

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.2

CUSTOMS APPEAL NO: 86831 OF 2021

[Arising out of Order-in-Original No: CC/VA/03/2021-22 Adj. (I) ACC dated 20th July 2021 passed by the Commissioner of Customs (Import) Air Cargo Complex, Mumbai.]

GOQii Technologies Pvt Ltd

102, Satyam Tower Sanghai VI, Corporate Park
Off BKSD Marg, Deonar Govandi (E), Mumbai-400089

... *Appellant*

versus

Commissioner of Customs (Import)

Air Cargo Complex, Navpada,
Sahar Village, Andheri (E), Mumbai

...Respondent

APPEARANCE:

Shri Gopal Mundhra, Advocate and Shri Rajath Bhardwaj, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85459/2024

DATE OF HEARING:

06/11/2023

DATE OF DECISION:

03/05/2024

PER: C J MATHEW

The cavil in this appeal of M/s GOQii Technologies Pvt Ltd,

against order¹ of Commissioner of Customs (Import) Air Cargo Complex (ACC), Chatrapati Shivaji Maharaj International Airport (CSMIA), Mumbai which has re-classified ‘activity trackers’ imported by them with consequential enhancement of duty liability of basic customs duty from 7.5% to 20%, is the incorrectness of revision of their declaration that rate of duty against tariff item 9029 1090 of First Schedule to Customs Tariff Act, 1975 to that against tariff item 8517 6290 of First Schedule to Customs Tariff Act, 1975 without consideration for the nature of the goods and the rules of classification. It all started with bills of entry no. 5440172/25.10.2019 and no. 5434487/25.10.2019, self-assessed with the more favorable rate, that the customs officials were convinced as wrongly declared to which were added another nine, filed between then and 15th November 2019, that were pending for clearance and on the whole of which, valued at ₹3,64,97,280/- and originally self-assessed to duty of ₹ 1,01,22,521/- valued at ₹3,64,97,280/-, were, upon the appellant herein opting for ‘provisional assessment’, re-assessed under section 18 of Customs Act, 1962 to enhanced liability of ₹ 1,60,44,204/- of which ₹ 59,21,683/- was paid under protest. Another 21 consignments entered for import between 20th November 2017 and 25th October 2019, on which duty liability of ₹ 1,72,46,143/- had been discharged on assessable value of ₹ 6,21,81,901/- , were also included in the impugned adjudication

¹ [order-in-original no. CC/VA/03/2021-22 Adj. (I) ACC dated 20th July 2021]

proceedings, along with above taken up for finalization of assessment, for recovery of differential duty of ₹ 1,01,43,257/- under section 28 of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, that came to be confirmed in the impugned order even as the entirety of import, valued at ₹ 10,04,64,181/-, were held as liable for confiscation under section 111(m) of Customs Act, 1962 but, on the finding that goods valued at ₹ 6,21,81,901/- already cleared were not available for confiscation, fine under section 125 of Customs Act, 1962 was restricted to ₹ 36,00,000/- for redemption of 'provisionally assessed' goods. In addition, adjudicating authority imposed penalty of amount equivalent to the differential duty on the whole under section 114A of Customs Act, 1962 on the differential duty so held as recoverable.

2. We have heard Learned Counsel for appellant and Learned Authorized Representative at length on their several submissions pertaining to classification of the imported goods. However, on perusal of the impugned order and on evaluation of the respective arguments, we restrict ourselves to the aspect of adherence to the legal niceties in the resolution of the dispute over 'rate of duty' for levy intended by section 12 of Customs Act, 1962.

3. In revising the classification, the adjudicating authority appears to have found

‘Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network’

corresponding to heading 8517 of First Schedule to Customs Tariff Act, 1975 to be a more apt description of the impugned goods before concluding that the residuary, and non-specific, tariff line below

‘Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.’

corresponding to sub-heading 8517 62 of First Schedule to Customs Tariff Act, 1975 to be most appropriate. It also appears from the impugned order that the original authority, even while relying on rule 3(b) of the General Rules for Interpretation of the Import Tariff in Customs Tariff Act, 1975 to set the terms of adjudication for determination of the most proximate of the several constituents of the composite article, held ‘wireless communication capability’ to predominate. However, the rationale for the latter which paved the way for the former is glaringly absent in the impugned order which should, in discharge of adjudicatory onus, have identified the constituents and eliminated other constituents as less suitable to describe the composite article.

