

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 51026 OF 2020

(Arising out of Order-in-Original No. 23/2020/U.G./Pr. Commissioner dated 15.06.2020 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi-110037)

M/s. Oppo Mobiles India Pvt. Ltd.

.....Appellant

Plot No. 1, Udyog Vihar,
Greater Noida,
Uttar Pradesh-201306

VERSUS

**The Principal Commissioner of
Customs (Import)**

.....Respondent

ACC (Imports), New Customs House,
Near IGI Airport - 110037

APPEARANCE:

Shri H.K. Sharma, Consultant and D.K. Nayyar, Advocate for the Appellant

Shri Mihir Ranjan, Special Counsel for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING: 14.05.2025

DATE OF DECISION: 13.11.2025

FINAL ORDER NO. 51708/2025

JUSTICE DILIP GUPTA:

M/s. Oppo Mobiles India Pvt. Ltd.¹ has filed this appeal to assail the order dated 15.06.2020 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi² by which the claim of the appellant seeking exemption of duty against the import of microphones and receivers has been rejected and the demand of duty has been confirmed with interest and penalty.

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- 1. the appellant**
 - 2. the Principal Commissioner**

2. The appellant had claimed exemption of duty under a Notification No. 57/2017-Customs dated 30.06.2017³. This Notification was first amended by Notification No. 22/2018-Customs dated 02.02.2018⁴ and then amended by Notification No. 37/2018-Customs dated 02.04.2018⁵ and Notification No. 24/2019-Cus dated 06.07.2019⁶.

3. The Exemption Notification dated 30.06.2017 provides that the Central Government in exercise of the powers conferred by section 25(1) of the Customs Act, 1962⁷ exempts the goods of the description specified in column (3) of the Table as are specified in the corresponding entry in column (2) of the said Table when imported into India, from so much of the duty of customs as is in excess of the amount calculated at the standard rate as specified in the corresponding entry in column (4) of the said Table subject to any of the conditions mentioned in the corresponding entry in column (5). The relevant portion of the said Exemption Notification dated 30.06.2017 is reproduced below:

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

Notification No. 57/2017-Customs

New Delhi, the 30th June, 2017

G.S.R. (E). – In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, ***, hereby exempts the goods of the description as specified in column (3) of the Table below, ***** as are specified in the corresponding entry in column (2) of the said table, when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount**

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- 3. the Exemption Notification dated 30.06.2017**
 - 4. amendment Notification dated 02.02.2018**
 - 5. amendment Notification dated 02.04.2018**
 - 6. amendment Notification dated 06.07.2019**
 - 7. the Customs Act**

calculated at the standard rate as specified in the corresponding entry in column (4) of the said Table subject to any of the conditions, as specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (5) of the said Table.

TABLE

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
*****	*****	*****	*****	*****
6.	Any Chapter	<p>(a) The following goods for use in manufacture of cellular mobile phones, namely:-</p> <p>(i) Printed Circuit Board Assembly (PCBA) (ii) Camera Module (iii) Connectors (iv) Display Assembly (v) Touch Panel /Cover Glass Assembly (vi) Vibrator Motor/Ringer</p> <p>(b) Inputs or parts for use in manufacture of items mentioned at (a) above</p> <p>(c) Inputs or sub-parts for use in manufacture of parts mentioned at (b) above</p>	<p>Nil</p> <p>Nil</p> <p>Nil</p>	<p>1</p> <p>1</p> <p>1</p>

ANNEXURE

Condition No.	Conditions
1.	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

(emphasis supplied)

4. The aforesaid Exemption Notification dated 30.06.2017 was first amended by Notification dated 02.02.2018. It needs to be noted that Serial No. 6 of the Exemption Notification dated 30.06.2017 was not touched by

this amendment Notification dated 02.02.2018, but Serial No. 18 was inserted with an Explanation. The relevant portion of this amendment Notification dated 02.02.2018 is reproduced below:

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

Notification No. 22/2018-Customs

New Delhi, the 2nd February, 2018

In the said notification, in the Table,-

- (i) against S.No. 1, for the entry in column (4), the entry "15%" shall be substituted;
- (ii) S.Nos. 2 and 3 and the entries relating thereto shall be omitted;
- (iii) against S.No. 7, in column (3), item (i) shall be omitted;
- (iv) after S.No. 7 and the entries relating thereto, the following S.Nos. and entries shall be inserted, namely:-**

