CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 52463 OF 2022

(Arising out of Order-in-Original No.04/2022-23/S.J/Principal Commissioner dated 31.08.2022 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi)

One97 Communications Limited, **...Appellant**
136, 1st Floor, Devika Tower, Nehru Place,
New Delhi - 110019

VERSUS

Principal Commissioner of Customs, **...Respondent**
Air Cargo Complex (Import),
New Customs House,
New Delhi-110037

WITH

CUSTOMS APPEAL NO. 55695 OF 2023

(Arising out of Order-in-Original No.08/2023-24/S.J/Principal Commissioner dated 28.07.2023 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi)

One97 Communications Limited **...Appellant**
136, 1st Floor, Devika Tower, Nehru Place,
New Delhi- 110019

VERSUS

Principal Commissioner of Customs, **...Respondent**
Air Cargo Complex (import),
New Customs House,
New Delhi-110037

APPEARANCE:

Shri B.L. Narasimhan, Ms. Jyoti Pal, Ms. Anjali Singh and Ms. Aditi Sharma, Advocates for the Appellant

Shri S.K. Rahman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 19.02.2025
DATE OF DECISION: 05.08.2025

FINAL ORDER NO's. 51129-51130/2025

JUSTICE DILIP GUPTA:

Customs Appeal No. 52463 of 2022 has been filed by One97 Communications Limited[1] to assail the order dated 31.08.2022 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi[2], by which the concessional rate of 10% basic customs duty[3] availed by the appellant under Serial No. 20 of the Notification No. 57/2017 dated 30.06.2017[4] for import of paytm soundbox Version 1 and Version 2[5] has been denied and the demand of Rs. 3,29,17,929/- has been confirmed under section 28(1) of the Customs Act, 1962[6] with interest under section 28AA and penalty under section 112(a) of the Customs Act.

2. **Customs Appeal No. 55695 of 2023** has been filed by the appellant to assail the order dated 28.07.2023 passed by the Principal Commissioner by which the concessional rate of basic customs duty at the rate of 10% under the Notification for import of the goods has also been denied and the appellant has been held liable to pay basic customs duty at the rate of 20 percent. Consequently, the differential customs duty of Rs. 17,97,88,217/- has been confirmed under section 28(1) of the Customs Act with interest under section 28AA and penalty under section 112(a) of the Customs Act.

3. The appellant is an e-commerce company. It provides basket of digital services through its web-based platform called "paytm",

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1. **the appellant**
2. **the Principal Commissioner**
3. **BCD**
4. **the Notification**
5. **the goods**
6. **the Customs Act**

including payment gateway services to businesses and merchants. The payment gateway service is essentially a universal payment solution facilitating digital payments to merchants enabling the merchants to aid their business for seamless collection of payments from their customers.

4. During the period from 05.08.2019 to 27.02.2022, the appellant imported the goods by classifying them under Customs Tariff Item[7] 8517 62 90 of the First Schedule to the Customs Tariff Act, 1975[8] and paid 10% BCD by availing the benefit of concessional rate of duty under Serial No. 20 of the Notification.

5. The relevant portion of the Notification containing Serial No. 20, of which the benefit was claimed by the appellant, as it stood upto 01.02.2021 is reproduced below:

> "**Exemption to specified goods used in manufacture of mobile phones.-** In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), **the Central Government**, on being satisfied that it is necessary in the public interest so to do, **hereby exempts the goods of the description as specified in column (3)** of the Table below, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975 as are specified in the corresponding entry in column (2) of the said Table, **when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is is excess of the amount calculated at the standard rate as specified in the corresponding entry in column (4) of the said** Table subject to any of the conditions, as specified in the Annexure to this notification, the condition number of which is

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7. CTI
8. the Customs Tariff

mentioned in the corresponding entry in column (5) of the said Table.

Table

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
xxxxxxxxx				
20	8517 62 90 or 8517 69 90	All goods other than the following goods, namely:- (a) xxxxxxxxx (b) xxxxxxxxx (c) xxxxxxxxx (d) xxxxxxxxx (e) xxxxxxxxx (f) xxxxxxxxx (g) xxxxxxxxx (h)Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products	10%	-]

(emphasis supplied)

6. It is with effect from 01.02.2021 that item at (h) of Serial No. 20 of the Notification was substituted by Notification No. 3/2021 dated 01.02.2021. The substituted items at (h) and (i) are:

> "(h) Multiple input/Multiple Output (MIMO) products;
> (i) Long Term Evolution (LTE) products";

7. It would, therefore, be necessary to examine the description and functionality of paytm soundbox Version 1 and Version 2 that have been imported by the appellant. The appellant has described them in the following manner:

(i) The goods are portable audio-activated smart devices that notify merchants instantly when they receive payments in their account from their customers. When a customer scans the paytm QR code of the merchant, the device announces the payment amount loudly, ensuring immediate

successful payment alert to the merchant. It, therefore, relieves the merchant from the need to check text messages for receipt of payment;

(ii) The goods comprise of an in-built speaker for audio output, LED as an indicator for internet connectivity, rechargeable lithium battery, Media Tek processor having Model Number MTK 6261A and radio frequency transceiver having Model No. FX5169D. The Media Tek processor and radio transceiver due to specifications and presence of second generation[9] antennas, can only be used to connect to the Global Systems for Mobile Communication[10] i.e. 2G mobile network for establishing internet connection;

(iii) The internet connectivity of the goods is entirely dependent on machine-to-machine type SIM cards[11] of Vodafone or Airtel that come along with the goods, pre-installed and activated at the time delivery. The goods cannot connect to Wi-fi internet connection; and

(iv) Though these M2M SIM Cards are capable of receiving 4G signals, these SIM cards, when placed in the goods, can only connect to 2G networks due to the technical specifications of the goods. Additionally, the Internet Protocol addresses for these M2M SIM Cards are whitelisted by telecom operators. Thus, they prevent their use in other devices for calls, texts, or web browsing.

