



\$~16 & 17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CUSAA 76/2023**
AMAZON WHOLESALE INDIA PRIVATE LIMITED

.....Appellant

Through: Mr. V. Lakshmikumaran, Mr.
Yogendra Aldak, Ms. Jyoti Pal,
Mr. Kunal Kapoor and Ms.
Anjali Singh, Advs.

versus

**CUSTOMS AUTHORITY FOR ADVANCE RULINGS, NEW
DELHI & ANR.**

.....Respondents

Through: Mr. Anurag Ojha, SSC along
with Mr. Subham Kumar, Mr.
Kumar Abhishek, Mr. Dipak
Raj Singh and Mr. Varun Garg,
Advs.

17

+ **CUSAA 2/2024 & CM APPL. 725/2024 (Interim Stay)**
AMAZON WHOLESALE INDIA PRIVATE LIMITED

.....Appellant

Through: Mr. V. Lakshmikumaran, Mr.
Yogendra Aldak, Ms. Jyoti Pal,
Mr. Kunal Kapoor and Ms.
Anjali Singh, Advs.

versus

**CUSTOMS AUTHORITY FOR ADVANCE RULINGS NEW
DELHI & ANR.**

.....Respondents

Through: Mr. Anurag Ojha, SSC along
with Mr. Subham Kumar, Mr.
Kumar Abhishek, Mr. Dipak
Raj Singh and Mr. Varun Garg,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

07.08.2024

%



1. These appeals impugn two decisions handed down by the **Customs Authority for Advanced Rulings**¹ which had been petitioned by the appellant with the purpose of receiving an opinion with respect to the classification of three devices, namely Echo Dot (5th Gen), Echo Dot (5th Gen) with Clock and Echo Pop. The appellant calls upon us to render our opinion on whether the devices in question are classifiable under **Customs Tariff Heading**² 8517 62 90 and if our answer be in the negative, whether those devices would fall under CTH 8518.

2. The AAR, in terms of the order impugned dated 12 July 2023 has held Echo Dot (5th Gen) as well as Echo Dot (5th Gen) with Clock are liable to be placed under CTH 8518 22 10 of the First Schedule to the **Customs Tariff Act, 1975**³. Similarly, it has found that Echo Pop is liable to be placed under the aforementioned CTH in the impugned order dated 27 September 2023.

3. Before us, it is undisputed that while dealing with similar products and which had been broadly placed in the category of “Echo Family Devices”, we had on a previous occasion been called upon examine the issue of classification in our decision in **Amazon Wholesale India Private Limited vs. Customs Authority for Advance Rulings, New Delhi & Anr.**⁴

4. Upon consideration of the rival submissions which were addressed on that appeal, we had recognized the principal attributes of the Echo Family Devices making them liable to be acknowledged as “convergence devices” as opposed to a mere speaker or other audio

¹ AAR

² CTH

³ Act

⁴ 2023 SCC OnLine Del 7817



devices of a like character. This becomes evident from the following observations that came to be rendered by us in the aforementioned judgment:-

“40. However, of significant import was Note 3 and which spoke of composite machines including those which were designed to perform two or more complementary or alternative functions. The Note bid the Authority in such cases to approach the issue of classification by bearing in mind the principal or the dominant function which the product could perform. The AAR clearly failed to advert to the legal fiction which stood introduced by virtue of Note 3 when it used the expression “as if consisting only of that component or as being that machine which performs the principal function.” The soul of these devices was their ability to act as means for the transmission and reception of data, the devices when working in a wi-fi environment enabling the user to perform a multitude of tasks, the recognition of voice commands and interacting with the AVS in real time. It was these facets which constituted the core ability of these devices and thus compelling one to acknowledge this capability as constituting the principal “component” of that machine and the said features being its principal function. The legal fiction created by Note 3 unerringly commands us to reach this conclusion.

XXXX

XXXX

XXXX

44. We also find merit in the submission of the appellants that the AAR clearly erred in resting its conclusion on the fact that those devices when not connected to the internet would function merely as speakers. The aforesaid line of reasoning is rendered wholly untenable when one bears in mind the indubitable fact that the subject devices were not intended to be used merely as speakers but were embodiments of “technological convergence” representing a combination of technologies enabling the holder thereof to replace multiple devices with one gadget or tool for the purposes of communication, information and entertainment. It would thus be wholly incorrect to view the subject devices as being simply speakers.