(1)	(2)	(3)	(4)	(5)
*****	*****	*****	*****	*****
18.	8518	All goods other than the following parts of cellular mobile phones, namely:- (i) Microphone (ii) Wired Headset (iii) Receiver	Nil	1

- (vi) after the Table, the following Explanation shall be inserted, namely:-**

'Explanation.- For the purposes of this notification,-

- (a) "Moulded Plastics" means moulded plastic housing component with or without integrated AC pins that acts as enclosure to the printed circuit board used in a charger or adapter of cellular mobile phones;
- (b) **"Printed Circuit Board Assembly (PCBA)" means printed circuit board assembled with electronic components such as resistors, capacitors, diodes, inductors, ICs and mechanical components such as**

contact springs or connectors of charger or adapter of cellular mobile phones.”

(emphasis supplied)

5. A further amendment was carried out in the Exemption Notification dated 30.06.2017 on 02.04.2018 and the relevant portion of the amendment Notification dated 02.04.2018 is reproduced below:

**“GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

Notification No. 37/2018-Customs

New Delhi, the 2nd April, 2018

In the said notification, in the Table,-

(i) *****

(ii) against serial number 6, in column (3), the items (i), (ii) and (iii) shall be omitted;

(iii) after serial number 6 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

(1)	(2)	(3)	(4)	(5)
“6A.	Any Chapter	(a) Inputs or parts for use in manufacture of Printed Circuit Board Assembly (PCBA) of cellular mobile phones	Nil	1
		(b) Inputs or sub-parts for use in manufacture of parts mentioned at (a) above	Nil	1
*****	*****	*****	*****	*****

(iv) in the Explanation for the words ‘For the purposes of this notification’, the words and figures ‘For serial numbers 7A, 7B and 7C of this notification’ shall be substituted.”

(emphasis supplied)

6. A further amendment was carried out in the Exemption Notification dated 30.06.2017 on 06.07.2019 and the relevant portion of the amendment Notification dated 06.07.2019 is reproduced below:

**“GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

Notification No. 24/2019-Customs

New Delhi, the 6th July, 2019.

G.S.R.(E). – **In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962)**, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 57/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R. 798 (E), dated the 30th June, 2017, namely:-

In the said notification, in the TABLE,-

(i) against S. No. 6A, in column (3), after item (b), the following proviso shall be inserted, namely:-

“Provided that nothing contained in the entries mentioned at items (a) and (b) shall apply to the following goods, namely:-

- (i) connectors;
- (ii) microphones;**
- (iii) receivers;**
- (iv) speaker;
- (v) SIM socket”

(emphasis supplied)

7. The appellant is engaged in the business of manufacture of cellular mobile phones and smartphones. The appellant has been importing, among other mobile parts, microphones and receivers for use in the manufacture of PCBA which is used in the manufacture of mobile phones and availed

exemption from payment of duty under Serial No. 6 of the Exemption Notification dated 30.06.2017 and Serial No. 6A of the amendment Notification dated 02.04.2018.

8. A show cause notice dated 27.12.2019 was issued to the appellant demanding customs duty of Rs. 2,50,54,790/- (including social welfare surcharge and IGST) for the period from 02.02.2018 to 06.07.2019 on the microphones and receivers imported by the appellant for the following reasons:

- (i)** Microphones and receivers are specifically mentioned at Serial No. 18 of the amendment Notification dated 02.02.2018 and as such, customs duty ought to have been paid on the same cleared for the period from 02.02.2018 to 06.07.2019;
- (ii)** Explanation (b) to the Notification dated 02.02.2018 does not mention microphones or receivers and so they are not parts of the PCBA;
- (iii)** The appellant was availing benefit of exemption under Serial No. 6A of the amendment Notification dated 02.04.2018 that prescribed nil customs duty for inputs used in the manufacture of PCBA of cellular mobile phones but as microphones and receivers are not part of PCBA, the benefit of exemption was not available to the appellant;
- (iv)** As per the Customs Tariff, microphones as well as receivers are covered under Customs Tariff Item⁸ 8518 10 00 and CTI 8518 30 00 respectively, and attract basic customs duty with social welfare surcharge, and IGST totaling. For this purpose, a letter dated 01.02.2018 issued by JS (TRU-1) has been relied upon; and

- (v) Microphones and receivers are not parts of PCBA and attract duty under Serial No. 18 of the amendment Exemption Notification dated 02.02.2018.

