CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 51799 OF 2024

[Arising out of Order in Original No. 20-22/2023/VCG/Pr. Commissioner/ICD-Import/TKD dated 23.08.2023 passed by the Principal Commissioner of Customs (ICD) Import, Tughlakabad, New Delhi]

GX INDIA PVT LTD **.....APPELLANT**

(formerly known as "Genexis India Pvt Ltd.")
401, 4th Floor, JMD Regent Plaza, M.G. Road,
Gurugram, Haryana-122001

Vs.

PRINCIPAL COMMISSIONER OF CUSTOM IMPORT-NEW DELHI ICD TKD **.....RESPONDENT**

Inland Container Depot,
Tughlakabad, New Delhi-110020

WITH

CUSTOMS APPEAL NO. 51800 OF 2024

[Arising out of Order in Original No. 20-22/2023/VCG/Pr. Commissioner/ICD-Import/TKD dated 23.08.2023 passed by the Principal Commissioner of Customs (ICD) Import, Tughlakabad, New Delhi]

GX INDIA PVT LTD **.....APPELLANT**

(formerly known as "Genexis India Pvt Ltd.")
401, 4th Floor, JMD Regent Plaza, M.G. Road,
Gurugram, Haryana-122001

Vs.

PRINCIPAL COMMISSIONER OF CUSTOM IMPORT-NEW DELHI ICD TKD **.....RESPONDENT**

Inland Container Depot,
Tughlakabad, New Delhi-110020

AND

CUSTOMS APPEAL NO. 51841 OF 2024

[Arising out of Order in Original No. 20-22/2023/VCG/Pr. Commissioner/ICD-Import/TKD dated 23.08.2023 passed by the Principal Commissioner of Customs (ICD) Import, Tughlakabad, New Delhi]

GX INDIA PVT LTD **.....APPELLANT**

(formerly known as "Genexis India Pvt Ltd.")
401, 4th Floor, JMD Regent Plaza, M.G. Road,
Gurugram, Haryana-122001

Vs.

PRINCIPAL COMMISSIONER OF CUSTOM IMPORT-NEW DELHI ICD TKD **.....RESPONDENT**

Inland Container Depot,
Tughlakabad, New Delhi-110020

Appearance:
Shri A.K. Prasad, Ms. Surbhi Sinha, Advocates for the Appellant
Shri Nikhil Mohan Goyal, Authorised Representative for the Respondent

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

FINAL ORDER NO'S. 50954-50956 /2026

DATE OF HEARING : 20/03/2026
DATE OF DECISION: 20/05/2026

P.V. SUBBA RAO

1. M/s GX India Pvt. Ltd.[1] filed these three appeals to assail the order dated 23.08.2023[2] passed by the Principal Commissioner of Customs, Inland Container Depot[3], Tughlakabad in which he decided the proposals made in three show cause notices issued by the ICD Tughlakabd, New Delhi, Air Cargo Complex, New Delhi and ICD Patparganj, New Delhi as follows:

Sr No	Port of Import	SCN	SCN date	Period involved	Amount involved (in Rs.)
1	ICD, TKD, New Delhi	129/Commr/ICDTKD **(SCN-I)**	14.09.2022	March 2019 to January 2021	17,27,13,319/-
2	ACC (Import), New Delhi	09/022-23 **(SCN-II)**	12.05.2022	July 2017 to Jan. 2021	8,46,64,348/-

1 The appellant
2 Impugned order
3 ICD

3	ICD, PPG, New Delhi	VIII(6)/ICD/PPG/SCN/GX/India/112/2021-22/2625 **(SCN-III)**	06.04.2022	06.12.2018	10,54,966/-
	Total				**25,84,32,633/-**

2. The appellant is in the business of software Development as well as manufacture, import and trading of Information and Communication Technology[4] products as well as network products to internet service providers and consumers. The dispute in this case relates to the nature, classification and eligibility of exemption notification of the following two products imported by the appellant:

(i) Optical Network Terminals (ONT)/ Optical Network Units(ONU) (home gateway units) which the appellant classified under **Customs Tariff Item[5] 8517 69 50** as "subscriber end equipment" and claimed full exemption from duty under Notification No. 24/2005-Cus dated 01.03.2005 (Sr No. 13B); and

(ii) Optical Line Terminals (OLT) which the appellant classified under **CTI 8517 69 90** as "other" and claimed partial exemption under Notification No. 57/2017-Cus dated 30.06.2017 (Sr No. 20)

3. The **Directorate General Revenue Intelligence[6],** Kochi investigated these imports and thereafter the department came to the view that ONT/ONU were correctly classifiable under **CTI**

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4 ICT
5 CTI
6 DRI

8517 62 90 and, therefore, they were not eligible for exemption under Notification No. 24/2005-Cus dated 01.03.2005(Sr. No. 13B) as claimed by the appellant.

4. DRI came to the view that **OLT** were correctly classifiable under **CTI 8517 62 90** and as they were nothing but optical transport equipment and, therefore, they were also not eligible for Exemption Notification No. 57/2017-Cus dated 30.06.2017 (Sr No. 20).

