



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

% **Judgment reserved on: 10 October 2023**
Judgment pronounced on: 11 December 2023

+ CUSAA 76/2022 & CM APPL. 23914/2022 (Stay)

AMAZON WHOLESALE INDIA PRIVATE
LIMITED

..... Appellant

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

versus

CUSTOMS AUTHORITY OF ADVANCE RULING,
NEW DELHI & ANR.

..... Respondents

Through: Mr. Satish Kumar, Sr. Standing
Counsel with Mr. Dhruv, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

YASHWANT VARMA, J.

1. The appellant herein assails the correctness of the views expressed by the **Customs Authority for Advance Rulings**¹ as embodied in the impugned order dated 20 July 2021 and insofar as it holds that the 11 impugned devices are classifiable under **Customs Tariff Heading**² 8518 and 8528. The appellant asserts that the devices in question are correctly classifiable under CTH 8517 and more particularly Tariff Entry 8517 62 90 thereof. The 11 devices in question are asserted to fall in the category of “Echo Family Devices” and which

¹ AAR

² CTH




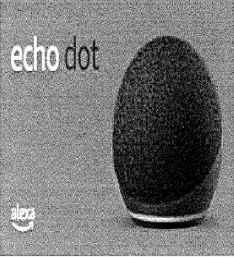
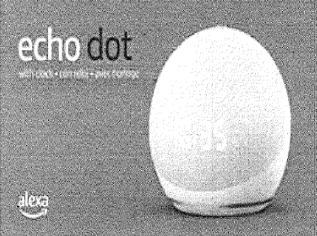
the appellant claims to be essentially communication devices with an inbuilt speaker. From the synopsis which was placed by the appellant before the AAR, the common features and functionality attributes of the Echo Family Devices was described as follows:



- **“Common features of Echo Family Devices:** The Echo family devices are communication devices with inbuilt speaker with Alexa Technology built in it. They can perform multiple functions, including answering questions, playing music, reading news/ audio-books, providing traffic, weather and other real-time information and controlling smart devices. The Subject Echo Devices do not support cellular services. They require an internet connection to perform their functions i.e. they do not have modem incorporated in them. These devices are Bluetooth enabled, which makes it possible to connect such devices with user's phone and/or external speaker. When the devices are connected to the user's phone, they can play audio stored in the user's phone. When they are connected to an external speaker, the audio output is played through the external speaker instead of the internal speaker. *(Page No. 13 -14 of AAR No.5)*
- **Common functioning of Echo Family Devices:** These devices respond to the name “Alexa”, which is commonly known as the 'wake word'. They are pre-programmed to catch the wake word using the microphone in-built to detect the sound. Once the subject devices analyse the wake word, the device becomes operative and starts recording user's voice. When the user finishes speaking, the devices convert this voice/audio data into radio frequency ("RF") signals to be sent to Amazon cloud over the internet. Amazon cloud converts the RF signals into commands that it interprets. Thereafter, it analyses the command and sends back the results over the internet in the form of RF signals to the devices which, in turn, convert the results into electric signals played as audio output on in-built speakers for the user to hear them or on external speakers or on visual output on the display segment for the user to see. The subject devices control the smart appliances in a similar manner. *(Page No. 22- 24 of AAR No.5)*
(Diagram on control of smart devices on page 24 of AAR No.5)

2. The individual features of the subject devices were also explained by way of a tabular statement and relevant parts whereof are reproduced hereinbelow:

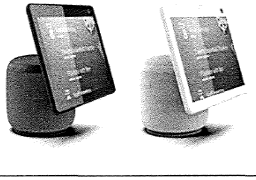
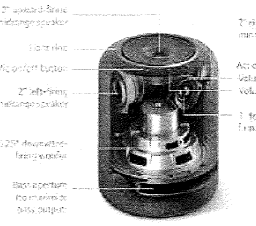

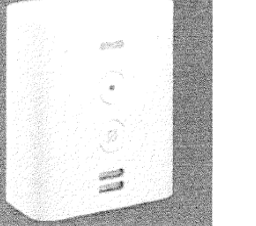



| Model No. | Product details / Market Name | Image | Brief description of additional features | Advance Ruling Applications filed by AWIPL | Classification claimed | Benefit claimed under |
|-----------|-------------------------------|---|---|--|--|-----------------------|
| L4S3RE | Echo 4th Generation |  <p style="text-align: center;">Sphere</p> <p style="text-align: center;">Page No. 68 of AAR No. 5</p> | <p>Echo family device: Additional features include built-in Zigbee smart home hub, temperature sensor, ultrasonic-based presence and motion detection feature. Sound quality of Echo 4th Gen is comparatively better than Echo Dot (next two products in this table).</p> <p><i>(Additional features on page no. 14 of AAR No. 5; Specific functioning on page no. 24 of AAR No. 5)</i></p> | Advance Ruling Application No. 5 | 8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i> <i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i> | - |

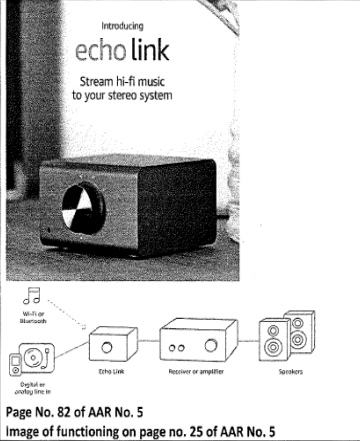
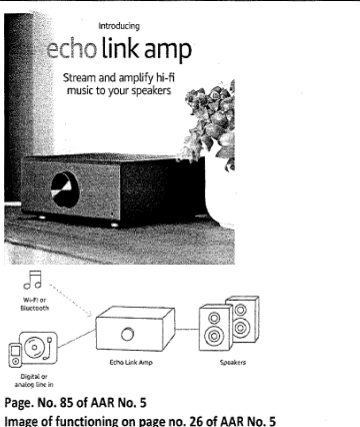
| | | | | | | |
|--------|------------------------------------|---|---|--|--|--|
| B7W64E | Echo Dot 4th Generation |  <p style="text-align: center;">Page No. 70 of AAR No. 5</p> | <p>Echo family device: Additional features include built-in smart home hub, temperature sensor, ultrasonic-based presence and motion detection feature</p> <p><i>(Additional features on page no. 15 of AAR No. 5; Specific functioning on page no. 24 of AAR No. 5)</i></p> | | 8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i> <i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i> | Sl. No. 20 of Notification No. 57/2017 <i>(page no. 40 of AAR No. 5)</i> |
| B7W644 | Echo Dot 4th Generation with Clock |  <p style="text-align: center;">Page No. 70 of AAR No. 5</p> | <p>Echo family device: Additional features include built-in smart home hub, temperature sensor, 7-segment LED display for viewing time and showcasing daily information such as current time, temperature, air quality, current state of timers and alarms, etc.</p> <p><i>(Additional features on page no. 15 of AAR No. 5; Specific functioning on page no. 24 of AAR No. 5)</i></p> | | 8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i> <i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i> | Sl. No. 20 of Notification No. 57/2017 <i>(page no. 40 of AAR No. 5)</i> |

