

	सीमाशुल्क आयुक्त का कार्यालय, (एन.एस.-IV) OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-IV), न्हावा-शेवा, जवाहरलालनेहरूसीमाशुल्क भवन, NHAVA-SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE, ता. उरण, जिला-रायगड, महाराष्ट्र-400707 TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA – 400 707.
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Date of Order: 29.08.2025

Date of Issue: 01.09.2025

F. No.: S/10-1107/2023-24/ADC/Gr.VA/NS-V/CAC/JNCH

SCN No. 2592/2023-24/ADC/Gr. VA/NS-V/CAC/JNCH

SCN Date: 05.02.2024

Passed By: Shri. Raghavendra Singh

Additional Commissioner of Customs, NS-IV

Order-In-Original No. - 740/2025-26/ADC/Gr. VA/NS-V /CAC/JNCH

Name of the Party/ Noticee- M/s TP Link India Private Limited (IEC – 0310008921)

मूल आदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्न में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 1.50 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 1.50 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal: Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
- Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS

On the basis of intelligence, the officers of SIIB(I), JNCH found that M/s TP Link India Private Limited (IEC – 0310008921) had filed various bills of entry during the period for 01.02.2019 to 28.02.2019 through Customs Broker M/s KPV India for the clearance of various Networking Products viz. Range Extender, Wifi Kit, Wifi Adapter, Customer Premises Equipment (CPE) & Access Point/Wireless Access Point (WAP). The said goods were imported by claiming incorrect duty exemption of Sr. No. 20 of Notification No. 57/2017 under CTH 85176290.

2. During investigation by SIIB (Import), the Importer submitted technical literature of all these products and same was also available on official website of Importer <https://www.tp-link.com/us/home-networking> key/ relevant feature of which was extracted and shown below: -

2.1 Wireless Adapter: -

	Specification
Product Name	Archer T2U Nano (AC600 Nano Wireless USB Adapter)
Interface	USB 2.0
Dimension	15*7.1*18.6mm
Antenna Type	Omni Directional
Wireless Standard	IEEE 802.11ac, IEEE 802.11a, IEEE 802.11n, IEEE 802.11g, IEEE 802.11b
Frequency	5GHz; 2.4GHz
Function	It allows wired devices to pick up WiFi signals

2.2 Customer Premises Equipment (CPE): -

	Specification
Product Name	CPE510 (5GHz 300Mbps 13dBi Outdoor CPE)
Interface	1 10/100Mbps Shielded Ethernet Port (Passive PoE in) 1 Grounding Terminal; 1 Reset Button
Dimension	8.8 x 3.1 x 2.4 in
Antenna Type	Built-in 13dBi 2 x 2 Dual-polarized Directional Antenna Beam Width: 45° (H-Plane) / 30° (E-Plane)
Wireless Standard	IEEE 802.11a/n (with Pharos MAXtream disabled)
Frequency	5.15~5.85GHz
Function	Telecommunication equipment to connect the customer premises to the public switched telephone network (PSTN) or other network

2.3 Access Point/Wireless Access Point (WAP): -

	Specification
Product Name	EAP225-Outdoor (AC1200 Wireless MU-MIMO Gigabit Indoor/Outdoor Access Point)
Interface	1x Gigabit Ethernet RJ-45 port
Dimension	8.5 × 1.8 × 1.1in.
Antenna Type	2.4GHz: 2 × 3dBi, 5GHz: 2 × 4dBi
Wireless Standard	IEEE 802.11a/b/g/n/ac
Frequency	2.4GHz, 5GHz
Function	It allows Wi-Fi devices to connect to a wired network

2.4 WI-FI Kit:-

	Specification
Product Name	TL-WPA8630 KIT (Powerline AC Wi-Fi Kit)
Interface	3 * Gigabit Ethernet Port
Dimesnsion	TL-WPA8630 : 5.5 x 2.7 x 1.8 in. (140.6 x 68 x 45mm) TL-PA8010P : 5.2×2.8×1.7 in. (131×72×42 mm)
Compatibility	Compatible with all Home Plug AV & Home Plug AV2 standard powerline adapters
Wireless Standard	IEEE 802.11a/n/ac/ax 5 GHz, IEEE 802.11b/g/n/ax 2.4 GHz
Frequency	2.4 GHz and 5 GHz
Function	It allows wired devices to pick up WiFi signals

2.5 Range Extender: -

	Specification
Product Name	RE605X AX1800 Wi-Fi Range Extender
Interface/Port	1 Gigabit Ethernet Port
Dimension	2.9×1.8×4.9 in.
Antenna	2 External Antennas
Wireless Standard	IEEE 802.11a/n/ac/ax 5GHz, IEEE 802.11b/g/n/ax 2.4GHz
Frequency	2.4GHz and 5GHz
Function	Also known as Wi-Fi booster, it repeats the wireless signal from router to expand its coverage.

3. M/s TP Link India Private Limited (IEC – 0310008921) has been importing various Networking Products viz. Range Extender, Wifi Kit, Wifi Adapter, Customer Premises Equipment (CPE), Access Point/Wireless Access Point (WAP) etc., of various models, under HSN 85176290 and claiming exemption vide Sr. No. 20 of Notification No. 057/2017 which exempts basic customs duty in excess of 10%, however the standard rate of BCD under 85176290 is 20%.

