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

Appeal No. : E/1661/2000-EX[DB] Dated: **05/07/2012**

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

VINTRON ELECTRONICS PVT.LTD.
F-34,OKHLA INDL. AREA,PHASE-I,
N.DELHI

VINTRON ELECTRONICS PVT.LTD. (Appellant)

VS

C.C. (EXPORT) NEW DELHI (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/746/2012-EX[DB]** dated **03/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,

1. **Respondent**
C.C. (EXPORT) NEW DELHI
Air Cargo Export, New Custom House,
New Delhi 110037

2. **Advocate(s) / Consultant(s):** SHRI MANISH GAUR, ADV, C/O APPELLANT

3. **C.D.R**
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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
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Assistant Registrar
EXCISE Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Date of Hearing 06.06.2012
Date of decision: 3.7.2012

For approval and signature:

Hon'ble Mr.Justice Ajit Bharihoke, 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?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No.1661 of 2000
(Arising out of Order-in-Appeal No.153-CE/DLH/2000 dated 10.2.2000 dated passed by the CCE (A), New Delhi)

M/s Vintron Electronics Pvt. Ltd. Appellants

Vs.

CCE, New Delhi Respondent

Present: Shri Manish Gaur, Advocate for the Appellant
Present Shri Sunil Kumar, AR for the Appellant

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

FINAL **ORDER No.** A/746/2012-Ex(BR)

Per: Rakesh Kumar:

M/s Vintron Electronics Pvt. Ltd. (hereinafter referred to as appellant), were engaged in the manufacture of "Add on cards".

During the period from June, 1994 to August, 1994 and December, 1994 to 16.03.1995, the appellant cleared the "Add on cards" to their customers by classifying them under heading no.847100 of the first schedule to Central Excise Tariff Act, 1985 and paid excise duty @ 15% Ad valorem.

2. The department was of the view that "Add on cards" are used as part of computer and fall under chapter heading 8473.00, and are chargeable to duty @ 20% Adv valorem. Thus two show cause notices for differential duty, show cause notice dated 30.12.1994 for differential duty of Rs.7,51,244/- for the period from June, 1994 to August, 1994 and show cause notice dated 25.5.1995 for differential duty of Rs.15,00,336 for the period from December, 1994 to 16.03.1995, were issued to the assessee.

3. In their reply as also during personal hearing, the appellant reiterated that they had rightly classified "Add on cards" under chapter heading 8471.00 and that the department was not justified in changing classification of the product from sub heading 8471.00 to 8473.00 merely because on the basis of an audit objection, particularly when the classification had earlier been approved by the Department.

4. The jurisdictional Assistant Commissioner vide his order in original dated 16.10.1998 confirmed the duty demands raised by the

respective show cause notices under section 11A of the Central Excise Act, 1944.

5. The appellant preferred an appeal against the order in original. The Commissioner (Appeals) taking note of the fact that the appellant were clearing their goods under sub heading 8471.00 after approval from the jurisdictional authority and also taking note of the fact of the judgement of Supreme Court in the case of **CCE vs. Cotspun Ltd.- 1999 (113) ELT 353 (SC)** came to the conclusion that levy of excise duty on the basis of approved classification is correct levy till such time correctness of approval is questioned. So far as the demand raised by show cause notice dated 30.12.1994 was concerned he set aside the order in original. As regards the show cause notice dated 25.5.1995 Commissioner (Appeals) set aside the demand upto the period 11.3.2005 and directed that short levy of excise in terms of second show cause notice after 16.3.95 be re-worked out in terms of the judgement of the Supreme Court.

6. The appellant not being satisfied with the order of the Commissioner (Appeals) preferred an appeal before the Tribunal. The Tribunal vide order dated 8.11.2002 did not find any reason to interfere with the impugned order in appeal. Accordingly, appeal was dismissed.

7. The appellant preferred civil appeal No.5146 of 2003 against the order of the Tribunal before Hon'ble Supreme Court and the Supreme Court remanded the matter back to the Tribunal for fresh disposal of the appeal in accordance with law after considering the nature and functions of the "Add on cards" in the functioning of automatic data processing machines and all the contentions of the party were left open.

8. Shri Manish Mohan, learned Advocate has shown us model of mother board, platform having sockets in which "Add on Cards" are inserted and pleaded that the motherboard is assembly of various connections which jointly perform data processing work which is popularly known as computing and "Add on cards" like sound card, display cards, LAN card, Modem, graphic card etc. can be attached to the motherboard by inserting them in the integrated circuit sockets provided in the mother board and that without said "Add on cards", computer cannot perform at full function that a computer can do.

