
(2024) 07 CESTAT CK 1511

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No.51166 Of 2020

Vodafone Idea Limited

APPELLANT

Vs

Principal Commissioner of Customs

RESPONDENT

Date of Decision : 01-07-2024

Acts Referred:

Citation : (2024) 07 CESTAT CK 1511

Hon'ble Judges : Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : B.L. Narasimhan, Dhruv Matta, Prafful Dawani, Mihir Ranjan

Final Decision : Allowed

Judgement

Dilip Gupta, J

1. Vodafone Idea Limited (previously Idea Cellular Limited), the appellant has sought the quashing of the order dated 08.07.2020 passed by the Principal Commissioner of Customs ACC (Imports), the Principal Commissioner by which 'Transponder, Muxponder, and Optical splitter cards, the subject cards' imported by the appellant during the period from 28.11.2017 to 04.12.2017 under three Bills of Entry have been classified under Customs Tariff Item, CTI, 8517 62 90 and not under CTI 8517 70 90 as claimed by the appellant, and consequently the demand of duty has been confirmed with interest and penalty.'

2. The department of the imported goods by the appellant, the classification adopted by the appellant in the three Bills of Entry and the classification determined by the department are as follows:

Description of the imported goods

Classification by appellant under CTI

Classification by department under CTI

DW011707 ZTE TS4 100G Transponder Card (Non-WPC Item) (Captive

Consumption) (For Cellular Telephony Network)

8517 70 90

8517 62 90

DW011706 ZTE MX2 100G Muxponder Card (Non-WPC Item) (Captive Consumption) (For Cellular Telephony Network)

8517 70 90

8517 62 90

DW021613 ZTE Optical Splitter Card SOP2 (Non-WPC Item) (Captive Consumption) (For Cellular Telephony Network)

8517 70 90

8517 62 90

3. In respect of the classification by appellant, the Basic Customs Duty is NIL (S. No. 5 of NN 57/2017), Education Cess is Nil and ISGT is @ 18%. In respect of the classification by the department, the Basic Customs Duty is @ 10%, Education Cess is @ 3% and IGST is @ 18%.

4. The appellant cleared these goods under CTI 8517 70 90 as 'parts' by virtue of Section Note 2(b) of Section XVI. However, the department believed that these goods were kind of Network Interface Cards, NIC cards classifiable under CTI 8517 62 90 and proposed a demand of Rs. 1,03,73,154/- through the show cause notice dated 09.09.2019.

5. The Principal Commissioner classified the subject cards under CTI 8517 62 90 and confirmed the proposed duty demand with interest by order dated 08.07.2020. The findings recorded by the Principal Commissioner are as follows:

(a) Like NIC cards connect computer over a network, in telecommunication, these cards connect OTN equipment over an optical network. Thus, the subject cards are nothing but NIC cards;

(b) Group G of HSN Explanatory Notes to Sub-Heading 8517 62 covers NIC cards, multiplexers, and electro-optical converters. Thus, by application of General Rules of Interpretation Rule 1, the subject cards are covered under CTI 8517 62 90;

(c) Even though the subject cards are incomplete populated PCBs, they have essential character of the finished good as they perform the function of network interfacing, multiplexing, electro-optical conversion and hence should be classifiable as complete apparatus under CTI 8517 62 90 by application of General Rules of Interpretation Rule 2(a); and

(d) From the conjoint reading of Section Note 3 to Section XVI and HSN Explanatory Notes to Heading 8517, these cards mounted in series/ groups on

OTN main board are composite machines, consisting of two or more machines fitted together to make a whole. Thus, OTN equipment amounts to composite machine and the subject cards should be classified under CTI 8517 62 90.