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|---------|-------------|---|--|--|--|--|
| H2K3K37 | Echo Show 5 |  <p style="text-align: center;">Page No. 71 of AAR No. 5</p> | <p>Echo family device: Further additional features include 5.5" display screen with front camera for accessing visual information panels or for video calling</p> <p><i>(Additional features on page no. 15 of AAR No. 5)</i></p> | | 8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i> <i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i> | Sl. No. 20 of Notification No. 57/2017 <i>(page no. 40 of AAR No. 5)</i> |
| C7H6N3 | Echo Show 8 |  <p style="text-align: center;">Page No. 73 of AAR No. 5</p> | <p>Echo family device: Additional feature includes 8" display screen for accessing visual information panels or for video calling</p> <p><i>(Additional features on page no. 16 of AAR No. 5)</i></p> | | 8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i> <i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i> | - |



| | | | | | | |
|--------|--------------|--|--|--|--|---|
| T4E4AT | Echo Show 10 |  <p>Page No. 75 of AAR No. 5</p> | <p>Echo family device: Additional features include 10.1 inches display screen, motorized fixed base which enables it to pan and tilt the screen (hands free viewability with 140 degrees viewing angle)</p> <p><i>(Additional features on page no. 16 of AAR No. 5)</i></p> | | <p>8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i></p> <p><i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i></p> | |
| O2T2V3 | Echo Studio |  <p>Page No. 75 of AAR No. 5</p> | <p>Echo family device: Additional features include temperature sensor, built-in Zigbee smart home hub and the capacity to deliver 3D surround sound</p> <p><i>(Additional features on page no. 19 of AAR No. 5)</i></p> | | <p>8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i></p> <p><i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i></p> | |
| | |  <p>Page No. 79 of AAR No. 5</p> | | | | |
| C77A68 | Echo Flex |  <p>Page No. 77 of AAR No. 5</p> | <p>Echo family device: Additional features include the ability to be directly plugged into the power socket for functioning. The in-built speaker is not optimized for music playback and thus, it requires an external speaker.</p> <p><i>(Additional features on page no. 18 of AAR No. 5)</i></p> | | <p>8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i></p> <p><i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i></p> | <p>Sl. No. 20 of Notification No. 57/2017 <i>(page no. 40 of AAR No. 5)</i></p> |
| BP39CN | Echo Auto |  <p>Page No. 81 of AAR No. 5 Image of functioning on page no. 24 of AAR No. 5</p> | <p>Echo family device: Does not have a speaker for audio playback. Device is meant to be used in a motor vehicle and allows its users to connect their smartphone to the device via Bluetooth and use Alexa services in their vehicle. Further, the device cannot connect to the cloud on its own, but accesses the same via a smartphone through the Alexa app.</p> <p><i>(Additional features on page no. 19 of AAR No. 5; Specific functioning and image on page no. 24 – 25 of AAR No. 5)</i></p> | | <p>8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i></p> <p><i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i></p> | <p>Sl. No. 20 of Notification No. 57/2017 <i>(page no. 40 of AAR No. 5)</i></p> |



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|---------------|--|--|---|--|--|
| <p>SXP16E</p> | <p>Echo Link - Stream hi-fi music to your stereo system</p> |  | <p>Echo family compatible device: It can be used for streaming Hi-Fi music to any stereo system; User can connect Echo Link to the stereo and supported echo devices to play music throughout the home.</p> <p><i>(Additional features on page no. 20 of AAR No. 5; Specific functioning and image on page no. 25 – 26 of AAR No. 5)</i></p> | <p>8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i></p> <p><i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i></p> | |
| <p>K9Y29E</p> | <p>Echo Link Amp - Stream and amplify hi-fi music to your speakers</p> |  | <p>Echo family compatible device: Similar to Echo Link except that this device has an additional in-built amplifier (it also amplifies the audio signals that are streamed through it)</p> <p><i>(Additional features on page no. 21 of AAR No. 5; Specific functioning and image on page no. 26 of AAR No. 5)</i></p> | <p>8517 62 90 <i>(Page no. 31- 40 of AAR No. 5)</i></p> <p><i>(Office of Principal Commissioner of Customs, New Delhi has concurred)</i></p> | |

3. The principal question which appears to have arisen for consideration was whether the subject devices were liable to be placed in CTH 8517 and which includes **“apparatus for transmission or reception of voice, images or other data including apparatus for communication in a wired or wireless network”** or under CTH 8518 which essentially deals with microphones, loudspeakers, headphones and earphones or under CTH 8528 and which is concerned with 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.



4. The AAR in terms of the impugned order has held that the principal function of the three Echo 4th generation devices appears to be the reproduction of sound and thus they being liable to be classified as speakers. It has held that while these devices may be voice enabled and compatible in a WI-FI environment, those features would, at best, lead one to recognize them as being ‘*smart speakers*’ and thus retaining their principal attribute, namely, of being a speaker as generally understood. In view of the above and bearing in mind the **General Rules for Interpretation**³ for import tariff as well as Note 3 to Section XVI of the **Customs Tariff Act, 1975**⁴, the AAR has come to conclude that they are classifiable as ‘*smart speakers*’ under CTH 8518 and more particularly Tariff Entry 8518 22 00.

5. Insofar as Echo Show Devices are concerned, the AAR has taken the view that the primary function of these devices is to act as a display or a monitor and thus enabling the playback of videos from web channels, to display video content during video calling as well as for viewing motion pictures. It thus proceeded to hold that those devices are monitor/display not incorporating television reception apparatus and thus liable to be placed under CTH 8528 and more specifically Tariff Entry 8528 59 00.

6. While evaluating the appropriate classification of Echo Flex, the AAR has accepted the stand of the appellant that it is a communication device and thus classifiable under Tariff Entry 8517 62 90. Proceeding then to consider the Echo Studio Device, the AAR has found it to be in

³ GI Rules

⁴ Act



a sense a ‘*smart speaker*’ akin to the Echo 4th generation devices and thus classifiable under Tariff Entry 8518 22 00.

7. Insofar as Echo Link is concerned, the AAR recognized its principal function to be that of reception, conversion and transmission of voice or other data to the high-quality speaker and since the amplifier functions embedded in the device was not a principal feature, it was liable to be classified under Tariff Entry 8517 62 90. The same rationale was applied for classifying the device Echo Link Amp under Tariff Entry 8517 62 90, which in essence is similar to the Echo Link device and has an additional built-in amplifier.

8. An additional issue which appears to have been raised was whether the Echo Auto, Echo Flex, Echo Show 5, Echo Dot 4th generation and Echo Dot 4th generation with Clock devices would be eligible to claim benefits of an exemption notification dated 30 June 2017 as amended vide notification dated 01 February 2021. The AAR identified the qualifying criteria for a claim of exemption to be that the subject devices being classifiable either under Tariff Entries 8517 62 90 or 8517 69 90 coupled with the condition of those devices not falling in the list of excluded items as enumerated therein. One of the criteria for exclusion from exemption as specified in the aforementioned notification was of the devices being **Multiple Input Multiple Output**⁵ enabled.

9. Of the five devices in respect of which the appellant claimed exemption, the AAR found that only Echo Auto and Echo Flex would qualify since only those two devices were classifiable under Tariff

⁵ MIMO



Entry 8517 62 90. For the remaining three devices, the AAR answered the issue raised against the appellant and held that the said devices were not eligible for exemption having already held that they were not classifiable under Tariff Entries 8517 62 90 or 8517 69 90.

