CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 50718 of 2025

(Arising out of Order-in-Original No. 17-19/2023/VCG/Pr. Commr./ICD-Import/TKD dated 08.08.2023 passed by Pr. Commissioner of Customs, ICD TKD, New Delhi.)

M/s. UT Starcom India Telecom Private Limited **...... Appellant**
Shop 12, A-1/8A, Ground Floor,
Krishna Nagar, Delhi-110051

Versus

Pr. Commissioner of Customs (Import), **...... Respondent**
Inland Container Depot,
Tughlakabad, New Delhi-110020

WITH

Customs Appeal No. 50719 of 2025

(Arising out of Order-in-Original No. 17-19/2023/VCG/Pr. Commr./ICD-Import/TKD dated 08.08.2023 passed by Pr. Commissioner of Customs, ICD TKD, New Delhi.)

M/s. UT Starcom India Telecom Private Limited **...... Appellant**
Shop 12, A-1/8A, Ground Floor,
Krishna Nagar, Delhi-110051

Versus

Pr. Commissioner of Customs (Import), **...... Respondent**
Inland Container Depot,
Tughlakabad, New Delhi-110020

AND

Customs Appeal No. 50720 of 2025

(Arising out of Order-in-Original No. 17-19/2023/VCG/Pr. Commr./ICD-Import/TKD dated 08.08.2023 passed by Pr. Commissioner of Customs, ICD TKD, New Delhi.)

M/s. UT Starcom India Telecom Private Limited **...... Appellant**
Shop 12, A-1/8A, Ground Floor,
Krishna Nagar, Delhi-110051

Versus

...... **Respondent**

Pr. Commissioner of Customs (Import),
Inland Container Depot,
Tughlakabad, New Delhi-110020

APPEARANCE:

Mr. Aditya Sarin, Advocate for the Respondent
Mr. N.M. Goyal, Authorised, Authorised Representatives of the Department

CORAM:

HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13.07.2026
DATE OF DECISION 07.08.2026

FINAL ORDER NO's. 51288-51290/2026

DR. RACHNA GUPTA

Present order disposes off three appeals arising out common order-in-original no. 17-19/2023 dated 08.08.2023.

2. The said order had originated out of three show cause notices:

Sr. No.	Appeal	SCN
1.	C/50718/2025	10/2022-23
2.	C/50719/2025	SCN bearing C. No. VIII/6/ICD/ PPG/ SCN /UTStarcom/118/2022
3.	C/50720/2025	111/2022-23

3. The aforesaid show cause notices were issued by the Directorate of Revenue Intelligence, Kochi based on the intelligence to the effect that certain importers are importing optical network terminals/units (O&Ts / O & Us/ home gateway units and MODAMs into India by classifying those goods as subscriber and E&D equipments "under CTH 85176950, MODAM under CTH 85176230 and OLTs under CTH 85176290". It was gathered that the importers have been clearing the goods at nil/ reduced rate of duty by claiming exemption under Notification No. 24/2005-Cus dated 01.03.2005 and of Notification No.

57 of 2017-Cus dated 30.06.2017, as amended. The appellants herein were informed to be one of such importers resorting to the above mentioned mis-declaration and mis-classification. The matter was accordingly investigated. Statements of various concerned were recorded and the documents provided or/ recovered were examined based thereupon it was alleged in three of the show cause notice as follows:

> (i) In show cause notice dated 09.05.2022 while getting clearance of aforesaid goods during the period April 2019 to August 2020 the evasion of customs duty to the tune of Rs. 43,04,294/- was alleged.
>
> (ii) In show cause notice dated 20.04.2022 while getting clearance of the aforementioned goods through Bill of Entry No. 8810257 dated 14.09.2020 evasion of customs duty to the tune of Rs. 1,27,574/- was alleged.
>
> (iii) In show cause notice dated 12.08.2022 while getting clearance of aforesaid goods during the period 26.2.2020 to 18.08.2020 the evasion of customs duty to the tune of Rs. 1,23,07,073/- was alleged.

4. The aforesaid amounts were proposed to be recovered vide the respective show cause notices alongwith the interest in terms of section 28A of the Customs Act 1962 and the penalties under section 114A and 114 AA of the act. The penalty upon custom broker M/s A. M. Express Worldwide Logistics was also proposed under section 112 of the Act. The proposal has been confirmed vide the order under challenge. Being aggrieved the appellants are before this Tribunal.

5. We have heard Mr. Aditya Sarin, learned counsel for the appellant and Mr. N.M. Goyal, learned authorised representative appearing for the department.

6. Both the parties have acknowledged that the issue as involved in the present appeal is about the classification of subscriber equipment

and MODAMs and that it stands already decided in favour of the department.

7. Learned counsel for the appellant mentioned that the impugned order i.e. O-I-O dated 08.08.2023 is still been assailed on the grounds of limitation. It is submitted that while importing the impugned goods, the appellant had bonafidely arrived at the classification in dispute. The query about the classification was raised with respect to Bill of Entry dated 20.09.2019 i.e. after the impugned three of the Bills of Entries were already objected. The classification dispute as in question, was never earlier challenged. Due to this fact the authorities were not entitled to invoke the extended period of limitation. The order confirming the demand proposed under time barred show cause notice is therefore liable to be set aside on the technical ground of limitation itself.

8. Learned DR on the other hand has vehemently objected the said submission holding that it was a big cartel of various importers being indulged in customs duty evasion by wrongly availing the benefits of the exemption notifications. It is submitted that the Adjudicatiing Authority in the impugned order has meticulously examined the issue of limitation as well. As there is no informity in the findings arrived at, the appeal is prayed to be dismissed.

9. Having heard both the parties and perusing the entire record specifically the impugned order, it is observed that in para 6.6 of the appeal, the adjudicating authority has elaborately discussed the role played by the importer/ appellant and in para 6.7 thereof the role played by customs broker has meticulously been examined and discussed. It has been observed as follows:

"6.6 Role played by Importer Noticee

I have examined the allegation made against importer in the referred SCNs and submission made by the importer noticee in their defence replies and during personal hearing, the role played by the importer noticee are summarised as under:-

i) The noticee have affected the imports of the impugned goods under different sub-headings through different ports The very inconsistency in the adoption of the classification by the noticee is by no means an innocuous consequences, despite the technical features of the products conforming to the classification 8517 62 90. The noticee having full knowledge of the said fact, the inconsistency in classification is nothing but pre-meditated tactics to avail ineligible exemptions so as to evade applicable duty. ONTs were projected as Subscriber End Equipment and classified under 8517 69 50 availing NIL rate of duty under Sl. No. 13P of Notification No 24/2005-Customs as amended

ii) Inspite of the ONTs and OL.Ts performing similar functions, the noticee chose to classify them under different tariff items. It is seen that in some cases, the noticee themselves have classified the products ONTS/ONUS/OLTs under 85176290/85176990 and discharged customs duty @10% & 20% as listed in separate Annexure to the SCNs.

iii) The department has reassessed one Bill of Entry number 8927060 dated 24.09.2020 provisionally by changing the classification of ONTs from the declared CTH of 8517 69 50 to 8517 62 90. The noticee should have shown bonafide in their action to pay differential duty just after provisional reassessment on one B/E, which they failed to do.

iv) That the noticee has uploaded on e-sanchit the Equipment Type Approval certificate issued by the Wireless Planning and Coordination Wing (WPC), Department of Telecommunications, Ministry of Communications, with respect to the bill of entry in Annexure to the SCNs. The subject ETA-SD-20191106860 dated 29.11.2019 states the equipment type as GPON ONT. The said ETA makes no mention of "subscriber end equipment". It also implied that the application for the ETA was also filed for GPON ONT and not Subscriber End Equipment/ Customer Premise Equipment. That notice themselves mentioned in the invoices and related documents as "subscriber end equipment". Thus, I find that the noticee was fully aware of the matter of incorrect classification and claim of ineligible benefit of exemption/reduced duty rate under notification that had resulted in non-payment of BCD.

> v) The importer failed to have exercised due diligence while making self-assessment of duties in the Bills of Entry as mandated under Section 17 of the Customs Act, 1962 and particularly when the self-assessment resulted in undue benefit to them by way of duty saved on account of an exemption benefit ineligibly availed. In case of an ambiguity, they ought to have sought provisional assessment under Section 18(1), which they did not. That the noticee had continued to classify the items under 8517 69 50 as Subscriber End Equipment, and availed the consequent exemption benefit that had the department not pointed out so, they would have continued with the mis-classification and ineligible exemption benefits. This clearly brings forth the mala tide on the part of the noticee to evade payment of Customs Duty as mentioned above."

10. To falsify those observations, there is only an oral submission of the appellant that never earlier the impugned three Bills of Entries, the classification dispute was raised by the department. The above findings rather falsify the said oral submission as well. This only observation is sufficient for us to hold that the adjudicating authority has rightly concluded about intentional availments of the exemption benefit by the appellant with intent to evade the customs duty. The findings are, therefore, upheld. Consequent thereto. The three of the appeals are hereby dismissed.

(Order pronounced in the Open Court on 07.08.2026)

(RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shenaj