5. After completion of the investigation by DRI, the jurisdictional Officers of the three customs stations (ICD TKD, ACC Delhi and ICD PPG) issued the three show cause notices indicated above in respect of the imports made through the respective ports.

6. The show cause notices proposed re-classification of the imported goods as above, denial of exemptions and recovery of the differential duty invoking extended period of limitation under section 28(4) the Customs Act, 1962[7] along with interest under section 28 AA of the Act. They also proposed confiscation of the goods under Section 111 (m) of the Act and imposition of penalties under Section 114A and Section 114AA of the Act. The notices also proposed also imposing penalties on the others such as the customs brokers, clearing and forwarding agents, etc.

7. In the impugned order, the Commissioner only confirmed the demand with interest and imposed penalties under sections

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7 Act

114A and 114AA of the Act on the appellant. He did not impose any penalty on the other noticees. The Commissioner held that the imported goods were liable to confiscation under section 111(m)of the Act but did not impose any redemption fine as the imported goods were not available for confiscation.

8. We have heard Shri A.K. Prasad, learned counsel for the appellant and Shri Nikhil Mohan Goyal, learned authorized representative appearing for the department and perused the records.

Submissions of the appellant

9. Shri A K Prasad, Learned counsel for the appellant made the following submissions:

(i) The impugned order did not discuss any reasons given by the appellant as to why the goods in dispute could not be classified under **CTI 8517 62 90**.

(ii) In paragraphs 5.3.2 to 5.3.6 of the impugned order, the Commissioner discussed various technical aspects of what is a telecom network but did not cite any technical literature or source in support of his contention. He also did not rely on any technical opinion to substantiate his observations.

(iii) The appellant has sought technical opinion of expert of Shri Ravinder Kumar Mishra, retired Deputy Director General, Department of Telecommunication on each of the

imported goods whose report has not been referred to in the impugned order, let alone, countering it. For this reason also the impugned order is not correct.

(iv) The appellant also relied on by the Customs Advance Ruling Authority, Mumbai, ruling dated 20.01.2022 in the case of **Netlink (P) Ltd.** to assert that the ONT is classifiable under **CTI 8517 69 50** and the appellant was entitled to exemption under Notification 24/2005-Cus dated 01.03.2005 (Sr No. 13B) but the Commissioner did not follow the Advance Ruling. Further Revenue's Writ Petition No. 12398 of 2022 before Madras High Court assailing the above Advance Ruling has since been dismissed by the High Court.

(v) In the reply to the Show Cause Notices, the appellant also referred to document dated 22.4.2022 of the Telecom Regulatory Authority of India (TRAI) wherein ONT has been referred to as 'subscriber end equipment' or 'Customers premises equipment'. However, the Commissioner did not accept the contention that they need to be classified under the residuary heading "other" under **CTSH 8517 69** and **CTI 8517 69 50.**

(vi) In the reply to the show cause notice the appellant referred to two orders passed by the Principal Commissioner of Customs (Adjudication) Mumbai on the classification of ONT/ONU products in which it was held that they were

classifiable under **CTI 8517 69 50** as 'subscriber end equipment' but the Commissioner did not follow them. The two decisions which are as follows:

- **15/SJ(15)/PCC(Adjn)/Mumbai/2022-23 dated 26.12.2022** relating to the imports by **M/s. Reliance Retail Ltd**.,
- **18/SJ(15) PCC(Adjn)/Mumbai/2022-23 dated 30.12.2022** relating to imports by **M/s Optilink Network Pvt Ltd.**

(vii) The case of **Reliance Retail Ltd.** above was assailed before CESTAT, Mumbai by both Revenue and the assessee and by Final Order dated 17.04.2025 the department's appeal was dismissed and the appeal of the appellant was allowed.

(viii) The case of the department is that ONU/ ONT and OLTs were optical transport network (OTN)products/ equipment appropriately classifiable under **CTI 8517 62 90**. Before classifying the product, its correct nature must be ascertained. The Commissioner did not, in the impugned order, give any findings as to why the above equipment were optical transport network/ equipment but has directly decided the classification.

(ix) The appellant claimed a particular classification or exemption Notification as per his understanding and it does not amount to mis-declaration or willful mis-statement of suppression of facts to invoke extended period of limitation. Even in his statement, Shri Magan Swaroop Gattani,

Managing Director of the appellant clarified that they genuinely believed that the classification and exemption notification claimed by them were correct.

(x) The Commissioner should have followed the decision of the Commissioner (Adjudication) Mumbai.

(xi) Claiming a particular classification or exemption notification, even if it is found to be not correct does not render the goods liable to confiscation under section 111(m) of the Act. Penalty under section 114AA can be invoked only against the individual and not the corporate entity.

(xii) In view of the above, the appeals may be allowed and the impugned order may be set aside.

