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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WRIT PETITION (CIVIL) No. 4826/2017**

Reserved on: 17th August, 2018
Date of decision: 28th August, 2018

UNION OF INDIA & ANR. ..... Petitioners
Through Mr. Sanjeev Narula, Standing Counsel.

versus

AMAZON SELLER SERVICES PVT. LTD. ..... Respondent
Through Mr. L. Badri Narayanan, Mr. Karan Sachdev & Ms. Saumya Dubey, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

The Principal Commissioner of Customs, Air Cargo Complex (Import) and the Union of India, through Ministry of Finance, have filed the present writ petition for setting aside and quashing the Order No. AAR/CUS/01/2015 dated 15th May, 2015 passed by the Authority for Advance Rulings (the AAR, for short).

2. The impugned order holds that Kindle e-reading devices imported by M/s Amazon Seller Services Private Limited, the respondent before us and the applicant before the AAR, being "electrical machines with translation or dictionary functions" were exempt from basic customs duty vide serial No. 26 of the Exemption Notification No. 25/2005-CUS dated 1st March, 2005 as amended by

notification No. 133/2006-CUSTOMS dated 30th December, 2006 (hereinafter collectively referred to as 'the exemption notification').

3. Counsel for petitioner-Revenue has confined and restricted his challenge to the interpretation given to the expression "electrical machines with translation or dictionary functions" in Serial No. 26 of the exemption notification i.e. whether Kindle e-reading devices were "electrical machines with translation and dictionary function". Revenue does not dispute the finding that Kindle devices are electrical machines under the residuary clause, i.e., "others" under the residuary Custom Tariff Heading (CTH, for short) 8543 89/8543 7099.

4. Revenue submits that the primary function of Kindle e-reading devices was not to translate or perform dictionary functions and hence, they would not be covered under the expression "electrical machine with translation or dictionary function". Reliance is placed on the Constitution Bench decision of the Supreme Court in ***Commissioner of Central Excise, New Delhi versus Hari Chand Shri Gopal And Others***, (2011) 1 SCC 236 and ***Commissioner of Customs (Import), Mumbai versus Dilip Kumar***, in Civil Appeal No. 3327/2007 decided on 30th July,2018, to urge that exemption notifications should be construed and interpreted strictly and in case of ambiguity and doubt interpretation in favour of the Revenue, rather than the assessee is mandated and required.

5. Counsel for respondent, on the other hand, submits that the Serial No. 26 of the exemption notification has been rightly interpreted by the AAR, for the expression used in the notification was, 'electrical machines with translation or dictionary functions' and

the word “with”, indicates that translation or dictionary function need not be the dominant or the primary purpose of the electrical machines. It would be sufficient if the electrical machines could perform and have translation or dictionary function, a feature admittedly present in the Kindle e-reading devices. Distinction and difference in use of the word "for" in the exemption notification with reference to other exempted items was highlighted. This was the core reasoning given by the AAR in paragraphs 2 and 3 of the impugned order.

6. Respondent has highlighted that a number of other contentions and arguments were raised by the Revenue before the AAR, including question of classification under the CHA 8543 89/8543 7099, which were examined and dealt with in the impugned order. Contentions now raised are somewhat different from the primary and core submission before the AAR.

7. At the outset, we may record that the Revenue has not contested and questioned classification of Kindle e-reading devices under the CHA 8543 89/8543 7099. Thus, two sides are *ad idem* that Kindle e-reading devices would be covered under the residuary tariff item CHA 8543 89/8543 7099, i.e., "others", under the Chapter 85 heading "electrical and electronic machinery and equipment".

8. In order to appreciate and understand the contention raised on interpretation of exemption notification, we would like to quote relevant portion from the notification dated 30th December, 2006 which reads :-

> “G.S.R. (E).- 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 following the goods of the description specified in column (3) of the Table below and falling within the 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, form the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

S. No.	Heading, Sub-heading or Tariff item	Description of goods
26.	8543 7099	Electrical machines with translation or dictionary functions

”

9. The AAR had dealt with and interpreted exemption granted under Serial No. 26 with reference to the Kindle e-reading devices in the following words:-

> “2. The application is opposed by the Revenue, Customs Department on the ground that the Kindle Device which is imported does not have the translation or as the case may be dictionary functions as it is the main feature. The contention of the Revenue is that the Notification would be applicable only to such Kindle devices which have the translation or as the case may be dictionary functions as its main function.

> 3. The interpretation of the Revenue is completely incorrect if the Tariff entry 8543 7099 is accepted, then it is clear that all such electrical machines which have the translation or its dictionary functions will be entitled to be benefitted by the Notification as stated above. When the entries are to be read, the plain meaning have to be given to those entries. We do not find anything anywhere in the Notification which admits of any other interpretation much less offered by the Revenue to the effect that the function of translation or dictionary as the case may be, should be a main feature of the electrical machine like Kindle device. We, therefore, reject the contention of the Department on this point."

10. Clearly, the AAR has interpreted serial No. 26 of the notification, inasmuch as it has accepted the interpretation placed by the respondent. The contention of the petitioner that the AAR did not examine and interpret Serial No. 26 of the notification is, therefore, incorrect and mistaken. However, it could be urged that detailed elucidation of the expression "electrical machines with translation or dictionary functions" is absent and principles of interpretation applicable to exemption notification have not been discussed.

11. In the application dated 8th June, 2012 filed before the AAR, the respondent had described the Kindle devices as under:-

> "2. Applicant proposes to enter into a new business activity wherein the applicant will be importing among other things, various models of e-book readers for resale in India. The various models of e-book readers shall be sold as Kindle e-book readers and include models such as Kindle, Kindle Touch, etc. These various models

of Kindle e-book reader are hereinafter referred to as “Kindle Devices”. Applicant proposes to import these e-book readers for reselling the same to distributors and other wholesale dealers who will ultimately sell these products to the end users or individual customers.

3. The Kindle Devices are electronic book readers which allowsa (sic allows) userto (sic user to) read e-books. The Kindle devices simulate the experience of reading a physical book to a reader through a patented e-link technology and e-ink display screen. Readers can purchase/download e-books, newspapers and magazinesonto (sic magazine) the Kindle Devices from the Amazon Kindle web store. The details of the product description and specification are provided as Annexure-IV.

4. The following are the features of the Kindle Devices:

(a) Screen size of 6”- 10”(depending upon model) with e-ink display screen;

(b) Weight: 5.98 – 18.9 Ounces (depending on model);

(c) 5-Way Controller and/or Touch Capability;

(d) Battery Life with wireless switched-off: 1 month or 2 months (depending on model)

(e) Storage: 2 GB/4GB on device to store about 1,400/3,000 books (depending on model)

(f) Text-to-Speech capability;

(g) In-Built Dictionary Function;

(h) Proprietary software specifically designed for e-books: Bookmarks and Annotation on the e-books; Personal documents service; Highlighting of passages; Sharing of meaningful passages via social networking sites such as Facebook, Twitter, etc.;

Lending books between users;

(i) Content Formats: Kindle (AZW), TXT, PDF, unprotected MOBI, PRC natively;
HTML, DOC, DOCX, JPEG, GIF, PNG, BMP through conversion;
(j) Network connectivity is via Wi-Fi, WAN, 3G and network via USB 2.0;
(k) No voice or other data communication function is available. For example readers cannot make voice calls, or send messages over the wireless network. No other form of transmission of data is available other than downloading of e-books and those mentioned at S. No. (h) above;

(I) Experimental Web Browser via Wi-Fi connection only.

5. The main feature/function of the Kindle Devices is to allow reading of books/newspapers/magazines in electronic format. Accordingly, the operating system and proprietary software built into the Kindle Devices also have limited functions and much lower processing capabilities than personal computers. In other words, the Kindle Devices are not designed to perform computing functions. The Kindle Devices allow for viewing of different files but do not allow for easy creation of content. Therefore, the Kindle Devices are not comparable or substitutablefor (sic) personal computers or tablets or other hand-held computers. The readers purchase Kindle Devices primarily for reading

> books/newspapers/magazinesin (sic) electonic form.
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> 6. The Kindle Devices have limited communication functionality. The Kindle Devices connect to the internet via Wi-Fi or 3G mainly for the purpose of downloading the e-books onto the device. The Kindle Devices contain an experimental web browser that is not designed for extensive internet browsing. The Kindle Devices do not have any voice or image communication built in. The users of the Kindle Devices pre-dominantly consume content that is present on the device and not content that is generally available on the internet.
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> 7. The Kindle Device also contain an in-built dictionary function. At the time of reading e-books, users can select a particular word on the page and an in-built dictionary displays the meaning of the word at the bottom of the page. The dictionary is stored on the device and there is no requirement to connect to the internet for accessing the dictionary. Therefore, the Kindle Devices contain an in-built dictionary."