XXXX

XXXX

XXXX

48. We also find merit in the submission of Mr. Lakshmikumaran who had drawn our attention to the decision rendered by the AAR, Mumbai who had while examining the question of classification of a similar device, namely the “Apple HomePod” correctly come to conclude that it was principally a convergence device.



49. While the precept of principal function is well settled, we deem it apposite to notice the decision of the Supreme Court in *Commissioner of Central Excise, Delhi v. Carrier Aircon Ltd.*¹⁵, where the question which arose was whether chillers were liable to be classified in the category of air conditioning machines merely because they were predominantly used in air conditioning plants. While answering in favour of the assessee, the Supreme Court observed as follows:—

“13. From the above, it is established that the primary function of the chiller is to refrigerate or chill water/liquid irrespective of the industrial or other application which the chilled water is put to. Air-conditioning system is just one amongst the various industrial applications in relation to which chillers are used. Only because 90% of the chillers manufactured by the respondent are used in the air-conditioning systems cannot be the basis for classification of the chillers as parts of air-conditioning system classifiable under Heading 84.15.

14. End use to which the product is put to by itself cannot be determinative of the classification of the product. See *Indian Aluminium Cables Ltd. v. Union of India* [(1985) 3 SCC 284 : 1985 SCC (Tax) 383]. There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification the relevant factors *inter alia* are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to (*sic* produced), the end use to which the product is put to, cannot determine the classification of that product.

15. Tariff Heading 84.15 covers air conditioning machines which control and maintain temperature and humidity in closed places. The main function of air-conditioning system is to control temperature which is not done by a chiller. A reading of Tariff Entry 84.15 would show that it is intended to cover only those machines which comprise elements for changing temperature and humidity and chillers would fall outside the purview of the said entry. The function of the chiller is only to chill water or bring it to a very low temperature, and it is the air-handling unit having an independent and distinct function which produces the effect of air conditioning, controlling the temperature and the humidity. The chiller itself does not do any air conditioning as it is designed only to refrigerate or produce chilled water/liquid.



16. Revenue is classifying the impugned chillers as parts of the air-conditioning system as the same are used in central air-conditioning plants of star hotels, airports, hospitals, large office complexes and large establishments. The use of the chillers in the air-conditioning system would not take away the primary or basic function of the chiller which is to produce chilled water by using a refrigerating circuit. Heading 84.18 covers refrigerators, freezers and other refrigerating or freezing equipment. Accordingly, the chillers in question shall fall under specific Heading 84.18 of the Tariff Act. This view is supported by the explanatory notes of HSN below Heading 84.15. HSN provides that:

“If presented as separate elements, the components of air conditioning machines are classified in accordance with the provisions of Note 2(a) to Section 16 (Headings 84.14, 84.18, 84.19, 84.21, 84.79, etc.)....”

“Chillers” manufactured by the respondent are cleared as separate elements and not as (*sic* part of) air conditioning machines, therefore, the same have to be classified under Tariff Entry 84.18 as refrigerating or freezing equipments as the basic function of the chillers is to chill the water or liquid. Chillers manufactured by the respondent cannot be classified under Heading 84.15 simply because 90% of the chillers manufactured by the respondent were being used in the commissioning of central air-conditioning plant. End use to which the product manufactured is put to, cannot determine the classification of the product when the product manufactured falls under a specific heading.”

50. Closer to our case is the decision rendered by the Supreme Court in *Xerox India Limited v. Commissioner of Customs, Mumbai*¹⁶ and where the question of multifunctional machines and their classification arose for consideration. The products in that case were capable of being used as a printer, fax machine, copier as well as a scanner. The Department in that case sought to place those machines under Tariff Entry 8479 89, being the residual entry as opposed to the assessee which claimed the product to be a part of CTH 8471-Automatic Data Processing Machines. While answering the question as posited in favour of the appellant/assessee, the Supreme Court observed thus:—

“15. In order to determine the classification of the multifunctional machines, it is necessary to look into some relevant provisions. Rule 3(a) of the General Rules for the Interpretation of the First Schedule (which along with the Second Schedule specifies the rates at which duties of



customs shall be levied under the Customs Act) provides:

“3.(a) The heading which provides the most specific description shall be preferred to headings providing a more general description.”

