

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

PRINCIPAL BENCH – COURT NO. – IV

**Customs Appeal No. 50234 of 2021 [DB]**

[Arising out of Order-in-Original No. 55/2020/UG/Principal Commissioner dated 07.10.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi]

**M/s. L.G. Electronics India Private Limited**

**...Appellant**

Plot No. 4, Tech Zone-2, Greater Noida,  
Uttar Pradesh - 201305

*VERSUS*

**Principal Commissioner of Customs,  
New Delhi**

**...Respondent**

Air Cargo Complex (Import),  
New Customs House, Near IGI Airport,  
New Delhi - 110037

**APPEARANCE:**

Ms. Jyoti Pal and Shri Amitabh Amrit, Advocates for the Appellant  
Shri Rajesh Singh, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

**HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

DATE OF HEARING: 31.07.2023  
DATE OF DECISION: **30.11.2023**

**FINAL ORDER No. 51585/2023**

**DR. RACHNA GUPTA**

The appellant had imported 2000 units of "G Watch (Smart Watch)" from the Republic of Korea vide two Bills of Entry bearing No. 2370169 and 2375523 both dated 11.03.2019. They had classified the said goods under CTH 91021900 and have assessed the basic customs duty at the rate of 'NIL' BCD after claiming the benefit of entry serial no. 955 of Notification No. 152/2009-Cus.,

dated 31.12.2009. However, IGST at the rate of 18% was paid. Department observed that the imported goods, "G Watches" are capable of performing many functions other than those related to timekeeping and as such are the smart watches as different from those classifiable under CTH 91021900. Department formed an opinion that such kind of apparatus/device merits classification under CTH 85176290. Resultantly, the Show Cause Notice No. 01/2020 dated 13.01.2020 was served upon the appellant proposing rejection of classification claimed by the appellant i.e. under CTH 91021900. It is proposed that the imported goods be classified under 85176290 to which the duty exemption, as availed, is not applicable. Resultantly, short payment of customs duty amounting to Rs.86,62,852/- with respect to the import of the impugned goods vide the aforementioned two Bills of Entry was proposed to be recovered along with the interest. The imported goods were proposed to be held liable to confiscation. In addition, the penalty was also proposed to be imposed upon the appellant. The said proposal has been confirmed vide the Order-in-Original bearing no. 55/2020 dated 07.10.2020. While ordering confiscation, option to impose redemption fine has not been given and penalty of Rs.8,00,000/- has been imposed on the appellant under Section 112 (a) of the Customs Act, 1962. Being aggrieved the appellant is before this Tribunal.

2. We have heard Ms. Jyoti Pal and Shri Amitabh Amrit, learned Advocates for the appellant and Shri Rajesh Singh, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that appellant is a private limited company engaged in import and sale of various electronic goods including LG Watch W7 (Hybrid Watch or impugned goods). It is impressed upon that the impugned goods have two physical watch hands and a micro gearbox and it operate on quartz movements, designed by finest Swiss Watch Maker, SOPROD SA. It is also submitted that the impugned goods carry the look of traditional analog watch and works also like the said analog. Learned counsel acknowledged that though the imported goods perform the smart watch functions with the help of few electrical components (LCD, 4GB RAM, Bluetooth, Qualcomm Chipset etc.), however, still the users can wear the same on their wrist to watch time, to receive alarms etc., just like the traditional watch analog. Hence, the imported goods have rightly been classified by the appellant under CTH 91021900. Chapter 91 covers different types of watches and their features. The impugned goods duly get covered under the criteria given therein. It is further submitted that under Chapter 85 CTH 8517, the goods covered are telephone sets and other apparatus for communication in a wired or wireless network. Whereas the goods covered under CTH 9102 are wrist watches, pocket watches etc., as the heading suggest and there is no denial that the imported goods are wrist watches for observing time. The brochure of their company describing the imported goods has also been elaborated. From no stretch of imagination they can be called as telephones sets/other apparatus, hence the correct classification is CTH 91021900. The findings under challenge are therefore liable to be set aside.