4. In view of above, M/s TP Link India Private Limited (IEC – 0310008921) were called upon to show cause as to why

- a) The benefit of Customs Notification No. 57/2017-Cus dated 30.06.2017 (Serial No. 20) as amended, claimed in bills of entry as per **Annexure-A** to the show cause notice, for exemption from payment of BCD, should not be denied;
- b) Differential Duty of Customs amounting to **Rs. 21,87,487/-**, in respect of bill of entry as per **Annexure-A** to the Show Cause Notice; as discussed above in foregoing paras to this notice, which was short paid during the period 01.02.2019 upto 28.02.2019 due to wrong availment of benefit of serial no 20 of Notification no 57/2017-cus, should not be demanded and recovered under Section 28(4) of the Customs Act, 1962.
- c) The interest amount on the aforesaid demand of duty at sub-para (b) above as applicable should not be demanded in terms of **Section 28AA** of Act, *ibid*, as discussed *supra*.
- d) The goods imported during the period under consideration valued at **Rs 1,68,52,749/-** should not be held liable for confiscation under the provisions of **Section 111(m)** and **Section 111(o)** of the Act, *ibid*, as discussed *supra*.
- e) Penalty should not be imposed upon M/s TP Link India Pvt Ltd (IEC – 0310008921) in terms of **Sections 112(a) and/or 114A** of the Act, *ibid*, as discussed *supra*.
- f) Penalty should not be imposed upon M/s KPV India, Custom Broker under section 112(a) of the Act, *ibid*, for the act of commission and omission, as discussed *supra*.

5. Further the Competent Authority i.e. Commissioner of Customs (NS-IV), by exercising his powers conferred under the first Proviso to section 28(9) of Customs Act, 1962, on 02.01.2025, extended the period of adjudication in the subject SCN by one year up to 03.02.2026.

PERSONAL HEARING AND SUBMISSION

6. Opportunity for personal hearing was provided to the noticee vide F. No. S/10-1107/2023-24/ADC/Gr.VA/NS-V/CAC/JNCH on 09.01.2025, and the same was attended by Shri Arvind D Patil, Logistics Manager, and Adv. Shanti Singh on behalf of the Importer. They stated that by notification No. 57/2017 dated 30 June 2017 the products containing MIMO and LTE technologies were exempted from 10% duty, to be charged on products under Sr. No. 20(h). However, said exemption was applicable to products imported by them and covered in the impugned SCN. Since, only MIMO technology was used in said product. The word 'AND' must be strictly construed in terms of the Hon'ble Delhi High Court's order/judgement of M/s. Ingram Micro India Pvt Ltd. The SCN was barred by limitation since SCN was dated 05.02.2024 for the bills of entry from 01.02.2019 to 28.02.2019 i.e. beyond 2 years. The extended period of limitation was only applicable in cases of collusion, willful misstatement and suppression of facts u/s 28 of the Customs Act, which was not the case in the present notice. They reiterated their written submission and requested to drop the proceedings.

7. Vide their submissions dated 09.01.2025 the noticee submitted that-

7.1 They were one of India's largest distributors of Information Technology and Telecommunication products. They import Networking Products like Switches, Routers and Access Points and supply them through their distribution system in the Indian market.

7.2 During the period 1.02.2019 to 28.02.2019, they had imported networking products such as CPE, Access Point, WiFi Range Extender, Wireless Nano USB Adapter, Access Point, Outdoor CPE, Wireless PCI Express Adapter. High Gain Wireless Dual Band USB Adapter etc by availing the benefit of Sl.No.20 of the Notification No.57/2017-Cus. Sl.No.20 of the Notification No.57/2017-Cus prescribed an effective rate of Basic Customs Duty of 10% for all products classifiable under the Tariff item 85176290/85176990 of the Customs Tariff of India. However, the benefit of the lesser rate of basic customs duty was not available to certain prescribed products mentioned there-under. The benefit of lower rate of customs duty was accordingly not available to the following products –

- (a) Wrist wearable devices (commonly known as smart watches);
- (b) Optical transport equipment;
- (c) Combination 7 of one or more of Packet Optical Transport Product or Switch (POTP or POTS);
- (d) Optical Transport Network (OTN) products;
- (e) IP Radios;
- (f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers;
- (g) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products;
- (h) Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products.

They submitted that their goods imported vide through 4 B/Es were networking products with MIMO technology, however none of the products in question were equipped with LTE technology.

7.3 MIMO Technology: Stands for Multiple-Input/Multiple-Output, enabling multiple simultaneous antenna transmissions for enhanced data capacity and reliability.

7.4 LTE Technology: It is a high-speed wireless communication standard for mobile devices and data terminals, developed under the 3GPP framework. It progressed from 1G analog systems to 4G LTE, enhancing capacity and speed through OFDM and MIMO integration.

7.5. The show cause notice was invalid due to the absence of a challenge to the already assessed Bills of Entry. The goods were imported based on assessed Bills of Entry, which are considered appealable orders under Section 47 of the Customs Act, 1962. The Bills of Entry can only be set aside by a competent appellate authority through an appeal. The Supreme Court's recent decision in **ITC Ltd. Vs. CCE, Kolkata -IV squared at 2019 (360) ELT2016** has concluded that even an order of self-assessment is an assessment order passed under the Customs Act and is appealable by either the revenue or the assessee. Reliance was placed on Everyday Industries Ltd 2016 (337) ELT 189 in this regard.

7.6. The department misinterpreted the exemption notification, claiming that the noticees correctly availed the benefit of Sl.No.20 of Notification No.57/2017-Cus, as the products imported contained MIMO technology only, and the exemption is applicable to MIMO Technology and not eligible to MIMO and LTE products.

Sl. No. (1)	Chapter or Heading or Sub-heading or tariff item (2)	Description of goods (3)	Standard Rate (4)
20**	8517 62 90 or 8517 69 90	<u>All goods other than the following goods,</u> namely: - (a) Wrist wearable devices (commonly known as smart watches); (b) Optical transport equipment; (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS); (d) Optical Transport Network (OTN) products; (e) IP Radios; (f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers; (g) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products; (h) Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products.	10%

***Sl.No.20 as amended by the Notification No.2/2019-Cus with effect from 29.01.2019.*

The entire case of the department hangs on the interpretation of Clause (h) of Sl.No.20 of the Notification No.57/2017-Cus. As per the department, it is enough that the product has MIMO technology. It is not necessary that the product needs to have both MIMO and LTE technology.

