



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण
CUSTOMS AUTHORITY FOR ADVANCE RULINGS
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई - ४०० ००१
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03rd February, 2023

Ruling Nos. CAAR/Mum/ARC/06/2023

in

Application No. CAAR/CUS/APPL/24/2021 - O/o Commr-CAAR-MUMBAI

Name and address of the applicant : M/s. Amazon Seller Services Private Limited,
8th floor, Brigade gateway, 26/1, Dr. Rajkumar
Road, Malleshwaram(West), Benaguru-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-600001
The Commissioner of Customs, Chennai-II
(Import Commissionerate), Custom House,60,
Rajaji Salai, Chennai-600001
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 : Ms. Jyoti Pal (Advocates, LKS),
Mr. Prasad Salvi (Advocates, LKS),
Mr. Anand Tripurari
Mr. Jeshwin Immanuel

Present for the Department : --

Ruling

1. M/s. Amazon Seller Services Private Limited had proposed to import Fire TV Stick. The application of 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 14.07.2016. However, since no rulings were issued by the said authority, the pending application was 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 an advance ruling in respect of the pending application. The applicant, vide their communication dated 25.02.2021, informed that they are still interested in receiving the advance ruling and also that they will submit the application in the revised format in due course. Thereafter, the said application was e-mailed by the applicant in July, 2021, which was followed by physical submission of the application in August, 2021.

2. In the said application, 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, Raigad as envisaged under section 28-1 (1) of the Customs Act, 1962 read with the relevant regulations in force.

3. The comments of the aforesaid six Principal Commissioners/Commissioners of Customs in respect of the original application regarding classification of Fire TV Stick filed before the erstwhile AAR are on record. However, after receipt of fresh application in light of the Customs Authority for Advance Rulings Regulations, 2021, letters were again sent to the said Commissionerates. The comments, which were received from the Commissionerates, were further shared with the applicant.

4. 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-1 pertaining to classification of Fire TV Stick under section 28(4) read with section 124 of the Customs Act, 1962 arising out of short levied/ short paid Customs duty due to “wrongful classification of goods” (i.e. Amazon Fire TV Stick/HDMI digital media receiver Model No. LY73PR & E9L29Y) under CTH 8517 62 90 instead of 8528 71 00 and “wrongful claim of lower rate of IGST” (i.e. 18% instead of 28%).

4.1. 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 granted ad-interim stay vide its order dated 24.02.2020.

4.2 From the information provided by the applicant and based on documents on record it is observed that the applicant has claimed that a Fire TV stick is a HDMI digital media receiver designed to stream digital audio/video content to high- definition television. This device is a dual-core processor with a dedicated Videocore4 GPU, 1 GB of memory and 8 GB of storage having a dual band, dual antenna 802.11 AC Wi-Fi. It connects to the HDMI port of a television. Once connected, the user gets access to television episodes and movies on Amazon Instant Video, Netflix, HBO NOW, and more via the internet. The user can also play games, music and download additional applications. The applicant has further stated that the source of receiving signals by Fire TV Stick is an internet. Moreover, Fire TV sticks are not capable of



receiving signals from satellite/cable/terrestrial source to convert them in the form suitable for display on the television. The Fire TV sticks do not support cellular services. They require an internet connection to perform their functions i.e. they do not have a modem incorporated in them.

5. The applicant was heard on 23.11.2021. Sh. Lakshmi Kumaran, advocate, representing the applicant, argued that since their petition before the High Court is only for staying the decision in the show cause notice issued by the Commissioner (Audit) while their application for advance ruling is pending, there is no bar in proceeding with the pending advance ruling application. However, it was pointed out to the representative of the applicant that in the pending writ petition the erstwhile AAR was also a respondent, and therefore, no decision on pending advance ruling application is possible, unless the Hon'ble High Court finally disposes of the writ petition or the applicant withdraws the writ petition.

