CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 52209 of 2024

(Arising out of Order-in-Original No. 40/2024/VCG/Pr.Commr/ICD-Import/TKD dated 19.06.2024 passed by the Principal Commissioner of Customs (Import), New Delhi)

Ismartu India Pvt. Ltd. **....Appellant**
D-197, 198, 1999, Sector 63
NOIDA – 201 301 (UP)

Versus

Principal Commissioner of Customs (Import) **....Respondent**
Inland Container Depot
Tughlakabad
New Delhi 110 020

APPEARANCE:

Shri Tarun Gulati, senior advocate assisted by Shri Rupesh Gupta, Shri Tarun Jain, Ms. Kritika Tuteja and Ms. Shruti Kulkarni, advocates for the appellant

Shri Shiv Shankar, authorized representative of the department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing : 28.01.2026
Date of Decision : 18.05.2026

FINAL ORDER NO. 50914/2026

JUSTICE DILIP GUPTA :

Ismartu India Pvt. Ltd.[1] has filed this appeal to assail the order dated June 19, 2024 passed by the Principal Commissioner of Customs that rejects the classification of the goods imported by the appellant and reclassifies the same and, accordingly, confirms the differential customs duty with interest under section 28AA of the

1. **the appellant**

Customs Act, 1962[2] and penalty under section 112(a)(ii) of the Customs Act. The order also confiscates the goods with an option to the appellant to redeem the same on payment of redemption fine.

2. The appellant is engaged in the business of manufacturing/assembling mobile phones and for this purpose the appellant imported certain goods from M/s Techno Mobile Ltd., Hong Kong and filed a Bill of Entry dated September 14, 2022 declaring the goods as 'Parts of MFR of Mobile Phones'. Believing that the goods are mobile phones in CKD condition and not parts of mobile phones, an investigation was started. The appellant provided complete details of the goods covered under the said Bill of Entry and explained that the consignment covered under five different invoices were parts of five different models of mobile. The appellant also provided documents in respect of actual descriptions and classification of the impugned goods. Summons dated September 26, 2022 was issued to Dinesh Goyal, authorized representative of the appellant, and his statement was recorded under section 108 of the Customs Act. The appellant also, by a letter dated September 30, 2022, submitted a list of local purchased items for the models imported. The appellant clarified that the material imported was insufficient to manufacture a phone and so the appellant has to procure additional material locally, including items beyond batteries.

3. The officers of the department availed services of a Chartered Engineer to ascertain the exact nature of the goods. The

[2] **the Customs Act**

Chartered Engineer submitted a report dated November 29, 2022 which *inter alia* mentions :

> "On visual examination, it is noted that prima facie the parts received after assembling will form an incomplete product and not in working condition. Though they acquire the article shape of a Mobile Phone & thus in light of the above prima facie have essential characteristics of the article but these goods do not form a complete article as the battery, camera, software etc. are required, processing for quality control, product testing for safety factors, individual packaging warrant compliance etc., is required for marketability."

4. The department further sought clarification from the Chartered Engineer as to whether the assembled goods with the addition of a battery would have communication functionality, even if the camera did not work. The Chartered Engineer, in his report dated January 05, 2023, stated that it was not possible to determine the communication functionality of the device without testing it through an approved laboratory.

5. The appellant was also asked by the department to submit details of the consignment imported during the last two years and the appellant provided the data by a letter dated March 31, 2023.

6. A show cause notice dated July 25, 2023 was issued by the Commissioner of Customs (Import) mentioning that the appellant had wrongly self assessed the Bills of Entry as the goods were a complete mobile set attracting duty under Customs Tariff Item[3] 8517

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3 CTI

14 00. The relevant portion of the show cause notice is reproduced below :

> "**14.1** From the investigations as detailed above, it appears that the importer has misclassified the CTH of the goods imported vide all invoices as mentioned in Annexure-A in the corresponding Bills of Entry filed by them resulting in short-payment of duty. Therefore, it appears that the importer has wrongly self-assessed the Bills of Entry mentioned in the Table above under Section 17(1) of the Customs Act, 1962. The impugned goods do not correspond in respect of classification being a complete mobile set attracting CTH 85171400/85171219 with respect to the declaration given in the Bills of Entry as manufacturing parts of mobile phones. Further, under provisions of Section 46(4A) of the Act, ibid, it is the responsibility of the importer to ascertain the accuracy of the information given in the Bill of Entry.
>
> **14.2 In view of the above and submission by the importer, it appears that the goods/mobile parts imported vide invoices for the past two years as mentioned in Annexure-A have all the components required for the manufacture of the mobile phone which merit classification under tariff item 85171400 (Applicable BCD @ 20%) instead under different tariff item of mobile parts**."
>
> **[emphasis supplied]**

7. The show cause notice, therefore, called upon the appellant to show cause as to why the classification of goods imported through the Bill of Entry dated September 14, 2022 and those detailed in Annexure-A and B should not be rejected and classified under CTI 8517 14 00/CTI 8517 12 19; differential duty should not be demanded and recovered from the appellant under section 28(1) of the Customs Act with interest under section 28AA of the Customs Act; and penalty under section 112(a)(ii) of the Customs Act should not be imposed for improper importation of the goods.

8. The appellant filed a detailed reply to the show cause notice and contended that the appellant had classified the imported items under various Customs Tariff Headings specific to parts for mobile phones and that these items were insufficient for complete mobile phone assembly. The appellant also highlighted that some components were also locally procured, which supported the claim of the appellant that the imported parts were not a complete mobile phone.

9. The Principal Commissioner, however, upheld the re-classification of the goods under CTI 8517 14 00/CTI 8517 12 19 as proposed in the show cause notice and, accordingly, confirmed the demand of differential duty. The relevant portions of the order passed by the Principal Commissioner are reproduced below :

> "**12.6 I further observe that it is the contention of the noticee that as per Rule 2(a) of General Rules for the Interpretation of the Customs Tariff Act, 1975, incomplete articles should either be complete but unassembled or possess the essential character of the finished article. It is their contention that the goods imported by them do not meet these criteria and, therefore, should not be classified under heading 8517**.
>
> **12.7** In this regard I note that the noticee have not denied that they imported all the parts required for manufacturing of Mobile Phones of different models except battery and camera module. They have declared classification of these parts under different Tariff Headings, as per table above. **I note that the parts imported by the noticee are not sold as it is or in any other shape or manner but are used to assemble the complete Mobile Phone, for which they have their own assembling facility**.
>
> **12.8** …..**I note that the notice have neither claimed nor established that the mobile phone parts**

imported by them under different Bills of Entry were in excess of the number required for a complete or incomplete mobile phone, which suggests that all the parts imported by the notice were used in assembly of mobile phones only. I further find that the parts imported by the noticee were designed and manufactured by the foreign entity and what the noticee did with such parts was merely assembling thereof at the site. This has been stated by Shri Deepak Kumar Singh, the authorized representative and Senior Process Engineer of the noticee, who in his statement dated 21.10.2022 tendered under Section 108 of the Customs Act, 1962 has stated that the imported parts and accessories are assembled at company location D 197. D-Block, Sector 63, Noida, Gautam Buddha Nagar, Uttar Pradesh;

12.9 It is further stated by Shri Deepak Kumar in his statement that technically a mobile phone is essentially used for communication between two or more persons. However, with the advancement of technology, several additional functions are also incorporated into a mobile phone such as a camera, music system, Internet surfing, GPS location, Bluetooth etc. **This suggests that the goods imported by the notice were complete or finished goods presented in unassembled state and the simple assembly operation undertaken by the noticee takes them within the scope of Rule 2(a) of the Interpretative Rules**.

12.10 The noticee, in their defence have referred to the decision of the Hon'ble CESTAT in the case of LG Electronics India Vs. CC(I) - MANU/CM/0049/207 where the benefit of exemption was extended to the mobile phones imported in SKD condition and not individual parts. It was held that the assembly of parts is not simple and involves downloading of software which can be handled only by skilled technicians. **In this regard, I note that the Hon'ble CESTAT in the case of LG Electronics, cited supra, pronounced its decision with reference to the benefit of availability of exemption Notification No. 21/2002-Cus., but did not examine the classification of the impugned goods in the light of Rule 2(a) of the Interpretative Rules read with Explanatory Notes to Section XVI HSN and hence, I find that the ratio of the judgment of the Hon'ble**

CESTAT in the case of LG Electronics is not applicable to the facts of the present case.