10. It is in the aforesaid backdrop that the appellant assails the opinion as expressed by the AAR and raises the following questions for our consideration:

- “(i) Whether the Impugned Advance Ruling No. *AARIDEL/AMAZON/17/2021* dated 20.07.2021, is liable to be set aside as the same was passed without appreciating the correct factual and legal position?
- (ii) Whether the impugned devices are correctly classifiable under Customs Tariff Item 8517 62 90 of the First Schedule to the Customs Tariff Act, 1975?
- (iii) Whether three (3) impugned devices, namely Echo Show 5, Echo Dot 4th Generation and Echo Dot 4th Generation with clock are eligible for exemption under S1. No. 20 of Notification No. *57/2017-Cus* dated 30.6.2017?”

11. Appearing in support of the appeal, Mr. Lakshmikumaran addressed the following submissions. Taking us through the impugned order, Mr. Lakshmikumaran pointed out that the AAR had itself captured the various features of the 11 subject devices and understood them in the following terms:

| “S. No | Device | Particulars/Features |
|--------|---|---|
| 1. | Echo 4 th generation with Model No. L4S3RE | Built-in smart home hub (ZigBee and Halo), temperature sensor and an ultrasonic-based presence and motion detection feature, which can be used to detect when a person enters or exists a room. The device is MIMO enabled. |
| 2. | Echo Dot 4 th generation with Model No. B7W64E | Similar features as that of the Echo 4 th generation device. However, Echo Dot 4 th generation does not support MIMO and the sound quality is comparatively better. |



| | | |
|----|---|---|
| 3. | Echo Dot 4 th Generation with Clock with Model No. B7W644 | Similar features as that of the Echo Dot 4 th generation. The additional features are that it has an LED display for viewing time and showcasing daily information such as time, temperature, air quality, alarms etc. The device is not MIMO enabled. |
| 4. | Echo Show 5 – Digital Media Receiver (With Display Screen) with Model No. H23K37 | Echo Show 5 has a screen with a front camera. The device can perform various functions including accessing visual information panels. It has a 5.5 inch display screen which is used for video calling with the use of a camera and a microphone. The device also has a manual shutter to close the camera. The said device is not MIMO enabled. |
| 5. | Echo Show 8 - Digital Media Receiver (With Display Screen) with Model No. C7HGN3 | Echo Show 8 performs the same functions as Echo Show 5 and it has an 8 inch display screen. The said device is MIMO enabled |
| 6. | Echo Show 10 - Digital Media Receiver (With Display Screen) with Model No. T4E4AT | Echo Show 10 has a 10.1 inch display screen. The said device can perform the same functions as that of Echo Show 8. The additional feature is that Echo Show 10 has a motorized fixed base, which enables to it to pan and tilt the screen, providing a hands-free viewability with 140 degrees viewing angle. It also has the capability to frame individual within the camera field of view during a video call, for which smart motion technology is used. Due to this distinguishing feature, the device can be placed anywhere and the user can view the screen without holding/adjusting the screen manually. |
| 7. | Echo Flex with Model No. C77A68 | Echo Flex can be directly plugged into a socket for functioning. It has an in-built speaker, but the same is not optimized for music playback. The said device also has USB ports, enabling users to charge mobile phones, night lights, clocks, air freshener etc., All these accessories can be controlled by a user by using the Echo Flex. The said device is not MIMO enabled. |



| | | |
|-----|--|--|
| 8. | Echo Studio with Model No. O2T2V3 | Echo Studio is different from the other Echo devices, in terms of its superior sound quality. It is capable of delivering 3- dimensional surround sound and can decode and render Dolby Atmos, Dolby Digital 5.1, 7.1 audio formats. The device also has the feature of tuning the speakers in terms of its orientation, placement and room acoustics basis the room it is placed in. The device also has a temperature sensor and a smart home hub, that can control other smart devices. The device is MIMO enabled. |
| 9. | Echo Auto – Media Transmission Device with Model No. BP39CN | Echo Auto has all the common features, except it does not have a speaker for audio playback. The in-built speaker of Echo Auto is meant for use only during initial device set up. The device is meant to be used in a vehicle and allows its users to connect their smartphones to the device. The device uses the data services of the smartphone to access the cloud and perform its functions. It does not have a screen or speakers for playing media. The device is also not MIMO enabled. |
| 10. | Echo Link – Audio Receiver with Model No. SXP16E | Echo Link can be used for streaming music to any stereo system. A user can connect Echo Link to the stereo and other supported Echo devices to play music throughout the home or in a particular room. The said device is MIMO enabled. |
| 11. | Echo Link Amp - Audio Receiver and Amplifier with Model No. K9Y29E | Echo Link Amp is similar to Echo Link, except that Echo Link Amp has an additional input amplifier. Therefore, external amplifiers would not be required in case a user is using passive speakers as output speakers. The said device is MIMO enabled.” |

12. Explaining the common features of the subject devices, Mr. Lakshmikumaran contended that they are essentially mediums of communication with built-in Alexa technology. It was pointed out that the devices, while not supporting cellular services, are designed to be



connected with either wired or external WI-FI. Mr. Lakshmikumaran explained that the devices when connected to the internet can perform multiple functions such as answering questions, streaming music, reading news/audio books, providing traffic, weather and other real time information as well as controlling smart household fixtures such as lights and fans as well as regulating the functioning of air conditioners. It was further explained by learned counsel that the devices are also Bluetooth enabled and thus can be controlled by a user's phone and can also function as an external speaker when connected with other devices.

13. Expanding upon the varied functions that those devices could perform, Mr. Lakshmikumaran submitted that the subject devices are pre-programmed to commence functioning on the use of the *wake word* 'Alexa' using the inbuilt microphone to detect that particular sound. On capturing the wake word, the devices become operational and start responding to the user's voice. It was submitted that instructions or commands orally conveyed and so captured by the devices constitutes data which is thereafter transmitted over the internet to the **Amazon Server/Alexa Voice Server**⁶. The AVS is stated to convert the signals so received into commands which are then interpreted and analyzed and the results then pushed back to the devices over the internet. The instructions so received are thereafter converted into tangible results in sync with the command which had been originally given.

14. Mr. Lakshmikumaran pointed out that in order to obviate any confusion with respect to classification of the 11 devices and for the purposes of obtaining clarity, the AAR was moved by way of a

⁶ AVS



comprehensive application dated 09 March 2021. According to Mr. Lakshmikumaran, a ruling on classification was sought in respect of the 11 Echo devices. It was his submission that the subject of classification of goods under the First Schedule of Import Tariff placed in the Act is foundationally governed by the GI Rules. According to Rule 1 of the GI Rules, Mr. Lakshmikumaran submitted, the goods were liable to be classified in accordance with the terms of the Chapter Heading as well as the relevant Section and Chapter Notes. Our attention was drawn to the Heading of Section XVI whose title appears to suggest its intent to covers all mechanical and electrical appliance/equipment as well as Electrical machinery and equipment falling under Chapters 84 and 85 respectively. Reliance was specifically placed on Note 3 placed in Section XVI which reads as follows:

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

15. Mr. Lakshmikumaran laid emphasis on Note 3 as providing guidance for the purposes of classification by stipulating that in the case of multi-functional machines, it is the principal function of the machine which would be determinative. In terms of the synopsis which has been submitted for our consideration Mr. Lakshmikumaran while reiterating the versatility of the devices submitted that they are essentially multi-function machines involving and enabling transmission, reception or conversion of data. While elaborating on the above, Mr. Lakshmikumaran submitted that the devices become operative and



respond to the wake word 'Alexa' and transmit commands to the Amazon cloud/AVS and finally convert the results received into electrical signals which are then played back as output through either the external/internal speakers or as in the case of Echo Show devices displayed on the screen.