6. Sh. Lakshmi Kumaran stated that they will withdraw their writ petition before the Hon'ble High Court and inform the Secretariat of the CAAR, Mumbai. Subsequently, Vide Order No. CAAR/Mum/ARC/01/2021 dated 13.12.2021, the secretary to the CAAR, Mumbai was directed to place this matter for decision only when one of the two scenarios outlined in the preceding paragraphs takes place.

7. Thereafter, the applicant informed the secretariat of CAAR, Mumbai vide email dated 23.11.2022 enclosing therewith the final order of the Hon'ble Bombay High Court dated 09.11.2022 the disposal of a Writ Petition no. WP/474/2020, whereby the CAAR, Mumbai has been directed to decide the said application within twelve weeks. The Hon'ble Bombay High Court held:

"By consent and keeping open all rights and contentions of the parties and in view of what is recorded by this Court in its order dated 24th February 2020, the following order is passed:

(a) the show cause notice dated 25th July 2019 is hereby quashed and set aside;

(b) the Authority for Advance Ruling shall consider petitioner's application filed on 14th July 2016 and dispose the same in accordance with law within twelve weeks from today;

(c) if the Authority for Advance Ruling holds against petitioner, respondent no.2 may take such further steps as required in accordance with law including issuance of any show cause notice within eight weeks of passing their ruling."

Copy of this order was e mailed to the Commissioner (Audit), Customs, Mumbai Zone -1 immediately.

8. Subsequently, the applicant was heard on 30.11.2022. Ms. Jyoti Pal and Mr. Prasad Salvi, advocates from M/s Lakshmi Kumaran and Sridharan, Mr. Anand Tripurari and Jeshwin Immanuel from the applicant M/s. Amazon Seller Services Private Limited appeared and explained order of Hon'ble High Court of Bombay, previous CAAR rulings and technical difference distinguishing CTH 8517 from CTH 8528 of Customs Tariff Act, 1975. They also invited attention to their earlier submissions in support of their application. Based on their oral



as well as written submissions they requested to pass a ruling within the time frame given by the Hon'ble High Court of Bombay. Applicant's CAAR-1 application along with enclosures describes in details the product specifications and product functioning.

9. I have gone through the records of the case and written as well as oral submissions made by the applicant. The applicant has filed the advance ruling application for six different ports/ Jurisdictional Commissioners namely:

- a) The Pr. Commissioner of Customs, Air Cargo Complex & Airport, Air India SATS Air Freight Station Terminal, Devanahalli, Bengaluru
- b) The Pr. Commissioner of Customs, Chennai VII (Air Cargo Commissionerate), New Custom House, Air Cargo Complex, Meenambakkam
- c) The Commissioner of Customs, Chennai-II (Import Commissionerate), Custom House, 60, Rajaji Salai, Chennai
- d) The Commissioner of Customs. Air Cargo (Import), New Customs House, Near I.G.I. Airport, New Delhi
- e) The Pr. Commissioner of Customs (III), (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai
- f) The Commissioner of Customs (Nhava Sheva -V), Jawaharlal Nehru Customs House, Nhava Sheva, Tal Uran, District Raigad, Maharashtra – 400707;

10. I observed that the comments were received from the jurisdictional Pr. Commissioners/Commissioners and the same were forwarded to the applicant for submitting the applicant's response.

- a) Comments received from the Pr. Commissioner of Customs, ACC, Bengaluru has opined for the Fire TV stick to be classified under tariff heading 85287390. They have supported their claim by stating that:

"Fire TV Stick can be used only when it is connected to the HDMI port of the HD Television and the programmes can be viewed with internet connection via Wifi and programmes to be seen can be controlled with the remote, the product is rightly classifiable under Chapter Heading No.85287390 (Other), in view of the exclusion of the transmission or reception apparatus of heading 8528 in Chapter Heading 8517."