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9. 2G
10. GSM
11. M2M SIM Cards

8. A show cause notice dated 02.08.2021 was issued to the appellant proposing recovery of differential duty on the goods imported by the appellant during the period from 05.08.2019 to 06.07.2021. The show cause notice alleges that the goods imported by the appellant are 4G, Long-Term Evolution[12] as well as Multiple Input Multiple Output[13] product and would, therefore, not be eligible for the benefit under Serial No. 20 of the Notification.

9. This show cause notice was adjudicated by an order dated 31.08.2022 passed by the Principal Commissioner. The duty demand was confirmed on the following grounds:

(i) When the information about the impugned goods is displayed on the website of the appellant, then the department is not required to provide additional evidence to support its claim that the goods work on 4G network;

(ii) The antenna in a device does not describe whether the said device is 2G or 4G enabled for it is the chipset and RF bandwidth that determine the said character. Thus, by referring to technical specification of the goods and the two articles available on Wikipedia website on GSM frequency bands and LTE frequency bands, the order holds that the goods having MediaTek chipset capable of working on GSM 850, EGSM900, DCS1800, PCS1900 bands have an uplink and downlink frequency identical to the LTE bands namely, LTE 5, LIE 8, LTE 3 and LTE 2 respectively. The goods working on

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12. LTE
13. MIMO

similar frequencies are, therefore, also compliant to LTE Standards; and

(iii) The two test reports submitted by the appellant from Shenzhen STS Test Services Co. Ltd.[14] and from Alpha Test House[15] are contradictory to each other and, therefore, cannot be relied upon.

10. Thereafter, another show cause notice dated 21.02.2023 was issued by the Deputy Commissioner of Customs to the appellant in respect of the imports of the goods from 28.07.2021 to 27.08.2022. Reference was made to the earlier show cause notice dated 02.08.2021 and the order dated 31.08.2022 passed by the Principal Commissioner and it was alleged that the appellant was not eligible for the benefit of the Notification.

11. This second show cause notice was adjudicated by an order dated 28.07.2023 passed by the Principal Commissioner. The order refers to the findings recoded in the earlier order dated 02.02.2021 and also to certain additional findings namely:

(i) The International Mobile Equipment Identity[16] certificates for the goods, as submitted by the appellant, cannot be relied upon to conclude that the goods are 2G enabled because these are issued basis the declaration and documentary evidence submitted by the appellant on the online portal and the Department of Telecommunication[17] takes no responsibility of

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14. STS
15. ATH
16. IMEI
17. DoT

verifying the data submitted by the appellant. The certificates are auto-generated, once the relevant details and documents are submitted on the portal; and

(ii) It has been noted that from the analogy given in the III-TO, an inference can be drawn that the goods, being the latest technology goods, are compliant to 4G/LTE standards which can also operate on 2G standards.

12. Shri B.L. Narasimhan learned counsel for the appellant assisted by Ms. Jyoti Pal, Ms. Anjali Singh and Ms. Aditi Sharma made the following submissions:

(i) The appellant is eligible to avail the benefit of concessional rate of duty under the Notification. For a product to be eligible for concessional rate of BCD under Serial No. 20 of the Notification it has to fulfil two conditions cumulatively, namely that the product should be classifiable under CTI 8517 6290 or CTI 8517 6990; and the product should not be covered by the exclusionary clause given under the description column of Serial No. 20 from (a) to (i). In the present case, the goods are correctly classifiable under CTI 8517 62 90 and are GSM/2G products which are not covered by the exclusionary clauses of Serial No. 20 of the Notification;

(ii) The goods being 2G devices can only work on GSM /GPRS network standard which falls under the 2G

network spectrum. It is not a 4G device and thus does not work on LTE network standard;

(iii) The findings in the orders given on the technical capabilities of the goods are based upon assumptions/presumptions which are not substantiated by authentic technical literature;

(iv) The findings in the orders are not based on any authentic technical literature or expert opinion, evidence, statement, report or data but on Wikipedia articles. The Courts have time and again held that Wikipedia cannot be considered as a reliable source as the website functions in a manner where anybody is allowed to edit the content;

(v) The claim of the appellant is premised on the test reports obtained by ATH and STS, supplier's declaration as well as the IIT-TO given by Professor Saif Mohammed. However, the orders have not taken such reports and declaration under consideration, let alone cite any reasons for negating such reports / declaration;

(vi) The two test reports submitted by the appellant from ATH and STS are not contradicting each other;

(vii) The IIT-TO has been incorrectly interpreted in the orders;

(viii) The demand pertaining to the pre-amendment of Notification with effect from 01.02.2021 is not sustainable;

(ix) No interest is recoverable;

(x) Goods are not liable for confiscation; and

(xi) Penalty has also been incorrectly imposed.

