

THE AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs & Service Tax)
NEW DELHI

15th Day of May, 2015

Ruling No. AAR/Cus/01/2015 in

Application No. AAR/44/Cus/03/2012

PRESENT

Justice V.S. Sirpurkar (Chairman)
Shri S.S. Rana (Member)

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Name & address of the applicant : M/s. Amazon Seller Services Private Limited, Bangalore.

Commissioner concerned : The Commissioner of Customs Import & Gen.), IGI Airport, New Delhi -110037.

The Commissioner of Customs (Airport & Air Cargo), Chennai.

The Commissioner of Customs (Port & Import), Chennai.

The Commissioner of Customs (Import), Air Cargo, Mumbai.

The Commissioner of Customs (Port-Import), Jawahar Lal Nehru Custom House, Nhava Sheva, Taluka-Uran, Distt. Raigad, Maharashtra-400 707.

The Commissioner of Customs Bangalore.

Present for the applicant : Shri S. Vasudevan, Advocate

Present for the Department : Shri Govind Dixit, Additional Commissioner, (AR).

RULING

This application relates to Kindle Device which is imported by the applicant. The Kindle Device as per the understanding of the applicant is an electrical device having unique and individual functions. The applicant further claims that this Kindle Device is

classifiable under Tariff Item in 8543 70 99. On this basis, the applicant has claimed a total exemption from payment of customs duty under the Notification No. 25/2005-Cus. Dated 01.03.2005.

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 70 99 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.

4. Further at the final hearing stage, Shri Dixit raised the question that this device may not be covered under the entry 8543 70 99. A very interesting feature has come to our notice in this. On behalf of Commissionerates i.e. Chennai Air Cargo as well as Mumbai Air Cargo in their reply both have in an unequivocal terms agreed that the device i.e. Kindle is actually covered under entry 8543 70 99. Shri Dixit then points out to a contrary stand regarding the Tariff entry. Chennai (seaport-import) Commissionerate, however, asserts that the device which is proposed to be imported is not covered under entry 8543 70 99. According to the Chennai (seaport-import) Commissionerate, it is covered under entry 8528 59 00 and the other is Chapter 8521 General. It is also suggested that this device can be covered under Tariff entry 9504 90.

4(a) Delhi Commissionerate in its communication dated 2.7.2012 set up a defence to entry 8471 and in fact that is not a case of the applicant. The applicant throughout claims the benefit of entry 8543 70 99.

5. In fact, this issue of Tariff entry had been closed at the admission stage itself on account of the comments sent by the Commissionerates of Chennai Air Cargo and Mumbai Air Cargo and the matter was proceeded only on the ground as to whether the import could be covered by the Notification as stated above. However, at the final stage Shri Dixit has raised this question of a different Tariff entry which covers the product.

6. Though, reluctantly, we would proceed to decide even this contention at this stage raised by the Revenue for the first time. First entry claimed to be applicable is 8528 59 00. It comes under the main entry 8528 which pertains to “monitors and projectors, not incorporating, television reception, apparatus, reception apparatus for television, whether or not incorporating radio products, receivers or sound or video recording or reproducing apparatus.” The concerned entry relied on by the Customs i.e. 8528 59 00. We have seen Tariff entry ourselves and are of the clear opinion that this entry will not cover in any manner the Kindle Device because basically it is not a monitor or a projector. The main entry 8528 is in respect of the monitors, projectors and the television sets that is clearly not the case here. The specific entry relied upon by the Customs is 8521 which pertains to video recording or reproducing apparatus, whether or not incorporating video tuner. This is clearly not applicable for the simple reason that Kindle device is not meant for video recording or reproducing anything. The other related entry under this heading pertains to video recorders beta cam or beta cam SP or digital beta cam S-VHS or digital –S etc. That is clearly not the proper description of Kindle device. The third entry relied upon by the Customs Department is under the heading 9504 which pertains to video game consoles and machines, articles for funfair table or parlor games, including printables, billiards, special tables for casino games and automatic bowling alley equipment. From the very nature of the description, the Kindle Device will not be a part of toys, games and sports equipments; parts and accessories thereof which is to be covered under the heading 9504. Custom says that it will come

under 950490 which is 'other'. Kindle cannot be covered under this entry, it has to be in the nature of the games. The 'other' entry pertains to the video game consoles and machines or the other games apparatus by coins, banknotes, bankcards to Kindle. Entry 9504 is meant for the various machines for games. In short 9504 is meant for various kinds of games. Kindle apparatus is certainly not a game. It has the function of allowing the user to read various books and while reading, if the user comes across any difficult word incomprehensible to the user, he can access the dictionary meaning of the word. It is certainly not a game. It is an educational device. It cannot be covered under the category meant for the games, hence, Department's contention is unacceptable. Therefore, in our opinion, the Kindle Device will be covered under entry 85437099 being an electrical machine with translation or dictionary functions. Therefore, this late objection raised by the Revenue is rejected. We have seen the some import details. All these imports have been under the entry 85437099 and accepted by Customs. Of course, these imports were not made by the applicant but that is irrelevant once the Customs Departments accepts the same to be covered by 85437099.

7. Accordingly, we hold that the Kindle Device is covered by Tariff entry 854 370 99. They have the benefit of Notification No. 25/2005-Cus. Dated 01.03.2005

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(S.S. Rana)
Member

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(V.S. Sirpurkar)
Chairman