

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.10349-10350/2024

M/S L.G. ELECTRONICS INDIA PRIVATE LIMITED

Appellant(s)

VERSUS

COMMISSIONER OF CUSTOMS

Respondent(s)

O R D E R

1. These appeals under Section 130E of the Customs Act, 1962 (for short, "the Act of 1962") are at the instance of an assessee and are directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, "the CESTAT") dated 30-11-2023 in the Customs Appeal No.50234/2021 and the order dated 26-4-2024 in the Customs Rectification of Mistake Application No.50010 of 2024 in Customs Appeal No.50234/2021 by which the appeals filed by the appellant - herein came to be dismissed thereby affirming the order in original passed by the Principal Commissioner dated 7-10-2020.

2. The following three questions fell for the consideration of the Tribunal:-

(i) whether LG Watch W7 as imported by the appellant is classifiable under CTH 91021900 as claimed by the appellant or is classifiable under CTH 85176290 as affirmed vide the Order in original?

(ii) whether the appellant is eligible to claim concessional rate of basic customs duty under Sl. No.955 of the Notification No.152/2009 dated 31-12-2009 ? and;

(iii) whether the imported goods are liable for confiscation and the appellant is liable for being penalized?

3. It appears from the materials on record that the appellant imported 2000 units of "G Watch (Smart Watch)" from the Republic of Korea vide two bills of entry bearing Nos.2370169 and 2375523 respectively both dated 11-3-2019. The appellant classified the said goods under CTH 91021900 and accordingly assessed the basic customs duty at the rate of "nil" after claiming the benefit of entry Sl. No.955 of Notification No.152/2000-CUs dated 31-12-2009

4. The Tribunal however, recorded that the appellant did pay IGST @ 18%.

5. The entire debate revolves around on two entries i.e. 9102 19 00 and 8517 6290 respectively.

6. It is the case of the appellant - herein that what was imported were wrist watches, whereas the case of the Department is that they might be wrist watches but with a mechanism by which the person wearing the same is able to receive, converse or transmit the voice with data.

7. In the manner as aforesaid, the Department tried to draw a distinction between an ordinary wrist watch and a watch termed as smart watch having few special features.

8. The Tribunal took the view that what was imported may be termed as watches but they were smart watches and being smart watches, the main benefit that the person using it would derive is to constantly update himself, receive or transmit data. In the words of the Tribunal, a smart watch is a wearable computing device that closely resembles a wrist watch or other time keeping device.

9. Saying as stated aforesaid, the appeal came to be dismissed holding as under:-

"6.8 Thus it is apparent from the brochure that the impugned G-Watch is to be paired with the companion device which is running android and supports bluetooth and which wears the operating system by Google. The companion device has to be connected to mobile data or a Wifi network. It is observed that to set up the impugned G-Watch for the first time, a data connection mandatory. Thus in addition to the looks of the impugned product which is almost similar to a watch/clock having two hands with quartz movement meant for telling time and even a chronograph, the Impugned good can be used to do the following:

- (i) can send and receive a text message,
- (ii) user can make and receive telephonic calls of his mobile phone at this product,
- (iii) can download and open any app (application) on the app screen,
- (iv) the home screen can be used as compass, stopwatch, timer, calibration, barometer and LT meter, the functions similar to that of watch,
- (v) have Google fit app to view the workout reports,
- (vi) it takes tasks using voice commands as it has a built in google assistance. However for the purpose, a data or wifi connection is required on the companion device and device must be in a Bluetooth range,
- (vii) While using the Bluetooth the impugned. G-Watch can be connected to other mobile devices including the added wi-fi networks,
- (viii) it provides upon source software information.

6.9 The specific features of the impugned imported product, as discussed above, make it clear that the main function of this device is not just time keeping or time watching but to work as a portable/wearable device as an organizer which is capable of transmitting or receiving data in the form of voice or images plus it is an apparatus for communication in a wired or wireless network.

Chapter 91 talks about watches/clocks mechanically electronically operated for respective display whether or not Thus any automatic and whether or not stop watch. Gadget/apparatus or machine having any features in addition to above cannot be classified as watch/clock. Hence irrespective the product is wearable on wrist and that it has two metal hands with mechanical/quartz movement to show time, it cannot be called as clock and watches as are classifiable under Chapter 91. discussed above, the products of Chapter 91 have a specific purpose of timekeeping / time telling with certain advance

functions but related only to time. Nothing in Chapter 91, either Chapter headings or Tariff entry headings, suggests that a watch which is capable of transmitting data or which is working on operating system of Google or which has anything to do with wired or wireless network shall still fall under this Chapter 91.