13. Shri S.K. Rahman, learned authorized representative appearing for the department, however, defended the two orders passed by the Principal Commissioner and made the following submissions:

(i) The sound box comes with a dedicated SIM slot and will work on 4G connectivity, and will always be connected to the internet in order to manage the payments on behalf of the retailer;

(ii) Display of information on the website of the appellant was the sole responsibility of the importer and the department does not require additional evidence to support the claims. As the blog was available on website of paytm itself, the same is an admitted fact and there is no requirement of proving an admitted fact;

(iii) From the submissions of the appellant it is an admitted fact that the M2M SIM Card in the goods is capable of receiving 4G signals and, therefore, there is no dispute regarding 4G connectivity provided by service providers like Vodafone or Airtel;

(iv) 4G technology covers both LTE and MIMO and thus the goods working on 4G technology are also LTE and MIMO products;

(v) The SIM, based upon 4G, is an indispensable requirement of the goods;

(vi) Goods are to be assessed as they are presented/imported into country. If a device with

4G connectivity capacity is imported, then it would be assessed as 4G device irrespective of usage as 2G device. Post importation usage is not important;

(vii) The control chips available in the goods are capable of connecting to 4G LTE bandwidth;

(viii) As ATH Report and STS Test Report are contradictory, they cannot be relied upon. Hence, the claim of the appellant that goods are functioning only on 2G is not reliable;

(ix) Further, these test Reports cannot be relied upon as the Custom Department was not informed prior to the testing of goods. The samples were not taken and sent by the department. Thus, the identity of the product cannot be established with the item tested at the laboratory; and

(x) MediaTek chipset embedded in the goods is capable of working on GSM. It has an uplink and downlink frequency identical to the LTE.

14. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

15. The issue that arises for consideration in these two appeals is regarding eligibility of the appellant to avail the benefit provided under Serial No. 20 of the Notification on import of paytm soundbox Version 1 and Version 2. The contention of the appellant is that the goods imported by the appellant do not fall under the exclusionary clause (h) or (i) of Serial No. 20 of the Notification and, therefore, the appellant would have to pay the reduced BCD @10% on the goods imported.

16. It is seen that the appellant provides a web based platform called 'paytm' that enables the merchants to use the payment gateway services, which is a payment solution facilitating all digital payments. The appellant imported paytm soundbox Version 1 and Version 2 by classifying this product under CTI 8517 62 90 and paid 10% BCD by availing the benefit provided under concessional rate of duty under Serial No. 20 of the Notification. The goods imported by the appellant are portable audio-activated smart devices that notify merchants about the receipt of payments from the customers in their account. A customer has to scan the paytm QR code of the merchant and the device announces the payment amount loudly regarding successful payment, thereby relieving the merchant from the need to check text messages for receipt of payment.

17. According to the appellant, the goods comprise of an in-built speaker for audio output, LED as an indicator for internet connectivity, rechargeable lithium battery, Media Tek processor having Model No. MTK6261A and radio frequency transceiver having Model No. FX5169D. The appellant contends that the aforesaid Media Tek processor and radio transceiver, due to its specification and presence of 2G antennas, can only be used to connect to the GSM i.e. 2G mobile network for establishing internet connection. The appellant also contends that the internet connectivity of the goods is dependent on M2M type SIM cards of Vodafone or Airtel that come with the goods, pre-installed and activated at time of delivery and that the goods cannot connect to Wi-fi internet connection. The appellant also contends that though the M2M SIM Cards are capable of receiving 4G signals, but the SIM cards, when placed in the goods, can only connect to 2G network due to technical

specifications of the goods. The appellant further claims that the Internet Protocol addresses for these M2M SIMs are whitelisted by telecom operators as a result of which use in other devices for calls, texts, or web browsing is prevented.

18. A perusal of the Notification, as stood prior to 01.02.2021, shows that BCD @10% at Serial No. 20 would be leviable for all goods under CTI 8517 62 90, except those items referred to from (a) to (h). It needs to be noted that (h) refers to:

> "(h) Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products."

19. With effect from 01.02.2021, clause (h) of Serial No. 20 of the Notification was amended and clause (i) was added. The amended clause (h) and the newly inserted clause (i) are reproduced below:

> "(h) Multiple input/Multiple Output (MIMO) products;
> (i) Long Term Evolution (LTE) products";

20. The reason why the Principal Commissioner has denied the benefit of 10% BCD claimed by the appellant is that the antenna in the device does not describe whether the said device is 2G or 4G enabled, for it is the chipset and RF bandwidth that determine the character. The order also holds that the technical specification of the goods and two articles available on Wikipedia website on GSM frequency bands and LTE frequency bands show that goods having Media Tek chipset are capable of working on GSM 850, EGSM900, DCS1800, PCS1900 bands and have an uplink and downlink frequency identical to the LTE bands namely, LTE 5, LIE 8, LTE 3 and LTE 2 respectively. The impugned order, therefore, holds that the goods working on similar frequencies are also compliant to LTE Standards. The impugned order also holds that the

two test reports submitted by the appellant from STS and ATH are contradictory to each other and, therefore, cannot be relied upon.

21. To avail the benefit of concessional rate of duty at Serial No. 20 of the Notification, a product has to fulfil the two conditions set out cumulatively. They are that the product should be classifiable under CTI 8517 62 90 and that they should not be covered by the exclusionary clauses (a) to (h) of Serial No. 20 prior to 01.02.2021 and from (a) to (i) w.e.f. 01.02.2021.

22. The show cause notice and the impugned order do not dispute the classification of the goods by the appellant under CTI 8517 62 90. The benefit of the concessional rate of BCD at @ 10% has been denied because the product was considered to be covered by the exclusionary clause.

23. The contention of learned counsel for the appellant is that the product prior to 01.02.2021 is not covered by the exclusionary clause (h) and after 01.02.2021 is not covered by the exclusionary clauses (h) and (i). Elaborating this submission, learned counsel pointed out that the goods are 2G devices and can work only on GSM/GPRS network standard which fall under the 2G network spectrum. Learned counsel emphasized that the product is not a 4G device and thus does not work on LTE network standard.