16. It was submitted that the inbuilt speakers and screens merely act as an output medium for the information sought or the video or audio content requested. According to learned counsel, the principal function of the Echo devices is thus liable to be recognized as being that of transmission, reception and conversion of data, be it in the shape of voice or images. According to Mr. Lakshmikumaran, the subject devices should consequently be acknowledged as being '*convergence devices*' and thus classifiable under CTH 8517 and more particularly under Tariff Entry 8517 62 90 which extends to machines for the reception, conversion and transmission or regeneration of voice, images or other data. Mr. Lakshmikumaran also drew our attention to the letter dated 01 June 2021 issued by the Principal Commissioner, Customs, New Delhi (Respondent No. 2) to AAR in relation the appellant's application, whereby the Customs authority set out its comment that the 11 Echo family devices are classifiable under Tariff Entry 8517 62 90. Mr. Lakshmikumaran submitted that the aforesaid communication affirms the position as taken by the appellant and thus establishing that the view as taken by the AAR in the impugned order is untenable and liable to be set aside.

17. Mr. Lakshmikumaran further pointed out that the AAR, Mumbai while dealing with a similar product, namely, Apple HomePod had



ultimately come to recognize the same to be a ‘*convergence device*’ as distinguished from a normal speaker and thus liable to be classified under CTH 8517. Mr. Lakshmikumaran invited our attention to the following passages from that decision:

“11. Considering the attributes of the device in question, which is capable of receiving voice commands, covert such voice commands into text to perform multiple tasks, e.g., stream music from the internet or another Apple device, retrieve information available in the net like weather, traffic, news, sports updates etc., regenerate such information back to the user in the form of music/speech, and also act as a home automation device to control reconditioners, locks, lights etc., it is clear that the product in question has multiple facets, and therefore, its classification would depend upon identifying the essential character of the device. The product consists of an Apple designed A8 chip, a six-microphone array, a seven-tweeter array, and a high excursion woofer enclosed in a seamless mesh fabric. The device works wirelessly through Wi-Fi or Bluetooth and as already noted it can play music directly from the internet or from another Apple device through AirPlay 2. Through its digital assistant, Siri, a user can give voice commands not only for obtaining the preferred music, but also information like, weather, news etc. Therefore, unlike a mere speaker, which only reproduces sound, the HomePod is a convergence device which is capable of receiving voice commands and processing such commands internally to receive the desired end result, be it music or information, and regenerate such music or information back to the user via the speakers. The primary mode of interacting with the device is voice commands, though it is possible to play, pause and raise volume by tapping the top of the device. The home automation functions of the device to control a wide range of accessories is carried out via a hardware certification platform and a database system that makes possible integrate, configure, and communicate between a wide variety of products. The control of such devices is also done through Siri via voice commands. Considering the various functions that the device is capable of and taking into account the existing tariff classification system, I am of the considered opinion that the product in question answers to the description of six-digit entry 851762 which is meant for 'Machines for reception, conversion and transmission or regeneration of voice, images, other data, including switching and routing apparatus' and more specifically under the residuary sub-heading 85176290.



In view of my aforesaid discussions, I rule that Apple HomePods merit classification under sub-heading 85176290 of the first schedule to the Customs Tariff Act, 1975.”

18. Based on the aforesaid decision of the AAR Mumbai, Mr. Lakshmikumaran submitted that the appellant filed a modification petition dated 03 August 2021 before the AAR, Delhi, seeking a declaration that the 11 Echo family devices should be classified under CTH 8517. The said petition, according to Mr. Lakshmikumaran came to be perfunctorily dismissed by the AAR, New Delhi and it failed to accord due consideration on a precedent which was clearly of import by merely observing that the determination made by it did not suffer from a mistake of law or fact and thus warranting no review.

19. Mr. Lakshmikumaran then submitted that the opinion expressed by the AAR is liable to be set aside on a more fundamental plane. It was his submission that the scope of Tariff Headings and Entries falling thereunder are liable to be interpreted and understood bearing in mind the synergy which must be recognized to exist when it comes to the subject of classification, especially since India follows the **Harmonized System of Nomenclature**⁷. Our attention in this respect was drawn to the **Binding Tariff Information**⁸ decisions rendered by the competent authorities in England as well as the European Union and which had consistently held that Echo family devices were classifiable under CTH 8517. The aforesaid determinations have been placed on the record compendiously as Annexures 11, 12 and 13.

⁷ HSN

⁸ BTI



20. Mr. Lakshmikumaran also drew our attention to the Circular of the **Central Board of Excise & Customs**⁹ dated 05 September 2013 which was called upon to evaluate the classification of Bluetooth Wireless Headsets to be used alongside mobiles and cellular phones. It would appear from a reading of the aforesaid Circular that the Board accepted the position that normal headphones when combined with a microphone would only carry audio signals whereas Bluetooth headsets are an active part of a wireless network and which simultaneously receive or transmit voice or data in a wireless setting. On due consideration of the above features of Bluetooth Wireless headsets as distinguished from ordinary headsets, the Board held that they would be classifiable under CTH 8517. We deem it apposite to extract paras 4 & 5 of the Circular hereinbelow:

“4. In the instant case, as “Bluetooth Wireless headset for mobile/cell phone”, is presented together with a charger, ear hooks and user documentation and put up in a set for retail sale, therefore besides GRI 1, the legal basis of classification would be the sequential application of Rules 2(a), 2(b), 3(a) and 3(b). It is the headset that confers it the essential character to this set. As seen, the “Bluetooth Wireless Headset for mobile phones/cell phones” comprises microphone/transmitter, headphone/receiver, wireless communication system. The communication function for mobile telephony characterizes its principal function for the purpose of Note 3 to Section XVI. This function is included in heading 85.17: “other apparatus for the 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”. Thus, heading 85.17 would apply to “apparatus” used for communication in wireless networks, which is a simultaneously two-way audio and data streaming in the radio frequency band. Also, the HS Explanatory Note to sub-heading 8517.62 (Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus) provides that, “this

⁹ Board



sub-heading includes cordless handsets or base units, when presented separately.” Headphones combined with a microphone of heading 8518 carry only audio signals and are not an active part of a network, whereas a Bluetooth headset with mobile telephony function is an active part of a wireless network, includes a software part for the wireless network and simultaneously receives/transmits voice and data in a wireless network. Thus, “Bluetooth Wireless headsets for mobile phones/cell phones” equipped with communication device fully comply with the sub –heading 8517.62.

