GOVERNMENT OF PAKISTAN
MODEL CUSTOMS COLLECTORATE OF PPRAISEMENT (EAST)
(CLASSIFICATION CENTRE)
CUSTOM HOUSE, KARACHI
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C. No. (1005) KAPE-DC(PCT)2015 Dated: 13 February, 2016

The Collector of Customs,
MCC Appraisement (West),
Custom House,
Karachi.

Subject: **DECISION OF CLASSIFICATION COMMITTEE IN COMPLIANCE OF ORDERS OF HONOURABLE HIGH COURT IN C.P. NO. D-1600/2015, D-2422/2015, D-4694, D-6175/2015 & D-662/2015**

A reference was made to Classification Committee to determine the classification of Lead Acid (VRLA) batteries imported by M/s Telenor Pakistan (Pvt) Limited vide MCC Appraisement (West) letter No. SI/Misc./299/2015-VI dated 24th November, 2015.

FACTS:

M/s. Telenor Pakistan (Pvt.) Limited imported batteries of "ZTE" and "YUASA" Brand and sought clearance under PCT Heading 8507.2010 which is a three dash (---) local heading created to cover batteries for 'telephone exchanges'. The clearance Collectorate assessed the consignments under PCT Heading 8507.2090 on the grounds that the imported batteries are multipurpose; therefore, do not qualify to be classified under PCT Heading 8507.2010. The importer not agreeing with classification preferred Constitutional Petitions bearing No. D-1600 / 2015, D-2422 / 2015, D-4694 / 2015, D-6175 / and 6662 / 2015 in the Honorable High Court of Sindh at Karachi. The Honorable High Court disposed of the above said petitions with the direction that classification dispute be decided through Classification Committee within 45 days after providing the hearing opportunity to the petitioner i.e. M/s Telenor Pakistan (Pvt.) Limited.

ISSUE:

2. Whether the imported 'batteries' are appropriately classifiable under three dash national PCT Headings8507.2090 as contented by the Collectorate or under8507.2010 of the First Schedule to the Customs Act, 1969 (Pakistan Customs Tariff), as claimed by the importing company?

For the ease of understanding on the subject from the importers and the Collectorate, arguments are tabulated as under:

Collectorate's Standpoint	Importer's Response
According to the information from the web-site of the manufacturer and the broacher / catalogue provided by the importers at the time of clearance of their consignments, the imported batteries are not specifically designed for use in the 'Telephone	Customs picked up subject information from Internet, but couldn't provide the similar specifications which prove the multipurpose use of imported batteries. The Company provided the specifications, vendor's letters,

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Exchanges' and in fact are for multipurpose use having applications in telecommunication, UPS, alarm systems, fire & security systems, emergency lighting, engine starting, solar power systems and utilities etc.	customs examination report and logical explanation about specifications which explains how these batteries are different from the other multipurpose-use batteries. The customized imported VRLA batteries come in battery banks, each bank consisting of 24 cells with each battery having voltage capacity of 2 volts with negative current flow to avoid damage to installed components due to power fluctuation. The whole bank of 24 cells provide 48 volts and the specifications make the integration of the imported batteries impossible for general purpose. The imported two volts, 500-800 Ampere – hour VRLAs batteries are of specific type which utilize advanced technology i.e. GEL (OPZV) to provide enhanced performance and higher tolerance to extreme weather conditions and substantially higher product life for long term power solutions. Due to their customized design which includes added features like low voltage i.e. 2V single cell, high amperage ranging from 500-800 ampere, weight around 40 to 50 kg per single cell and high cost makes it almost impossible to use for any other general / universal purpose. Moreover, the amperage ranging 500 – 800 per hour is much higher than the amperage of batteries being used for residential or commercial purpose and is considerably lower than the amperage of solar batteries. Two volts battery with such a higher product value cannot be used frequently for any other purpose. The inbuilt specifications of the batteries are designed to support the low maintenance with a shelf life of 10 years. These are the cyclic batteries used only for short stretches e.g. 1-2 hours at a time and fast charging of 20% per hour (0.2 C10).The components of the lead acid batteries for telecom sector have a specific design, size and characteristics which make it suitable for use in telecommunication exchanges only. The added features and customized type of the batteries, which come at increased expense, make them unsuitable for general / multipurpose use and are theft protected being high in weight. They further explained that in order to make these batteries adoptable for general / universal applications, the same will need to be converted into 12V.These features render them technically / practically unfit and non-feasible for general / universal usage whereas many practical, technically feasible and cost-effective solutions are readily available in the market.
These batteries are not specifically designed for sole use in the Telephone Exchanges, whereas; the Batteries imported by the importer are multi-	The imported batteries are of customized type and bear an inscription, as is also confirmed through examination reports by the Customs