12. The respondent had accepted in the application before the AAR that Kindle devices were primarily e-book readers, albeit also have inbuilt dictionary in the device, which the reader can use to understand meaning of the selected word. We would observe that no false or misleading representation regarding nature and use/function of the e book device was made. Nature and functions performed by a Kindle device are not under challenge and a matter of dispute before us.

13. Given the nature of dispute, we had called upon the petitioner to produce the original file under which the exemption notification was

processed and issued. The respondent was also given liberty to file copy of the Information Technology Agreement as it was argued that the exemption Notification No. 25/2005-Cus dated 1st March, 2005 was issued pursuant to and in terms of the Information Technology Agreement to which India is a signatory.

14. Petitioners have not been able to produce the relevant file and stated that in-spite of efforts made the file is untraceable. However, the petitioner state that all signatory countries including India to the Ministerial declaration on Trade and Information Technology Products, Singapore dated 13th December, 1996 (ITA-1) were to eliminate customs duties and other duties and charges of any kind, within the meaning of Article II: I(b) of the General Agreement of Tariff and Trade, 1994 with respect to the products annexed to the declaration. India being a signatory to the ITA-I was bound to classify and grant exemption to 217 items, including "Electrical machines with translation or dictionary functions", covered by the agreement on which nil basic customs duty was prescribed. The Notification No. 25/2005-Cus dated 1st March, 2005 was accordingly issued, exempting certain products from customs duty. The petitioner state that the sub-heading 8543 89 "others" would cover electrical machines and apparatus having individual functions not specified or included elsewhere in Chapter 85. The said entry was a residual entry, as was clear from the word “others”. The exemption or nil duty, vide the exemption notification was, however, prescribed and applicable to "electrical machines with specific translation or dictionary functions" only and not for all machines falling under the residual entry "others".

Subsequently, there were changes to the Customs Tariff Act, 1975 with effect from 1st January, 2007, and tariff item 8543 89 was substituted by sub-heading 8543 70 and the residual entry of “others” 8543 89 (99) was substituted by tariff item 8543 70 99. Accordingly, Notification No. 25/2005-Cus was amended by Notification No. 133/2006-Cus dated 30th December 2006 w.e.f. 1st January, 2007 and the relevant tariff item 8543 89 (99) was substituted by tariff No. 8543 70 99. Consequently, the description of the exemption goods was also slightly changed and was recorded as “electrical machines with translation or dictionary functions”.

15. The petitioner reiterate that e-book readers were/are products/items covered under the residuary tariff item "others", be it 8543 89 or 8543 70 99 that would attract basic customs duty of 12.5%, reduced to 7.5%. in January, 2007. However, vide the Budget of 2014, basic excise duty on e-readers was reduced from 7.5% to nil on general consideration as such and wishes of such readers. Subsequently, vide Budget of 2016-17 this exemption for e-readers was withdrawn and as a result e-readers were to attract basic customs duty of 7.5%. It is also the case of the petitioner that the products covered under the ITA-1 dated 13th December, 1996 to which India is signatory, would not cover modern information technology products.

16. We would note that for decision of the present case, we have to adjudicate and decide whether e-reading devices like "Amazon kindle devices" would fall within the ambit of "electrical machines with translation or dictionary functions" which were granted and allowed exemption. Suffice, for the present consideration and decision, is to

notice the contention of the petitioner that it is the primary or the main function and not ancillary or secondary function, which would entitle a product to claim exemption under the exemption notification covering "electrical machines with translation or dictionary function." The respondent contests the said submission, and rely on the word "with" with reference to dictionary function, to urge that no distinction could be drawn between primary and ancillary function.

17. Our research has shown that the issue of classification and exemption of “e-reading devices for electronic books” under the Combined Nomenclature (CN, for short) Code 8543 70 10 “electrical machines with translation and dictionary functions” on which no conventional rate of duty was payable was raised before the Court of Justice of European Union in the case of Amazon EU Sarl on reference made in terms of request made by Principal Customs Office, Hanover, Germany. Contention of the Customs Office, Germany was that the CN Code 8543 70 90 applicable to "others" on which conventional duty @ 3.7% was payable, would apply to "e-reading devices for electronic books". Decision of the Court of Justice of European Union dated 11th June, 2015 opines that "e-reading devices for electronic books" in addition to hardware and software for reading e-books have a speech output option and a programme for reproduction of audio formats. E-reading devices also have a dictionary function, which can be pre-installed with option to download and install additional dictionaries. European Court referred to Rule 3 of Part-I of sub-section A of the General Rules, titled "General Rules for interpretation of CN", which reads as under:-

> "3. When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:
>
> (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;"

The Court of Justice of the European Union while applying the said Rule and principle, also applied their earlier rulings that for the purpose of classifying a product it was necessary to take into account what the consumers would consider to be ancillary or principal function. It was held that a product should be classified having regard to the principal function and not one of the ancillary functions. The Court of Justice of the European Union held that in the absence of the CN of sub-heading corresponding to the principal function of the product, electronic book readers would be classifiable under the residuary sub-head, i.e., "others" and not under the CN code "electrical machines with translation or dictionary functions".

18. However, there is contra ruling by the United States International Trade Commission in the case of Thomson Multimedia, Inc. regarding the e-book reader RCA REB 1100 and 1200 Amazon, HQ 9647 79 dated 27th February, 2002, wherein the electronic e-book

readers were classified under the sub-heading 8543.89.92 "electrical machines with translation or dictionary functions". Referring to comparison with sub-heading 8543 89 96, i.e., "others", which was described as the basket provision, it was observed that use of the word "with" in the sub-heading, 8543 89 92 indicates combination, accomplishment, presence or addition or omissions inclusive of all and, therefore, this sub-heading did not require that the dictionary should serve as the principal function of the electronic machines. Rather, the word "with" indicates mere presence of dictionary function, that was all that was required.

19. To grapple with "with" and explain the expression "electrical machines with translation or dictionary functions", we will strictly go by the words used in the exemption notification and give natural and normal meaning to the said words for there is no indication as to the object and purpose behind providing such exemption or concessions, except the obligation in terms of ITA-I. The first aspect to be noticed is that exemption has been granted to a limited category of items/products covered by the residuary entry "others" enlisted as CHA 8543 89/8543 7099 under Chapter V under the heading "electrical and electronic machinery and equipment". The products covered under the residuary clause CHA 8543 89/8543 7099 are products not specified and included elsewhere in the chapter 8543 89 10 to 8543 89 95. In other words, what would be covered by the exemption notification are items or goods, which fall under the residuary clause and not any item which falls under a specific clause of the tariff items. The issue of classification of Kindle Devices under

Tariff Item 8543 89/8543 7099 was raised before the AAR, but the said position has not been argued and contested before us. There is no dispute or debate that Kindle Devices fall under the residuary clause, i.e., “others” covered by item No. 8543 89/8543 7099.

20. However, the exemption granted vide exemption notification, relates to a category of "other" goods classified under Tariff Item 8543 89/8543 7099; namely, “electrical machines with translation or dictionary functions”. The exemption has not been granted to all products/items covered by the residuary clause 8543 89 / 8543 70 99. Therefore mere classification of the e-readers under CHA 8543 89/8543 7089 as "others", is not sufficient to claim benefit of exemption. The requirement and stipulation in the exemption notification under the heading “Description of Goods”, is restricted to "electrical machines with translation or dictionary functions". Translation or dictionary function, we would observe, qualifies the term “electrical machines” and two stipulations are connected and joined with word “with”. The word “with” has been interpreted below, but at this stage, it may be stated that translation or dictionary functions would not exist in “electrical machines”, until and unless they have ability to function as a translator or perform dictionary function. It is an accepted and admitted position that there were/are electrical/electronic machines preloaded with translation or dictionary software with the exclusive or primary function of translator or dictionary.

21. We now turn to the connecting word “with” and interpret the same. Dictionary meaning of the word “with” in *Webster's*

Comprehensive Dictionary is “in the company of; as a member or associate of”. The word "with" is also used, by means of or aid of, as is apparent when we use the word “with” in the sentence; to write "with" a pencil. Therefore, the word “with” can in the context mean, adding or having a material or quality or endowed with the particular character. In *Oxford Advanced Learners Dictionary* the word “with” has been defined as having or carrying, which in the present context would mean an electrical machine which carries, i.e., works and functions as a translator or has a dictionary function. The Dictionary also states that the word “with” may have reference to having possessing or showing a particular thing or quality or a feeling. The word “with” as per *Words and Phrases, Permanent Edition, Volume 46 published by West Publishing Company*, denotes or expresses some situation or relation of nearness, proximity, contiguity or association, connection or the like. It can be used to denote the accompaniment of a cause, means or instruments, etc.; sometimes equivalent to “by”. It is stated that the word “with” is frequently used in the same sense of “in addition to” i.e., word “with” has a dual meaning and may be defined to mean either inclusive of or by way of addition or supplement.

22. Referring and interpreting the word “with” with reference to the eligibility criteria in the recruitment rules on years of service, the Supreme Court in ***A.K. Raghumani Singh and Others versus Gopal Chandra Nath and Others***, (2000) 4 SCC 30 had observed and held:-

> "**7.** The word "with" has been defined in the *New Shorter Oxford Dictionary* (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means: "Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense 'and' — 'as well'."
>
> **8.** Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years' experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word "subsequent" after the word "with".

In the said case, the Supreme Court had observed that use of the word "with" would depend on the context in which it is used. The word "with" could mean "accompanied by", as having an additional function, albeit frequently is used as to convey "and".

23. Reference on question of interpretation of exemption provisions can be made to ***Star Industries versus Commissioner of Customs (Import) Raigad***, (2016) 2 SCC 362, which had quoted the following passage from ***Novapan India Limited versus CEC & Customs***, ***Hyderabad*** 1994 Supp (3) SCC 606:-

> "*16*. We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals* [*Mangalore Chemicals and Fertilisers Ltd.* v. *CCT*, 1992 Supp (1) SCC 21] and in *Union of India* v. *Wood Papers Ltd.* [*Union of India* v. *Wood Papers Ltd.*, (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , referred to therein—represents the correct view of law. *The*

> *principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee—assuming that the said principle is good and sound—does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals* [*Mangalore Chemicals and Fertilisers Ltd.* v. *CCT*, 1992 Supp (1) SCC 21] *and other decisions viz. each such exception/exemption increases the tax burden on other members of the community correspondingly*. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in *Hansraj Gordhandas* v. *CCE and Customs* [*Hansraj Gordhandas* v. *CCE and Customs*, AIR 1970 SC 755 : (1969) 2 SCR 253] , that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption."

24. In ***IVRCL Infrastructure and Projects Limited versus Commissioner of Customs***, (2015) 13 SCC 198, it was observed that eligibility clause in relation to exemption notification is to be given strict meaning, thereby meaning that the notification is to be interpreted in terms of the language and once the assessee satisfies the

eligibility clause, exemption clause therein has to be construed liberally. Thus, eligibility condition deserves strict construction although construction of a condition may be given a liberal meaning. ***G.P. Ceramics (P) Limited versus CTT***, (2009) 2 SCC 90, which refers to several earlier decisions, elucidating on interpretation of tax exemptions had observed that exemption given with a beneficent objective would be in public interest and for public purpose. Sometimes, the Courts take into consideration the object and purpose to clear an ambiguity and doubt and make exemption clause effective. Courts have taken a pragmatic and a practical view so as to avoid any anomaly or absurdity as was held in ***Union of India versus Ranbaxy Laboratories Limited and Others***, (2008) 7 SCC 502 and ***Oxford University Press versus Commissioner of Income Tax***, AIR 2001 SC 886. In ***Commissioner of Central Excise, Jaipur versus Mewar Bartan Nirmal Udyog***, (2010) 13 SCC 753, the Supreme Court observed that when a dichotomy is introduced by an exemption provision/clause, the same has to be interpreted in terms of its language.

25. In ***Hari Chand Shri Gopal*** (supra), Constitution Bench of the Supreme court had examined several earlier rulings, including decision in ***Collector of Central Excise, Jaipur versus J.K. Synthetics***, 2000 (120) ELT 54 (SC) and ***Novopan India Limited*** (supra) and had held as under:-

> "**29.** The law is well settled that a person who claims exemption or concession has to establish

that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.

30. In *Novopan India Ltd.* [1994 Supp (3) SCC 606] this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas* v. *CCE and Customs* [AIR 1970 SC 755 : (1969) 2 SCR 253] held that (*Novopan India Ltd. case* [1994 Supp (3) SCC 606] , SCC p. 614, para 16)

> "*16.* … such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption."

> **31.** Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. In *TISCO Ltd.* [(2005) 4 SCC 272] this Court held that the principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning where for the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature."

26. Recent decision of the Supreme Court in ***Commissioner of Customs (Import), Mumbai versus M/s Dilip Kumar and Company and Others,*** Civil Appeal No. 3327/2007 dated 30th July, 2018 overrules the ratio in ***Sun Export Corporation, Bombay versus Collector of Customs, Bombay*** (1997) 6 SCC 564 and holds that there is a difference between three components of a taxing statute, namely, subject of tax; person liable to tax; and rate at which tax is to be levied. In the case of ambiguity of taxation provision relating to the subject matter of tax and the person liable to tax, the State has to prove the liability and in case of ambiguity, benefit would go to the assessee.

One has to look merely at the words stated and there is no room for any intendment or presumption to bring the subject matter and the person to tax. However, the same principle would not apply in case of tax exemption, where and when in case of doubt the issue should be decided in favour of the Revenue. Here again, the Supreme Court referred to the decision in ***Hari Chand Shri Gopal*** (supra) to draw distinction between conditions which require strict compliance, the non-compliance of which would render the assessee ineligible for exemption and procedural provisions which require substantial compliance to be entitled for exemption. The two situations are different and while considering an exemption notification, this distinction cannot be ignored. To sum up, the Supreme Court in ***M/s Dilip Kumar and Company*** (supra) had observed:-

> "60. To sum up, we answer the reference holding as under-
>
> Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
>
> When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
>
> The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands over-ruled."

27. In the present case, the exemption notification was to allow import of "electrical machines with translation or dictionary functions" at nil rate of duty. In whatever manner we interpret the said words the interpretation should not be irrational and arbitrary. Chapter 85 deals with the electrical machinery and equipment and parts thereof. The "electrical machine apparatus" are classified under tariff item heading 8543. These include electronic equipments like video special effect equipment, video typewriter, audio-visual stereo encoders, radio frequency power transformers, etc. It is undisputed and unchallenged, as stated above, that Kindle devices would fall under the basket or residuary heading 8543 89/8543 7099. Thus, the only issue is whether the said device is "with translation or dictionary functions". The words "with translation or dictionary functions" have been used to restrict and keep the benefit of the exemption notification within bounds and not expand scope of exemption. Kindle device is an electronic device designed for use as an electronic book reader. As an electronic book reader, it has several e-books pre-installed in the device and other e-books can be downloaded. The product is developed and designed to function as an e-book reader and is sold and bought as a e-book reader and not as a translator or as a dictionary. The e-book reader has an inbuilt dictionary feature, which is a secondary or additional feature, useful for the reader. This secondary or additional feature would not make it and qualify the e-reading machine as an "electrical machine with translation or dictionary function". The word 'with' can have diverse and varied meaning depending upon the context in which it is used. A restricted meaning

to the word "with" is in consonance with the judgments of the Supreme Court on strict construction of exemption notification. In the context of the present notification, we observe and hold that the words 'translation' and 'dictionary' functions qualifies the words 'electrical machines' with the mandate that translation or dictionary function should be the *primary* and relevant function of the said machine for which they are purchased and used. The exemption is restricted to machines which translate or perform dictionary functions and not to other machines that primarily perform some other function.

28. This is not a case where the exemption notification creates a dichotomy so as to attract a challenge under Article 14 of the Constitution. For legal purposes, classification of goods in the sub-heading of the heading is determined according to the items of those sub-headings and any related sub-heading notes. Exemption granted is in terms of the international obligation on signing ITA-1, which obligation is duly fulfilled when exemption was granted to devices with primary and relevant function to act as translator or dictionary. The electronic dictionary provided is pre-installed in the Kindle device. Downloading of additional dictionaries though not stated in the application before the AAR could be optional, as in case of several electronic devices. E-reading devices are designed, purchased and used for reading text and not as a dictionary or translator.

29. Considerable emphasis was laid by the respondent on the difference between the language and the use of the word "with" in the exemption Notification No. 25/2005-Cus at Serial No. 26 "electrical machines with translation or dictionary functions" and with reference

to other items wherein the word "for" and not "with" has been used. According to us, this would not make any difference when we apply the principles of law as expounded by the Constitution Bench of the Supreme Court in the case of ***M/s Dilip Kumar and Company*** (supra). As noticed above, the word "with" is equally capable of referring to the dominant or the main purpose and not the ancillary or the secondary function. For reasons stated in paragraphs 27 and 28 above, the restrictive interpretation would be appropriate and inconsonance with principles of interpretation applicable to tariff items. Broad and wide ambit propounded by the respondent unintelligibly articulates a rather far-fetched interpretation.

30. In other words, our conclusion is that the exemption notification would apply where the device is an electrical machine covered under tariff item No.8543 89/8543 7099, and its primary and basic function should be to translate or perform dictionary function. Primary function of kindle device is to enable the user to read e-books. It is an e-book reading device and not a translator, and is not procured or purchased to perform dictionary function. No one purchases a kindle device because it is a translator or device "with" a dictionary function. E-book readers are purchased because a person wants to read e-books which are pre-loaded or can be downloaded from internet. Dictionary in a Kindle device enables the reader to make use of the dictionary while reading the e-book. E-book reader as such is not a dictionary or translator device. E-book readers would be appropriately classified in "others" as distinct from "electrical machines with translation and dictionary function".

31. We are conscious and aware that pronouncements or decisions by the AAR should not be interfered with as the scope of judicial review is narrow and limited. However, in the context of the present case and after referring to the reasoning given by the AAR, we feel that the language of the notification under the heading 'description of goods' i.e. "electrical machines with translation or dictionary functions" has been erroneously rejected, holding that the dictionary and translation function may not be the main feature of the electrical machine. There has been failure to consider the legal ratio which mandates strict interpretation of exemption notification and also the legal position that the word 'with' is a chameleon which changes colour in the context in which it is used. The word "with" need not have a static and have a universal interpretation and the construction put forward by the Revenue was creditable and worthy of acceptance. The interpretation by the AAR would falter when we apply the ratio in ***Hari Chand Shri Gopal*** (supra) and ***M/s Dilip Kumar and Company*** (supra) in the context of the present exemption notification. Accordingly, the writ petition is to be allowed holding that Kindle devices are not covered under the exemption notification as they were/are not "electrical machines with translation or dictionary functions".

32. The last issue, which arises for consideration, is whether our judgment should be made applicable with effect from the date on which the writ petition was filed or should have retrospective effect i.e. from the date of filing of the application by the Respondent before the AAR. Judgment and decisions by the Courts interpret and declare

the law as it exists and they do not create and enact any new law. In this sense, judgments of the Courts would be always retrospective, unless for special reasons, the judgment is given prospective effect [see ***Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited***, (2008) 14 SCC 171]. In the context of the present case, we would notice that there has been considerable delay and laches on the part of the Union of India in challenging the order of the AAR dated 15th May, 2015, as the present writ petition was filed only on 11th May, 2017. The order dated 15th May, 2015 had its consequences. The respondent could have verily believed that the government had accepted the order. As noticed above, e-book readers were granted specific exemption from basic excise duty vide Budget of 2014, but subsequently by Budget of 2016-17 the exemption was withdrawn with the e-readers attracting basic customs duty of 7.5%. The respondent had filed their application before the AAR on 8th June, 2012 and the pronouncement was by way of order the dated 15th May, 2015, when the e-book readers were themselves not attracting any basic customs duty. Given the aforesaid facts and background, we direct that the respondent would not be entitled to benefit of exemption notification on e-book readers till 15th May, 2015 for this was a risk which the respondent had knowingly taken. Possibly they would have passed on the burden of the basic customs duty on the consumers as decision of the AAR was pronounced on 15th May, 2015. E-book readers were granted specific exemption vide Budget of 2014 which was withdrawn by the Budget of 2016-17. This benefit/exemption would obviously apply. We would, in view of the delay and laches on the part of the petitioner in approaching the Court, hold that the respondent would not be liable to pay basic customs duty re-introduced by the Budget of 2016-17 for the period post-Budget 2016-17 till the filing of the present writ petition on 11th May, 2017.

33. Accordingly, the present writ petition is allowed setting aside and quashing the Order No. AAR/CUS/01/2015 dated 15th May, 2015 passed by the AAR i.e. Authority of Advance Ruling, but we grant partial relief to the respondent by holding that the petitioner would not be entitled to recover basic customs duty for the period between 15th May, 2015 till 11th May, 2017, i.e., the date on which the impugned order was passed and till the present writ petition was filed. In the facts of the case, there would be no order as to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

AUGUST 28th, 2018
VKR/ssn