5. In view of the above, the Board is of the view that “Bluetooth Wireless headsets for mobile phones/cell phones” is correctly classified in heading 85.17, sub -heading 8517.62, by application of GRI 1 (Note 3 to Section XVI), 3(b) and 6.”

21. Mr. Lakshmikumaran submitted that ultimately the issue of classification would have to be evaluated bearing in mind the well-settled “principal function” test which courts have consistently employed. According to learned counsel, merely because the devices could also or incidentally perform the function of a speaker or a monitor would not detract from the principal function of those devices being recognised to be the reception, conversion and transmission of data. It was the submission of learned counsel that merely because the appellant may have advertised the subject devices as ‘*smart speakers*’ on its web portal, would also not be determinative since the name or nomenclature of a product cannot always be accepted to be a valid criterion for classification or for the said test being applied in complete disregard of the functionality of a product. Mr. Lakshmikumaran in this respect sought to draw sustenance from the following decisions:

- (i) **Commissioner of Central Excise Hyderabad v. Sarvotham Care Limited**¹⁰;

¹⁰ (2015) 13 SCC 498



- (ii) **Sanghvi Movers Ltd v. Commissioner of Customs**¹¹ (as confirmed by the Supreme Court in its order dated 22.04.2016, CA No. 4336/2008).

22. Learned counsel further submitted that the AAR erred in taking the position that if the subject devices were not connected to the internet, they would function as speakers only and this aspect justifying their placement in either CTH 8518 or 8528. According to learned counsel, the view so taken proceeds in ignorance of the indubitable fact that the subject devices are in fact designed, manufactured and intended to be used with an internet connection failing which the various Alexa based features which are embedded in those devices would be rendered otiose. According to learned counsel, the view taken by the AAR in this regard is wholly illogical and merits outright negation.

23. Controverting the submissions of Mr. Lakshmikumaran, Mr. Satish Kumar, learned counsel appearing for the respondents, advanced the following submissions. Mr. Kumar placed reliance upon the principal function test and Note 3 to Section XVI of the First Schedule to the Act and contended that the principal function of the impugned devices is to act as a speaker or as a display or monitor. It was contended that the Amazon Echo 4th generation devices and the Amazon Echo Show devices are being marketed and sold as a premium speaker and a monitor respectively. According to Mr. Kumar, in common trade parlance, they are not regarded as Alexa based communication devices and would therefore not be classifiable under CTH 8517. Mr. Kumar also contended that in the absence of internet

¹¹ 2007 SCC Online CESTAT 79



connectivity, the impugned devices would function as stand-alone speakers/monitors only and this lending further credence to they being classifiable either under CTH 8518 or 8528. It is in this background that Mr. Kumar contended that the said devices, being devoid of cellular network services and modem do not have the necessary capabilities to function as communication devices as compared to similarly placed devices that may legitimately claim placement under CTH 8517. According to learned counsel, it is these aspects which would lead the Court to uphold the view as taken by the AAR.

24. Mr. Kumar also submitted that the impugned Echo 4th generation devices and the Echo Studio accepting voice commands with WI-FI capability would at best qualify as ‘*smart speakers*’ and that those devices would thus be classifiable as ‘*hearable devices*’ as per the Notification No. 12/2022-Customs dated 01 February 2022 issued by the Ministry of Finance. Mr. Kumar laid stress on the following parts of that notification:

“Explanation. - For the purposes of this notification, hearable devices mean: -

- (i) true wireless stereo (TWS), headphones, earphones and similar devices like earbuds, neckbands, headsets, etc., whether or not combined with a microphone, being capable of connecting through a wireless medium; and
- (ii) portable bluetooth speakers comprising of an amplifier and loudspeaker(s) with maximum output power not exceeding 40 Watts, having battery as a source of power and capable of wireless connectivity through bluetooth.”

25. Mr. Kumar further submitted that the AAR Mumbai’s decision relating to Apple Home Pods is of little relevance since as per the scheme of the **Customs Act, 1962**¹², advance rulings pronounced by

¹² the 1962 Act



the AAR bind only the concerned applicant and the particular Commissionerate of Customs and therefore no other individual or entity can derive benefit from such expressions of opinion. With respect to the BTI decisions rendered by the competent customs authorities in overseas jurisdictions is concerned, Mr. Kumar submitted that the said decisions do not bind the Indian customs authorities and who are jurisdictionally empowered and obliged to answer the issue of classification independently and bearing in mind our Act as well as the Rules and Regulations framed thereunder.

26. Having noticed the rival submissions addressed, we deem it apposite to briefly notice the conclusions recorded by the AAR and which forms the basis for the passing of the impugned order. Insofar as Echo 4th Generation, Echo Dot 4th generation and Echo Dot 4th generation with Clock were concerned, the AAR on the basis of the product description, the special features of those devices as highlighted by the appellant as well as the advertisements and content appearing on the website of Amazon came to conclude that their principal function was to reproduce sound and act as a speaker. The AAR notes that while those devices when connected to a WI-FI network are enabled to accept voice commands, the said feature would at best elevate those devices to be described as '*smart speakers*' and notwithstanding the above, they would still be liable to be recognised as speakers principally. It was the aforesaid view which led it to conclude that the devices in question were liable to be placed in Tariff Entry 8518 22 00. Proceeding further to rule on the classification of Echo Show 5, Echo Show 8 and Echo Show 10 devices, it came to conclude that those devices were basically



monitors/displays, not incorporating television reception apparatus, and thus liable to be placed under CTH 8528 and more specifically Tariff Entry 8528 59 00.

27. However, insofar as Echo Flex, Echo Auto and Echo Link devices were concerned, it accepted the contention of the appellant that they were liable to be placed under CTH 8517 as a communication device for the reception, conversion and transmission of voice, images or other data.

28. That left the AAR to only consider the appropriate classification of the Echo Studio device. On due consideration of the material placed before it, the AAR came to conclude that the said device would fall in the same category as Echo 4th Generation, Echo Dot 4th Generation and Echo Dot 4th Generation with Clock and thus be liable to be categorized under CTH 8518, and more specifically Tariff Entry 8518 22 00.

29. It then proceeded to consider the claim for exemption and which rested on the provisions contained in the exemption Notification dated 30 June 2017, as amended vide Notification dated 01 February 2021. It becomes pertinent to note that the appellant had claimed exemptions in respect of Echo Show 5, Echo Auto, Echo Flex, Echo Dot 4th Generation and Echo Dot 4th Generation with Clock. The principal conditions for the purposes of extension of exemption benefits in relation to the impugned devices were recognized to be the device falling either under Tariff Entries 8517 62 90 or 8517 69 90 together with the subject products not being MIMO enabled. Since the AAR had already held that the Echo Show 5, Echo Dot 4th Generation and Echo Dot 4th Generation with Clock devices were not classifiable under CTH



8517, it held that they would not be covered by the aforementioned exemption Notification. It, however, accepted the extension of exemption benefits to Echo Auto and Echo Flex since they were not MIMO enabled and more fundamentally since it had already held that they were liable to be placed under CTH 8517.

