



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमाशुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
दूरभाष : (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343
DIN: 20250621MN0000722529

DIN: 20250671MN0000723529

PREAMBLE

A	फाइल संख्या / File No.	:	F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23 Dated 28.09.2022
C	मूल आदेश संख्या/ Order-In-Original No.	:	47/ADC/SR/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	13.06.2025
E	जारी करनेकी तारीख/ Date of Issue	:	13.06.2025
F	द्वारापारित/ Passed By	:	SHRAVAN RAM , Additional Commissioner, Customs Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/S. ZEN EXIM PVT. LTD. , 2ND FLOOR, SHAKTI 404, OPP. GURUDWARA, SARKHEJ GANDHINAGAR HIGHWAY, THALTEJ, AHMEDABAD, GUJARAT.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हड्डको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

M/S. ZEN EXIM PVT. LTD., having registered address at 2nd Floor, Shakti 404, Opp. Gurudwara, Sarkhej Gandhinagar Highway, Thaltej, Ahmedabad-380054 and having IEC No. **0801004845** (hereinafter referred to as “the Importer” or “the noticee” or “M/s. Zen Exim Pvt. Ltd.”) had filed Bills of Entry as mentioned in Table-1 below for import of Wireless Networking Devices through Customs Broker M/s. Nippon Express

(India) Private Limited classifying the same under Tariff Heading 85176290 claiming benefit under Notification No. 57/2017 dated 30.06.2017 (Sr. No. 20):-

Table-1

BoE No./ Date	Item	Item No.	CTH	Assessable Value (Item) (in Rs.)	Duty Levied 30.98% (in Rs.)	Short Levy 12.98% (43.96% - 30.98%) (in Rs.)
(A)	(B)	(C)	(D)	(E)	(F)	(G)
9025857/ 01.10.2020	QN-I-220 INDOOR ACCESS POINT ITEM NO QN-I-220 COOCN WPC NO W-R-2018 109219 WIRELESS NETWORKING ACCESS POINT	1	85176 290	5324854	1649640	691166
9271817/ 22.10.2020	QN-H-220 INDOOR ACCESS POINT ITEM NO QN-H-220 COOCN WPC NO E-TA SD 2020 020 1126 WIRELESS NET WORKING ACCESS POINT	1	85176 290	3030863	938961	393406
9918603/ 11.12.2020	QN-I-200 INDOOR ACCESS POINT ITEM NO QN-I-200 COOCN WPC NO W-R 2018 109399 WIRELESS NETWORKING ACCESS POINT	1	85176 290	2285567	708069	296667
9871032/ 08.12.2020	C050900C461A ePMP 1000:5 GHz Force 200AR5-25 High Gain Radio - (ROW) India cord) Model no. C050 900 C061A WPC NO WR-2018 109399 W C050910 C401	1	85176 290	1141089	353509	148113
9871032/ 08.12.2020	A EPMP 5 GHz FORCE 300-25 HIGH GAIN RADIO (ROW) (I-NDIA CORD) Model No. C050910 C401AWPC NO WR-2018109390 WIRELE	3	85176 290	912735	282765	118473
9871032/ 08.12.2020	C050900C471A EPMP 1000:5 GHZ FORCE 180 INTEGRATED RADIO (ROW-) (INDIA CORD) Model No. C050900C071A WPC NO WR-2018109390 W	2	85176 290	842429	260984	109347
TOTAL				13537537	4193928	1757172

2. During the course of Audit by the officer of Central Excise Revenue Audit ("CERA"), Ahmedabad for the period from October, 2020 to December, 2020, it was observed that M/s. Zen Exim Pvt. Ltd. had imported "QN-I-220 INDOOR ACCESS POINT ITEM NO QN-I-220 COOCN WPC NO W-R-2018109219 WIRELESS NETWORKING ACCESS POINT" and "C050900C471A EPMP 1000:5 GHZ FORCE 180 INTEGRATED RADIO (ROW-) (INDIA CORD)" vide 4 Bills of Entry as detailed in above table and classified them under CTH 8517 6290 and paid duty @30.98 percent (BCD @10% + SWS @10% of BCD + IGST @18%) by taking the benefit of Sr. No. 20 of the Notification 57/2017 dated 30.06.2017.

3. It was observed that as per the provisions of Customs Notification No. 57/2017 dated 30.06.2017 [Sr. No. 20(h)] Wireless Networking Access Point, imported by the

importer as detailed in above table, is not covered under the said notification. The relevant portion of Sr. No. 20 of Notification No. 57/2017 dated 30.06.2017 read as under:

“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) products and Long Term Evolution (LTE) products”***

4. The officers of CERA, Ahmedabad had raised objection regarding short levy of duty due to irregular availment of said Notification by the importer. They had further observed that on verification of description of goods, it appeared that the items were wrongly classified under Sr. No. 20 of Notification 57/2017 dated 30.06.2017. As per the objection raised by CERA Audit, “WIRELESS NETWORKING ACCESS POINT” is a device that creates a wireless local area network, or WLAN, usually in an office or large building. An access point connects to a wired router, switch or hub via an Ethernet cable, and projects a Wi-Fi signal to a designated area. As per the technical write-up given by the applicant regarding end use of the product,

“QN-I-200 is a wireless access point based on 803.11 ac technology with an integrated MIMO radio with 27 dBm output power. The gigabit Ethernet port with 802.3af/at support allows powering the device with PoE-swicthes”.

