

**AUTHORITY FOR ADVANCE RULINGS**  
**(Central Excise, Customs and Service Tax)**  
**Hotel Samrat, 4<sup>th</sup> Floor, Kautilya Marg, Chanakyapuri**  
**New Delhi**

**Present:**

**Justice V.S. Sirpurkar (Chairman)**  
**Shri S.S.Rana (Member)**  
**Shri R.S.Shukla (Member)**

The 19th day of February, 2016

Ruling No. AAR/CUS/ 04 /2016  
in

Application No. AAR/44/CUS-1/04 /2014

Name & address of the applicant : M/s Samsung India Electronics Private Limited, Gurgaon

Commissioners concerned : The Commissioner of Customs, Import NCH, Nr. IGI Airport, New Delhi-110037

Present for the Applicant : Shri B.L.Narsimhan, Advocate,  
Ms. Disha Jain, Advocate

Present for the Department : Shri Amresh Jain(AR)

**Ruling**

M/s Samsung India Electronics Private Ltd. (hereinafter also referred to as applicant) is a private limited company registered in India under Companies Act, 1956. Applicant proposes to launch a new mobile phone by the name of Galaxy K Zoom under the Galaxy series. Applicant proposes to import the said product for reselling to the distributors, retailers and the individual customers. The product is powered by Android Kit-Kat operating system and a quad 1.3GHz processor along with the dual-core 1.7GHz processor. It has a 4.8" HD SAMOLED (Pentile) touch screen. It comes with 2 GB RAM, 8GB in built memory, and has external memory of up-to 64GB. It has a support system for micro SD cards. Most of the specifications of the hardware and the software installed in the product, matches with the other mobile phones of the Galaxy series. However, one of the

distinguishing features of this product from its predecessor in the Galaxy series is the quality of its camera. It is equipped with a 20.7MP BSI CMOS having 10x Zoom, w/Flash. Other important feature of the product is its In-Call feature. This allows the user of the product to capture and share an image even when on call, with a simple twist of zoom ring.

2. The questions on which advance ruling is sought by the applicant are as follows:-

*(a) Whether the product is rightly classifiable as a telephone under Custom Tariff Heading (hereinafter referred to as "CTH") 8517 or as a Camera under CTH 8525?*

*(b) If the correct classification of the product is under CTH 8525, then whether the applicant is entitled to the benefit of the exemption provided under the Notification 25/2005?*

3. Applicant submits that there are two competing headings in which the said product can be covered i.e. 8517 and 8525. Applicant submits that items to be classified under CTH 8517 are basically equipments 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. In the instant case, the product performs all these functions. There is transmission and reception of calls, text messages, multimedia messages, mails, images, videos etc. which is performed by the product. As the description provided in the CTH 8517 and the functions performed by the product are similar, the product can fall CTH 8517. Further, Cameras under CTH 8525 are those cameras which convert the images captured into analogue or digital data. The cameras of this heading capture an image onto a light sensitive device. This light sensitive device sends an electrical representation of the images to be further processed into an analogue or digital record of the images. From the explanation provided in the Harmonized System of Nomenclature (HSN) it can be said the product to be imported has a digital camera inbuilt in it. However, the way tariff heading is worded, it appears that it seeks to cover those goods which are only digital cameras and perform the function of capturing image as a principal function.

4. Applicant submits that the classification of goods mentioned in the First Schedule of the Import Tariff is governed by General Rules for the Interpretation. The said rules for interpretation have been adopted from the General Rules for the Interpretation of the Harmonized System. According to Rule 3(b) of the General Rules for the Interpretation of the Harmonized System, in case of classification of composite goods consisting of different components, the component which gives the essential character to the goods is the determining factor. Therefore, in order to correctly classify the product to be imported, one will have to rely upon the test of *essential Character*. It is important to consider the features of the product to identify the essential character of the product. It is a device from which user can make calls, can receive calls, send and receive messages, play music video, music player or radio, record video, can do arithmetic calculations, receive and send mails, can get directions via navigation, can take photographs and upload them instantly etc.

5. Applicant further submits that they had approached the Customs Valuation and Classification Institute, Korea Customs Service for classifying Galaxy S4 Zoom which is the predecessor of the product. The said Institute on the basis of the structure, functions and price ratio of the product has provided that the product is classifiable as tariff item number 8517 12 9010 i.e. under the category of cordless phone. The applicant also imported S4 Zoom in the USA, where the US Customs and Border Protection has classified the product under H.S. Number 8517120050. The Customs Entry Advice of UK has also classified the product under CTH 8517120090.