Further, Rule 3(b) of the same reads as follows:

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

16. In addition, Note 3 to Section XVI (which includes both Chapter 84 and Chapter 85) reads as follows:

“3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which *performs the principal function*.”

17. It is not in dispute that the multifunctional machines in question, Xerox Regal 5799 has about 85% of its total parts and components along with manufacturing cost allocated to printing, as does 74% of the Xerox XD155^{df} model. This clearly shows that the printing function emerges as the principal function and gives the multifunctional machines its essential character. Having such a nature, it also clearly meets the threefold requirement of Chapter Note 5(B), as it is to be used principally in ADPM, it is connectable to the central processing unit, and it is able to accept data in a form (codes or signals) which can be used by the system. Further, there would be no application of Chapter Note 5(E) as correctly pointed out by the learned counsel for the appellants, as the multifunctional machines are presented independently. Moreover, since predominant components are relating to printing function, Chapter Note 5(D) also becomes relevant which includes printers under Heading 84.71. We are also satisfied with the contention of the appellants that based on the nature of the functions they perform, the multifunctional machines would serve as input and output devices of an ADPM (computer) and thus serve as unit of an ADPM, which on a reading of Chapter



Note 5(C), clearly classifies them as falling under Sub-Heading 8471.60 of the Act.

18. We are not in agreement with the submission made by the learned Senior Counsel for the Revenue. The primary contention of the respondent is that no one function of the multifunctional machines, even printing, can be seen as predominant. This has clearly been shown to be incorrect on facts, and in the light of the submissions by the appellants, there has been no case made out for classification of the goods under the residuary Sub-Heading 8479.89. We may also notice that the Tribunal, while considering the decision on which reliance was placed by the learned counsel appearing for the appellants, has stated that those decisions are distinguishable on facts without appreciating that in principle, the case cannot be distinguished.”

51. We find ourselves unable to sustain the view as expressed by the AAR for the following additional reasons. Undisputedly, India follows the HSN system of classification. We take note of the determinations made by competent authorities in jurisdictions overseas with respect to similar convergence devices and which too though not strictly binding on the AAR, would have merited due consideration and are liable to be accorded deserved weightage while answering an issue of classification. Ultimately the *raison d'etre* for adoption of the HSN system is to aid international commerce as well as to achieve uniformity and certainty in trade and commerce. Those determinations are not only representative of how such products have come to be classified globally, they would also be germane and relevant to answer questions of classification when raised.

52. The Board's view, as expressed, albeit in respect of Bluetooth Wireless Headsets, also duly acknowledges the function of products which are principally concerned with transmission or reception of voice, images and data. The Circular took due notice of the fact that while ordinary Headphones carry only audio signals, Bluetooth Wireless Headsets are designed to be active participants in a networked environment and thus enabled to receive and transmit voice and data across a wireless network. The view, as expressed by the Board in the aforementioned Circular dated 05 September 2013 is a reiteration of the special characteristics of devices which are designed to perform multiple functions in a wired or wireless network including the reception and transmission of voice and data and thus transcending the limits of traditional products which only reproduce or play back content.”

5. Speaking on the ambit of CTH 8517, we had in *Amazon*



Wholesale India Private Limited observed as follows:-

“41. Of equal significance is the ambit of CTH 8517 and which includes apparatus for transmission or reception of voice, image or other data including apparatus used for communication in either a wired or wireless network environment. The appellant had sought to place the seven devices in question in Tariff Entry 8517 62 90 and which fell within the umbrella entry of machines for the reception, conversion and transmission or regeneration of voice, images or other data. The devices, as we have found above, clearly qualified and fell within the range of products which CTH 8517 covered.

XXXX

XXXX

XXXX

47. As is evident from the explanation of the unique features of the products in question, they were principally designed to act as mediums for reception and transmission of data and could additionally and as an aside also be used as a speaker. However, since these were essentially reception and transmission devices which could analyze data and perform the varied functions noticed above, they were rightly described by the appellant as being communication devices and thus answering the requirement of machines for the reception, conversion and transmission or regeneration of voice, images or other data as contemplated under Tariff Entry 8517 62 90.