Therefore, it appeared that the benefit of BCD could not be availed and was leviable to merit duty @43.960% (BCD @20% + SWS @10% of BCD + IGST @18), which resulted in short levy of duty of **Rs. 17,57,172/-**.

5. The Deputy Commissioner, Customs, ICD-Khodiyar had conveyed the audit objection to M/s. Zen Exim Pvt. Ltd. and requested to pay the short levy of duty alongwith interest. However, they had not agreed with the audit objection.

6. LEGAL PROVISIONS IN THE CUSTOMS ACT, 1962:

6.1 SECTION 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;”

6.2 SECTION 28AA. *Interest on delayed payment of duty--*

“(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.”

6.3 SECTION 111(m):-

“Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in proviso to sub-section (1) of Section 54; when brought from a place outside India shall be liable to confiscation.

...

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

...”

6.4 SECTION 112: *penalty for improper importation of goods*

“Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act

Shall be liable,-

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;"

7. In view of the above discussions, it appeared that the importer had wrongly taken the benefit of Sr. No. 20(h) of the said Notification. Thus, it appeared that the importers had contravened the provisions of Section 46(4) and Section 17 of the said Act, in as much as they had mis-declared the notification in question in the Bills of Entry filed under Section 46(4) and availed the wrong benefit of exemption Notification resulting in incorrect assessment of duty discharged on the goods in question.

7.1 It appears that the benefit of Sr. No. 20 of Notification No. 57/2017 dated 30.06.2017 is not available to the Importer and it resulted in short levy of duty of Rs. 17,57,172/- . Therefore, it appeared that the short levy of duty to the tune of **Rs. 17,57,172/- (Rupees Seventeen Lakhs Fifty Seven Thousand One Hundred Seventy Two Only)** as detailed in table-1 was liable to be recovered from the said Importer under Section 28(1) of the Customs Act, 1962 along-with interest in terms of Section 28AA of the Customs Act, 1962.

8. It appeared, therefore, that the said importer has knowingly and intentionally taken the benefit of Sr. No. 20(h) of the said Notification. It appeared to be a case of willful mis-statement with intention to avail ineligible benefit of the said exemption to evade duty of Customs. This constitutes an offense of the nature covered in Section 111(m) and Section 111(o) of the Customs Act, 1962 and the goods imported appeared liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

9. As per Section 111(m) of the Customs Act, 1962, any goods which do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962 are liable for confiscation under the said Section. As per Section 111(o) of the Customs Act, 1962, any goods, exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, are liable for confiscation under the said Section.

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

10. For these acts of omission and commission, M/s. Zen Exim Pvt. Ltd. appeared liable to penalty under Section 112(a)(ii) of the Customs Act, 1962 in as much as they had intentionally made and used false and incorrect declaration / statements / documents to evade payment of legitimate Customs duties as discussed in the foregoing paras.

11. Further, by these acts of the omission and commission of the importer, they appeared to attract the provisions of Section 114AA of the said Act. The said importers had mis-declared the goods in question with intent to avail undue benefit of the exemption Notification and thus the said importer had rendered himself liable to penalty under Section 114AA of the said Act.

12. Accordingly, vide Show Cause Notice bearing No. VIII/ICD-Khod/O&A/HQ/2022-23 dated 28.09.2022 (herein after referred to as “the said SCN”) issued by the Additional Commissioner of Customs, Ahmedabad, the importer Zen Exim Pvt. Ltd., was called upon to show cause as to why:-

- (i)** The total amount of differential Customs duties amounting to Rs.17,57,172/-, attributable to the concessional rate of Customs duty wrongly claimed under Sr. No. 20 of Notification No. 57/2017-Cus. dated 30.06.2017, as amended; should not be demanded and recovered under Section 28(1) of the Custom Act, 1962 by denying the benefit of the said Notification;
- (ii)** The imported goods having declared assessable value of Rs. 1,35,37,537/- should not be held liable to confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty benefit under Sr. No. 20 of the Notification No. 57/2017 -Cus. dated 30.06.2017, as amended;
- (iii)** Interest at an appropriate rate as applicable, on the Customs duty evaded, should not be recovered from them under Section 18(3) read with Section 28AA of the Customs Act, 1962;
- (iv)** Penalty should not be imposed upon them under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962.

13. DEFENCE REPLY:

The Importer Zen Exim Pvt. Ltd. have submitted reply to the said SCN vide their written submissions dated 28.10.2022, interalia they submitted that :-

Issue decided by Hon'ble Tribunal

- It is undisputed fact that the Wireless Networking Access Points, imported by the noticees, are having MIMO technology and are without LTE standard. Sr.