Submissions of the Revenue

10. Shri Nikhil Goyal, Learned authorized representative for the revenue vehemently supported the impugned order and submitted as follows:

(i) The appellant imported ONT/ONUs and classified them under **CTI 8517 69 50** and claimed the benefit of Notification No. 24/2005-Cus (Sr No. 13B) and classified ONTs under **CTI 8517 69 90** claiming the benefit of exemption notification no. 57/2017-Cus (Sr No. 20). The appellant's claim is that ONT/ONUs were subscriber end equipment while OLTs were "Others".

(ii) DRI, Cochin initiated an investigation and found that ONT/ONUs and OLTs were, *prima facie*, in the nature of optical transport network products. Consequently, the

department proposed in the SCNs that the goods should be classified under **CTI 8517 62 90**. Accordingly, the Commissioner, in the impugned order, confirmed the demand of differential duty and imposed an equivalent amount of penalty under section 114A of the Act and a penalty of Rs. 6 crores under section 114AA of the Act.

(iii) Fiber to the home and fiber to the business (FTTX-FTTH:FTTB) is a technology that delivers communication signals from a central point to the individual customer over optical fibers. The two important types of systems through which FTTX (broadband) connections are provided Active Optical Network (AON) and passive optical network (PON). In AON, the signal is transmitted using a photoelectric conversion device, active components, and fiber optics. It enables point to multipoint optical communication for a variety of industrial applications such as optical fiber transmission lines and optical remote terminals.

(iv) PON is an optical distribution network (ODN). It does not use any active devices or components for its operations and does not require power sources. There are two PON standards-Gigabit Passive Optical Network (GPON) and Ethernet Passive Optical Network (EPON).

(v) EPON is the technology used to provide high broad band connectivity using Ethernet as medium of communication between the central office and the customer premises. GPON is a point to multipoint access network. It

uses passive splitters in the fiber distribution network enabling one single feeding fiber from the service provider to service multiple homes and small businesses. It relies on fiber optic cables to deliver video, data and voice signals.

(vi) GPON consists of three important components, namely, Optical Line terminal (OLT), Optical Network Terminal (ONT) and Optical Distribution Terminal (ODN). ONT is a broad band telecommunication terminating device installed with the customer's premises. It acts as an interface with the user's equipment. Further, ONT functions as an optical modem that connects to an ISP via a fiber optic cable. On the upstream channel, the ONT delivers user data to the OLT, and on the downstream channel, it receives data from the OLT and supplies to the customer's devices and equipment.

(vii) ODN refers to the infrastructure within a passive optical network (PON) which distributes optical signals from the central office (CO) to multiple customers' premises. In PON architectures like EPON and GPON, the ODN plays a crucial role in ensuing efficient and reliable data transmission.

(viii) **Customs Tariff Sub-heading 8517 62** includes machines for reception, conversion and transmission or regeneration of voice, images and other data, including switching and routing apparatus. Under this sub-heading, **CTI 8517 62 90** refers to 'other' under which the

department seeks to classify ONT. The appellant classified it under **CTI 8517 69 50** as "subscriber end equipment".

(ix) Customs Tariff Heading **8517** has three customs tariff sub-headings:

8517 61 – base stations

8517 62- machines for reception conversion and transmission or regeneration of voice, images and other data including switching and routing charges,

8517 69 – other goods.

(x) Only if the ONT/ONU and OLT imported by the appellant do not fall under 8517 61 or 8517 62 can they fall under the residual category 8517 69. Since the ONT and ONU and OLT are all machines for reception converstion and transmission of data they squarely fall under **Customs Tariff sub-heading 8517 62** and not under the residual category of **8517 69. CTI 8517 69 50** and **CTI 8517 69 90** are both sub-sets of **CTSH 8517 69**. Only such 'subscriber end equipment' which do not fall under **CTSH 8517 61** or **CTSH 8517 62** will be covered under residuary **CTSH 8517 69**. Since the imported goods fall **under 8517 62,** they cannot fall under **8517 69**. Likewise, the ONT imported by the appellant cannot fall under **8517 69 90** because they are also machines work for reception and transmission of data. Therefore, they fall under **8517 62**.

(xi) Notification No. 24/2005-Cus dated 01.03.2005 issued by the Ministry of Finance exempted all goods falling under 8517 from the basic customs duty. Later, in the Budget 2014-15 10% duty was imposed on telecommunication products falling outside the purview of the Information Technology Agreement (ITA)in order to boost domestic production and reduce dependence on imports. The Finance Minister speech while introducing in the Finance Bill No. 2, 2014 dated 11.07.2014 excluded the following from the exemption.

i. Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers;

ii. Optical transport equipment, 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; and

iv. Multiple Input/Multiple Output (MIMO) and Long term evolution (LTE) products.

(xii) In view of the above, the classification of the goods in the impugned order is correct and calls for no interference. Consequently the confirmation of demand of differential duty and imposition of penalties also need to be upheld.

Therefore, all the three appeals may be dismissed and the impugned order may be upheld.