30. It is pertinent to note that while the AAR did notice the principles of interpretation and which in turn would be guided by the GI Rules, the Chapter Headings and the Notes placed therein, it clearly appears to have failed to test or answer the issue of classification based on the guiding principles as evinced therefrom. The AAR, in our considered opinion, even while attempting to ascertain and discern the principal function of the subject devices appears to have taken an extremely narrow if not myopic view. This, we are constrained to so observe, in light of the following facts.

31. Of the seven devices which were ultimately classified by the AAR as falling under CTH 8518 and 8528, we note that undisputedly those devices were designed to act as communication devices, were voice enabled and had various functionalities including the capability of controlling compatible smart home appliances, browsing the internet, assisting in online shopping, setting reminders and tasks as well as acting as a calling and messaging platform. The Echo Show range devices, while having all of the aforementioned attributes, could additionally be used for video calling or for streaming video content.

32. The AAR while proceeding to ultimately classify the seven subject devices under CTH 8518 or CTH 8528 appears to have been swayed principally by how those products had been described or



advertised by the appellant itself or as per their descriptions appearing on various web portals. However, the AAR while proceeding down this path clearly erred in failing to bear in mind the well settled principle that the name or nomenclature as ascribed to a particular product may not and in all circumstances be countenanced to be the determinative or conclusive test insofar as the issue of classification is concerned.

33. We deem it apposite in this connection to notice the decision of the Supreme Court in **Commissioner of Central Excise, Hyderabad vs. Sarvotham Care Limited**¹³ and which was commended for our consideration by Mr. Lakshmikumaran. The product which formed the subject matter of that decision was known as “*nizral shampoo*”. While the manufacturer had sought to place the product in the category of ‘*medicine*’ under CTH 3003, the Department took the position that since the manufacturer had itself chosen to describe the product as a ‘*shampoo*’, it was liable to be classified under CTH 3305, the heading relating to preparations for use on hair. While dealing with the question which stood posited, the Supreme Court observed as under: -

“21. At the outset, we may mention that the product known as “Nizral shampoo” gives the nomenclature of the product as shampoo. However, the respondent claims that it is a patent or proprietary medicament as its essential characteristic is therapeutic in nature. It is the common case of the counsel for the parties that the predominant use of the product in question is to be taken into consideration while deciding the classification issue. Therefore, it is to be determined as to whether the product in question is primarily used as a shampoo or it is used as a medicament. To find answer to this question, it is necessary to keep in mind the essential characteristics of the product.

22. When the matter is examined from the aforesaid perspective we come to the conclusion that the respondent is correct in submitting

¹³ (2015) 13 SCC 498



that the essential properties of the product are medicinal in nature.
It is clear from the following description:

“Pharmacodynamics

Ketoconazole, a synthetic imidazole dioxolane derivative has a potent anti-fungal activity against dermatophytes, such as *Trichophyton* sp. *Epidermophyton* sp. *Microsporum* sp. and yeasts, such as *Candida* sp. and *Malassezia furfur* (*Pityrosporum ovale*). Ketoconazole shampoo rapidly relieves scaling and pruritus, which are usually associated with pityriasis versicolor seborrhoeic dermatitis and pityriasis capitis (dandruff).

Pharmacokinetics

Percutaneous absorption of Ketoconazole shampoo is negligible since blood levels cannot be detected, even after chronic use. Systemic effects, therefore, are not expected.

Indications

Treatment and prophylaxis of infections in which the yeast *Pityrosporum* is involved, such as pityriasis versicolor (localised), seborrhoeic dermatitis and pityriasis capitis (dandruff).

Contra-indications

Known hypersensitivity to Ketoconazole or the excipient.”

23. The manufacturer has given clear warning and precautions for the use of this product which are follows:

“Warnings and Precautions

To prevent a rebound effect after stopping a prolonged treatment with topical corticosteroid, it is recommended to continue applying the topical corticosteroid together with Nizral shampoo 2% and to subsequently and gradually withdraw the steroid therapy over a period of 2-3 weeks.

Seborrhoeic dermatitis and dandruff are often associated with increased hair shedding, and this has also been reported although rarely, with the use of Nizral shampoo 2%.”

24. It is further mentioned as to how the treatment should be given to a person suffering from various kinds of dandruff:

“Treatment

-Pityriasis versicolor; once daily for maximum 5 days.



-Seborrhoeic dermatitis and pityriasis capitis; twice weekly for 2 to 4 weeks.

Prophylaxis

-Pityriasis versicolor: once daily for a maximum 3 days during a single treatment course before the summer.

-Seborrhoeic dermatitis and pityriasis capitis: once every one or two weeks.”

25. Even the adverse reaction of the treatment is mentioned by the manufacturers with specific advice that overdose of this shampoo is not expected, as is clear from the following:

“Adverse reactions

Topical treatment with Nizral shampoo 2% is generally well tolerated. As with other shampoos, a local burning sensation, itching, irritation and oily/dry hair may occur, but are rare, during the period of use of Nizral shampoo 2%. In rare instances, mainly in patients with chemically damaged hair or grey hair, a discolouration of the hair has been observed.

Overdosage

Not expected as Nizral shampoo 2% is intended for external use only. In the event of accidental ingestion, only supportive measures should be carried out. In order to avoid aspiration, neither emesis nor gastric lavage should be performed.”

26. Thus, not only is limited period use stated, another important feature that appears in the literature supplied by the respondent is the information for the “patient”, describing the user of the product as a “patient”. It is as under:

“Patient information

Ketoconazole shampoo 2%

Nizral shampoo 2%

You have been advised by your doctor to use this shampoo to treat dandruff. This leaflet gives you some information that you should keep in mind while using Nizral shampoo. It also gives some background information on dandruff, which is important for you to deal with it. Please read this leaflet carefully to get the best results from this treatment. Remember that it cannot answer all your questions, and that you should check with your doctor for any further information you may require.”



27. The use is suggested only on the advice of a doctor and there is a suggestion that doctor should be consulted for any further information. The respondent has also provided the literature/material showing that dandruff is a disorder which affects the hairy scalp. It is generally triggered by a single-celled organism which is a kind of fungus, with scientific name “PityrosporumOvale”. For treatment of this disease, Nizral shampoo 2% (i.e. shampoo containing 2% “Ketoconazole”) is shown as “a new medicine” use whereof cures and clears a dandruff. It is suggested that it should be used once a week and on other days, normal shampoos may be used which clearly shows that “Nizral shampoo” is to be used like a medicine, unlike other normal shampoos.”

34. As would be manifest from the aforesaid extracts of the decision in *Sarvotham Care*, notwithstanding the product having been branded as a ‘shampoo’, the Supreme Court observed that for the purposes of answering the question of classification, it would have to necessarily be determined whether the product was primarily intended to be used as a ‘shampoo’ or as a ‘medicament’. It ultimately held in favour of *Sarvotham Care* applying the rule of predominant use.