7.7. The Department claims that the exemption notification excludes products with only MIMO technology, even if they don't have LTE technology. They submitted that this argument was incorrect, as only products with both MIMO and LTE technology are excluded. The entry (h) of Notification No. 57/2017-Cus uses the word "AND" to indicate that only products equipped with both technologies are included. The word "products" is used after "Long Term Evolution (LTE)" instead of after MIMO technology. The remaining entries of Notification No. 20 refer to products/equipment, not just technologies. The entry in question covers products with MIMO and LTE Technology, not 'MIMO PRODUCTS' or 'LTE PRODUCTS'. The entry is construed based on the rule of ejusdem generis, which states that words in a statute are limited to matters of the same class or genus as preceding them. The exclusion under clause (h) for "MIMO and LTE products" is meant only for telecommunication products working on MIMO Technology and LTE Standard. They submitted that products solely working on MIMO technology or products solely working on LTE Standards are not covered within the scope of the Notification. The term "and" is

widely understood as a conjunctive used to connect and join words, phrases, clauses, and sentences. The entry is supported by numerous grammar books and extracts from dictionaries, which provide various meanings for "and."

7.8. They submitted various judicial decisions that have interpreted the meaning of the word "and" in a conjunctive sense. It is based on the Punjab & Haryana High Court's decision in *Panchkula v. Kulcip Medicines*, reported in 2009 (14) STR 608 (P&H) where the word "and" was used after the word "clearing" but before the word "forwarding" at two places in clause (j). The court also cited *British Health Products (I) Ltd. v. Collector of Central Excise, New Delhi*, 1999 (107) ELT 642(T) which held that the expression used in relation to food preparation of milk and cream is "milk" and "cream". The text also references Supreme Court decisions such as *Mazagaon Dock Ltd. v. CIT, Star Industries v. Commissioner of Customs (Imports), Raigad*, *Commissioner of Central Excise v. Amritlal Chemaux Ltd.*, *Collector of Customs, Bombay v. Shibani Engineering Systems*, and *Sree Durga Distributors v. State of Karnataka*. The products excluded from the Notification are MIMO enabled LTE products, not products that have MIMO functionality alone, as the subject period render around interpretation of Sr.No. 20 of the notification no. 52/2017-cus and the fact that the amendment came w.e.f. 02.02.2021 TRU letter F. No. 334/02/2020-TRU dated 1.2.2021 is misplaced, as it states that the amendments are only clarificatory in nature.

7.9. They cited the Supreme Court's decision in *MM Aqua Technologies Ltd. v. CIT Delhi*, 2021, which held that a provision in tax statute cannot be presumed to have retrospective operation when language such as "for removal of doubt" is used. The court also cites the Bombay High Court's decision in *Greatship (India) Ltd. v. Commissioner of Service Tax, Oil and Natural Gas Company Ltd.*, 2015, which affirmed the proposition that an explanation to a provision may clarify the ambiguity in the main provision or add and widen its scope. The department's proposal to deny the benefit of an exemption notification was without basis and not sustainable. Exclusion clauses in exemption notifications should be strictly construed to avoid frustration and uncertainty. The Supreme Court in *Pappu Sweets and Biscuits versus Commissioner of Trade Tax, U.P., Lucknow* 1998 (10) TMI 452-Supreme Court observed that the notification aimed to increase industrial activity within the State by encouraging new industrial units or expansion, diversification, or modernization by existing industrial units. However, the High Court did not examine the issue from this angle and failed to appreciate that the exclusionary part of an exemption notification should be given a narrow meaning. The Supreme Court of India in the case of *Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Co.* 2018 (361) E.L.T 577 (SC) has also held that where there is an ambiguity in the interpretation of the exemption notification, only then the benefit of the doubt should be in favor of the department. Therefore, the objection raised by the department in the current case is without any basis and the proceedings are liable to be set aside.

7.10. The issue in the case of *Ingram Micro India Pvt Ltd* is squarely covered by the Order of CESTAT, New Delhi dated 12.09.2022. The Hon'ble Tribunal, New Delhi held that the access points imported by the Noticees worked on MIMO technology and did not support LTE standard, thus, they were justified in claiming exemption from the whole of the customs duty under Serial No. 13 (iv) of the notification. The court also noted that MIMO is a technology and cannot be treated as an independent product. If the intention was to exclude products with only MIMO technology, the word "products" should have been used after both MIMO and LTE. Thus, the term "Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) Products" means products which contain both MIMO and LTE. The court supported this view, citing decisions in *British Health Products*, *Kulcip Medicines*, and *Ingram Micro India*. In *British Health Products*, a Division Bench of the Tribunal held that the word "and" is generally used in a conjunctive sense, while in *Kulcip Medicines*, the court ruled that the context and intention of legislature are the guiding principles.

7.11. The Supreme Court of India has ruled that the interpretation of the Information Technology Agreement, 1996 (ITA-1) should be adopted in India's case against G.M. Exports. India, a member of the World Trade Organisation (WTO), 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). The ITA-1 aimed to reduce custom duty on specified telecom products by 2005. Attachment-B of the ITA-1 specifically covers Network Equipment, specifically LAN and WAN apparatus for interconnection of automatic data processing machines. India was required to reduce the tariff rate for network apparatus with effect from 01.03.2005. On or around 26th March 1997, the Government of India gave its Modifications to the existing Schedule XII, which were confirmed by the WTO on 2nd July 1997. The products falling in Attachment-B to the ITA-1 by description will be bound by the duty concession, wherever the said product is classified. Section 74 read with the Second Schedule of the Finance Act, 2005 specified a nil/free rate of duty against entire Heading 85.17.

7.12. The Supreme Court in CC Vs. G M Exports – 2015 (324) ELT 209 (SC) concluded that Article 51(c) of the Constitution of India is a Directive Principle of State Policy, which states that the State shall endeavour to foster respect for international law and treaty obligations. In a situation where India is a signatory nation to an international treaty, it is a legitimate aid to the construction of the provisions of such statute that are vague or ambiguous. In a situation where India is a signatory nation to an international treaty, a purposive rather than a narrow literal construction of such statute is preferred. In the context of the ITA-1 and the Schedule of Concessions of India, so long as the imported goods are falling within the purview of the ITA Agreement, exemption extended by the Tariff has to be extended. The Indian Intellectual Property Act (ITA) exempts imported products from duty under the ITA, as they are classified under Heading 85.17 and are network apparatus used on LAN and WAN. Imported Access Points and Wifi Extenders are not considered networking equipment and are entitled to the exemption under the ITA. India has stated that only goods based on technologies in existence when the ITA was signed will be exempted from duty. MIMO technology came into existence in 1993.

