

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 51093 OF 2020

(Arising out of Order-in-Original No. 09/VKP(09)ADG(ADJ)/DRI/N.DELHI/2019-20 dated 23.12.2019 passed by the Commissioner of Customs (Air), Chennai-VII Commissionerate, New Custom House, Chennai-600 027)

Commissioner of Customs (Air)
Chennai – VII Commissionerate,
New Customs House,
Meenambakkam
Chennai – 600 027

.... Appellant

VERSUS

M/s. Ingram Micro India Pvt. Ltd.
Empire Plaza Building, 5th Floor,
B-Block, Godrej IT Park, Pirojshanagar
LBS Marg, Vikhroli (W), Mumbai-400079

...Respondent

APPEARANCE:

Shri P.R.V. Ramanan, Special Counsel and Shri Rakesh Kumar, Authorized Representatives of the Department

Shri T. Vishwanathan, Shri Rachit Jain and Shri Ashwani Bhatiya, Advocates for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 24.08.2022
Date of Decision: 12.09.2022

FINAL ORDER NO. 50831/2022

JUSTICE DILIP GUPTA:

The Commissioner of Customs (Air) Chennai-VII Comminssionerate¹ has filed this appeal to assail the order dated 23.12.2019 passed by the Additional Director General (Adjudication), Directorate of Revenue Intelligence, New Delhi², holding that Wireless

1. the Commissioner
2. the Additional Director

Access Points³ imported by M/s. Ingram Micro India Pvt. Ltd⁴ would be classifiable under Customs Tariff Item⁵ 8517 62 90 and accordingly would be entitled to exemption from Basic Customs Duty⁶ under the notification dated 01.03.2005, as amended by the notification dated 11.07.2014. The demand of customs duty for the period from 11.07.2014 to 30.06.2017 has, therefore, been dropped. The penalty imposed upon Ingram Micro as also its Director Material, Blase D'Souza have also been dropped.

2. Ingram Micro is a distributor of Information Technology products. It imported WAP from various suppliers such as Cisco Systems International BV, Aruba Networks International Ltd., Fortinet Singapore Pvt. Ltd, Ruckus Wireless, Symbol Technologies LLC, Juniper Networks (Hong Kong) Ltd. for trading purpose in India and it classified the imported WAP under CTI 8517 62 90 during the period 11.07.2014 to 30.06.2017. According to the appellant, WAP works on Multiple Input/Multiple Output⁷ technology, but does not support Long Term Evolution⁸ standard.

3. It would, therefore, be necessary to state briefly about WAP, MIMO and LTE:

- (i) **WAP:** It is a networking device used for wireless communication within the Local Area Network⁹. It helps in connecting wireless enabled devices such as Laptops, Smartphone, Tablets etc., to a wired network;

3. WAP
4. Ingram Micro
5. CTI
6. BCD
7. MIMO
8. LTE
9. LAN

- (ii) **MIMO:** It is a technology wherein multiple antennas are used simultaneously for transmission and multiple antennas are used simultaneously for reception;
- (iii) **LTE:** In telecommunication, it is a standard for highspeed cellular communication for mobile devices and data terminals. It increases the capacity and speed using a different radio interface together with core network improvements.

4. The issue in this appeal pertains to the availability of exemption from the whole of the customs duty by Ingram Micro under Serial No. 13 of the notification dated 01.03.2005, as amended by notification dated 11.07.2014. The relevant Serial No. 13, as it stood during the relevant period is as follows:

“Exemption to goods of specific heading, from customs duty (ITA Bound). – In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), **the Central Government**, on being satisfied that it is necessary in the public interest so to do, **hereby exempts the following goods of the description as specified in column (3) of the Table below and falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely: -**

Sl. No.	Heading Sub Heading or Tariff Item	Description
(1)	(2)	(3)
13	8517	All goods, except the following: (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 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.
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(emphasis supplied)

5. The Directorate of Revenue Intelligence ¹⁰ conducted an investigation and a show cause notice dated 13.12.2018 was issued to Ingram Micro proposing to deny the exemption from the whole of the customs duty to WAPs imported by it during the relevant period. A summary of the duty sought to be demanded in the show cause notice is as follows:

S. No.	Place of Import	No. of BOEs	Period of Import	Differential Customs Duty Demanded (INR)	Demand within normal period of limitation (in Rs.) (21.12.2016 to 23.06.2017)
1.	Air Cargo Complex, Chennai	673	16.07.2014 to 23.06.2017	4,85,37,039	6,640,402
2.	Air Cargo Complex, Sahar, Andheri (E), Mumbai	375	26.07.2014 to 31.05.2017	3,54,42,995	6,334,383
3.	Air Cargo Complex, New Delhi	74	13.08.2014 to 20.06.2017	70,94,472	411,599
TOTAL		1122	16.07.2014 to 23.06.2017	9,10,74,505	1,33,86,384

6. The show cause notice states that exclusion under Serial. No. 13(iv) applies to either of the products, namely MIMO products or LTE products for the reason that from a plain reading of the

10. DRI

notification, it is clear that exemption has been denied on two types of products i.e. MIMO products and LTE products. As there are only two types of products at Serial No. (iv) of the notification, the conjunctive 'and ' has been used without using the term 'product' for both the items. Further, if the purpose was to apply the said condition on products having both MIMO technology and LTE standards, then Serial No. 13(iv) would have read as follows:

- (i) LTE products having MIMO technology
- OR
- (ii) LTE products with MIMO technology

7. Secondly, the show cause notice notes that between the words 'MIMO' and 'LTE', 'and' is placed but it is not followed by a comma. The show cause notice places reliance on the judgment of the Supreme Court in **Shree Durga Distributors vs. State of Karnataka**¹¹.

8. The show cause notice also invokes the extended period of limitation contemplated under section 28(4) of the Customs Act, 1962¹², apart from the proposals for confiscation of imported goods under section 111 (m), penalties under sections 112 and/or 114AA and 114AA of the Customs Act. Further, it proposes to impose personal penalty on Blase D'Souza, Director Material of Ingram Micro under sections 112 and 114AA of the Customs Act.

9. The show cause notice was adjudicated upon by the Additional Director, in favour of Ingram Micro for the following reasons:

- (i) The exemption from the whole of the customs duty is available on the imported WAP that are

11. 2007 (212) E.L.T. 12 SC
12. the Customs Act

undisputedly MIMO enabled but without LTE standard;

- (ii) To treat 'MIMO and LTE products' as three categories namely only MIMO, only LTE, and both MIMO and LTE, would amount to violation of language itself and the principles stipulated in the judgment of the Supreme Court in **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Co.**¹³;
- (iii) The judgment of the Supreme Court in **Shree Durga** is not applicable since it is silent on a possible situation where set of two words having 'and' in between them, are not followed by 'comma' but by a 'full stop';
- (iv) There is no ambiguity as far as Serial No. 13 (iv) is concerned and Ingram Micro has satisfactorily discharged the onus for its claim; and
- (v) Ingram Micro has not willfully suppressed any information with respect to MIMO because of presence of words 802.11 in all the Bills of Entry as 802.11, which refers to IEEE Standards for MIMO.

10. Thus, all the proposals made in show cause notice, including confiscation, penalties on Ingram Micro and penalties on Blase D'Souza have been dropped.

11. Shri P.R.V. Ramanan, learned special counsel appearing for the Department and Shri Rakesh Kumar, learned authorized representative appearing for the Department made the following submissions.

13. 2018 (361) E.L.T 577 (SC)

- (i) The expression 'Multiple Input/Multiple Output (MIMO)' appearing before 'and' does not by itself mean anything. Since the exception carved out has to be 'goods', this expression has to be interpreted to connote products based on MIMO technology;
- (ii) The expression 'products' appearing after LTE has to be read with 'MIMO' to mean and cover MIMO products. Further, 'products' being the common factor for both MIMO technology and LTE, the expression 'and' has been used in a conjunctive way to cover individually MIMO products and LTE products;
- (iii) Accordingly, WAP being MIMO products, by virtue of use of MIMO technology in them, would fall within the exclusion clause;
- (iv) The expression 'and' is sought to be interpreted by Ingram Micro as if it is a conjunctive between a technology and a standard and accordingly, the products arising out of such a combination alone would be hit by the exclusion clause. If this was the intent behind the said exclusion clause, then the expression used would have simply been 'LTE products with or having MIMO technology';
- (v) MIMO technology is a sub-set technology of LTE architecture, protocols and system. Further, it is not mandatory to have both MIMO and LTE;
- (vi) Argument that WAP is essentially an Information Technology device and as the exclusion clause is meant to cover only telecom equipment and devices, WAP cannot be excluded from the exempted category is misconceived;