12.11 It is the further contention of the noticee that Battery is an essential part for Mobile Phone, which is purchased by them locally; that the Mobile Phone cannot be in a functional and marketable condition without a battery. They have referred to the decision of the Hon'ble CESTAT in the case of Jas Telecom Pvt. Ltd. Vs. CCE - 2019(369) ELT 1515 (Tri. Bang.) and in the case of CC Bangalore Vs. Ni Micro Technologies Pvt. T.td. - 2014 (311) ELT 458 (Tri. Bang.). **In this regard, I note that the judicial pronouncements, referred to by the noticee again examine the eligibility to exemption claimed with reference to Battery imported by the appellant, which I find is not there in the present case. Further, as noticed above, in none of the cited cases, the classification of the impugned goods has been examined in the light of Rule 2(a) of the Interpretative Rules read with Explanatory Notes to Section XVI HSN, and hence I find that the ratio of the cited decisions is not applicable to the facts of the present case**.

12.14 Further, I note that the noticee have referred to the report dated 29.11.2022 provided by Chartered Engineer during the course of investigation in respect of goods imported under Bill of Entry No. 2432709 dated 14.09.2022 where it has been opined that post-assembly. specific tests viz. Mobile Application/Software Testing. Hardware Testing, Battery Charging Testing. Signal Receiving. Network Testing. Protocol Testing. etc. are indispensable to assure the functionality and quality of the mobile phones. **In this regard, I note that the complete Mobile Phone comes into existence upon assembling. Various testing thereon are undertaken only after the complete Mobile Phone has come into existence and hence the contention of the noticee that testing is indispensable to assure the functionality and quality of the mobile phone does not alter the position that the goods imported by the noticee were complete or finished goods at the time of import where these were presented in unassembled state**.

14. **<u>Confiscation of the impugned goods :-</u>**

14.1 The noticee, in this regard have stated that assuming, without admitting that the subject goods could

be classified as mobile phones in CKD condition under CTH 85171400, **claiming classification is a matter of understanding and belief in the minds of the assessee, which does not constitute an offense under the provisions of the Customs Act, 1962**. By making reference to a few judicial pronouncements, it is their contention that the goods are not liable for confiscation under Section 111(m) and the charge is not sustainable.

14.4 ……**The importer, while presenting the Bill of Entry, shall at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such a Bill of Entry and shall, in support of such declaration, produce to the proper officer, the invoice reflecting true & correct description and classification, relating to the imported goods. In the present case, the Noticees have mis-declared the description and value of impugned goods in Bills of Entry, invoices and other supporting documents and the declaration was not found to be correct as coming out in investigation, therefore, have contravened provision of Section 111 (m) of the Customs Act, 1962. Thus, the subject goods are to be confiscated under section 111(m) of Customs Act**.

15.2 I find that in the present case, for the reasons discussed at para 14 supra, M/s Ismartu India Pvt. Ltd. have been involved in the import of impugned goods imported vide Bill of Entry No. 2432709 dated 14.09.2022 and the bills of entry, as mentioned in Annexure A & Annexure-B to the Show Cause Notice, which are liable for confiscation under section 111(m) of Customs Act. In terms of Section 17(1) and 46(4) of the Customs Act, 1962, the noticee was required to self-declare and self-assess the classification and Customs Duty payable on the imported goods correctly. I find that the noticee has contravened the provisions of Section 17(1) and Section 46(4A) of the Act, ibid, as they failed to ensure the accuracy of the information given in the Bill of Entry, which resulted in short payment of Customs duty and hence confiscation of impugned goods. **Therefore. for the omission and commission on the part of noticee, I held that Ismartu India Pvt. Ltd. is liable for penalty under Section 112 (a) (ii) of the Customs Act. 1962**."

[emphasis supplied]

10. Shri Tarun Gulati, learned senior counsel for the appellant assisted by Shri Rupesh Gupta, Shri Tarun Jain, Ms. Kritika Tuteja and Ms. Shruti Kulkarni, made the following submissions :

(i) The burden of proof to challenge the classification of imported goods is upon the department, but in the present case the order has been passed without any evidence having been led by the department to substantiate its case. In fact, the evidence of the expert produced by the department is in favour of the appellant as it does not confirm that the imported goods are complete mobile phones. The impugned order, on the other hand, has placed the burden of proof on the appellant to demonstrate that the imported goods are not complete mobile phones. To substantiate this submission, learned senior counsel placed reliance upon the decisions of the Supreme Court in **Commissioner of Customs and Central Excise, Amritsar (Punjab)** vs **D.L. Steels and Others**[4] and **Hewlett Packard India Sales Private Limited (now HP India Sales Private Limited)** vs **Commissioner of Customs (Import), Nhava Sheva**[5];