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

No. 20 of Notification 57/2017 dated 30.06.2017 as amended exempts all goods, falling under Sub-heading 85176290 of the Customs Tariff except the goods specified in clauses (a) to (h). Clause (h) of exclusion clauses reads as follows:

“(h) Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE) products.”

- The show cause notice has been issued to deny the benefit of Notification No. 57/2017 dated 30.06.2017 (Sr. No. 20) since the Wireless Access Points is having MIMO Technology. The Noticee's contention that 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.
- They relied on the judgment of CESTAT New Delhi in the identical matter of This issue has been set at rest by the Hon'ble Tribunal in the case of Commissioner of Customs (Air) Chennai Vs. **M/s. Ingram Micro India Pvt. Ltd.** Reported at 2022-TIOL-882-CESTAT -DEL. The Hon'ble Tribunal has dismissed the appeal filed by the Department against Order-In-Original No. 09/VKP(09) ADG(ADJ)/DRI/N.Delhi/2019-20 dated 23.12.2019 passed by the ADG (Adjudication), DRI, by holding that the Wireless Access Points imported by the Respondent Works on MIMO Technology and does not support LTE standard and allowed benefit of exemption under Serial No. 13(iv) of the Notification.
- They further referred the judgments in following cases:
 - Union of India Vs. Kamlakshi Finance Corporation Ltd., 1991 (55) ELT 433 (S.C.).
 - Topland Engines Pvt. Ltd. Vs UOI, 2006 (199) ELT 209 (Guj.).
 - F.I. Dupont India Pvt. Ltd. Vs UOI, 2014 (305) ELT 282
 - Shiv Texfabs Ltd. Vs CCE, 2015 (315) ELT
 - Imtiyaz Eqbal Pothiwala Vs CC, Mumbai, 2018, (361) ELT 890

Assessment orders have attained finality

- The impugned goods were imported in 2020 and were assessed to duty after filing of Bills of Entry alongwith requisite documents. The Assessment of all the Bill of Entry have attained finality as no appeal was filed by the department against the assessments. It is settled law that the assessment cannot be reopened by issuance of SCN under Section 28 of the Customs Act, 1962. Kind Attention is invited to the Judgment of the Supreme Court in the case of ITC Ltd. Vs. CCE 2019 (368) ELT 216 (S.C.). The Supreme Court has held that self-assessment is also an assessment order passed under the Customs Act, 1962. The expression any person in Section 128 is of wider amplitude. The revenue as well as assessee can prefer an appeal aggrieved by an order of assessment. Since the assessment orders passed on these 4 bills of Entry had not been challenged by the department by filing appeal under Section 128 of the Customs Act, 1962, the Assessment orders have attained finality and same cannot be reopened for the assessment.

- They also rely upon the decisions in following case laws in support of their defence:-
 - Jairath International Vs. UOI, 2019 (10) TMI 642
 - Superpack Vs. CCE, 2006 (193) ELT 354 (T)
 - Priya Blue Industries Ltd. Vs. CC(Prev), 2004 (172) ELT 145
 - Jio Infocomm Vs CC (Imports), 2021- TIOL-661- CESTAT-MUM.

Benefit of Sl. No. 20 of Notification 57/2017 dated 30.06.2017 available to product having only MIMO Technology

- They submit that exclusion clause (h) of the Sl. No. 20 of Notification 57/2017 is not applicable to the goods imported by the noticees since Wireless Access Point are only having MIMO Technology and without having LTE standard. Thus, Wireless Access Pointes, imported by the Noticees are not MIMO and LTE products which is only excluded from the benefit of Notification. They referred the Tribunal in the case of Commissioner of Customs (Air) Vs. M/S. Ingram Micro India Pvt. Ltd. They further relied on the following cases:
 - Raghunath International Ltd. Vs. Union of India, 2012 (280) ELT 321 (All.)
 - Manmohan Das Shah Vs. Bishur Das, AIR 1967 SC 643
 - Prof. Yashpal Vs. State of Chhattisgarh, AIR 2005 SC 2026

GOODS NOT LIABLE FOR CONFISCATION

- Goods imported by the Noticees are not liable for confiscation under Section 111(m) and Section 111(o) 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.
- That availment of benefit of concessional rate has been found to be legal by the ADG (Adjudication) DRI, New Delhi and the appeal filed by the department has been dismissed by the Hon'ble Tribunal. In view of this, there remains no substance in the allegation of department that the noticees made mis-statement or suppressed the fact or made false declaration. The stand taken by the Noticees has been found to be correct by the Hon'ble Tribunal.
- In any case provisions of Section 111(m) of the Act are not applicable for confiscating the goods since the goods were found to correspond in respect of value and in respect of any other particular such as, quantity of goods, quality of goods, and description of goods. It is, thus, apparent that all particulars made in the bills of entry in respect of goods have been found to be correct. Therefore, the declaration as to the truth of contents of bill of entry was not false at all. Merely claiming a particular exemption does not fall within the purview of Section 111(m) of the Act. They placed reliance on the following decisions.
 - (i) Northern Plastics Ltd. Vs. CC, 2002-TIOL1889-SC-CUS
 - (ii) International Exim Agency Vs. CC, 2009 (242) ELT 267 (Tri.)
 - (iii) Shreeji Shipping Ltd. Vs. CC, Kandla 2014 (302) ELT 139 (Tri. Ahmd),
 - (iv) Surbhi Impex P. Ltd. vs. CC (ED), Mumbai 2012 (283) ELT 556 (T-Mum)