9. The appellant filed a comprehensive reply and denied the allegation made in the show cause notice.

10. The Principal Commissioner denied the benefit of exemption claimed by the appellant and ordered for recovery of the short paid duty under section 28(1) of the Customs Act with interest under section 28AA of the Customs Act and also imposed penalty under section 112(b)(ii) of the Customs Act. The Principal Commissioner also held that the goods were liable to confiscation under section 111(m) of the Customs Act.

11. This appeal has been filed by the appellant to challenge the aforesaid order dated 15.06.2020 passed by the Principal Commissioner.

12. Shri H.K. Sharma, learned consultant and Shri D.K. Nayyar, learned counsel for the appellant submitted that the appellant was entitled to avail the benefit of exemption from payment of duty under the Exemption Notification dated 30.06.2017, as amended from time to time, since microphones and receivers are parts used in the manufacture of PCBA which is used in the manufacture of cellular mobile phones. In this connection, learned consultant placed the Exemption Notifications and also submitted that the amendment Notification dated 06.07.2019 does not apply retrospectively.

13. Shri Mihir Ranjan, learned special counsel appearing for the department, however, supported the impugned order and submitted that in terms of the amendment Notifications dated 02.02.2018, 02.04.2018 and 06.07.2019 (which learned special counsel contented was retrospective in nature), the appellant was not entitled to claim exemption of duty. Learned

special counsel also placed reliance upon the "Phased Manufacturing Policy" of the Ministry of Electronics and Information Technology as exemption to parts of mobile phones would put the domestic industry to considerable hardship. Learned special counsel also placed reliance upon a decision of the Chennai Bench of the Tribunal in **M/s. Flextronics Technologies Pvt. Ltd. vs. Commissioner of Customs, Chennai**⁹.

14. The submissions advanced by the learned consultant for the appellant and the learned special counsel appearing for the department have been considered.

15. The appellant manufactures cellular mobile phones and for this purpose imported parts like microphones and receivers, which the appellant claims were used in the manufacture of PCBA, which the appellant further claims are used in the manufacture of cellular mobile phones. The appellant claimed exemption from duty of customs under Serial No. 6 of the Exemption Notification dated 30.06.2017 at (a)(i) and (b). PCBA is mentioned at Serial No. 6(a)(i) and (b) provides that parts imported for use in manufacture of PCBA would also be exempted. The exemption is, however, subject to condition no. 1 which provides that the importer should follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017¹⁰.

16. There is no dispute that the appellant was entitled to exemption from payment of duty under the Exemption Notification dated 30.06.2017 and nor is there any dispute that the appellant was not entitled to claim exemption of duty after the issuance of the amendment Notification dated 06.07.2019. The dispute is for the intervening period from 02.02.2018 when the

9. Customs Appeal No. 40392 of 2020 decided on 28.02.2024 (Chennai)
10. the 2017 Rules

amended Notification dated 02.02.2018 was issued upto the issuance of the amendment Notification dated 06.07.2019.

17. Thus, the dispute in the present appeal is for the period from 02.02.2018 to 06.07.2019. On 02.02.2018, the aforesaid Exemption Notification dated 30.06.2017 was amended for the first time. Serial No. 6, as would be seen from a perusal of the amended Notification dated 02.02.2018, was not touched. Serial No. 7C, which was added, relates to the inputs or parts for use in the manufacture of parts of charger or adapter of cellular mobile phones like PCBA and moulded plastic.

18. Serial No. 18 was also added and the goods which are described are "All goods other than the following parts of cellular mobile phones namely: (i) Microphone, (ii) Wired Headset and (iii) Receiver". These parts were subjected to 10% customs duty.