24. It is seen from the technical specifications of the goods that they are fitted with a MediaTek chipset processor having model number M1K6261A. This main control chip embedded in the goods has a radio frequency of GSM Bands B2/B3/B5/B8 (GSM 850, EGSM900, DCS1800, PCS1900). The antenna design of the goods is of 2G antenna which connects to the service provider network.

25. It can be gathered from the technical specifications that have been provided that the MediaTek Chip, MT6261A is designed to operate exclusively on GSM standards and the model is engineered to support various GSM-based applications, ensuring compatibility and performance within the GSM network framework. It is also seen that the chip does not extend its capabilities beyond GSM standards as it is a solution tailored solely for GSM connectivity. From the literature that has been provided, it clearly transpires that 2G technology is based on the GSM standard and thus, 2G is linked to GSM.

26. It will also be necessary to understand the evolution of mobile networking system and meaning of 2G, 4G and LTE. In mobile wireless communication networks, the term "Generation" refers to a change in the nature of the system, speed, technology, frequency, data capacity and latency. Each generation has standards, different capacities, new techniques and features which differentiate them from the previous generations. Till date, various **'**Generations**'** that have emerged include, 1G, 2G, 3G, 4G and 5G. 2G refers to the second generation based on GSM and emerged in late 1980s. It uses the bandwidth of 30 to 200 Khz, whereas 4G based on LTE offers a downloading speed of 100Mbps.

27. The appellant has relied upon two reports submitted by ATH and STS to support the view that the goods operate exclusively with 2G connectivity. These two laboratories tested the goods in consonance with technical standards of Third Generation Partnership Project[18]. This 3GPP develops protocols for mobile telecommunications and provides technical standards/ specifications to be followed by its member organizations for 2G, 3G and 4G network.

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18. 3GPP

28. ATH tested the goods for 2G, 3G and 4G signal verification as per the 3GPP standards and the report states that the goods work only on 2G and not on 3G/ 4G network. The relevant portions of the test report dated 22.09.2021 for paytm soundbox Version 1 and Version 2 are reproduced below:

Test Report

Test Result:

6. (i) For 2G (GSM) signal verification:

Test Procedure for Model 1: Paytem Soundbox V1-

- The lab placed the EUT (Equipment under test) Model: Paytm Soundbox V1 in the Shielding Chamber and the tester is connected.
- The device is exposed to GSM i.e. 2G signaling.
- Further, as can be seen on the snapshot, the connection is getting established for 2G signal.
- Hence, the device is receiving the 2G signal.
- Hence it can be concluded that device is operating with 2G signals.

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Result: Paytm Soundbox V1 is operating with 2G (GSM) signals.

Test Procedure for Model 2: Paytm Soundbox V2-

- The lab placed the EUT (Equipment under test) Model: Paytm Soundbox V2 in the Shielding Chamber and the tester is connected.
- The device is exposed to GSM i.e. 2G signaling.
- Further, as can be seen on the snapshot, the connection is getting established for 2G signal.
- Hence, the device is receiving the 2G signal.
- Hence it can be concluded that device is operating with 2G signals.

Result: Paytm Soundbox V2 is operating with 2G (GSM) signals.

29. The appellant has also placed reliance upon the STS test report which also mentions that the device works on 2G connection and complies with the standard specified for GSM network.

30. The impugned order has discarded these two test reports for the reason that the two reports contradict each other as when ATH subjected the goods to 3G (i.e. 1922.6 Mhz - 2112.6 Mhz) and 4G (i.e.1712.5 Mhz - 1807.5 Mhz) uplink and downlink frequency then the said device was not working, whereas the STS report states that the goods passed the tests under frequency bands GSM 900 and DCS 1800 whose uplink and downlink frequencies ranges from 880.2 Mhz - 914.8 MHz and 1710.2 Mhz - 1747.8 Mhz respectively, which is approximately 1800 Mhz and closer to the frequency range for a 4G network.

31. It cannot be said that the two test reports are contradictory to each other. STS had not subjected the goods to the uplink and downlink frequency for 3G and 4G network. It only performed the test for the 2G network standard on the frequency band which is common for 3G also. However, when ATH subjected the devices to 3G and 4G uplink and downlink frequency then it was unable to connect to the network as it lacked the desired channel bandwidth and hence the goods were on "idle" state when subjected to 3G and 4G signals.

32. The aforesaid conclusion find support from the expert technical opinion of Professor Saif Khan Mohammed, a technical expert in the field of wireless communication, working as a Professor in the Department of Electrical Engineering at I.I.T.-Delhi. In response to the queries raised at Question of no’s. 5 and 6 regarding the reports submitted by ATH and STS, the expert gave an opinion which is reproduced below:

"**Q.5 Whether the report by Alpha Test House is in contradiction with the specification of the RF Chipset (i.e., Mediatek MT6261A) because the technical specification of MT6261A stated that it can operate in the 1800 MHz band whereas the report by Alpha Test House reported failure when the Paytm Soundbox V1 and V2 devices were tried to operate in the 1800 MHz.**

4.18. **As concluded from paragraph 4.3 of this report, the RF chipset specification clearly specifies that the RF chipset is capable of communicating with a 2G GSM/GPRS network in the 1800 MHz band.** From paragraphs 4.10, 4.11, 4.12 and 4.13 in this report it is clear that the RF chipset cannot connect to 3G UMTS and 4G LTE networks. **The report by Alpha Test House says that the Paytm Soundboxes V1 and V2 cannot connect to a 3G and 4G network in Band 1 and Band 3(1800 MHz) respectively (see Annexure-R). This is expected since the RF chipset has a 2G GSM/GPRS only radio which cannot connect to a 3G UMTS/4G LTE network. The report by Alpha Test House in fact confirms that the RF chipset is not 3G UMTS/4G LTE compliant. Therefore, the test report by Alpha Test House does not contradict with the RF chipset technical specification.**

4.19. The assumption that, being able to transmit and receive radio waves on a certain frequency band used for 3G UMTS/4G LTE implies that any radio communication on that band must be 3G UMTS/4G LTE complaint, is incorrect (see the explanation in paragraphs 4.5-4.9 and 4.14-4.17 on this report).