- b) Comments received from the Pr. Commissioner of Customs, Chennai VII (Air Cargo Commissionerate), has suggested CTH 8528711 by stating that:

"Fire TV Stick, is a portable device which connects to HDMI port of a television and thereafter the user get access to television episodes and movies and can also play games and music. Further, this product is supported with remote controller to change programmes. No other reception apparatus is required other than this product to view the programmes on television. Therefore, it appears that the product under reference, Fire TV Stick, is a new technological development of reception apparatus for Television. All reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Not designed to incorporate a video display or screen are merit classifiable under CTH 8528 71 00"



c) The Commissioner of Customs, Chennai II has suggested classification under CTH 85176290 by offering following comments:

- *“Based on the above and the product description and working of the device, there are three possible Classifications based on the Customs Tariff for Amazon Fire TV Stick:*
 - 85287100
 - 85176960
 - 85176290

● 8528 71 00 (Reception apparatus for television, whether or not incorporating radio- broadcast receivers or sound or video recording or reproducing apparatus not designed to incorporate a video display or screen):-

- *It is clear from the product description, catalogue and working that the Fire TV Stick does not receive signals from satellite/cable/terrestrial.*
- *Once connected to Wi-Fi, it converts the content into a form suitable for display on television screen and thus allows the user to access and view the movies, TV shows etc. already available on Netflix, Amazon video etc.*
- *Hence, based on the above, 85287100 does not appear to be the appropriate classification for the product.*

● 8517 69 60 (Set top boxes for gaining access to internet):-

- *The Oxford dictionary definition of a set top box is a device that changes a digital television signal into a form which can be seen on an ordinary television.*
- *Set top box is thus essentially a hardware device that allows a digital signal to be received, decoded and displayed on a television.*
- *As per the catalogue, Fire TV Stick does not receive signals from satellite/cable/terrestrial but gets its input from Wi-Fi.*
- *Hence, based on the above, 85176960 does not appear to be the appropriate classification for the product.*

● 8517 62 90(Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus-Other):

- *Explanatory notes issued by WCO (World Customs Organization) for CTH 8517 states that it excludes apparatus for the transmission or reception of radio-broadcasting or television signals.*
- *Wi-Fi frequency range is based on IEEE 802.11 protocol and is different from that of a television signal.*
- *The catalogue states that the product is connected to the display device following which it allows the user to access data available on Netflix, Amazon Instant Video, HBO Now and Hulu Plus etc.*
- *The product transmits the instructions sent by the user, converts them in the form readable by the system and on receipt of the output again transmits the same which is displayed on the screen.*



- Thus, it is essentially a media streamer which derives its input from Wi-Fi and converts data into a form which can be displayed on HDTV and it will start streaming in minutes.
- Based on the above, CTH 85176290 seems to be the most appropriate classification for Amazon Fire TV Stick.”

d) Commissioner of Customs. Air Cargo (Import), New Delhi has suggested CTH 852550. They have placed their reliance on US Customs Rulings dated 09.12.2014 and have stated that:

“The description of heading 8525 squarely covers the features and working of fire TV stick. The above view is also supported by a US Customs Ruling for a similar device namely Roku Streaming Stick which had been classified under 8525430”

e) The Pr. Commissioner of Customs (III), (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai opined as follows:

“

Tariff Item		Description of goods	Unit	Standard Rate of duty	Preferential Areas Rate of duty
8517		Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of vice, images or other data , including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528			
8517 62	--	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:			
8517 62 90	-- -	Other	u	20%	-

Custom Tariff Item 8517 62 90

HSN Explanatory Notes to heading 8517 provide

“This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric



current are optical waves flowing in a wire network are by electro-magnetic waves in wireless network. The signal may be analog or digital. The networks, which may be interconnected, include telephone, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks."

It is further provided in the HSN that the communication apparatus includes one which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such network.