19. Serial No. 18 added by the amendment Notification dated 02.02.2018 is in the context of three goods of cellular mobile phones that are imported, namely Microphone, Wired Headset and Receiver. It does not relate to microphones and receivers that are imported for manufacture of PCBA used in the manufacture of cellular mobile phones. Entry at Serial No. 6 continues without any amendment and so there is a clear distinction between the goods described at Serial No. 6 and at Serial No. 18. Serial No. 18 added by the amendment Notification dated 02.02.2018 would not be applicable.

20. The impugned order has placed reliance upon Explanation (b) which was added by the amendment Notification dated 02.02.2018. This defines PCBA. As is clear, the definition is in the context of PCBA of charger or adapter of cellular mobile phones and not PCBA of the mobile phones.

21. Thus, the amendment Notification dated 02.02.2018 does not alter Serial No. 6 of the Exemption Notification dated 30.06.2017.

22. The next amendment Notification is dated 02.04.2018. It seeks to omit items (i), (ii) and (iii) of Serial No. 6 of the Exemption Notification dated 30.06.2017. At the same time it adds Serial 6A, 6B and 6C. At Serial No. 6A, the goods that are described at (a) are "Inputs or parts for use in the manufacture of PCBA of cellular mobile phones" and at (b) "Inputs or sub-parts for use in manufacture of parts mentioned at (a) above" PCBA. Thus, what was described at Serial No. 6(a)(i) and (b) of Exemption Notification dated 30.06.2017, is what is now contained at Serial 6A of the amendment Notification dated 02.04.2018. There is, therefore, no change so far as this part of Serial No. 6 of the Exemption Notification dated 30.06.2017 is concerned.

23. What is also important to notice is that Explanation that was added by the amendment Notification dated 02.02.2018 was also amended and the Explanation was restricted only to Serial numbers 7A, 7B and 7C. Thus, also Serial No. 18 of the amendment Notification dated 02.02.2018 would not be applicable to Serial No. 6 of the amendment Notification dated 30.06.2017 or 6A of the amendment Notification dated 02.04.2018.

24. The aforesaid discussion conclusively establishes that the two amendment Notifications dated 02.02.2018 and 02.04.2018 do not in any manner alter Serial No. 6 of the Exemption Notification dated 30.06.2017 in so far as microphones and receivers that were imported by the appellant for the manufacture of PCBA.

25. The impugned order, on the basis of some information obtained by the Principal Commissioner, also holds that microphones and receivers are not used in PCBA. In the absence of any allegation having been made in the show cause notice and in absence of opinion of any expert opinion having been obtained, reliance placed on the information downloaded from website

cannot be considered as authentic. The Principal Commissioner has also imported his own knowledge to arrive at a conclusion that when the exterior of a phone is removed there are electronic components inside it which would include, amongst other, receivers and microphones and because "these components need a foundation to sit on and, therefore, these are attached to PCBA or installed correctly on the PCBA in order to function". Such personal knowledge of the Principal Commissioner cannot form the basis of an order in the absence of any opinion to this effect given by an expert. The finding that receivers and microphones are not parts of PCBA and are parts of mobile phone is without any basis.

26. In this connection, it would be pertinent to refer to a decision of this Tribunal in **Vivo Mobile India Pvt. Ltd. vs. Commissioner, Customs, New Delhi**¹¹ and the relevant observations are as follows:

"17. We further observe that to still prove its stand, appellant has heavily relied upon report of Indian Institute of Technology, Delhi dated 18.03.2019. and the core recommendation therein. As mentioned above, it has been emphasized by the appellant that without the mobile soldered on PCBA, PCBA fails the sensitivity test. Same was demonstrated to investigating authority and was conveyed to the department by 7.1.2019 in reply to show cause notice dated 22.1.2020. Also it was clarified that microphone imported by the appellant since have to be soldered onto PCBA, those are the parts of such PCBA. We find that the expert opinion in this respect was sought by the department itself, it finds no mention in the entire Show Cause Notice.