Findings

11. We have considered the submissions advanced by both sides and perused the records.

12. The issues to be decided by us are:

(i) whether the ONT/ONUs and OLTs imported by the appellant are classifiable under **CTI 8517 62 90** (as held in the impugned order) or under CTI 8517 69 50 (OLT) (as asserted by the appellant);

(ii) whether the appellant was entitled to the benefit of the Notification No. 24/2005-Cus as amended (S.No. 13A) on ONT/ONU and Notification No. 57/2017-Cus (S.No. 20) on OLT as claimed by the appellant or not;

(iii) whether extended period of limitation was correctly invoked in this case raising the demand under section 28(4) of the Act; and

(iv) whether penalties on the importer have been correctly imposed in the impugned order.

Classification

13. Duties of customs are to be paid as per the Customs Tariff. It is divided into sections and chapters within each section. Each chapter is further divided into four-digit customs tariff headings (CTH) and further into six-digit Customs Tariff sub heading (CTSH) and still further into eight-digit Customs Tariff items (CTI).

14. Goods should be classified as per the Customs tariff headings, sub-headings and tariff items read with any section notes or chapter notes. In this case, there is no dispute that the goods fall under the four-digit **CTH 8517**. There are no relevant section notes or chapter notes and none have been relied upon by either side. What is in dispute is the further classification within **CTH 8517**. The portion of the customs tariff related to **CTH 8517** is reproduced below:

Tariff Items	Description of goods
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
-	Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks:
-	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)
851761 00	--base stations
8517 62	--**Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:**
8517 62 10	--- PLCC equipment
8517 62 20	--- Voice frequency telegraphy
8517 62 30	--- Modems (modulators-demodulators)
8517 62 40	--- High bit rate digital subscriber line system (HDSL)
8517 62 50	--- Digital loop carrier system (DLC)
8517 62 60	--- Synchronous digital hierarchy system (SDH)
8517 62 70	---Multiplexers, statistical multiplexers
8517 62 90	**--- Other**
8517 69	**-- Other**
8517 69 20	--ISDN System
8517 69 20	-- ISDN terminal adaptor
8517 69 40	--- X 25 Pads
8517 69 50	**--- Subscriber end equipment**
8517 69 60	--- Set top boxes for gaining access to internet
8517 69 70	--- Attachments for telephones
8517 69 90	---Other

15. In the Customs Tariff, in addition to four, six and eight-digit classifications, there are also single, and double and triple dashes

which precede the entries. In some cases, these dashes are along with the six or eight-digit classifications and in other cases they are alone. General Explanatory Notes under the general rules for interpretation explain the significance of these dashes and how they should be read in the following words:

General Explanatory Notes

1. Where in column (2) of this Schedule, the description of an article or group or articles under a heading is preceded by a ”-“, the said article or group of articles shall be taken to be a sub-classification of the article or group of the articles covered by the said heading. Where, however, the description of the article or group of articles is preceded by “--", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has “-“. Where the description of the article or group of articles is preceded by “---" or “----”, the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has “-‘ or “--".

16. The four digit tariff heading 8517 is divided into two single dashes ‘-‘. The first single dash covers telephones sets including smart phones and other phones for cellular network or for other wireless network. It is not the case of either party that disputed goods fall under this single dash. The disputed goods fall under the second single dash which covers ‘other apparatus for transmission or reception for voice, images or data including apparatus for communication in voice or wireless network (such as a local vide area network)’. There is no dispute upto this level of classification.

17. Under the above single dash there are three double dashes as follows:

8517 61 00 --base stations
8517 62 -- Machines for reception, conversion and transmission or re-generation of voice images or other data, including switching and routing apparatus
8517 69 -- Other

18. It is not the case of either party that disputed goods were base stations **(CTI 8517 61 00).** According to the Revenue, the goods fall under the second double dash **CTSH 8517 62** whereas according to the appellant they fall under the third double dash **CTSH 8517 69**. Before deciding further classification of the disputed goods under CTI (8-digit level), this classification at CTSH (6-digit level) issue must be resolved.

19. Learned counsel for the appellant and also the learned authorized representative appearing for the Revenue have taken us through the literature and explained in detail the functions of the disputed goods of ONT/ONU. These are optical network terminals/ units. These are installed at the premises of the subscriber of the broadband service. They receive broadband internet connection through an optical fiber from the ISP, split it into multiple points to which various devices in the house can be connected to enjoy the broadband. They also provide this internet connection through wifi.

20. These are passive devices and do not need a power supply. Learned counsel submitted that these are like a combination of

the erstwhile modems and routers. These functions of ONT/ONU are not in dispute. They receive internet connectivity in broadband form through the optical fiber and transmit it to various devices of the subscriber either through cables or through wifi. The case of the appellant is that under **CTI 8517 69 50** there is a specific heading of "subscriber end equipment" preceded by triple dash and since these are undisputedly meant to be installed in the subscriber's premises, ONT/ONU deserve to be classified as subscriber end equipment under **CTI 8517 69 50**. This argument appears to be fair at the first glance. However, a closer look would reveal that **CTI 8517 69 50** is sub-set of **8517 69** "Others". The question is other than what? Evidently, it is other than the two entries preceded by double dashes before this entry namely, the base stations (**CTI 85117 61 00**) and 'machines for reception conversion and transmission or re-generation of the voice, machines and other data including switching and routing apparatus' (**CTSH 8517 62**).

