IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL Nos. E/201,241/2009
E/CO/32/2009

(Arising out of Order-in-Original No. 15/2008 dated 28.11.2008 passed by Commissioner of Central Excise, Mumbai-IV)

Intellvisions Software Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Mumbai-IV **Respondent**

AND

Commissioner of Central Excise, Mumbai-IV **Appellant**

Vs.

Intellvisions Software Ltd. **Respondent**

Appearance:

Shri R.V. Shetty, Advocate, for appellant assessee
Shri V.K. Agarwal, Additional Commissioner (AR), for Revenue

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 14.6.2018
Date of Decision: 14.6.2018

ORDER No. **A/86988-86989/2018**

Per: Sanjiv Srivastava

Appeals under consideration namely E/201/2009 and E/241/09 are directed against the order in original

No 15/2008 dated 28.11.2008 of Commissioner Central Excise Mumbai IV. Commissioner has vide his order held as follows-

i. *After issue of letter dated 29.01.2008 by the Deputy Commissioner, Central Excise, Division K-I Mumbai-IV, M/s ISL started paying full rate of duty i.e. 16% adv till 28.02.2008 and @ 14% from 01.03.2008 classifying the products under chapter 85318000 and 84714190. However as discussed in detailed supra, I hold that the products mentioned at Sr No 1to 6 in he show cause notice are classifiable under chapter heading 84729090 and the products mentioned at sr No 7 & 8 in the show cause notice are classifiable under chapter heading No 85254000 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).*

ii. *The show casue notice F No V-Adj (Misc) 30-36/08 dated 22.05.2008 which covers period from April 2004 to January 2007, demanding duty of Rs 2,05,25,880/- (Rupees Two Crore Five Lakhs Twenty Five Thousand Eight Hundred and Eighty only) is hereby dropped, which is hit by limitaton and there is no suppression of facts on the part of M/s ISL.*

iii. *The show cause notice F No V-Adj (Misc) 30-18/08 dated 05.03.08 which covers period from February*

2007 to January 2008 demanding CE duty of Rs 23,56,928/- (Rupees Twenty Three Lakhs Fifty Six Thousand Nine Hundred and Twenty Eight Only) is confirmed and recoverable from M/s ISL.

iv. *I do not impose penalty under Section 11AC of Central Excise Act, 1944 and/ or Rule 25 of Central Excise Rules, 2002 as explained supra.*

v. *I impose interest under section 11AB of the Central Excise Act, 1944, at the appropriate rate applicable during the relevant period, The jurisdictional Assistant Commissioner, should work out the interest amount and inform the assessee within a period of one month from the date of receipt of this order.*

vi. *I do not propose to impose any personal penalty under Rule 26 of Central Excise Rules, 2002 on Shri Rajan Kapoor, Chief Financial Officer of M/s ISL on the basis of above findings.*

Appellants have filed appeal challenging the classification of the goods as held by the Commissioner and consequently the demand of duty and interest on the said goods. Revenue has challenged the order whereby Commissioner has held that the extended period of limitation cannot be invoked in the present case as no facts were suppressed.

2.1 Appellants are engaged in manufacture of Digital Machines as detailed in table 1 and were classifying them as indicated and discharging the Central Excise Duty @ 12% as per Sr No 16 of the Notification No 6/2006 CE dated 01.03.2006 as amended.

S No	Description Of Goods	Classification
1	I-Serve Terminals (Customer Service Automation)	847114190
2	Cheque Deposit Machine	847114190
3	Quick Pay (Bill Payment Terminal)	847114190
4	Opti Q (Dynamic Q- Management System)	847114190
5	I-Serve (Self Banking Terminal)	847114190
6	Pay Point (Automated Bill Payment Terminal)	847114190
7	I-Watch (Digital ATM Surveillance Solution)	847114190
8	I-watch DVR (Digital Video Recording)	847114190

2.2 After examining the technical literature and relevant Chapter Notes (5A(a)(2) & 5E of the Chapter 84 of First Schedule to The Central Excise Tariff Act, 1985) department was of opinion that the goods mentioned at Sl No 1 to 6 were classifiable under Heading 84729090 and those at Sl No 7 & 8 classifiable under Heading

85258090 of First Schedule to Central Excise Tariff Act, 1985. Accordingly exemption as contained in Notification No 6/2006 dated 01.03.2006 for Computers under Heading 8471 was not admissible to them.