35. A similar question arose for the consideration of the Supreme Court in **Commissioner of Customs, Central Excise and Service Tax, Hyderabad vs. Ashwani Homeo Pharmacy**¹⁴. In this case also the manufacturer had asserted that notwithstanding the product being styled as a ‘hair oil’, it was liable to be classified as a ‘medicament’. While dealing with the aforesaid question, the Supreme Court pertinently observed as follows: -

“72. As regards the question as to whether the product in question, AHAHO, merits classification as ‘medicament’ under Chapter 30 or as ‘cosmetic or toilet preparations’ under Chapter 33, the inquiry shall be directed towards a couple of tests taken together, being the

¹⁴ 2023 SCC Online SC 558



common/commercial parlance test i.e., how the product is understood commonly, including by the persons dealing in the same and by the end-users; and the ingredients test i.e., whether the ingredients used in the product are found mentioned in authoritative textbooks [vide *Shree Baidyanath Ayurved Bhavan Ltd.* (supra)]. The connotations of common parlance test could further be understood from the case of *Alpine Industries* (supra), that the primary object of such taxing statute being to raise revenue and various products being differently classified for that purpose, the entries are not to be understood in their scientific and technical meaning; rather the terms and expressions used in tariff have to be understood by their popular meaning, that is the meaning attached to them by those dealing with or using the product. Further, as observed in *G.C. Jain* (supra), the words and expressions, unless defined in the statute have to be construed in the sense in which persons dealing with them understand i.e., as per trade understanding and usage. Yet further, there is no fixed test or static parameter for correct classification of a product and it essentially depends on the meaning assigned to it by the persons concerned with it. One of the essential factors for determining whether a product falls under Chapter 30 or not is as to whether the product is understood as a pharmaceutical product in common parlance. However, the quantity of medicament used in a particular product is not a relevant factor because, ordinarily, the extent of use of medical ingredients is very low as a larger use may be harmful for the human body [vide *Wockhardt Life Sciences* (supra)]. Moreover, as held in *Sharma Chemicals* (supra), the mere fact that a product is sold across the counters and not under a doctor's prescription, does not by itself lead to a conclusion that it is not a medicament; and in *Meghdoot* (supra), that a product may be medicinal without having been prescribed by a medical practitioner. It is held by this Court in *BPL Pharmaceuticals* (supra) and reiterated in *Meghdoot* (supra) that the items which may be sold under names bearing a cosmetic connotation would nevertheless remain medicines based on the composition. As regards the question as to whether a particular product is classifiable under Chapter 30 as 'medicament' or under Chapter 33 as 'cosmetic', one of the essential features would be as to whether the preparation is essentially for cure or prevention of disease (medicament) or for care (cosmetic); and the preparation having only subsidiary curative or prophylactic value would fall under Chapter 33 [vide *Alpine Industries* and *Sunny Industries* (supra)].

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88. In regard to the overt reliance of the appellant on the expression “Hair Oil” used for the product by the respondent, it may also be observed that small doses of the medicines in question would invariably require some medium of administration. Learned counsel for the respondents has rightly submitted that in relation to the product in question, hair oil is only a medium through which the medicine is to be applied on the scalp, particularly when it is meant for nourishing the hair roots.

89. It is also apparent in the present case that the stand of the Department to classify the product in question as ‘cosmetic’ under Chapter 33 is essentially based on the distinct entry “Hair Oil” occurring therein; and it appears that the expression “Hair Oil” occurring on the label of the product has been taken as decisive by them. For what has been discussed hereinabove, it would also follow as a natural corollary that the expression “Hair Oil” occurring on the label of the product is only indicating the medium through which Homeopathic medicines comprising the product are to be applied. We are unable to accept the submissions and the efforts on the part of the appellant to take the product in question to Chapter 33 merely because of its label carrying the expression “Hair Oil” while ignoring the preceding significant expressions “Homeo” and “Arnica”. As observed by this Court in *BPL Pharmaceuticals* (supra), for a product to be taken to Chapter 33, it has first to be a ‘cosmetic’. Similarly, reference to Note 1(e) of Chapter 30 also turns out to be of no relevance because the product in question cannot be said to be a preparation of Heading 3305 and then having insignificant or subsidiary therapeutic or prophylactic properties. As regards the product in question, which is essentially made of Homeopathic medicines which have therapeutic and prophylactic uses, it cannot be said to be carrying only subsidiary pharmaceutical value. Putting it differently, we are satisfied that the product in question, AHAHO, is predominantly of pharmaceutical value and the item of cosmetic therein, i.e., hair oil, is nothing but a medium for appropriate use of that pharmaceutical value.

90. In regard to the above, we find the consideration of this Court in the case of *BPL Pharmaceuticals* (supra) to be apposite to the questions before us. Therein, this Court was considering a product sold by the assessee under the brand name “Selsun shampoo”. This Court found it to be medicament with reference to a variety of tests applied from different angles and after finding that its active ingredient was selenium sulfide. In that context, this Court also indicated that an individual using such product may not be prepared to say that he or she was using a particular compound



to get rid of dandruff or other similar diseases but would not hesitate to state that he or she was using a particular brand of shampoo. The observations in *BPL Pharmaceuticals* in this regard correlates with ingredient test as also the common parlance test; and in our view, fortify the case of the respondent.

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95. The other suggestion on behalf of the Adjudicating Authority and the appellant, relating to the common parlance test with reference to the depiction of a lady with long black flowing hair on its label and thereby treating it as cosmetic, is also stretching the matter to the brink of absurdity. When the product in question is intended to control hair fall as also to prevent dandruff and to induce good sleep, which all carry their own therapeutic and prophylactic connotations, the picture of a lady with long black flowing hair cannot be said to be unrelated to the indications related with the product. In any case, such a picture, by itself, cannot make the product in question a cosmetic. Interestingly, right at the top of the said picture and below the name of the product, it proclaims “Controls hair fall. Prevents dandruff”. The Adjudicating Authority has taken his process of analysis to further illogical heights by proclaiming that hair growth was at the best a cosmetic necessity rather than a disease requiring immediate attention or treatment. We have reproduced these expressions of the Adjudicating Authority verbatim to show the irrationality of reasoning and want of logic. A treatment or prevention of hair fall by way of medication was sought to be rejected by the Adjudicating Authority by his impression that hair growth was only a cosmetic necessity. We could only disapprove such an approach.

96. The substance of the matter remains that in common parlance, the product in question would be approached essentially for its claimed medicinal qualities and not as another hair oil. This aspect, in our view, is itself sufficient to reject the contentions of the appellant and the observations of the Adjudicating Authority. The Tribunal has rightly dealt with the matter in accordance with the law applicable to the facts of the present case.”

36. It is thus evident from the aforementioned principles as enunciated by the Supreme Court that the mere description of the product as a ‘hair oil’ or ‘shampoo’ would not be conclusive for the purposes of classification under the CTH. The decisions in *Sarvotham Care* and



Ashwani Homeo thus clearly explain the legal position to be that nomenclature alone would not constitute a defining basis for the purposes of answering a question of classification. When the aforesaid principles are applied to the facts at hand, it becomes clear that merely because the appellant or others had chosen to describe the products as smart speakers, the same could have neither been accepted as being conclusive of the issue that arose nor could the description of the products detracted from the right of the appellant to urge the AAR to examine the issue of classification by applying the dominant function test.

37. In our considered opinion, the tests evolved by courts in connection with the issue of classification such as nomenclature, common parlance, principal function, primary and incidental purpose are all aids and rules of guidance liable to be cumulatively borne in consideration in order to ascertain the true character of a product. While none of those tests are accorded preeminence, it is ultimately for the authorities to ascertain which of those rules would merit adoption and represent an accurate understanding of the nature of the product.