- (v) Komal Trading Company Vs. CC (Imports), 2014 (301) ELT 506 (Tri.)
- (vi) Lewek Altair Shipping Pvt. Ltd. vs. CCE, 2019 (366) ELT 318
- (vii) CC, Amritsar Vs. Raja Impex Pvt. Ltd. 2008 (229) ELT 185 (P&H)
- (viii) CC vs. Finesse Creation Inc, 2010 (355) ELT A120 (S.C.).

PENALTY NOT IMPOSABLE

- Penalty is not imposable on the Noticees under Section 112(a)(ii) and Section 114AA of the Customs Act as the Noticees have not done or omitted to have done any act in relation to goods which has rendered the goods liable to confiscation under Section 111(o)/111(m) of the Act. Further, the Noticees have neither knowingly nor intentionally made/signed/used any declaration/document which is false or incorrect in any material particular. Claiming of an exemption notification does not amount to mis-statement or making a false declaration as held by Courts and Tribunal. Above all there is view in the department that for the purpose of denying the benefit of notification, the imported product must be having both MIMO technology with LTE standard. Further, the said view in department has been affirmed by that Tribunal in CC (Air) Vs. Ingram Micro India Pvt. Ltd. by dismissing the appeal filed by the department.
- In this regard, they rely on the following judgments.
 - (i) Mentha & Allied Products Ltd. Vs. CCE, 2004 (167) ELT 494 (S.C.)
 - (ii) Bata India Ltd. Vs. CCE, 2015 (321) ELT 194 (S.C.).
 - (iii) CCE Vs, Honda Siel Power Products Ltd., 2015 (323) ELT 644 (S.C.).
 - (iv) Uniflex Cables Ltd. vs. CCE, 2011 (271) ELT 161 (S.C.),
 - (v) CCE vs. Saluja Exim 2011 (270) ELT 560,
 - (vi) UOI Vs. Beryl Drugs Ltd., 2015 (322) ELT 261 (MP).
 - (vii) Indira Printers Vs. CCE (345) ELT 269 (Tri. Del).
- The contention in show cause notice that in self assessment, onus is on the Importer to classify, determine and pay the applicable duty is without any substance. It may please be appreciated that self-assessment is subject to verification by the Proper Officer who has the power to reassess the goods under section 17 of the Customs Act. They relied on the case of Reliance Jio Infocom Ltd. Vs. CC (Imports) 2021-TIOL-661-CESTAT-MUM.
- In view of the above they prayed that the show cause notice may be vacated and proceedings initiated against the Noticees may be dropped. The Noticees requested to be heard before the adjudication of the show cause notice.

14. TRANSFER OF CASE TO THE CALL BOOK

In an identical issue of M/s. Ingram Micro India Pvt. Ltd, who were issued a Show Cause Notice by DRI for denying the benefit of concessional Duty in terms of Notification No. 24/2005-Cus dated 1.3.2005, as amended vide Notification No. 11/2004-Cus dated 11.07.2014, in respect of an imported product, namely, 'Wireless Access Point' and Show Cause Notice was dropped by Additional Director General (Adjudication).

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

Department's appeal against this OIO is also dismissed by Hon'ble Tribunal, New Delhi vide Order No. 50831/2022 dated 12.09.2022. An appeal was filed by the Department before Hon'ble High Court, New Delhi through e-filing system on 14.03.2023, therefore the said Show cause notice F. No. VIII/ICD-Khod/O&A/HQ/2022-23 dated 28.09.2022 was kept in call book till the judgment in the department appeal no. CUSAA 38/2023. Now the Hon'ble High Court of Delhi has delivered a judgment vide order dated 13.01.2025 in the said appeal and upheld the decision of Hon'ble Tribunal, New Delhi. Therefore, the said SCN is retrieved for adjudication.

15. RECORD OF PERSONAL HEARING:

15.1 The noticee requested to vacate the proceedings in view of the judgment vide their letter dated 28.01.2025.

15.2 Personal Hearing in the matter was held on 03.06.2025 on virtual mode, wherein, Shri V.K. Agrawal, Advocate appeared on behalf of the M/s. Zen Exim Pvt. Ltd. before the then adjudicating authority and reiterated the written submissions dated 28.10.2022 and 28.01.2025. He also referred the judgments of Hon'ble GESTAT New Delhi and then Hon'ble High court of Delhi in the matter of M/s. Ingram Micro India Private Limited and requests to vacate the proceedings initiated vide the aforesaid SCN.

