessional rate of BCD @10% available under Serial No. 20 (g) of Notification No. 57/2017-Customs, dated 30.06.2017, as amended, in respect of the product 'Ethernet Switches' imported under the Bills of Entry mentioned in Annexure-C to the show cause notice. The said goods is required to be assessed at merit rate of Basic Customs Duty @20%.

19.1.3 **Wired Controller or Network Controller**:

19.1.3.1 I find that the Importer has imported Wired Controller or Network Controller under Bills of Entry, as mentioned in Annexure-D to the show cause notice, availing the benefit of concessional rate of BCD under Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended. As per Item (f) of Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended, *"Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers"* are excluded from the benefit of concessional rate of BCD.

19.1.3.2 The importer has imported Network Controllers of Model ZD 1205, SZ 100 etc. On going through the product brochure, I find that one of the key features of the product ZD 1205 Controller is that *the said product automatically ensures predictable performance for voice, video, and multimedia through the use of Layer 3 tunneling and using key caching techniques when roaming.* One of the applications of the product SZ 100 Wireless Controller is *"Voice : 802.11e/WMM" which refers to the highest priority traffic in the IEEE 802.11e Wi-Fi standard's Quality of Service (QoS) system, using the Wi-Fi Multimedia (WMM) specification. This priority is essential for real-time applications like Voice over IP (VoIP), ensuring that voice packets receive preferential treatment and less delay compared to other data types. It achieves this using different "Access Categories" (ACs) for voice, video, best effort, and background traffic, with voice assigned the highest priority and shortest wait times. WMM uses four traffic categories: Voice (AC_VO), Video (AC_VI), Best Effort (AC_BE), and Background (AC_BK). Voice is assigned the highest priority.*

As per the product brochure, the product SZ 100 Wireless Controller is also having the feature of "*Bonjour Management*" which enables the detection of Bonjour Services such as Airplay, Apple TV and other Apple Network Services. Therefore, I find that the Network Controllers imported by the Importer are VoIP equipments and fall under the exclusion clause (f) of Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended.

19.1.3.3 I, therefore, hold that the importer is not eligible for concessional rate of BCD @10% available under Serial No. 20 (f) of Notification No. 57/2017-Customs, dated 30.06.2017, as amended, in respect of the product 'Wired Controller or Network Controller' imported under the Bills of Entry mentioned in Annexure-D to the show cause notice. The said goods is required to be assessed at merit rate of Basic Customs Duty @20%.

19.1.4 **Wired Networking Access Gateway**:

19.1.4.1 I find that the Importer has imported Wired Networking Access Gateway or Network Gateway (Application Delivery Controller) under Bills of Entry, as mentioned in Annexure-E to the show cause notice, availing the benefit of concessional rate of BCD under Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended. As per Item (f) of Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended, *"Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers"* are excluded from the benefit of concessional rate of BCD.

19.1.4.2 As per the product brochure and information available on websites, the functions of Networking Access Gateway or Network Gateway (Application Delivery Controller) imported by the Importer are as under:

- An application delivery controller employs algorithms and policies to determine how inbound application traffic is distributed.
- Application delivery controllers are also heavily relied upon for their monitoring capabilities. They can check a server's health and operability beyond the standard ping.
- Application delivery controllers can also provide real-time and historical analysis of all user and network traffic, including metrics for round-trip times, bandwidth usage, and datacenter and wide area network (WAN) latency.
- An ADC can employ an array of mechanisms to improve application

performance, especially over mobile and high-latency networks.

- Application delivery controllers can handle exceedingly high volumes of encrypted and unencrypted traffic. The application delivery controller manages certificates and decrypts traffic before it reaches the server.
- Application delivery controllers can also provide performance benefits across mobile networks. Several creative mechanisms enable an application delivery controller to optimize web content delivery over mobile networks. Application delivery controllers have visibility into the content that is being delivered, and can further optimize delivery of web pages containing large images by converting GIF files into more efficient PNG formats.
- The ADC can implement rate-limiting measures to protect internal server resources from being targeted by distributed denial-of-service (DDoS) attacks

19.1.4.3 In view of the above functions and features of Networking Access Gateway or Network Gateway (Application Delivery Controller) imported by the Importer, I find that the said products are VoIP equipment and fall under the exclusion clause (f) of Serial No. 20 of Notification No. 57/2017-Customs, dated 30.06.2017, as amended.