3.1 Learned counsel further mentioned that the tariff entries have to be interpreted as per the relevant section and chapter notes. The decision in the case of **Saurashtra Chemical Porbandar Vs. Collector of Customs reported as 1986 (23) ELT 283 (Tri.-LB)** and **Mauri Yeast India Pvt. Ltd. Vs. State of U.P. reported as 2008 (225) ELT 321 (SC)** has been relied upon by the learned counsel. Learned counsel also submitted that the technological advancements have to be taken into consideration while determining the classification. Various other functions of the imported goods is nothing but technological advancement due to which wrist watch/clock cannot be made to fall under any other tariff entry. The decision in the case of **Collector of Customs & Central Excise Vs. Lekhraj Jessumal & Sons reported as 1996 (82) ELT 162 (SC)** has been relied upon. Learned counsel further submitted that while importing the goods the benefit of Notification No. 152/2009 has rightly been claimed as the country of origin certificate was duly submitted. All the requirements thereof have duly been satisfied. Above all, the benefit of notification can be claimed at any stage. Finally it is submitted that even if the classification of appellant is not accepted, the act of appellant is merely a claim for incorrect classification. It cannot be alleged as mis-declaration. Question of imposition of penalty upon the appellant does not at all arise. The decision in the case of **Northern Plastic Ltd. Vs. Collector of Customs and Central Excise reported as 1998 (101) ELT 549 (SC)** has been relied upon. With these submissions, learned counsel has prayed for the order under challenge to be set aside and appeal to be allowed.

4. Learned DR while rebutting these submissions has mentioned that the imported goods have the function of transmission and reception of data which allow the communication to the wired or wireless communication network. Hence, those have rightly been classified by the department under CTH 85176290. It is submitted that importer itself, while filing the Bills of Entry at the time of self-assessment, has declared the imported goods as "G Watch (Smart watch)". Admittedly the product performed many other functions than merely timekeeping. It is mentioned that even by following General Rules of Interpretation, the goods merits classification under 85176290.

4.1 Learned DR further impressed upon that the declared classification 91021900 covers electrical wrist watches working on the basis of quartz movement. But as per appellant's own brochure/catalogue, the G watch except being a wearable wrist device and having two moving hands to show time, has the combined mechanical movements with digital functionalities including that of LCD display, touch sensitivity, microphone, Wifi and Bluetooth connectivity and that it needs an operating system as provided by Google. Even the initial set up of time is done through syncing the impugned good with the user phone. On the contrary, the wrist watches/non-smart watch time pieces are set manually. Learned DR also impressed upon that according to World Customs Organization ruling (Harmonised System Committee 55<sup>th</sup> Session – March 2015), smart watches are technical equipment with display, processor, main memory etc. can fulfill several other functions such as receiving, converting and sending or regenerating sounds,

picture and other data. Thus by applying section note 3 to Section XVI, smart watches merits classification under CTH 85176290. Resultantly, the duty exemption under Notification No. 152/2009 is rightly been denied. Impressing upon no infirmity in the order under challenge, appeal is prayed to be dismissed.

5. Having heard the rival contentions of both the parties, perusing the entire records of the appeal memo including the catalogue of the appellant with respect to the impugned imported goods and the Bills of Entry in question, we observe that the following are the issues to be adjudicated:

(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 confirmed vide the Order-in-Original.

(ii) Whether the appellant is eligible to claim concessional rate of basic customs duty under serial no. 955 of the Notification No. 152/2009 dated 31.12.2009

(iii) Whether the imported goods are liable for confiscation and the appellant is liable for being penalized.

6. **First point of adjudication:**

Both the parties have relied upon the General Rules of Interpretation (GRI) and have impressed upon that the chapter notes read with GRI decides the tariff entry for a particular goods. In view thereof, we foremost need to look into the tariff entries in

question and then the General Rules of Interpretation. Chapter heading and chapter note for Chapter 85 are as follows:

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8517	<p>Telephone sets, including telephones for cellular networks or for other wireless networks; <b>other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528</b></p> <p>- Telephone sets, including telephones for cellular networks or for other wireless networks:</p>			
8517 11	-- Line telephone sets with	u	Free	

	cordless handsets:	u	Free	
8517 11 10	--- Push button type			
8517 11 90	--- Other			
8517 12	-- Telephones for cellular networks or for other wireless networks:	u	20%	
8517 12 10	--- Push button type			
8517 12 90	--- Other	u	Free	
8517 18	- Other	u	Free	
8517 18 10	--- Push button type			
8517 18 90	--- Other			
	- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):	u	<sup>1</sup> [20%]	
8517 61 00	-- Base stations			
8517 62	-- <b>Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:</b>	u	Free	
		u	Free	
8517 62 10	--- PLCC equipment			
8517 62 20	--- Voice frequency	u	Free	