The items to be classified under -CTH 8517 are principally equipment for transmission and reception of voice, image or data. In other words, transmission or reception of voice, image or data must be the principal function for a product classifiable under CTH 8517. Section XVI covers all sorts of mechanical and electrical appliances/equipment etc. Chapters 84 and 85 come under Section XVI. Chapter 85 of Schedule I to the Tariff Act covers various types of Electrical machinery and equipment including apparatus for transmission, reception and conversion of voice, images or other data. HSN Explanatory Notes to Chapter Heading 8517 provides that "These apparatus (apparatus for telegraphic communication other than facsimile machines of heading 8443) are essentially designed for converting characters, graphics, images or other data into appropriate electrical impulses, for transmitting those impulses, and at the receiving end, receiving these impulses and converting them either into conventional symbols or indications representing the character, graphics, images or other data or into characters, graphics, images or other data themselves." Examples given for the same are apparatus for transmitting messages or apparatus for receiving messages. It is mentioned that in some cases, the receiver and the transmitter apparatus are combined into one receiver transmitter

The Fire TV Stick, however does not receives signals from satellite/cable/terrestrial to convert them in the form suitable for display on television screen. Once connected to a WI-FI, it allows the user to access and view the movies, TV Shows etc., already available on Netflix, Amazon Video etc. From a reading of the Tariff Heading and Explanatory Notes, CTH 8517 discussed above the functions performed by the product are similar, therefore it should fall under this CTH.

The device is rightly classifiable under CTH 85176290 meriting full rate of duty and import license is required from WPC as it is a network device, where the essential function remains that of receiving and demodulating the WIFI signals."

- f) Commissioner of Customs (Nhava Sheva -V), Jawaharlal Nehru Customs House, Nhava Sheva, Raigad had scrutinized on the basis of the submission made by the applicant regarding the product and have classified the product Fire TV stick under CTH 85176290.

11. Application for advance rulings has sought a decision on classification of Amazon Fire TV Stick which is a HDMI digital media receiver having a technical specifications of a dual core processor with a dedicated Videocore4 GPU, 1 GB of memory and 8 GB of storage, a dual band, dual antenna 802.11 AC Wi-Fi. At the outset I find that technical specifications



mentioned in CAAR-1 application are different from the products' description and their specifications referred in show cause notice F. No. S/16-Audit-1626/2018-19 NCH, dated 25.07.2019 issued by Commissioner of Customs (Audit). Products referred in show cause notice are described as Amazon Fire TV Stick/HDMI digital media receiver Model No. LY73PR & E9L29Y. However, I do not find any mention of these models in their CAAR-1 application. Hence the present ruling will be applicable only to the products' description and technical specifications mentioned in CAAR-1 application.

11.1 Before proceeding further, I observe that in the similar cases of Fire TV Stick vide Ruling No. CAAR/Mum/ARC/68-69/2021 dated 08.12.2021 in case of Application No. CAAR/CU S/APPL/28-29/2021-0/o Commr-CAAR-Mumbai filed by M/s. Amazon Seller Services Pvt. Ltd., it was inter alia held by this authority that:

“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 8 GB of storage. It has dual band 2x2 802.11 AC Wi-Fi with support for 5 GHz 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 8525 50 30. 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 8528 71 00 and held that digital media receiver discussed here is rightly classifiable under sub-heading 8517 62 90.”

12. In the similar case of classification of identical device Fire TV Stick (Lite 1st Gen/3rd Gen) the Customs Authority for Advance Rulings, New Delhi vide its Ruling No. CAAR/Del/Amazon/15/2021 dated 05.07.2021, in case of application filed by M/s. Amazon Wholesale India Pvt. Ltd., considered and rejected the sub-heading 8528 71 00 and held that digital media receiver is rightly classifiable under sub-heading 8517 62 90.

