CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 41785 of 2016

(Arising out of Order-in-Appeal No. 192/2016(CXA-II) dated 31.05.2016 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Aurelec Data Processing System **...Appellant**
Auroville,
Puducherry – 605 101.

Versus

Commissioner of GST and Central Excise **...Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue,
Beach Road,
Puducherry – 605 001.

APPEARANCE:

For the Appellant : Shri M.N. Bharathi, Advocate
For the Respondent : Shri Anoop Singh, Authorized Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40184 / 2025

DATE OF HEARING : 22.01.2025
DATE OF DECISION : 06.02.2025

Per Mr. VASA SESHAGIRI RAO

Excise Appeal No. E/41785/2016 has been filed by M/s. Aurelec Data Processing System, Auroville, Pondicherry (hereinafter referred to as 'Appellant') assailing the Order-in-Appeal No. 192/2016 (CXA-II) dated 31.05.2016 passed by the Commissioner of Central Excise (Appeals-II), Nungambakkam, Chennai who have allowed the appeal of the Revenue classifying 'Add-on Cards' under CTH 847300 of Central Excise Tariff Act, 1985 and also imposed a penalty of Rs.10,000/- under Rule 173Q of the Central Excise Rules, 1944.

2.1 Briefly stated the facts are that the Appellant is a Manufacturer of Computers falling under Chapter sub-heading 8471.00 of the Central Excise Tariff Act, 1985 and classified the 'Add-on Cards' under Chapter sub-heading 8471.00 attracting Central Excise Duty @ 15%. However, the Revenue was of the view that these products *viz.,* 'Add-on Card' would be correctly classifiable under Chapter sub-heading 8473.00 attracting Central Excise Duty @20%. Therefore, the Show Cause Notice dated 30.03.1995 was issued to the Appellant proposing to re-classify the goods under Chapter 8473 and demanding differential duty of Rs.3,66,669/- on Add-on Cards cleared by the Appellant during the period from October 1994 to February 1995.

2.2 After due process of the law, the Ld. Adjudicating Authority *vide* Order-in-Original No. 78/2001 dated 10.12.2001 had dropped the entire proceedings. The

Department felt that dropping of the demand was not legal and proper and hence filed an appeal with the Commissioner (Appeals) who *vide* Order-in-Appeal No. 127/2003 (P)(D) dated 05.11.2003 had allowed the Department's appeal by placing reliance on the decision of the Tribunal in the case of *Vintron Electronics P. Ltd. Vs. Commissioner of Central Excise, New Delhi [2003 (151) ELT 589 (Tri.-Del.)]* wherein it was held that the 'Add-on Cards' were classifiable under the Chapter Heading 84.73 of the Central Excise Tariff Act, 1985. Aggrieved by the above Order-in-Appeal dated 05.11.2003, the Appellant filed an appeal before the CESTAT, Chennai and stated that the decision rendered by the CESTAT, Delhi in the case of *Vintron Electronics P. Ltd. (supra)* had been set aside by the Apex Court as reported in *[2012 (279) ELT 161 (SC)]* by way of remand. Consequently, the Tribunal Chennai has remanded the case back to the Commissioner (Appeals) *vide* Final Order No. 40014/2015 dated 08.01.2015 directing therein to decide the case based on the decision rendered by the Apex Court in the above case.

2.3 Considering the contentions of the Department, the Lower Appellate Authority *vide* Order-in-Appeal dated 31.05.2016 had held that Add-on Cards are classifiable under Chapter Heading 8473 of the Central Excise Tariff Act relying on the decision rendered by the Tribunal Mumbai in the case of *Commissioner of Central Excise, Mumbai-II Vs. Virtual Computers Pvt. Ltd. [2013 (292) ELT 478 (Tri.-Mum.)]*.

3. During the hearing before the Tribunal, the Ld. Advocate M.N. Bharathi has admitted that the issue of classification of Add-on Cards has been decided against the Appellant in view of the decisions in the cases of *Vintron Electronics P. Ltd. Vs. Commissioner of Central Excise, New Delhi [2012 (279) ELT 161 (SC)]* which remanded the issue to the Tribunal and in *Commissioner of Central Excise, Mumbai-II Vs. Virtual Computers Pvt. Ltd. [2013 (292) ELT 478 (Tri.-Mum.)].* Another plea submitted by the Ld. Advocate was that no interest could be demanded on this duty as interest provisions came into effect from 26.05.1994. He has further submitted that as the issue involved is of interpretation of classification of the product, which is technical in nature, no penalty is imposable.