On the contrary, Chapter 85 notes suggest that anything which works on electronic integrated circuits, microprocessors, smart cards, Random Access Memories (Ram), digital system, signals, such apparatus are all covered under Chapter 85.

6.10 Tariff Entry No. 8517 though talks about telephone sets and the telephones for cellular networks but simultaneously it talks about such apparatus which are capable of transmitting and receiving oral or visual data. The several entries under this heading shows that the apparatus other than telephones, if are capable of transmitting data, are included. The tariff entry 8517 6290 as proposed by the department to be the relevant entry for the Impugned goods is sufficient for us to hold that all other apparatus which are capable of transmitting or receiving data other than telephones and those specifically named under Tariff Entry 8517 are covered under the said entry.

10. After the appeals came to be dismissed, the appellant herein preferred a Rectification Application No.50010/24 in the original Customs Appeal bringing it to the notice of the Tribunal that assuming for the moment that the goods imported would fall within entry 8517 6290, still they would be exempt from payment of any duty in light of the Notification No.151/09 dated 31-12-2009.

11. We should look into this Notification a little closely.

12. The Notification reads thus:-

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, when imported into India from the Republic of Korea, from whole of the duty of customs leviable thereon:

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of Republic of Korea, in accordance with the provisions of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue).No.187/2009-Customs (N.T.), dated the 31st December, 2009.

2. This notification shall come into force with effect from 1st January, 2010."

13. The Rectification Application came to be disposed of by the Tribunal holding as under:-

"From the discussion on the above mentioned both the points of adjudication though it is clear that the goods have wrongly been classified by the appellant and the benefit of exemption of duty has also been wrongly claimed but we are aware that imposition of penalty is a penal consequence of some intentional mala fide act. The onus was of the department to prove that the wrong classification was an intentional act of the appellant to wrongly claim duty exemption. Mere mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods as has been held by this Tribunal in the case of Lewek Altain Shipping Pvt. Ltd. Vs. Commissioner of Cus., Vijayawada reported as 2019 (366) E.L.T. 318 (Tri.- Hyd.). Hon'ble Supreme Court also in an appeal against the said decision has held that mentioning of wrong tariff item or claiming benefit of ineligible exemption notification did not amount to mis- description of goods neither did it amount to making faldr or incorrect statement. In the present case also, we observe that the appellant is convinced of the fact that the product imported has mechanical hands and quartz movements as identical to a wrist watch and that this apparatus is also wearable on wrist. It is a clear case of misunderstanding on part of the appellant. Question of invoking penal provisions does not at all arise in this circumstance. Resultantly, we decide the third point of adjudication in favour of the appellant.

9. As an outcome of the entire above discussion on three of the points of adjudication, we hereby hold that the product imported is a Smart Watch which is classifiable under 8517 6290. appellant has wrongly classified it under 9102 1900. Thus the benefit under exemption Notification No. 152/2009-Cus. was not available to products of 8517 tariff entry hence it is held that same has wrongly been claimed. The order under challenge to the extent confirming demand of customs duty is therefore hereby upheld. However, the order imposing penalty and confiscating the

goods is hereby set aside in light of the findings under Point

No. 3. Consequently, the appeal in hand is ordered to be partly allowed."

14. In such circumstances, referred to above, the appellant is here before this Court with the present appeals.

15. We heard Mr. V. Lakshminarayan, the learned Senior counsel appearing for the appellant and Mr. Chandrasekhar Bharathi, the learned counsel appearing for the appellant - Revenue.

16. We called upon Mr. Bharathi to make us understand that even otherwise if the goods falling within entry 8517 62 90 are exempted by virtue of the Notification No.151/2009, referred to above, then why the Tribunal declined to look into the same.

17. The reply of the learned counsel to the aforesaid is that there is a condition precedent in applying the Notification 151/2009 and the said condition is that the importer has to declare the place of origin and must produce the Certificate of Origin in accordance with the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea). In other words, according to Mr. Bharathi, the goods should have been originated from the Republic of South Korea for the purpose of seeking the benefit of the Notification 151/2009.

18. It appears that the whole idea in preferring the Rectification Application was to highlight the aforesaid. However, the finding of fact recorded by the Tribunal is that there was nothing on record to indicate that the importer i.e. the appellant had proved to the

satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs with respect to the Certificate of Origin with them.

19. We are afraid the Tribunal does not seem to be right in taking such view.

20. Our attention was drawn to the Certificate of Origin which has been annexed and is a part of this Paper Book (Annexure A1).

21. The original Certificate is at page 130 of the Paper Book.

22. The Certificate reads thus:-

12	Declaration by the exporter	<p>The undersigned hereby The declares that the above details and statement are correct, that all goods were produced in THE REPUBLIC OF KOREA and that they comply with the origin requirements specified for these goods in the KOREA-INDIA Comprehensive Economic Partnership Agreement for the goods exported to</p> <p style="text-align: center;">INDIA SEOUL Republic of Korea, MAR 08, 2019</p> <p style="text-align: center;">Place and date, signature of authroised signatory</p>
13	Certification	<p>It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> <p style="text-align: center;">Song Eui Jeong</p> <p style="text-align: center;">MAR. 08, 2019 PYEONGTAEK</p> <p style="text-align: center;">CUSTOMS REPUBLIC OF KOREA</p> <p style="text-align: center;">Place and date, signature and stamp of issuing authority</p>

23. Clause 12 of this particular Certificate is with respect to declaration by the exporter and Clause 13 provides for the certification by the Customs Department. The information furnished

vis-a-vis Clause 12 makes it very clear that the goods were imported and originated from the Republic of Korea. At this stage, Mr. Bharathi would submit that if that be so then what was the good reason for the appellant - herein to state as against the clause 7 that the claim was made under entry 9102.92.

24. We believe that while trying to bring the case within entry 9102 1900, the case of the appellant - importer was that what was imported were actually wrist watches and though there may be a particular device in the same, the same would not bring such goods within the ambit of 8517 62 90.

25. Otherwise also, we see no lack of good faith or any dishonest intention to make a false representation before the authority concerned.

26. Even if they would have declared or shown as against Clause 7 the entry 8517 62 90, they would have been still entitled to the benefit of the Notification 151/2009.

27. At one point of time, we were inclined to remit the matter to the Tribunal for fresh consideration of the last argument of the learned counsel appearing for the appellant in so far as the applicability of the Notification 151/2009 is concerned.

28. However, having looked into the Original Certificate of Origin which is not disputed otherwise, we are convinced that the appellant is entitled to the benefit of the Notification 151/2009.

29. We clarify that we have not recorded any finding as regards the fine distinction between 9102 1900 vis-a-vis 8517 62 90.

30. In view of the aforesaid, these appeals succeed and are hereby allowed.

31. The impugned order passed by the Tribunal is set aside. Consequently, the order in original also set aside.

32. At this stage, we are informed by the learned Senior counsel appearing for the appellant that at the relevant point of time, the entire duty levied upon the appellant was paid and deposited.

33. Now, since we are allowing these appeals, the entire amount shall be refunded to the appellant within a period of two months from today with applicable rate of interest.

34. Pending applications, if any, also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(SANDEEP MEHTA)

NEW DELHI
10TH SEPTEMBER, 2025.

ITEM NO.105

COURT NO.6

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.10349-10350/2024

M/S L.G. ELECTRONICS INDIA PRIVATE LIMITED

Appellant(s)

VERSUS

COMMISSIONER OF CUSTOMS

Respondent(s)

(IA No. 173487/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 223200/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES & IA No. 173486/2024 - STAY APPLICATION)

Date : 10-09-2025 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE SANDEEP MEHTA

For Appellant(s) :

Mr. V. Lakshminarayan, Sr.Adv.

Ms. Neha Choudhary, Adv.

Mr. Umag Motiyani, Adv.

Ms. Nitum Jain, Adv.

Mr. Ayush Agarwal, Adv.

Ms. Medha Sinha, Adv.

Mr. Swastik Mishra, Adv.

Ms. Charanya Lakshmikumaran, AOR

For Respondent(s) :

Mr. V.C. Bharathi, Adv.

Mr. Gurmeet Singh Makker, AOR

Mr. Udai Khanna, Adv.

Ms. Gayatri Mishra, Adv.

Ms. Bharti Tyagi, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. The appeals are allowed, in terms of the signed order.
2. Pending applications, if any, also stand disposed of.

(VISHAL ANAND)

ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)

COURT MASTER (NSH)

(Signed Order is placed on the file)