2.2 Two Show Cause Notices have been issued to the party

- ✓ one dated 22.05.2008, demanding duty short paid during the period April 2004 to January 2007 amounting to Rs 2,05,25,880/- (Rupees Two Crore Five Lakhs Twenty Five Thousand Eight Hundred and Eighty only) by invoking extended period of limitation as provided under proviso to Section 11A(1) ;
- ✓ second dated 05.03.2008 demanding duty short paid during the period February 2007 to January 2008 amounting to Rs 23,56,928/- (Rupees Twenty Three Lakhs Fifty Six Thousand Nine Hundred and Twenty Eight Only);

2.3 Commissioner has adjudicated the Show cause Notices, while he upheld the case of department on merits he dropped the demand raised by first show cause notice dated 22.05.2008 for the reason that extended period could not have been invoked. He confirmed the duty demanded as per the second show cause notice dated 056.03.2008 and also confirmed the demand for interest in respect of the duty demanded.

2.4 Appellants have challenged the order of Commissioner on merits against the confirmation of the duty demand whereas revenue has challenged the dropping of demand on the ground of limitation. Department has also filed cross objections (E/CO/32/09-MUM) in the appeal filed by the Appellant

2.5 Since both the appeals and cross objections are directed against the same order in original they have been clubbed and heard together and taken up for disposal simultaneously.

3.0 Have heard Shri R V Shetty Advocate for the Appellant and Shri V K agarwal Additional Commissioner (Authorized Representative) for the department.

3.1 Arguing for the Appellants learned counsel referred to the technical literature in respect of the said goods and submitted that goods supplied by him were nothing but computers correctly classifiable under Chapter Heading 8471. Accordingly they have rightly availed the benefit of exemption in respect of the said goods. He also submitted that mere fact of wrong classification cannot be a ground for invoking extended period of limitation for demanding duty. He relied upon the decisions as listed in table 1in support of his contentions-

Table 2: Decisions Relied Upon by The Appellant's Counsel	
Cause Title	**Citation**
Ranaday Micro Nutrients Vs Collector of Central Excise	1996 (87) ELT 19 (SC)
HCL Peripherals Vs Commissioner Central Excise Chennai	2008(229)ELT547(SC)
Commissioner Vs HCL Peripherals	2008(229)ELT117(SC)
Gestener (India) Ltd Vs Commissioner Customs Mumbai	2006(197)ELT498(T)
Commissioner Vs Gestener (India) Ltd	2006(204)ELTA44(SC)
Microland Ltd Vs Commissioner Customs Chennai	2006(200)ELT169(T)
Blue star Ltd Vs Commissioner Customs Mumbai	2007(208)ELT106(T)
Commissioner Central Excise Vs Reliance Industries Ltd	2008(223)ELT586(BOM)
Commissioner Vs Reliance Industries Ltd.	2008(224)ELTA98(SC)

3.2 Arguing for the revenue learned Authorized Representative submitted that the correct classification of the mentioned at Sl No 1 to 6 will be 847209090 and of those mentioned at Sl No 7 & 8 under 85258090 as has been held by the Commissioner in his order. He heavily relied on the Chapter No 5A and 5E of the Chapter 84 of First Schedule of Central Excise Act, 1985. He also referred to HSN Chapter Notes for Headings 89471 & 8472 in support of his contentions. He submitted that since the gods in question are not computers classifiable under Chapter 8471, benefit of exemption at Sl No 16 of Notification No 6 / 2006-CE dated 01.03.2006 is not admissible to the party. He further submitted that since appellants have suppressed the vital facts from the department Commissioner was not correct in dropping the demand made in show cause notice by invoking extended period of limitation. He relied upon the decision of Tribunal in case of Cadbury India Ltd Vs Commissioner Central Excise Indore [2014 (47) STR 168 (T-Del)] in his support.

4.0 We have considered the submissions made by both the sides. To understand the goods in dispute a reference is made to the technical literature provided by the Appellant during the course of arguments. The said technical literature is reproduced below:


Self-Service Technologies
Intellvisions self service automation technologies are designed to increase brand awareness, greater reach and a proven ability to handle high volume payment transactions.
...They enable our customers to reduce their cost per transaction, create new channels to grow business and above all deliver a superior customer experience.
www.intellvisions.com
Intellvisions
Automation... Limited to Your Imagination

i-Serve (BPT) Bill Payment Terminal

Rising costs... Increased wages... Shrinking margins...