4. The Ld. Authorised Representative Shri Anoop Singh has affirmed the findings in the impugned order dated

31.05.2016 and stated that the issue is no more *res-integra* in view of the decision rendered by the Tribunal Mumbai in the case of *Commissioner of Central Excise, Mumbai II Vs. Virtual Computers Pvt. Ltd. [2013 (292) ELT 478 (Tri.-Mum.)].* He prayed for dismissal of the appeal filed by the Appellant.

5. We have heard both sides and considered the rival submissions.

6. The only issue that is required to be decided in this appeal is whether the classification of the 'Add-on Cards' adopted by the Appellant under Chapter sub-heading 847100 of the Central Excise Tariff Act, 1985 is correct or not?

7. In the first round of litigation *vide* Order-in-Original No. 78/2001 dated 10.12.2001, the Ld. Assistant Commissioner has dropped the proceedings based on the following findings and observations: -

i. The opinion of ET&T has appreciated the fact that the Add-on Cards are connectable to the CPU either directly or indirectly or through one or more other units; specifically designed as part of such a system; and able to accept or deliver data in a form (code or signal) which could be used by the system.

ii. Therefore, the opinion of the ET&T confirms the classifications of the Add-on Cards only under Chapter Heading 84.71 and not under Chapter 84.73 and the Chapter Note 5(c) to Chapter 84 affirms that even units presented separately are to be classified under Chapter Heading 84.71 only.

However, on review of this order when an appeal was filed before the Lower Adjudicating Authority, he had reversed the decision allowing the appeal of the Department.

8. The issue regarding the classification of Add-on Cards is no more *res integra* in view of the decision passed by the Tribunal, Mumbai in the case of *Commissioner of Central Excise, Mumbai-II Vs. Virtual Computers Pvt. Ltd. [2013 (292) ELT 478 (Tri.-Mum.)]* holding that Mother Boards and Add-on Cards are classifiable under Chapter Heading 8473 of the Central Excise Tariff Act, 1985. The

Tribunal, Mumbai has reasoned as below on the appropriate classification of the Add-on Cards: -

> *"2. The appeal is being taken up in view of the remand order dated 11.2.2012 passed by the Hon'ble Supreme Court in Civil Appeal No. 3560 of 2007.*
>
> *3. The issue involved in this appeal is regarding classification of motherboard and add on card.*
>
> *4. The Commissioner (Appeals) in the impugned order held that the goods in question are classifiable under Heading 8471 of the Central Excise Tariff, whereas the Revenue wants to classify the same under Heading 8473 of the Central Excise Tariff.*
>
> *5. We have heard the learned Additional Commissioner (AR) at length. The add-on card provides more features by adding circuit connected to the motherboard using peripherals component inter-connected. Motherboard is the central printed circuit board of the computer and holds many of the crucial components of the system providing connectors for other peripherals. We find that the sub-heading 8471 of the Central Excise Tariff covers Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included. Heading 8473 covers Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading Nos. 84.69 to 84.72 of the Tariff.*
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> *6. The add-on card and motherboard cannot be considered as automatic data processing machines. The same are parts and accessories suitable for use with the machine falling under Heading 84.71 of the Tariff. In view of the above, as*

the goods in question are parts and accessories of the data processing machine falling under Heading 84.71 of the Tariff, therefore being parts and accessories are classifiable under Heading 8473 of the Tariff.

7. The impugned order is set aside and the appeal filed by the Revenue is allowed."

9. After appreciating the facts as above and in compliance to the judicial discipline, the appeal is rejected upholding the classification of Add-on Cards under Chapter Heading 8473 of the Central Excise Tariff Act, 1985. As such demand of duty is confirmed. No interest is payable as the provision for payment of interest in terms of Section 11AB of the Central Excise Act, 1944 is applicable from 28.09.1996.

10. However, we find that the Lower Appellate Authority in his order dated 31.05.2016 has imposed a penalty of Rs.10,000/- under Rule 173Q of the Central Excise Rules, 1944.

11. After considering all the facts obtaining in this appeal, and due to prolonged litigation for so many years, and as the issue involved is of classification and

interpretation of the provisions of Central Excise Tariff Act, 1944, no penalty needs to be levied. Ordered accordingly.

10. Thus, the appeal is rejected but for the modification to the extent of setting aside the penalty imposed.

(Order pronounced in open court on 06.02.2025)

Sd/-	Sd/-
(AJAYAN T.V.)	**(VASA SESHAGIRI RAO)**
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

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