6. Applicant submits that if the essential character to the product is given by the camera, then in such a situation, the product will be classifiable as Customs Tariff item no. 8525 80 20, as Digital Camera. Notification No. 25/2005-Cus. exempts certain goods from whole of customs duty leviable thereon under the first schedule. At serial number 13 of the said notification, digital still image cameras are provided. This exemption is subject to the condition that for the purposes of this entry, "digital still image video camera" means a digital camera not capable of recording video with minimum resolution of 800 x 600 pixels, at minimum 23 frames per second, for at least 30 minutes in a single sequence using

the maximum storage (including expanded) capacity. The product fulfills the condition as mentioned in the said notification and hence, is eligible to get the exemption from the payment of the customs duty. In short, contention of the applicant is that the Galaxy K Zoom is classifiable under CTH 8517. Applicant further submits that in case, said product is not classifiable under CTH 8517 and is to be classified under CTH 8525, as camera, then in that eventuality, it is exempted from Customs duty as per Notification No. 25/2005-Cus (S. No. 13)

7. Revenue submits that the product i.e., Galaxy K Zoom proposed to be imported in the current application has similar features as compared to the Galaxy S4 Zoom. As per the literature submitted by the applicant along with the application for Advance Ruling, the Galaxy K Zoom is stated to be “Real-Zoom in your pocket”. Further, in the literature it is mentioned that the “Mission: leading image communication trend”. Further, in the literature, the USPs of the product are mentioned as Slim Optical Zoom, 7mm Thinner than Galaxy S4 Zoom, Real optical Zoom (10X), High Resolution (20.7 MP), Big Size Sensor (1/2.3”0, Photographer Friend, Enjoyable pro-like photo life with smart capturing guide, Unique Accessories, Unexpected photo experience with unique camera covers, Android Based new Camera UI Experience and Simple and user-friendly UX. The principal function of the device as Camera finds support from the fact that the device automatically detects the surrounding and controls various options that can affect the photographer to allow taking best shot of the current environment. This mode is suitable for general users, as the device controls most settings and the catalogue also mentions that it captures the moments a user does not want to miss using various shooting modes. This equipment also has the capabilities to customize the options that affect the photography according to the environment where the photo is taken. This mode is suitable for advanced users, as the users are required to adjust the settings manually. The zoom is controlled by a ring around the barrel, which can also be set to control different functions or bring up menus. Twist it during a phone call and it will allow to snap a shot and instantly sends it via MMS. The Mobile Phone available in the market does have a zoom facility in the camera but this is a digital zoom not the optical zoom.

8. Revenue further submits that the applicant had imported Galaxy S4 Zoom, which is predecessor model to Galaxy K Zoom proposed to imported; that the Department vide adjudication order classified Galaxy S4 Zoom under CTH 8525 8020, as digital camera. Revenue further submits that the product Galaxy K Zoom proposed to be imported by the applicant is to be classified under CTH 8525 8020 as camera, in view of Note 3 to Section XVI of the Import Tariff, as camera performs the principle function in the Galaxy K Zoom. In support of their contention, Revenue relied upon the judgment of the Hon'ble Supreme Court in the matter of Xerox India Ltd. Vs. Commissioner of Customs, Mumbai 2010 (260) ELT 161 (SC) as also Tribunal's order in case of Collector of Customs, New Delhi vs. Apsom Computers Ltd. 2001 (130) ELT 660 (Tri – Del.). Revenue also submits that as per technical specification provided by the applicant on Google and other websites, the subject device has specifically been designed and marketed by Samsung as a Camera wherein mobile facility and other applications are only additional features.

9. It is observed from the submissions made by the applicant and the Revenue that both have relied upon the principle of principal function for classification of subject product – Galaxy K Zoom; applicant proposes the product to be classified under CTH 8517 as mobile phone, whereas the Revenue suggests it to be classified under CTH 8525 as digital camera. Applicant's reliance on classification by Customs Valuation and Classification Institute, Korea Customs Service, US Customs & Border Protection and UK Customs is not considered as the same is in respect of Galaxy S4 Zoom and not product under consideration i.e. Galaxy K Zoom. For the same reasons, contents of Adjudication Order relied upon by the Revenue is also not considered. However, in order to appreciate the present issue, it may be appropriate to examine the relevant tariff entries as also Section Note etc.

10. Relevant extract of CTH 8517 and 8525 is as under;

8517                      *Telephone sets, including telephones for cellular networks or for other wireless networks; 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 local or wide area network) other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528.*

- *Telephone sets, including telephones for cellular networks or for other wireless networks:*

8517 11 -- *Line telephone sets with cordless handsets:*

8517 11 10 --- *Push button type*

8517 11 90 --- *Other*

8517 12 -- *Telephones for cellular networks or for other wireless networks*

8517 12 10 --- *Push button type*

8517 12 90 --- *Other*

8525 *Transmission Apparatus for Radio – Broadcasting or television, whether or not incorporation reception apparatus or sound recording or reproducing apparatus; Television Cameras, Digital Cameras and Video Camera Recorders*

8525 80 - *Television cameras, digital cameras and video camera recorders:*

8525 80 10 --- *Television Cameras u 10% -*

8525 80 20 --- *Digital Cameras u 10% -*

8525 80 30 --- *video camera recorders u 10%-*

8525 80 90 - *Other*

11. Relevant part of HSN Explanatory Notes appended to the Tariff Heading 8517 and 8525 are as under;

## **85.17**

- (I) *TELEPHONE SETS, INCLUDING TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS*