19.1.4.4 I, therefore, hold that the Importer is not eligible for concessional rate of BCD @10% available under Serial No. 20 (f) of Notification No. 57/2017-Customs, dated 30.06.2017, as amended, in respect of the product 'Networking Access Gateway or Network Gateway (Application Delivery Controller)' imported under the Bills of Entry mentioned in Annexure-E to the show cause notice. The said goods are required to be assessed at merit rate of Basic Customs Duty @20%.

19.2 The second issue for decision before me is whether the total Customs Duty amounting to Rs. 8,84,38,134/- (Rupees Eight Crore, Eighty Four Lakh, Thirty Eight Thousand, One Hundred and Thirty Four Only), short paid on the impugned goods imported vide the Bills of Entry, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, should be demanded and recovered from the Importer under Section 28(4) of the Customs Act, 1962 along with the applicable interest thereon as per Section 28AA of the Customs Act, 1962?

19.2.1 I find that the Importer in their defence reply has contended that the duty computation has not been correctly made in respect of seven Bills of

Entry, since the goods imported thereunder were imported by them against Service Exports from India Scheme (SEIS) under Notification No. 25/2015-Customs dated 08.04.2015, availing the benefit of exemption of BCD. Therefore, the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, vide letter dated 28.10.2025 was requested to check and verify the above contention of the Importer. The Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, vide letter dated 31.10.2025 has submitted his verification report. The scrutiny of relevant Bills of Entry and the verification report has revealed that the Importer has imported the following goods against SEIS scrip availing the benefit of BCD exemption under Notification No. 25/2015-Customs dated 08.04.2015 and the differential duty has been wrongly calculated by including the BCD in respect of the below mentioned seven Bills of Entry:

Sl. No.	Bill of Entry No.	Description of Imported Goods	Value of the goods	Cust-oms Duty Paid	Cust-oms Duty Payable	Diff. Cust-oms duty payable	Diff. Cust-oms duty dema-nded	Excess duty dema-nded	Anne-xure to SCN
1.	6104108 dt. 16.12.19	Wired Networking Access Gateway	3899436	779107	856316	77209	935085	857876	Ann-E
2.	6180465 dt. 21.12.19	Wired Networking Access Gateway	647303	129331	142148	12817	155223	142406	Ann-E
3.	6733660 dt. 03.07.20	Wired Networking ADC Platform	590831	123956	141563	17607	135773	118166	Ann-E
4.	6792073 dt. 07.02.20	Wired Networking ADC Platform	869883	182502	208424	25922	199899	173977	Ann-E
Total Excess Duty demanded in Annexure-E								**1292425**	**Ann-E**
5.	6354443 dt. 04.01.20	Wired Networking Controller	113813	22740	24993	2253	27292	**25039**	**Ann-D**
6.	8056300 dt. 02.07.20	Wired Networking Switch	436690	91618	104631	13013	100351	**87338**	**Ann-C**
7.	6385810 dt. 07.01.20	Wireless Access Point	406493	81217	89266	8049	97477	**89428**	**Ann-B**
Total Excess Duty demanded								**1494230**	

19.2.2 From the above, I find that there is excess demand of Customs duty amounting to Rs.14,94,230/- in Annexure-B (Rs.89,428/-), Annexure-C (Rs.87,338/-), Annexure-D (Rs.25,039/-) and Annexure-E (Rs.12,92,425/-) due to inclusion of BCD in the calculation of differential duty in respect of the above seven Bills of Entry though the Importer had claimed exemption of BCD under Notification No. 25/2015-Customs dated 08.04.2015 in respect of the said product. Therefore, I hold that the said amount of Rs.14,94,230/- demanded in excess is liable to be dropped.

19.2.3 I have held in the paras supra that the importer is eligible for benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, in respect of the product viz. Wireless Access Point with MIMO Technology. Therefore, I hold that the demand of differential customs duty of Rs. 4,35,88,793/-, as detailed in Annexure-B to the show cause notice, involved on the said goods, are liable to be dropped.