16. DISCUSSION & FINDINGS:-

16.1 I have carefully gone through the facts of the case, defense submissions made by the said importer Zen Exim Pvt. Ltd., oral submission made during the course of Personal hearing, the documents submitted including case laws cited by the said importer, order of Hon'ble CESTAT, New Delhi and Hon'ble Delhi HC's order dated 13.01.2025 and records available on the file.

16.2 I find that the said SCN dated 28.09.2022 issued to Zen Exim Pvt. Ltd. in respect of the impugned goods "QN-I-220 INDOOR ACCESS POINT ITEM NO QN-I-220 COOCN WPC NO W-R-2018109219 WIRELESS NETWORKING ACCESS POINT" and "C050900C471A EPMP 1000:5 GHZ FORCE 180 INTEGRATED RADIO (ROW-) (INDIA CORD)" imported vide Four (04) Bills of Entry as detailed in Table-1 for availing the benefit of Sr. No. 20 of the Notification 57/2017 dated 30.06.2017, which appeared not available to them as per Audit objections. The issues to be decided before me are:

- a) Whether the benefit of Basic Customs Duty (BCD) exemption claimed under Sr. No. 20 of the Notification No. 57/2017-Cus dated 30.06.2017 as amended is available to them for the Shipping Bills mentioned in Table-1?
- b) Whether differential Duty of Customs totally amounting to Rs.17,57,172/- leviable on the goods imported vide 04 Bills of Entry details as in Table-1, are recoverable from the said importer under the provisions of Section 28 (1) of the Customs Act, 1962 along with interest

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

at an appropriate rate as applicable, under Section 28AA of the Customs Act, 1962?

- c) Whether the imported goods having totally declared value Rs. 1,35,37,537/- are liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962?
- d) Whether the importer is liable to penalty under Section 112(a) (ii) and 114AA of the Customs Act, 1962?

16.3 Now I proceed to decide whether the benefit of Basic Customs Duty (BCD) exemption claimed under Sr. No. 20 of the Notification No. 57/2017-Cus dated 30.06.2017 as amended is available to them for the Shipping Bills mentioned in Table-1.

16.3.1 I find that the said Importer Zen Exim Pvt. Ltd. had imported “Wireless Networking Access Point” devices such as “QN-I-220 INDOOR ACCESS POINT”, “ePMP” etc. through ICD Khodiyar during the year 2020 vide total Four (04) Bills of Entry as detailed in the Table-1 above. They declared and classified the imported goods Wireless Networking Access Point” under Custom Tariff Heading No. 85176290 of the First Schedule of the Custom Tariff Act, 1975 and cleared the same on payment of concessional rate of duty after availing concessional duty benefit under Sr. No. 20 of the Notification No. 57/2017-Cus. dated 30.06.2017.

16.3.2 I find from the public domain source the description of both type of products as given in Image-1 and 2 below:

Image-1

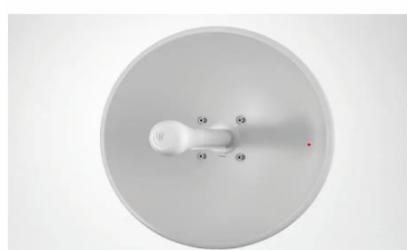
Product Overview

The QN-I-220 ensures a wireless networking technology that offers concurrent dual-band, consistent and dependable 802.11ac wave 2. MU-MIMO technology delivers lightning-fast speeds and exceptional coverage, resulting in exceptional user experiences. The QN-I-220 is the ideal choice for low-density enterprise and hotspot settings, including small and medium-sized businesses, retail establishments, restaurants, and multi-tenant small offices and branch offices. The 802.11ac wave 2 Wi-Fi access point integrates exclusive technologies distinctive to the Quantum Wi-Fi portfolio. Every access point includes a manufacturer's warranty covering three years from the activation date, as well as theft protection features to safeguard assets against unauthorized use.



Image-2

[Home](#) / [Networking](#) / [Access Point](#) / Cambium Networks ePMP 1000 5 GHz Force 200AR5-25 High Gain Radio ROW India cord



Cambium Networks
Cambium Networks ePMP 1000 5 GHz Force 200AR5-25 High Gain Radio ROW India cord
Access Point
MPN: C050900C461A
SKU: CAMBIUM004
[Sign In to View Price](#)
Product Highlights
• Cambium Networks ePMP 1000 5 GHz Force 200AR5-25 High Gain Radio ROW India cord

16.3.3 I find that The **QN-I 220** is a Quantum Networks *Indoor Wireless Access Point*. It's a concurrent dual-band, 802.11ac Wave 2 device that utilizes MU-MIMO technology for fast speeds and wide coverage, making it suitable for various indoor environments like offices, hotspots, and retail locations. QN-I-220 is a Wi-Fi access point and does not use LTE Standard.

ePMP (Enhanced Point-to-Multi-Point) is a fixed wireless broadband technology from Cambium Networks. It's a system that provides high-performance wireless connectivity, particularly in areas where traditional wired infrastructure is lacking or expensive. ePMP utilizes a point-to-multipoint architecture, where a central access point communicates with multiple subscriber modules (SMs). ePMP typically uses 5 GHz or 6 GHz frequency bands for wireless connectivity, does not use LTE (Long Term Evolution) Standard. ePMP utilizes Multiple-Input Multiple-Output (MIMO) technology, specifically Multi-User MIMO (MU-MIMO). ePMP 3000, for instance, employs 4x4 MU-MIMO to transmit to two subscribers simultaneously, effectively doubling downlink throughput.