6. Shri B.L. Narasimhan, learned counsel for appellant assisted by Shri Dhruv Matta and Shri Prafful Dawani submitted that:

(i) The Principal Commissioner committed an error in not accepting the classification of the subject cards by the appellant;

(ii) Reliance has been placed upon Division Bench decisions of the Tribunal in M/s. Ciena Communications India Pvt. Ltd. vs. Principal Commissioner of Customs (Import), Customs Appeal No. 86992 of 2021 decided on 18.12.2023 and Commissioner of Customs, Mumbai (Air Cargo Import) vs. Reliance Jio Infocomm Ltd., Customs Appeal No. 88479 of 2018 decided on 22.06.2022;

(iii) The appeal filed by the department to assail the aforesaid decision of the Tribunal in Reliance Jio (II) was dismissed by the Supreme Court on 30.01.2023;

(iv) The subject cards that have been imported by the appellant are not a machine in itself but parts of the main equipment and in support of this contention reliance has been placed upon a Division Bench decision of the Tribunal in M/s. Vodafone Idea Limited vs. Principal Commissioner of Customs (Import), New Delhi, Customs Appeal No. 52287 of 2019 decided on 20.09.2022; and

(v) The subject goods are not NIC Cards. To support this contention reliance has been placed upon the aforesaid decision of the Tribunal Vodafone Idea.

7. Shri Mihir Ranjan, learned special counsel appearing for the department, however, supported the impugned order and contented that it does not call for any interference in this appeal. In this connection, learned special counsel placed the order passed by the Principal Commissioner.

8. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

9. The relevant tariff entries are reproduced below:

Tariff Item

Description of goods

Unit

Rate of Duty

(1)

(2)

(3)

(4)

(5)

8517

Telephone sets, including 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

- Telephone sets, including telephones for cellular networks or for other wireless networks:

8517 11

-- Line telephone sets with cordless handsets:

8517 11 10

--- Push button type

u

Free

-

8517 11 90

--- Other

u

Free

-

8517 12

-- Telephones for cellular networks or for other wireless networks:

8517 12 10

--- Push button type

u

10%

-

8517 12 90

--- Other

u

10%

-

8517 18

-- Other:

8517 18 10

--- Push button type

u

Free

-

8517 18 90

--- Other

u

Free

-

- 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

-- Base stations

u

10%

-

8517 62

-- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:

u

10%

-

8517 62 10

--- PLCC equipment

u

Free

-

8517 62 20

--- Voice frequency telegraphy

u

Free

-

8517 62 30

--- Modems (modulators-demodulators)

u

Free

-

8517 62 40

--- High bit rate digital subscriber line system (HDSL)

u

Free

-

8517 62 50

--- Digital loop carrier system(DLC)

u

Free

-

8517 62 60

--- Synchronous digital hierarchy system(SDH)

u

Free

-

8517 62 70

--- Multiplexers, statistical multiplexers

u

Free

-

8517 62 90

--- Other

u

10%

-

8517 69

-- Other:

8517 69 10

--- ISDN System

u

Free

-

8517 69 20

--- ISDN terminal adaptor

u

Free

-

8517 69 30

--- Routers

u

Free

-

8517 69 40

--- X 25 Pads

u

Free

-

8517 69 50

--- Subscriber end equipment

u

Free

-

8517 69 60

--- Set top boxes for gaining access to internet

u

Free

-

8517 69 70

--- Attachments for telephones

u

Free

-

8517 69 90

--- Other

u

10%

-

8517 70

- Parts:

8517 70 10

-- Populated, loaded or stuffed printed circuit boards

u

Free

-

8517 70 90

-- Other

Kg

10%

-

10. The following facts would emerge in connection with the subject goods:

(i) The subject cards are to be used in ZTE ZXONE 8000 ('main equipment');

(ii) The main equipment is optical transport network equipment classifiable under CTI 8517 62 90;

(iii) The main equipment consists of a modular chassis i.e., chassis with dedicated slots for various populated printed circuit boards ('Populated PCBs') ('Cards', for short);

(iv) The subject cards have terminal pins on one end which enable connection with the respective dedicated slots in the chassis;

(v) All the cards in the main equipment communicate with each other via backplane interface in the chassis of the main equipment; and

(vi) This backplane interface is proprietary of the manufacturer and not universal. Thus, these cards will function solely with the chassis of the main equipment (when put in the dedicated slots) and will not function with the chassis of any other vendor.

