

AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS & SERVICE TAX)
NEW DELHI

PRESENT

Mr. Justice P. V. Reddi (Chairperson)
Mr.A.Sinha (Member) Mrs. Chitra Saha (Member)

Tuesday, the 18th day of November 2008

Ruling No.AAR/06/Cus/2008

In

Application No.AAR/04/Cus/2008

Applicant	M/s Agilent Technologies India Pvt.Ltd.,Tirupati Plaza, Plot No.11,Sector - XI, 2 nd Floor, Dwarka, New Delhi- 110 075
Commissioners concerned	Commissioner of Customs, Air Cargo Complex, Andheri(East), Mumbai – 400 099. Commissioner of Customs(Import & General), New Custom House, Near IGI Airport, New Delhi- 110037 Commissioner of Customs, C.R. Building, Queens Road Bangalore-1 Commissioner of Customs and Central Excise, Hyderabad – II Commissionerate, L.B.Stadium Road, Basheer Bagh, Hyderabad- 500 004.
Present for the Applicant	Mr.Anand Verma, Manager – Custom Classification Mr.Vishal Gupta - Tech. Application Consultant Mr. Prakash Manjunath – Classification Engineer
Present for the Commissioners concerned	(1)Mr.Harish Kr.Thakur, Jt.CDR (2)Mr. Sumit Kumar, SDR

R U L I N G
(By Mrs.Chitra Saha)

1. The applicant, M/s Agilent Technologies, India is a wholly owned subsidiary Indian company of M/s Agilent Technology, Europe B.V., Netherlands and is engaged in import and marketing of various measuring instruments, including spectrum analyzers. It proposes to import two models of spectrum analyzers of Agilent Performance Spectrum Analyzer series and has sought advance ruling under Section 28 H of the Customs Act 1962 on the following issues regarding the classification of such imports:-

- “a) What is the Customs Classification of Agilent Technologies Product No. E 4443 A, Spectrum Analyzer when imported into India?
- b) What is the Customs Classification of Agilent Technologies Product No. E 4447 A, Spectrum Analyzers when imported into India?”

2. The applicant states that the above instruments are state of the art next generation spectrum analyzers which have been specially designed for use in the telecom industry. These instruments are used extensively for testing wireless, broad band and other communication systems. They are equipped with specially designed hardware and software applications which enable them to measure and analyze distortions, spurious signals, phase noise, noise figure, 2G and 3G wireless communication formats. They can carry out various telecom specific measurements some of which are listed below :-

- (a) CDMA
- (b) CDMA2000
- (c) TD SCDMA

- (d) W-CDMA
- (e) GSM
- (f) EDGE
- (g) Bluetooth
- (h) WLAN
- (i) Digital modulation
- (j) Noise figure
- (k) Phase noise

3. The applicant claims that these are not general purpose spectrum analyzers but are specially designed for telecommunication and therefore should be classified under 9030 40 00 of the Customs Tariff. The above tariff item specifically mentions cross-talk meters and distortion factor meters. The models E4443A and E4448A are capable of measuring cross-talk and harmonic distortions. Since both the models, in addition to being general purpose spectrum analyzers, also have capabilities for carrying out measurements and analysis which are specific to telecom sector, these merit classification under 9030 40 00. In view of the predominant use of these spectrum analyzers in the telecom sector, these instruments are being sold by the applicant to well known telecommunication companies such as Bharti Telecom, Alcatel, Reliance Communications, NOKIA etc. Product literature brought out by the manufacturing company M/s Agilent Technologies has been enclosed. For further details about product features and performance, the applicant has referred to the website of the manufacturer www.agilent.com

4. The comments of the Commissioners of Customs had been called for. The Commissioner of Customs, Air cargo, Mumbai, reported that most of the spectrum analyzers imported in that Commissionerate were classified

either under customs tariff heading (CTH) 9030 33 90 or 9030 89 90. However, in cases of two imports by Reliance Communications Ltd. and Bharti Airtel Ltd., where the spectrum analyzers were declared to be specially designed for telecom, the goods were classified under 9030 40 00. This heading covers instruments and apparatus specifically designed for telecommunication, such as cross-talk meters, gain-measuring instruments, distortion factor meters etc. In the applicant's case, the literature supplied reveals that E4443A and E4447A measure and analyze flexibility, speed, accuracy, band width, phase noise and modulation. On the basis of the above, the Commissioner opines that these spectrum analyzers are used to analyze telecommunication quantities/parameters and therefore merit classification under CTH 9030 40 00. The Commissioners of Customs, Bangalore and New Delhi have also recommended classification of both the models of the spectrum analyzer under 9030 40 00 as these find specific use only in telecommunication. The Commissioner of Customs & CE, Hyderabad has reported that the applicant had imported Agilent Spectrum Analyzer model ESA-L E4408B in Jan., 08 and that these were classified under 9030 84 00. Without giving comments about the classification of the two specific models proposed to be imported, he has generally expressed the view that all spectrum analyzers cannot be said to be meant for use in telecommunication. A technical opinion about the spectrum analyzers given by the Principal, Ambedkar Institute of Technology, New Delhi has been produced by the Department.

5. At the time of the hearing of the application, the representative of the Department has raised some preliminary objections. He states that since the applicant has already imported a spectrum analyzer in the past, the proposed imports constitute an ongoing activity and do not fall in the realm of “proposed activity” as envisaged in the definition of advance ruling in Sec.28E(b) of the Customs Act 1962. On the issue of the import of spectrum analyzers by the applicant being an ongoing activity, M/s Agilent, India has stated that the Agilent ESA-L E4408B spectrum analyzer imported through the Hyderabad Commissionerate is distinct from the models for which advance ruling has been sought. The said instrument was imported for supply to Govt. of India for defence purposes. Since this import was exempted from payment of duty, they had not disputed the classification of the Department. The E4443A and E4447A had not been imported earlier. In fact, before admitting the application, we did consider whether the import of same goods was made in the past. It would not be appropriate to entertain this preliminary objection again at this stage.