In view of the above, both types of products use MIMO Technology, but not using LTE standard.

16.3.4 Now, I come to the relevant tariff heading as appearing in Schedule I to the Customs Tariff Act and benefit of concessional duty exemption availed under notification in question, which are reproduced under:

Heading No. Item Description

8517	TELEPHONE SETS, INCLUDING SMARTPHONES AND OTHER TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS : OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK), OTHER THAN TRANSMISSION OR RECEPTION APPARATUS OF HEADING 8443, 8525, 8527 OR 8528 OTHER APPARATUS FOR TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK):
8517 61 00	<i>Base stations</i>
8517 62	<i>Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:</i>
8517 62 10	<i>PLCC equipment</i>
8517 62 20	<i>Voice frequency telephony</i>
8517 62 30	<i>Modems (modulators-demodulators)</i>
8517 62 40	<i>High bit rate digital subscriber line system (HDSL)</i>
8517 62 50	<i>Digital loop carrier system(DLC)</i>

8517 62 60 *Synchronous digital hierarchy system(SDH)*

8517 62 70 *Multiplexers, statistical multiplexers*

8517 62 90 Other

16.3.5 I find that Import duty on certain electronic goods under the Customs (Import of Goods of Concessional Rate of duty) Rules, 2017 were specified vide Notification No. 57/2017-Customs dated 30.06.2017. Further, Sr. No. 20 of said Notification No. 57/2017-Cus., dated 30.06.2017 was substituted by following Sr. No. 20 vide Notification No. 2/2019-Cus., dated 29.1.2019 (with effect from 30.01.2019) and standard rate of basic Custom duty were specified for certain electronic goods as shown below:-

(1)	(2)	(3)	(4)	(5)
“20	8517 62 90 or 8517 69 90	<p><i>All goods other than the following goods, namely :-</i></p> <p>(a) <i>Wrist wearable devices (commonly known as smart watches);</i></p> <p>(b) <i>Optical transport equipment;</i></p> <p>(c) <i>Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS);</i></p> <p>(d) <i>Optical Transport Network (OTN) products;</i></p> <p>(e) <i>IP Radios;</i></p> <p>(f) <i>Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers;</i></p> <p>(g) <i>Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products;</i></p> <p>(h) <i>Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products</i></p>	10%	-”;

16.3.6 I find that Wireless Access points are special-purpose communication devices on wireless local Area Networks (WLANS). It is an Access Points act as a central transmitter and receiver of wireless radio signals and connects WI-FI enabled devices such as Laptops, Smart phones, Tablet etc. to a wired network. Mainstream wireless Access Points support Wi-Fi and are most commonly used to support public Internet hotspots and other business networks where larger buildings and spaces need wireless coverage. Access Point hardware consists of radio transceivers, antennas and device firmware. Wi-Fi hotspots commonly deploy one or more wireless APs to support their Wi-Fi coverage area. The Access Point is independently identifiable/ used/ marketed equipment for extending the wireless network using MIMO Technology and is not a part of any product.

16.3.7 MIMO stands for multiple-input multiple-output, where multiple refers to multiple antennas used simultaneously for transmission and multiple antennas used simultaneously for reception. MIMO is a radio communications technology or RF

technology, which uses multiple antennas to enable a variety of signal paths to carry the data, choosing separate paths for each antenna to enable multiple signal paths to be used to provide gains in channel robustness and throughput. Besides antennas, MIMO also requires software algorithms in the network (i.e. in case of Wi-Fi, Access Points / Controllers).

16.3.8 Before MIMO, there were other types of advanced antenna technology with different configurations- most commonly, multiple input single output (MISO) and single input multiple output (SIMO). MIMO builds on these technologies. The different MIMO formats - SISO, SIMO, MISO and MIMO require different numbers of antennas as well as having different levels of complexity. Also dependent upon the format, processing may be needed at one end of the link or the other - this can have an impact on any decisions made. The MIMO technology was introduced in WI-FI in 802.11n standard during 2009 approved by IEEE, IEEE 802.11 (which is marketed under the brand name Wi-Fi) is a set of media access control (MAC) and physical layer (PHY) specifications for implementing wireless local area network (WLAN) for computer/ mobile communication in the 900 MHz and 2.4, 3.6, 5, and 60 GHz frequency bands. It defines frequency, protocols, encoding, modulation, frames etc. for wireless communication which helps to inter-op between various components of wireless LAN (WLAN) infrastructure. MIMO is one of the most common forms of wireless, and it played a key role in the deployment of LTE and the wireless broadband technology standard Worldwide Interoperability for Microwave Access (Wi-MAX).

