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

Appeal No. C/275 /2007 - CU[DB]

Date **24/03/2011**

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT,
NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant

Vs

M/S CAPITAL BUSINESS SYSTEMS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/133/ 2011 CU[DB]** dated 17.03.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S CAPITAL BUSINESS SYSTEMS LTD.
54/2, EAST PUNJABI BAGH,
NEW DELHI.

2. Adv. / Consult MR. P.K. RAI, ADV.
808, L & T BUILDING,
SECTOR-18B, DWARKA,
NEW DELHI – 110 075.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. IV

Date of Hearing : 23.2.2011

Custom Appeal No. 275 of 2007

[Arising out of the Order-in-Appeal No. CC(A)/45/D-I/AIR/06 dated 23.11.2006 passed by the Commissioner of Customs, New Delhi]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not>	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	NO
4.	Whether order is to be circulated to the the Department Authorities?	Yes

CC, New Delhi — Appellant

Vs.

M/s Capital Business Systems Ltd. — Respondent

<u>Appearance</u> :

Appeared for Appellant : Shri K.K. Jaiswal, SDR
Appeared for Respondent : Shri Promod Kr. Rai, Advocate

<u>Coram</u>:
Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. C/133/11 dated 17.3.11

Per Mathew John :

The matter involved in this case is the classification of a printer imported by the Respondent vide Bill of Entry No.123629 dated 25-01-06. The Printer is described in the Proforma Invoice No. N/CBS/002 dated 7.1.06 as

> "NIPSON 8000 SED Laser printer with in built data management computer with varypress print Server and IPDS data interface including start up supplies and start up spare parts."

2. As per technical specification given in the catalogue the printer can print on paper, synthetics, labels, foil, thermostatic stocks. Its weight is 1000 Kgs and size is 1394 mm width, 2178 mm length and 1600 mm height.

3. The Assistant Commissioner who assessed the goods classified the goods under Tariff Item 84436090 of Customs tariff. The Commissioner (Appeal) classified the goods under Tariff Item 84716026. Aggrieved of the order of the Commissioner (Appeal) the department has filed this appeal.

4. Revenue argues that such printers are classifiable under CTH 8443 by virtue of explanatory notes to CTH 8471 read with Note 5 to Chapter 84. According to Explanatory Notes to CTH 8471, an apparatus can only be classified in this heading as a unit of an automatic data processing system if it:

(i) performs a data processing function;

(ii) Meets the criteria set out in Note (B) to this chapter including the introductory paragraph to that note, and is not excluded by the provisions of Note (E) to this chapter

5. Explanatory Notes to CTH 8471 further clarify that the foregoing provision, is however to be considered in the overall context of Note 5 to Chapter 84 and is therefore applicable, subject to provisions of paragraph (E) of that Note, by virtue of the introductory part of paragraph (B) thereof. Therefore according to revenue the impugned printer working in conjunction with an automatic data processing machine, but having, particularly in terms of their size, technical capabilities and particular application, the characteristics of a printing machine designed to perform a specific function in printing or graphics industry (production of prepress colour proofs, for example) are to be regarded as machine having a specific function classifiable in heading 8443.

6. Both the sides rely on Chapter Notes 5(B) to 5(E) of chapter 84 of the Customs tariff to support their view points. These notes are reproduced below:

> **"5(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of the complete system if it meets all the following conditions:**
>
> **(a) It is of a kind solely or principally used in an automatic data processing system;**
>
> **(b) It is connectable to the central processing unit either directly or through one or more other units; and**
>
> **(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.**

5(C) Separately presented units of an automatic data processing machine are to be classified in heading 8471.

5(D) Printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and B(c) above, are in all cases to be classified as under of heading 8471.

5(E) machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or failing that, in residual headings."

7. It is argued by revenue that the impugned printer is performing a specific function of printing on various mediums like paper, synthetics, labels, foils and thermo sensitive stocks and working in conjunction with an automatic data processing machine and therefore merits classification in the heading appropriate to its functions i.e. printing, under CTH 84436090 as other machinery for uses in printing industry.