Q.6 The Radio Test report of M/s STS for the Paytm Soundbox states that it has passed the test of DCS1800 frequency Band which is a LTE frequency band. Will this make the aforesaid device LTE/4G compliant?

4.20. **The fact that the Paytm device is able to transmit and receive signals in a certain frequency band used by 4G LTE devices does**

not indicate that it must be a 4G LTE complaint device, as explained in paragraphs above. Being able to transmit and receive radio waves in a certain frequency band is not the same as being compliant to some technology standard. Being compliant to a certain cellular communication standard means adhering to all protocols of that standard, which is a more stringent requirement than just being able to transmit/receive radio waves in a certain frequency band.

4.21. A wireless communication system consists of mobile devices and the network. There are many different ways in which multiple mobile devices can share the same communication link. Sharing should be such that the signal transmitted by a mobile device does not interfere with the signal transmitted by another device. The sharing mechanism is commonly called as the "multiple access method".

4.22. In 2G GSM systems Time Division Multiple Access (TDMA) with Gaussian Minimum Shift Keying (GMSK) modulation method was used. Although GMSK modulation is good for controlling the out-of-band radiation, its throughput rate (in bits per second) is low and is sufficient only for voice communication. 2G GSM was initially designed primarily for voice communication. However, due to the growing need for data (e.g., internet browsing) it was enhanced to include GPRS (General Packet Radio Service) and then further enhanced to include EDGE (Enhanced Data Rate for Global Evolution) which uses 8-PSK modulation. However, even with EDGE the throughput rate was limited to a maximum of around 384 Kbps (see highlighted text in Annexure-H, available at European Telecommunications Standards Institute (ETSI, an European Standards Organization) webpage https://www.etsi.org/ technologies/mobile/2g).

4.23. Capacity limitations of 2G communication systems and the increasing demand for multimedia services led to the development of Third generation (3G)

> communication technologies where the multiple access method was Code Division Multiple Access (CDMA) (see highlighted text in Annexure-I, available at ETSI web page https://www.etsi.org/ technologies/mobile/3g). Demand for further higher data rates led to the 4G Long Term Evolution (LTE) standard where the multiple access method is Orthogonal Frequency Division Multiple Access (OFDMA) in the downlink and SC- FDMA (Single-carrier Frequency Division Multiple Access) in the uplink (see highlighted text in Annexure-J, https://www.etsi.org/technologies/mobile/4g). **As we can see the multiple access methods in different generations of cellular wireless communication standards is different and therefore a radio designed to connect to only a 2G GSM/GPRS network cannot connect to a 3G UMTS/4G LTE network.**"
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> **(emphasis supplied)**

33. The order dated 28.07.2023 passed by the Principal Commissioner that has been impugned in Customs Appeal No. 55695 of 2023 has discarded this expert opinion for the reason that the technical opinion had been taken from a IIT Professor without informing the customs department. When such a technical opinion was taken by the appellant from an expert, it could not have been ignored merely because the department was not informed at the time of taking of the opinion. Nothing prevented the department from also taking an opinion from an expert or seeking queries from him.

34. The order has placed reliance on the earlier order dated 31.08.2022 passed by the Principal Commissioner, while adjudicating the first show cause notice, under which the goods were found to be 4G compliant and LTE. In fact in paragraph 5.2 of the order, in connection

with the expert opinion submitted by Professor Saif Khan Mohammed, the observations made by the Principal Commissioner are as follows:

> "5.2 Hence in the light of the above quoted order in original, the subsequent imports of impugned goods, as covered in this notice, shall also be governed by the finding given in the said order. **I have observed that the noticee has attempted to contradict my findings by taking the order to Mr. Saif Khan Mohammad, Professor on Department of Electrical Engineering, IIT Delhi.**
>
> **I find that the above opinion has been sought by the noticee after issuance of Order No. 04/2022-23, without informing the department and has been sought in question answer form to counter the findings of the said order. Anyways I shall discuss part of the said opinion.**
>
> (i) **At question No. 2, he was asked to clarify if 4G LTE is supported on GSM frequency range or bandwidth and if yes, to clarify if a device is operating on such common band for communication, will such device be considered as a 2G GSM/GPRS device or a 4G compliant device?** In answer to above question, he clarified that 4G LTE is also supported on the GSM bands, for example LTE Band 8 service and GSM 900 service operate in same band (880-915 MHz and 925- 960 MHz). Also, LTE Band 3 service and GSM 1800 service operate in same band (1710- 1785 MHZ, 1805-1880 MHz).
>
> **From the above clarification, it is evident that he accepted that so far as bandwidth are concerned, the device operates on the bandwidth of 4G LTE.**
>
> (ii) **Further, it has been stated in the answer that even though 4G LTE service and 2G GSM/GPRS service can be carried on the same band, just knowing a device's operating frequency band does not tell whether it is 2G GSM/GPRS or 3G UMTS/4G LTE compliant. A device could be operating in the 1800 MHz band but is only 2G compliant and not 4G LTE**

compliant even though 4G LTE communication is also possible on the same band with some other 4G LTE complaint device. To explain the above clarification, an analogy between communication and rail transportation has been used. It has been stated that by knowing if some train travels from City A to City B on the rail line R, we do not know whether the train is a superfast or a local train since both types of train provides transportation service on the same rail line; that some operators also provide 3G UMTS and 4G LTE service on the same frequency band which is used by the 2G network, therefore if one is able to talk using old mobile phone today on the same frequency band used by other advanced 4G LTE mobile devices, it does not imply that the old mobile phone is 4G LTE compliant and that the old mobile phone is obviously not 4G LTE compliant since it was manufactured when 4G LTE standard did not even exist.