11. According to the appellant, the goods are an integral and inseparable part of the main equipment, which together form the complete main equipment. The goods cannot function on a standalone basis and function only when put in the slot of the main equipment chassis. It is, therefore, the submission that the goods are proprietary to the main equipment. The term 'proprietary', as defined in Newton's Telecom Dictionary, 17th Updated edition, Newton's Telecom Dictionary, 2001, means "something that will only work with one vendor's equipment". The subject cards, the appellant claims, are designed specifically for ZTE ZXONE 8000.

12. It has also been submitted that the main equipment, i.e. optical transport network equipment, has been described by the International Telecommunications Union Recommendations, such as G.709 and G.798, as a telecommunications industry standard protocol that provides an efficient way to transport, switch, and multiplex different services onto high-capacity wavelengths across the optical network. It has commonly been termed as a "digital wrapper" considering the equipment packs each client transparently to be efficiently transported across the network. Within this technological arrangement, the chassis of the main equipment has dedicated slots marked for these cards. These cards become functional when plugged into these slots from where it derives the source power and intelligence.

13. The technical details of the subject goods in dispute have been described in the following manner:

(a) Transponder card: This card sends and receives client-side optical service signals and supports optical-electrical and electro-optical conversion for service signals on the client side and also supports optical-electrical, electro-optical and wavelength conversion for optical signals on the line side. Thus, this card is a passive component which simply does conversion between the electrical and optical mediums. There is no conversion done by this card of the voice/ images/ other data being carried on the signal.

(b) Muxponder card: This card works in an identical manner, except that it has an additional functionality of multiplexing multiple sub-rate client interfaces onto the line interface. Multiplexing involves the combination of multiple signals in a manner that they can be carried on the same physical medium. In this card also, there is no conversion of the voice, images, or other data or information being carried on the signal.

(c) Optical Splitter card: This card splits a single optical input into multiple optical output. This is a passive component and works in conjunction with the other components or cards deployed in the optical transport network equipment chassis.

14. It is now necessary to examine the decisions on which reliance has been placed by learned counsel for the appellant.

15. In Ciena Communications India, the Tribunal held that the goods Hybrid/ Matrix Cards and Small Form Factor Pluggable for OTN equipment are correctly classifiable under 8517 70. The Tribunal also noted that the goods do not perform their function independently, without being fitted in the chassis of the main equipment. It also needs to be noted that while making reference to Section Note 2(b) to Section XVI, the Tribunal held that the goods are classifiable as 'parts'. The Tribunal also relied upon the earlier decision of the Tribunal in Commissioner of Customs, Mumbai (AIR Cargo Import) vs. Reliance Jio Infocomm Ltd. decided on 22.06.2022, which decision was upheld by the Supreme Court in the judgment rendered on 30.01.2023 in Civil Appeal No's. 586-598 of 2023. It also needs to be noted that the Tribunal held, in view of the decision of the Supreme Court rendered on 30.01.2023, that goods of similar nature (Amplifier Cards, Transponder Cards, Muxponder Cards and Optical Add-Drop Multiplexer Cards used in Dense Wavelength Division Multiplexing (DWDM) machines) would be classifiable as parts of DWDM equipment under CTI 8517 70 10. The Division Bench observed that the said cards cannot function without being incorporated in DWDM equipment and accordingly, such cards cannot be considered as independent apparatus.

16. The present matter, therefore, stands concluded by the aforesaid decisions of the Tribunal which have been upheld by the Supreme Court.

17. The following chart will give the classification of goods of similar nature involved in decisions of the Tribunal.

S. No.

Case Title

Goods

Remarks

1

Reliance Jio. Order of the Tribunal dated 29.07.2022 in Customs Appeal No. 88483 of 2018

Small-Form Factor Pluggable (SFP)

Classifiable under 8517 70 as 'Parts'

2

Cienna Communications. Order of the Tribunal dated 18.12.2023 in Customs Appeal No. 86992 of 2021

Transponder, Muxponder and Splitter Card for OTN equipment

Classifiable under 8517 70 as 'Parts'

3

Reliance Jio. Order of the Tribunal dated 22.06.2022 in Customs Appeal No. 88479 of 2018

Transponder and Muxponder Card for DWDM equipment

Classifiable under 8517 70 as 'Parts'