19.2.4 As discussed at paras supra, I have further held that the Importer is not eligible for the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, in respect of the imported goods viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform, totally valued at Rs. 34,01,15,119/- imported vide the Bills of Entry, as detailed in Annexure-C, Annexure-D and Annexure-E to the show cause notice. Therefore, I hold that the differential customs duty of Rs.2,28,99,579/- (Rs.2,29,86,917 – Rs. 87,338), Rs.13,11,537/- (Rs. 13,36,576 – Rs. 25,039) and Rs.1,92,33,423/- (Rs. 2,05,25,848 - Rs.12,92,425), as detailed respectively in Annexure-C, Annexure-D and Annexure-E to the show cause, totalling Rs.4,34,44,539/- is required to be recovered from the Importer. The remaining amount of Rs.14,04,802/- [Rs. 87,338 (Ann-C) + Rs. 25,039 (Ann-D) + Rs.12,92,425 (Ann-E)] is liable to be dropped due to excess demand of differential duty in respect of seven Bills of Entry, as discussed in Para 19.2.1 & 19.2.2 above. Thus, the total customs duty evaded by the Importer by wrongly availing the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, comes to Rs.4,34,44,539/- (Rupees Four Crore, Thirty Four Lakh, Forty Four Thousand, Five Hundred and Thirty Nine only). I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011 ' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

(a) Seek assistance from Help Desk located in each Custom Houses, or

(b) Refer to information on CBIC/ICEGATE web portal www.cbic. gov.in, or
(c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or
(d) An Importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied.

Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

19.2.5 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate duty accordingly. In the instant case, it is apparent that the Importer despite being in knowledge of the fact that they are not eligible for the benefit of concessional rate of duty under Serial No. 20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, they intentionally and knowingly mis-declared the particulars of Notification in the Bills of Entry and wilfully claimed the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, with malafide intention to evade payment of Customs duty at appropriate rate. It is therefore very much apparent that Importer has wilfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, Importer has indulged in wrong availment of exemption available under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, with clear intent to evade payment of Customs Duty. By adopting this modus in respect of the impugned goods, the Importer has short paid Customs duty amounting to Rs.4,34,44,539/- (Rupees Four Crore, Thirty Four Lakh, Forty Four Thousand, Five Hundred and Thirty Nine only), which merits

invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. I, therefore, find and hold that total Customs Duty amounting to Rs.4,34,44,539/- in respect of the imported goods viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform cleared under Bills of Entry, as detailed in Annexure-C, Annexure-D and Annexure-E to the Show Cause Notice, is recoverable from the Importer invoking the provision of extended period under Section 28(4) of the Customs Act, 1962.

19.2.6 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay duty in accordance with the provisions of Section 28 ibid, in addition to such duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty amounting to Rs.4,34,44,539/- is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is required to be recovered under Section 28AA of the Customs Act, 1962.

19.3 The third issue for decision before me is whether all the goods imported vide Bills of Entry, as mentioned in Annexures - B, C, D and E and consolidated in Annexure 'A' to the show cause notice, valued at Rs. 67,62,04,506/- (Rupees Sixty Seven Crore, Sixty Two Lakh, Four Thousand, Five Hundred and Six only), which were self-assessed and have already been cleared, should be held liable for confiscation under Section 111 (m) of the Customs Act, 1962 and since the same are not physically available for confiscation, fine in lieu of confiscation should be imposed upon the Importer under Section 125 of the Customs Act, 1962?

19.3.1 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) of the Customs Act, 1962. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962.

19.3.2 I have already held in the paras supra that the importer is eligible for benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, in respect of the product

viz. Wireless Access Point with MIMO Technology. Therefore, I hold that the said goods totally valued at Rs.33,60,89,387/-, imported under Bills of Entry, as detailed in Annexure-B to the show cause notice, are not liable for confiscation under Section 111(m) of the Customs Act, 1962.

19.3.3 In the instant case the Importer has improperly availed the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, in respect of the products viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform. Therefore, the said imported goods totally valued at Rs. 34,01,15,119/- imported vide Bills of Entry, as mentioned in Annexure-C, Annexure-D and Annexure-E to the show cause notice, by wrongly availing the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

19.3.4 I find that in terms of Section 46 (4) of the Customs Act, 1962, the Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty. However, the Importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have wrongly availed the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, thereby they have short paid the duty with clear intent to evade payment of Customs Duty. Thus, I find that they have violated the provisions of Section 46(4) of the Customs Act, 1962. All these acts on the part of Importer have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962.

19.3.5 As the impugned imported goods are found to be liable for confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) ibid reads as under:

> ***"SECTION 125. Option to pay fine in lieu of confiscation.*** *— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit"*

19.3.6 In the instant case, the Importer has wrongly availed the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, in respect of the imported goods viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform. I find that in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras has observed as under:

> "23. *The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fines in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*
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> ....
> ....
> ...."