4 **(2023) 17 Supreme Court Cases 358**
5 **(2023) 7 Supreme Court Cases 799**

(ii) The parts and components of mobile phones imported by the appellant were further supplemented by locally procured parts and thereafter extensive manufacturing process was employed by the appellant, including loading of software. The impugned order, therefore, erroneously concludes that the imported parts were complete mobile phones in view of rule 2(a) of the General Rules for the Interpretation of the Customs Tariff Act, 1975[6]. To support this contention, learned senior counsel placed reliance upon the decision of the Supreme Court in **Commissioner of Customs, New Delhi** vs **Sony India Ltd.**[7] and the decision of the Tribunal in **LG Electronics India Pvt. Ltd.** vs **Commissioner of Customs (I)**[8]**;**

(iii) The imported parts do not satisfy the essential character of a mobile phone and substantial manufacturing activity is mandatory for manufacture of mobile phones; and

(iv) The impugned order has confirmed application of both the parts of rule 2(a) of GIR which, parts are mutually exclusive to each other.

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6 **GIR**

7 **(2008) 13 Supreme Court Cases 145**

8 **2006 (204) ELT 450 (Tri.-Mumbai)**

11. Shri Shiv Shankar, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions :

(i) The Principal Commissioner has correctly reclassified the imported goods under CTI 8517 14 00/8517 12 19 as mobile phones presented in CKD/SKD condition by invoking rule 2(a) of the GIR. To support this contention, learned authorized representative placed reliance upon the decision of the Supreme Court in **Commissioner of Customs, New Delhi** vs **Sony India Ltd.[9];**

(ii) The essential character test does not require 100% completeness. What is relevant is whether the imported goods, as presented, substantially represent the final product;

(iii) The report of the Chartered Engineer does not rule out the applicability of rule 2(a) of the GIR;

(iv) The appellant consciously declared the goods as 'parts' despite knowing that the combined consignments resulted in assembly of complete phones; and

9 **2008 (231) ELT 385 (SC)**

(v) The goods were rightly held liable to confiscation under rule 111(m) and imposition of penalty under section 112(a)(ii) of the Customs Act is justified.

12. The submissions advanced by the learned senior counsel appearing for the appellant and the learned authorized representative appearing for the department have been considered.

13. The issue that arises for consideration in this appeal is whether rule 2(a) of the GIR would be applicable to the goods imported by the appellant by treating the imported goods as 'complete' mobile phones and not as 'parts' of mobile phones.

14. The appellant claims that it had imported parts of mobile phones through the Bill of Entry dated September 14, 2022 and to support this contention the appellant had provided documents in respect of the actual description and classification of the goods and also explained that the consignment covered under five different invoices were of parts of five different models of mobile. The appellant also clarified that the goods imported by the appellant were insufficient to manufacture a mobile phone and so the appellant had to procure additional material locally, including items beyond batteries. In fact, by a letter dated September 30, 2022 the appellant submitted a list of 'locally purchased items' for each of the models imported through the Bill of Entry and the list is reproduced below :

S.No.	Model	Local Purchase items
1.	IT5626N	PCBA MB MA 2810 DI 8M+8M V2.0 CAM STDP FF 8W GC6133i+2160V1.0 Battery
2.	ACE 2N	PCBA MB DL 19114 4M+4M V01 LCM LENS ACE2 PC .065 BLACK BATTERY
3.	15607	BATTERY
4.	IT2175	PCBA MB M1812 B2 4M+4M TCD STDP 1.77 QQCTC GC 9106 V1.0 CAM STDP FF 8M GC61331+2160 V1.0 BATTERY
5.	IT2175	PCBA MB M1812 B2 4M+4M LCD STDP 1.77 QQ TN CTC-GC 9106 V1.0 CAM STDP FF 8M GC6133i+2160 V1.0 BATTERY

15. The department availed the services of a Chartered Engineer to ascertain the nature of the goods imported by the appellant. The Chartered Engineer in his report dated November 03, 2022 stated as follows :

> **"EXAMINATION/DESCRIPTION OF INVOICE:**
>
> Samples from consignment were shown to us. On examination these parts/items are found same as declared in Invoice pertaining to Mobile Phone Model it5607 as declared.
>
> Pictures taken are attached as Annexure A.
>
> **BRIEF OF PRODUCTS:**
> These are parts of Mobile Phone and are received in disassembled/unassembled condition. These unassembled parts form incomplete Mobile Phone. The consignment is received without battery (which is essential for power back up to use mobile), camera. They further requires fitment of parts like few consumables like solder wire etc., along with printing of brand/model for marketing with some basic manufacturing process.
>
> xxxxxx xxxxxx xxxxxx
>
> Further after assembling of these parts after procurement and fitment of camera and battery, mobile-device testing functions are required to assure the quality of mobile devices. It is conducted on both hardware and software and