16.3.9 LTE uses MIMO and orthogonal frequency-division multiplexing (OFDM) to increase speeds up to 100 megabits per second (mbps) and beyond. LTE uses MIMO for transmit diversity, spatial multiplexing (to transmit spatially separated independent channels), and single-user and multiuser systems. MIMO in LTE enables more reliable transmission of data, while also increasing data rates. It separates the data into individual streams before transmission. During transmission, the data and reference signals travel through the air to a receiver that will already be familiar with these signals, which helps the receiver with channel estimation. I find that the said SCN has not disputed the fact that Wireless Networking Access Point imported by them are having MIMO technology and are without LTE standard as contended by the noticee.

16.3.10 I find that the impugned goods are Wireless Access Devices which do not fall into any exclusion from (a) to (g) of above Table. I further find that the noticee contended that 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; that since the exclusion clause uses the conjunction ‘and’ its scope would be restricted to those products that have both MIMO and LTE, thus according to the noticee a product has only MIMO technology would not be covered by the exclusion clause and, therefore, would not be excluded from the scope of Serial No. 20 to avail benefit of concessional rate of duty under Notification 57/2017 dated 30.06.2017.

16.3.11 I find that in the case of **M/S. INGRAM MICRO supra**, the adjudicating authority has allowed exemption benefit to WAP vide Order-In-Original No.09/VKP (09)

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

ADG (ADJ)/ DRI/ N. Delhi/2019-20, Dated 23.12.2019 by holding that exemption from Basic Custom duty under the notification dated 01.03.2005 as amended by Notification No. 11/2014-Cus., dated 11.07.2014 is available to the imported goods WAP work on MIMO Technology and does not support LTE standard.

16.3.12 In the departmental appeal against the said order, the Hon'ble CESTAT New Delhi vide order dated 12.09.2022 upheld the said order and dismissed the appeal filed by the revenue against the said order.

16.3.13 I find that CESTAT New Delhi in its order dated 12.09.2022, has understood WAP, MIMO and LTE in the following manner:

*"(i) **WAP**: It is a networking device used for wireless communication within the Local Area Network. It helps in connecting wireless enabled devices such as Laptops, Smartphone, Tablets etc., to a wired network;*

*(ii) **MIMO**: It is a technology wherein multiple antennas are used simultaneously for transmission and multiple antennas are used simultaneously for reception;*

*(iii) **LTE**: In telecommunication, it is a standard for high speed cellular communication for mobile devices and data terminals. It increases the capacity and speed using a different radio interface together with core network improvements."*

16.3.14 I find that departmental appeal against the said order of CESTAT New Delhi was filed in the Hon'ble Delhi High Court, which has appropriately stated that:-

"...

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.*

..."

I find that in present case also, the sole dispute is whether exclusion clause covers products having only MIMO Technology and not working on LTE standard. While going through the relevant portion of Sr. No. 20 of Notification No. 57/2017 dated 30.06.2017 amended by Notification No. 02/2019-Cus., dated 29.01.2019, which is in accordance to the clause (iv) of Sr. No. 13 of earlier notification 25/2005 dated 01.03.2005 applicable for electronic goods prior to introduction of notification No. 57/2017-Cus dated 30.06.2017, I find that it covers MIMO and LTE products.

16.3.15 I find the Hon'ble Delhi HC vide its order dated 13.01.2025 has held in case of **M/S. INGRAM MICRO supra** that:

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

"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 (MPLS-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."**

16.3.16 I further find that the Hon'ble Delhi HC in the case of **M/S. INGRAM MICRO supra** has stated that-

"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".

The Hon'ble HC has further stated that-

"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."

16.3.17 I find that the Hon'ble HC referred **UNION OF INDIA & ORS. VS. IND-SWIFT LABORATORIES LIMITED: (2011) 4 SCC 635** and **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI V. DILIP KUMAR & CO AND ORS.: 2018 (361) ELT 577 (SC)** for interpretation of 'and'.

"19. 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. In *Kanai Lal*

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

16.3.18 I further find that the Hon'ble Delhi HC held that:-

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

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

59. Coming back to the facts of the case and applying the above principle, we note that the word 'and' is suffixed with the word 'MIMO' and prefixed with the word 'LTE' and there is no punctuation mark or comma after the word 'MIMO' and before the word 'and'. Further, 'MIMO and LTE' are followed by the word 'products'. **Therefore, as a common rule of English language, the word 'and' would clearly, and in unambiguous terms, be read conjunctively.**

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

61. In light of the above, we hold that the phrase "MIMO and LTE Products" in Serial No. 13(iv) of the amended Notification No. 24/2005 applies solely to products combining MIMO technology and LTE standards. The exclusion clause cannot be stretched to encompass products featuring either one of the

two technologies. Accordingly, the WAPs imported by the respondent, which employ MIMO technology but not the LTE standards, are entitled to the exemption from Basic Customs Duty.

