

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

PRINCIPAL BENCH – COURT NO. – I

Customs Appeal No. 51365 of 2025

[Arising out of Order-in-Original No. 10/2025-26 dated 23.6.2025 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi]

M/s. Magic Mike Enterprises Pvt. Ltd.

... Appellant

Plot No. 281, Third Floor,
Udyog Kendra Extension - II, Ecotech – III,
Greater Noida,
Uttar Pradesh 201 306

VERSUS

**Principal Commissioner of Customs,
Air Cargo Complex (Import)**

... Respondent

New Customs House,
Near IGI Airport
New Delhi 110 037

APPEARANCE:

Shri Rajat Dosi, Advocate for the Appellant
Shri Rajesh Singh, Authorised Representative for the Revenue

CORAM:

HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 02.06.2026

DATE OF DECISION: 05.06.2026

FINAL ORDER NO. 51032/2026

P V SUBBA RAO

M/s. Magic Mike Enterprises Pvt Ltd.¹ filed this appeal to assail the order dated 23.6.2025² passed by the Principal Commissioner confirming the proposals in the show cause notice dated 11.7.2023³ and confirmed demand Rs. 1,14,40,850/- as customs duty under section 28 of the Customs Act, 1962⁴ with interest to be paid on the four Bills of Entry filed by the appellant

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1. The appellant
 2. Impugned order
 3. SCN
 4. Act

in July 2022 along with interest and imposed an equal amount as penalty under section 114A of the Act.

2. We have heard both sides and perused the records.

3. The appellant imported printed circuit board assembly (PCBA) for Router 1 GE (parts of networking product) through air cargo complex, New Delhi and filed four Bills of Entry in which it classified them under **Customs Tariff Item⁵ 8517 79 10** and claimed the benefit of exemption Notification No. 24/2005-Cus dated 1.3.2005 (S. No. 13S). All four Bills of Entry were cleared on self-assessment.

4. Later, on scrutiny of these Bills, it was felt that the appellant had wrongly availed the benefit of the exemption notification for the reason that the imported goods were among the PCBAs which were excluded from entry no. 13S being '**combination of one or more Packet Optical Transport Product or Switch (POTP or POTS)**' and were however, covered by entry no. 22 of the same notification which attracted 10% duty.

5. Accordingly, the SCN was issued demanding recovery of differential duty with interest and penalty.

6. The appellant contested the demand asserting that the imported goods were not POTP or POTS and hence, they were not excluded by S. No. 13S of the notification. The Commissioner agreed with this submission but found that the appellant had not fulfilled the condition to avail the benefit of the exemption notification (S.No. 13S) and for that reason, denied the benefit of this entry and confirmed the demand with interest and imposed an amount equal to the differential duty as penalty.

5. CTI

7. Shri Dosi, learned counsel made the following two submissions:
- a) In the impugned order, the Commissioner travelled beyond the SCN. While the SCN proposed to deny the benefit of the exemption at S. No. 13S on the ground that the goods were excluded from the entry, the Commissioner denied the benefit of the exemption on the ground that the appellant had not fulfilled the condition. Therefore the impugned order cannot be sustained.
 - b) The reason for the appellant not fulfilling the condition laid down in the notification is that in the book which the appellant referred, the publisher had wrongly not entered the condition. Therefore, there was a reasonable cause for failure.
8. Shri Rajesh Singh, learned authorised representative for the Revenue, on the other hand, vehemently supported the impugned order. He pointed to the table in page 3 of the SCN which clearly reproduced entry 13 S of the notification including the condition therein. He, however, submitted that since the SCN contended that the appellant's goods did not fall under this entry at all, the question of asking if the appellant had fulfilled the conditions in the entry did not arise.
9. When the appellant submitted its defence that the goods fell under this entry of the notification, the Commissioner examined and accepted the submissions. Therefore, it became essential to examine if the appellant had fulfilled the conditions of the exemption also which were not only in the notification but were also reproduced in the SCN. The appellant had, however, put up defence only to the extent that the goods fell under the entry but did not put up any evidence to show that it fulfilled the condition of the notification. Therefore, the Commissioner has not at all travelled beyond the SCN.

10. He also vehemently argued that the appellant cannot take the defence that since some popular private publisher whose book the appellant had referred did not print the condition, it cannot be a ground for not fulfilling the condition.

11. He prayed that the appeal may be dismissed and the impugned order may be set aside.

12. We have considered the submissions advanced by both sides and perused the records. The relevant entry in the notification reads as follows:

S.No.	Heading, sub-heading or tariff item	Description
13S	8517 79 10	All goods other than Printed Circuit Board Assembly (PCBA) of the following goods, namely- (a) cellular mobile phones (b) Base station (c) Optical transport equipment (d) Combination of one or more of Packet Optical Transport Product or Switch (POTP of POTS) (e) Optical Transport Network (OTN) products (f) IP Radios (g) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers; (h) Carrier Ethernet Switch, Packet Transport Note (PTN) products, Multiprotocol Lable Switching-Transport Profile (MLPS-TP) products; (i)Multiple Input/Multiple Output (MIMO) products; (j) Long Term Evolution (LTE) products (k) Wrist wearable devices (commonly known as smart watches) Subject to the condition that the importer follows the procedure set out in the Customs (Imports of Goods at Concessional Rate of Duty) Rules 2017

		and at the time of importation of the above goods furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of the Customs, as the case may be to the effect that, - (A) Imported goods shall not be used in the manufacture of goods mentioned at (b) to (i) above. (B) In the event of failure to comply with (A) above, he shall be liable to pay an amount equal to the difference between the duty leviable on the imported goods but for the exemption under this notification and that already paid at the time of importation.”
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13. The first submission of the learned counsel is that the impugned order has travelled beyond the SCN and that the appellant was never put to notice that it had not fulfilled the condition in the notification against this entry. This submission cannot be accepted. The contention in the SCN is that the goods were not covered at all by this entry 13S and hence the appellant was not entitled to the notification.

14. In the adjudication order, the authority has to consider not only the allegations in the SCN but also the defence put forth. The appellant’s defence was that the imported goods fall under entry 13S and hence it was entitled to the benefit of the notification. However, in its defence the appellant did not claim or demonstrate that it also fulfilled the conditions of the notification. Therefore, the Commissioner was absolutely correct in examining the defence of the appellant in all its dimensions including whether it had fulfilled the condition therein.

15. When we asked, learned counsel fairly conceded that the appellant had not fulfilled the condition in Entry 13S. According to him, the appellant had not fulfilled the condition because it was not correctly published in the book

which it had referred. We do not see how any error or mistake by a publisher will change the scope of the notification. The power to issue exemption notifications is with the Central Government and all notifications are published in the official Gazette and are available online on eGazette.nic.in and also on the portal of CBIC. The appellant was also made aware of the condition in the SCN.

16. Therefore, this submission of the learned counsel as the reason for not fulfilling the condition of the notification also cannot be accepted.

17. Another relevant issue is whether the non-fulfillment of the condition of the exemption notification will affect the entitlement of the appellant to the notification. Although no submissions were made on this issue, we find it is necessary to examine it.

18. The condition in the exemption notification (S. No. 13S) is the importer follows the procedure set out in the Customs (Imports of Goods at Concessional Rate of Duty) Rules, 2017⁶ at the time of importation of the goods furnishes an undertaking to the Deputy Commissioner or the Assistant Commissioner of the Customs, as the case may be to the effect that,-

(A) imported goods shall not be used in the manufacture of goods mentioned at (b) to (i) above;

(B) in the event of failure to comply with (A) above, he shall be liable to pay an amount equal to the difference between the duty leviable on the imported goods but for the exemption under this notification and that already paid at the time of importation.'

19. The goods mentioned at (b) to (i) of the entry are those goods which were excluded from S. No. 13S of the notification. Hence, no exemption is

6. IGCR Rules

available to those goods. Other goods are exempted, subject to the condition that they are not used to manufacture these excluded goods [S.No. (b) to (i)]. In order to ensure that they are not used to manufacture the excluded goods, the procedure prescribed under IGCR Rules must be followed and the undertaking must be furnished to the Deputy Commissioner or Assistant Commissioner at the time of import.

20. Rule 2 of the IGCR Rules indicates their purpose and application. It reads as follows:

2. Application. – (1) **These rules shall apply to an importer, who intends to avail the benefit of an exemption notification** issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and **where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.**

(2) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

21. The procedure to be followed is in Rule 5, the accounts which the importer has to maintain are indicated in Rule 6 and the recovery of duty if the importer fails to use the goods for the intended purpose is in Rule 8 of IGCR Rules which read as follows:

5. Procedure to be followed. – (1) The importer who intends to avail the benefit of an exemption notification shall provide information –

(a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding one year; and

(b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(2) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but

for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation. (4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

6. Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records.

(1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

(3) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.

8. Recovery of duty in certain case. – The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilised or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of

actual payment of the entire amount of the difference of duty that he is liable to pay.

22. The above scheme, in a nutshell, is that the importer gives a bond and undertaking to his jurisdictional Assistant or Deputy Commissioner of Central Excise to use the goods in the manner specified based on which the Assistant or Deputy Commissioner of Customs at the port would clear the goods. Thereafter, if the importer fails to use the goods in the manner indicated, the jurisdictional Assistant Commissioner or Deputy Commissioner would recover the amount enforcing the bond. These Rules are intended to ensure that an exemption given to the imported goods for use in a particular manner are used so and not otherwise.

23. The exemption Notification No. 24/2005-Cus [S. No. 13S] is a bit unusual as the exemption is available not on the condition that they will be used in a particular fashion but on the condition that they will not be used in a particular fashion viz., in the manufacture of the goods mentioned in clauses (b) to (i) of the entry. In order to ensure that they are not so used, the ICGR Rules had to be followed and an undertaking was to be given to the Assistant Commissioner.

24. The question which arises is since the goods were imported quite a while ago in 2022, did the appellant use them to manufacture goods indicated in (b) to (i) of entry 13S of the notification? Learned authorised representative of the Revenue provided us valuable assistance and has shown through the documents and records including the statements that the appellant was only a trader and was not a manufacturer and had imported and sold the goods. It is therefore, clear to us that the appellant had not

used the imported goods to manufacture goods indicated in (b) to (i) of entry 13S.

25. Therefore, although the appellant had not met the condition of the entry S. No. 13S inasmuch as it had not followed the ICGR Rules and had also not given the undertaking that the goods would not be used to manufacture goods at (b) to (i) of Entry 13S of the notification, the appellant did not use them so and only sold them. In the peculiar facts of this case, the purpose of the condition was fully met but the procedure needed to ensure that the condition is met was not followed.

26. In view of the above, the demand of duty denying the benefit of the Notification No. 24/2005-Cus (S. No. 13S) in the impugned order cannot be sustained. Consequently, the demand of interest and the penalties imposed on the appellant also cannot be sustained.

27. In view of the above, the appeal is allowed and the impugned order is set aside. The appellant will be entitled to consequential relief, if any.

(Order pronounced in open court on 05/06/2026.)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

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

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