Going by the analogy, it is true that a local train cannot be operated/used, even if desired, like a superfast train as it has no features/technology viz. it cannot match the speed and other facilities of a superfast train. **However, a superfast train, which has higher features/ technology can be operated/used like a local train. Similarly, it is true that in case of communication a 2G enabled device cannot be used/operated, even if desired, on advanced technology but a 4G LTE product, can be used/operated, if desired, like an older version. Today, there has been a lot of development in communication technology and old technology devices are no more in demand and are out of manufacture. In the instant case, the subject goods are latest technology goods.** 4G LTE standard now exits. xxxxxxxxxxx.

Regarding the claim of the noticee that once it is put to use it can function as a 2G device only, I note that the said goods having the 4G LTE compatibility can be used on 2G network but liability of duty is not based on how the subject goods are used but on their identity as a 4G/LTE product.

> In the light of above, it is much evident that the "Paytm Soundbox" imported by M/s One 97 Communications Ltd. is a LTE product and ineligible for the benefit of impugned Notification."
>
> **(emphasis supplied)**

35. The aforesaid order passed by the Principal Commissioner reveals that the expert opinion rendered by the Professor in respect to question no. 2 has been commented upon and it has also been concluded by the Principal Commissioner that a superfast train, which has higher features/ technology can be operated/used like a local train and, therefore, a 2G enabled device cannot be used on advanced technology but a 4G LTE product can be used/operated, if desired, on an older version. It needs to be noted that Query No. 2 posed to the Professor was whether 4G LTE is supported on GSM frequency range or bandwidth and if a device is operating on such common frequency band for communication that will such device be considered as a 2G GSM/GPRS device or a 4G compliant device.

36. It is, therefore, necessary to reproduce the query raised by the appellant under question no. 2 and the opinion rendered by the Professor. It is as follows:

> "**Q.2 Please clarify if 4G LTE is supported on GSM frequency range or bandwidth. If yes, please clarify if a device is operating on such common frequency band for communication, will such device be considered as a 2G GSM/GPRS device or a 4G compliant device?**
>
> 4.4. It is true that 4G LTE is also supported on the GSM bands, for example LTE Band 8 service and GSM 900 service operate in the same band (880 - 915 MHz and 925-960 MHz). Also, LTE Band 3 service and GSM 1800 service operate in the same band (1710-1785 MHz, 1805-1880 MHz).

Please refer to Annexure-B (pages 19-216 of 3GPP technical Standard TS 36.101 v12.31.0, see highlighted text on page 29).

4.5. **Even though 4G LTE service and 2G GSM/GPRS service can be carried on the same band, just knowing a device's operating frequency band does not tell whether it is 2G GSM/GPRS or 3G UMTS/4G LTE compliant. A device could be operating in the 1800 MHz band but is only 2G compliant and not 4G LTE compliant even though 4G LTE communication is also possible on the same band with some other 4G LTE compliant device. We can understand this with the following analogy.**

4.6. Let us think of a rail line R connecting two cities A and B. The rail line is a physical resource which provides transportation service. Similarly, a frequency band is a physical resource which provides wireless communication service. Different types of trains can be in the service of transporting people from city A to city B. Similarly different types of devices (analogous to trains) can be used to communicate on a frequency band (analogous to rail line). Consider two different types of trains between cities A and B, (i) superfast/high speed trains, and (ii) local trains. Both these trains can carry people from city A to city B on the same rail line. Superfast trains travel at high speed and stop at very few intermediate stations, whereas local trains have lower speed and stop at almost all intermediate stations. **Similarly, both a 4G LTE compliant device and a 2G GSM/GPRS compliant device can be used to communicate information over the same frequency band. A 4G LTE compliant device can achieve higher communication speed (in Mbps) than a 2G GSM/GPRS compliant device (i.e., a 4G LTE complaint device can communicate a given number of information bits in lesser time when compared to a 2G GSM/GPRS complaint**

device). A 4G LTE complaint device is therefore like a superfast/high speed train and a 2G LTE compliant device is like a local train.

Table-2 Example of analogy between rail transportation and communication.

	Communication	**Rail Trasportation**
Physical resource	Frequency band	Rail line
Service	Communication of information (in the form of bits)	Transportation of people
Device	A user terminal/ mobile used to communicate information	Trains used to transport people
Low speed device	2G GSM/GPRS complaint	Local train
High speed device	4G LTE compliant	Superfast/high speed train

4.7 Suppose, if we are told that some train travelled from City A to City B on the rail line R, then can we conclude that it is a superfast train?

4.8 The answer is obviously, no. We do not know whether the train is a superfast or a local train since both types of train provide transportation service on the same rail line R. Similarly, both a 4G LTE device (analogous to superfast train) and a 2G GSM/GPRS device (analogous to a local train) communicate on the same frequency band (analogous to the rail line R). However, just using a rail line R (analogous to frequency band) does not imply that a train (analogous to mobile device) is superfast (analogous to 4G LTE compliant)."