8. The two competing headings are reproduced below.

Extracts from 2005-2006 Customs Tariff

<u>Entries relating to heading 8471</u>

8471		**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**	
8471 10 00	-	Analogue or hybrid automatic data processing machines	Free
8471 30	-	*Portable digital automatic data processing machines, weighing not more than 10 kg. consisting of at least a central processing unit, a keyboard and a display:*	

8471 30 10	---	Personal computer	Free
8471 30 90	---	Other	Free
	-	Other digital automatic *data* processing machines:	
8471 41	--	Comprising in the same housing at least central processing unit and an input and output, whether or not combined:	
8471 41 10	---	Micro computer	Free
8471 41 20	---	Large or main frame computer	Free
8471 41 90	---	Other	Free
8471 49 00	--	Other, presented in the form of systems	Free
8471 50 00	-	Digital processing units other than those of sub headings 8471 41 or 8471 49 whether or not containing in the same housing one or two of the following types of unit : storage units, input units, output units	
8471 60	-	Input or output units *whether* or not containing storage units in the same housing:	
8471 60 10		Combined input or output units	Free
	---	*Printer:*	
8471 60 21	----	Line printer	Free
8471 60 22	----	Dot matrix printer	Free
8471 60 23	----	Letter quality daisy wheel printer	Free
8471 60 24	----	Graphic printer	Free
8471 60 25	----	Plotter	Free
8471 60 26	**----**	**Laser Jet printer**	**Free**
8471 60 27	----	Ink jet printer	Free
8471 60 29	----	Other	Free
8471 60 30	---	Monitor	Free
8471 60 40	---	Keyboard	Free
8471 60 50	---	Scanners	Free
8471 60 60	---	Mouse	Free
8471 60 90	---	Other	Free
8471 70	-	Storage units :	
8471 70 10	---	Floppy disc drivers	Free
8471 70 20	---	Hard disc drivers	Free
8471 70 30	---	Removable or Exchangeable disc drives	Free
8471 70 40	---	Magnetic tape drive	Free

8471 70 50	---	Cartridge tape drives	Free
8471 70 60	---	CD-ROM drive	Free
8471 70 70	---	Digital video disc drive	Free
8471 70 90	---	Other	Free
8471 80 00	-	Other units of automatic data processing machines	Free
8471 90 00	-	Other	Free

Entries relating to Heading 8443

8443		**Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442: inkjet printing machines: other than those of heading 8471 machines for uses ancillary to printing**	
	-	offset printing machinery:	
8443 11 00	--	Reel fed	15%
8443 12 00	--	Sheet fed, office type (sheet size not exceeding 22 x 36 cm)	15%
8443 19 00	--	Other	15%
	-	*Letterpress printing machinery, excluding flexographic printing* :	
8443 21 00	--	Reel fed	15%
8443 29 00	--	Other	15%
8443 30 00	-	Flexographic printing machinery	15%
8443 40 00	-	Gravure printing machinery	
	-	other printing machinery :	
8443 51 00	--	Ink-jet printing machines	15%
8443 59	--	*Other :*	
8443 59 10	---	Flat bed printing presses	15%
8443 59 20	---	Platen printing presses	15%
8443 59 30	---	Proof presses	15%
	---	*machinery for printing repetitive word or design or colour* :	
8443 59 41	----	On cotton textile	15%
8443 59 49	----	Other	15%
8443 59 90	---	Other	15%
8443 60	-	machines for uses ancillary to printing:	
8443 60 10	---	Automatic feeders and sheet delivering machine	15%

8443 60 20	---	Serial numbering machines	15%
8443 60 30	---	Folders, guzmnos perforators and staplers	15%
8443 60 90	**---**	**Other**	**15%**
8443 90	-	Parts	10%
8443 90 10	---	Parts of printing presses	10%
8443 90 90	---	Others	15%

9. The arguments on behalf of the Respondent are as under:

9.01 CTH 8443 covers printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442 and it specifically excludes the printing machines of heading 8471. The printing components of CTH 8442 are as under:

8442 Machinery, apparatus and equipment (other than the machine-tools of heading 8456 to 8465), for type-founding or type-setting, for preparing or making printing blocks, plates, cylinders or other printing components, printing type blocks, plates, cylinders and other printing components, blocks, plates, cylinders and lithographic tones, prepared for printing purposes (for example, planed, grained or polished)

9.02 In the Laser Jet Printer imported by the Respondent is a printer where the image to be printed is first generated in the computer using various software. The image generated by the computer is then printed using toner. There is no use of plates or transfer of image from the plate mounted on the machine in the paper using ink as the printing medium as contemplated under CTH 8443.