38. Regard must also be had to the fact that the general tests as evolved by courts must cede to the rules of interpretation which may have been specifically drawn. It is in such contingencies that our precedents bid us to accord precedence to GI Rules, Chapter Headings and Notes appended thereto.

39. Insofar as the rejection of the claim of the appellant in respect of the seven devices is concerned, we find that the AAR has abjectly failed to answer the question of classification based on the Chapter



Headings or the Notes placed in Section XVI and which were clearly of seminal importance. It becomes pertinent to note that Section XVI apart from covering machinery and mechanical appliances also extends its application to electrical equipments, sound recorders and reproducers, television image and sound recorders and producers and parts and accessories thereof. CTH 8517, 8518 and 8528 are undoubtedly placed in this Section.

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



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

42. CTH 8518, on the other hand stood confined to loudspeakers, headphones and earphones. It brought within its ambit single or multiple loudspeakers whether or not mounted in enclosures, as well as headphones and earphones and other like articles. As would be evident from a plain reading of CTH 8518, the said Tariff Heading does not even purport to deal with apparatus used for transmission or reception of voice, image or other data or a product used for communication in a wired or wireless network. CTH 8528 is also not concerned with the transmission or reception of voice, image or other data or for communication in a wired or wireless network.

43. CTH 8518 was thus confined to loudspeakers per se while CTH 8528 stood basically confined to displays and monitors generally. Those entries cannot be construed as extending their coverage to convergence devices or platforms which were designed and enabled to perform the function of transmission and reception of voice or data or the performance of the varied functions which constituted the special characteristics of the seven devices in question. If one were to test these



devices bearing in mind Note 3, it is apparent that the AAR was obliged to approach the issue by seeking to discern the primary function of the devices. Viewed in that light, it is manifest that the devices were not mere speakers. They were essentially designed to act as mediums of communication, transmitting voice, image or data and performing myriad functions in a wired or wireless environment. The playback ability of those devices could not have justifiably been recognised as being their primary or dominant function.

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

45. We further note that the placement of Echo Show 5, Echo Show 8 and Echo Show 10 under CTH 8528 also rests on an extremely narrow and constricted understanding of their attributes. While those devices could undoubtedly play video content on the display or the monitor, those were not the primary or solitary functions that could be performed by those devices, as is evident from the description of their features. Those three subject devices while undoubtedly comprising of



a display monitor could also perform the varied functions which the other Echo Family devices could conduct in a WI-FI environment. Undisputedly, the three devices could not only be used for playback of video content or for accessing streaming services, they could also be used for video calling and messaging. Mere monitors cannot possibly perform those functions nor can such attributes be said to be found in monitors generally.

46. Ultimately, it was incumbent upon the AAR to ascertain the principal function of the seven devices. This was an obligation which was placed not just in terms of Note 3 placed in Section XVI of the First Schedule to the Act but also in light of the principle well settled by numerous precedents rendered on the subject with respect to composite machines and thus clearly contemplating those which could perform multiple functions complementarily or alternatively, to be classified as if consisting only of that component or that machine which constitutes the principal function. Viewed from that angle, we are of the firm opinion that it would be wholly incorrect to describe the devices in question to be mere speakers.

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



transmission or regeneration of voice, images or other data as contemplated under Tariff Entry 8517 62 90.

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

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

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

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

¹⁵ (2006) 5 SCC 596



use to which the product is put to, cannot determine the classification of that product.

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

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

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

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



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

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

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

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

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

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

“3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting

¹⁶ (2010) 14 SCC 430



only of that component or as being that machine which performs the principal function.”

17. It is not in dispute that the multifunctional machines in question, Xerox Regal 5799 has about 85% of its total parts and components along with manufacturing cost allocated to printing, as does 74% of the Xerox XD155df model. This clearly shows that the printing function emerges as the principal function and gives the multifunctional machines its essential character. Having such a nature, it also clearly meets the threefold requirement of Chapter Note 5(B), as it is to be used principally in ADPM, it is connectable to the central processing unit, and it is able to accept data in a form (codes or signals) which can be used by the system. Further, there would be no application of Chapter Note 5(E) as correctly pointed out by the learned counsel for the appellants, as the multifunctional machines are presented independently. Moreover, since predominant components are relating to printing function, Chapter Note 5(D) also becomes relevant which includes printers under Heading 84.71. We are also satisfied with the contention of the appellants that based on the nature of the functions they perform, the multifunctional machines would serve as input and output devices of an ADPM (computer) and thus serve as unit of an ADPM, which on a reading of Chapter Note 5(C), clearly classifies them as falling under Sub-Heading 8471.60 of the Act.

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

51. We find ourselves unable to sustain the view as expressed by the AAR for the following additional reasons. Undisputedly, India follows the HSN system of classification. We take note of the determinations made by competent authorities in jurisdictions overseas with respect to similar convergence devices and which too though not strictly binding



on the AAR, would have merited due consideration and are liable to be accorded deserved weightage while answering an issue of classification. Ultimately the *raison d'être* for adoption of the HSN system is to aid international commerce as well as to achieve uniformity and certainty in trade and commerce. Those determinations are not only representative of how such products have come to be classified globally, they would also be germane and relevant to answer questions of classification when raised.

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

53. We also find ourselves unable to accept the contention of Mr. Kumar based on the exemption Notification dated 01 February 2022 issued by the Ministry of Finance classifying portable Bluetooth speakers as '*hearable devices*'. We at the outset deem it apposite to



observe that the Ministry's decision to extend exemption to a particular category of devices or products cannot possibly be accepted as being relevant for the purposes of classification for the following reasons. The Ministry, bearing in mind various policy objectives, may choose to extend the benefit of exemption to a wide variety of products. When exercising the power to exempt, the competent authority may also choose not to be bound by the CTH and thus extend benefits even to those which may otherwise not strictly fall within the purview of a particular tariff entry. We thus find ourselves unable to accept the contentions of Mr. Kumar based on the said notification. The submissions of Mr. Kumar founded on the aforesaid notification are liable to be negated for the following additional reasons.

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



heading of '*hearable devices*' also does not convince us to doubt the views expressed hereinabove.

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

56. Since for reasons aforesaid, we have found ourselves unable to uphold the view taken by the AAR denying the classification of Echo Show 5, Echo Dot 4th Generation and Echo Dot 4th generation with Clock under CTH 8517 and more particularly Tariff Entry 8517 62 90/8517 69 90, the denial of exemption benefits to those products would also not sustain.

57. We, consequently answer the questions of law as framed by holding that the eleven devices are correctly classifiable under CTH 8517 and more particularly under Tariff Entry 8517 62 90. Echo Show 5, Echo Dot 4th Generation and Echo Dot 4th Generation with Clock are held eligible to claim exemptions in accordance with SI. No. 20 of the Notification dated 30 June 2017, as amended vide Notification dated 01 February 2021. The order of the AAR insofar as it deals with the classification of Echo Flex, Echo Auto, Echo Link and Echo Link Amp is affirmed.



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58. In light of the answers as rendered, we set aside the impugned order of the AAR dated 20 July 2021 to the extent indicated above.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 11, 2023/kk