	telegraphy			
8517 62 30	--- Modems (modulators-demodulators)	u	Free	
8517 62 40	--- High bit rate digital subscriber line system (HDSL)	u	Free	
8517 62 50	--- Digital loop carrier system (DLC)	u	Free	
8517 62 60	--- Synchronous digital hierarchy system (SDH)	u	Free	
8517 62 70	--- Multiplexers, statistical multiplexers	u	20%	
<b>8517 62 90</b>	<b>--- Other</b>	<b>u</b>	<b>Free</b>	
8517 69	--- Other:	u	Free	
8517 69 10	--- ISDN System	u	Free	
8517 69 20	--- ISDN terminal adaptor	u	Free	
8517 69 30	--- Routers	u	Free	
8517 69 40	--- X 25 Pads			
8517 69 50	--- Subscriber end equipment	u	Free	
8517 69 60	--- Set top boxes for gaining access to internet	u	Free	
8517 69 70	--- Attachments for telephones	u	<sup>2</sup> [20%]	
8517 69 90	--- Other	[u]	<sup>3</sup> [10%]	
8517 70	- Parts:			
8517 70 10	-- Populated, loaded or stuffed printed circuit boards	kg	15%	

8517 70 90	-- Other			
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Few of the relevant Chapter notes of chapter are as follows:

*3. For the purposes of heading 8507, the expression "electric accumulators" includes those presented with ancillary components which contribute to the accumulator's function of storing and supplying energy or protect it from damage, such as electrical connectors, temperature control devices (for example, thermistors) and circuit protection devices. They may also include a portion of the protective housing of the goods in which they are to be used.*

*5. For the purposes of heading 8523:*

*(a) "Solid-state non-volatile storage devices" (for example, "flash memory cards" or "flash electronic storage cards") are storage devices with a connecting socket, comprising in the same housing one or more flash memories (for example, FLASH E<sup>2</sup>PROM") in the form of integrated circuits mounted on a printed circuit board. They may include a controller in the form of an integrated circuit and discrete passive components, such as capacitors and resistors;*

*(b) The term "smart cards" means cards which have embedded in them one or more electronic integrated circuits (a microprocessor, random access memory (RAM) or read-only memory (ROM)) in the form of chips. These cards may contain contacts, a magnetic*

*stripe or an embedded antenna but do not contain any other active or passive circuit elements.*

*7. For the purpose of heading 8536, "connectors for optical fibres, optical fibre bundles or cables" means connectors that simply mechanically align optical fibres end to end in a digital line system. They perform no other function, such as the amplification, regeneration or modification of a signal.*

*- For the purposes of heading 8523, "Information Technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine.*

Chapter heading and chapter notes for Chapter 91 are as follows:

<b>Tariff Item</b>	<b>Description of goods</b>	<b>Unit</b>	<b>Rate of duty</b>	
			<b>Standard</b>	<b>Preferential Areas</b>
9102	<b>Wrist-watches, pocket-watches and other watches, including stop watches, other than those of heading 9101</b>  -Wrist-watches, electrically operated, whether or not incorporating a stop-watch facility:			
9102 11 00	-- With mechanical display only	u	20%	-
9102 12 00	-- With opto-electronic display only	u	20%	-
				-

9102 19 00	-- Other		20%	
	- Other wrist-watches, whether or not incorporating a stop-watch facility			
9102 21 00	-- With automatic winding	u	20%	-
9102 29 00	-- Other	u	20%	-
	- Other:			
9102 91	-- Electrically operated			
9102 91 10	--- Pocket watches	u	20%	-
9102 91 20	---Stop watches	u	20%	-
			20%	-
9102 91 90	--- Other	u		
9102 99	-- Other			
				-
9102 99 10	--- Pocket watches	u	20%	
				-
9102 99 20	--- Stop watches	u	20%	
				-
9102 99 90	--- Other	u	20%	

The Chapter note for Chapter 91 reads as "Clocks and watches and parts thereof". Few of the relevant notes are as follows:

*2. Heading 9101 covers only watches with case wholly of precious metal or of metal clad with precious metal, or of the same materials combined with natural or cultured pearls, or precious or semi-precious stones (natural, synthetic or reconstructed) of headings 7101 to 7104. Watches with case of base metal inlaid with precious metal fall in heading 9102.*

*For the purposes of this Chapter, the expression —watch movements|| means devices regulated by a balance-wheel and hairspring, quartz crystal or any other system capable of determining intervals of time, with a display or a system to which a mechanical display can be incorporated. Such watch movements shall not exceed 12 mm in thickness and 50 mm in width, length or diameter.*

*1. Except as provided in Note 1, movements and other parts suitable for use both in clocks or watches and in other articles (for example, precision instruments) are to be classified in this Chapter.*