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purpose and can also be used in cell phone centers.	staff, which reads "PROPERTY OF TELENOR PAKISTAN PVT. LTD." and "DESIGNED FOR TELENOR GROUP OF COMPANIES USE ONLY".
PCT Heading 8507.2010 is a three dash (---) heading, created for "Telephone Exchanges", in terms of "Pakistan Rules", as embodied in preamble of the Tariff read with Sections 18(1) and 18-E of the Customs Act, 1969.	No rebuttal.
The previous data of clearance of the similar kind of Batteries imported by the Cell Phone Companies was also checked and found that the similar consignments were assessed and got released under PCT Heading 8507.2090 instead of PCT Heading 8507.2010.	All the telecom sector companies have been clearing these batteries under 8507.2010 since incorporation of said heading. Customs changed their stance and understanding of classification from January, 2015 onwards and forcefully reassessed the same under 8507.2090.
.The "Telephone" and "Cell Phone" are two different commodities and modes of communication of both the equipments are based on different technologies. Therefore, the Service Providing Centers of the Cell Phone Companies cannot be equated at par with the conventional Old "Telephone Exchanges".	The telecom exchanges have undergone significant changes in terms of technology, usage, composition and structure. By the time this three dash (---) local heading 8507.2010 was introduced in 2007, most of the telecom companies, including M/s. PTCL, were using automated exchange system rather than the conventional exchange which was already outdated by 2007.
According to the local requirements, the Customs Administration of Pakistan has bifurcated the single (-) dash headings into three (---) dash headings to cater the needs of the PTCL's land-line Telephone Exchanges. The PCT Heading 8507.2000 was divided as follows:- - Other Lead Acid Accumulators:- 8507.2010- - - Sealed Lead Acid batteries used in telephone exchanges 8507.2090- - - Others;	Customs assumption that subject code was introduced for M/s. PTCL which was then a public sector organization is patently incorrect for the reasons that M/s. PTCL was privatized in 2006 and was no more a public sector company at the time of incorporation of three dash local heading. Pakistan Customs Tariff (First Schedule to the Customs Act, 1969) is a laid down law and the national level (---) PCT Headings are introduced by the legislature on the basis of product, use, or industry and not for a specific company, as contended by the clearance Collectorate. The national (---) heading was introduced to facilitate the growing telecom sector.
The PCT Heading 8507.2010 covers only such Batteries which are exclusively designed for use in Telephone Exchanges based on conventional land line telephones.	By the time of incorporation of three dash (---) national heading 8507.2010 conventional system was being replaced with modern day state of the art technology. Even M/s. PTCL had been started to provide services such as GSM, CDMA, broadband internet and IPTV which cannot be supported through conventional exchanges for the lack of technical ability. How it could be the intent of the legislature to support a dying technology through tariff concession by introducing three dash national heading. Customs authorities' logic carries not weight and rationale. Customs Department forcefully wants to assess the disputed commodities under HS Code 8507.2090 in order to levy 20% customs duty and showing PCT Heading 8507.2010 as a redundant one. They emphasized that the at the

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	time of introducing three dash heading in the year 2007-2008, no company was using conventional old exchanges. Old exchanges were used in old days by PTCL.
The word "Use" appeared in PCT Heading 8507.2010 have significant legal meaning and confirms the understanding of the Collectorate that the multipurpose Batteries are classifiable under PCT Heading 8507.2090 and the Batteries exclusively designed / used only for Telephone Exchanges are classifiable under PCT Heading 8507.2010.	Three dash HS Code 8507.2010 doesn't provide any specification and / or justification of the battery that should be exclusively used in telephone exchanges. The three dash (---) heading 8507.2010"Lead Acid Batteries used in telephone exchanges" only provide general description which means any sort of lead acid batteries for the purpose of use in telephone exchange shall be classified under 8507.2010. They further contended that no voltage and amperage is defined for batteries to be used in telephone exchange in the Explanatory Notes and that the Customs authorities have failed to provide data through their record (WeBOC) regarding the specifications and type of batteries used in telephone exchange, and information about the vendors that are manufacturing such batteries.