19.3.7 The Hon'ble High Court of Gujarat by relying on aforesaid judgment, in the case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), has held interalia as under: -

> ***"174.*** ***.....*** *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*
>
> *"23. The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief*

for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

19.3.8 In view of the above, I hold that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of the imported goods viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform, totally valued at Rs. 34,01,15,119/- imported vide Bills of Entry, as mentioned in Annexure-C, Annexure-D and Annexure-E to the show cause notice, though the said goods are not available for confiscation.

19.4 Now, I proceed to decide the fourth issue i.e. the proposal for imposition of penalty under Section 114A, Section 112(a)(ii) and Section 114AA of the Customs Act, 1962 against the importer. In the present case, the show cause notice has been issued under Section 28 (4) of the Customs Act, 1962.

19.4.1 I find that the Show Cause Notice has proposed penalty under the provisions of Section 114A of the Customs Act, 1962 on the importer. The penalty under Section 114A can be imposed only if the duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of concessional rate of duty under Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended, which was not available to them, with an intention to avoid the payment of Customs Duty.

19.4.2 Further, I find that demand of Customs Duty amounting to Rs.4,34,44,539/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the importer under Section 114A of the Customs Act, which provides for penalty equal to duty plus interest in cases where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of duty plus interest in terms of Section 114A ibid.

19.4.3 The fifth proviso to Section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

> *"Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114."*

19.4.3.1 In the instant case, I have already found that the importer is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, I hold that penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

19.4.4 I find that the show cause notice has also proposed imposition of penalty under Section 114AAof the Customs Act, 1962 on the importer. The text of the said statute is reproduced hereunder for ease of reference:

> ***"114AA. Penalty for use of false and incorrect material*** *- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used,* ***any declaration****, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

19.4.5 I find that importer was well aware that the imported goods which have been ordered for confiscation, were not eligible for concessional rate of duty under Serial No. 20 of Notification No. 57/2017-Customs dated

30.06.2017, as amended. However, they intentionally and knowingly mis-declared the particulars of Notification in the Bills of Entry and wilfully claimed the benefit of concessional rate of duty under Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended, with clear intent to evade payment of duty and contravened the provision of Section 46 (4) of the Customs Act, 1962 by making false declarations in the Bill of Entry. Hence, I find that the importer has knowingly and intentionally mis declared the particulars of Notification in the Bills of Entry in respect of imported goods. Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 114AA of the Customs Act, 1962.

19.4.5 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that "*Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority*".

19.5 The next issue for decision before me is whether penalty should be imposed upon M/s. Nippon Express (India) Pvt. Ltd., the Customs Broker, under Section 117 of the Customs Act, 1962?

19.5.1 I find that the Importer has filed the Bills of Entry, as detailed in Annexure-B to Annexure-E to the show cause notice, in respect of the impugned goods at Air Cargo Complex, Ahmedabad, through the Customs Broker M/s. Nippon Express (India) Pvt. Ltd., Ahmedabad. The Customs Brokers Licensing Regulations, 2018, govern the licensing process for individuals and entities to act as customs brokers in India, under which certain obligations have been imposed upon the Customs Brokers. These obligations cast upon the Customs Broker a link between Customs Authorities and the Importers with an object of facilitating the clearances at Customs. The Customs Broker is thus supposed to safeguard the interests of both the Customs as well as the Importers. Hon'ble Supreme Court in the case of KM Ganatra and Co. while relying upon the decision of Mumbai Tribunal in the case of Noble Agency Vs. Commissioner of Customs, Mumbai reported in 2002 (142) E.L.T. 84 has held as follows:

> *"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the*

Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."

19.5.2 It becomes clear from the above provisions and the decision of the Hon'ble Apex Court that Customs Broker is not supposed to be a formal agent either of Customs House or of the importer. But the utmost due diligence in ascertaining the correctness of the information related to clearance of cargo is the Customs Broker's duty. He is not only supposed to advise the importer/exporter about the relevant provisions of law and the mandate of true compliance thereof but is also responsible for informing the Department if any violation of the provisions of the Customs Act appears to or have been committed by his client at the time of the clearances.

