TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3367/94 Date 01/04/2008

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
C.C.E. DELHI 1
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant
Vs
M/S HFCL SATELITE COMMUNICATION LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 118/08-ex** **Excise** dated 12-3-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act. 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S HFCL SATELITE COMMUNICATION LTD.
   5TH FLOOR HINDI BHAWAN VISHNU DIGAMBER
   MARG NEW DELHI
2. Adv. / Consult SH. BALBIR SINGH, ADV., C/O RESPONDENT
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications. M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases. B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B. S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL No. 3367 OF 2004-DB

[Arising out of Order-in-Appeal No. 57/CE/DLH/04 dated 8.04.2004 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

CCE, Delhi — Appellant

Vs.

M/s. HFCL Satellite Co. Ltd. — Respondents

Appearance:

Shri Sanjay Kumar, JDR for the Revenue,
Shri Balbir Singh, Advocate for the respondents

Coram:

Hon'ble Mr. S.S. Kang, Vice President,

Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing:12rd March, 2008

FINAL ORDER NO. 118/08-EX dated 12-3-08

Per S.S. Kang:

Heard both sides.

2. Revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) held that the product in question, manufactured and cleared by the respondents, is computer software classifiable under Sub-heading 8524.20 of the Schedule to the Central Excise Tariff Act, 1985.

3. The case of the Revenue is that the item in question is classifiable under Sub-heading 8524.90 of the Central Excise Tariff Act as other computer software. Contention is that the product in question is application software used in telecommunication. Contention is that computer software classifiable under Sub-heading 8524.20 of the Tariff is only operational software. As the present software is application software, therefore, it is classifiable under sub-heading 8524.90 of the Central Excise Tariff Act.

4. Contention of the respondents is that Heading 85.24 of the Tariff covers Records, tapes and other recorded media for sound or other similarly recorded phenomena. Sub-headings covers Gramophone records, Computer software, Magnetic tapes, Magnegtic discs, and

other products. Sub-heading 8524.90 is in respect of other recorded media for sound or other similarly recorded phenomena, Magnetic tapes, Magnetic discs. Contention of the respondents is also that the software in question is used with data processing machine for checking and verifying the operation of telecommunication satellite. As the software is used with data processing machine it is classifiable under 8524.20 as computer software.

5. We find that tariff heading 85.24 of the Central Excise Tariff Act is for Records, tapes and other recorded media for sound or other similarly recorded phenomena. For ready reference Tariff heading 85.24 is reproduced below:-

85.24		Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of Chapter 37
	8524.10	- Gramophone records
	8524.20	- Computer software
		- Magnetic tapes:
	8524.31	- Audio tapes in any form
	8524.32	– Audio cassettes
	8524.33	– Video tapes in any form
	8524.34	– Recorded video cassettes, containing tape of width not exceeding 15 millimetres, manufactured from an unrecorded video cassette
	8524.35	– Video cassettes, other
	8524.39	- Others
	8524.40	– Magnetic discs
	8524.90	– Other

Reading of the Tariff heading 8524 reveals that it is in respect of Records, tapes and other recorded media for sound or other similarly recorded phenomena. The tariff heading further includes Magnetic tapes, Magnetic discs. The items classifiable under sub-heading 8524.90 are other Records, tape and other recorded media for sound or other similarly recorded phenomena. It is also not in dispute that the software in question is used with the data processing machine to check and verify the operation of telecommunication software. As the software is used with data processing machine and there is no further classification of operational or application software as claimed by revenue. We find no infirmity in the impugned order. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 14th March, 2008

RK