7.13. The Supreme Court of India has emphasized the importance of considering international conventions and norms when construing domestic laws. The term "new invention" under the Indian Patent Act, 1970 is defined as any invention or technology that has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing the patent application with complete specification. Public domain construes any information, knowledge, documents, technology, or invention that is readily available and accessible, either indirectly or directly, not only within India but around the world in any form. In the case of Monsanto Company vs. Coramandal Indag Products (P) Ltd. 1986 AIR 712, the Supreme Court of India observed that as long as the public in the relevant field or profession is aware of any publication, the information would be considered in the public domain. Thus, the government cannot claim ignorance of the products covered under the scope of the Agreement over which exemption has been granted, thus, the imported goods are entitled to the benefit of the ITA.

7.14. The Show Cause Notice dated 05.02.2024 demands duty for goods imported during February, 2019. The entire demand of duty is barred by limitation, as the SCN does not mention any specific ground or reason for invocation of the extended period of limitation. The only basis for invocation of the extended period appears to be that they have self-assessed the Bill of Entry and have incorrectly availed the benefit of the exemption notification. The extended period of limitation is applicable only if any of the ingredients (by reason of) specified above exist. In the instant case, no ground exists warranting the invocation of extended period of limitation. There has been no mis-declaration of any particulars in the Bills of Entry by them, nor has there been any mis-classification. The goods have been correctly described in the bills of entry, and the import department initiated the instant proceedings based on the same description given by them. The present SCN was based upon the BoE submitted by them, and it was based upon *Uniworth Textiles Limited v. Commissioner of Central Excise, Raipur*, (2013) 9 SCC 753; 2013 (288) ELT 161 (SC). It was held that there ought to be a positive act and not merely a failure to pay duty which is not on account of any fraud, collusion, wilful mis-statement or suppression of facts.

7.15. The case of *Vedanta Aluminium Ltd. v. Custom & Central Excise Settlement Commission* 2016 (331) E.L.T. 408 (Cal.) has established that fraud or misrepresentation

cannot be suppressed when particulars can be easily ascertained by the Department. The burden of proof proving malafide conduct lies with the Revenue, and the extended period of limitation cannot be invoked unless specific averments in the Show Cause Notice are provided. The burden of establishing mala fides is heavy and requires proof of a high order of credibility.

7.16. In the present case, the SCN has failed to discharge the burden of proving collusion, wilful misstatement, or suppression of fact. The noticee has been under a bonafide belief that it is not liable to the differential duty in an alleged manner, and the department's different view does not automatically mean that the noticee has violated the ingredients to invoke the extended period. The department must prove the existence of a strong case to invoke the extended period of limitation of five years under Section 28(4) of the Act, which has to be construed strictly. The proceedings shall be treated as time-barred, making the SCN liable to be dropped. The demand of duty raised by invoking the extended period of limitation is not sustainable for demanding the differential duty. They have complied with all the requirements of the Customs Act, 1962, and all correct declarations as warranted under Section 46 of the Customs Act.

7.17. The Show Cause Notice proposed the confiscation of goods under Section 111(m) and 111(o) of the Customs Act, 1962, arguing that they had wrongly availed the exemption under Sl. No. 20 to Notification No. 57/2017-Cus. However, the SCN fails to state what the nature of misdeclaration committed by them. They submitted that claiming benefit of an exemption/classification cannot render the goods liable to confiscation under the provisions of Section 111(m). Also, the goods were not liable to be confiscated under Section 111(o) of the Customs Act, as no occasion has arisen in the instant case warranting the invocation of this clause.

7.18. They submitted that penalty under Section 114A can be imposed when duty has not been paid or short-paid due to collusion, wilful mis-statement, or suppression of facts. They submitted that the present case does not involve any wilful mis statement or suppression of facts, making the penalty under Section 114A imposable. They submitted that the SCN was not sustainable in law, as the question of levy does not arise once the demand is found to be non-sustainable. The court has followed this judgment in several cases, including those by the High Court and Tribunals.

7.19. They submitted that interest under Section 28AA of the Customs Act, 1962 was not leviable due to the unsustainable demand of duty. The liability of interest under Section 28AA is linked to the demand of duty under Section 28(4), and charging interest does not arise when the main demand is not sustainable. The Supreme Court of India has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest.

7.20. In view of the above, they requested to drop the proceedings vide SCN dated 05.02.2024.

DISCUSSION AND FINDINGS

8. I find that the notification No. 57/2017 dated 30.06.2017 provides effective rate of duty on specified products. CTH 8517 6290 was included for the first time vide Notification No. 22/2018 Cus dated 02nd Feb, 2018 in the parent Notification No. 57/2017-Cus. Relevant Sr. no. 20 of this notification is extracted below: -

Table-I

S.No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
20	8517 6290	All goods other than wrist wearable devices (commonly known as smart watches)	10%	-";

Thereafter, description “MIMO and LTE products” was inserted for the first time vide Notification No. 75/2018 dtd 11th Oct 2018 that amended the basic Notification No. 57/2017 – Cus. Relevant Sr. No. of this Notification No. is extracted below:

Table-II

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
“20	8517 62 90	All goods other than following goods, namely: - (a)Wrist wearable devices (commonly known as smart watches) (b)Optical transport equipment (c)Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS) (d)Optical Transport Network (OTN) products (e)IP Radios	10%	-
21	8517 69 90	All goods other than following goods, namely: - (a)Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers (b)Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products (c)Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products	10%	-”;