XXXX

XXXX

XXXX

55. As would be evident from the findings and conclusions recorded hereinabove, the impugned devices perform a host of functions including reception, conversion and transmission of voice or other data to produce the requisite final output warranting their classification under CTH 8517. We are also of the firm opinion that merely because these devices could if so chosen by the user also be used as mere speakers, the same would not justify us recognising their primordial attribute to be that of a speaker alone.”

6. We additionally note that the scope of CTH 8518 was explained by us in *Amazon Wholesale India Private Limited* in the following terms:-

“42. CTH 8518, on the other hand stood confined to loudspeakers, headphones and earphones. It brought within its ambit single or multiple loudspeakers whether or not mounted in enclosures, as well as headphones and earphones and other like articles. As would be evident from a plain reading of CTH 8518, the said Tariff



Heading does not even purport to deal with apparatus used for transmission or reception of voice, image or other data or a product used for communication in a wired or wireless network. CTH 8528 is also not concerned with the transmission or reception of voice, image or other data or for communication in a wired or wireless network.

43. CTH 8518 was thus confined to loudspeakers per se while CTH 8528 stood basically confined to displays and monitors generally. Those entries cannot be construed as extending their coverage to convergence devices or platforms which were designed and enabled to perform the function of transmission and reception of voice or data or the performance of the varied functions which constituted the special characteristics of the seven devices in question. If one were to test these devices bearing in mind Note 3, it is apparent that the AAR was obliged to approach the issue by seeking to discern the primary function of the devices. Viewed in that light, it is manifest that the devices were not mere speakers. They were essentially designed to act as mediums of communication, transmitting voice, image or data and performing myriad functions in a wired or wireless environment. The playback ability of those devices could not have justifiably been recognised as being their primary or dominant function.

XXXX

XXXX

XXXX

54. We firstly take note of the said notification clearly stipulating that portable Bluetooth speakers would for the purposes of the said notification be placed in the category of ‘hearable devices’. All that the said notification therefore purports to achieve is to include portable Bluetooth speakers in the category of ‘hearable devices’ and that too for the purposes of extending the benefits of exemption in terms of that notification. The said notification thus cannot be viewed as a determination of the question of classification of devices which receive or transmit data, be it audio or visual, or those which are capable of analyzing data and having special attributes ascribed to the devices in question. It may be additionally noted that neither CTH 8518 nor 8528 employ the expression ‘hearable devices’. That expression formulated to describe a particular range of products is used only in the exemption notification. Thus, the mere inclusion of Bluetooth speakers under the heading of ‘hearable devices’ also does not convince us to doubt the views expressed hereinabove.”

7. It becomes pertinent to note that the decisions of the AAR which are impugned before us came to be pronounced prior to the judgment rendered by us in *Amazon Wholesale India Private Limited*.



The AAR, thus clearly had no occasion to examine the questions in light of our decision and which would constitute the binding declaration of the legal position by the jurisdictional High Court. In any event, and for reasons assigned in that decision, we are of the firm opinion that the orders impugned here cannot be sustained.

8. However, and before parting, we deem it apposite to deal with some amendments which have come to be introduced in CTH 8518 by way of Finance Act, 2022. As a result of those amendments, CTH 8518 has seen the inclusion of the expression “wireless” in terms of CTH 8518 29 10 and CTH 8518 22 10, while CTH 8517 has remained untouched. However, it becomes pertinent to note that the broad heading of CTH 8518 remains unchanged and reads as follows:-

“Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets”

9. Consequently, the inclusion of the expression “wireless” would have to be read alongside the principal commodities which are covered by and fall within the expanse of CTH 8518. The word ‘wireless’ would thus have to be read alongside ‘loudspeakers’, ‘headphones’ and ‘earphones’. Merely because the subject devices are also enabled to perform and operate in a wireless environment, they would not be liable to be placed under CTH 8518.

10. We consequently allow the instant appeals and set aside the impugned orders dated 12 July 2023 and 27 September 2023 rendered by the AAR and hold that the three subject devices would be liable to be classified under CTH 8517 62 90.

11. Following the reasons assigned in our decision in *Amazon*



Wholesale India Private Limited, we further hold that the appellant-assessee would be entitled to claim exemption in terms of Serial No. 20 of Notification No. 57/2017-Cus dated 30 June 2017.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 07, 2024/neha