(emphasis supplied)

37. The expert opinion given by the Professor could not have been discarded in the manner in which it has been done by the Principal Commissioner. The Principal Commissioner has completely mis-interpreted the opinion given by the Professor in the holding that since in the present times when 4G network is available the goods must be like superfast train which are capable of running at slower rate as well

on 2G Speed. The view taken by the Principal Commissioner is not correct because the networking capability of the goods depends upon the hardware and the analogy given by the Professor in the opinion has been incorrectly interpreted by the Principal Commissioner. The Principal Commissioner failed to appreciate the reasoning of the Professor to substantiate that the goods are 2G devices. Certain bands of GSM and LTE can work on same frequency range/spectrum because the frequency spectrum is limited in range and deployment of new spectrum is quite expensive. Thus, the makers are using the legacy frequency range for deployment of LTE bands as well which is comparatively cheaper than building a whole new spectrum. Hence, on a single spectrum, one can find different bands of GSM, 3G and LTE working simultaneously. This is what was emphasised by the Professor in his opinion namely that 2G and 4G devices both can travel or work on same bandwidth and any device operating on such common bandwidth does not become 2G as well 4G compliant. The bandwidth is merely a path wherein 2G and 4G can be considered as bike and car wherein the travelling speeding (i.e. data transmission capabilities) can only be determined basis the technically specification of the device. What has also been emphasised by the Professor is that the goods lack the transmission/reception pins which can work on 4G network. The goods also have a Gaussian filter and not OFDM modulation method required for 4G network and most importantly it supports VAMOS because of the MediaTek MT6261A chip, which is primarily meant to work with 2G devices only.

38. In this connection, it would also be relevant to refer to Query No. 3 and the opinion given by the Professor to this Query:

> "**Q.3 What can be the other parameters to determine if a device is 2G or 4G compliant?**
>
> 4.11. 2G GSM/GPRS audio coding and decoding (CODEC) supports VAMOS (Voice Services over Adaptive Multi-user Channels on One Slot). Please refer to Annexure C, 3GPP Technical Standard TS 45.001 v12.1.0 (see highlighted text on page 40). VAMOS increases the number of voice channels/connections that can be simultaneously active. VAMOS technology is specific to 2G GSM/GPRS and is not supported in 3G UMTS and 4G LTE standards. The voice CODEC features of the RF chipset clearly states that it supports VAMOS (see page 13 of the chipset technical specification document, Annexure-Q). This clearly shows that the Mediatek RF chipset used in Paytm Soundboxes V1 and V2 supports VAMOS technology which is supported only in 2G GSM/GPRS and is not supported in 3G UMTS and 4G LTE standards. **This clearly shows that the Paytm Soundboxes V1 and V2 are 2G compliant and are not 3G UMTS/4G LTE compliant.**"
>
> **(emphasis supplied)**

39. The Principal Commissioner, therefore, committed an error in completely mis-interpreting the expert opinion given by the Professor. The said opinion makes it absolutely clear that the product is GSM/2G product which is not covered by the exclusionary clauses of Serial No. 20 of the Notification.

40. To reiterate, the issue that had arisen for consideration was whether the appellant was eligible to avail exemption under Serial No. 20 of the Notification on the import of 'paytm' soundbox Version 1 and Version 2 and for this what was required to be examined was whether the goods can only connect to 2G network due to the technical specifications of the goods. For this purpose, the appellant had placed

reliance upon two test reports submitted by Shenzhen STS Test Services Co. Ltd. and from Alpha Test House. The test reports submitted by both STS and ATH conclude that 'paytm' soundbox Version 1 is operating with 2G (GSM) signals and 'paytm' soundbox Version 2 is operating with 2G (GSM signals. Professor Saif Khan Mohammed, a technical expert in the field of wireless communication and a Professor in the Department of Electrical Engineering at I.I.T. Delhi gave his opinion on the two reports submitted by STS and ATH. The Professor specifically stated that merely because 'paytm' device is able to transmit and receive signals in a certain frequency band used by a 4G LTE device does not indicate that it must be a 4G LTE complaint device. This is clear from the replies given by the Professor to the six queries raised. In such a situation when the two test reports and the expert opinion of the Professor hold that the 'paytm' soundbox Version 1 and Version 2 operates with 2G (GSM) signals, the Principal Commissioner could not have ignored the two test reports and the expert opinion and himself drawn a conclusion, which is completely contrary to the two test reports and the expert opinion.

41. The Principal Commissioner has placed emphasis on a blog post appearing on the website of the appellant in which it is stated that the goods are 4G enabled. The appellant has not admitted the contents of the blog post as this information was published on the website of the appellant by a stanger and not by any employee of the appellant. It cannot, therefore, be said that because of this information appearing in the blog post on the website of the appellant, the product is 4G compliant. The product has to be independently examined to determine

whether it is 4G enabled or not and not by what is posted on a blog by a stanger on the website of the appellant.

42. The Principal Commissioner has also relied upon two articles available on Wikipedia website to hold that the chipset and RF bandwidth determine whether a device is 2G or 4G. It is on the basis of the two articles that the Principal Commissioner has held that the goods having MediaTek chipset are capable of working on GSM 850, EGSM900, DCS1800, PCS1900 bands, that have an uplink and downlink frequency identical to the LTE bands namely, LTE 5, LTE 8, LTE 3 and LTE 2 respectively and so the goods working on similar frequencies are also compliant to LTE standards.