Apart from above, M/s Telenor Pakistan (Pvt.) Limited further informed that the Company has 8000 sites to provide cellular services to millions of customers. The batteries are used as 'secondary power source' to the exchanges to its outdoor and indoor exchanges and are classifiable under H.S. Code 8507.2010 in view of their specification and utilization. These batteries even fetch more value than fixed by the Customs authorities under section 25A of the Act.

LAW AND ANALYSIS:

5. The matter was taken-up by the 'Classification Committee'. A team of M/s Telenor Pakistan (Pvt.) Limited along with their advocate Mr. Ghulam Hyder Sheikh attend the meeting. Mr Adnan Rafique, Assistant Collector represented the Collectorate. The Committee has observed that classification of any commodity under Harmonized System is determined in accordance with the General Rules of Interpretation (GRI) to be applied in sequential order. Explanatory Notes provide a commentary on the scope of each heading and are considered authentic source of interpretation at two dash (--) heading but are not supportive for determination of classification at three dash (---) and four dash (----) national heading. The Committee further elaborated to the participants that under GIR's 'Pakistan Rules', the Board (FBR) is empowered to determine the PCT Heading as per the national requirement. This position is also accepted by the importer M/s Telenor, in their reply.

6. Deliberating on the subject, it is relevant to add here that 'telecommunication' means communication over a distance by cable, telegraph, telephone, or broadcasting. *Article 1.3* of the International Telecommunication Union's Radio Regulation defines telecommunication as *"Any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems"*. This definition is also identical to those contained in the Annex to the Constitution and Convention of the International Telecommunication Union (Geneva,

1992). Further, Section 2 of Pakistan Telecommunication (Re-organization) Act, 1996, defines the telecommunication system as under:

> *(t) "telecommunication system" means any electrical, electro-magnetic, electronic, optical or optio-electronic system for the emission, conveyance, switching or reception of any intelligence within, or into or from Pakistan, whether or not that intelligence is subjected to rearrangement, computation or any other process in the course of operation of the system, and includes a cable transmission system, a cable television transmission system and terminal equipment;"*

7. The Committee has further deliberated and observed that a **telephone exchange** is a telecommunications system used in the *Public Switched Telephone Network* (PSTN). An exchange consists of electronic components. In older systems, human operators interconnect (*switch*) telephone subscriber lines or virtual circuits of digital systems to establish telephone calls between subscribers. A private telephone exchange as in large corporations is referred to as a ***Private Branch Exchange*** (PBX). In what is called a Land Line, a pair of wires goes out from every telephone set to the telephone exchange. To make a call from one telephone to the other, the two pairs need to be connected, which is done by means of switches. The electric current which makes the telephone set work at home is supplied from the telephone exchange with which the phone is connected with. Whereas, Base Transceiver Station (BTS) is usually composed of:

(i) Transceiver (TRX) often referred to as the driver receiver (DRX or DRU)

(ii) Power amplifiers, it amplifies the signal from DRX for transmission through antenna.

(ii) Combiner, it combines feeds from several DRXs so that they could be sent out through a single antenna.

(iii) Multiplexer, it is used for separating sending and receiving signals to/from antenna.

(iv) Antenna, it used for sending and receiving signals.

(v) Alarm extension system, it collects working status alarms of various units in the BTS and extends them to operations and maintenance (O&M) monitoring stations.

(vi) Control function, it controls and manages the various units of BTS, including any software On-the-spot configurations, status changes, software upgrades, etc. are done through the control function through Radio.

(vii) Power System with Backup.

8. From above explanation, it is clear that a BTS or RBS (a cell site) has an antennae, one or more sets of transmitter/receivers i.e. transceivers, digital signal processors, control electronics, a GPS receiver for timing, primary and backup electrical power sources, and sheltering. The traffic calls are forwarded to ***Mobile Switching Centre*** located away from the cell sites so different number of BTS can connect with it. The Mobile Switching Centre in

turn is connected to the 'Public Switched Telephone Network'. Therefore, the BTS cannot be equated at par with the Telephone Exchange as mentioned in PCT heading 8507.2010.

9. Having said that, the Committee considers that inscription on the imported lead-acid batteries declaiming *'PROPERTY OF TELENOR PAKISTAN PVT. LTD."* and *"DESIGNED FOR TELENOR GROUP OF COMPANIES USE ONLY'* is, prima facie, an act on behalf of the importer / petitioner to give impression that the goods are manufactured for the exclusive use for them and specifically designed for Telenor Exchanges to provide a secondary source of power. The broacher / catalogue, provided by the Telenor at the time of processing of GD's, in terms of Section 80 of the Custom Act, 1969, do not specify that these batteries are specifically used in telephone exchanges and cannot be used for any other purpose. Moreover, the aforesaid customized design of the batteries cannot renders them un-suitable for any other purpose, such as data-centers, IT centers of banks, airlines etc. Even otherwise, any lead-acid accumulator of multipurpose usages, including Telecommunication Companies, if not solely design for Telephone Exchanges, will be classifiable under PCT Heading 8507.2090.

10. Now in the instant case, the Batteries imported by the Telenor, are used to power the BTS/RBS for Transmission, Reception and its control system in the event of a power failure and are not used in a telephone exchange or more accurately in a PSTN. The BTS/RBS is not a telephone exchange (PSTN) nor even a PBX.

11. The brochure/Literature of "YUASA" Batteries have been perused which revealed that M/S Telenor has imported two types of batteries but has chosen to contest the classification of only 2v OPZV battery. The OPZV battery is a special type of battery which has a cylindrical plate as opposed to standard batteries which have two flat plates. It is further noticed out that the batteries contrary to the claim of Telenor are not specialized batteries for Telecom, but are batteries for general use e.g. UPS, Alarm Systems, Fire &Security Systems, Emergency Lighting, Engine Starting, Solar Powered Systems Telecommunication and Utilities as checked and confirmed through various websites and literature.

HOLDING:

12. As discussed above in detail that BTS is not a Telephone Exchange, while PCT heading 8507.2010 pertains to the batteries used exclusively for Telephone Exchanges, that is why the M/s PTCL themselves are clearing their battery consignments for BTS/RBS under PCT heading 8507.2090 instead of 8507.2010. Though the Telenor has made an attempt to show that other companies are making the payment of duty / taxes, in terms of PCT Heading 8507.2090, under duress or compulsion but they failed to justify their statement with any corroborative document. On the legal side, if there is any wrong assessment the importers have the remedy to file an appeal under Section 193 of the Customs Act, 1969. No such evidence (appeal) has been provided by the Telenor, thus, it is incorrect that the other cellular companies are paying duty under compulsion in PCT heading 8507.2090. Moreover, the literature of impugned goods confirms that these batteries can be used for multiple uses like UPS, Alarm Systems, Fire & Security Systems, Emergency Lighting, Engine Starting, Solar Powered Systems Telecommunication and Utilities etc., hence the same cannot be classified under PCT heading 8507.2010 i.e. for telephone exchange purpose. Therefore,

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classification committee is of the opinion that the batteries in question having multiple use are appropriately classifiable under PCT heading 8507.2090.

13. Without prejudice, even otherwise apart from the discussion made above, as the PCT heading 8507.2090 appears/comes after 8507.2010, i.e. later in time, therefore, the batteries in question are classifiable under PCT heading 8507.2090 by virtue of rule 3(c) of General Rules of Interpretation of the Harmonized Coding System.

14. This Ruling is issued in terms of Chapter – II (Classification) of the CGO 12 / 2002 dated 15th June, 2002 and shall hold the field as far as present scheme of three dash (---) national heading 8507.2000 continues. Any appeal against this Ruling shall lie only with the Federal Board of Revenue under Rule 2 of Pakistan Rules to the General Rules for Interpretation.

(Muhammad Haris Ansari)
Additional Collector
Chairman Classification Committee

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