Thereafter Serial No. 20 of Notification No. 57/2017 was amended and serial number 21 was omitted vide Notification No. 02/2019-Cus. 29th January, 2019 effective from the 30th January, 2019. Amended Serial No. 20 is extracted below:

Table-III

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
“20	8517 62 90 or 8517 69 90	All goods other than following goods, namely: - (a) Wrist wearable devices (commonly known as smart watches); (b) Optical transport equipment; (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS); (d) Optical Transport Network (OTN) products;	10%	-”;

	(e) IP Radios; (f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers; (g) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products (h) Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products		
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Thereafter, Serial No. 20 of Notification No. 57/2017 was amended vide Notification No. 03/2021-Cus date 1st Feb, 2021 effective from 2nd February, 2021 as below:

“(xii) against S. No. 20, in column (3), for item (h), the following items shall be substituted, namely: -

“(h) Multiple Input/Multiple Output (MIMO) products;

(i) Long Term Evolution (LTE) products”;

9. Para 21 under Chapter 85 (Page 15) of D.O. Letter F. No. 334/02/2020-TRU dated 1st February, 2021 issued by Joint Secretary (TRU-1) extracted below

“(21) S. No. 20 of notification No. 57/2017-Customs, is being amended to clarify the scope of the item (h) under the said entry. Consequently, item (h), i.e. “Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products” is being separately mentioned in two different items (h) Multiple Input/Multiple Output (MIMO) products and Long Term Evolution (LTE) products. These amendments are only clarificatory in nature. These items continue to attract 20% BCD, as before. Consequential amendments are also being done in S. No. 22 of the notification No. 57/2017-Customs and S. No. 13S of the notification No. 24/2005- Customs, dated the 1st March, 2005. [S. Nos. (xii) and (xiii) of the notification No. 03/2021- Customs dated 1st February, 2021 and notification No. 05/2021-Customs dated 1st February, 2021 refers].”

9.1. The above D.O letter highlights that either of “MIMO” or “LTE” products are liable for 20% BCD as before. It clearly explains that even after issuance of Notification No. 02/2019-Cus. 29th January, 2019 effective from the 30th January, 2019, both MIMO or LTE product were separate heading/items attracting 20% BCD on products having MIMO or LTE technology.

10. I find that the importer has imported various networking products viz. Range Extender, Wifi Kit, Wifi Adapter, Customer Premises Equipment (CPE), Access Point/Wireless Access Point (WAP) etc., of various models and has classified the same under CTH 85176290.

10.1. After going through the description of the goods imported by the noticee, in detail it was found that although the Show Cause Notice discussed various items imported by the importer in its Para 5, 5.1, 5.2 and 5.3. However it has revolved around “**Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products**” as mentioned in **Sr. No 20(h) of** notification No. 57/2017 dated 30.06.2017, **in detail**. The following goods are basically covered in the BE’s mentioned in the annexure.

S.No	CTH	Description of Items Imported
1	85176290	Networking Product Wireless MU-MIMO WALLPLATE Access Point
2	85176290	Networking Product EPA OUTSIDE WIRELESS N OUTDOOR Access Point

3	85176290	Networking Product WI-FI Range Extender
4	85176290	Networking Product Outdoor CPE

Looking at the description of the goods in details, from open source and also from the CBIC’s **Circular No. 08/2023-Cus**, it appears that the above goods can be more appropriately fall under Sr. No. 20 (e) of the notification No. 57/2017 dated 30.06.2017.

SECOND PERSONAL HEARING

11. As the show cause notice did not specifically discuss Sl. No. 20 (e), in detail, accordingly to uphold the principle of the natural justice, another opportunity for personal hearing was provided to the noticee vide F. No. S/10-1107/2023-24/ADC/Gr.VA/NS-V/CAC/JNCH on 29.07.2025. The noticee was asked to provide clarification of product of Wireless Access Point and others as mentioned in the annexure to the show cause notice, which could be appropriately classified under Sr. No. 20(e) of the Notification No. 57/2017-Cus. The hearing was attended by Shri Arvind D Patil, Logistics Manager, and Adv. Lakshmi Menon on behalf of the Importer. They submitted that the product “Wireless Access Point” are not IP Radios, therefore exclusion in terms of Sl. No. 20(e) of the Notification No. 57/2017-Cus will not be applicable. **The circular No. 08/2023-Cus cannot be applied retrospectively to imports made in February 2019.** They submitted that there was no provision under the Customs Act, 1962 to raise a contention which is beyond the scope of SCN. In this regard, they put reliance upon the supreme court case of Commissioner of Customs, Mumbai Vs Toyo Engineering India Ltd. The issue of Sr. No. 20(e) was raised in 15.07.2025 which was much beyond the time limit for issuance of SCN as per Section 28 of the Customs Act, 1962. Also, it is submitted that the product wireless access points do not fall within the purview of S. No. 20(e) of the notification no. 57/2017.

11.1 On merits they submitted that S. No. 20(e) covers IP Radios. IP radios also known as Radio over IP (RoIP) are a technology that enables two-way radio communication over an IP network such as the internet. This allows for the integration of traditional radio systems with IP based networks, extending coverage and communication capabilities beyond traditional radio infrastructure limitations and communication between different radio systems or devices using a standard internet connection. On other hand, a Wireless Access Point creates local wireless networks (Wi-Fi) that allow devices to connect to the internet or other networks. Thus, both devices operate on different principles and different purpose. Therefore, observation of department regarding wireless access point products can be classified under sr. no. 20(e) of the notification no. 57/2017 is incorrect and without any basis.