21. There is no dispute that the goods were not base stations (**CTI 8517 61 00**). The question is whether they are 'machines that receive convert and transmit voice, machines or other data' (**CTSH 8517 62**) are not. From the elaborate submissions made by the learned counsel and also the learned authorized for the Revenue and discussed above, it is evident that the only purpose and function of these devices is to provide internet connection through optical fiber from the ISP and transmit it to various devices in the household or office, thus transmitting data from

the internet to various devices of the subscriber and also transmitting the data about the internet usage to the ISP. Therefore, there cannot be any manner of doubt that these receive and transmit data. Such being the case, they deserve to be classified **CTHS 8517 62** and cannot be classified under **CTHS 8517 69** which is the residual category.

22. Within the six-digit heading **8517 62** there are various eight-digit CTIs for PLCCA equipment (CTI 8517 62 10) voice frequency polygraphy (CTI 8517 62 20) modems (CTI 8517 65 30) hybrid weight digital subscribe systems (CTI 8517 62 40) digital crew carry assistance (CTI 8517 62 50), synchronize digital hierarchy system (CTI 8517 62 60) and multiplexers (CTI 8517 62 70).The imported ONT/ONU are none of these. Therefore, they can only fall under the residuary **CTI 8517 62 90** "other". The classification of the goods by Revenue, therefore, deserves to be accepted.

23. Learned counsel for the appellant vehemently argued that when there is specific heading for "subscriber end equipment" under **CTI 8517 69 50**, ONT/ONU being "subscriber end equipment" deserve to be classified under that CTI only.

24. We cannot agree with this submission. **CTI 8517 69 50** is only a sub-set of **CTSH 8517 69**. When something does not fall under **CTSH 8517 69,** it cannot also fall under any of the CTIs under this CTSH. An illustration will remove any doubt about this

proposition. Let us say, that college students in India are classified by their place of study and gender as follows:

A. Delhi
B. Mumbai
C. Chennai
D. Rest of India
    (i) Boys
    (ii) Girls
    (iii) Transgender

25. The first level of classification is based on the place of the study- Delhi, Mumbai, Chennai and Rest of India. Students of rest of India are further divided by their gender. A transgender student in say, Allahabad, would fall under D(iii) but a transgender student of Delhi cannot fall under this category because the student will fall under A (studying in Delhi) and not under D (as he is not studying in the rest of India)¯.

26. All "subscriber end equipment" cannot clearly, be classified under **CTI 8517 69 50**. Even if we consider the goods falling under **CTH 8517** themselves, telephone sets, smart phones etc., are all installed at the subscriber's premises and are therefore "subscriber end equipment". However since they do not fall under the **CTSH 8517 69** they cannot be classified under **CTI 8517 69 50**. Once it is accepted that the ONTs/ONU are meant for reception and transmission of data, the irresistible conclusion is that they fall under **CTI 8517 62** and, therefore, they cannot be fall under **CTI 8517 69**.

27. Next is the question of classification of optical line terminal (OLT). As explained by both sides these are the equipment

which are installed at the end of the internet service providers and they provide the link between the ISP and the subscriber to provide the broadband. For the reasons discussed above, these are also machines which receive and transmit data and, therefore, they deserve to be classified under six digit **CTSH 8517 62**. Only goods which are not machines for reception or transmission of data will fall under the residual category of "others" (**CTSH 8517 69**). The appellant's claim of classification of these OLTs under **CTI 8517 69 90** cannot, therefore, be accepted. In view of the above, we find that on merits the classification of the OLT under **CTI 8517 62 90** in the impugned order is correct and proper.

Exemption Notification

28. Exemption Notification No. 57/2017 as applicable during the relevant period exempted goods falling on both **CTI 8517 62 90** and under **CTI 8517 69 90** with some exceptions. These included (i) Optical Transmit network (ii) combination of one or more packet optical transmit product or switches (POTP or POTS) (iii) And optical transport network (OTN) products. The SCN alleged that these are optical transport equipment or optical transport network and Commissioner. The impugned order held that they were POTP and for this reason denied the benefit of the exemption notification. The submission of the learned counsel for the appellant is that the ONT/ONU cannot be called as optical transport equipment and in support he submitted a report by the Shri R.K. Mishra, retired Deputy Director General of the

Department of Telecommunication who conclusions in his report are as follows:

> "13. A detailed technical examination of the equipment has been done analysing data sheets of the equipment from the Manufacturer at para 10 and 11 above proving that the equipment imported are GPON (ONT/ONU) and GPON (OLT) used in Access Network for providing Broad band Internet services to customers in FTTH and are not falling in category of equipment Optical Transport Network Equipment (OTE / OTN). All Data sheets at places at Annexure 1 and 2 respectively.
>
> 13.1 In para 12 an explanation has been given to counter the observation of Custom Authority in SCN no. 129 dated 12.09.2022 about reference drawn from open sources, guidelines issued by TRAI on domestic manufacturing and by DoT on public procurement.
>
> 13.2 A physical inspection of the equipment and photograph has been done at the site of Importer at 401, JMD Regent Plaza, M-G Road, Gurugram, Haryana-122001. Thereafter this report has been prepared, signed and placed at Annexure 3.
>
> 13.3 The above explanation clearly show that the imported equipment referred at Para 1.1 above as GPON ONT/ONUS are Subscriber end equipment also called Routers/HGU in Access network to be used for providing Broad band Internet services to customers and not falling in category of Optical Transport Network Equipment (OTE / OTN) which are used in Optical core network of Telecom service provider. Further equipment at para 1.2 GPON (OLTS) are part of Access network to be used for connecting to ONT/ONU for providing Broad band Internet services to customers and **not falling in category of equipment Optical Transport Network Equipment** (OTE / OTN) which are used in Optical core network of Telecom service provider."

29. It is the submission of the learned counsel that in the SCN they were not put to notice seeking to deny the benefit of the Notification on the ground that the ONT/ONU are POTP. It is also the submission that the Commissioner committed an error in not accepting the expert opinion produce by the appellant to assert that they were not optical transport network products. The Commissioner, according to the learned counsel did not examine

or cross-examine Shri Mishra, the expert nor produce any contrary technical opinion to show that the goods were POTP.

30. In the impugned order the Commissioner has denied the benefit of the exemption notification No. 24/2005-Cus dated 01.03.2005(Sr. No. 13B) for ONT/ONU products and also held that the appellant was not entitled to the benefit of the Notification No. 57/2017-Cus Dated 30.06.2017 (Sr No. 20). This was for the reason that ONT/ONU products were in the nature of optical transport network products and, therefore, excluded from the benefit of the exemption notification Sr. No. 13 of this notification was amended by Notification No. 11/2014-Cus dated 11.07.2014 and certain goods were excluded from the exemption notification. The relevant portion of the Notification No. 11/2014-CUS is reproduced below:

> G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 24/2005- Customs, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.122 (E), dated the 1st March, 2005, namely: –
> In the said notification, in the Table,-
> (a) against serial number 13, in column (3), for the existing entry, the following entry shall be substituted, namely:-
> (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 Optica Transport Product or Switch (POTP or POTS), Optical TransportNetwork(OTN) products, and IP Radios;
> (iii) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multi protocol Label Switching-Transport Profile (M PLS-TP) products;
> (iv) Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE) ”.
>
> (b) after serial number 39 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"40	All chapters	All goods for the manufacture of following goods, namely:- (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

P Radios;
(iii) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multi protocol Label Switching-Transport Profile (M PLS-TP) products;
(iv) Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE) Products: provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.".

31. According to the department ONT/ONUs being the optical transport network products are excluded from the exemption notification as above. The case of the appellant is that ONT/ONU do not qualify as optical transport network products and, therefore, they are not excluded from the benefit of this exemption notification. For this purpose, learned counsel relies on the expert opinion of Shri Ravinder Kumar Mishra, retired Deputy Director General of Telecommunication. In conclusion part of this report he specifically mentioned that the ONT/ONU imported by the appellant do not fall in the category of optical transport network equipment. The Commissioner has neither considered the expert opinion of Shri Ravinder Kumar Mishra produced by the appellant nor has he given any finding as to why he does not agree with the same. Learned counsel for the

appellant specifically states that the Commissioner had not even called Shri R.K. Mishra, to examine or to question him about his report.

Exemption Notification for OLT.

32. The appellants claim of Exemption Notification No. 57/2017-Cus dated 30.06.2017 (Sr No. 20) for OLT was denied by the Commissioner. The relevant portion of this exemption notification is below;

(1)	(2)	(3)	(4)	(5)
"20	8517 62 90	All goods other than 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)	10%	-

This exemption notification also needs to be examined in the light of expert opinion produced by the appellants.

Extended period of limitation

33. Reasons for extended period of limitation is given in the show cause notice is as below:

> "It is seen that some of their Bills of Entry wherein benefit of exemption/reduced rate of duty was claimed by misclassifying the imported goods were re-assessed by the department by correctly classifying the goods under tariff item 85176290 and denying the notification benefits. The details of such reassessed Bill of Entry Nos.3268076 dated 17.05.2019, 6583423 dated 22.01.2020, 8957227 dated 26.09.2020, 9321940 dated 26.10.2020 are enclosed as Annexure-D, E, F & G to this notice. Analysis of the assessment process in the bills of entry referred to in Annexures D, E, F and G reveals that the assessing group has raised queries on the specific issue of GPON/Optical