62. *In view thereof, we are of the opinion that the order of the learned CESTAT does not suffer from any infirmity or error and, is, therefore upheld.*

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

64. *The appeal is accordingly dismissed."*

16.3.19 In view of the above discussion, I find that the Hon'ble High Court of Delhi in the case of **M/S. INGRAM MICRO supra** has allowed the benefit of exemption notification 24/2005-Customs dated 01.04.2005 as amended to the import of Access Points with MIMO technology but without LTE standard. I find that the Hon'ble HC in above judgment stated 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.*" In view of the judgment, the principal issue in the present case also is whether the exemption under Notification No. 57/2017 dated 30.06.2017, claimed on import of Access Point device with MIMO technology but without LTE standard, is admissible or not.

And the answer is '**yes**' in view of the judgment of Hon'ble HC.

16.3.20 It is also clear that the Access points or products having MIMO technology and LTE standard, would not get exemption from payment of BCD. In view of above discussion, I hold that the BCD exemption, claimed and availed on import of Access Points with MIMO technology but without LTE standard by the noticee is admissible to them and as such the question of demand of differential duty does not arise. I hold that, M/s. Zen Exim Pvt. Ltd. have correctly availed the concessional benefit under Notification No. 57/2017 dated 30.06.2017 (Sr. No. 20) as amended.

16.4 Now I decide whether differential Duty of Customs totally amounting to Rs.17,57,172/- leviable on the goods imported vide 06 Bills of Entry details as in Table given in para 1 to said SCN, are recoverable from the said importer under the provisions of Section 28 (1) of the Customs Act, 1962 along with interest at an appropriate rate as applicable, under Section 28AA of the Customs Act, 1962.

16.4.1 I find that, as discussed in foregoing paras, the BCD exemption under Notification No. 57/2017 dated 30.06.2017 (Sr. No. 20) as amended, claimed and availed on import of "Access Points with MIMO technology but without LTE standard" by M/s. Zen Exim Pvt. Ltd. is admissible to them and the noticee have not short-paid Customs Duty. Therefore, I hold that no differential duty and no interest thereupon is recoverable from them.

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

As I find that no differential duty and no interest, is recoverable, I would not go into the merits of the case laws relied by the noticee.

16.5 Now I decide whether the imported goods having totally declared value Rs. 1,35,37,537/-are liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

16.5.1 I find from the discussion in foregoing paras, in view of the order dated 13.01.2025 of Hon'ble High Court of Delhi, M/s. Zen Exim Pvt. Ltd has correctly availed the benefit of the Sr. No. 20 of the notification 57/2017-Customs dated 30.06.2017 as amended. I, therefore, hold that there is no short levy or payment of Customs Duty and the question of confiscation of goods under section 111(m) and section 111(o) of the Customs Act, 1962, does not arise.

As I find that the subject goods are not liable for confiscation, I would not go into the merits of the case laws relied by the noticee.

16.6 Now I decide whether the importer is liable to penalty under Section 112(a)(ii) and 114AA of the Customs Act, 1962, or otherwise?

16.6.1 I find that, as no duty is required to be confirmed and leviable in present case and goods are not liable for confiscation, therefore, due to no omission or commissions, I do not impose any penalty under Section 112(a)(ii) of Customs Act, 1962 on M/s. Zen Exim Pvt. Ltd.

16.6.2 I find that, as benefit of exemption under the said notification as claimed by the noticee is admissible and there is nothing as mis-declaration, I do not impose any penalty under Section 114AA of Customs Act, 1962 on M/s. Zen Exim Pvt. Ltd.

16.6.3 As I find that as no penalty is imposable under Section 112 and 114AA, I would not go into the merits of the case laws relied by the noticee.

ORDER

17. In view of the foregoing discussions and findings, I drop the proceedings initiated vide the Show Cause Notice bearing No. VIII/10-78/ICD-Khodiyar/O&A/HQ/2022-23 Dated 28.09.2022.

(SHRAVAN RAM)
Additional Commissioner
Customs Ahmedabad

DIN: 20250671MN0000723529

F. No. VIII/10-78/ ICD-Khodiyar/O&A/HQ/2022-23

Dated: 13.06.2025

By Speed Post A.D./E-mail /Hand Delivery/Through Notice Board

To,

M/S. ZEN EXIM PVT. LTD.,
2ND FLOOR, SHAKTI 404, OPP. GURUDWARA,
SARKHEJ GANDHINAGAR HIGHWAY,
THALTEJ, AHMEDABAD, GUJARAT.

F. No. VIII/10-78/ICD-Khod/O&A/HQ/2022-23
OIO No. 47/ADC/SR/O&A/HQ/2025-26

Copy to:

- (i) The Commissioner of Customs, Ahmedabad [Kind Attn. The Assistant Commissioner (RRA), Customs, Ahmedabad]
- (ii) The Deputy Commissioner, Customs, ICD-Khodiyar.
- (iii) The Deputy Commissioner, Customs (Task Force), Ahmedabad.
- (iv) The System-In-charge, Customs HQ, Ahmedabad for uploading on the official web-site.
- (v) Guard File