18. The Adjudicating Authority ignored this technical opinion obtained during the course of investigation. Instead, he has relied on the information collected from the internet. The same definitely amount to extraneous consideration

11. Customs Appeals No. 51045 of 2020 decided on 04.10.2022 (Tri. - Del.)

and reliance upon non admissible documents/ data. The expert report being departments' own documents is very much admissible in evidence. Perusal of the report shows that the impugned goods are the parts of PCBA. There is otherwise no evidence to record to prove that imported microphone are not the part of PCBA. ***"**

(emphasis supplied)

27. It needs to be noted that the aforesaid decision, granted benefit of exemption from payment of duty under Entry No. 427 of the Notification No. 57/2017-Cus dated 30.06.2017.

28. It is also pertinent to note that in the reply filed by the appellant to the show cause notice, a reference was made to a certificate issued by a Chartered Engineer mentioning that microphones and receivers are mounted on PCBA. This certificate has been taken note of in paragraph 13 of the impugned order. The relevant portion of the reply is as follows:

"**13. ******* that in the past the microphone were of bigger size and imported separately and were pasted and soldered on to the PCB; that with the advancement in technology the microphone have become tiny sized and are pasted and soldered on to the PCBA; that these are subjected to sensitivity test of their functionality; that in case the components including microphone and receiver are not pasted/soldered/assembled the PCBA fails the sensitivity test and therefore the microphone and receiver are a part of the printed circuit board assembly of the mobile phones since same cannot function without these parts. They also submitted a certificate dated 09.03.2020 from the Chartered Engineer to the effect that microphone and receivers are a part of PCBA of the cellular mobile phones."

29. The learned special counsel for the department has relied upon the "Phase Manufacturing Policy". This was not even a part of the show cause notice and, therefore, cannot be relied upon. Even otherwise, the relevant entries have to be examined to determine the classification.

30. The amended Notification dated 06.07.2019, to the extent it amends Serial No. 6A, makes the position very clear. It is under this Notification that microphones and receivers have been excluded against Serial No. 6A. This means that before this amendment Notification, microphones and receivers were considered as parts used in the manufacture of PCBA of cellular mobile phones. The impugned order, instead of accepting the case of the appellant that this is a clear pointer to the fact that prior to 06.07.2019 microphones and receivers were parts used in the manufacture of PCBA, has applied this Notification retrospectively with effect from 02.02.2018.

31. In the first instance, this Notification does not state that it is retrospective in nature and even otherwise there is nothing in the Notification which may even remotely suggest that it is retrospective in nature. In fact, the prospective nature of the Notification is clear from the communication dated 05.07.2019 issued by the Tax Research Unit in the Ministry of Finance in connection with Customs Notification No's 18/2019 to 27/2019 dated 06.07.2019. It mentions that important changes in respect of the customs duty rates are contained in Annexure A which gives details of Chapter wise changes in basic customs duty. In respect of Chapter No. 84 and 85 at Serial No. 16, the following has been stated:

“(16) Microphones, receivers and SIM sockets of mobile phones attracts 15% BCD by tariff rate. Further, in general speakers attracts 15% BCD by tariff rate. Also, connectors for use in cellular mobile phones attracts concessional 10% BCD [S.No. 5B of the notification No. 57/2017-Customs, dated 30th June, 2017 refers]. Now, all these items are being explicitly excluded from scope of entry at Sr. No. 6A of the notification No. 57/2017-Customs, dated 30th June, 2017 as amended vide notification No 24/2019-Customs dated 6th July, 2019 refers.”

(emphasis supplied)

32. The sentence "**Now, all these items are being explicitly excluded from scope of entry at Serial No. 6A of the notification No. 57/2017-Customs, dated 30th June, 2017 as amended vide notification No. 24/2019-Customs dated 6th July, 2019 refers**" makes it amply clear that the amendment Notification dated 06.07.2019 is prospective in nature.

33. Section 25 of the Customs Act deals with power to grant exemption from duty. Sub-section (4) states that every Notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for the publication in the Official Gazette. It is not in dispute that amended Notification dated 06.07.2019 was issued under sub-section (1) of section 25 of the Customs Act. Thus, it would apply retrospectively only if it is specifically provided for in the Notification. In the absence of any such a stipulation in the Notification regarding retrospectively, the Notification has to be applied prospectively.

34. Considering all these factors there is no manner of doubt that the amendment Notification dated 06.07.2019 shall have prospective application from 06.07.2019 and cannot be applied retrospectively.