9.03 The printer imported by the respondent cannot print unless it is connected to a computer. It also stores data for printing. In case printing fails on account of short supply of paper etc. the moment paper is supplied, it again resumes printing using stored data

9.04 Further the item imported by the respondent is a printer and not Machines for uses ancillary to printing as contemplated under CTH 84436090. The item imported by respondent is specifically not covered under CTH 84436090. Therefore it cannot be classified under CTH 84436090.

9.05 The CTH 84716026 specifically includes Laser Jet Printer.

9.06 As per Rule 3(a) of the General Rules for the Interpretation of Import Tariff the heading which provides the most specific description shall be preferred to headings providing a more general description. Therefore as per Rule 3(a), the Laser Jet Printer is correctly classifiable under CTH 84716026.

9.07 Now, as per note 5(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units and a unit of this system is to be regarded as being a part of the complete system if it is of a kind solely or principally used in an automatic data processing system; it is connectable to the central processing unit either directly or through one or more other units; and it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

9.08 Now the printer under consideration is definitely a part of the automatic data processing system. The printer under consideration is of a kind which can be used only in an automatic that processing system, it is connectable to a central data processing unit directly and it receives data in signal form used by the system. As per note 5(C) Separately presented units of an automatic data processing machine are to be classified in heading 8471. Since this printer is a unit of automatic data processing machine it needs to be classified under heading 8471.

9.09 Further as per note 5(D) Printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of note 5(B)(b) and 5(B)(c) above, are in all cases to be classified as units of heading 8471. Since the printer under consideration satisfies the conditions of note 5(B)(b) and 5(B)(c) above, as per note 5(D), it is to be classified under heading 8471 without any doubt.

9.10 Since in view of note 5(B), 5(C) and 5(D) of chapter 84 the printer under consideration is a specifically classifiable under heading 8471, the provisions of note 5(E) will not be attracted.

10. Considered arguments on both sides.

11. In the Appeal Memorandum it is the provisions in the HSN notes which the revenue is relying on for argument in para 4 and 5 above are not extracted. It appears to be their own interpretation of the provisions. The only provisions seen under heading 8471 which the Revenue may be relying on reads as under:

> "However the heading **excludes** machine, instruments or apparatus incorporating or working in conjunction with an automatic data processing machine and performing a specific function. Such machines instruments or apparatus are classified in the headings appropriate to their respective functions or, failing that, in residual headings (Part E) of the General Explanatory Note to this Chapter)

12. The above note can apply to an apparatus like an eye testing machine which works with the help of a computer. The machine has individual function though it employs a computer. The main function of the impugned machine is to serve as an output to the information stored in a computer and can not fall under any heading other than 8471 where such machines are specifically included.

13. Revenue is objecting to classification of the impugned printer under heading 8471 for the reasons that it is huge in size as compared to ordinary printers used along with computer and for the reason that it can print on material other than paper. The idea canvassed is that because it is huge in size it a printing machinery rather than a printer. The relevant chapter notes do not decide the issue based on size of printer or the type of material on which printing is to be done. This printer satisfies all the conditions laid down in Chapter Note 5(B) of Chapter 84 . Further it specifically

satisfies conditions laid down in notes 5(B) (b) and 5(B) (c) of chapter 84 and therefore in view of Note 5(D) it is classifiable under heading 8471 only. Further Tariff Item 8471 60 26 specifically covers Laser Jet Printer. Such being the case the item cannot be taken to heading 8443 for Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442. This machine does not make use of printing type, blocks, plates, cylinders and other printing components of heading 8442.

14. So the impugned printer is clearly classifiable under Tariff Item 8471 60 26. The fact that the rate of duty under this Tariff Item is zero cannot be a reason to give distorted meanings to descriptions in each Heading and Tariff items and the Chapter Notes and Interpretative Rules to somehow deny the benefit provided in the tariff.

15. Therefore the Appeal is rejected by upholding the order of Commissioner (Appeal).

(Pronounced in Open Court on 23.2.2011)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)