FINDINGS AFTER SECOND HEARING

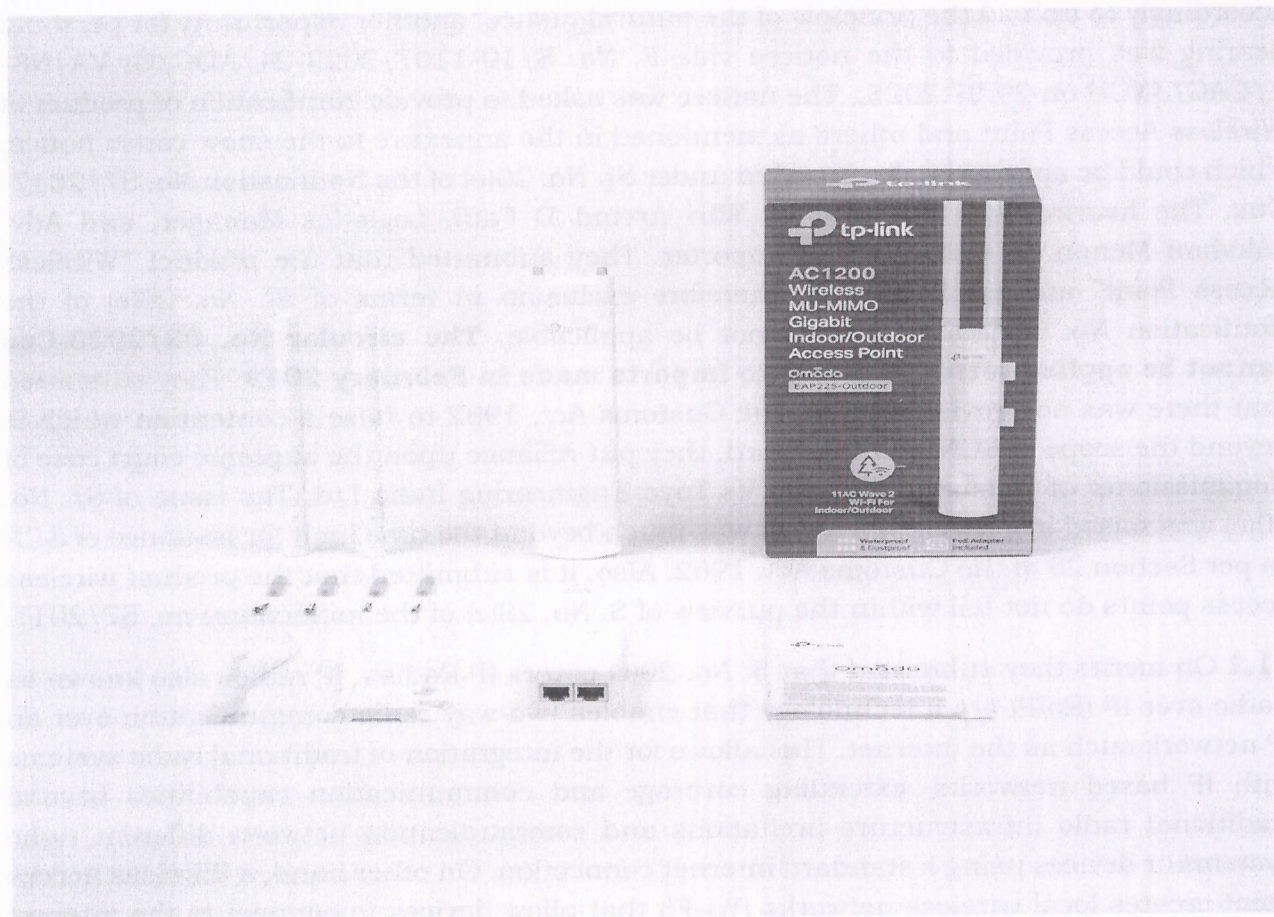
12. It is observed that the impugned goods, namely **Wireless Access Points (WAP)**, have been imported by the noticee under CTH 8517 6290 while availing concessional rate of Basic Customs Duty @10% under Sl. No. 20 of Notification No. 57/2017-Cus. dated 30.06.2017. The Show Cause Notice examined the applicability of exclusion under Sl. No. 20(h) (MIMO and LTE products). However, after detailed examination during the process of adjudication and in light of subsequent clarification issued by CBIC circular, it is evident that the subject goods are more appropriately classifiable under the exclusion entry at Sl. No. 20(e), namely *IP Radios*.

13. Circular No. 08/2023-Cus dated 13.03.2023 issued by CBIC elaborates the scope of various exclusion clauses (a) to (h) of Notification No. 57/2017-Cus. This specifically illustrates that Wireless Access Points are to be considered as *IP Radios*. This clarification is of vital significance because it confirms that Wireless Access Points operate as IP-based radio apparatus. They function by using IEEE wireless standards to create IP-based radio communication, thereby falling squarely within the scope of “IP Radios” envisaged in Sl. No. 20(e).

14. The contention of the noticee that Circular No. 08/2023 has introduced a new category of goods under Sl. No. 20(e) is misplaced. It is a settled law that **circulars cannot amend exemption notifications** issued under Section 25 of the Customs Act, 1962. Thus, if Wireless Access Points were never covered under “IP Radios,” CBIC could not have included them under Circular No. 08/2023. The very fact that the Circular clarifies their placement under Sl. No. 20(e) is itself demonstrative that such goods were always covered under the said entry, and the Circular merely explains the position rather than enlarging it.

15. Therefore, Wireless Access Points are correctly classifiable under *IP Radios* at Sl. No. 20(e) of Notification No. 57/2017-Cus., and are ineligible for concessional rate of 10% BCD. The concessional rate claimed by the noticee is therefore inadmissible, and the goods are liable to assessment at the standard rate of 20% BCD.

15.1 A picture of wireless access point is given below for illustration purpose.



16. From the technical literature and discussion above, as these imported networking products fall in the category of “apparatus which allows for the connection to a wired or wireless communication network” and correctly classifiable under the declared CTH 85176290, and also there is no objection as to the classification, I do not make any observation to that regard.

17. From the open source it was ascertained that “IP radio” is a general term for a radio transmitter and receiver that transmits data over an IP network, while a wireless access point (WAP) is a specific device that uses a radio to provide wireless connectivity to an IP network. **In essence, a wireless access point is a type of IP radio**, incorporating an onboard computer and radios that convert data between wireless radio signals and the wired network, enabling Wi-Fi devices to connect to the larger network. **Wi-Fi access points operate as IP-based radios** because they use radio waves to send and receive data over the Internet Protocol (IP) network, functioning as a bridge between a wireless network and a wired LAN. They translate data into radio signals for wireless transmission and vice-versa, allowing devices to connect and communicate wirelessly by establishing a point of connectivity on the network.