> from the view of different procedures, the testing comprises R&D testing, factory testing and certificate testing.
>
> Factory testing is a kind of sanity check on mobile devices. It is conducted automatically to verify that there are no defects brought by the manufacturing or assembling.
>
> xxxxxx xxxxxx xxxxxx
>
> **On visual examination, it is noted that prima facie the parts received after assembling will form incomplete product and not in working condition. Though they acquire article shape of Mobile Phone & thus in light of above prima facie have essential characteristics of article but these goods do not form a complete article as battery, camera, software etc. are required, processing for quality control, product testing for safety factors, individual packaging, warrant compliance etc., is required for marketability**.
>
> **[emphasis supplied]**

16. It transpires that, subsequently, the department sought further clarification from the Chartered Engineer as to whether the assembled goods with the addition of the battery would have communication functionality, even if the camera did not work. The Chartered Engineer thereafter submitted a fresh report dated January 05, 2023 and the relevant portion is reproduced below :

> **"These are parts of Mobile Phone and are received in disassembled/unassembled condition. These unassembled parts form incomplete Mobile Phone. Further after assembling of these parts and battery is added, mobile-device testing functions & software compliance is required to make it able to functional for communication even without camera/camera PCB. Every manufacturer has different circuitry for every model for closed operation of device. Hence without testing through approved laboratory, it is not possible to arrive at communication functionality of device."**
>
> **[emphasis supplied]**

17. It is in the context of the aforesaid, that the contention advanced by learned senior counsel for the appellant regarding applicability of rule 2(a) of the GIR has to be examined. Rule 2(a) and rule 1 of GIR are reproduced below :

> "The Schedule-Excise Tariff Rules for the Interpretation of the this Schedule
>
> 1. The titles of Sections and 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 provisions hereinafter contained.
>
> 2(a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled."

18. It is seen from a perusal of rule 2(a) of GIR that the incomplete or unfinished articles must have the essential characteristic of a complete or finished article. To establish this, the department placed reliance upon the report dated November 03, 2022 submitted by the Chartered Engineer. A perusal of the said report, which has been reproduced above, shows that the Chartered Engineer categorically mentioned that the unassembled parts imported by the appellant form an incomplete mobile phone as it is not only without a battery, which is essential for the power backup to use mobile and camera, but it also requires fitments of parts with some basic manufacturing process. The Chartered Engineer also opined that on visual examination, *prima facie* the parts after

assembly will form an incomplete mobile which will not be in a working condition. What the Chartered Engineer further opined was that after assembly it may acquire the shape of a Mobile Phone and so, *prima facie* have the essential characteristics of the article, but these goods do not form a complete article as the battery, camera and software are required.

19. It is, therefore, clear that definite finding has been recorded by the Chartered Engineer that the parts would have the essential characteristic of a complete or a finished article. The report only states that after assembly the parts may acquire the shape of a mobile phone and so *prima facie* it will have the essential characteristic of a mobile phone. Even in his subsequent report dated January 05, 2023, the Chartered Engineer reported that the parts imported by the appellant form an incomplete mobile phone. It cannot, therefore, be said that the department could conclusively establish that the parts imported by the appellant have the essential characteristic of a complete or finished mobile phone.

20. It needs to be remembered that it is for the department to substantiate its claim regarding re-classification. The impugned order has, on the other hand, placed burden on the appellant to demonstrate that the imported goods are not complete mobile phones.

21. In this connection, it may be pertinent to refer to the judgment of the Supreme Court in **D.L. Steels.** The Supreme Court held that if the department challenges the classification made by the

assessee, the onus is on it to establish that the items in question fall in the taxing category as claimed by them and that the burden is on the revenue to adduce proper evidence to show that the goods are classifiable under a different heading than that claimed by the assessee. This view was reiterated by the Supreme Court in **Hewlett Packard India.**

22. In view of the aforesaid discussion, it is not possible to accept the view taken by the Principal Commissioner that in view of the provisions of rule 2(a) of GIR, the goods imported by the appellant are not parts of mobile phones, but complete mobile sets attracting duty under CTI 8517 14 00/CTI 8517 12 19.

23. The impugned order dated June 19, 2024 passed by the Principal Commissioner, therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **18.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Golay