

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 23276 of 2014

(Arising out of Order-in-Original No.TVM-EXCUS-000-COM-05-14-15
dated 17.07.2014 passed by the Commissioner of Central Excise &
Customs, Thiruvananthapuram.)

**M/s. Toonz Animation India
Pvt. Ltd.**

No.731-739, Technopark Campus,
Thiruvananthapuram - 695 581.

Appellant(s)

VERSUS

The Commissioner of Central Excise,

I.C.E. Bhavan, Press Club Road,
Thiruvananthapuram - 695 001.

Respon

dent(s)

APPEARANCE:

Mr. Kurian Thomas, Advocate for the appellant.

Mr. Vikalp Jain, Superintendent (AR) for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 20615 /2026

DATE OF HEARING: **04.02.2026**

DATE OF DECISION: **06.05.2026**

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Toonz Animation India (P) Ltd. against Order-in-Original No. TVM-EXCUS-000-COM-05-14-15 dated 17.07.2014 passed by the Commissioner of Central Excise and Customs, Thiruvananthapuram.

2. Briefly the facts are that the appellant is an 100% Export oriented unit (EOU) who manufactured and exported 'Software' as per the Letter of Permission (LOP) issued by the Assistant

Commissioner of Central Excise, Trivandrum. On investigations, it was found that appellant was clearing animated films and television serials, which was considered to be not 'software' to be classified under 8524.40 but to be classified under 8524.39; thus, demanding central excise duty. The Commissioner referring to the Encyclopaedia Britannica and the statements recorded during investigation held that the products were rightly classifiable under 8524.39, accordingly, confirmed the demand of duty along with interest and imposed equal amount of penalty. Aggrieved by this order, the appellant is in appeal before us.

3. The learned counsel submitted that two show-cause notices were issued, the first show-cause notice No. 10/2005 C. Ex. dated 04.11.2005 was for the period from 01.04.2001-08.06.2005 and the second show-cause notice No. 1/2008 dated 04.02.2008 for the period from 09.06.2005 to 07.11.2006. While the first show cause notice classified the goods under 8524.39 /8524.40, the same goods were classified under 8523 in the second show-cause notice.

3.1 He submits that the impugned order places reliance on the definition of the 'Software' as defined in the supplementary note of Chapter 85 of the Customs Tariff. It is submitted that the Commissioner at para 38 accepts the experts confirmed that the product of the appellant is 'Software' and that the earlier opinion was given not being aware of the definition relied upon in the show-cause notice. It is his submission that having noted the revised opinion given by the experts at the time of cross-examination, the Commissioner cannot substitute his own personal opinion. Also, referring to para 30 of the impugned order, it is submitted that reference to the dictionary meaning of the term 'Software' is in deviation from the proposal in the show-cause notice. Alternatively, it is argued that the classification in the second show-cause notice was under 8523,

which cannot be sustained as it relates to only Compact Disc (CD).

3.2 On limitation, it is submitted that there is no misdeclaration of facts since they were under the *bona fide* belief that their products were classifiable under 'Software' since they manufactured and exported 'Software' which was not under dispute. Further, the expert's opinion also being in their favour, the question of misdeclaration or penalty does not arise.

4. The learned Authorised Representative (AR) reiterated the findings of the Commissioner in the impugned order and submitted that since the appellant has been clearing animated films, they cannot be classified as 'Software'.

5. Heard both sides. The question to be decided in this appeal is whether the products cleared by the appellant M/s. Toonz Animation India (P) Ltd. in the Domestic Tariff Area (DTA) are to be considered as 'Software' as claimed by the appellant. The Commissioner in the impugned order at Para 34 states as follows:

"34. the important aspect to be decided is whether the products cleared by the appellant in the where software as claimed by them or not and whether they were liable to pay duty as proposed in the showcase notice. I also find that the demand proposal is based on the opinion relating to software obtained by the department from two experts in the field and the crux of the objection raised by the appellant hinges on the definition of software particularly with reference to the one given in the customs exemption notifications and the CETA."

6. At para 38 of the impugned order, the Commissioner also observes that:

"38. While giving their opinion in the matter, the Director, STPI, Trivandrum and the Additional Director, CDAC, Trivandrum were unanimous in that FTP is a general tool used to receive and send

computer files from one machine to another in a networked atmosphere and that the cartoon film or serial etc created using software tool are only soft copies of such films or files in digital form and are not strictly software. However, they had changed tune and opined during cross examination at the time of personal hearing that the products cleared by M/s. Toonz in the DTA were software when read in conjunction with the definition of 'Information Technology software' given in the Customs Exemption notifications. They have also stated that their earlier version was without considering the above definition."

7. The Commission also rejects the opinion of the experts stating that they are not competent to interpret words and phrases in a statute. Let's examine definition of 'Information Technology Software' which is reproduced below:

Information Technology Software' means "any representation of instructions, data, sound or image, including source code and object code, recorded in a machine-readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine".

8. The experts who had initially stated that it is not a 'Software', later with reference to the above definition stated it is a 'Software'; hence, the basis on which the show-cause notice was issued based on the expert's opinion originally taken becomes invalid.

9. We also find that there is no dispute that the appellant working under the Software Technology Park Scheme was provided with a LOP for development and export of software; hence, the products manufactured and cleared by them in DTA has to be 'Software' since what is allowed in DTA is what is manufactured and exported by the appellant; therefore, once the exports are accepted as 'Software' and there is no dispute that the products cleared for export are different from what is cleared under DTA and the same cannot be disputed.

10. The Commissioner at para 47 notes that the show-cause notice No. 1/2008 dated 04.02.2008, the products cleared in the DTA by them were found to be animation films supplied in Betacam SP Pal tapes and CDs which were also not 'Software' and classified them under CTH 85.23, while the same goods while deciding the show-cause notice No.10/2005 dated 4.11.2005 classified them under 8524.39 and 8524.40 for the period up to 08.06.2005. This, itself, implies that Revenue is not clear of the products description and have failed to understand the same in terms of the definition of 'Information Technology Software'. To understand better, the relevant Chapter Tariff Headings (CTH) are reproduced below:

- 8524.20 - Software
- Magnetic Tapes
- 8524.39 - Other
- 8524.40 - Magnetic discs

11. Based on the above description, we find that the products cleared by the appellant in the form of CD are not a simple compact disc which when installed in the computer start functioning. On the other hand, they are CDs admittedly, which can function only with the software as discussed above which are supplied to the customers along with the CDs; therefore, they are rightly classifiable under CTH 8524.20 as 'Software'.

12. Secondly, we find that what is cleared by the appellant into DTA is animated advertisement films, TV commercials, animated cartoons, serials, logos etc., in a form of CDs/ Beta Cassettes. These all are also cleared as 'Software' for the purpose of export. Based on the brochure, it is also noted in the show-cause notice that software such as Animo, US-Animation, 3D Studio Max are used for viewing the products cleared by the appellant; therefore, it is clear that they fall under the category of 'Software' as defined under Information Technology Software as reproduced above.

13. We are also in agreement with the appellant that the opinion given by the experts cannot be dismissed without having obtained any other third opinion. Accordingly, considering all the grounds, we find that the impugned products cleared into DTA are nothing but 'software' and are eligible for the benefit of the Notification.

14. In view of the above, the impugned order is set aside and the Appeal is allowed.

(Order pronounced in Open Court on 06.05.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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