35. Learned special counsel appearing for the department has, however, placed reliance upon a decision of the Tribunal in **Flextronics Technologies** to contend that the amendment Notification dated 06.07.2019 would have retrospective effect.

36. In paragraph 9.7 of this decision, the Tribunal examined whether the insertion in the Notification was clarificatory or retrospective in nature. There is an error in the reproduction of Serial No. 16 of the TRU letter dated 05.07.2019 as is clear from paragraph 9.10 which records Serial No. 16 as follows:

"9.10 *****

"(16) Microphones, receivers and SIM sockets of mobile phones attracts 15% BCD by tariff rate. Further, in general speakers attracts 15% BCD by tariff rate. Also, connectors for use in cellular mobile phones attracts concessional 10% BCD [S.No. 5B of the notification No. 57/2017-Customs, dated 30th June, 2017 refers]. **Now, all these items have been explicitly excluded from** scope of entry at Sr. No. 6A of the notification No. 57/2017-Cus"

(emphasis supplied)

37. It is from a reproduction this Serial No. 16 that the following conclusion has been arrived at by the Division Bench:

"This circular makes it clear that the intention of the amendment was to make explicit what was considered implicit and remove any confusion there may have been in this regard. The TRU's DO reflects the position as discussed above."

38. Serial No. 16 actually provided that "Now, all these items are being explicitly excluded", which leaves no manner of doubt that the Notification is prospective in nature. The conclusion, therefore, that has been drawn on the basis of a mistake in the reproduction of the Circular is not borne out from Serial No. 16 of the TRU letter dated 05.07.2019.

39. This apart, the Division Bench failed to examine section 25(4) of the Customs Act which specifically provides that every Notification issued under section 25(1) of the Customs Act shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. This aspect was also examined by the earlier Division Bench of the Tribunal in **Vivo Mobile**. Non-consideration of a statutory provision having a direct bearing on the issue has rendered the decision of the Tribunal in **Flextronics Technologies** per incuriam.

40. Whether a Notification is prospective in nature or retrospective in nature in the context of section 25(4) of the Customs Act was also examined by a Division Bench of this Tribunal in **InterGlobe Aviation Limited vs. Commissioner of Customs, New Delhi**¹². The relevant portions of the decision are reproduced below:

"33. The main body of the Amendment Notification mentions that the Central Government 'hereby makes the following amendments' in the Exemption Notification dated 30.06.2017. It does not state that the amendment would apply retrospectively from the date the Exemption Notification was issued on 30.06.2017 nor does Explanation (d) state that it has been inserted with retrospective effect.

34. Section 25(4) of the Customs Act provides that every notification issued under sub-section (1) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. In the absence of any specific stipulation in the Amendment Notification providing otherwise, the said Amendment Notification shall come into force on the date of its issue by the Central Government i.e. 19.07.2021. The Amendment Notification dated 19.07.2021 cannot, therefore, have retrospective effect.

33. The department seeks to take aid of Explanation (d) that was inserted by the Amendment Notification dated 19.07.2021 to contend that since the words 'for removal of doubt' and 'it is clarified' have been used in Explanation (d), the amendment contained in clause (1) would necessarily have retrospective effect.

34. It needs to be remembered that the Amendment Notification does not state that it is retrospective in nature and only an inference is sought to be drawn by the department that the

12. Customs Appeal No. 51937 of 2021 decided on 05.08.2024 (Tri. - Del.)

amendment would have retrospective effect because of use of the words 'it is clarified' and 'for removal of doubt'.

35. A clarificatory provision generally seeks to supply an obvious omission or to clear doubts on the meaning of the language used in the previous provisions. It makes explicit or clears the meaning of a provision contained in the Act, which meaning was already implicit. The Courts have repeatedly held that in such a situation it is necessary to first consider the meaning of the provision to which Explanation is added without such Explanation, and then compare the same with the meaning given by the added Explanation. If the result is same, then alone the Explanation can be considered to be clarificatory in nature and given a retrospective effect from the inception of the original provision. The provision sought to added cannot be presumed to be clarificatory merely because the provision attached to Notification bears the nomenclature such as 'it is clarified' or 'for the removal of doubts'. It has to be determined, in each case, whether the provision is clarificatory, basis the test laid down by the Courts.