Telecom and utility companies face an increasing shortage of quality manpower and infrastructure amidst an ever growing customer base. Self-service technologies from Intellvisions enables telecom companies to reduce the cost per transaction while providing consistent improved service levels across all retail outlets.

SERVICES

- **Service Provisioning:** activation of roaming facility, ISD facility, etc
- **Bill Enquiry and Payment:** enquiries for outstanding bills and payment of utility, rental and mobile bills
- **Media Manager Feature:** streaming of advertisements on screens and generation of location and time-based advertisements, programmable to individual kiosks
- **Content Download:** downloads of games, ringtones, screen savers and wallpapers
- **Video Help Desk:** in-built camera enables customer support at the call center using one to one video conferencing
- **Customer Satisfaction Survey/ Product Promotions:** interactive tools, survey forms and digital promotions to augment marketing efforts
- **Prepaid PIN Services:** automated kiosks enable the purchase of prepaid and top-up vouchers for multi-vendor services at the same Kiosk

BENEFITS

FOR CUSTOMERS

- 24 x 7 customer self-service
- Increased customer satisfaction
- Personalized bill payment experience
- No frustrating queues or human interaction
- Printed acknowledgment receipt

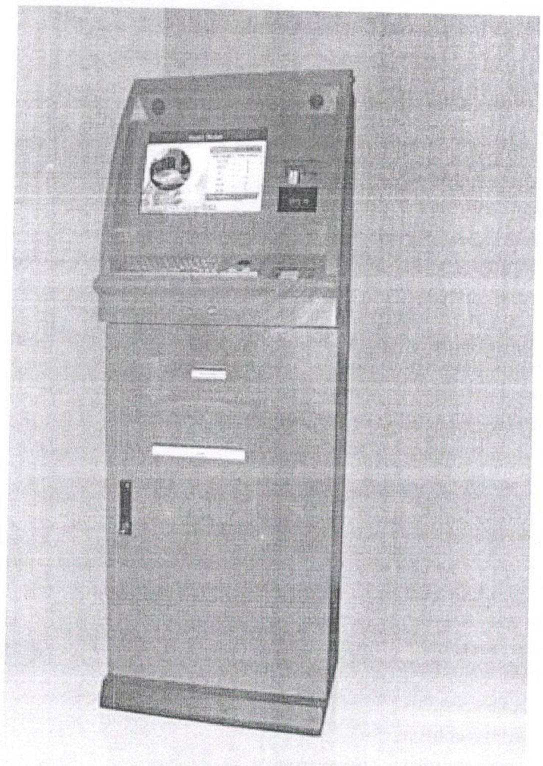
FOR INSTITUTIONS

- Direct savings in terms of manpower
- Reduced data entry and increased accuracy
- Significant reduction in teller enquiries
- Comprehensive MIS reports
- Conveys a tech savvy image of the institution
- Increased selling opportunities

i-Serve Multi Service Kiosk

More products... Manpower scarcity...Increasing competition

Banks and Retail institutions offer a wide range of products and services. The acute shortage of space and knowledgeable employees makes it difficult to service an ever increasing customer base.



i-Serve range of multi-function Kiosks optimizes migration of high volume low value transactions from the teller to the self-service channel.

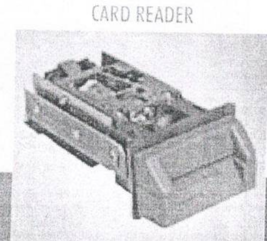
The versatile nature of the i-Serve series lets you introduce new functionality to keep pace with the changing business environment.

i-Serve offers a high level of security and a host of flexible configuration options. These include EMV card readers, Triple DES Pin Pads , cheque acceptors & cash acceptors.

