

# Principal Commissioner Of Customs vs M/Sgo Ip Global Services Pvt. Ltd on 27 March, 2025

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27

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CUSAA 71/2024 & CM APPL. 51080/2024

PRINCIPAL COMMISSIONER OF CUSTOMS .....Appellant

Through: Mr. R. Ramachandran, Sr  
Prateek Dhir, Adv. (M:9

versus

M/SGO IP GLOBAL SERVICES PVT. LTD .....Respondent

Through: Mr. A.K. Prasad and Ms. Surabhi  
Sinha, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. This is an appeal under Section 130G of the Customs Act, 1962 arising out of the Customs, Excise and Service Tax Appellate Tribunal (hereinafter "CESTAT") impugned order dated 3rd January, 2024.

3. The short issue that arises in the present petition is in respect of the interpretation of the word 'and' appearing in the clause (iv) of Serial No. 13 of Notification No. 11/2014-Customs dated 11th July, 2014, i.e., "Multiple Input/ Multiple Output (MIMO) and Long Term Evolution (LTE) Products". The CESTAT vide the impugned order has interpreted the said terms i.e., MIMO and LTE in conjunction and thereby, held that the subject goods would not be covered in the exclusion clause of the exemption notification.

4. This issue has now been decided by a Coordinate Bench of this Court in Commissioner of Customs (Air) Chennai -VII Commissionerate, Chennai v. Ingram Micro India Pvt. Ltd. in Customs Appeal No. 51093 of 2020. The relevant paragraphs are set out below:

"42. Thus, again, every technology or feature is followed by words such as 'products' or a specific product such as 'switch'.

43. It is clear from the aforesaid that the Central Government has appropriately and purposefully used terms such as 'and', 'or', 'products' and 'equipment', along with commas, to ensure precise and unambiguous categorization.

44. In this background, when entry (iv) of Serial No. 13

- which refers to "MIMO and LTE Products" - is examined, we note that there is a clear absence of word 'products' after 'MIMO', as the same has been put after the word 'LTE'. To put it differently, the word 'products' has been put after the words 'MIMO' and 'LTE', thereby indicating that "MIMO and LTE Products" includes those products which work on both MIMO technology and LTE standard.

45. The interpretation advanced by the Revenue is that the phrase "MIMO and LTE Products" includes three categories - (i) products using MIMO but not LTE, (ii) products using LTE but not MIMO, and (iii) products using both MIMO and LTE. In the written submissions filed on behalf of the Revenue, it has been asserted that the grammatically, the only possible way to fulfil this intention was to add the word 'and' between 'MIMO' and 'LTE' and then suffix the term 'products' after 'MIMO and LTE' as the same would have the meaning of 'MIMO product and LTE product'.

46. However, in our opinion, the aforesaid contention is unmerited. If the intention of the Central Government was to include products utilizing either MIMO technology or LTE standard or both, the phrase 'MIMO or LTE Products' could have been used. The use of the conjunction 'or' would have naturally encompassed all products with either of the two technologies/standards, and also those products which combine both. There would have been no need to use 'and' in place of 'or', as the latter would inherently fulfill the purpose of including all such categories. To explain in simpler terms, the phrase "MIMO or LTE Products" would mean - products having MIMO technology or products having LTE standard. A product having MIMO technology can have many other technologies, standards, etc., which may also include LTE standard. Similarly, a product having LTE standard can have many other technologies, standards, etc., which may also include MIMO technology. Thus, the phrase 'MIMO or LTE Products' would have included the categories of products, which the Revenue is projecting before this Court.

47. Moreover, in earlier entries of the same notification, such as Serial No. 13 (ii) and (iii), the word 'or' has been used wherever appropriate to denote alternatives. Similarly, commas have also been employed to demarcate distinct categories of products. Had the intention been to use 'and' in a disjunctive manner in entry (iv) of Serial No. 13, the phraseology could also have been easily drafted as follows: 'MIMO Products and LTE Products', or 'MIMO Products and/or LTE Products', or 'MIMO Products or LTE Products'. These products could also have been separated by use of commas, such as by drafting the same as 'MIMO Products, LTE Products' or 'MIMO Products, and LTE Products'. However, the same has not been done in the exclusion

entry in question.

48. As noted in the preceding discussion, MIMO is a technology and LTE is a standard. Concededly, the case of Revenue is that "MIMO and LTE Products", inter alia, includes "products which work on LTE standard and have MIMO technology". Thus, it is not disputed that there exist products which embody both MIMO technology and LTE standard.

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51. Further, the term "and" is a conjunction, commonly understood to connect and join words, clauses, or phrases. Dictionaries and linguistic principles affirm that "and" denotes addition or combination, unless there is ambiguity or absurdity arising from its literal interpretation.

52. In this regard, it would be relevant to take note of the following passage from G.P. Singh's Principles of Statutory Interpretation (15th Edn.):

"The word "or" is normally disjunctive and "and" is normally disjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature"

53. In the present case, there is no such ambiguity or absurdity. In our view, when all the four entries of Serial No. 13 are analysed, it would lead to only one conclusion that the word "and" is to be read in conjunctive manner only, and the phrase "MIMO and LTE Products" would refer to only those products which have both MIMO technology and LTE standard.

54. As far as the argument of the Revenue that in the year 2021, the Notification No. 25/2005, and one Notification No. 57/2017-Customs were amended and the phrase "MIMO and LTE Products" were substituted with (i) MIMO products; (ii) LTE products', and that these amendments were clarificatory in nature, is concerned, notably, an amendment in the Notification No. 57/2017-Customs was brought vide Finance Act, 2021 which is clarificatory in nature, and, clarifies Serial No. 20 of the said notification. It states that the subject entry will now be read as (i) MIMO products;

(ii) LTE products. Similar change was brought in Notification No. 25/2005 by virtue of Notification No. 05/2021-Customs.

55. Thus it is clear that the aforesaid amended entries in the concerned Notifications, in their clarificatory form, will be applicable only from the date of coming into force of these amendments i.e. 02.02.2021. As a natural consequence, the cases, which are in dispute qua the exclusion entry in question, which are pending adjudication or were adjudicated prior to the amendment brought about by clarifications, will be amenable to interpretation and adjudication as it stood prior to the aforesaid clarification and amendment.

56. It would, therefore, mean that in cases involving disputes over interpretation of the subject entry, the amendment brought about through later clarification cannot put fetters on the powers of the Courts or adjudicating authorities, dealing with disputes prior to the amendment so as to have a binding effect on such authorities or on the Courts to hold as correct the clarification as the guiding principle to decide the entry which stood prior to such amendment in its original form.

57. We are of the view that the clarification is brought about in the Statute when there is ambiguity and disputes arise due to such ambiguities. The fact that a clarification is needed to be brought about in the subject entry by the Finance Act, 2021 would point out towards the inherent ambiguity experienced in its interpretation and application which prompted and necessitated the subject amendment and clarification. In the light of this observation and the facts of the present case as well as the judicial precedents in similarly situated cases, we are of the opinion that exclusion clause (iv) of Serial No. 13 of the amended Notification No. 24/2005, which reads as 'MIMO and LTE products', would have to be read in its original form applying the law and rules of interpretation of statutes, especially as applicable in cases of taxation.

58. While adjudicating cases of disputes over an entry attracting or not attracting customs duty, the first and foremost rule to be followed is reading it as it stands by giving it the meaning that can be understood by reading the plain language of the entry in question.

59. Coming back to the facts of the case and applying the above principle, we note that the word 'and' is suffixed with the word 'MIMO' and prefixed with the word 'LTE' and there is no punctuation mark or comma after the word 'MIMO' and before the word 'and'. Further, 'MIMO and LTE' are followed by the word 'products'. Therefore, as a common rule of English language, the word 'and' would clearly, and in unambiguous terms, be read conjunctively. 60. To reiterate, the amendments as discussed above were introduced in the year 2021, whereby "MIMO and LTE products" were changed to "(i) MIMO products; (ii) LTE products". The word 'and' has been totally taken out from the new entry and the same is absent from the entry altogether. The absence of word 'and' between the word 'MIMO' and 'LTE', as it existed prior to the amendment brought as clarification, rather speaks and explains by its absence, about the presence of intention to read 'MIMO' and 'LTE' as conjunctive and not disjunctive.

61. In light of the above, we hold that the phrase "MIMO and LTE Products" in Serial No. 13(iv) of the amended Notification No. 24/2005 applies solely to products combining MIMO technology and LTE standards. The exclusion clause cannot be stretched to encompass products featuring either one of the two technologies. Accordingly, the WAPs imported by the respondent, which employ MIMO technology but not the LTE standards, are entitled to the exemption from Basic Customs Duty. "

5. In view of the above, ld. Counsels for both parties do not dispute that the above legal position would cover the present appeal as well.

6. In terms of the decision in Ingram Micro India Pvt. Ltd. (supra) no question of law arises in this matter for determination.

7. The appeal is dismissed in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE MARCH 27,  
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