> Network Products meriting classification under 85176290 and falling under the list of items excluded from the exemption covered by Notification No. 24/2005 as amended and thereby liable to be assessed at the merit duty of 20% BCD. The noticee appears to have agreed to the change in classification and denial of exemption proposed by the assessing officers, as evident from the replies to the queries, even inspite of the option of provisional assessment that was made available to them. Even after such re-assessments, the noticee continued to mis-classify ONT-ONUS under 85176950 and OLTs under 85176990 (as evident from the timeline in Annexure B), availing ineligible notification benefits, which exposes their mens rea to evade payment of appropriate duties of Customs. For instance, the bill of entry dated 26.10.2020 in Annexure G was filed at ICD, Tughlakabad itself, and Annexure B reveals that at the same port as well, the noticee continued the misclassification and the consequent availing of ineligible benefit of notification.
>
> Thus it becomes all the more evident that the noticee was fully aware of the matter of wrong claim of benefit of exemption / reduced duty rate under notification that had resulted in non-payment of BCD at 10%/20% in respect of the bills of entry listed in Annexure-B having a total assessable value of Rs.69,88,59,162/ [Rupees Sixty Nine Crores Eighty Eight Lakhs Fifty Nine Thousand One Hundred Sixty Two only]. Even though the total import duty payable on these Bills of Entry was Rs.30,72,18,488/- (BCD 13,97,71,832/- + SWS-1,39,77,183/- + IGST 15,34,69,472/-), they had paid an amount of Rs. 13,45,05,169/- only and continued to wrongly claim the ineligible benefit in the course of self-assessment with the malafide intention to evade import duties to the tune of Rs. 17,27,13,319/- (BCD-13,26,01,099/- + SWS,37,66,121/- + IGST-2,63,46,100/-). Hence the Noticee is liable to pay the differential duty to the tune of Rs. 17,27,13,319/- (BCD-13,26,01,099/- + SWS-1,37,66,121/- + IGST 2,63,46,100/-) as detailed in [Annexure-B] attached to this notice. Despite being pointed out to them, they have not discharged the differential duty for the above cited bills of entry."

34. The submissions of the appellant before the Commissioner regarding invocation of extended period of limitation were as follow:

> "27.1. The Show Cause Notice dated 12.09.2022 demands duty for the period March, 2019 to January 2021 and has

been served on the Noticee on 19th September, 2022. The same, therefore, partially extends beyond the period of limitation of two years provided in Section 28 (1) of the Customs Act 1962 and is to that extent partially barred by time.

27.2. The Noticee submit that the larger period of limitation of 5 years provided in Section 28 (4) of the Customs Act 1962 is inapplicable in the present case since there is no collusion or wilful mis-statement or suppression of facts on the part of the Noticee

27.3. The Noticee submit that it is settled law that claiming of a particular classification or Notification is a matter of understanding on the part of the importer and, the claiming of a particular classification or exemption Notification does not amount to mis-declaration or wilful mis-statement or suppression of facts. The Noticee have correctly described the goods in the Bills of Entry along with the Model numbers. Therefore, as laid down in the following judgments, the claiming of a particular classification or Notification with which the department may subsequently disagree does not amount to mis-declaration or wilful mis-statement or suppression of facts:

(i) Northern Plastic Ltd v Collector - 1998 (101) ELT 549 (SC)

(ii) CC v Gaurav Enterprises - 2006 (193) ELT 532 (BOM)

(iii) C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM

(iv) S. Rajiv & Co. v CC - 2014 (302) ELT 412.

(v) Lewek Altair Shipping Pvt. Ltd. v CC -2019(366) ELT 318 (Tri- Hyd) confirmed in 2019 (367) ELT A328 (SC).

(The above judgments are enclosed as ANNEXURES 44-48

27.4. The larger period of limitation, therefore, cannot apply."

35. The findings in the impugned order on invocation of extended period of limitation are as follows:

"5.8 EXTENDED PERIOD OF DEMAND

5.8.1 I observe that the Noticee has raised contention about the invocation of extended period of demand under Section 28(4) of the Act and cited various judgments in support of their case.

5.8.2 I notice that initially the Noticee had imported the impugned goods by classifying the same under tariff item 8517 62 90 on payment of customs duty at the rate of10% and 20% as applicable during the material time without availing the benefit of Notification No.24/2005-Cus dated 01.03.2005. Subsequently, the Noticee has changed classification of their goods under CTH 8517 62 90 to CTH 8517 69 50/8528 69 90 and cleared imported goods on NIL duty by availing the benefit of Notification No.24/2005-Cus dated 01.03.2005.

5.8.3 I find that the Hon'ble CEGAT, New Delhi in the case of Swastik Sanitary Wares Ltd. vs CCE, Ahmedabad as reported in [2001 (129) E.L.T. 373 (Tri. Del.)] has interalia held as under:

> "17. As regards the limitation, the appellants had on their own changed the classification of th of the disputed goods and had removed the same under lower rate of Prior to 1-11-1986, the said goods were cleared as sanitary wares. The goods remained of duty. the same; the commercial understanding remained the same; but to avail of the concessional rate of duty applicable to laboratory wares, mis-declaration was made and facts were suppressed. The dealers were describing the said sinks as kitchen sinks. The plea that the appellants were not concerned as to how its dealers described their products, in the facts and circumstances of the case only confirms the view that it was an intentional and mala fide step to evade payment of appropriate duty of excise."

5.8.4 I find that the Hon'ble Supreme Court of India in the case of M/s Novopan India Ltd. vs C.C.E & C, Hyderabad as reported in [1994 (73) E.L.T. 769 (S.C.)] has interalia held that exemption being in the nature of exception to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State.

5.8.5 1 find that the Noticee has changed classification of their goods under CTH 8517 62 90 to CTH 8517 69 50/8528 69 90 without any change in nature of goods from manufacturer side. If there was any confusion regarding classification of their impugned goods, the option to seek advance ruling in respect of their products was always available to them like other importers whose case laws/CAAR Judgments were relied upon by them. Correct nature, size, use, function etc. is in the knowledge of the Noticee firm as well as their MD but they choose to classify their imported goods under CTH 8517 62 90 for the sake of claiming exemption under Notification No.24/2005-cus dated 01.03.2005 (Sr. No.13P). The ingredients for invoking extended period i.e. suppression of material facts is present in this case. Therefore, I hold that invocation of extended period of demand u/s 28(4), in the present case, is justified.”

36. We have considered these submissions advanced by the learned counsel for the appellant and the learned authorized representative for the revenue on the question of limitation.

37. Learned authorized representative has also brought to our attention that the appellant was earlier classifying the goods under **CTI 8517 62 90**. In fact, when the appellant had previously classified the goods under **CTI 8517 65 90**, a query was raised on the Bill of Entry asking the appellant to justify the classification. In response, the appellant replied that the goods may be classified **CTI 8517 62 90** and, therefore, the appellant was aware that the correct classification was **CTI 8517 62 90**. Thereafter, it only changed the classification in the disputed Bills of Entry to avail the benefit of ineligible exemptions. We find extended period of limitation to raise the demand can be invoked if the duty is not paid by reason of collusion, willful mis-statement of suppression of facts. We do not find sufficient evidence in this case to allege any of these three factors. It is true that the appellant had initially classified the goods under a CTI and thereafter changed the classification under different Bills of Entry but this by itself, does not prove collusion, willful mis-statement or suppression of any facts. From the facts of this case, we find that extended period of limitation could not have been invoked in the present case. Therefore, the demand for the extended period of limitation needs to be set aside.

Penalties

38. Penalties have been imposed on the importers in the impugned order under sections 114A and 114AA. These sections read as follow:

"114A. Penalty for short-levy or non-levy of duty in certain cases.

- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

[Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28-AB, is paid within thirty days from the date of the 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 duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the purposes of this section, the duty or interest as reduced of increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, alongwith the interest payable thereon under section 28-AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.Explanation.-For the removal of doubts, it is hereby declared that-

> (i)the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;(ii)any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]
>
> **114AA. Penalty for use of false and incorrect material.**
>
> - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

39. As can be seen elements required to impose penalty under section 114A are the same are those required to invoke the extended period of limitation. Since we have found against the invocation of extended period of limitation under section 28, penalty under section 114A also cannot be sustained. Accordingly, penalty under section 114A is set aside.

40. Penalty under section 114AA can be imposed for willfully mis-stating any facts. In this case the appellant had declared the goods correctly and classified them under CTI which is different quite from the CTI under which they have been classified in the impugned order. Mis-declaration could would apply that the wrong fact has been mentioned. Classification is not a matter of fact but a matter of opinion. It is the opinion of the person self-assessing duty or re-assessing it or adjudicating a matter or deciding the matter in appeal as to which is the appropriate classification. It cannot be said as true of false. The importer may classify the goods under a particular heading, the officer

may re-assess it under a different heading and on appeal the Commissioner (Appeals), this Tribunal or courts may change the classification again. It does not mean that the importer had mis-stated any fact or that the officer has mis-stated any fact in classifying goods under a particular CTI. We, therefore, find that penalty under section 114AA could not have been imposed in this case.

41. In view of the above, we allow the appeal in part and remand the appeal in part as follows:

(i) The classification of ONT/ONU under CTI 8517 62 90 is upheld.

(ii) The classification of OLT under CTI 851762 90 is upheld.

(iii) Denial of exemption notification No. 24/2005-Cus dated 01.03.2005 (as amended) (Sr. No. 13B) on the ground that the goods were Optical Transport Network Products is remanded back to the Commissioner to consider the report of the Telecom Expert submitted by the appellant which specifically states that the ONT/ONU were not optical transport network products. The Commissioner may examine/ cross examine the expert and decide this question.

(iv) The exemption to OLTs under Notification No. 57/2017-Cus dated 30.06.2017 (Sr No. 20) is also

remanded to the Commissioner to consider the report of the Telecom expert submitted by the appellant and decide. The Commissioner may examine/cross examine the expert and decide the question.

(v) The demand for extended period of limitation under section 28 and penalties under section 114A and 114AA are set aside.

(vi) The impugned order is modified to the extent indicated above and the matter remanded to the Commissioner to decide as above after giving appellant an opportunity of being heard.

(vii) We record our appreciation for the detailed technical information and valuable assistance provided by Shri Nikhil Mohan Goyal, learned authorized representative for the Revenue and Shri A.K. Prasad and Ms. Surbhi Sinha, learned counsel for the appellant in deciding these appeals.

[Order pronounced on **20/05/2026**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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