

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.1

Customs Appeal No.85882 of 2018

[Arising out of Order-in-Appeal No.MUM-CUSTOM-AMP-APP-756 to 815/17-18, dt.30.11.2017 , passed by the CC (Appeals), Zone-III, Mumbai]

Commissioner of Customs (Import) MumbaiAppellant
Gr.VA, Air Cargo Complex,
Sahar, Andheri (East), Mumbai 400 059

VERSUS

M/s Reliance JioInfocom LtdRespondent
Building No.5-C, 1st Floor, Reliance Corporate Park,
Ghansoli, Navi Mumbai 400 071

WITH

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Appearance:

For Appellant : Shri K.M. Mondal, Special Counsel
Shri R. Kapoor, Pr.Commr. (AR)

For Respondent : Shri J.C. Patel, Shri Vipin Jain - Advocates

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/87015-87016/2019

Date of Hearing: 07.05.2019
Date of Decision: 06.11.2019

PER: DR.D.M. MISRA

These two appeals filed by the Revenue against respective Orders-in-Appeals passed by the Commissioner of Customs (Appeals), Mumbai, since involved common issues, are taken up together for disposal.

2. Briefly stated the facts of the case are that the Respondents during the period May 2017 to August 2017 imported "Antenna" for Base Transmission Station(BTS) declared the same as "parts" classifying it under CTSH 85177090 of Customs Tariff Act, 1975; alleging that the said imported goods are classifiable under CSH 85176290, the assessments were carried out accordingly by the adjudicating authority. Consequently, the Respondents paid duty under protest and filed appeals before the learned Commissioner (Appeals), challenging the assessment order passed by the Adjudicating authority. The learned Commissioner (Appeals) allowed the appeals filed by the Respondents and remanded the matter to the Adjudicating authority for re-assessing the goods under CTH 85177090 of CTA,1975 and to consider the refund of duty paid under protest by the respondent. Hence, the present appeals are filed by the Revenue.

3. The learned Special Counsel Shri K.M. Mondal for the Revenue has submitted that in the impugned order, the learned Commissioner (Appeals) has wrongly held that since the antenna imported by the Respondent is specifically designed for use with base station and it is an essential and integral part of the base

station, so as to make the base station completely functional unit, its classification will be as part of the base station under chapter sub heading No.85177090. The learned Commissioner (Appeals) has also erred in holding that since the antenna is suitable for use solely or principally with base station, it shall be classifiable as a part of base station in accordance with the Chapter Note 2(b) of Section XVI of CTA, 1975. The learned Commissioner (Appeals) has also held that goods falling under heading 8517 are exempted from whole of duty of customs under Notification No.24/20005-Cus., dt.01.03.2005. Further, the learned Commissioner (Appeals) has also wrongly held that in terms of sr. no 15 of Notification 25/2005-Cus., dt.01/3/2005 "Aerials or antennae of kind used with apparatus for radio telephony" are also exempted from BCD of sub heading 8529, which indicates the legislative intention to exempt the antenna for cellular network compatible to function with base station from levy of Basic Customs Duty.

4. Referring to the description of goods mentioned under chapter Heading 8517, the Ld. Special Counsel has submitted that CH 85176100 specifically covers the base station. Further, he has argued that there is no dispute on the classification of the base station, but the dispute is with respect to the classification of 'antenna' which is a part of the base station.

5. It is the Revenue's contention that in view of the Board's Circular No.01/2018 dt.15.1.2018 that the antenna is a completer device with specified function i.e. conversion of electrical signal into electro-magnetic waves and vice versa in a wireless communication

system, hence appropriately classifiable under CSH 85176290 by virtue of Section Note 2(a) of Section XVI of CTA,1975. Sub-Heading 85176290 covers "others" under broad description of the goods "Machine for the reception, conversion and transmission or re-generation of voice, images for the data, including switching and routing apparatus" against the six digit heading 851762. In the Board's instructions, reference has been made to Rules 1 and 6 of the General Rules for Interpretation of the Import Tariff. As per Rule 1, for legal purposes classification shall be determined according to the terms of the headings and any relative section or chapter note and provided such heading or note, do not otherwise required. As per Rule 6, the classification of goods under sub-heading of a heading shall be determined according to the term of those sub headings and any related sub heading note and mutatis-mutandis to the above rule in understanding that only sub heading at the same level are comparable. For the purpose of this rule, the relative section and chapter note also apply unless the context otherwise requires. By application of these rules as per the Board's instructions, the antenna used at base Trans-receiver station/Node B/C Node, being a wireless communication net work merits classification under CTH 85176290.

6. Responding to the argument of the Respondent that antenna for base station is passive element which cannot function on its own, hence, classifiable under Heading 85170960 as a part to base station in view of the classification of the same adopted by the Customs in other countries Viz., China, Vietnam, Singapore, US and by the HS

Committee 62nd Session, the learned Special Counsel has submitted that Revenue is concerned with the Customs Tariff of India for classification of the goods, and as per the Customs Tariff of India, the classification of the goods has to be determined by application of General Rules for interpretation of import tariff and its relevant section, notes, and chapter notes. Revenue need not be guided by the import tariff of other countries. He has contended that as far as classification decision of base station antenna of H.S. committee is concerned, it may be a good guide but it is certainly not binding on the Revenue unless it is ratified by India. This is quite apparent from the Board's instructions dt.15.01.2018.

7. Further, the learned Special Counsel has submitted that the judgment of Hon'ble Supreme Court in the case of CC, Bangalore Vs Hutchison Essar South Ltd- 2015 (324) ELT 240 (S.C.) holding that antenna is an integral and inseparable part of BTS without which it cannot function, is not relevant to the present issue as in that case, the Hon'ble Apex Court was concerned with the interpretation of the entries under Notification No.21/02-Cus dt.1.3.2002 and not concerned with classification of 'antenna'.

8. Further, countering the argument of the Respondent that they are eligible for Notification No.25/2005-Cus, dt.01.03.2005 which exempts aerials of antenna and also Notification No.69/04-Cus, dt.09.07.2004, amended by Notification No.18/2007-Cus, dt.22.02.2007, he has submitted that the notification is not conclusive for determination of classification of the goods. Classification of the goods has to be determined by application of

general interpretative rules. It is submitted that antenna under heading 8529 and that 8517 are not one and the same. Notification does not prescribe that all kinds of antenna irrespective of their classification will be exempted from the whole of duty of Customs and/or education cess.

9. On the issue of maintainability of the appeal, the learned Special Counsel submitted that there has been Note Sheet Order where under the review committee arrived at the conclusion for review and authorised for filing of the appeal, which is sufficient compliance with the relevant provision for filing Appeal under the Customs Act as held by Hon'ble Supreme Court in the case of Collector of C.E. Vs. Berger Paints India Ltd – 1990 (47) ELT 210 (S.C.).

