IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75652 of 2023

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/05/2023 dated 25.05.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Technology Next, **: Appellant**
7A/61, W. E. A. Karol Bagh,
New Delhi-110005

VERSUS

The Commissioner of Customs(Port) **: Respondent**
Custom House, 15/1, Strand Road, Kolkata-700001

AND

Customs Appeal No. 75944 of 2024

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/05/2023 dated 25.05.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata-700001)

The Commissioner of Customs(Port) **: Appellant**
Custom House, 15/1, Strand Road, Kolkata-700001

VERSUS

M/s. Technology Next, **: Respondent**
(IEC-0505018675)
7A/61, W. E. A. Karol Bagh,
New Delhi-110005

APPEARANCE:

Shri Rahul Tangri, Advocate for the Assessee

Shri S. Debnath, Authorized Representative for the Revenue

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.76543-76544/2026

DATE OF HEARING / DECISION: 14.10.2026

Order: [PER SHRI ASHOK JINDAL]

Both sides are in appeal against the impugned order. The Revenue is challenging the order on dropping of the demand by the adjudicating authority and the appellant is challenging the order to the extent confirming the demand against the appellant. The period involved is from 15.06.2017 to 27.12.2021 and the Show Cause Notice has been issued on 30.05.2022.

2. The facts of the case are as under: -

i. Technology Next (hereinafter referred to as the "Appellant") is a proprietorship concern engaged in dealing with various networking products.

ii. The present dispute deals with classification of 10 such products imported by the Appellant during the period 15-06-2017 to 27-12-2021 through Kolkata Port (INCCU1), Kolkata Airport (INCCU4), New Delhi Airport (INDEL4) and ICD Ludhiana, Punjab (INLDH6).

iii. Most of the disputed Bills of Entry were cleared by the department after verification and physical examination of the imported goods, the details of which are briefly stated below:

For imports at INCCU4 –

- all the BOEs were subjected to verification of goods by physically opening the packets by the department.
- For the BOE No. 2814147 dated 11.08.2017, the officer initially assessed the bill of entry to deny the benefit of exemptions claimed. However, after representation by importer and after going through the product literature, the officer re-

assessed the bill of entry allowing the exemption benefit.

- For BOE Nos. 9385992 dated 24.12.2018 and 9815675 dated 28.01.2019, the bills of entry were assessed denying the benefit of exemption claimed and after the importer made the payment of Rs. 43,388/- and Rs. 2,07,565/- respectively.
- For the remaining BOEs, even after physical examination of the goods and values, no objection was raised by the department and the assessment claimed by the Appellant were finalized.

For imports at INCCU1 –

- 10 out of the 11 BOES were subjected to physical examination of goods by the customs officers. For the remaining BOE, the query on valuation was raised, though being satisfied with the explanation of the importer, no changes to the assessment were made by the authorities.
- During the physical examination of goods, the officers sought the product catalogues, technical literature and the justification of exemption notifications claimed by the importer prior to assessing the goods.
- In 8 out of 10 BOEs, the department was satisfied of the classification and exemptions claimed by the Appellant.
- For the remaining 2 BOE, viz. 9689652 dated 17.01.2019 and 5798664 dated 23.11.2019, the goods were re-assessed and allowed cleared only on payment of differential customs duty amounting to Rs. 47,143/- and Rs. 52,160/-, respectively.

For imports at INLDH6 –

- Only 1 BOE was filed by the Appellant, viz. 4914464 dated 16.09.2019, which was subjected to 100% examination. In this case,

the examination was done by shed inspector, shed superintendent, jurisdictional Assistant Commissioner along with the empanelled Chartered Engineer of the department. Post the report of the said Chartered Engineer and being satisfied with the claim of exemptions and classification made by the Appellant only, the goods were allowed to be cleared for home consumption.

For imports at INDEL4 –

- 2 out of the 8 BOEs were examined physically with detailed verification of compliances.
- The assessments claimed in the BOEs for all the consignments were accepted by the department and clearance was allowed.

iv. The list of the disputed goods is as follows:

Sl. No.	**Product**	**Classification claimed by the Assessee**	**Classification as per the department**
	Demand fully time barred		
1.	Optical Line Terminal (OLT)	8517 69 50 (Subscriber End Equipment)	8517 62 90
2.	Optical Fiber Switch 8 Port	8517 69 50	8517 62 90
3.	USB to LAN Convertor	8517 69 50	8517 62 90
4.	HD-SDI to fibre convertor	8517 69 50	8517 62 90

Demand partially time barred			
5.	Routers	Same as above	8517 62 90
6	ONT/ ONU	8517 69 50 (Nil BCD as per Sl. No. 13P of Notification No. 24/2005-Cus dt. 01-03-2005)	8517 62 90
7.	Home Gateway Units (HGU)	Same as above	8517 62 90
8.	Media Convertors	Same as above	8517 62 90
9.	Small Form Pluggable (SFP/QSFP)	8517 70 90 (Parts) (Nil BCD as per Sl. No. 5 of Notification No. 57/2017-Cus dt. 30-06-2017)	8517 62 90
10.	PCBA for ONUs/SFP Modules/Router	8517 70 10 (Nil BCD as per Sl. No. 13S of Notification No. 24/2005-Cus dt. 01-03-2005)	8517 70 10 (without exemption benefit)

Calculation of demand for the normal period of limitation is enclosed as **Annexure-1** to this synopsis.

v. Most of these products have been described as **"Subscriber End Equipment"** by the Government of India through various notifications/reports etc.

vi. SCN dated 30-05-2022 was issued proposing demand of duty short paid amounting to Rs. Rs. 1,99,96,456/- on these aforesaid goods by invoking extended period of limitation.

vii. A detailed reply was filed by the Respondent, countering each and every allegation contained therein.

viii. After considering the reply, the Ld. Commissioner vide OIO dated 30-05-2022 dropped the demand proposed by invoking extended period of limitation holding the same inapplicable in view of the full disclosures made and physical examination of most of the consignments by the Appellant ***[Refer Para 38.2 at Page 159 of the Appeal Paper Book]***. On merits, the Ld. Commissioner held against the Appellant in relation to the products at S. No. 1, 2, 3, 4 and 7 of the table above and for the remaining products, held in favour of the classification/ exemptions claimed by the Appellant. Accordingly, the demand for the normal period of limitation only on the Home Gateway Unit (at S. No. 7 of the table above) amounting to Rs. 32,04,654/- was only confirmed and the remaining demand of Rs. 1,67,91,802/- has been dropped.

ix. Being aggrieved by the OIO to the extend it confirms the demand under normal period of limitation for Home Gateway Unit, the Customs Appeal No. 75652 of 2023 has been preferred by the Appellant. On the other hand, the department has filed Customs Appeal No. 75944 of 2024 against dropping of the demand on the remaining products on merits/ limitation.

3. The Ld. Counsel appearing for the appellant/importer submits that as the assessment of the Bills of Entry in question has not been challenged by the Revenue, in such circumstances, the impugned proceedings are not sustainable against the importer, as held by the Honourable Apex Court in the case of *ITC Ltd v CCE, Kolkata-IV, [2019 (368) E.L.T. 216 (S.C.)].*

4. He also relied on the decision of this Tribunal in the case of *Shri Rumen Dey Versus Commissioner of Customs (Prev.) Shillong, 2023 (7) TMI 70-CESTAT Kolkata]* wherein a Show Cause Notice was issued to the importer alleging undervaluation of the goods; it was held in the said case that Revenue cannot initiate show cause proceedings without challenging the Bills of Entry in Appeal.

5. It is further contended by the Ld. Counsel for the appellant that the extended period of limitation is not invocable in this case; the period of dispute is from 15.06.2017 to 27.12.2021 whereas the Show Cause Notice came to be issued on 30.05.2022 by invoking extended period of limitation against them. It is their submission that the goods were cleared at the time of filing of the Bills of Entry and there is no allegation of commission of fraud, suppression of facts or willful mis-statement on the part of the appellant herein. In the circumstances, it is submitted that the demand for the period up to May, 2020 is barred by limitation.

6. On the other hand, the Ld. Counsel appearing on behalf of the Revenue Appellant submits that demand under challenge in the Revenue's appeal is sustainable, but the ld. adjudicating authority has,

wrongly, without application of mind, dropped the said demand raised against the importer.

7. Heard the parties.

8. We find that it is a case of classification of the goods in question. It is a fact on record that at the time of filing the Bills of Entry, the importer had sought classification of the goods, which was allowed and the goods were thus cleared by granting out-of-charge.

9. Therefore, the order of assessment of Bills of Entry has become final.

10. Considering the fact that the said assessments of the Bills of Entry have not been challenged, in the circumstances, we hold that the impugned proceedings are not sustainable against the importer. In view of this, the impugned the demand of duty confirmed against the importer is not sustainable. Consequently, the appeal filed by the Revenue is also not found to be maintainable.

11. In the result, the appeal filed by the assessee/importer is allowed and the appeal filed by the Revenue is dismissed.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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