13. I find that in order to decide present classification issue contending CTHs i.e. 8517 62 90 and 8528 71 00 are required to be examined in further details. Description of goods and tariff rates applicable relevant to CTH 8517 are reproduced below:

Tariff Item	Description of goods	Unit	Standard Rate of duty	Preferential Areas Rate of duty
8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of vice, images or other data , including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528			



8517 62	-	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:			
8517 62 90	-	Other	u	20%	-

Description of goods and tariff rates applicable relevant to CTH 8528 are reproduced below:

Tariff Item		Description of goods	Unit	Standard Rate of duty	Preferential Areas Rate of duty
8528		Monitors and projectors, not incorporating television reception apparatus, reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus			
8528 71 00	---	Not designed to incorporate a video display or screen	u	20%	-

14. In various Apex Court judgments the Court has upheld the persuasive as well as guiding value of HSN Explanatory Notes on the issue of classification under the Customs Act, 1962. In order to comprehend the scope of respective tariff entries it is essential to refer to HSN Explanatory Notes. HSN Explanatory notes of CTH 8517 read as follows:

"5.- For the purposes of heading 85.17, the term "smartphones" means telephones for cellular networks, equipped with a mobile operating system designed to perform the functions of an automatic data processing machine such as downloading and running multiple applications simultaneously, including third-party applications, and whether or not integrating other features such as digital cameras and navigational aid systems."

"This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks."

(1).....



(II) 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)

(A) Base stations.

(B) Entry-phone systems.

(C) Videophones.

(D) Apparatus for telegraphic communication other than facsimile machines of heading 84.43.

These apparatuses are essentially designed for converting characters, graphics, images or other data into appropriate electrical Impulses, for transmitting those Impulses, and at the receiving end, receiving these impulses and converting them either into conventional symbols or indications representing the characters, graphics, images or other data or into the characters, graphics, images or other data themselves.

Examples are:

(1) Apparatus for transmitting messages, such as dial or keyboard transmitters and automatic transmitters (e.g., tele-printer or teletypewriter transmitters).

(2) Apparatus for receiving messages (e.g., teletypewriter receivers). In some cases, the receiver and the transmitter apparatus are combined into one receiver-transmitter.

(3) Picture telegraphic apparatus. The ancillary photographic equipment used with this apparatus (e.g., developing equipment) falls in Chapter 90.

(E) Telephonic or Telegraphic Switching Apparatus.

(F) Transmitting and receiving apparatus for radio-telephony and radio-telegraphy.

(G) Other communication apparatus.

This group includes apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network.

Communication networks include, inter alia, carrier-current line systems, digital-line systems and combinations thereof. They may be configured, for example, as public switched telephone networks, Local Area Networks (LAN), Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture.

This group includes:

(1) Network interface cards (e.g., Ethernet interface cards).

(2) Modems (combined modulators-demodulators).

(3) Routers, bridges, hubs, repeaters and channel to channel adaptors.

(4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).

(5) Codecs (data compressors/decompressors) which have the capability of transmission and reception of digital information.

(6) Pulse to tone converters which convert pulse dialled signals to tone signals.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus of this heading are also classified here.



The heading also excludes:

- (a) Facsimile machines (heading 84.43).
- (b) Perforating machines, whether or not electric, used to perforate paper bands ready for use in automatic telegraphic apparatus (heading 84.72).
- (c) Induction coils for insertion in telephone or telegraph line circuits (heading 85.04).
- (d) Cells; batteries and accumulators (heading 85.06 or 85.07).
- (e) Telephone answering machines designed to operate with a telephone set but not forming an integral part of the set (heading 85.19).
- (f) Apparatus for the transmission or reception of radio-broadcasting or television signal (headings 85.25, 85.27 or 85.28).
- (g) Electric bells or indicators (e.g., luminous indicators operated by the dial of a telephone) (heading 85.31).
- (h) Relays and switching equipment, such as selectors for automatic telephone exchanges, of heading 85.36.
- (ij) Insulated electric wire, cable, etc., as well as optical fibre cables, made up of individually sheathed fibres: whether or not fitted with connectors; including cords with plugs for switchboards (heading 85.44).
- (k) Telecommunication satellites (heading 88.02).
- (l) Telephone call registers and counters (Chapter 90).
- (m) Carrier-current and other transmitters and receivers which form a single unit with analogue or digital telemetering instruments or apparatus, or which, together with the latter, constitute a functional unit within the meaning of Note 3 to Chapter 90 (Chapter 90).
- (n) Calculographs (time recorders) (heading 91.06).
- (o) Monopods, bipods, tripods and similar articles (heading 96.20).