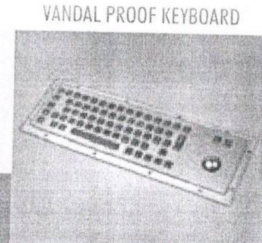
SERVICES / CONFIGURABLE OPTIONS

- **Cheque deposit automation -** i-Serve (SBT) can automate the entire cheque deposit process. It scans the cheque, endorses the cheque and serially stacks the cheque. The customer is then presented with a printed acknowledgement of the cheque.
- **Teller Enquiries-** all routine teller transactions such as balance enquiry, detailed/Mini account statement, fund transfer, cheque book request or stop cheque requests available at customer's convenience
- **Internet Banking-** i-Serve (SBT) enables customers to carry out transactions through e-banking such as account details, fund transfer etc.
- **Customer tool support-** help desk agents can be reached via video conferencing to answer service related queries
- **Marketing Tool-** i-Serve (SBT) fully automates the three steps product information, product research and transaction providing opportunities to up sell and cross sell products
- **Revenue Generation-** additional revenues by offering bill payment and e-top up services for utilities and cell phone companies

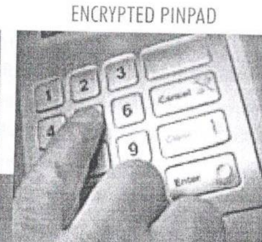
CARD READER



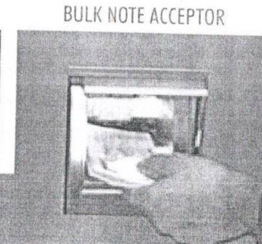
VANDAL PROOF KEYBOARD



ENCRYPTED PINPAD



BULK NOTE ACCEPTOR



BENEFITS AND APPLICATIONS

Banking

- Effectively manage space in branches
- Migrate routine transactions like cheque/ cash deposits, loan processing, teller queries to the self-service channel
- Meet the challenges of competition and increase customer base
- Fulfill the promise of true anytime, anywhere and anyplace banking
- Increased selling opportunities for financial products

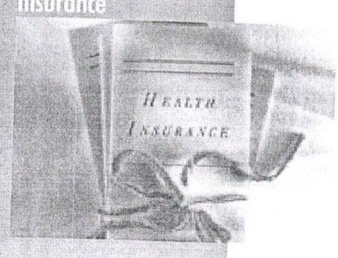
Retail

- Provide detailed product demonstrations
- Generate on-the-spot customer surveys
- Reduction in distribution cost of coupons
- Provide convenient touch points for customers to access mall directory, promotion schemes
- Easy access to discount coupons and loyalty programs
- Provide additional channels to vend movie and event tickets

Airlines

- Online booking facility with wide range of flights and fares
- Terms and conditions and flight specific rules
- Maximize terminal space and employee's time and efforts
- Quick and easy check in at the airport along with preferred seat assignments
- Frequent Flyer updates
- Flight Schedules and delays
- Reduced wait time and personalized service experience

Insurance



- Extend presence in non branch locations
- Provide product information with decision support tools like interactive calculators
- Increase operational efficiency by letting kiosks answer routine questions
- Additional channels for processing payments (cash, card and cheque)
- Online registration and filling of claims
- Payment of premium (cash/card/cheque) along with acknowledgment receipt
- Online interaction with insurance experts

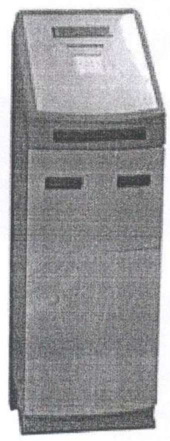
CHEQUE AUTOMATION SYSTEM

Intellvisions provides a complete range of cheque deposit automation systems engineered to work on 24 x 7 basis. These machines are designed to handle all cheques without any intervention from the employees, while providing customers with printed acknowledgment receipt.

NEED FOR CHEQUE DEPOSIT AUTOMATION

- Sizable number of customers walk-ins for cheque deposits
- The central banks guideline to provide acknowledgment receipts for cheques deposited.
- Long queues lead to disgruntled customers
- Rising manpower costs

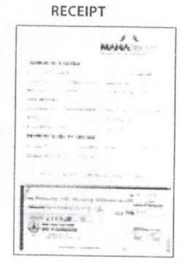
CHQ-MATE



- Reads MICR Code
- Generates acknowledgment with user-defined input & MICR No. of deposited cheque
- Free fall stacking of cheques

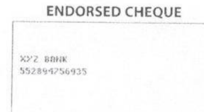
CHQ-MATE (CTS)

RECEIPT



- Prints serial number at the rear of the cheque and scans both sides of the cheque
- Generates acknowledgment with user-defined input & image of the cheque
- Serial stacking of cheques

ENDORSED CHEQUE



BENEFITS

FOR BANKS

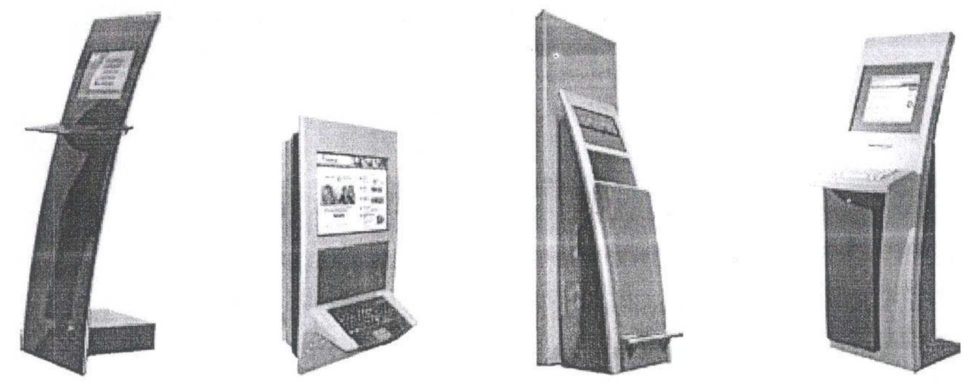
- Direct savings in terms of manpower
- Reduced data entry and increased accuracy
- Reduced back-office reconciliation issues
- Increased operational efficiency
- Transaction data and scanned images readily available
- Faster and easier clearance services
- Cost savings in the handling, transportation and storage of physical cheques

FOR CUSTOMERS

- 24 x 7 customer self service
- Increased customer satisfaction
- No frustrating queues or human interaction
- Superior service experience
- Printed acknowledgment receipt
- Reduced time lag between cheque presentation and realization

STANDARD CONFIGURATION

- 15"/17" LCD with touch screen, bigger size available on request.
- CPU option : Commercial grade / Industrial grade CPUs



OPTIONAL ACCESSORIES

▪ Vandal proof keypad(optional) ▪ CCD Camera	▪ Keyboard ▪ CCD camera ▪ Magnetic Card reader ▪ 80mm Thermal receipt printer	▪ Keyboard ▪ CCD camera ▪ Magnetic Card reader ▪ 80mm Thermal receipt printer	▪ Keyboard ▪ CCD camera ▪ Magnetic Card reader ▪ 80mm Thermal receipt printer

OPTIONAL ACCESSORIES

▪ CCD camera ▪ 80mm Thermal receipt printer ▪ Magnetic card reader ▪ CCD barcode reader ▪ Cash acceptor ▪ Bin ▪ 20" overhead LCD	▪ 80mm Thermal receipt printer ▪ Magnetic card reader ▪ Cheque acceptor ▪ Cash acceptor	▪ CCD camera ▪ 80mm Thermal receipt printer ▪ Magnetic card reader ▪ Cheque acceptor ▪ MICR scanner/ Endorser/ Stacker ▪ Cash acceptor	▪ CCD camera ▪ 80mm Thermal receipt printer ▪ Magnetic card reader ▪ Cheque acceptor ▪ MICR scanner ▪ CCD barcode reader

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5.0 From the said technical literature it is quite evident that all the goods under consideration are standalone machines capable of performing a specific function. These machines/ equipments can be installed in remote locations for providing host of services to the users as highlighted in the technical literature. From the description of the products and functions performed it is quite evident that the said machine/ equipments are for performing various functions which are part of ordinary banking functions such currency dispensation, cheque deposits, bill payment etc., from a remote location without any human intervention. In table 3, a comparison of competing tariff entries has been made.