19.5.3 M/s. Nippon Express (India) Pvt. Ltd., Customs Broker in their written submission dated Nil submitted on 12.04.2023 has relied on some case laws and further pleaded that no allegations of manipulation of documents or description, wrong advice to mis declare the goods etc. have been levelled against them, therefore, penalty under Section 117 is not leviable. The core point involved in all these cases is that the Customs Broker had prepared documents in a bonafide manner based upon the declaration made by the importer/exporter, the CHA cannot be penalized under Customs Act. In the present case, there is nothing on record to suggest that the Customs Broker had acted in a bona-fide manner but they had not exercised due diligence in declaring the correct Notification in the Bills of Entry. Hence ratio of these case laws would not help them to get impunity from punishment.

19.5.4 M/s. Nippon Express (India) Pvt. Ltd., the Customs Broker was very much aware that the consignments imported by the Importer were not eligible for concessional rate of duty under Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017, as amended. Therefore, it is found that the Custom Broker M/s. Nippon Express (India) Pvt. Ltd. have failed to advise the Importer to comply with the provisions of the Act, other allied Acts and the Rules and regulations thereof, and in case of non-compliance, did not bring the matter to the notice of the Deputy Commissioner of Customs of Air Cargo Complex, Ahmedabad, thereby the Customs Broker has abetted the Importer in evading the Customs duty which act has rendered the goods liable for

confiscation. This has resulted into short payment of Customs Duty amounting to Rs.4,34,44,539/- by the Importer. Thus, by their act of omission and commission, the Customs Broker M/s. Nippon Express (India) Pvt. Ltd. have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

20. The Importer has submitted copy of certificates issued by Chartered Engineer and claimed that as per the said certificates the imported goods do not fall under the exclusion clauses (g) & (f) of Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended. I have gone through the certificates issued by Chartered Engineer and I find that the Chartered Engineer has given the opinion regarding the imported goods based on the documents provided by the Importer without physical examination of the imported goods. It is further mentioned in the certificates that the imported goods would not fall within Serial No. 20 (g)/20(f) of the concerned notification. I do not agree with the Chartered Engineer's Certificates submitted by the Importer, as Chartered Engineer is not the proper authority to decide classification or entitlement of an exemption notification in respect of the imported goods, which will be decided by the Officer or the adjudicating authority or the appellate authorities. Therefore, I hold that the Chartered Engineer's certificates submitted by the Importer has no relevance in the present case on hand.

21. The importer in their defence reply has pleaded that no appeals were filed by the Department against the assessment orders i.e., assessed bills of entry and out of charge order, passed by the proper officer and any issues arising out of finalisation of such Bills of Entry cannot be questioned or agitated by the Department subsequently by initiating show cause proceedings against the importer. The said plea of the importer is not tenable.

21.1 It can be seen that Section 28 of the Customs Act, 1962 has an exclusive provisions covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. For raising demand under Section 28 on grounds of short payment/short levy in final assessment etc., no review /appeal against final assessment is required. The demand of non-levy, short-levy and of recovery of erroneous refund under Section 28 of the Act is an independent provision. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of show cause notice and to allow the party

to have a full hearing on the charges that would be made against them. The proceeding under Section 28 are of exclusive nature, inasmuch as, independent proceedings are held by issue of show cause notice by the Department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The importer gets full opportunity to know the charges levelled against them as well as the evidence on which the charges are levelled and in turn place their case with supporting evidence in defence.

21.2 The aforesaid issue is settled by the higher judicial fora wherein it is held that Section 28 of the Customs Act, 1962 can be invoked for short levy or non levy of customs duty even if assessment order is not appealed under Section 129 of the Customs Act, 1962. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise Vs CC, Chennai, reported in 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue show cause notice under Section 28 of the Act after clearance of the goods. Relevant Para 6 of the judgment is reproduced hereunder:

> *"6. With regard to question No. l, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)].Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words "where any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the under-valuation and proposed short levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act."*

21.3 The Hon'ble CESTAT in the case of Rajesh Gandhi Vs CC(Import), Mumbai reported in 2019 (366) ELT 529 (Tri-Mumbai), has held that demand can be raised without challenging the assessment under Section 17 of the Customs Act,1962. The relevant Part of the order is reproduced below: -

"6. *Before we proceed to adjudge the legality and propriety of the confirmation of differential duty, the confiscation and the imposition of penalties, the preliminaries must be dealt with. These pertain to the permissibility for invoking proviso to Section 28 of Customs Act, 1962 without challenge to the assessment effected under Section 17 of Customs Act, 1962 before the goods were cleared from control of Customs Authorities and the extent of applicability of judicial precedent from the decisions cited by Learned Authorised Representative.*