4. On the other hand, it would appear that the adjudicating

authority, taking note of

‘34. Based on the above observation, similarly activity tracker is Wrist wearable devices, commonly known as smart watches and having many exclusive functions which cannot be used otherwise except for a particular purpose and are classifiable under CTH 85176290. The importer has also submitted that besides measuring distance there are various other features in the said Activity trackers imported by them. The importer had also reiterated that it measures steps taken, distance travelled, calories burnt, active minutes, hourly activity stationary time and time slept. That after gathering the data from the user's body, the data gets electronically transferred to the smart phone by wireless means (Bluetooth). That the goods can perform several functions viz. communication apparatus, stroboscope etc.’

in the impugned order, appears to have been influenced by reference to ‘wrist bearable devices’ (otherwise known as smart watches) in several clarifications of Central Board of Indirect Taxes & Customs (CBIC) that enunciated these as corresponding to 8517 6290 of First Schedule to Customs Tariff Act, 1975 to suffice for any article capable of being so worn to be so classified. The enormity of chasm of logic between the design of the ‘activity tracker’ and ‘smart watch’, let alone unquestioned acceptance that ‘smart watch’ is indeed so classifiable, which has not been touched upon in the impugned order demonstrates inadequacy of finding. It is also settled law that a notification giving effect to rate of duty, in whichever manner designed, or prescribing a special procedure cannot substitute for the mandate of the charging

section.

5. Furthermore, the impugned order refers to *modus operandi* alert issued by the Directorate General of Revenue Intelligence (DGRI) which, too, appears to have influenced the revision in classification. This, indubitably, invalidates ‘application of mind’ – binding the ‘proper officer’ to statutory mandate - to such extent as to discredit the finding.

6. On top of all that, the finding in the impugned order that

‘38. I find that submissions made by the importer do not explain as to why the said goods i.e. activity tracker is different from Wrist wearable devices, commonly known as smart watches which are classifiable under CTH 85176290. I find that importer in the case of assessment of B/E no. 6210918 dated 02.08.2016 had accepted the contention of the assessment group and the goods under the said BE was assessed and classified under CTH 85176290 (BCD @ 10%). I find that the importer has not given any explanation regarding the issue of re-classification of the goods by the assessment group in case of B/E no. 6210918 dated 02.08.2016 where the department re-classified the goods under CTH 85176290 (BCD @ 10%), which was accepted by the importer. Further, I find that the importer was aware of the fact that the goods should be classified under CTH 85176290 as they had not contested the classification or filed any appeal in the matter.’

appears to have premised that it was for the importer to defend itself against adoption of a proposed classification which is contrary to settled

judicial determination of the rules of engagement to which we shall turn after setting out the statutory framework.

7. The General Rules for Interpretation of the Import Tariff in Customs Tariff Act, 1975 sets forth the rules of engagement in undertaking classificatory exercise. The ‘proper officer’ is obliged to identify the appropriate heading before proceed through the sub-heading to the tariff item. Here, the premise that the goods are ‘composite’ should have been followed by selecting the predominating function from among the identified constituents and the description corresponding to each that, along with relevant notes in the chapter and section, would be evaluated for defining the characteristic of the whole taken together without question. That glaring lack precludes us from evaluation of the revised classification as being legal and proper.

8. We have time and again referred to the decisions of the Hon’ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]* holding that

‘It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.’

and in *HPL Chemicals Ltd v. Commissioner of Central Excise,*

Chandigarh [2006 (197) ELT 324 (SC)] holding that

‘28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.....’

9. It would appear that the rules of engagement for revision in classification as required by the General Rules of Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 and the law as determined by the Hon’ble Supreme Court *supra* have been observed in their breach. Therefore, it is necessary that the entire dispute should be revisited. To enable that to be done, we set aside the impugned order and remand the matter back to the original authority for a fresh decision on the proposed classification after subjecting it to validation in accordance with law as statutorily enacted and judicially determined.

(Order pronounced in the open court on 03/05/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)