Table 3: Competing Tariff Entries in which classification has been claimed.		
8471		AUTOMATIC DATA PROCESSING MACHINES AND UNITS THEREOF; MAGNETIC OR OPTICAL READERS, MACHINES FOR TRANSCRIBING
847130	-	DATA ON TO DATA MEDIA IN CODED FORM AND MACHINES FOR PROCESSING SUCH DATA, NOT
84713010	---	ELSEWHERE SPECIFIED OR
84713090	----	INCLUDED
847141	--	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least
84714110	---	a central processing unit, a keyboard
84714120	---	and a display:
84714190	---	Personal computer
84714900	--	Other
84715000	-	Other automatic data processing machines: Comprising in the same housing at least a central processing

		unit and an input and output unit,
8471 60	-	whether or not combined :
84716010		Micro computer
	---	Large or main frame computer
84716025	---	Other
8471 60	----	Other, presented in the form of
24	----	systems
8471 60	---	Processing units other than those of
29	---	sub-headings 8471 41 or 8471 49,
8471 60	---	whether or not containing in the same
40	---	housing one or two of the following
8471 60	-	types of unit: storage units, input
50	----	units, output units
8471 60	---	Input or output units, whether or not
60	---	containing storage units in the same
8471 60	---	housing:
90	---	Combined input or out put units
8471 70	---	Printer:
8471 70	---	Plotter
10	---	Graphic printer
8471 70	-	Other
20	-	Keyboard
8471 70		Scanners
30		Mouse
8471 70		Other
40		Storage units:
8471 70		Floppy disc drives
50		Hard disc drives
8471 70		Removable or exchangeable disc
60		drives
8471 70		Magnetic tape drives
70		Cartridge tape drive
8471 70		CDROM drive
90		Digital video disc drive

8471 80 00 8471 90 00		Other Other units of automatic data processing machines Other
8472		OTHER OFFICE MACHINES (FOR EXAMPLE, HECTOGRAPH OR STENCIL DUPLICATING MACHINES, ADDRESSING MACHINES, AUTOMATIC BANKNOTE DISPENSERS, COIN SORTING
84721000	-	MACHINES, COIN COUNTING OR
84723000	-	WRAPPING MACHINES, PENCIL-SHARPENING MACHINES, PERFORATING OR STAPLING
847290	-	MACHINES)
84729010	---	Duplicating machines
84729020	---	Machines for sorting or folding mail or
84729030	---	for inserting mail in envelopes or
84729040	---	bands, machines for opening, closing
	---	or sealing mail and machines for
84729091	----	affixing or cancelling postage stamps
84729092	----	Other:
84729093	----	Stapling machines (staplers)
84729094	----	Digital duplicator
84729095	----	Automatic bank note dispensers
84729099	----	Coin sorting machines, coin counting or wrapping machines Other: Word processing machines Automatic typewriters Braille typewriters, electric u Nil Braille typewriters, nonelectric u Nil Other typewriters, electric or nonelectric

		Other
8525		TRANSMISSION APPARATUS FOR
		RADIO-BROADCASTING OR
		TELEVISION, WHETHER OR NOT
		INCORPORATING RECEPTION
		APPARATUS OR SOUND RECORDING
852550	-	OR REPRODUCING APPARATUS;
85255010	---	TELEVISION CAMERAS, DIGITAL
85255020	---	CAMERAS AND VIDEO CAMERAS
85255030	---	RECORDERS;
85255040	---	Transmission apparatus:
85255090	---	Radio broadcast transmitter
852560	-	TV broadcast transmitter
	---	Broadcast equipment sub-system
85256011	----	Communication jamming equipment
85256012	----	Other
85256013	----	Transmission apparatus incorporating
85256019	----	reception apparatus:
	---	Two way radio communication
85256091	----	equipment:
85258092	----	Walkie talkie set
85256099	----	Marine radio communication
852580	-	equipment
85258010	---	Amateur radio equipment
85258020	---	Other
85258030	---	Other:
85258090	---	VSAT terminals
		Other satellite communication
		equipment
		Other
		Television cameras, digital cameras
		and video camera recorders Television
		Cameras
		Digital cameras

		Video camera recorders Other

6.0 For purpose of making the Classification, in terms of First Schedule to Central Excise Tariff Act, 1985, General Rules of Interpretation of tariff reproduced below lay down the guiding principle.

1. *The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.*
2. *(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

   (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or

substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. *When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

   (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

   (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component

which gives them their essential character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. *Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.*

5. *In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:*

(a) camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods

if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. *For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

7.0 In terms of the above rules classification of the product is to be determined in accordance with terms of the headings and any relative Section & Chapter Notes. The terms of headings in which the Appellant has claimed the classification and those in which revenue has sought to classify has been reproduced in para 5 above. Also the Chapter Note 5 which lays down the guiding principles for classification under heading 8471, as claimed by the Appellant needs to be examined and hence reproduced below:

5. (A) For the purposes of heading 8471, the expression "automatic data processing machines" means machine capable of :

(i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;

(ii) being freely programmed in accordance with the requirements of the user;

(iii) performing arithmetical computations specified by the user; and

(iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.