7. *The Tribunal, in re Rahul Ramanbhai Patel, as pointed out by Learned Authorised Representative, besides examining the relevancy of statements to fasten the consequences of undervaluation, did also consider the first supra and followed earlier decisions to render the finding that -*

'6..... One of the questions of law framed by the Hon'ble High Court reads thus :-
'Whether the Tribunal was right in holding that the order of assessment on which no appeal was preferred, can be reopened by issue of fresh show cause notice under Section 28A of Customs Act, in the light of the apex court's decision reported in 2004 (172) E.L.T. 145 (S.C.) in the case of Priya Blue Industries Ltd. v. Commissioner of Customs?'

The Hon'ble High Court answered the above question in favour of the Revenue in paragraph 6 of its judgment, which is reproduced below :-

'6. With regard to question No. 1, the law is well-settled that show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28(1) of the Act is accepted, we will be rendering the words "whether any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis declaration and suppression of value, which led to the evaluation and proposed short-levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.'

7. We are told that the SLP filed against the above decision of the High Court was dismissed by the Apex Court [Venus Enterprises v. Commissioner - 2007 (209) E.L.T. A61 (S.C.)].

8. We also note that this Tribunal followed Jain Shudh Vanaspati Ltd. (supra) and Venus Enterprises (supra) in Ford India Private Limited v. Commr. of Customs, Chennai [2008 (228) E.L.T. 71 (Tri.-Chennai)]. On the other hand, in the cases of Hitaishi Fine Kraft Indus Pvt. Ltd. (supra) and Shimnit Machine Tools & Equipment Ltd. (supra), the decision of the Supreme Court in Jain Shudh Vanaspati (supra) was not considered.

9. In the result, we reject the plea made by the Ld. Counsel that it was not open to the Department to reopen the assessment under Sec. 28 of the Customs Act.'

8. *Though in a different context, the ratio of the decision of the Tribunal in disposing of the appeal of Knowledge Infrastructure Systems Private Ltd.*

&Others v. Additional Director General, Directorate of Revenue Intelligence, Mumbai [Final Order Nos. A/86617-86619/2018, dated 31st May, 2018] is that after the clearances of imported goods effected under Section 47 of Customs Act, 1962, subject as it is to satisfaction of the proper officer that the goods had discharged the appropriate duty liability and were not prohibited for import, subsequent discovery of non-eligibility for such clearance, on either of these two counts, deems such clearances to have been tentative, and rectifiable, under proceedings that invoke Section 28 and/or specific provisions of Section 111 of Customs Act, 1962, is unequivocally applicable here.

9. *In the light of this consistent stand, demonstrated in judicial precedent reiterated across time and space, the claim of the appellant that the assessment of the impugned goods at the time of clearance precludes any remedy other than appeal is not acceptable.*

21.4 In light of the above well settled principle of law, contention raised by the importer that Show Cause Notice is invalid in the absence of valid appeal against the out of charge/Bill of Entry is not tenable. Accordingly, I hold that the Show Cause Notice issued under Section 28 (4) of the Customs Act is proper, correct and legal.

22. I find that the importer in their written submission has placed reliance on various case laws/judgments in support of their contention on issues raised in the Show Cause Notice. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same can not be extended to other case(s) without looking to the hard realities and specific facts of each case. Thus decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Produced reported in 2004 (170) ELT 135 (SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs. CCE, Delhi reported in 2004 (173) ELT 113(SC) wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again, in the case of Commissioner of Customs(Port), Chennai Vs. Toyato Kirloskar Motor P. Ltd. reported in 2007 (213) ELT 4 (SC), it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision

has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

23. In view of my findings in the paras supra, I pass the following order:

ORDER

23.1 I deny the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, availed by the importer for clearance of imported goods viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform under Bills of Entry, as mentioned in Annexure-C, Annexure-D and Annexure-E to the show cause notice, and order for assessment of the said goods at the merit rate of Basic Customs Duty. I allow the benefit of concessional rate of duty under Serial No.20 of Notification No.57/2017-Customs dated 30.06.2017, as amended, availed by the importer for clearance of imported goods viz. Wireless Access Points with MIMO Technology under Bills of Entry, as mentioned in Annexure-B to the show cause notice.

23.2 I confirm the demand of Customs duty amounting to Rs.4,34,44,539/- (Rupees Four Crore, Thirty Four Lakh, Forty Four Thousand, Five hundred and Thirty Nine only) leviable on the imported goods viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform under Bills of Entry, as detailed in Annexure-C, Annexure-D and Annexure-E to the show cause notice issued under Section 28(4) of the Customs Act, 1962, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Zen Exim Pvt. Ltd. (IEC No. 0801004845), 2nd Floor, Shakti 404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat 380054. I drop the demand of remaining amount of Customs duty of Rs.4,49,93,595/- (Rupees Four Crore, Forty Nine Lakh, Ninety Three Thousand, Five Hundred and Ninety Five only) [Rs. 4,35,88,793 (Ann-B) + Rs. 87,338 (Ann-C) + Rs. 25,039 (Ann-D) + Rs.12,92,425 (Ann-E)].

23.3 Interest at the appropriate rate shall be charged and recovered from M/s. Zen Exim Pvt. Ltd. (IEC No. 0801004845), 2nd Floor, Shakti 404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat 380054, under Section 28AA of the Customs Act,1962 on the duty confirmed at Para 23.2 above.

23.4 I hold that the imported goods viz. Ethernet Switches, Wired Controller or Network Controller and Wired Networking Gateway/ADC Platform, totally valued at Rs. 34,01,15,119/- (Rupees Thirty Four Crore, One Lakh, Fifteen Thousand, One Hundred and Nineteen only) imported vide Bills of Entry, as mentioned in Annexure-C, Annexure-D and Annexure-E to the Show Cause Notice, are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Zen Exim Pvt. Ltd. (IEC No. 0801004845), 2nd Floor, Shakti 404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat 380054, the option to redeem the goods on payment of Fine of Rs. 3,40,00,000/- (Rupees Three Crore and Forty Lakh only) under Section 125 of the Customs Act, 1962 in lieu of confiscation. I drop the proposal for confiscation of the imported goods viz. Wireless Access Point with MIMO Technology valued at Rs.33,60,89,387/- (Rupees Thirty Three Crore, Sixty Lakh, Eighty Nine Thousand, Three Hundred and Eighty Seven only) made under Annexure-B to the show cause notice.

23.5 I impose penalty of Rs.4,34,44,539/- (Rupees Four Crore, Thirty Four Lakh, Forty Four Thousand, Five hundred and Thirty Nine only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Zen Exim Pvt. Ltd. (IEC No. 0801004845), 2nd Floor, Shakti 404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat 380054. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Importer to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

23.6 I refrain from imposing penalty under Section 112 of the Customs Act,1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

23.7 I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakh only) on M/s. Zen Exim Pvt. Ltd. (IEC No. 0801004845), 2nd Floor, Shakti 404, S. G. Highway, Opp. New Gurudwara, Thaltej, Ahmedabad, Gujarat 380054, under Section 114AA of the Customs Act, 1962.

23.8 I impose penalty of Rs. 4,00,000/- (Rupees Four Lakh only) on Customs Broker viz. M/s. Nippon Express (India) Pvt. Ltd., 201, 2nd Floor, Citizen Arena, Opp. Nidhi Hospital, Near Stadium Cross Roads, Navrangpura, Ahmedabad -380009, under Section 117 of the Customs Act, 1962.

24. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

25. The Show Cause Notice bearing F. No. VIII/10-34/Commr./O&A/2022-23 dated 01.02.2023 is disposed off in above terms.

20.11.2025

(Shiv Kumar Sharma)
Principal Commissioner of Customs

F. No. VIII/10-34/Commr./O&A/2022-23 Date: 20.11.2025

DIN- 20251171MN000000C3B5

By Speed Post/E-Mail/By Hand

To:

1. M/s. Zen Exim Pvt.Ltd
2nd Floor, Shakti 404,
S. G. Highway, Opp. New Gurudwara,
Thaltej, Ahmedabad, Gujarat 3800542.

2. M/s. Nippon Express (India) Pvt. Ltd.
201, 2nd Floor, Citizen Arena,
Opp. Nidhi Hospital,
Near Stadium Cross Roads,
Navrangpura, Ahmedabad -380009

Copy to:

(1) The Chief Commissioner of Customs, Ahmedabad Zone
(2) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
(3) The Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad for information please.
(4) The Superintendent (System), Customs HQ., Ahmedabad for uploading on the Official website of Customs Commissionerate, Ahmedabad.
(5) Guard File.