17.1 The importer in their defence stated that ‘Wireless Access Point creates local wireless networks (Wi-Fi) that allow devices to connect to the internet or other networks’, thus they

have different principal and purpose that of IP Radio. This contention of the importer that these products have different principal, is misleading, based on the above factual findings.

17.2 I also find that there are few other items also apart from Wireless Access Point (WAP), that have a different description like

- a. Networking Product CPE 510 (Outdoor CPE)
- b. Networking Product RE 305/450/TL Range Extender

After going through the website of the TP-LINK, it was ascertained that these goods are also covered under IP Radios, therefore I do not have any hesitation in holding that the correct Sr No should be 20(e) of the above mentioned notification.

18. Accordingly, the statement of Shri Arvind D Patil, Logistics Manager recorded in which he inter-alia submitted that-

“Notification No. 57/2017-Customs does not clearly state that products of single capability of MIMO or LTE will attract 20% BCD, only those products having capability of both MIMO as well as LTE will attract 20% BCD. So for product having capability of only MIMO, BCD @10% was paid under serial no 20 of said notification. After the issuance of Notification No 03/2021 dated 01.02.2021 and this DO letter No.334/02/2020-TRU dated 01.02.2021 by Ministry, BCD@20% was paid on most of MIMO product subject as per suggestion from inhouse technical team.”

is of no consequence to the outcome of this case.

19. Ongoing through details of products mentioned at para 5.1.1, 5.1.2, 5.1.3, 5.1.4 and 5.1.5 of the Show Cause Notice it appears that these products are Wireless Access Point which can appropriately be classified under Sr. No. 20 (e) of notification 57/2017-Cus dated 30.06.2017(as amended) (read with circular 08/2023 dated 13.03.2023 issued vide F. No. 524/11/2022-STO(TU))

Relevant appropriate part is reproduced as under, for reference

Notfn item	Notification description	Identification of products/equipment covered
(e)	Internet Protocol (IP) Radios	The Machines/apparatus covered under this category include - i. Wi-Fi Access Point Equipment and Wi-Fi Controller ; ii. Repeaters (RF/RF-over-Optical) & In-Building Solution (IBS)- Indoor/Outdoor including active and passive Accessories (2G/3G/4G/5G and onwards); iii. Wireless Radio Link – (IP/Hybrid) equipment.

Thus, CBIC Circular 08/2023 dated 13.03.2023 illustrated a more effective identification of products and equipment covered under (a) to (h) in the notification 57/2017-Cus dated 30.06.2017. It is useful for stakeholders in identification of products/equipment under 85176290 and 85176990 at the time of filing of import declarations. The circular provides detailed information and clarifications to ensure consistent interpretation and application of the exclusion criteria. It offers further guidance to customs officers and importers for accurate determination of goods that are not eligible for the concessional rate of duty. Therefore, Wireless Access Point products are more appropriately classifiable under Sr. No. 20 (e) of notification 57/2017-Cus dated 30.06.2017. Also, when there is expressed provision to include the Internet/ WI-FI Access Points in the under Serial No 20(e), there is no room for any other interpretation by the department. Further, there is no change of duty as demanded in the subject SCN which is @ 20% of BCD, thus the duty demanded remains protected. The only issue that remains is that the importer has with the intent to evade the payment of appropriate BCD, taken the undue benefit of the Notification no. 57/2017-Cus dated 30.06.2017. Therefore, importer had wilfully mis-stated the incorrect Sr. No. of notification no. 57/2017-Cus dated 30.06.2017 while filing the said Bills of Entries and paid BCD @10% on import of goods, instead of 20% BCD.

19.1 I find that an error in the show cause notice may be corrected by way of passing suitable order, after providing an opportunity of being heard to the noticee, which has been done in this case. I also find that when Wi-Fi / Wireless Assess Point, is explicitly mentioned in the CBIC Circular 08/2023 dated 13.03.2023, to fall under Sr. No 20 (e) of Notification no. 57/2017-Cus dated 30.06.2017, accordingly this is an error on the face of the Show Cause Notice. However otherwise there is no change in the duty demanded by the department. I also find that substantial and apparent loss to the government exchequer will take place, if the demand is not confirmed even after knowing all the facts of the matter.

20. Therefore, it appears that M/s TP Link India Pvt Ltd has attempted to import impugned networking goods viz. Range Extender, Wifi Kit, Wifi Adapter, Customer Premises Equipment (CPE), Access Point/Wireless Access Point (WAP) by availing ineligible benefit of Serial No 20(h) of Not No. 57/2017.

21. From the statement of Custom Broker and investigation conducted, it appears that Custom Broker M/s KPV India filed the bills of entry based on import document provided by Importer M/s TP Link India Pvt Ltd. The Importer availed ineligible benefit of serial no 20 of Notification No 57/2017-Cus which was not available to product in question. Shri Sunil Kumar, M/s KPV India, G Card holder, although was presented with the description of the imported goods should have made due diligence while advising the importer to file the BES, while claiming the exemption notification.

Thus, it appears that Custom Broker firm failed to fulfil their responsibilities as mandated under Rule 10(d) of Custom Broker Licensing Regulations, 2018 which reads as under

“advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”

21.1 Thus, from above, it appears that Custom Broker has failed to discharge his duties and violated provisions of Rule 10(d) of Custom Broker Licensing Regulations, 2018, and caused substantial loss to the government revenue. For this act of commission and omission, the Custom Broker has rendered himself liable for penal action under Section 112(a) of Customs Act, 1962.

22. Relevant provisions of the law in so far as they apply to this case is as below:

The provisions of the Customs Act, 1962, and the Rules made there under in so far as they relate to the facts and circumstances of the subject case are as under:

22.1 Section 17. Assessment of duty. – (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

It is relevant to mention that with effect from 08.04.2011, by virtue of amendment of the Customs Act, 1962, Self-Assessment of Customs duty in respect of import goods is done by the importers. Thus, importers are required to declare the correct, description, value, classification, notification number, if any, and themselves access the Customs duty leviable, on the imported goods. It has been clarified in the first Para 4 of CBIC Circular No. 17/2011-Customs dated 08.04.2011 that the importer is responsible for assessment of import goods. Therefore, statutory responsibility of the importers to properly self-assess the goods and discharge Customs duty on import goods, along with filing all declarations and related documents and confirming these as true, correct and complete.

22.2 SECTION 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to [fifteen per cent] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

22.3 Section 111(m) & 111(o) of the Customs Act, 1962

Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any particulars with the entry made under this Act....

Section 111(o) provides that any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer; shall be liable to confiscation

22.4 Section 112. Penalty for improper importation of goods, etc.—

Any person,—

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act.

22.5 Section 114A. Penalty for short-levy or non-levy of duty in certain cases. —

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso.

It appears that the Importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable for confiscation under Section 111(m) and/or 111 (o) of the Customs Act, 1962. It further appears that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) and 114A of the Customs Act. 1962.

23. I find that, on the basis of the facts and circumstances mentioned herein above, it appears that the importer have knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to notification Sr. No., with an intent to evade the applicable duty and the by their aforesaid acts of omission and commission appears to have rendered the impugned goods liable for confiscation under Section 111 (m)/ or Sec 111(o) of the Customs Act, 1962. However, I find the goods imported vide bills of entry as detailed above are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (i)."

24. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.

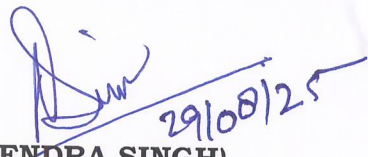
25. Now coming to the issue of penalties, I find that the impugned notice proposes a penalty under Section 112(a) and 114A of the Customs Act, 1962 on the notice firm. In this regard, I find that the importer has wrongly evaded legitimate customs duty. I find that, in the self-assessment regime, it is the bounden duty of the Importer to correctly assess the duty on the imported goods. In the instant case wrongly availed the benefits of IGST notification by the importer of such repute having access to all legal aid, tantamount to suppression of material facts and wilful mis-classification. The "*mens rea*" can be deciphered only from "*actus-reus*". Thus, providing the suppression of fact and claiming undue benefit by the said Importer taking a chance to clear the goods by misclassifying it, amply points towards their "*mens rea*" to evade the payment of duty. Thus, I find the Importer is liable for a penalty under Section 114A of the Customs Act, 1962.

26. In view of the above facts, I pass the following order.

ORDER

- (i) I reject the benefit of lower rate of BCD @10% availed as per Sl. No. 20 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 *as amended* and I order to re-assess the Bills of Entry with BCD @ 20% for goods as mentioned above under CTI 85176290.
- (ii) I order to confirm the demand of differential duty of **Rs. 21,87,487/- (Rupees Twenty-One Lakh Eighty-Seven Thousand Four Hundred and Eighty Seven only)** on the impugned goods imported vide the two Bills of Entry under Section 28(4) of Customs Act, 1962, from M/s. **TP Link India Pvt Ltd.**
- (iii) I order to recover applicable interest on the amount of **Rs. 21,87,487/- (Rupees Twenty-One Lakh Eighty-Seven Thousand Four Hundred and Eighty Seven only)** under Section 28AA of the Customs Act, 1962 from M/s. **TP Link India Pvt Ltd.**
- (iv) I order to confiscate the impugned goods having assessable value of **Rs. 1,68,52,749/- (Rupees One Crore Sixty Eight Lakh Fifty Two Thousand Seven Hundred and Fourty Nine only)** under Section 111(m) and Sec 111(o) of the Customs Act, 1962, but since the same have already been cleared, hence I impose a redemption fine of **Rs. 35,00,000/- (Rupees Thirty Five Lakh only)** under Section 125 of the Customs Act, 1962 upon M/s. **TP Link India Pvt Ltd.**
- (v) I order to impose penalty on amount of **Rs. 21,87,487 (Rupees Twenty-One Lakh Eighty-Seven Thousand Four Hundred and Eighty Seven only)** and the applicable interest, on M/s. **TP Link India Pvt Ltd**, under Section 114A of Customs Act, 1962. However, I give an option to M/s. **TP Link India Pvt Ltd** to pay 25 % of the penalty so demanded here, provided the importer has paid the Duty, Interest, and such reduced penalty as demanded in this para, all within thirty days from the date of the communication of this order.
- (vi) I order to impose penalty of **Rs. 2,00,000/- (Rupees Two Lacs only)** on M/s **KPV India**, Custom Broker under Section 112(a) of Customs Act, 1962
- (vii) Since penalty under Section 114 has already been imposed on M/s. **TP Link India Pvt Ltd**, I refrain from imposing penalty under Section 112 (a) of Customs Act, 1962.

22. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.


(RAGHAVENDRA SINGH)
Additional Commissioner of Customs,
CAC, NS-IV, JNCH

To,

1. **M/s TP Link India Pvt Ltd**
201, 2NDFloor, A Wing, Times Square Building,
Andheri Kurla Road, Marol Andheri
Mumbai-400059
2. **M/s KPV India**, Custom Broker
1202, Mayuresh Chamber, Sector-11
CBD Belapur, Navi Mumbai- 400614

Copy to:

1. The Asst./Dy. Commissioner of Customs, Centralised Adjudication Cell, JNCH
2. The Dy. Commissioner of Customs, Circle- D1, Audit, JNCH
3. The Dy. Commissioner of Customs, Review Cell, JNCH.
4. The Dy. Commissioner of Customs, Recovery Cell, JNCH.
5. The Dy. Commissioner of Customs, Group VA, JNCH
6. The Dy. Commissioner of Customs, EDI, JNCH
7. Notice Board (CHS Section).
8. Office Copy.