*A clock or watch is composed of two main parts: the movement and the container for the movement (case, cabinet, etc.)*

6.1 To appreciate as to which of the above precisely apply upon “G-Watch (Smart Watch)”, we need to look for General Rules of Interpretation also. Those read as follows:

*Classification of goods in this Schedule shall be governed by the following principles:*

*1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

*2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

*(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*

*3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

*(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

*(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

*4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.*

*5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:*

*(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar*

*containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;*

*(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.*

*6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

6.2 The impugned goods i.e. G-Watch, as discussed above, is imported as a 'smart watch' as is apparent from the Bills of Entry on record. Meaning of watch and smart watch also to be looked into. For the purpose we have taken aid from dictionaries and the technical information from internet. As per Cambridge dictionary, a smart watch is the watch that has many of the features of a smart phone or a computer. As per Collins dictionary a smart watch is a wireless electronic device that can respond to spoken commands, for example by giving information or playing music. The smart watch is just one example of wearable tech. We judicially notice that a smart watch is a wearable computer in the form of a watch; modern Smart watches provide a local touch screen interface for daily use, while an associated smart phone

app provides management and telemetry, such as long-term biomonitoring. While early models could perform basic tasks, such as calculations, digital time telling, translations, and game-playing. Smart watches released since 2015 have more general functionality closer to smart phones including mobile apps, a mobile operating system and WiFi/Bluetooth connectivity. Some smart watches function as portable media players with FM radio and playback of digital audio and video files via a Bluetooth headset. Some models, called watch phones (or phone watches), have mobile cellular functionality such as making telephone calls. The main benefit of a smart watch is that it keeps you constantly updated without you having to whip out your smart phone. **A smart watch is a wearable computing device that closely resembles a wristwatch or other time-keeping device.** In addition to telling time, many smart watches are Bluetooth - capable. The gadget becomes a wireless Bluetooth adaptor capable of extending the capabilities of the wearer's smart phone to the watch. The wearer can use the watch's interface to initiate and answer phone calls from their mobile phone, read email and text messages, get weather reports, listen to music, dictate email and text messages, and ask a digital assistant a question. Smart watches offer many features. Among them are the following:

- health informatics, such as heart rate, blood oxygen level, blood pressure and temperature monitoring;
- contactless payment and digital wallet applications;



- messaging and calling features, similar to those on a smart phone;
- emergency calls for assistance if the watch detects the wearer has fallen;
- social media and other notifications from synchronized smart phone applications;
- games, music, photos and other entertainment options;
- location features, such as maps, a compass and an altimeter;
- and
- GPS tracking

6.3 Smart watches typically integrate with a user's smart phone. Many of the same features and applications available on the phone are available on the watch and can synchronize with it.

6.4 We also take judicial notice of the definition of watch/clock. As per Collins dictionary, clock is a mechanical or electronic device, normally larger than a watch, which is meant for measuring and recording time, usually with two hands or changing or a digital display to indicate the hour and minute. Clock is otherwise originating from Latin word 'CLOCK' which means 'BELL'. It was an invention for period calculation. The clocks we see today are evolved versions of sundials, water clocks, mechanical water clocks and other time pieces. All these clocks have been used, since time immemorial, to calculate time periods that are shorter than the day, the lunar month and the year. Over the years various physical processes have been used to power the devices.

6.5 The Collins dictionary defines watch as a time piece different from clock that can be worn on the wrist /portable time piece with a band, carried in a pocket, or attached to a chain. The word is derived from old English word 'woecce' which meant 'watchman'. The term was coined by the sailors who timed the duration of their ship board watches. Over the years, there have been modifications to have different types of watches as that of waterproof watches, diving watches. Initially the watches were a mechanical device powered by winding a main spring and keeping time with an oscillating balance wheels. Later watches got powered by battery and kept the time with a vibrating quartz crystal. Various other extra features like moon face displays, timers, chronographs and alarm functions got incorporated in the watches. Howsoever, expansive collectable watches may be, valued more for their elaborate craftsmanship and glamorous design but the sole and simple object of watch/clock is time and day keeping. Thus anything to be called as watch/clock should has just two main components:

(i) Movement – it may be mechanical movement, utilizing gears and springs to tell the time, the watch need to be manually winded. Movement can be automatic where the mechanical wrist watch utilizes physical movement from the user. Typically through a weighted rotor which winds the main spring automatically. Movement can also be the quartz movement i.e. a battery powered movement utilizing a vibrating quartz crystal and an electric circuit to tell the time very accurately.

(ii) The case of the watch which is the main body of the watch containing the movement inside and dial on the top. These conventionally were made of stainless steel with several advancements, various different quality of alloys, plastics, giving various other different types can be used for these cases. Clock/watch is so related to time keeping that they even are used as verbs for time recording. For example, 'clock the raise' and timely vigilance example 'watch in watch out'.

6.6 From the above discussion about tariff entries, GRIs, definitions of smart watch and watch/clock, we are of the opinion that the watches and clocks of Chapter 91 are designed mainly for time and date display though with some extra elements but nothing related to transmission of data in any form. Whereas the smart watch is actually a computer, an apparatus which is capable of transmitting and receiving data, irrespective it is a device wearable on wrist just like watch and is capable of time telling also.

6.7 Reverting to the product in question which is imported as 'G-Watch' and is being classified as watch under Chapter 91 by the importer but is alleged by the department to be a device which is capable of converting data and thus are alleged as classifiable under Chapter 80 8517. We observe from the brochure/catalogue of the product on record that it is described as "LG Watch W7" smart watch with swiss effect, mechanical hands with precision movement with the following key specifications.

S.No.	Dimensions	44.5 x 45.4 x 12.9 mm
1	Weight	79.5g

2	Body Material	Stainless Steel; STS31 6L
3	Band	Quick-release 22 mm rubber
4	Display	1.2(3.048cm) LCD (360x360, 300ppi)
5	Movement	2 Hands (Hr. & Min.) + Micro Gearbox*
6	Chipset	Qualcomm APQ8009w
7	Operating System	Wear OS by Google
8	Memory	768MB/4GB eMMC**
9	Connectivity	Wifi, Bluetooth 4.2
10	Sensors	Accelerometer, Magnetic, Gyroscope & Barometer
11	Battery	240mAH Lithium Polymer
12	Water And Dust Resistance	IP68***
13	Smart Notifications	Messaging, Email, Calendar, App Alerts
14	In-box Accessories	USB-C Data cable, 5V TA, cradle Developed in partnership with Soprad SA, a Swiss Company

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 is

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 or electronically operated for respective display whether or not automatic and whether or not stop watch. Thus any 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. As 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.

6.11 Learned counsel has relied upon the case of **Saurashtra Chemicals (supra)** to impress upon that section notes and chapter are most relevant for the purposes of clarifying the scope of any heading and for determining classification of the goods. However, the first Rule of GRI, as recorded above specifies that for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require in such manner that heading which provides most specific description shall be preferred to headings providing a more general description. The rules say that in any other case the goods shall be classified under the heading appropriate to the goods to which they are most akin. Essential character of the impugned good is to be a computer on wrist as different from being watch on wrist [GRI 2(a)]. A computer is an apparatus for transmission or receiving data though it is simultaneously telling time also but it is still different from specific description of watch/clock under chapter heading and notes of Chapter 85 [Rule 3 GRI].

6.12 In the light of above discussion it is held that once admittedly the impugned goods work on internet, it is not acceptable that the essential character of the impugned goods remains that of time

keeping only. Thus we hereby hold that section notes and chapter notes of Chapter 85 are most relevant for the purpose of classifying imported G-Watch (Smart Watch), it being a device capable of transferring data and even making or receiving phone calls which have not been the intent of the section notes and chapter notes of Chapter 91. Hence, First point of adjudication stands decided in favour of Revenue holding the right classification for the impugned imported product is 8517 6290.

7. **Second point of adjudication:**

From the findings under first point of adjudication, it is clear that the appellant has wrongly classified the goods under 9102 1900. These are held classifiable under Tariff Entry 8517 6290. From the Notification No. 152/2009-Cus. dated 31.12.2009, we observe that the entry at serial no. 955 thereof gives the benefit of exemption from customs duty to the goods falling under Tariff Entry 9102 to 9103 only. As already held above the goods are classifiable under 8157 6290, the benefit of the said notification shall not be available to the appellant. The certificate for origin is not sufficient to extend the benefit of nil rate of duty. As the origination from Korea is not the criteria of the Notification no. 152/2009-Cus. but such goods originating from Korea as are mentioned in the table under the said notification. Apparently and admittedly the goods classifiable under 8517 6290 are not mentioned in the said table. Hence, the benefit of nil rate of duty shall not be available to the appellant. Resultantly, the second point of adjudication is also decided against the appellant.



8. **Third point of adjudication:**

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 misdescription of goods neither did it amount to making false 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. The 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.

[Order pronounced in the open court on **30.11.2023**]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**

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