10. The learned A.R.(Commissioner) for the Revenue Shri Roopam Kapoor, reiterating the grounds of appeal raised a preliminary issues. He has submitted that there has been gross violation of the principles of natural justice as the learned Commissioner (Appeals) afforded only one opportunity of hearing and there is no representation from the Department.

11. The Id. A.R has submitted that the findings of the learned Commissioner (Appeals) that antenna works with base station and thus it is an integral part, is incorrect being in contradiction to the principles of classification of the good under the Customs Tariff Act as classification is not depending on functionality or its use, but the

principles prescribed under relevant section/chapter note. Referring to Section note 2(a) of Section XVI, he has submitted that it clearly prescribes that parts which are goods ought to be classified in their respective headings. Further it do not, at any stage, indicate that these parts should be capable of functioning on their own. Drawing analogy to the goods viz. speakers, head-phones, ear-phones, etc which are not capable of functioning on their own, and are often designed to be a part of other equipments like music system, mobile phones etc. but are still classifiable under their respective headings. Therefore, in similar manner, the antenna is also a specific machine classifiable under different heading as goods and as parts. He has submitted that the Customs Tariff recognizes the antenna as separate goods which is accordingly classifiable under Chapter Heading 852910 of Customs Tariff Act. However, as per Section note 2(b), antenna which is suitable for goods of headings 8517 are classifiable under Chapter 8517 and not under Chapter Heading 8529. Irrespective of the same, antennas are recognized as goods in their own right under Customs Tariff Act and accordingly covered within the scope of Section Note 2(a).

12. Further, he has submitted that once antenna is treated as independent machine/goods (under Chapter 852910), but certain kinds of antennas are classifiable under Chapter 8517 due to Section notes; the essential nature of antenna classifiable under CSH 8517 as goods does not change. It was submitted that if the antennas are goods under CTA 1975, then are appropriately classifiable under CSH 85176290 as "other goods" and not under 85177090 as "parts".

Further, he has submitted that use of words "machines" under Heading 851762 widens the scope of the said heading as all other headings use the words "apparatus". It substantially expands the scope of sub heading 851762 as the definition of 'machine' in the Section Note 5 of Section XVI is exhaustive and not limited. Further, the antenna is specifically cited in Chapter 85, it is covered in the definition of machines in Chapter 851762. Further, referring to the literature of antenna placed during the course of hearing, the learned A.R. for the Revenue has submitted that the antennas are capable of being used across the spectrum of new and evolving technologies of 4G, LTE and 5G wireless generation and thus have evolved to be sophisticated machine rather than just magnetised bars of metal.

13. Assailing the impugned order, the learned A.R. has submitted that the compatibility of Antenna with the base station cannot be the basis for its classification. It is submitted that a base trans-receiver as well as antenna work independently which are compatible to each other and it cannot be said that the antenna is a part of base station as per the provisions of CTA. Even the learned Commissioner (Appeals) admits that these are fitted together and not in BTS. The certificate of Assistant Wireless Advisor produced reveals that "GSM, Micro-wave, antennas are passive element and work in conjunction with the trans-receiver. It was further submitted that the antenna only works in conjunction with BTS but cannot be treated as a part of BTS. It is further submitted that BTS also only transmits air waves, a function which is more efficiently done by the antenna. It

is submitted that antenna also converts electro-magnetic waves into electrical signals and is therefore called "transducers" which are machines in their own rights.

14. Distinguishing the judgment of Hon'ble Supreme Court in Hutchison Essar South Ltd case (supra), the learned A.R. has submitted that Hon'ble Supreme Court based its findings on the fact that the antennas had been imported along with base station. Referring to Para 9 of the judgment, the learned A.R. has submitted that the said judgment should be read to the effect that the benefit of exemption notification would be available to antenna when it is imported along with BTS. In the present case, however, the antenna had been imported independently. Referring to the judgment of Tribunal in the case of Modern Communication & Broadcasting Systems P. Ltd Vs CC Kandla - 2009 (245) ELT 199 (Tri-Ahmd), wherein it was held that the antenna system performs both reception and transmission, he has submitted that if it be so, the antenna is an independent machine and thus classifiable as independent goods and not as parts.

15. Further, he has submitted that the findings of the learned Commissioner (Appeals) on the issue of availability of exemption under various notification ought to be struck down since it is beyond the scope of assessment of Bill of Entry as the said notification was not even claimed in the Bill of Entry or in the protest letter given by the Respondent.

16. Rebutting the reliance placed by the Respondent on the issue of classification of Antenna adopted by other countries he has submitted that the tariff in such cases is not fully aligned with the Customs Tariff in India and in any case, the classification at 8 digit level is left for the country to be decided. The difference in the tariff is clear in most of the examples relied upon by the Respondents. On the classification by WCO is concerned, he has submitted that it is only persuasive effect and not binding on any country. This is evident from the fact that CBIC has decided not to withdraw the circular which classify Antenna under sub heading 85176290. Further, he has submitted that antenna which are used in radio telephony under Chapter 8529 are distinct from the antenna which are used for telecommunication as now only antenna are used for VHF, UHF and radio telegraphy and similar equipments only are classifiable under CH 8529. Therefore, the observation of the learned Commissioner (Appeals) that it is the intention of the Government of India, is incorrect, particularly when viewed in the context of the Judgment of Hon'ble Supreme Court in the case of CC Vs. M/s Dilip Kumar & Company & Ors.- 2018-TIOL-302-SC-CUS-CB.

17. Per contra, the learned Advocate for the Respondent, answering to the preliminary objection raised by the learned A.R. for the Revenue, in Appeal No.C/85883/2018 submitted that there has been no violation of principles of natural justice nor the said grounds have been taken by the Revenue in their grounds of appeal based on the review of the Committee of Chief Commissioners. The learned Advocate has submitted that the personal hearing notice was

granted by the Commissioner to both the parties. In support, he has referred to the intimation of personal hearing enclosed with the appeal filed by the Respondent dt.07.05.2019. Also, he has submitted that as a prevalent practice, the learned Commissioner (Appeals) despatched a copy of the appeal to the Department soliciting their response. The Department has not filed against their response to the said appeal or any counter-argument in writing; nor sought adjournment to file such written submissions or appear for personal hearing. Therefore, the grounds taken before the Tribunal that the Revenue was deprived of an opportunity of personal hearing is devoid of merit. Further, he has submitted that as per Section 128A of the Customs Act, 1962, it is mandatory on the part of the Commissioner(Appeals) to provide an opportunity of hearing to the Appellant ; if he so desires. Thus it is only the Appellant (now the Respondent) who has the statutory right to be heard and there is no statutory right conferred on the respondent before the Ld. Commissioner (Appeals), that is the department, to be heard. As per as Section 1(A) of Section 128 is concerned, the same has been introduced in the year 2004, which allows the Commissioner (Appeals) to adjourn the hearing for reasons to be recorded in writing, subject to a maximum of three adjournments. It is amply clear that adjournment cannot be extended to the party concerned as a matter of routine, unless sufficient cause has been shown in support of the adjournment. Further, he has submitted that the number of 3 adjournments prescribed the upper limit as laid down by the Hon'ble Gujarat High Court in the case of Ramesh Vasantbhai Bhojani Vs UOI - 2017 (357) ELT 63 (Guj.). He has further

submitted that the plea of violation of principles of natural justice advanced by the Revenue at this stage is hollow as the Revenue could not demonstrate that the prejudice has been caused to them. In support, the learned Advocate referred to the judgment of Hon'ble Supreme Court in the case of ECIL Vs B. Karunakar – (1993 4 SCC 727); Financial Corporation & Anr. Vs Kailash Chandra Ahuja – (2008 9 SCC 31), Sarv U.P. Gramin Bank Vs Manoj Kumar Sinha – (2010 3 SCC 556).

18. Responding to the second preliminary objection raised by the learned A.R. for the Revenue that since duty was paid under protest, no appeal could have been filed against the assessment until the decision is delivered on the protest by the Deputy Commissioner, the learned Advocate for the Respondent pleaded that no provision under the Customs Act, 1962 or the rules made there-under has been cited by the Revenue in this regard. It is his contention that the appeal filed against the assessment of Bill of Entry itself amounts to protest. Further, he has submitted that in view of the decision of Hon'ble Supreme Court in the case of Priya Blue Industries – 2004 (171) ELT 145 (SC), even though the duty was paid under protest, unless appeal has been filed against the order of assessment, refund claim held to be inadmissible. Further, he has submitted that Hon'ble Bombay High Court in the case of Karan Associates - 2009 (236) ELT 23 (Bom.) has held that the assessment on the bill of entry is an appealable order even in absence of a speaking order of an assessment. It is his contention that when the Deputy Commissioner chose not to pass a speaking order of

assessment, the Respondent had no choice but to approach the learned Commissioner (Appeals), challenging the said assessment.

19. Advancing their argument on merit, the learned Advocate has submitted that "antenna" is a part BTS and the Customs tariff itself has recognized antenna as part and not a complete apparatus for reception, conversion and transmission of data. He has submitted that prior to 2007, the heading 85.17 covers only apparatus for line telephony and did not cover any radio telephony. The transmission apparatus of radio telephony was covered under Chapter Heading 85.25 and reception apparatus for radio telephony was covered under Heading 85.27. Antenna for the apparatus of heading 85.25 and 85.27 was specifically covered as 'parts' under Heading 85.29. It is his contention that therefore, it would follow from the above that the tariff itself recognizes that antenna are not, in themselves, complete apparatus for transmission or reception of radio telephony, but only parts of apparatus for transmission and reception of radio telephony.

20. He has further submitted that in the year 2007, consistent with the changes made by World Customs Organisation to the HSN, whereby the apparatus for transmission and reception of radio telephony were shifted from Heading 85.24 and 85.27 and brought under Heading 85.17; consequent to which parts of such apparatus would stand shifted from heading 85.29 to sub-heading 8517.70.

21. Consistent with the said changes in the HSN, the CTA in India also got amended w.e.f. 01.01.2007 and consequently, the transmission and reception apparatus for radio telephony were removed from Heading 85.24 and 85.27 and brought under Heading 85.17. Similarly, parts of transmission and reception for radio telephony covered under Heading 85.29 prior to 2007 shifted to heading 8517.70 which covers parts. The net effect of the aforesaid changes was that antenna for transmission and reception apparatus which prior to 01.01.2007 covered as parts under heading 8529, shifted to 8517.70 which covers parts. It is his contention that w.e.f. 01.01.2007, the base stations which are transmission and reception apparatus used in radio telephony (cellular network) to be covered under Heading 8517.6100 and antenna for such base station being part, should cover under Heading 8517.70. Referring to the Samson catalogue on base station, the learned Advocate has submitted that the antenna is one of the parts of base station. It is their argument that Hon'ble Supreme Court in the case of CC Vs Hutchison Essar South Ltd (supra) held that antenna is an integral and inseparable part of base station.

22. Rebutting the argument of the Department that the Antenna is a machine, the learned Advocate has submitted that the term "machine" for the reception, conversion and transmission etc. was placed against double dash (--) in SH 8517.62 and that the term "machine" is wider than the term "apparatus" as per Note 5 of Section XVI overlooks the fact that '-' entry of machine itself appears under the '-' entry viz. "other apparatus for transmission or

reception of voice, images or other data including apparatus for communication in wired or wireless network such as local or wide area network". It is their contention that for any goods to fall under any of the sub heading of Chapter 8517.62, it must be first apparatus for transmission or reception of voice etc. He has argued that the very fact that prior to 2007, the tariff did not treat the Antenna as apparatus for transmission or reception of data but considered it as parts of apparatus, would itself show that the antennas are not apparatus for transmission or reception of data but merely parts of such apparatus. Further, he has submitted that the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance, and nowhere any of the heading of Chapter 84 or 85, antenna is cited as machine/machinery, equipment, apparatus or appliance.

23. The learned Advocate has further submitted that the Notification No.69/2004-Cus, dt.09.07.2004 as amended by Notification No.18/2007-Cus, dt.22.02.2007 conclusively establish that from 2007, Antenna is a kind used with apparatus for radio telephony should cover under sub heading 85177090. It is their contention that, therefore, Antenna is a kind used with the apparatus for radio telephony only under tariff 85177090.

24. The learned Advocate has further submitted that Antennas for base station are globally classified as parts under heading 8517.7090. In support, he has referred to the classification of China

Customs, Vietnam Customs Tariff, Singapore Customs Tariff and USA Customs Ruling No.36/2009. Further, he has submitted that the decision of Counsel European Commission, consequent upon revision of HSN in 2007, also classified aerials for radio telephony apparatus under Heading 8517.70.

25. Assailing the stand of the Department that in view of Note 2(a) of Section XVI, Antenna is classifiable under Heading 8517.6290, the learned Advocate has submitted that Note 2(a) provides that parts which are goods included in any of the headings of Chapter 84 or 85 are in all cases to be classified in the respective headings and note 2(b) provides that other parts, if suitable for use solely or principally with particular kind of machine to be classified with the machine of that kind. The said note 2(a) cannot be applied for the reason that Antenna are neither specified under Heading 8517.6290 nor do they answer the description "machine" for the reception, conversion, or transmission etc.

26. Further, they have submitted that apart from the fact that the tariff itself recognize that the Antenna are not themselves complete apparatus for transmission and reception, a letter dt.02.09.2013 of Assistant Wireless Advisor, Government of India, Department of Telecommunication, indicates that Antennas are passive elements and incapable of radiation itself; being passive element, the same are only parts and not machine/apparatus for transmission and reception.

27. Further assailing the Circular dt.15.01.2018, which is contrary to the Notification No.18/2007-Cus, dt.22.02.2007, the learned Advocate has submitted that the circular has applied Rule 2(a) of Section XVI of CTA on the erroneous premise that Antenna are complete device with specified function of conversion of electrical signals, whereas the Antenna are not a complete device, but a mere passive element. Further, he has submitted that the circular cannot override the statutory notification and circular which is contrary to a statutory notification can have no effect in law. In support, the learned Advocate refers to the judgment of Hon'ble Supreme Court in the case of Sandur Micro Circuits Ltd Vs CCE – 2008 (229) ELT 641 (SC), Microland Ltd Vs CC – 2017 (357) ELT 988, and Hindustan Unilever Ltd Vs CCE – 2010 (250) ELT 92. Further, the learned Advocate referring to the judgment of Hon'ble Supreme Court in the case of CCE Vs Minwool Rock Fibres Ltd – 2012 (278) ELT 581 (SC), argued that the circulars/instructions issued by the Board are not binding on Assessee/Quasi-judicial authority/Court. The learned Advocate has further submitted that the HS Committee in its 62nd session held that Antenna for base stations are classifiable as parts under Heading 8517.70 and not complete machine or apparatus. The Hon'ble Delhi High Court in the case of Manisha Pharma Plasto Pvt. Ltd. – 1999 (112) ELT 22 held that the opinion of the HS Committee carries a lot of weight and should ordinarily be taken as binding since the very name of the Committee suggests that it is meant to harmonize the conflicting interpretation of

products and formulae in the member countries, in view of the international trade.

28. Explaining the functioning of Antenna, the learned Advocate has submitted that it is mere piece of metal conductors which is used to produce electro-magnetic waves by application of an alternating current. The Antenna is a mere piece of metal conductor and when an alternating current is applied to the antenna, a disturbance is created in the electro-magnetic field, as a result of which electro-magnetic waves are radiated. The antenna is used merely to generate the electro-magnetic waves, which is the medium through which the data is transmitted. Referring to HSN Explanatory Note under Heading 85.17, the learned Advocate submitted that it draws a clear distinction between data such as speech or other sounds and images (referred as signals) and the means of medium used for transmission of data/signals. From the said explanation, it is evident that data (signals) are transmitted between two points through a medium. This medium in the case of a wired network, is a wire and in the case of wireless network, the mediums are the electro-magnetic waves. What is covered under S.H. 8617.62, are the machines for reception, conversion and transmission or re-generation of data and not machines which produce the medium through which the data is transmitted. The role of Antenna in telecommunication network is limited to generate electro-magnetic waves by using electric current as an input. Hence, it is not covered under SH 8517.62, which is also evident from the nature of various machines specified under SH 8517.62 as

these machines interact and interface with data in its original form for converting such data into electrical current or optical waves or vice versa. This is the process of conversion referred to S.H. 8517.62 and Antenna is not capable of doing any such conversion, but receives mere RF signals and emits electro-magnetic waves. Rebutting the argument of the learned A.R. for the Revenue that the Antenna in question can be used across a wide spectrum of technology and not merely a part of base station, the learned Advocate submitted that the said argument has not been substantiated and also beyond the scope of appeal.

29. Without prejudice to their submissions advanced, the learned Advocate has submitted that in any event, the Antenna of a kind used with apparatus for radio telephony, are covered under Sr.No.15 of Notification No.25/2005-Cus, dt.01.03.2005, which has been upheld by the learned Commissioner (Appeals) in the impugned order but not challenged by the Revenue in the present appeal. It is his contention that even though Sr.No.15 mentions tariff heading 8529.10, the antenna in question satisfied the description of the goods given in the said notification. Even though since 2007, Antenna of a kind used with apparatus for radio telephony, taken out of Heading 8529.10 and placed under Heading 8517, the exemption continue to mention 8529.10 under a mistake. Such mistake cannot be ground to deny them the benefit of notification in view of the judgment of Hon'ble Supreme Court in the case of Jain Engineering Co. Vs CC - 1987 (32) ELT 2 (SC), Johnson & Johnson Ltd Vs CCE - 1997 (92) ELT 23 (SC), Silvassa Machines Vs CC - 2017 (349) ELT

176. Further rebutting the argument of the learned A.R. for the Revenue that the Commissioner (Appeals) erred in extending the benefit of exemption notification which was not claimed in the Bills of Entry, the learned Advocate has submitted that it is a settled law that benefit of exemption notification can be claimed at any stage of proceedings, as held by Hon'ble Supreme Court in the case of Share Medical Care Ltd Vs UoI – 2007(209) ELT 321 (SC).

30. In their further submissions, the learned Advocate for the Respondent has emphasized that Notification No.69/2004-Cus. Issued in respect of Education Cess was rescinded by Notification No.9/2018-Cus, dt.02.02.2018 consequent upon replacement of education cess by social welfare surcharge; the successor Notification No.11/2018 dt.2.2.2018 at Sr.No.31 mentions that aerials or antennas of a kind to be used as apparatus for radio telephony and radio telegraphy falling under Tariff Item 85177090. Thus, the Government's statutory notification continues to consider the Antennas as "parts" falling under sub heading 85177090. The said notification was issued subsequent to Board's instructions No.1/2018-Cus, dt.15.01.2018.

31. Heard both sides at length, perused the written submissions filed on conclusion of hearing and the records of the case. The issue for determination in both the appeals, filed by the Revenue, centres around the classification of 'Antenna for base station imported by the Respondent used in mobile telecommunication network.

32. The Revenue deviating from the past assessment of classifying the said antenna for base station under CSH 85177090, classified it under CSH 85176290 of Customs Tariff Act, 1975. The Respondent to expedite the clearance of the imported goods, paid the duty under protest, and filed appeal before the learned Commissioner (Appeals), challenging the assessment of the respective Bills of Entry. The learned Commissioner (Appeals), after considering various aspects of the case, directed assessment under CSH 85177090 of CTA, 1975 and remanded the matter to the Adjudicating authority, accordingly.

33. Revenue assailed the order of the learned Commissioner (Appeals), inter alia, on the following grounds:-

3. Hence, telecommunication "Antenna" being a complete device with a specified function, i.e. Conversion of electrical signals into electromagnetic waves and vice versa in a wireless communication system, is appropriately covered by single dash heading "-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)" of heading 8517 as an 'transmitting and receiving apparatus for radio-telephony'. Further, a double dash level, it is squarely covered by the heading "8517 62 -Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus".

4. The classification of parts of the Goods of Chapter 85 is governed by rules enumerated in Section Note 2 of Section XVI read with General Explanatory Notes to this Section Note. According to Rule (a), parts which are goods included in any of the heading of Chapter 84 or 85, are in all cases to be classified in their respective headings.

5. In other words, the parts which in themselves constitute an article covered by a heading of this section, in all cases are to be classified in their own appropriate heading even if specially designed to work as part of a specific machine.

6. Goods under consideration would fall under CTH 85177090 as a part of the machine/apparatus classifiable

under 8517, only in the situation when it is not covered by any other heading of the section.

7. By applying General Rules for Interpretation 1 & 6, "Antenna used at Base Trans-receiver Station/NodeB/eNodeB in a Wireless Telecommunication Network, merits classification under CTH 8517 62 90.

8. Board vide Instruction No.01/2018 dt.01.01.2018 regarding technicalities and function of impugned goods have also reiterated that:

"The Antenna is an essential device of a wireless communication system. The information can travel only in the electromagnetic wave form. The Antenna radiates the information in the form of an electromagnetic wave in an efficient and desired manner to the destination, where the information is picked up by the receive antenna and passed on to the receiver via transmission line. The signal is demodulated and the original message is then recovered at the receiver. Thus, wireless communication gets established. The Antenna can generate electromagnetic waves from currents and voltages and which can convert electromagnetic waves to currents and voltages and which can convert electromagnetic waves to currents and voltages when these waves impinge on it. In technical language, the Antenna is a device that transform time varying electrical signals into electromagnetic waves at transmit antenna and electromagnetic waves induces voltage/current at receive antenna. Further, the Antenna for wireless communication works at transmit antenna as well as receive antenna".

9. Based on the instructions issued by Board dt.15.01.2018, the functions and technology defined solely and also in view of General Rules for Interpretation the Bills of Entry were assessed correctly.

10. The Appellant says that the impugned Order-in-Appeal No.MUM-CUSTOM-AMP-APP-756 to 815/17-18, dt.30.11.2017 passed by the Commissioner of Customs (Appeals), Zone-III, Mumbai to the extent of setting aside of assessment of 60 Bills of Entry, reassessment of "Antenna with Base Station" under CTH 85177090 and refund of Duty paid under protest is not maintainable in the first instance.

34. Before proceeding to analyse the Revenue's aforesaid grounds in considering the correctness of the Order impugned, it is necessary to address the preliminary objections raised by the Revenue, which are though not part of the above grounds, but addressed during the course of hearing.

34. It is contended that Ld. Commissioner (appeals) has failed to observe the principles of natural justice, in as much of as, the Department was not provided with adequate opportunities to present their case. Countering the said plea, the Respondent on the other hand has submitted that a copy of the appeal has been endorsed to the Department by the learned Commissioner (Appeals); no written submission was filed by the department in response to the said Appeal, nor any request for a personal hearing or adjournment of the hearing scheduled had been advanced. Besides, it is also argued that the relevant provision under the Customs Act & the Rules made there under mandates to extend personal hearing to the appellants and not to the respondents, and the argument of at least three adjournments of the personal hearing prescribed under the Act is only the upper cap and depends on the circumstances of each case, and not adjourning the matter invariably for three times in all cases will not result into violation of the principles of natural justice.

35. We find merit in the contention of the Ld. Advocate for the Respondent. It is a normal practice before the Commissioner (Appeals) that the personal hearing is extended to the Appellant-assessee when an appeal is filed by the Assessee, the department is served with copy of the Appeal to submit their reply to the Appeal and in the event they intend to be heard, such request is made accordingly in filing their written submission to the Appeal. Majority of cases where appeals are filed by the assessee, the appeals are

disposed of by the Commissioner (Appeals) after hearing the assessee after due notice to the department. In the present case, nothing has been brought on record to show that the Commissioner (Appeals) has deviated from the normal practice or rejected the request of adjournment of the department and proceeded by disposing the Appeal after hearing the Appellant in a biased manner without putting the department on notice about filing of the Appeal. Thus, in these circumstance, in our view, there is no violation of principles of natural justice in disposing the appeal by the learned Commissioner (appeals) by not adjourning the hearing suo motto for three times without any request for adjournment from the department in this regard.

36. The second preliminary objection raised by the Revenue is that since the duty has been paid under protest, the assessment is not final, therefore appeal against the assessment Order cannot lie before the Commissioner (Appeals). We do not find merit in the said contention of the Revenue in as much as that payment of the disputed amount before or after assessment of the respective bill of entry either under protest or otherwise will not make the assessment provisional/incomplete and not an appealable Order. On the contrary, in view of the principle of law laid down by the Hon'ble Bombay High Court in Karan Associate's case (supra), an assessed Bill of Entry is an appealable order.

37. Now, coming to the merits of the case, it is not in dispute that the imported Antenna was meant to be used with the base station for mobile telecommunication network. It is also not in dispute that the antenna for base station, imported by the Respondent earlier, that is prior to May 2017 had been subjected to classification as "parts" under Heading 85177090, and such assessment was never challenged by the Revenue.

38. The dispute now centres around the issue, whether the antenna for base station would be considered as a 'machine' and accordingly classifiable under CSH 85176290 as claimed by the Revenue or as "parts" classifiable under CSH 85177090, claimed by the Respondent.

39. Therefore, to understand the scope of the competing entry 85176290 & 85177090 and its applicability to the imported goods in question, it is necessary to have a glimpse on the development (changes) brought into the said tariff heading 8517 and related tariff entry 8525, 8527 & 8529 of CTA 1975.

Before 01.01.2007:

8517		Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones			
	-	Telephone sets; videophones:			
8517 11	--				
8517 11 10	---	Push button type	u	Free	-
8517 11 90	---	Other	u	Free	-
851719	--	Other	u	Free	-
	---	Telephone sets:	u	Free	-
8517 19 11	----	Push button type	u	Free	-

8517 19 12	----	Rotary dial type	u	Free	-
8517 19 19	----	Other	u	Free	-
8517 19 20	---	Videophones	u	Free	-
	-	Facsimile machines and teleprinters:	u	Free	-
8517 21 00	--	Facsimile machines	u	Free	-
8517 22 00	--	Teleprinters	u	Free	-
8517 30 00	-	Telephonic or telegraphic switching apparatus	u	Free	-
8517 50	-	Other apparatus, for carrier-current line systems or for digital line systems:	u	Free	-
8517 50 10	--	PLCC equipment	u	Free	-
8517 50 20	--	Voice frequency telegraphy	u	Free	-
8517 50 30	--	Modems (modulators-demodulators)	u	Free	-
8517 50 40	--	High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 50 50	--	Digital loop carrier system (DLC)	u	Free	-
8517 50 60	--	Synchronous digital hierarchy system (SDH)	u	Free	-
8517 50 70	--	Multiplexer, statistical multiplexer	u	Free	-
	---	Other:	u	Free	-
8517 50 91	----	ISDN terminals	u	Free	-
8517 50 92	----	ISDN terminal adapters	u	Free	-
8517 50 93	----	Routers	u	Free	-
8517 50 94	----	X25 pads	u	Free	-
8517 50 99	----	Other	u	Free	-
8517 80	-	Other apparatus:	u	Free	-
8517 80 10	---	Attachments for telephones.	u	Free	-
8517 80 20	---	Subscriber end equipment	u	Free	-
8517 80 30	---	Set top boxes for gaining access to the Internet	u	Free	-
8517 80 90	---	Other	u	Free	-
8517 90	-	Parts:	u	Free	-
8517 90 10	---	Populated, loaded or stuffed printed circuit boards	kg	Free	-
8517 90 90	---	Other	kg	Free	-

8525		Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras			
8525 10	-	Transmission apparatus:	u	12.5%	-
8525 10 10	---	Radio broadcast transmitter	u	12.5%	-
8525 10 20	---	TV broadcast transmitter	u	12.5%	-
8525 10 30	---	Broadcast equipment sub-system	u	12.5%	-
8525 10 40	---	Communication jamming equipment	u	12.5%	-
8525 10 50	---	Wireless microphone	u	12.5%	-
8525 10 90	---	Other	u	12.5%	-
8525 20	-	Transmission apparatus incorporating reception apparatus:	u	12.5%	-

	---	Two way radio communication equipment:	u	Free	-
8525 20 11	----	Walkie Talkie set	u	Free	-
8525 20 12	----	Cordless handset	u	Free	-
8525 20 13	----	Car telephone	u	Free	-
8525 20 14	----	Transportable telephone	u	Free	-
8525 20 15	----	Marine radio communication equipment	u	Free	-
8525 20 16	----	Amateur radio equipment	u	Free	-
8525 20 17	----	Cellular telephone	u	Free	-
8525 20 18	----	Other	u	Free	-
8525 20 19	---	Other:	u	Free	-
8525 20 91	----	VSAT terminals	u	Free	-
8525 20 92	----	Other satellite communication equipment	u	Free	-
8525 20 99	----	Other	u	Free	-
8525 30 00	-	Television cameras	u	12.5%	-
8525 40 00	-	Still image video cameras and other video camera recorders; digital cameras	u	12.5%	-

8527		Reception apparatus for radio-telephony, radio-telegraphy or radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock			
	-	Radio-broadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radio-telephony or radio-telegraphy:			
8527 12 00	--	Pocket-size radio cassette-players	u	12.5%	-
8527 13 00	--	Other apparatus combined with sound recording or reproducing apparatus	u	12.5%	-
8527 19 00	--	Other	u	12.5%	-
	-	Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radio-telephony or radio-telegraphy:	u	12.5%	-
8527 21 00	--	Combined with sound recording or reproducing apparatus	u	12.5%	-
8527 29 00	--	Other	u	12.5%	-
	-	Other radio-broadcast receivers, including apparatus capable of receiving also radio-telephony or radio-telegraphy:	u	12.5%	-
8527 31 00	--	Combined with sound recording or reproducing apparatus	u	12.5%	-

8527 32 00	--	Not combined with sound recording or reproducing apparatus but combined with a clock	u	12.5%	-
8527 39 00	--	Other	u	12.5%	-
8527 90	-	Other apparatus:	u	12.5%	-
	---	Radio communication receivers	u	12.5%	-
8527 90 11	----	Radio pagers	u	12.5%	-
8527 90 12	----	Demodulators	u	12.5%	-
8527 90 19	----	Other	u	12.5%	-
8527 90 90	---	Other	u	12.5%	-

8529		Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528			
8529 10	-	Aerials and aerial reflectors of all kinds; parts suitable for use therewith:	Kg	12.5%	-
	---	Dish antenna:	Kg	12.5%	-
8529 10 11	----	For communication jamming equipment	Kg	12.5%	-
8529 10 12	----	For amateur radio communication equipment	Kg	12.5%	-
8529 10 19	----	Other	Kg	12.5%	-
	---	Other aerials or antenna:	Kg	12.5%	-
8529 10 21	----	For communication jamming equipment	Kg	12.5%	-
8529 10 22	----	For amateur radio communication equipment	Kg	12.5%	-
8529 10 29	----	Other	Kg	12.5%	-
	---	Other:	Kg	12.5%	-
8529 10 91	----	For communication jamming equipment	Kg	12.5%	-
8529 10 92	----	For amateur radio communication equipment	Kg	12.5%	-
8529 10 99	----	Other	Kg	12.5%	-
8529 90	-	Other:	Kg	12.5%	-
8529 90 10	---	For communication jamming equipment	Kg	12.5%	-
8529 90 20	---	For amateur radio communication equipment	Kg	12.5%	-
8529 90 90	---	Other	Kg	12.5%	-

After 01.01.2007:

8517		Telephone sets, including 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 local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528			
-------------	--	---	--	--	--

	-	Telephone sets, including telephones for cellular networks or for other wireless networks:			
8517 11	--	Line telephone sets with cordless handsets:	u	Free	-
8517 11 10	---	Push button type	u	Free	-
8517 11 90	---	Other	u	Free	-
8517 12	--	Telephones for cellular networks or for other wireless networks:	u	Free	-
8517 12 10	---	Push button type	u	Free	-
8517 12 90	---	Other	u	Free	-
8517 18	-	Other:	u	Free	-
8517 18 10	---	Push button type	u	Free	-
8517 18 90	---	Other	u	Free	-
	-	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):	u	Free	-
8517 61 00	--	Base stations	u	Free	-
8517 62	--	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:	u	Free	-
8517 62 10	---	PLCC equipment	u	Free	-
8517 62 20	---	Voice frequency telegraphy	u	Free	-
8517 62 30	---	Modems (modulators-demodulators)	u	Free	-
8517 62 40	---	High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 62 50	---	Digital loop carrier system (DLC)	u	Free	-
8517 62 60	---	Synchronous digital hierarchy system (SDH)	u	Free	-
8517 62 70	---	Multiplexers, statistical multiplexers	u	Free	-
8517 62 90	---	Other	u	Free	-
8517 69	---	Other:	u	Free	-
8517 69 10	---	ISDN System	u	Free	-
8517 69 20	---	ISDN terminal adapter	u	Free	-
8517 69 30	---	Routers	u	Free	-
8517 69 40	---	X 25 Pads	u	Free	-
8517 69 50	---	Subscriber end equipment	u	Free	-
8517 69 60	---	Set top boxes for gaining access to internet	u	Free	-
8517 69 70	---	Attachments for telephones	u	Free	-
8517 69 90	---	Other	u	Free	-
8517 70	-	Parts:	u	Free	-
8517 70 10	--	Populated, loaded or stuffed printed circuit boards	Kg	Free	-
8517 70 90	--	Other	kg	Free	-

40. From the above comparative study, it is clear that prior to 2007, the heading 8517 was consisting of Apparatus i.e. telephone

instruments only for line telephony and not for radio telephony; the transmission apparatus for radio telephony was covered under heading 8525 and reception apparatus for radio telephony was covered under heading 85.27; the antenna for the apparatus for radio telephony under heading 8525 & 8527 was specifically covered as "parts" under 8527 of CTA,1975. After 01.01.2007 the instruments for radio telephony/mobile network, Apparatus for reception & transmission, and "parts" have been placed under one heading i.e 8517 of CTA, 1975. Revenue continued classification of Antenna for mobile network as "parts" accepting its classification under 85177090 post 01.01.2007.

41. Now, a simple analysis of heading 8517 effective from 01.01.2007, it is clear that the instruments/telephone sets for cellular networks/wireless networks, apparatus both for transmission and reception of voice, images or other data in a wired or wireless network, and "parts" classified under the said heading broadly placed under three categories of single dash(-). First single dash(-) for telephone sets, including telephones for cellular network or for other wireless network; second single dash (-) for 'other apparatus for transmission or reception of voice, images, or other data including apparatus for communication in wired or wireless network (such as local or wide area network); and the third single dash(-), for "parts". The 'base station' is classified under the second category under CSH 85176100, to which neither side disputes.

42. Revenue, referring to the definition of 'machine' prescribed under Note 5 of Section XVI classified the 'antenna' for base station under second category, as 'machines' for reception, conversion and transmission or regeneration of voice, images or other data including switching and routing apparatus. The Revenue's argument is based on the clarification issued by the Board on 01.01.2018 that Antenna is an essential device of a wireless communication system; the information can travel only in the electro-magnetic wave form. The antenna radiates the information in the form of electro-magnetic wave in an efficient and desired manner to the base station, where the information is picked up by the receiving antenna and passed on to the receiver via transmission line. The signal is de-modulated and the original message is then recovered at the receiver. Thus, the wireless communication gets established. It is the contention of the department that since the antenna can generate electro-magnetic wave from current and voltages and which can convert electro-magnetic wave to current and voltages with these waves impinge on it, therefore, it can be considered as a machine, which independently receives and transmits electro-magnetic waves.

43. The Respondent's contention, on the other hand, is that the antenna is a passive element. It cannot function on its own unless connected to the base station, Therefore, the same does not fall within the scope and meaning of 'machine' prescribed at Note 5 under Section XVI.

44. In support of their contention that the Antenna imported for base station is a passive element, the Respondent placed on record the opinion of Vinod Gandhi & Associates, Government registered Chartered Engineer. Also, they have placed a letter dt.12.11.2018 issued by the manufacturer of Antenna i.e. M/s Ace Technology, Korea i.e. Antenna supplied by them are passive part of base station i.e. e Node B. It is clarified that the Antenna on its own is not capable of performing any function and when connected, it only transmits and receives only the signals. It is further stated that the Antenna is not performing in any other functions like conversion or regeneration of voice, images or other data signals or switching and/or routing of signals. No technical literature has been placed by the Revenue in support of their contention that the imported Antenna for base stations are designed to function independently as a machine, contrary to the claim of the Respondent that these are passive elements and can function only when attached to the base station for receiving and sending signals. The Revenue has placed the general information available on net about the multi fold use of e node Antenna in 4G & 5G network in the developed wireless cellular technology. Comparing the data placed on the imported goods, we find merit in the contention of the learned Advocate for the Appellant that to be Antenna as machine, it needs to be something more than a passive element of receiving and sending electro-magnetic waves when attached to a base station. The meaning of 'Machine' provided under note 5 to Section XVI reads as:

" 5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance in the headings of Chapter 84 or 85."

The meaning of 'machine' has to be understood in the context of Heading 8517. This is clear when we read the scope of Heading 8517 as explained under HSN which reads as follows:-

"This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks."

45. In the present case, the manufacturer of Antenna as well as the chartered engineer's certificate, in clear terms clarified that the Antenna in question transmits and receives only signals and not performing any other function like conversion or regeneration of voice, images or other data signals and switching/routing of signals. Therefore, the Antenna stand alone cannot be considered as a 'machine', attracting classification under Heading 8517.62. Consequently, the observation of the Department in the circular dt.15.01.2018 that the Antenna itself is a complete device and has capability of functioning on its own of conversion of electrical signals into electro-magnetic waves and vice versa in a wireless communication system cannot be applied to the present goods as it would be complete only when connected to a base station. In the event if the Antenna so designed, instead of working as a passive element, besides the above function, it also performs some more functions as in the case of other entries under the same category, its

classification under sub heading 851762 may be attracted, considering the same as an independent of 'machine'.

46. The Revenue's contention to classify the 'Antenna' for base station under sub heading 851762 rests on the ground that as per note 2(a) of section XVI, parts which in themselves constitute an article covered by a heading of this section, in all cases are to be classified in their own appropriate heading even if specially designed to work as part of a specific machine. Further it is contended that Antenna is a part of a machine classifiable under heading 8517, only in the situation when it is not covered by any other headings of the section. As per Department, since it is classifiable under 851762, hence, not to be considered under 851770 as 'parts'. The said Chapter note reads as follows:

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538, and 8548) are in all cases to be classified in their respective headings;
- (b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
- (c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548."

47. A simple analysis of Clause (a) of the above Note reveals that parts which are 'goods' required to be classified in the respective headings; in the present case, 'Antenna' being a part of the BTS, hence applying the said Rule, classifiable under Chapter Heading 8517. Revenue's interpretation of the said clause(a) in the present case is that in the event if the goods are not falling under any of the sub heading of heading 8517, then only it will be classifiable as 'parts', is incorrect. Clause 'b' of the said Note 2 indicates that "other parts", by implication which are not goods, if suitable for use solely or principally with a particular kind of machine of the same heading are to be classified with the machines of that kind or the headings mentioned under the said clause 'b' as appropriate. Further, it is mentioned that parts which are equally suitable for use principally with the goods of heading 85.17 and headings of 8517 and 8525 to 8528 are to be classified as headings of 8517. Therefore, Antennas since parts of BTS, as held by Hon'ble Supreme Court in Hutchison Essar South Ltd.'s case (supra), therefore, be classified as "parts" under 8517.7090.

48. To resolve the issue about classification of Antenna for base station between the competing entries of 851762 and 851770 arose before the member countries, the HS Committee in 62nd session , after deliberation, recorded as follows:-

No	Product description	Classification	HS codes considered	Classification rationale
22	Antenna for Base Station	8517.70	8517.62 and 8517.70	GIRs 1 [Note 2(b) to Section XVI] and 6

It is a directional dual-polarized plate antenna with a width of 0.3 m and a length of 1.4 m.

The antenna works at 1.7-2.7 GHz frequency band and is part of a base station which plays a role as a core facility for mobile communication.

Used in a mobile communication system, the base station antenna receives and transmits electromagnetic waves in the base station system.

Its main features are as follows:-

- * Directivity: horizontal beam width of 65 degrees for cellular sector networking;
- * High gain: 18dBi;
- * Vertical beam pointing adjustment function; and
- * Unique 4.3-10 connector for communication.

49. The invoices and the specification of antenna imported submitted during the course of the proceeding confirms the specification mentioned as above.

Exhibit - 'A'

INVOICE

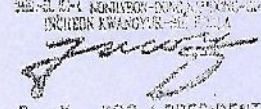
Shipper/Exporter ACE TECHNOLOGIES CORP. 24B 5L,451-4,NONHYEON-DONG,NAMDONG-GU, INCHEON KWANGYUK-SHI,KOREA		No. & Date of invoice VIBS_AR17D04-3 May 26, 2017			
INVOICE ADDRESS Reliance Jio Infocomm Limited. Reliance Corporate Park, 5B, 1st Floor, 8, TTC Industrial Area, Thane Belapur Road, Ghansoli, Navi Mumbai-400701, MAHARASHTRA, INDIA.		Terms of payment 150 Days After Delivery			
DELIVERY & NOTIFY ADDRESS Reliance Jio Infocomm Limited. C/o Reliance Industries Ltd, D-1 Kurkumbh MIDC Industrial Area, Pune Solapur Highway, Kurkumbh, Taluka Daund, Dist. Pune - 413002 Maharashtra Contact Person: Mr. Ramesh Krishnan Tel: +912244775414 / +917738210296		Terms of delivery * EXW Ha Nam, Vietnam			
Port of Loading HANOI, VIETNAM		Final Destination MUMBAI, INDIA			
Carrier DHL		Sailing on or about By AIR			
		Remarks SCN# 04547835			
		* COUNTRY OF ORIGIN : VIETNAM			
ITEM NO/P/N	DESCRIPTION	PO	Qty	Unit-Price	Amount
1	XXDWH-17-65J-IVT ANTENNA MULTIBAND 2001950026	MG1/63022006	2,048	@\$508.00	US\$10,42,432.00
2	AISB 2.0 5M AISB CABLE 2001816083	MG1/63022006	2,048	@\$14.00	US\$28,672.00
TOTAL			4,096		US\$10,71,104.00

* SAY: UNITED STATES DOLLARS ONE MILLION SEVENTY ONE THOUSAND ONE HUNDRED AND FOUR ONLY

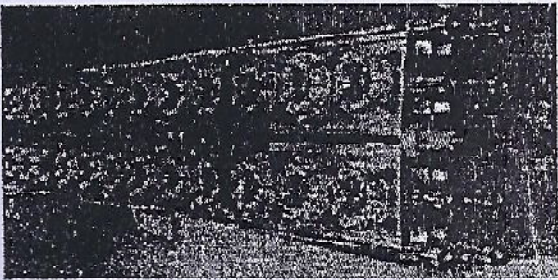
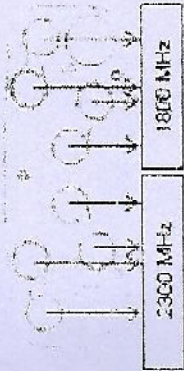
Bank Name:	Industrial Bank of Korea (Namdong Gyeongdan Branch)
Bank Address:	449-3, Nonhyeon-dong, Namdong-gu, Incheon, Korea
	Tel.: +82-32-815-6024
Bank Account no	107-045394-56-00017
Swift Code:	IBKOKRSE

CONTACT PERSON : J. S. IN
E-MAIL ADDRESS : acetechology@aceteq.co.kr
TEL. NO. : +82-32-458-1518
FAX No. : +82-32-458-1522

ACE TECHNOLOGIES CORP.
24B 5L, 451-4, NONHYEON-DONG, NAMDONG-GU
INCHEON KWANGYUK-SHI, KOREA


G. Y. KOO / PRESIDENT
 Signed By : _____

1800 4T4R / 2300 8 port Antenna (MB-type 1)

ELECTRICAL SPECIFICATIONS	
Model No.	XXDWH-17-661-VT
Frequency range	1710 ~ 1880 MHz 2300 ~ 2400 MHz
Gain	16.4 dBi ± 0.4 dB 16.4 dBi ± 0.4 dB
Polarization	Dual, ± 45° Dual, ± 45°
-3dB Beam width (H-plane)	66.0° ± 4.0°
-3dB Beam width (E-plane)	7.7° ± 0.5° 7.2° ± 0.5°
Cross Polarization Ratio (@0°)	≥ 20 dB ≥ 20 dB
Electrical down tilt	0° ~ 10° 0° ~ 10°
Upper Sidelobe Suppression	≥ 15 dB ≥ 15 dB
Front to back ratio (Co-pol)	≥ 30 dB (at 180° ± 30°)
Isolation between ports (in band)	> 25 dB
Isolation between ports (inter band)	> 40 dB
Impedance	50 Ω
VSWR	< 1.5
IMD (@2x20W)	< -150 dBC
Maximum input power	250 watt
N/A	
MECHANICAL SPECIFICATIONS	
Estimated Dimensions (WxHxD)	350*1400*130 mm
Estimated Weight (w/o radome)	17.5 Kg
Input connectors	8 x 7/16 DIN Female
Maximum wind velocity	60 m/s
Radome material	FRP
Mounting interface	Post

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1 | ACE TECHNOLOGIES CORP. | November 2013

50. Revenue vehemently opposed to the said opinion of HS Committee stating that it is not binding on the department. We do not find merit in the argument of the Revenue in view of the principle of law laid down by the Hon'ble Delhi High Court in Manisha Pharma Plasto Pvt. Ltd's case (supra), where under it is held that the

that the opinion of Harmonized Systems Committee has lot of weight and should ordinarily be taken as binding. Similar view has been expressed by the Tribunal in the case of CCE, Pune-I Vs. Telco Ltd. 2002 (143) ELT 548(Tri-Mum.), later upheld by the Supreme Court reported at 2003 (152) ELT A259. Also, the literature relating to the classification of the Antenna of different countries placed by the Respondent indicates that the Antenna is classified as part of base station under Subheading 851770.

51. In the result, the correct classification of the Antenna for base station is under Sub-heading 85177090 as "parts". Since, the main issue of classification has been addressed, the other ancillary/alternative submission/issues on the eligibility of various exemption notifications issued in support of the classification of the said goods, becomes more of academic, hence not analysed. Consequently, the Revenue's Appeals are being devoid of merit accordingly rejected.

(Order pronounced in the open court on 06.11.2019)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)