4

Huawei Telecommunications. Order of the Tribunal dated 05.10.2023 in Customs Appeal No. 86186 of 2022

Interface Cards for OTN equipment

Classifiable under 8517 70 as 'Parts'

5

Vodafone Idea. Order of the Tribunal dated 20.09.2022 in Customs Appeal No. 52287 of 2019

Line Cards for Routers

Classifiable under 8517 70 as 'Parts'

18. In terms of applicability of the aforesaid decisions, a summary of similarity between the Cards used for DWDM equipment in these appeals and the main equipment in the instant appeal, i.e. optical transport network equipment is as

follows:–

(i) Modular Architecture – In terms of design, the DWDM equipment and main equipment have scalable and modular architecture. The chassis of both the machines contain dedicated slots in which cards can be plugged.

(ii) Cards used in such equipment are in the nature of PCB Assembly – It is an undisputed fact in the present case as well as the Reliance Jio that the cards incorporated on the chassis of end equipment are in the nature of PCB assembly. Such PCB assembly was held to be classifiable under CTI 8517 70 10 by relying on the decision of the Tribunal Commissioner of Cus., Bangalore vs. Modicom Network Pvt. Ltd, 2005 (185) E.L.T. 333 (Tri - Bang.).

(iii) Cards are parts of equipment which cannot function independently – Similar to subject cards used in the main equipment, the cards used with DWDM equipment are specifically designed for use with the said equipment. Such cards draw power and intelligence from the DWDM equipment and cannot function unless incorporated in the DWDM equipment. The subject cards in the present appeal are dependent on the backplane components of the main component for drawing power and intelligence. Consequently, the subject cards cannot function unless they are incorporated in the main equipment. Thus, the subject cards and the cards of DWDM equipment are different from NIC Cards.

19. Thus, as in the case of cards of DWDM equipment, the subject cards in the present appeal cannot be considered as complete communication apparatus having an independent function. The subject cards cannot function independently without the other components of the main equipment and become functional only when plugged into the slot of modular chassis of the main equipment. Since the subject cards cannot be considered as an 'independent machine', like the machines mentioned under the heading 'Other Communication Apparatus' in HSN Explanatory Notes to CTH 8517, the same will be classifiable as 'parts'.

20. A Division Bench of the Tribunal in Vodafone Idea Limited (Customs Appeal No. 52287 of 2019 decided on 20.09.2022) in the matter of the appellant had examined the classification of router line cards imported for use in Cisco Routers. The Tribunal recorded a finding that in contrast to network interface cards, the cards under consideration were router line cards which were essential for the routers to operate. Thus, the Tribunal held that the correct classification of the cards would be under CTI 8517 70 90 as 'parts' and not CTI 8517 69 90 as 'other communication apparatus'. The Tribunal, while deciding classification, also discussed HSN Explanatory Notes to CTH 8479 which deals with machines having individual function and laid down the following twin test for determining whether an item is classifiable as part:

Test 1 - No separate identifiable function of its own– The Tribunal held that the line cards are proprietary of the original equipment manufacturer and are not cross compatible with devices of other manufacturers but are usable for the purpose for which they are designed. Thus, the cards possess no functionality

other than when used in the dedicated slot designed for them in the primary chassis equipment; and

Test 2 - Incapable of operating independently of the main machine- The Tribunal concluded that until the said cards are slotted in the dedicated slots into the chassis of the equipment, these cards cannot function. Thus, the cards in question could not perform independently of the router.

21. In the present case, the subject goods under dispute are not cross compatible with devices of other manufacturers and hence are solely usable for the pre-determined purpose i.e., usage with the main equipment. Thus, the subject goods also have no separable function of their own. It is also seen that the main equipment has modular chassis i.e., chassis has dedicated slots for the subject goods. Unless the subject goods are slotted in the chassis in their designated slots, the cards do not source power and intelligence and hence cannot operate independently of the main equipment.

22. Thus, the twin tests laid down in Vodafone Idea Limited, are satisfied by the subject cards imported in the instant case and would be classifiable as 'parts' of CTI 8517.

23. This apart, the subject cards are in the nature of Populated PCB. Undisputedly, the main equipment is classifiable under CTI 8517 62 90. The subject cards are not specifically covered under any heading of Chapter 84 or 85. Thus, they do they do not merit classification as per Note 2(a). Sub Heading 8517 70 specifically identifies and recognizes populated PCBs as 'parts'. The subject cards (Hybrid/Pure Matrix Cards) are populated PCB and thus merit classification under CTI 8517 70 10 as 'parts' of goods falling under Heading 8517 by virtue of Section Note 2(b) of Section XVI.

24. HSN Explanatory Notes to CTH 8534 distinguishes PCBs and PCBs mounted with mechanical/ electrical components (i.e., populated PCBs). It clarifies that populated PCBs are classified in accordance with Section Note 2 to Section XVI. It is, therefore, seen that even HSN Explanatory Notes treat populated PCBs as 'parts' of the primary apparatus.

25. In this regard, reliance can be placed on the decision of the Tribunal in Modicom Network, wherein the Tribunal held that the modules in the form of populated PCBs are 'parts' and are correctly classifiable under Sub-Heading 8517 90 and not under Sub-Heading 8517 80 as 'other apparatus'. The said decision was affirmed by the Supreme Court in Commissioner of Cus., Bangalore vs. Modicom Network Pvt. Ltd, 2015 (320) E.L.T. 21 (S.C.).

26. The Principal Commissioner has in paragraphs 83 and 84 of the impugned order incorrectly relied upon General Rules of Interpretation Rule 2(a) to hold that though the subject cards are in the nature of incomplete populated PCBs, but they have the essential character of the network interfacing equipment and, therefore, should be considered as complete machine for the sake of

classification. Since these cards have no capability to function on a standalone basis and were not imported collectively but through separate Bills of Entry, Rule 2(a) of the General Rules of Interpretation cannot be applied to determine classification.

27. The Principal Commissioner also relied on Note 3 to Section XVI to infer that the main equipment is a composite machine consisting of two or more machines fitted together to form a whole. Note 3 will not be applicable as the main equipment does not consist of two or more machines, nor does it consist of machines designed to perform two or more complementary or alternative functions. Thus, reliance placed in the impugned order on Section Note 3 is misconceived.

28. The subject cards are also not NIC cards as was held in Vodafone. The Principal Commissioner committed an error in holding that the subject cards are nothing but NIC cards as like NIC cards connect computer over a network in telecommunication, these cards connect optical transport network equipment over an optical network.

29. Definition of 'Network Interface Card', as given in the Thomas' Concise Telecom & Networking Dictionary, is as under:

"Network interface card (NIC): A network interface device in the form of a circuit card that is installed in an expansion slot of a computer to provide network access. Examples of NICs are cards that interface a computer with an ethernet alien and cards that interface of computer with an FDDI ring network."

30. Attaching a computer to a network requires a NIC to create and mediate the connection between the computer and the networking medium. For incoming data, the NIC must be able to interpret the incoming signals, then convert them into bits and assemble them into frames and to send it to the computer. For outgoing data, the NIC converts frame data received from the computer into bits and transmits these bits to the medium in the correct signal format.

31. Hence, NIC is effectively a translator which allows a computer to communicate with a network by translating the output of the computer into a format understandable by the network and vice versa. If a computer is not to be connected to a network, there is no need for the NIC of the computer to function. A computer is complete in itself and does its job of data processing without any need for NIC.

32. It has been clearly established in Vodafone that NIC cards are distinct and separable from the overall equipment and thus satisfy the twin tests laid down by this Tribunal. Using the analogy laid down in Vodafone, the subject cards which are tailor-made for the main equipment are in contrast to the NIC cards and are very much essential for the main equipment to operate.

33. Thus, the subject cards are not similar in nature to 'NIC Cards' and any reliance on the classification of 'NIC Cards' to determine appropriate classification

for the subject cards is misplaced.

34. Thus, for all the reasons stated above, the subject cards deserves classification under CTI 8517 70 90.

35. The impugned order dated 08.07.2020 passed by the Principal Commissioner cannot, therefore, be sustained is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on 01.07.2024)