36. In the present case, the Exemption Notification, before its amendment on 19.07.2019, provided for payment of 'duty of customs' on the repair value of the re-imported goods. The Tribunal, in the decision rendered on 02.11.2020 in **InterGlobe Aviation**, held in very clear terms that the phrase 'duty of customs' referred to in the condition against serial number 2 would not include integrated tax. By the Amendment Notification dated 19.07.2021, the phrase 'duty of customs' has been substituted with the phrase 'Said duty, tax or cess'. The effect of the amendment would be that basic customs duty, integrated tax and cess would be required to be paid on the repair value of the re-imported goods as a condition of grant of exemption. It is, therefore, clear that the requirement to pay customs duty and integrated tax on the repair value of re-imported goods pre-amendment and post amendment is not the same. Mere usage of the words 'for removal of doubts' or 'it is clarified' in the newly

inserted Explanation (d) will not, by itself, make the amendment clarificatory in nature. The amendment made on 19.07.2012 is substantive in nature as it seeks to additionally impose integrated tax, which otherwise pre-amendment was not to be paid on the re-import of goods. The fact that prior to the amendment, integrated tax was not required to be paid is clear from the provisions of the Customs Act, the Tariff Act and the decision of the Tribunal in **InterGlobe Aviation**. It cannot, therefore, be urged that despite the creation of a new liability to pay integrated tax under the Amendment Notification, the amendment would still be retrospective in nature.”

(emphasis supplied)

41. This Division Bench, thereafter, examined various judgments of the Supreme Court and the High Courts and observed as follows:

“**45.** What follows from the aforesaid judgments of the Supreme Court and the High Courts is that an Explanation to a provision may either clear the ambiguity in the main provision or it may add and widen the scope of the main provision. A provision is said to be clarificatory if a consideration of the meaning of the provision to which the Explanation has been added when compared to the meaning given by the added Explanation remains the same. However, if the meaning changes, it cannot be said to be clarificatory in nature. If the Explanation is clarificatory in nature, it may be given retrospective operation, but if it changes the law and alters or widens the scope of the main provision, it cannot be given retrospective operation.

46. In the present case, though Explanation (d), inserted by the Amendment Notification dated 19.07.2021, proceeds to state that ‘for removal of doubts’ it is clarified, but the fact is that it imposes integrated tax, which otherwise prior to the introduction of the Explanation was not leviable under the unamended Exemption Notification dated 31.06.2017. It cannot, therefore, be said to be retrospective in nature, more so when neither clause (i) nor clause (ii)

specifically mentions that it is retrospective in nature. Section 25(4) of the Customs Act also makes it abundantly clear that every Notification issued under sub-section (1) or sub-section (2A) of section 25 of the Customs Act shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. At the cost of repetition, the Amendment Notification dated 19.07.2021 issued under section 25(1) does not provide that it would be applicable retrospectively. Thus, in terms of section 25(4) of the Customs Act, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette.”

(emphasis supplied)

42. Thus, even though the amendment Notification used the words “for removal doubt” and “it is clarified” yet the Division Bench in **InterGlobe Aviation** held that it was not retrospective in nature.

43. It also needs to be noted that in the present case, it seen that by virtue of the amendment Notification dated 06.07.2019, customs duty would also be leviable on microphones and receivers when imported India even if they are imported for the manufacture of PCBA of cellular mobile phones.

44. The aforesaid decision of the Tribunal in **InterGlobe Aviation** was assailed by the department before the Supreme Court in Civil Appeal Diary No. 6685 of 2025, which appeal was dismissed by the Supreme Court on 14.07.2025.

45. There is no dispute in the present appeal for any period w.e.f. 06.07.2019 as the period involved in this appeal is from 02.02.2018 to 06.07.2019 only.

46. Thus, for all the reasons stated above, the impugned order dated 15.06.2020 passed by the Principal Commissioner rejecting the claim of the

appellant seeking exemption from payment of customs duty under the Exemption Notification dated 30.06.2017, as amended from time to time, cannot be sustained and is set aside. The demand of differential customs duty with penalty and interest cannot, therefore, be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **13.11.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya