



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण

CUSTOMS AUTHORITY FOR ADVANCE RULINGS

नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१

NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001

ई-मेल/E-MAIL: cus-advrulings.mum@gov.in

The 8th of December 2021

Ruling No. CAAR/Mum/ARC/68-69/2021

In

Application No. CAAR/CUS/APPL/28-29/2021 -0/o Commr-CAAR-MUMBAI

Name and address of the applicant: M/s. Amazon Seller Services Pvt. Ltd., 8th Floor, World Trade Centre, Brigade Gateway 26/1, Dr Rajkumar Road, Malleshwaram, W Bengaluru Urban, Karnataka - 560055

Commissioner concerned: The Pr. Commissioner of Customs, Air Cargo Complex & Airport, Air India SATS Air Freight Station Terminal, Devanahalli, Bengaluru – 560300.

The Pr. Commissioner of Customs, Chennai VII (Air Cargo Commissionerate), New Custom House, Air Cargo Complex, Meenambakkam, Chennai – 600016.

The Commissioner of Customs, Chennai-II (Import Commissionerate), Custom House, 60, Rajaji Salai, Chennai-600 001.

The Commissioner of Customs, Air Cargo (Import), New Customs House, Near I.G.I. Airport, New Delhi – 110037.

The Pr. Commissioner of Customs (III), (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai – 400099.

The Commissioner of Customs (Nhava Sheva -V), Jawaharlal Nehru Customs House, Nhava Sheva, Tal Uran, District Raigad, Maharashtra – 400707.

Present for the applicant: Sh. V. Lakshmikumaran, Advocate;
Sh. Prasad Salvi;
Sh. Anand Tripurai;
Sh. Jeshwin Immanuel

Present for the Department: --



Ruling

M/s. Amazon Seller Services Private Limited proposes to import Wireless Remote (for HDMI Digital Media Receiver) Model No. L5B83H. The application for advance ruling, seeking the classification of the said device, was received in the secretariat of the erstwhile Authority for Advance Rulings (Central Excise, Customs and Service Tax), New Delhi on 17.10.2018. The applicant filed another application on 04.08.2020. In the second application, they sought advance rulings on classification of HDMI Digital Media Receiver (Model No. S3L46N) with Alexa Voice Remote Lite (1st Gen., Model No. H69A73) as a kit (Fire TV Stick Lite, 1st Gen.), HDMI Digital Media Receiver(S3L46N) with All-new Alexa Voice Remote (2nd Gen., Model No. L5B83H) as a kit (Fire TV Stick, 3rd Gen.), and Alexa Voice Remote Lite (1st Gen., Model No. H69A73) for HDMI Digital Media Receiver. However, since no rulings were issued by the said authority, the pending applications were transferred to the Customs Authority for Advance Rulings, Mumbai in February, 2021. Communications were sent to the applicant from the secretariat of the CAAR, Mumbai to inform whether they are still desirous of receiving advance rulings in respect of the pending applications. The applicant, vide their communication dated 25.02.2021 informed that they are still interested in receiving the advance rulings and also that they will submit the applications in the revised format in due course. Thereafter, the applications were e-mailed by the applicant in July, 2021, which was followed by physical submission of the applications in August, 2021.

2. In both these applications, the applicant had originally requested for appointment of a Commissioner of Customs as envisaged under section 28-I (1) of the Customs Act, 1962 read with the relevant regulations in force at the material time. Accordingly, the Chairman, Central Board of Indirect Taxes and Customs had appointed the Principal Commissioner of Customs (Import), Air Cargo Complex, New Delhi for the said purpose. The comments of the Principal Commissioner of Customs (Import), ACC, New Delhi dated 01.02.2019 in respect Wireless Remote (for HDMI Digital Media Receiver) Model No. L5B83H is on record. However, in the applications submitted in July/August, 2021; the applicant has expressed their desire to import the subject goods through air cargo complexes of New Delhi, Mumbai, Chennai and Bengaluru as well as the sea ports of Chennai and Nhava Sheva. Accordingly, the applications have been sent to all the six Principal Commissioners/Commissioners of Customs for their comments. Communications have been received from the ACC, Mumbai as well as the sea ports of Chennai and Nhava Sheva. Comments of the Principal Commissioners/Commissioners of Customs have been shared with the applicant.

3. The applicant has informed that a show cause notice F. No. S/16-Audit- 1626/2018-19 NCH, dated 25.07.2019 was issued by the Commissioner of Customs (Audit), Mumbai Customs Zone-I pertaining to classification of an earlier model of Fire TV Stick. In light of the pending application before the Advance Ruling Authority, the applicant approached the Hon'ble Bombay High Court in Writ Petition No. WP/474/2020 seeking stay on adjudication of the above mentioned show cause notice. The Hon'ble High Court has granted ad-interim stay vide its order dated 24.02.2020. The applicant has also stated that the devices under consideration in the present proceedings, i.e., Fire TV Stick Lite (1st Gen./3rd Gen.) are new models of succeeding generations and are different from the Fire TV Stick device which is the subject matter of the pending litigation.

4. From the information supplied by the applicant, it appears that the new generation Fire TV sticks are offered in two configurations, i.e., Fire TV Stick Lite (1st Gen.) and Fire TV Stick (3rd Gen.), where the HDMI digital media receiver is identical, but the remote control devices are different. These devices are an advanced upgraded version of the earlier Fire TV Sticks. The HDMI digital media receiver is designed to stream digital audio/video content to high-definition televisions by connecting



to their HDMI port. Once connected, the user gets access to television episodes and movies on Amazon Instant Video, Netflix, HBO NOW, etc. via the internet. The user can also play games/music and download additional applications. The Fire TV Sticks source the content requested by the user from internet. As already mentioned, the applicant has clarified that the 3rd generation device includes everything that the 1st generation device offers, the difference between the two being in their inbox voice remote control and accessories. The Fire TV Stick Lite (1st Gen.) comes with Alexa Voice Remote Lite (1st Gen.) which works on radio frequency or Bluetooth technology. The Fire TV Stick (3rd Gen.) comes with All new Alexa Voice Remote which is both Bluetooth and infrared enabled. Being infrared enabled, it can control a wide range of other infrared devices and eliminates the need for a second remote. In addition to the buttons for regular Bluetooth enabled features, it has volume up and down/mute/power buttons, which on pressing, sends out infrared signals to infrared controlled devices.

5. The Alexa Voice Remote Lite (1st Gen.) is a Bluetooth enabled remote which works on radio frequency and is primarily meant to operate the Fire TV Sticks via Bluetooth when it is paired with the remote. It helps the user to find their favourite shows, live television programs, check the weather, turn on the lights, view live camera feeds, stream music and more using their voice. The device also features a voice button allowing the user to search for movies, TV shows, actors and directors by simply pressing and holding the voice button and speaking simultaneously. It has a microphone for receiving voice commands. Apart from voice button, the remote has other buttons like menu, home, back, play/pause, etc. for carrying out various functions. This remote doesn't have an infrared feature, and therefore, can't control IR devices. The wireless remote Model No. L5B83H, on the other hand, is both a Bluetooth and infrared enabled remote and can control a wide range of other infrared devices also, including compatible televisions, cable and satellite boxes, and A/V receivers.

6. In the opinion of the Commissioner of Customs (Import), Chennai sea port, HDMI digital media receivers take command from voice remote and broadcast/transmit the same to TV and therefore, merit classification under sub-heading 85255030. In respect of Alexa Voice Remote Lite (1st Gen.), Model No. H69A73, the suggested sub-heading is 85269200 on the ground that it is a radio control apparatus. The Commissioner of Customs, Nhava Sheva-V has informed about the show cause notice issued on the issue of classification of earlier model of Fire TV device and the pendency of the matter before the Hon'ble High Court, which is already discussed at paragraph 3 above. The Id. Commissioner has also informed that in the Advance Ruling No. CAAR/Del/Amazon/15/2021, dated 05.07.2021, the Customs Authority for Advance Rulings, New Delhi has held that Fire TV Stick Lite (1st Gen.) and Fire TV Stick (3rd Gen.) are rightly classifiable under tariff entry 85176290. The Id. Commissioner has suggested that the issue of classification of the items earlier imported are pending, and therefore, as per sub-section (2) of section 28-I of Customs Act, 1962, it appears that the present proceedings are not maintainable. The Principal Commissioner of Customs (Import), ACC, New Delhi, after examining the import data, has commented that import of wireless remote Model No. L5B83H is an ongoing and not a proposed activity and that examples of prior imports through ACC, Mumbai exists. With respect to the issue of its classification, it has been opined that the sub-heading 85176290 suggested by the applicant appears to be correct as the device streams digital audio/video content high definition and 4K TV sets.

7. The applicant was heard on 23.11.2021. Sri Lakshmikumaran, advocate, appearing on behalf of the applicant, has taken me through the product specifications and functionalities. He informed that all the devices involved in the present proceedings were also before the Customs Authority for Advance Rulings, New Delhi in the case of M/s. Amazon Wholesale India Pvt. Ltd. and that the said Id. authority has classified the Fire TV Sticks, a kit containing the HDMI digital media receivers and wireless remotes, under sub-heading 85176290. In so far as classification of wireless remotes, when imported separately, is concerned, the CAAR, New Delhi has ruled that the proper classification is sub-heading



85269200. The ld. counsel has fairly conceded that while from a purely functional point of view, the proper classification would have been 8517, since there is a specific tariff entry for wireless remote control devices, and the heading 8526 occurs last in numerical order, the ruling of the CAAR, New Delhi has been accepted by them.

8. Since the issue of maintainability has arisen, I reproduce the relevant provisions of law here. Sub-section (2) to section 28-I reads as under: -

'(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

*Provided that the Authority shall not allow the application ²³[***] where the question raised in the application is -*

(a) already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.'

The statute provides only two grounds for rejection of advance ruling applications: -

- The question raised in the applicant's case is pending before an officer of customs/tribunal/court,
- The question raised in the application has been decided by a tribunal/court.

In this case, there is no issue that the classification of the devices under consideration have been decided by a tribunal or any court, and therefore, the proviso (b) is inapplicable. So far as the proviso (a) is concerned, to exclude the jurisdiction of advance ruling, the question raised in the applicant's case must be pending before an officer of customs, tribunal or court. In this case, the question raised is not the same. The subject matter of dispute on which the Commissioner (Audit), Mumbai Customs Zone-I has issued a show cause notice is an earlier version of the Fire TV Stick. The decision of the said notice, pending before the Commissioner of Customs (Import), ACC, Mumbai has been stayed by the Hon'ble High Court of Bombay. Therefore, I am not inclined to accept the view, suggested by the Commissioner of Customs, Nhava Sheva-V that scope of advance ruling shall stand excluded even when similar matters are under dispute/litigation. If such a view is adopted it would not only be contrary to the proviso (b) reproduced/discussed above which uses the terms 'same matter', but also unduly restrict the scope of advance rulings in customs, thereby, defeating the very purpose of advance rulings. Besides, the applicant has also pointed out that the same devices were under consideration before the Customs Authority for Advance Rulings, New Delhi in the case another applicant and the matter stands decided. Therefore, deferring the decision in these applications or even rejecting them would not serve any purpose. In so far as the issue of advance rulings in respect of an ongoing activity is concerned, with due regard to the definition of advance ruling in law, it is my considered opinion that operation of advance rulings do not get extinguished just because an activity of import/export has taken place earlier, irrespective of the frequency of such activity. Drawing strength from the provisions of law reproduced earlier in this paragraph, a correct interpretation would be that advance rulings can be sought and given even for ongoing activities, so long as such activities, in respect of the same applicant, are not involved in any dispute; or already settled by an order of any competent tribunal/court. However, the application of such an advance ruling, in respect of an ongoing activity, shall be prospective and would not have any implication for activities, which stand concluded.



9. In the two applications for advance rulings before me, a decision on classification has been requested on two Fire TV Stick kits consisting of a HDMI digital media receiver paired with two types of wireless remotes. Besides, the applicant has also sought rulings on classification of these two types of remotes separately. Therefore, before proceeding further, it is necessary to examine the functionalities of each of these three devices. The HDMI digital receiver has a 1.7 Ghz quadcore processor and 8GB of storage. It has dual band 2x2 802.11AC Wi-Fi with support for 5GHz networks, allowing streaming at up to 1080p at 60fps. The receiver provides HD/HDR support on compatible televisions. The HDMI digital media receiver is described by the applicant as network appliance and entertainment device for streaming digital audio/video content from the internet to television. A user sends instruction either by way of speech through inbuilt microphone in the remote or by pressing buttons on the remote. Such instructions are to select the programme/movie/any other media that the user wants to watch. The audio instructions are processed by Alexa Voice Services and are transmitted wirelessly in the form of radio frequency signals via Bluetooth to the HDMI digital media receiver which are transmitted to the Amazon server on cloud through internet. The specific content requested by the user is received in return by the digital media receiver from the Amazon server. These signals are processed and converted into a form readable by a television. The processed signals are then transmitted to the connected television so that the requested media can be viewed by the user. The applicant has categorically stated that the digital media receiver is not capable of receiving signals from satellite/cable/terrestrial source and convert them in a suitable form for display on televisions. The device in question also does not support cellular services. It requires internet to perform. The Alexa Voice Remote Lite (1st Gen.) receives audio signals from the user, converts them into radio signals and transmits securely and wirelessly to the digital media receiver for further demodulation/processing of such radio signals. The second type of wireless remote essentially performs the same functions as described above.

10. From the features and functions described here-in-before, it is clear that the HDMI digital media receiver receives signals from Alexa Voice remote (lite 1st Gen./2nd Gen.) via Bluetooth. Such instructions are to select the content that the user wants to watch on his television. The digital media receiver receives instructions of the user, converts them into RF signals and transmits them to the cloud for processing by AVS. AVS converts the signals into a readable format, extracts the requested content from the Amazon cloud and transmits the same to the media receiver, which on receipt of the output, re-transmits the same for display on the user's television. Thus, HDMI digital media receiver is a device that transmits/receives RF signals and converts it into a format readable by the system and transmits the same which is displayed on the screen. The device, having been designed for reception, conversion and transmission of voice, images or other form of data merits classification under six-digit tariff entry 851762. The Commissioner of Customs (Import), Chennai sea port, is of the opinion that the function of digital media receiver is to broadcast/transmit signals to televisions and therefore, merits classification under sub-heading 85255030. As far as the contending tariff entry 8528 is concerned, it appears to be an unsuitable tariff entry for the device under consideration in the present proceedings in so far as the said entry is primarily suitable for receivers of television broadcast signals, whereas, the device under consideration does not receive signals from satellite/cable/terrestrial sources for display on television screens. Therefore, it is my considered opinion that the suggestion of the Id. Commissioner is not tenable. I have also noticed that the Customs Authority for Advance Rulings, New Delhi, for the identical device, considered and rejected the sub-heading 85287100 and held that digital media receiver discussed here is rightly classifiable under sub-heading 85176290.

11. So far as classification of wireless remotes, Model Nos. L5B83H and H69A73 is concerned, their functionality is limited to accepting commands of the user, either through voice or by way of pressing buttons, convert them into radio signals and transmit the radio signals securely and wirelessly



to the digital media receiver for further demodulation/processing. From the functional perspective, the two wireless remotes answer to the description of other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network, such as a local or wide area network. However, as held by the CAAR, New Delhi and also pointed out by the Id. counsel for the applicant, sub-heading 85269200 is a specific entry for radio remote control apparatus. As the CAAR, New Delhi has pointed out in his ruling, the HSN Explanatory Notes to heading 8526 states that radio apparatus for the remote control of ships, pilotless aircraft, rockets, missiles, toys, model ships or aircraft, etc. as well as for the detonation of mines, or for the remote control of machines remain included in that heading. Therefore, the proper classification entry for Wireless Remote (for HDMI Digital Media Receiver) Model No. L5B83H and Alexa Voice Remote Lite (1st Gen., Model No. H69A73), when imported separately, would be the sub-heading 85269200 and not 85176290, as originally contended by the applicant. However, when these wireless remotes are imported along with HDMI digital media receiver (Model No. S3L46N) as a kit, applying rule 3(b) of the General Rules for Interpretation of Customs Tariff, the classification of the entire kit would be sub-heading 8517620, on the ground that the digital media receiver, and not the wireless remote, gives the goods its essential character.

12. Coming to the question of eligibility to claim the benefit of exemption under serial no. 20 of the Notification No. 57/2017-Cus., dated 30.06.2017, as amended by the Notification No. 2/2019-Cus., dated 29.01.2019, I find that the latest amendment to the said exemption was vide Notification No. 3/2021-Cus., dated 01.02.2021, and also that the said notification provides a concessional rate of duty to all goods falling under sub-headings 85176290 and 85176990, except the following, (a) wrist wearable devices, commonly known as smart watches; (b) optical transport equipment; (c) combination of one or more of packet optical transport product or switch; (d) optical transport network products; (e) IP radios; (f) soft switches and voice over internet protocol equipment or VoIP phones, media gateways, gateway controllers and session border controllers; (g) carrier ethernet switch, packet transport node products, multiprotocol label switching transport profile products; (h) multiple input/multiple output and long term evolution products. Since, Fire TV Sticks do not appear to fall under any of the above exclusions, benefit of serial number 20 of the Notification No. 57/2017-Cus., dated 30.06.2017, as amended would be available to them. However, when the wireless remotes, Model Nos. L5B83H and H69A73, are imported separately they wouldn't be eligible for the said exemption.

To summarise, HDMI Digital Media Receiver (Model No. S3L46N) with Alexa Voice Remote Lite (1st Gen., Model No. H69A73) as a kit (Fire TV Stick Lite, 1st Gen.), and HDMI Digital Media Receiver(S3L46N) with All-new Alexa Voice Remote (2nd Gen., Model No. L5B83H) as a kit (Fire TV Stick, 3rd Gen.), are classifiable under sub-heading 85176290 of the first schedule to the Customs Tariff Act, 1975. Alexa Voice Remote Lite (1st Gen., Model No. H69A73) and All-new Alexa Voice Remote (2nd Gen., Model No. L5B83H), when imported separately, would be classified under sub-heading 85269200. While the Fire TV Sticks of both the 1st and 3rd generations would be eligible for the benefit of serial number 20 of Notification No. 57/2017-Cus., dated 30.06.2017, as amended; the wireless remote devices, when imported separately, wouldn't be eligible for the said notification benefit.

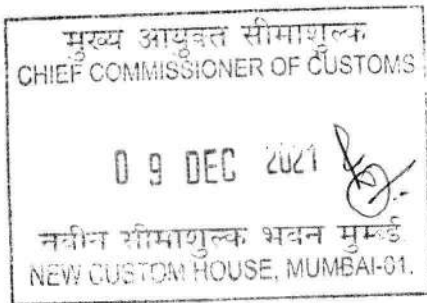

(M.R. MOHANTY)

Customs Authority for Advance Rulings,
Mumbai




This copy is certified to be a true copy of the ruling and is sent to: -

1. M/s. Amazon Seller Services Private Limited, 8th Floor World Trade Centre, Brigade Gateway 26/1, Dr Rajkumar Road, Malleshwaram, W Bengaluru Urban, Karnataka - 560055
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2. The Pr. Commissioner of Customs, Air Cargo Complex & Airport, Air India SATS Air Freight Station Terminal, Devanahalli, Bengaluru - 560300. Email: commrapacc-cusblr@nic.in
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7. The Commissioner of Customs (Nhava Sheva -V), Jawaharlal Nehru Customs House, Nhava Sheva, Tal Uran, District Raigad, Maharashtra - 400707. Email: commr-ns5@gov.in
8. The Customs Authority for Advance Rulings, 5th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi - 110021. Email: cus-advrulings.del@gov.in
9. The Principal Chief Commissioner of Customs, Mumbai Customs Zone-I, Ballard Estate, Mumbai -400001. Email: ccu-cusmum1@nic.in
10. The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi - 110066.
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(P. Vinitha Sekhar)
Secretary,
Customs Authority for Advance Rulings,
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Dated: 09.12.2021

S.No.	Complete Address	Barcode
1.	M/s. Amazon Seller Services Private Limited, 8th Floor World Trade Centre, Brigade Gateway 26/1, Dr Rajkumar Road, Malleshwaram, W Bengaluru Urban, Karnataka - 560055	EM719832455IN
2.	The Pr. Commissioner of Customs, Air Cargo Complex & Airport, Air India SATS Air Freight Station Terminal, Devanahalli, Bengaluru - 560300	EM719832543IN
3.	The Pr. Commissioner of Customs, Chennai VII (Air Cargo Commissionerate), New Custom House, Air Cargo Complex, Meenambakkam, Chennai - 600016.	EM719832424IN
4.	The Commissioner of Customs, Chennai-II (Import Commissionerate), Custom House, 60, Rajaji Salai, Chennai-600 001	EM719832662IN
5.	The Commissioner of Customs. Air Cargo (Import), New Customs House, Near I.G.I. Airport, New Delhi - 110037	EM719832676IN
6.	The Pr. Commissioner of Customs (III), (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai - 400099	EM719832680IN
7.	The Commissioner of Customs (Nhava Sheva -V), Jawaharlal Nehru Customs House, Nhava Sheva, Tal Uran, District Raigad, Maharashtra - 400707	EM719832557IN
8.	Customs Authority for Advance Rulings, 5 th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi-110021.	EM719832438IN
9.	The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi-110066.	EM719832441IN
10.	The Member (Customs), Central Boards of Indirect Taxes & Customs, North Block, New Delhi-110001	EM719832565IN

Receivers Signature



Senders Signature

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Customs Authority for Advance Rulings, Mumbai