9. Shri Manish Mohan, learned Advocate further submitted that the Commissioner (Appeals) have fallen in error in classifying "Add on cards" under sub heading 8473.00. Expanding on the argument, learned Counsel for the appellant submitted that "add on cards" have no utility whatsoever unless connected to motherboard of the computer/data processing machines and without the "Add on cards", computer/data processing machines cannot function as a whole. As

such, "Add on cards" are intergral parts of the computer to be classified as unit of the computer falling under sub heading 8471.00. In support from his contention, learned Counsel for the appellant seeks support from the judgement of the Supreme Court in the case of **CC, Bangalore vs. Acer India (P) Ltd.-2008 1 SCC 382** wherein desktop computer is held to be a combination of a CPU with monitor, mouse and keyboard imported together as set. Ld. Counsel for the appellants has also relied upon chapter note 5(a) and (b) to chapter 84 of the relevant Central Excise Tariff Act.

10. Shri Sunil Kumar, learned AR for the department has argued in support of the impugned order. He submits that the co-ordinate bench of this court in the case of Indochem Electronics Ltd. vs. CCE, Chennai-1997 (95) ELT 580 while dealing with similar issue has classified "Add on cards" under sub heading 8473.00. Learned AR submits that the "Add on cards" are only parts of a computer which are used for enhancing the performance function of computer/data processing machine, and as such these cards cannot be treated as units of the computer/data processing machine falling under sub heading 8471 as claimed by the appellant and therefore the Commissioner (Appeals) has rightly classified the "Add on Cards" under heading 8473 and the order cannot be faulted.

11. We have carefully considered the rival submissions and have perused the record. The point of dispute in this case is as to whether during the period of dispute, "Add on Cards" were classifiable under heading 8471 as a "unit of automatic data processing machine" or under heading 8473 as part of the goods of heading 8471.

12. During the period of dispute, heading 8471.00 and 8473.00 were as under:

> 84.71 8471.00 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".
>
> 84.73 8473.00 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.

The Appellant's claim is that Add on Cards are units of automatic Data processing machine, and, hence, are correctly classifiable under heading 84.71.

12.1 During the period of dispute, while chapter note 5(a) of chapter defined "automatic data processing machines" for the purpose of this chapter, chapter note 5(b) explains the scope of – "units of automatic data processing machines". Chapter note 5(b) is reproduced as under:-

> "(b) automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being part of the complete system if it meets all the following conditions:-
>
> (i) It is connectable to the central processing unit either directly or through one or more other units;

(ii) It is specifically designed as part of such a system [it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system].

Such units presented separately are also to be classified in heading 84.71.

12.2 thus, the point of dispute in this case reduces to determining as to whether the "Add –on Cards" are "units of automatic Data Processing Machines" in terms of its definition given in chapter note 5(b).

13. In terms of the Rule 1 of the Rules for the Interpretation of the 1st Schedule to the Central Excise Tariff Act, 1985, for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, subject to the provisions of Rule 2 to 5 of these Rules. Besides the Rules for the interpretation of the tariff, if a particular heading in the 1st schedule of the Central Excise Tariff Act, 1985 i.e. the Central Excise Tariff, is identical to the corresponding HSN heading, the HSN explanatory notes can also be a good guide for ascertaining the scope of the heading in the Central Excise Tariff.

14. An automatic data processing machine comprises of at least three units – central processing unit, which is the heart of the machine, input units and output units. An input unit is the one which receives inputs data and converts them into signals which can be processed by the machine, like key board, mouse, scanner, signal converting units etc. An output unit is the one which converts the signals provided by the

machine into intelligible form or into coded data for further use, like printer, plotter, graphic printer etc. Storage units like Floppy disc drives, hard disk drives, removable disk drives, CD-ROM drives, magnetic tape drives, pen drives, digital video disc drives etc are the units of an automatic data processing machine/ system which are essential for data storage. There are other units like units for enhancing the processing power of the CPU. From description of units of Automatic Data Processing Machines in HSN explanatory notes to heading 84.71, it is clear that units of automatic data processing machine are those which are involved in basic functioning of the machine i.e. converting the input data into signals which can be processed by the machine, data storage, data processing and converting the output signal into intelligible form. The items which augment the functioning relating to data input, data storage, data processing and display of output, and which satisfy the condition of chapter note 5(b) of Chapter 71, would also be covered by the term "units of Automatic Data Processing Machine". These components units are connected to CPU either directly or through other units – the inter connection may be through cables or the same can be plugged into the slots in the mother board.

15. On going through the impugned order, we find that while for deciding as to whether a particular "Add-on card" is classifiable under 84.71, it has to be determined as to whether on the basis of its function, it can be treated as a unit of an Automatic Data Processing Machine, i.e.

whether it is a input unit, storage unit, output unit or other unit, satisfying the condition of chapter note 5(b). This aspect has not been discussed earlier in the order in appeal/ or in the order in original. The order in original does not even discuss as to how the "Add on cards" being manufactured by the Appellant are classifiable under heading 84.73 and not under 84.71. Thus, we have no option but to remand this matter to the original adjudicating authority for specific findings as to whether on the basis of the functions, the "Add-on cards", in question, are classifiable as "units of Automatic Data Processing Machines". The matter is, therefore, remanded to the original adjudicating authority for de-novo adjudication keeping in view ~~of~~ the observations made in this order.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant