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Shri Tarun Bajaj, IAS
Secretary – Revenue
Ministry of Finance

Subject: - Concerns relating to Routers classification and duty implications

Issue: - Regarding issuance of DRI show cause notices to importers/manufacturers of 4G LTE Router / 4G LTE MiFi Router, ONU/ONT Router, Wireless Router, & ADSL + Modem availing benefit of exemption for Routers under Notification No. 24/205-Customs dated 1st March 2005 (SI No. 13N)

Request: - Request for clarity on the customs taxation of imported Routers and stoppage of show cause notices till clarity on matter is given by the Government of India

Respected Sir,

Greetings from MAIT!

This bears reference to the concerns raised by our member companies regarding investigations being conducted by DRI, which are ongoing and, in some cases, have led to issuance of show cause notices, to several firms which are importing/manufacturing products like 4G LTE Router / 4G LTE MiFi Router, ONU/ONT Router, Wireless Router, and ADSL + Modem

Further, for products like 4G LTE Router / 4G LTE MiFi Router, ONU/ONT Router, Wireless Router, & ADSL + Modem, queries are being received from many assessing officers at ports and shipments cleared provisionally with 20% duties.

Our member companies have been importing the above products availing benefit of exemption for Routers under Notification No. 24/205-Customs dated 1st March 2005 and amended via Notification No. 36/2019-Customs dated 30th December 2019. Prior to this 'Routers' were being imported by classifying under CTH 85176930, of the First Schedule to the CTA, 1975. The Rate of BCD applicable to the entry of 'Router', as specified in the First Schedule is "Free". In other words, Tariff Rate is Nil. Routers by name and description are specifically covered by Tariff Item 8517 69 30 of the Customs Tariff, such goods can fall only in that specific Tariff Item and nowhere else. The imported goods are bought and sold as routers and are known in trade and commercial parlance as routers.

The DRI has taken the stand that the said products are not Routers/CPE but essentially OTN Product or MIMO Product or LTE products or switches, and hence they cannot be imported under zero duty under Notification no 24/2005-customs.

To provide more clarity, please find below the definition of a Router and the various types of Routers. Newton's Telecom Dictionary, 31st Expanded and Updated Edition, Harry Newton, 2018, defines a router as follows:

"A… device that forwards packets not addressed to itself…. Routers are protocol insensitive, typically supporting multiple protocols. Routers most commonly operate at the bottom 3 layers of the OSI model, using the physical, link and network layers to provide addressing and switching. Routers also may operate at layer 4, the transport layer, to ensure end-to-end reliability of data transfer. Routers send their traffic based on a high level of intelligence inside themselves. This intelligence allows them to consider the network as a whole. How they route (also called routing considerations) might include destination address, packet priority level, least-cost route, minimum route delay, minimum route distance, route congestion level, and community of interest. Routers are unique in their ability to consider an enterprise network as comprising multiple physical and logical subnets (subnetworks). Thereby, they are quite capable of confining data traffic within a subnet, based on privilege as defined in a policy-based routing table. In a traditional router topography, each router port defines a physical subnet, and each broadcast is a subnet domain. Within that domain, all connected devices share broadcast traffic; devices outside of that domain can neither see that traffic, nor can they respond to it. Contemporary routers can define subnets on a logical basis, based on logical address (e.g., MAC or IP address) information contained with the packet header, and acted upon through consultation with a programmed router table…"

Whereas, Routing can be defined as "1.) the process of selecting a circuit path for a message. 2.) The process of directing packets of information from the source to the destination."

With the advent of technology, routers are evolving with varied functionalities. However, the primary function of 'Routing' continues to be the same.

Sir, please note that there are specific entries for routers in the tariff headings and, there are specific and identical entries in the notification 24/2005-customs. The imported goods are understood in trade parlance in the very manner in which they are described in the tariff and in the notifications. A just and reasonable implication of the above should be that the benefit of notification 24/2005 should thus be extended to the said goods. However, DRI/assessing officers are trying to fit the subject goods under certain terms mentioned under notification 57/2017 (such as MIMO Products, LTE products and OTN products), which are undefined and terms generic to certain technologies.

The Government of India entered into the Ministerial Declaration on Trade in Information Technology Products of Singapore dated 13.12.1996, also known as the Information Technology Agreement, 1996 (ITA-1) in order to reduce the custom duty on specified telecom products by 2005 which by name included 'Routers'. Thus ITA-1 specifically covered router by name under network equipment and the govt is committed to extend the benefit irrespective of the HS classification.

Based on the above facts, there had been no ambiguity in the understanding of the product which are routers and had been imported on zero duty. But recent investigations had put our whole industry in a state of confusion. Investigations have selectively been launched on few companies and SCNs are being issued, whereas other companies continue to import at zero duty structure, which is resulting in different costing structure to different companies and unfair competition.

With technological advances and convergence, routers may incorporate one or more of technologies such as wireless, 4G, LE/MIMO and also additional supporting features.

A short description is provided below for reference:

Wireless Router

These are standard Wireless routers. DRI has alleged that these are MIMO products and do not qualify to be a router.

4G LTE Router / 4G LTE MiFi Router, ONU/ONT Routers

The DRI has taken the stand that the said products are not Routers/CPE but essentially OTN Product or MIMO Product or LTE products, and hence they cannot be imported under zero duty under Notification no 24/2005-customs.

Sir, all the routers as specified above may have interfaces for different types of physical layer connections, such as copper cables, fibre optic, or wireless transmission. To elaborate further, internet comes into an installation from the internet service provider. The carriage may be over broadband (copper cable); optical fibre or an LTE/4G/5G. The different types of Routers and their input interface and output are –

Router	Input Interface	Output Interface
ONU Router (Optical Network Unit)	Fibre (PON) WAN	LAN
ONT Router (Optical Network Terminal)	Fibre (PON) WAN	LAN + WiFi
4G LTE Router	3G/4G, LTE SIM	LAN/WiFi
Wireless Router	Copper (RJ-45) WAN	LAN/WiFi
ADSL + Modem	Copper (RJ-11) WAN	LAN/Wi-Fi

Sir, irrespective of the interface and carriage medium (Broadband/Optical Fibre/LTE/4G/5G), the primary function of a router is to guide and direct network data and the OTN/MIMO/LTE are just technologies and NOT products. Hence, it is technically wrong to categorize the above specified Routers as OTN Product or MIMO Product or LTE products.

There can be different types of wireless networks. One is what we generally call Wi-Fi- there is LTE, as well as is 3G, 4G and now also 5G. LTE/3G/4G/5G generally pertain to mobile devices using a cell-based network. However, 5G is also being used as a frequency "band" in home Wi-Fi networks. This is similar to the frequency bands for radio, whereby AM and FM radio each use different frequency spectrums but the primary function of the radio to tune into these networks is the same. The 4G/5G enabled routers only differ in that they are compatible to access the 4G/5G networks. 4G/5G has little to do with routing. it is merely the ability to connect devices wireless to a router through that protocol. For example, when driving a car, there are different types of roadways (e.g. Expressways, National Highways, State Highways, etc.), but choosing which road to use doesn't impact the primary function of the car. What has changed in routing technology as it evolves over time is enhanced capacity, interface speeds, density and forwarding power, but not the inherent functionality or behaviour of the router.

Routers having switching capabilities

Questions are also being raised by assessment groups on routers having some switching capabilities. If a router has switching capability, it is a secondary functionality to the routing capability and not its core purpose. For example, while a pickup truck and a bus are both vehicles and that can technically transport cargo and passengers, the pickup truck is designed principally to transport cargo and can't hold as many passengers, while the bus is primarily engineered to transport passengers with very limited cargo space. Likewise, if a router has switching capabilities, the switching component is incidental and does not necessarily have the level of functionality of a standalone switch. The routing function is the essential character.

It is important to note that the OTN, MIMO, and LTE are technologies and NOT products. And a switch is a completely different product. Kindly refer to **Annexure I (Technical Note)** for details.

We would also like to present before you **some supporting documents where GOI has also recognized industry's understanding on these products as Routers**. Kindly refer **Annexure II (List of Supporting documents)**

In view of the totality of the above submissions, we request CBIC to –

i. clarify the classification of the subject goods under the Customs tariff and their eligibility to concessional rate of duty under Sl. No. 13N and Sl No.13P, respectively, under Notification no 24/2005-customs.

ii. Pause the show cause notices and the summons, letters and emails being issued to the trade asking for extensive documentation and information, from multiple customs offices across the country, till clarity on matter is given by the Customs.

iii. No retrospective taxation on imports being done before the date of clarification from GoI in case the clarification specifically mentions that the exemption on the products namely 4G LTE Router / 4G LTE/MIMO MiFi Router, ONU/ONT Router, Wireless Router, ADSL + Modem duty is NOT applicable

It may be appreciated that this is a matter of legal interpretation involving HS classification of goods and their eligibility to avail notification. We fail to understand why there is a need to question the importer companies and their customs brokers repeatedly on such a matter. In an era when the government is espousing a non-adversarial tax regime, we urge the CBIC to resolve such technical matters through consultation and issue of clarifications at policy level, rather than through confrontational means, which will give raise to undue litigation.

The duty exemption on Router should be blanket and not dependent on technology.

We are willing to provide any further information that would aid in early clarification. We look forward to your favourable consideration.

With regards,

Col. Ali Akhtar Jafri, Retd.
Dy. COO
(Acting Director General - MAIT)

CC: Shri Vivek Johri, IRS, Chairman-CBIC, Ministry of Finance