6. The issue to be determined is the classification of Performance Spectrum Analyzer, Model Nos. E4443A and E4447A manufactured by Agilent Technologies, California which are proposed to be imported by the applicant. The instrument ‘spectrum analyzer’ is specifically mentioned in the heading 9030 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff) though it is not referred to specifically in any of the sub head/tariff item under 9030. The question,

now, is under which sub head/tariff item of 9030 would the spectrum analyzers proposed to be imported, fall. For ease of reference the said tariff head is reproduced below:

9030	OSCILLOSCOPES, SPECTRUM ANALYSERS AND OTHER INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING ELECTRICAL QUANTITIES, EXCLUDING METERS OF HEADING 9028; INSTRUMENTS AND APPARATUS FOR MEASURING OR DETECTING ALPHA, BETA, GAMMA, X-RAY, COSMIC OR OTHER IONISING RADIATIONS
9030 10 00	Instruments and apparatus for measuring or detecting ionizing radiations
9030 20 00	Oscilloscopes and oscillographs Other instruments and apparatus, for measuring of checking voltage, current, resistance or power;
9030 31 00	Multimeters without a recording device
9030 32 00	Multimeters with a recording device
9030 33	Other , without a recording device
9030 33 10	Ammeters, volt meters and watt meters
9030 33 20	Spectrum resistance meters
9030 33 30	Capacitance meter
9030 33 40	Frequency measuring apparatus
9030 33 50	Megar meters
9030 33 90	Other
9030 39 00	Other, with a recording device
9030 40 00	Other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters,

	psophometers)
	<i>Other instruments and apparatus:</i>
9030 82 00	For measuring or checking semiconductor wafer or device
9030 8400	Other, with a recording device
9030 89	Other:
9030 89 10	Scintillator counters
9030 89 20	Vectroscope
9030 90	<i>Parts and accessories:</i>
9030 90 10	Of meters and counters
9030 90 90	Other

7. In a broad definition of the word “Spectrum” given in the Mc Graw Hill Concise Encyclopedia of Science and Technology (3rd ed. p.1776), it is stated that “the term spectrum is applied to any class of similar entities or properties strictly arrayed in order of increasing or decreasing magnitude. In general, a spectrum is a display or plot of intensity of radiation (particles, photons, or acoustic radiation) as a function of mass, momentum, wavelength, frequency, or some other related quantity”. More, specifically, it states that “in the domain of electromagnetic radiation, a spectrum is a series of radiant energies arranged in order of wavelength or of frequency. The entire range of frequencies is subdivided into wide intervals in which the waves have some common characteristic of generation or detection, such as the radio-frequency spectrum, infrared spectrum, visible spectrum, ultraviolet spectrum, and x-ray spectrum”.

“Spectrum Analysis” and “Spectrum Analyzer” are defined in Mc Graw Hill Dictionary of Scientific and Technical Terms(5th ed. p.1881) as follows:-

“Spectrum analysis: The measurement of the amplitude of the components of a complex waveform throughout the frequency range of the waveform.”

“Spectrum analyzer: Test instrument used to show the distribution of energy contained in the frequencies emitted by a pulse magnetron; also used to measure the Q of resonant cavities”.

8. The Explanatory Notes on the Harmonized System of Nomenclature (page 1848 3rd ed.) on tariff heading 9030 states that “Spectrum Analyzers are instruments which identify the different frequency components of an electrical input signal. They are mainly used to analyze electrical quantities”. The said Notes also state that “frequency meters” which measure frequencies and “wave meters” which measure wave lengths fall under “Other instruments and apparatus for measuring or checking voltage current resistance or power” covered under Customs Tariff Head (CTH) 9030.

9. The spectrum analyzers proposed to be imported are not mere frequency meters or wave meters. As stated by the applicant and confirmed by the website of the manufacturing company, Agilent Technologies, California, E4443A and E4447A are versatile instruments which are equipped with specially designed hardware and software options which enable them to measure and analyze different characteristics of complex radio frequencies and microwave signals used for telecommunications. They have capabilities to carryout telecom specific measurements which have been referred to by the applicant in the para no.2 given above. The extensive use of spectrum analyzers in the field of telecommunication, for measuring frequency responses, phase noise and distortion characteristics, modulation analysis etc. is well-known. The website of the manufacturing

company Agilent Technologies mentions the use of the spectrum analyzers in question for telecom purposes in the field of aerospace and defence, wireless connectivity and for checking components and devices used in cellular networks. The technical report of the Ambedkar Institute of Technology on E4443A and E4447A also confirms the use of these instruments in the field of communication. The E4443A and E4447A thus, in addition to having the capabilities of a general purpose spectrum analyzer, also possess features that make them specially suited for use in telecommunication. In particular, they can measure adjacent channel interference and harmonic distortion which are functions performed by the instruments, cross-talk meters and distortion factor meters specifically mentioned in 9030 40 00. Moreover, we find no reason to discredit the applicant's statement that the spectrum analyzers of these models are extensively bought by telecom Companies referred to supra. The two models of Agilent PSA Series spectrum analyzers E4443A and E4447A are therefore rightly classifiable as "other instruments and apparatus, specially designed for telecommunications" covered by 9030 40 00 of the First Schedule to the Indian Tariff Act, 1975.

10. Accordingly, the Ruling is given agreeing with the contention of applicant.

Pronounced on the 18th day of November, 2008.

Sd/-
(A.Sinha)
Member

Sd/-
(P.V.Reddi)
Chairman

Sd/-
(Chitra Saha)
Member