15. HSN Explanatory notes of CTH 8528 read as follows:

This heading includes:

- (1) Monitors and projectors, not incorporating television reception apparatus.
- (2) Television reception apparatus, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, for the display of signals (television sets).
- (3) Apparatus for the reception of television signals, without display capabilities (e.g., receivers of satellite television broadcasts).

Monitors, projectors and television sets utilize different technologies, such as CRT (cathode-ray tube), LCD (liquid crystal display), DMD (digital micromirror device), OLED (organic light-emitting diodes) and plasma, to display images.

Monitors and projectors may be capable of receiving a variety of signals from different sources. However, if they incorporate a television tuner they are considered to be reception apparatus for television.

(A) Monitors capable of directly connecting to and designed for use with an automatic data processing machine of heading 84.71

(B) Monitors other than those capable of directly connecting to and designed for use with an automatic data processing machine of heading 84.71



(C) Projectors

(D) Reception apparatus for television

This group includes apparatus whether or not designed to incorporate a video display or screen, such as:

(1) Receivers of television broadcasts (terrestrial, cable or satellite) which do not include a display device (CRT, LCD, etc.). These apparatuses receive signals and convert them into a signal suitable for display. They may also incorporate a modem for connection to the Internet.

These receivers are intended to be used with video recording or reproducing apparatus, monitors, projectors or televisions. However, devices which simply isolate high-frequency television signals (sometimes called video tuners) are to be classified as parts in heading 85.29.

(2) Television receivers for industrial use (e.g., for reading instruments at a distance, or for observation in dangerous localities). With this apparatus the transmission is often by line.

(3) Television receivers of all kinds (LCD, plasma, CRT, etc.) used in the home (television sets), whether or not incorporating a radio-broadcast receiver, video cassette recorder, DVD player, DVD recorder, satellite receiver, etc.

15. Rule (1) of the General Rules of Interpretation (GRI) states as follows. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

Contending tariff sub-headings for classification purpose in the instant case are CTH 8517 and CTH 8528. Descriptions under both these headings are already reproduced in para 13. HSN Explanatory notes related to these two CTHs are also reproduced in paras 14 & 15.

15.1 In the application for advance rulings before me a decision on classification has been requested on Fire TV Stick which is a HDMI digital media receiver. From the standpoint of technical specifications this HDMI digital receiver has a dual core processor with a dedicated Videocore4 GPU, 1 GB of memory and 8 GB of storage. It has dual band, dual antenna 802.11 AC Wi-Fi. 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 (present in the kit) or by pressing buttons on the remote. Such instructions are meant to select the programme/movie/any other media that the user wants to watch through Fire TV stick. These instructions are transmitted wirelessly in the form of RF signals via Bluetooth to the Fire TV stick and further 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. I find that the HSN Explanatory notes issued by WCO (World Customs Organization) for CTH 8517 state that it excludes apparatus for the transmission or reception of radio-broadcasting or television signals. I also find that the Fire TV Stick does not receive signals from satellite/cable/terrestrial to convert them in the form suitable for display on television screen.