*(B) Telephones for cellular networks or for other wireless networks.*

*This group covers telephones for use on any wireless network. Such telephones receive and emit radio waves which are received and retransmitted, e.g., by base stations or satellites.*

*These include, inter-alia:*

*(1) Cellular phones or mobile phones*

*(2) Satellite phones.*

## **85.25**

*(B) TELEVISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS*

*This group covers cameras that capture images and convert them into an electronic signal that is:*

*(1) Transmitted as a video image to a location outside the camera for viewing or remote recording (i.e., television cameras); or*

*(2) Recorded in the camera as a still image or as a motion picture (i.e., digital cameras and video camera recorders)*

*Many of the cameras of this heading may physically resemble the photographic cameras of heading 90.06 or the cinematographic cameras of heading 90.07. The cameras in heading 85.25 and the cameras in Chapter 90 typically include optical lenses to focus the image on a light sensitive medium and adjustments to vary the amount of light entering the camera. However, photographic and cinematographic cameras of Chapter 90 expose images onto photographic film of Chapter 37, while the cameras of this heading convert the images into analogue or digital data.*

12. It is noticed from the CTH 8517 and 8525 as also HSN Explanatory Notes above that mobile phone will be classified under CTH 8517 and digital camera under CTH 8525. But the issue remains unresolved, as the applicant proposes the subject product to be classified under CTH 8517 (mobile phone) and the Revenue under CTH 8525 (camera). In this connection, Rule 1 of General Rules for

Interpretation (GRI) for the purpose of classification and Note 3 of Section XVI of the Import Tariff is relevant and is reproduced as under;

*Rule 1 – 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.*

13. Further, Note 3 to Section XVI, of the Import Tariff reads as - *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.*

14. Further, applicant has also relied upon Rule 3(b) of GRI, which inter-alia states that in case of classification of composite goods consisting of different components, which gives the essential character to the goods, is the determining factor.

15. In view of above legal position, we are required to ascertain whether the product Galaxy K Zoom has the primary function and essential character of a mobile phone. It is noticed that the mobile phone is essentially a communication device working on the basis of towers and base stations arranged into a network of cells, which send and receive radio signals for cellular / mobile phone for communication. Further, such cellular / mobile phone will remain telephony. To classify the subject product as camera, on the basis that it has higher Megapixel of 20; optical zoom instead of digital zoom and has the capability to click picture and send them via multimedia message while on call, in our view is not correct, as such additions are related to the phone and not to the camera. It also may not be appropriate to shift classification of the product from the category of mobile phone to camera, on the basis of said 3 additional features i.e., higher megapixel, optical zoom and click picture and transmit the same while on call.

16. Revenue further submits that as per technical specification provided by the applicant on Google and other websites, the subject product has been specially designed and marketed by Samsung as a camera, wherein mobile facility and other applications are only additional features; that consistent with Note 3 to Section XVI, the product appears to be classifiable under CTH 8525 8020. Applicant refutes this allegation of the Revenue and submits that the applicant has always placed the impugned goods in the category of smart phone and not under camera. Applicant submitted snapshot of the website of the applicant. We have examined said snapshot and observe that the subject product has been described as “smart phone” and not camera.

17. Further, Galaxy K Zoom is also classifiable as cellular / mobile phone as per trade parlance and consumer perception test. It is reiterated that the applicant advertise said product as smart phone. We also agree with the applicant that the product is sold and marketed in India as smart phone and not as camera. In this connection, Hon’ble Bombay High Court in case of P.M.P Auto Industries Ltd. Vs Union of India & others 1987 (31) ELT 369 (Bom) remarked that whether these switches are automobile spares or are electrical fittings, the test is how the product is commercially known. Hon’ble High Court observed as under;

*I think, the test is still as to how these products are commercially known. I posed the question to Mr. Shah at the stage of arguments whether these products are available at the Lohar Chawl or at Opera House. At the Lohar Chawl, we have a market for ordinary electrical lights and fittings, whereas at Opera House we have a market for spare parts of automobiles. It is at Opera House, we get these switches and not at Lohar Chawl. That should be the test in a matter of this type.*

18. Applying the ratio of Hon’ble Bombay High Court to the present case, we have to see whether Galaxy K Zoom is sold at phone shop / market or at camera shop / market. The answer is clear that such a product is sold at phone shop. Therefore, as per trade parlance and consumer perception test also, the product is mobile phone, classifiable under CTH 8517 12.

19. In view of above, we hold that *the product i.e. Galaxy K Zoom is classifiable as telephone under Customs Tariff Heading 8517. Second question i.e., if the correct classification of the product is under CTH 8525, then whether applicant is entitled to the benefit of the exemption provided under Notification No. 25/2005, becomes infructuous.*

Sd/  
**(S.S.Rana)**  
**Member(R)**

Sd/  
**(V.S.Sirpurkar)**  
**Chairman**

Sd/  
**(R.S.Shukla)**  
**Member(L)**