43. This finding in the order passed by the Principal Commissioner is based merely on presumption and assumption that if device has a same uplink and downlink frequency for GSM and LTE bands, then the said device is compliant to both the network standards. The finding is not based on any authentic technical literature or any expert opinion, evidence, statement, report but is merely based on the two articles published on Wikipedia. Wikipedia cannot be considered as a reliable source of information since the website functions in a manner where any person is permitted to add contents. In this connection reliance can be placed on the judgment of the Supreme Court in **Hewlett Packard India Sales Pvt. Ltd.** vs. **Commr. of Cus. (Import), Nhava Sheva**[19] wherein it was held:

> **"14. At the outset, we must note that the adjudicating authorities while coming to their respective conclusions, especially the Commissioner of Customs (Appeals) have**

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> **extensively referred to online sources such as Wikipedia to support their conclusion. While we expressly acknowledge the utility of these platforms which provide free access to knowledge across the globe, but we must also sound a note of caution against using such sources for legal dispute resolution. We say so for the reason that these sources, despite being a treasure trove of knowledge, are based on a crowd-sourced and user-generated editing model that is not completely dependable in terms of academic veracity and can promote misleading information as has been noted by this court on previous occasions** also [Commissioner of Customs, Bangalore v. Acer India (P) Ltd. - (2008) 1 SCC 382, para 17 = 2007 (218) E.L.T. 17 (S.C.) = 2007 taxmann.com 219]. **The courts and adjudicating authorities should rather make an endeavour to persuade the Counsels to place reliance on more reliable and authentic sources.**"
>
> **(emphasis supplied)**

44. In the absence of any test report or cogent evidence produced by the department, the two articles published on the website of Wikipedia could not have been considered by the Principal Commissioner to arrive at a conclusion that the product is compliant to LTE standards.

45. Learned counsel for the appellant also submitted that the demand pertaining to the period prior to the amendment made on 01.02.2021 in the Notification is not sustainable. In this connection, learned counsel pointed out that prior to the amendment the scope of the exclusionary clause at (h) to Serial No. 20 of the Notification was restricted to the products that have both MIMO and LTE technology as was observed by the Tribunal in **Commissioner of Customs (AIR) Chennai-VII Commissionerate, Chennai** vs. **Ingram Micro India Pvt. Ltd**., but

the order passed by the Principal Commissioner has not given any finding as to whether the product has MIMO technology or not.

46. This submissions made by the learned counsel for the appellant deserves to be accepted.

47. The Tribunal in **Ingram Micro India** was called upon to examine Serial No. 13(iv) of heading 8517 that exempted all goods except those mentioned in clauses (i), (ii), (iii) and (iv). The observations of the Tribunal are as follows:

> "**15.** xxxxxxxx. Ingram Micro had claimed exemption under Serial No. 13 (iv) which is:
>
> > "(iv) Multiple Input/Multiple Output (MIMO) **and** Long Term Evolution (LTE) Products."
> >
> > (emphasis supplied)
>
> **16.** A bare perusal of the exclusion clause (iv) under Sl. No. 13 of notification shows that it covers MIMO and LTE products. **The sole dispute in this appeal is whether this exclusion clause covers products having only MIMO technology and not working on LTE standard. Exclusion clause (iv) uses the conjunction 'and' and, therefore, it can be urged that the scope of clause (iv) can be restricted to those products that have MIMO and LTE both and that the product that only has MIMO technology may, therefore, not be covered by this exclusion clause and, therefore, may not be excluded from the scope of Serial No. 13.**
>
> **17.** The contention of the Department is that 'and' should be read as 'or' in clause (iv) so that it would cover MIMO products or LTE products. **The contention advanced on behalf of Ingram Micro is that since the exclusion clause (iv) uses the conjunction 'and' its scope would be restricted to those products that have both MIMO and LTE. Thus, according to Ingram Micro a product that has only MIMO technology would not be covered by the**

exclusion clause and, therefore, would not be excluded from the scope of Serial No. 13 (iv).

18. The submission advanced by learned counsel for the respondent deserves to be accepted.

22. Though it is correct that clause (iv) would effectively mean include two categories of products namely MIMO and LTE and that they have distinct identities, but it is not possible to accept the contention advanced by learned special counsel for the Department that MIMO does not by itself mean anything unless it is followed by the expressions 'technology' or 'products' and, therefore, since the exception carved out has to be 'goods', this expression has to be interpreted to connote products based on MIMO technology.

23. What needs to be remembered is that MIMO is a technology and cannot be treated as an independent product. If the intention was to exclude even products having only MIMO technology, then the word 'products' should have been used after MIMO as well as after LTE. It, therefore, follows that the scope of 'products' excluded by entry (iv) would be products which use both MIMO and LTE. **Thus, the term 'Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) Products' means products which contain both MIMO and LTE. This view finds support from the following decisions.**"

(emphasis supplied)

48. In view of the aforesaid decision of the Tribunal, it has to be held that any demand for the period prior to 01.02.2021 cannot also be sustained.

49. When the demand is not sustainable, interest cannot be demanded from the appellant.

50. The goods cannot also be held liable for confiscation under section 111(m) of the Customs Act, since the appellant had correctly described

the goods in the Bills of Entry as **"**Paytm Soundbox, Version Number, BIS Registration Number with Date**"**. This apart, when the goods were first imported in India for testing purposes, the import documents bear the same declaration wherein even the exemption benefit claimed by the appellant under Serial No. 20 of the Notification was mentioned. Bill of Entry No. 9926510 dated 04.02.2019 associated with this import was even assessed by customs officer which was followed by an examination order wherein no objection was raised by the customs officer. The imposition of penalty under section 112(a) of the Customs Act, therefore, cannot be sustained. In any view of the matter there is nothing to show that the appellant acted with male fide intention.

51. Thus, for all the reasons stated above, the order dated 31.08.2022 impugned in Customs Appeal No. 52463 of 2022 and the order dated 28.07.2023 impugned in Customs Appeal No. 55695 of 2023 cannot be sustained and are set aside. The two Appeals are, accordingly, allowed.

(Order Pronounced on **05.08.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya, Jyoti