15.2 Comments received from the Commissionerate of Customs, Chennai II have been reproduced in para 10 (c) of this ruling. They have suggested CTH 8517 62 90 as a correct classification for the applicant's product in their response to the application. It is brought to the notice by responding Commissionerate that the explanatory note issued by WCO (World Customs Organization) for CTH 8517 states that it excludes apparatus for the transmission or reception of radio-broadcasting or television signals. It is established fact and also upheld in few apex court judgments that the HSN Explanatory Notes have persuasive value in deciding the classification matters under Customs Tariff Act, 1975. From technology perspective it was brought on record by respondent Commissionerate that the Wi-Fi frequency range is based on IEEE 802.11 protocol and is different from that of a television signal. The product transmits the instructions sent by the user, converts them in the form readable by the system and on receipt of the output again transmits the same which is displayed on the screen. Thus, it is essentially a media streamer which derives its input from Wi-Fi and converts data into a form which can be displayed on HDTV and it will start streaming in minutes. Based on these facts Commissionerate of Customs, Chennai II has opined that the CTH 8517 62 90 seems to be the most appropriate classification for Amazon Fire TV Stick. The Fire TV Stick does not receive signals from satellite/cable/terrestrial to convert them in the form suitable for display on television screen.

15.3 Pr. Commissioner of Customs (III), (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai has given exhaustive comments that are reproduced in para 10(e) of this ruling. He has opined that the HSN Explanatory Notes to heading 8517 provide that this heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical waves flowing in a wire network or by electro-magnetic waves in wireless network. The signal may be analog or digital. The networks, which may be interconnected, include telephone, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

It is further provided in the HSN that the communication apparatus includes one which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such network.

The items to be classified under CTH 8517 are principally equipment for transmission and reception of voice, image or data. In other words, transmission and reception of voice, image or data must be the principal function for a product classifiable under CTH 8517. The Fire TV Stick does not receive signals from satellite/cable/terrestrial to convert them in the form suitable for display on television screen. Once connected to a WI-FI, it allows the user to access and view the movies, TV Shows etc. already available on Netflix, Amazon Video etc. The catalogue submitted by the applicant states that the product is connected to the display device following which it allows the user to access data available on Netflix, Amazon Instant Video, HBO Now and Hulu Plus etc. From a reading of the Tariff Heading and Explanatory Notes discussed above the functions performed by the product are similar to those described for CTH 8517, therefore Pr. Commissioner of Customs (III), (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai has concluded that the applicant's product should fall under this CTH 8517 62 90.



15.4 Commissioner of Customs (Nhava Sheva -V), Jawaharlal Nehru Customs House, Nhava Sheva had scrutinized on the basis of the submission made by the applicant regarding the product and have classified the product Fire TV stick under CTH 8517 62 90.

15.5 Two jurisdictional Commissionerates have expressed divergent views on classification of Fire TV Stick. Pr. Commissionerate of Customs, ACC, Bengaluru has opined for the Fire TV stick to be classified under tariff heading 8528 73 90. They have supported their claim by stating that:

“Fire TV Stick can be used only when it is connected to the HDMI port of the HD Television and the programmes can be viewed with internet connection via Wi fi and programmes to be seen can be controlled with the remote, the product is rightly classifiable under Chapter Heading No.8528 73 90 (Other), in view of the exclusion of the transmission or reception apparatus of heading 8528 in Chapter Heading 8517.”

15.6 Comments received from the Pr. Commissionerate of Customs, Chennai VII (Air Cargo Commissionerate), has suggested CTH 8528 71 00 as a correct classification heading by stating that:

“Fire TV Stick, is a portable device which connects to HDMI port of a television and thereafter the user get access to television episodes and movies and can also play games and music. Further, this product is supported with remote controller to change programmes. No other reception apparatus is required other than this product to view the programmes on television. Therefore, it appears that the product under reference, Fire TV Stick, is a new technological development of reception apparatus for Television. All reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Not designed to incorporate a video display or screen merit classifiable under CTH 8528 71 00”

15.7 The fire stick is an on-demand streaming media player. The working of the device is explained as follows: The user makes a certain request for content on the Fire TV stick using Alexa remote. The remote sends the RF signal to the Fire TV stick, where the signal is converted to a digital signal and transmitted over the internet to the desired server/ cloud for retrieving the content requested by the user. This data is then converted into a form to be usable on TV. From the functionality point of view, there is no doubt the device carries out the functions of reception, conversion, transmission, and regeneration of voice, images, data etc.