- (vii) WAP is at the terminal point of the radio communication systems, which is both external and internal to a building or large spaces etc., in its spread. It is very much a part of the radio communications systems; and
- (viii) TRAI, in its recommendations on Telecom Equipment Manufacturing Policy dated 12.04.2011 has regarded Wi-Fi WAP as a broad band equipment under the category of Telecom equipment. Further, the notification dated 05.10.2012 issued by the Department of Telecommunications, following the policy of preferential treatment to indigenous manufacturers in Government purchases, has categorized WAP as 'Wi-Fi based broadband wireless access systems'. The amendment made by the notification has taken out specified telecom products for increasing the BCD to 10% and this includes Wi-Fi based WAP.

12. Shri T. Vishwanathan, learned counsel assisted by Shri Rachit Jain and Shri Ashwani Bhatiya, Advocates appearing for Ingram Micro made the following submissions:

- (i) The exclusion clause (iv) under Serial No. 13 of notification covers MIMO and LTE products. The sole dispute in the instant case is whether this exclusion clause covers products having only MIMO technology and not working on LTE standard. Exclusion clause (iv) uses the conjunction 'and' and, therefore, the scope of clause (iv) is restricted to those products that have MIMO and LTE both.

The product that only has MIMO technology would not be covered by this exclusion clause and thus cannot be excluded from the scope of Serial No. 13. Clause (iv) cannot be read as 'MIMO or LTE products', or 'MIMO products and LTE products'. In support of this contention reliance has been placed on the decision of the Tribunal **British Health Products (I) Ltd. vs. Collector of Central Excise, New Delhi**¹⁴ which was affirmed by the Supreme Court in the judgment reported in 2001 (133) ELT A160 and on the judgment of the Punjab and Haryana High Court in **Commissioner of Central Excise, Panchkula vs. Kulcip Medicines (P) Ltd.**¹⁵;

- (ii) Interpretation of other entries covered by Serial No. 13 of the notification substantiates that the entry at (iv), as worded during the subject period, excludes only products having both MIMO as well as LTE;
- (iii) MIMO is a technology and, therefore, cannot be treated as an independent product. Thus, if the intention was to exclude even products having only MIMO technology, then the word 'products' should have been used after MIMO as well as after LTE. Therefore, the scope of products currently excluded by entry (iv) would be products which use MIMO and LTE. Thus, the term 'Multiple Input/Multiple Output (MIMO)

14. 1999 (107) ELT 642 (Tribunal)

15. 2009 (14) S.T.R. 608 (P&H)

and Long Term Evolution (LTE) products' means products which contain both MIMO and LTE;

- (iv) A Bench of the Tribunal of Chennai in **M/s. Ingram Micro India Private Ltd. vs. The Commissioner of Customs**¹⁶, has confirmed the classification of identical product (i.e. WAP) under CTI 8517 62 90 and extended the benefit of the subsequent notification dated 30.07.2017. The Department has accepted the decision of the Tribunal. Therefore, once the benefit has been granted to Ingram Micro in the subsequent notification for the identical product, the benefit under the notification dated 01.03.2005, as amended on 11.07.2014, should also be extended;
- (v) India is a signatory to the Information Technology Agreement dated 13.12.1996 by the World Trade Organization. The Information Technology Agreement requires each participant to eliminate and bind customs duties at zero for all products specified in the Agreement. India signed the Agreement on 01.07.1997. Pursuant to Information Technology Agreement, India introduced the notification. At the time of introduction, all goods falling under Customs Tariff Heading¹⁷ 8517 were exempted from payment of duties. In 2014, on specified telecommunication products that were not covered under the Information Technology Agreement, the Government imposed customs

16. Customs Appeal No. 41694 of 2019 decided on 26.10.2020

17. CTH

duties by notification dated 11.07.2014. The Finance Minister's Budget Speech for the year 2014-15 and Tax Research Unit letter dated 10.07.2014 clarifies that BCD on specified telecommunication products not covered under the Information Technology Agreement is being increased from NIL to 10%. As WAP is an Information Technology product and is specifically covered under the Information Technology Agreement as 'Network Equipment' in Attachment B, the intention is clearly not to exclude WAP imported by Ingram Micro;

- (vi)** Exclusions in any notification are to be narrowly construed;
- (vii)** No words can be added to the present wording of the notification;
- (viii)** Subsequent amendments made in 2021 in another notification no. 57/2017-CUS., supports the interpretation place by Ingram Micro;
- (ix)** The extended period of limitation could not have been invoked in the facts and circumstances of the present case; and
- (x)** Confiscation and penalties are not invokable.

13. The submissions advanced by learned special counsel for the Department and the learned counsel appearing for the respondent have been considered.

14. The factual position that emerges is:

- (a) MIMO is a technology and LTE is a standard;

- (b) WAP imported by Ingram Micro has only MIMO technology and not LTE;
- (c) WAP is classified under CTI 8517 6290;
- (d) The following products may exist:
 - (i) MIMO products, which do not work with LTE standard
 - (ii) Products which work on LTE standards
 - (iii) Products having both MIMO and LTE technology
- (e) Ingram Micro has been paying full duty without claiming exemption under the notification on goods that have both MIMO technology and LTE standard.

15. What needs to be decided in the present appeal is regarding the availability of the exemption from the whole of the customs duty claimed by Ingram Micro under the notification. The Central Government, by the said notification, exempted the goods described in column (3) of the Table when imported into India, from the whole of the duty of customs leviable thereon. Serial No. 13 of heading 8517 exempts all goods, except those mentioned in (i), (ii), (iii) and (iv). Ingram Micro had claimed exemption under Serial No. 13 (iv) which is:

“(iv) Multiple Input/Multiple Output (MIMO) **and** Long Term Evolution (LTE) Products.”

(emphasis supplied)

16. A bare perusal of the exclusion clause (iv) under Sl. No. 13 of notification shows that it covers MIMO and LTE products. The sole dispute in this appeal is whether this exclusion clause covers products having only MIMO technology and not working on LTE standard. Exclusion clause (iv) uses the conjunction ‘and’ and, therefore, it can be urged that the scope of clause (iv) can be restricted to those products that have MIMO and LTE both and that the product that only has MIMO technology may, therefore, not be covered by this exclusion

clause and, therefore, may not be excluded from the scope of Serial No. 13.

17. The contention of the Department is that 'and' should be read as 'or' in clause (iv) so that it would cover MIMO products or LTE products. The contention advanced on behalf of Ingram Micro is that since the exclusion clause (iv) uses the conjunction 'and' its scope would be restricted to those products that have both MIMO and LTE. Thus, according to Ingram Micro a product that has only MIMO technology would not be covered by the exclusion clause and, therefore, would not be excluded from the scope of Serial No. 13 (iv).

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

19. It needs to be remembered that 'and' is a conjunctive and is used to connect and join. The dictionary meaning of 'and' is as follows.

"The New International Webster's Comprehensive

Dictionary of the English Language: And: Also; added to; as well as; a particle denoting addition, emphasis, or union, used as a connective between words, phrases, clauses, and sentences; shoes and ships and sealing wax ...

Or: Introducing an alternative: stop or go: red or white.

Oxford Dictionary of English, Third Edition: And:

Used to connect words of the same part of speech, clauses or sentences, that are to be taken jointly; bread and butter they can read and write a hundred and fifty.

Or: Used to link alternatives: a cup of tea or coffee are you coming or not either take taxis or walk everywhere...

Collins Cobuild English Dictionary for Advanced

Learners: And: You can use 'and' to link two or more words, groups, or clauses. When he returned, she and Simon had already gone...

Or: You can use 'or' to link two or more alternatives. Tea or coffee?...

Cambridge Advanced Learner's Dictionary, Fourth

Edition: And: Used to join two words, phrases, parts of sentences, or related statements together:

Ann and Jim; Boys and Girls; Knives and Forks

And/ or used to mean that either one of two things or both of them is possible: Many pupils have extra classes in the evenings and/or at weekends.

Or: Used to connect different possibilities. Is it Tuesday or Wednesday today?"

20. It is also seen that the word 'products' is not used after the words 'Multiple Input/Multiple Output (MIMO)'. Infact, 'and' is used after the words 'Multiple Input/Multiple Output (MIMO)'. It is seen that in entry (iii) of the same Serial No. 13 of notification, every technology is followed by the word 'products':

"Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-transport Profile (MPLS-TP) products;"

21. Learned special counsel for the appellant contended that clause (iv) would effectively mean and cover two categories of products, namely, (i) Multiple Input/Multiple Output (MIMO) products and (ii) Long Term Evolution (LTE) products and that MIMO products and LTE products are products which have distinct identities. Learned special counsel also contended that the expression 'Multiple Input/Multiple Output (MIMO)' appearing before 'and' does not, by itself, mean anything unless it is followed by expressions like 'technology' or 'products'. Since the exception carved out has to be 'goods', this expression has to be interpreted to connote products based on MIMO technology. Thus, the expression 'products', appearing after 'LTE' has

to be read with 'MIMO' to mean and cover MIMO products. Further, 'products' being the common factor for both MIMO technology and LTE standard, the expression 'and' has been used in a conjunctive way to cover individually MIMO products and LTE products. Learned special counsel, therefore, contended that as there are only two types of products at Serial No. 13 (iv), the conjunctive 'and' has been used without using the term 'products' twice. There is, therefore, no ambiguity and the expression "Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) Products" denotes Multiply Input/Multiple Output (MIMO) products on the one hand and Long Term Evolution (LTE) products on the other. There is, therefore, no need to refer to the World Trade Organisation ITA.

22. Though it is correct that clause (iv) would effectively mean include two categories of products namely MIMO and LTE and that they have distinct identities, but it is not possible to accept the contention advanced by learned special counsel for the Department that MIMO does not by itself mean anything unless it is followed by the expressions 'technology' or 'products' and, therefore, since the exception carved out has to be 'goods', this expression has to be interpreted to connote products based on MIMO technology.

23. What needs to be remembered is that MIMO is a technology and cannot be treated as an independent product. If the intention was to exclude even products having only MIMO technology, then the word 'products' should have been used after MIMO as well as after LTE. It, therefore, follows that the scope of 'products' excluded by entry (iv) would be products which use both MIMO and LTE. Thus, the term 'Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE)

Products' means products which contain both MIMO and LTE. This view finds support from the following decisions.

24. In **British Health Products**, a Division Bench of the Tribunal held as follows:

"7. We have carefully considered the pleas advanced from both sides. **From a reading of Tariff Heading 19.01, we observe that the expression used in relation to food preparation of milk and cream is "milk" and "cream". The word 'and' is generally used in the sense of conjunctive word. Therefore Id. Advocate submits rightly that the word has been used in conjunctive sense in the tariff heading.** This sense is also apparent if we look into the first part of the Tariff heading where a reference has been made to the disjunctive word 'or' in the expression preparation of flour, meal, starch or malt extract under Tariff Heading 19.01. Hence the expression "milk and cream" in the second portion of the Tariff Heading 19.01 would mean that both milk and cream should be present in the food preparation classifiable under the said heading. We do not agree with the plea of the Id. JDR that by use of "whole milk powder" and "cream" being necessarily contained in the whole milk powder, the preparation should be deemed to have contained both milk and cream. The two products, viz., "milk" and "cream" are commercially known differently. **When the Tariff heading uses names of two different commercial commodities joined by a conjunctive word, the preparation must contain those commodities in their natural form as available in the market.** There are preparations which are made of both milk and cream. One of the examples given by the Id. Advocate, is, 'Gulab Jamum' being a preparation of milk and cream."

(emphasis supplied)

25. The Punjab and Haryana High Court in **Kulcip Medicines** also observed as follows:

"11. **The question which falls for consideration is whether word 'and' used after the word 'clearing' but before the word 'forwarding' at two places in clause (j) be considered in a conjunctive sense or disjunctive sense.** It appears to be fairly well settled that

the context and intention of legislature are the guiding principles. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of Mazagaon Dock Ltd. v. CIT (1958) 34 ITR 368. **By necessary intendment the expression 'a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner' contemplates only one person rendering service as 'clearing and forwarding agent' in relation to 'clearing and forwarding operations'. To say that if, one person has rendered service as 'forwarding agent' without rendering any service as 'clearing agent' and he be deemed to have rendered both services would amount to replacing the conjunctive 'and' by a disjunctive which is not possible."**

(emphasis supplied)

26. A Division Bench of the Tribunal in **Ingram Micro India** in the matter of the appellant also confirmed the classification of identical product (i.e. WAP) under CTI 8517 62 90 and extended the benefit of the subsequent notification dated 30.07.2017. The Department has accepted the Order passed by the Tribunal. Therefore, once the benefit has been granted to Ingram Micro in the subsequent notification for an identical product, the benefit under the notification dated 01.03.2005, as amended on 11.07.2014 should also be extended to Ingram Micro.

27. This apart, what also needs to be noted is that India is a signatory to the Information Technology Agreement ¹⁸ dated 13.12.1996 by the World Trade Organization. The ITA requires each participant to eliminate and bind customs duties at zero for all products specified in the Agreement. India signed the Agreement on 01.07.1997. Pursuant to ITA, India introduced the notification. At the time of introduction, all goods falling under CTH 8517 were exempted from payment of duties. In 2014, on specified telecommunication products that were not covered under the ITA, the Government imposed customs duties by notification dated 11.07.2014. The Finance

18. ITA

Minister's Budget Speech for the year 2014-15 and Tax Research Unit letter dated 10.07.2014 clarify that BCD on specified telecommunication products not covered under the ITA was being increased from NIL to 10%. As WAP is an Information Technology product and is specifically covered under the ITA as 'Network Equipment' in Attachment B, the intention was clearly not to exclude WAP imported by Ingram Micro. The Network Equipment as defined in Annexure-B includes LAN and Wide Area Network ¹⁹ apparatus, including those products dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units - including adapters, hubs, in-line repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof. Imported WAP is a networking equipment working in LAN connecting Wi-fi enabled devices such as laptops, smartphones, tablets, etc. to a wired network. Thus also, imported WAP is entitled to the exemption from the whole of the customs duties under the ITA.

28. It is also well settled law that an exclusionary clause in an exemption notification should be strictly construed and must be given a narrow meaning so as to not frustrate the intention behind the exemption notification. In this regard, reliance can be placed on the decision of Supreme Court in **Pappu Sweets and Biscuits** versus

19. WAN

Commissioner of Trade Tax, U.P., Lucknow²⁰, wherein the Supreme Court observed:

“10. The notification further discloses that the object of declaring exemption from payment of sales tax was to increase industrial activity within the State by encouraging setting up of new industrial units or expansion, diversification or modernization by the existing industrial units. At the same time the State did not desire to extend that benefit to all such industries. It was therefore specifically stated in the notification that industries mentioned in Annexure II shall not be entitled to the benefit of exemption from payment of tax or reduction in rate of tax. Presumably, the State did not desire further growth of such industries by suffering loss of revenue. What is however necessary to note is that Annexure If is an exclusionary part of exemption notification. **The High Court did not examine the issue from this angle and also failed to appreciate that exclusionary part of an exemption notification has to be construed rather strictly. Even though the word used in exclusionary part of an exemption notification has a wide dictionary meaning or connotation, only that meaning should be given to it which would achieve rather than frustrate the object of granting exemption and which does not lead to uncertainty or unintended results.**”

(emphasis supplied)

29. It has been stated that the investigation by the DRI was not only against Ingram Micro but few other importers of these goods also and the proceedings initiated against other importers was dropped but appeals have not been filed by the Department.

30. The aforesaid discussion leads to be inevitable conclusion that WAP imported by the appellant works on technology and does not support LTE standard. Ingram Micro was, therefore, justified in claiming exemption from the whole of the customs duty under Serial

20. 1998 (10) TMI 452-Supreme Court

No. 13 (iv) of the notification. There is, therefore, no infirmity in the order dated 23.12.2019 passed by the Additional Director.

31. Such being the position, it would not be necessary to examine the other contentions raised by the learned counsel for the respondent, including the submission relating to the invocation of the extended period of limitation.

32. The appeal filed by the Department, therefore, deserves to be dismissed and is dismissed.

(Order Pronounced on 12.09.2022)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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...Respondent

APPEARANCE:

Shri P.R.V. Ramanan, Special Counsel and Shri Rakesh Kumar, Authorized Representatives of the Department

Shri T. Vishwanathan, Shri Rachit Jain and Shri Ashwani Bhatiya, Advocates for the Respondent

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

Date of Hearing: 24.08.2022

ORDER

Order Pronounced on **12.09.2022**.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(C.J. MATHEW)
MEMBER (TECHNICAL)**