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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/741 /2007 - CU[DB] Date **09/05/2012**

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

To :
M/S PATEL WIDECOM (INDIA) LTD.
SDF D-7, NSEZ, PHASE-II, NOIDA 201305.

M/S PATEL WIDECOM (INDIA) LTD. Appellant

Vs

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

I am directed to transmit herewith a certified copy of **Final order No.C/A/131/ 2012 CU[DB]** dated 08.05.2012 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
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I.
AIRPORT, NEW DELHI 110037.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ,
NEW DELHI 110 070

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

C/Appeal No.741/2007

(Arising out of order in appeal No.CCA/Cus/98/Acu-imp/2007 dated 22.6.07 passed by the Commissioner of Customs & Central Excise(Appeals), New Delhi)

For Approval and signature:

Date of Hearing: 9.4.2012
Pronounced on 08-05-12

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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?	No
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

M/s Patel Widecom (India) Ltd — Appellant

Vs

CC, New Delhi — Respondent

Appeared for the Appellant: Ms. Sukriti Das, Advocate
Appeared for the Respondent: Shri R.K. Gupta, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. C/A/131/12-Cus.

Per Mathew John:

The appellants imported a consignment of goods and filed a Bill of Entry dated 16-05-2006, declaring the goods as "Personal Digital Assistant (Data Processing Machine)" and claiming classification under Tariff Item 84713090. On examination of the goods and catalogue of the machine the Revenue found the item to be "Pocket Surfer Device". The equipment was found to be one used for internet browsing. The revenue was of the view that the equipment has no capability for processing of data and hence would not qualify for classification under 84713090. The assessing officer changed the classification of the goods to Tariff Item 847989999. There was delay in issuing a speaking order why classification was so changed. After continuous follow up such order was issued which order was appealed against. The Appellant did not get any relief from Commissioner (Appeal). Aggrieved by the order of the Commissioner (Appeal) appellants have filed this appeal.

2. Revenue relied on Chapter Note 5 of Chapter 84 which reads as under:

5(A) For the purposes of heading 8471, the expression 'automatic data processing machines' means:

(a) A digital machines, capable of (1) storing the processing programme or programmes and at least the date immediately necessary for the execution of the programme (2) being freely programmed in accordance with the requirements of the user (3) performing arithmetical computations specified by the user and (4) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;

(b) Analogue machines capable of simulating mathematical models and comprising at least: analogue elements, control elements and programming elements;

(c) Hybrid machines consisting of either a digital machine with analogue elements or an analogue machine with digital elements.

(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 units to be regarded as being a part of a complete system if it meets all of 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

© it is able to accept or deliver data in a form (code or signals) which can be used by the system.

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

(D) Printers, keyboards, X-Y coordinate 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 units of heading 8471.

(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."

3. According to the appellants the device has following capability:

"The item imported is "Pocket Surfer Device" which is a dedicated internet device having the focus to deliver the real web experience to the user, faster than any other wireless device, easily and affordably in one small, light weight unit that complements the user's existing hand held device through Bluetooth. The device allows the user to access the web, providing the internet experience similar to desktop computer without crunching the content. With the device the user can perform any function as can be normally done using any Web Browser like reading and writing e-mails, checking stocks, purchasing tickets, shopping, making reservations, chat, use a currency converter, read the news and so on. It also provides the user Basic Personal data Assistant (PDA) functions on the web that can also be registered on the device unit. The device is designed to provide a

true web experience. All the other functions like wring e-mail surfing the net, purchasing items, chatting, etc. are available using the device which is a handy, independent and autonomous instrument having a sleek design measuring only 5.98 inches by 2.97 inches by 0.58 inches (with case closed) small enough to fit in the pocket. The device can be program by the user for network setting (GRRS, 1x RTT username, password et); it can also be programmed for web resolution settings like resolution, animations, pop-up etc.

For the reasons functionality and specifications of the device, the same was presented by the appellants for assessment under customs Tariff sub heading No. 8671.3090. The assistant Commissioner (Customs) however, without giving a show cause notice to the appellants, place the device under Customs Tariff sub-heading 8479.8999.

4. The Counsel for the Appellants argues that the product is capable of programming for web resolution settings like resolution, animation pop up etc. It can be set for use based on username and password and thus it is capable of programming. It can also do the functions of a calculator that is classified without dispute under heading 84.71. Further it is the argument of the appellants that the heading 8479 is for heavy industrial machines. Further the function of this machine is to connect to the internet and retrieve data from computers available on internet and thus the device is always used in conjunction with computers and hence it is more appropriately classifiable along with computer under heading 84.71 rather than under heading 84.79 which is a residual heading.

5. The Ld AR for revenue submits that this item will go out of heading 84.71 in view of Chapter Notes 5 (A) (a) (2) and 5 (E) of Chapter 84.

6. We examined the matter with reference to the two competing heading presented before us. In our view this device is of a kind used principally in data processing, that is retrieving data from remote computers through wireless network and presenting it

to the user the data needed by him, and thus capable of accepting data in a form which can be used by the system consisting of the computer at remote location and the device. So the device is covered by Chapter Note 5(B). When computer printers which are not programmable are specifically included in heading 84.71 by note 5(D), it is not understood why this device has to be ousted from this heading and taken to heading 84.79. Further to apply note 5(D), canvassed by Revenue, the device should be capable of doing a specific function other than data processing. It is not explained which is the individual function other than data processing which the device is capable of doing. Note 5 (D) will apply in situations like that of a CNC machine or a machine used in testing of eyes which machine may be .using a computer to program the device and analyse the data. So between the two heading argued before us heading 84713090 is more appropriate than heading 84798999.

9. Thus the appeal is allowed with consequential benefits if any to the appellant.

(Pronounced on 08/05/12)

(MATHEW JOHN)
Member(Technical)
MPS*

(ARCHANA WADHWHA)
Member(Judicial)