15.8 From the HSN explanatory notes to Heading 8528, the reception apparatus for television includes (1) Receivers of television broadcasts (terrestrial, cable or satellite) (2) Television receivers for industrial use and (3) Television receivers of all kinds (LCD, plasma, CRT, etc.) used in the home (television sets). Therefore, the reception apparatus for television in heading 8528 are apparatus capable of receiving television broadcasts or devices like CCTVs or television sets themselves. On the scrutiny of the functionality of the fire stick viz-a-viz above note, it is evident that the device is designed for or capable of functions beyond or different from reception of the broadcast signal and conversion of the same into a signal for display. From technology perspective, it was brought on record by respondent



Commissionerate that the Wi-Fi frequency range is based on IEEE 802.11 protocol and is different from that of a television signal or radio signal.


15.9 Subheading 8528 71/73 includes receivers for TV. The apparatuses mentioned in these entries are capable of receiving and converting the signal. On the other hand, as explained in the above para, the Fire TV Stick performs all three functions of reception, transmission and conversion. The six-digit entry, 851762, which includes 'Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus' is a specific entry which satisfactorily encompasses the functions of the three networking devices under consideration. Therefore, Fire TV Stick merits classification under subheading 851762.

15.10 As per comments received from ACC, Bangalore, HSN explanatory notes exclude transmission or reception apparatus of heading 8528 from Heading 8517. The HSN explanatory note states that "Apparatus for the transmission or reception of radio-broadcasting or television signals (headings 85.25, 85.27 or 85.28)". However, the device under consideration is a streaming device, which uses the internet to provide on-demand content to its user. Therefore, they are not specified in the above-mentioned exclusion clause.

15.11 Based on forgoing discussion and analysis, the device Fire TV Stick, having been designed for reception, conversion and transmission of voice, images or other form of data through the internet and not through satellite/ cable/terrestrial sources merits classification under six-digit tariff entry 8517 62. I do not see any reason for deviation from the stand spelt out by Customs Authority for Advance Rulings, New Delhi in earlier rulings. I also agree with the views expressed on the product classification under CTH 8517 62 90 enumerated in paras 15, 15.1, 15.2 and 15.3 earlier. From technology perspective it was brought on record by one of the respondent Commissionerates that the Wi-Fi frequency range is based on IEEE 802.11 protocol and is different from that of a television signal. Customs tariff heading 8517 specifically excludes apparatus for the transmission or reception of radio-broadcasting or television signal (headings 85.25, 85.27 or 85.28). As far as the contending tariff entry 8528 is concerned, it appears to be an unsuitable tariff entry for classification of the device under consideration in the present proceedings in so far as the said entry is primarily suitable for receivers of television broadcast signals. Therefore, it is my considered opinion that the views expressed in paras 15.5 & 15.6 above for classification of applicant's product under CTH 8528 viz. 8528 71 00 and 8528 73 90, examined on the background of technological facts discussed earlier, are not legally tenable.

16. In view of aforesaid discussion, I rule that the Amazon Fire TV Stick/HDMI digital media receiver with dual core processor, dedicated Videocore4 GPU, 1 GB of memory and 8 GB of storage having a dual band, dual antenna 802.11 AC Wi-Fi is classifiable under CTH 8517 62 90 of the First schedule of the Customs Tariff Act, 1975.




(Narendra V. Kulkarni)

Customs Authority for Advance Rulings,
Mumbai

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

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(Handwritten signature)
3/2/2023

(P. Vinitha Sekhar)

Secretary, Additional Commissioner
Customs Authority for Advance Rulings, Mumbai.