(C) Subject to paragraph (D) and (E), a unit is to be regarded as being a part of an automatic data processing system if it meets all of the following conditions :

(i) it is of a kind solely or principally used in an automatic data processing system;

(ii) it is connectable to the central processing unit either directly or through one or more other units; and

(iii) it is able to accept or deliver data in a form (codes or signals) which can be used by the system. Separately presented units of an

automatic data processing machine are to be classified in heading 8471. However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of (ii) and (iii) above, are in all cases to be classified as units of heading 8471.

(D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in paragraph (C):

- *(i) printer, copying machines, facsimile machines, whether or not combined;*
- *(ii) apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);*
- *(iii) loudspeakers and microphones;*
- *(iv) television cameras, digital cameras and video camera recorders;*
- *(v) monitors and projectors, not incorporating television reception apparatus.*

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

8.0 From the above Chapter Note, specifically "E" it is crystal clear that machines incorporating or working in conjunction with automatic data processing machines and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or failing in residual headings. Appellant has submitted that their products are independently working machines capable of collecting and collating data on its own (Automatic), through input devices such as MICR reader, cameras, key board, mouse etc which are housed in the same housing and storing the same in to a data base resident in the machine for future requirement and/or for immediately for necessary execution of program/ applications. In their view their products process the data through Operating Software & Application program, installed. They further are capable of taking input from other machines on network and churn out the MIS reports etc and hence is nothing but a data processor. Appellant has further submitted that their machines are not Bank Note Dispensers but in fact are "Acceptors of the Bank Note". Thus in the terms of the submissions made by the Appellant himself their products are quite akin to the ATM machines with a role reversal, i.e. instead of dispensing the cash these machines used for depositing cash/ cheques. Even in terms of HSN Explanatory note for headings 8471 & 8472 the classification of such machines would appropriately be classified under heading 8472. The said HSN explanatory notes are reproduced below:

8471

(A) Automatic Data Processing Machines

The automatic processing machines of this heading must be capable of fulfilling simultaneously the conditions laid down in Note 5(A) to this Chapter. That is to say, they must be capable of:

(1) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;

(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 program which requires them to modify their execution, by logical decision during the processing runs.

Thus machines which operate only on fixed programs, i.e. program which cannot be modified by the user are excluded even though the user may be able to chose between a number of such fixed programs.

…….

(B) Separately Presented Units

Subject to the provisons of Notes 5(D) and (E) to this Chapter, this heading also covers separately presented constituent units of automatic data processing systems. These may be in the form of units having separate housing or in the form of units not having a separate housing and designed to be inserted into a machine (e.g. insertion onto the main board of a central processing unit). Constituent units are those defined in Part (A) above and in the following paragraphs, as being parts of a complete system.

An apparatus can only be classified in this heading as apart of an automatic data processing system if it:

(a) Performs data processing function

(b) Meets the following criteria set out in Note 5(C) to this Chapter:

i. It is of a kind solely or principally used in an automatic data processing system;

ii. It is connectable to the central processing unit either directly or through one or more other units; and

iii. It is able to accept or deliver data in a form (codes or signals) which can be used buy the system.

(c) It is not excluded by the provisions of Notes 5(D) and (E) to this chapter

8472

The heading includes interalia:

(1) Duplicating Machines ......

(2) Addressing Machines ....

(3) Ticket issuing machines (other than those incorporating a calculating device (heading 84.70) and coin operated machines (heading 84.74)) ....

(4) Coin Sorting or coin counting machines (including bank note counting and paying out machines) This heading covers such machines whether or not they are fitted with a device for wrapping the coins or banknotes or in some cases for printing the amount on the wrapping.

Coin-count machines operating by weighing fall in heading 84.23 or heading 90.16.

(5) Automatic banknote dispensers operating in conjunction with an automatic data processing machine, whether online or offline.

(6) Automatic teller machines with which customers deposit, draw and transfer money and see the balances of their accounts without direct contact with bank personnel.

(7) Pencil sharpening machine ....

(8) Punching Machine ...

(9) ....

.

.

(22) ....

10. Apex Court in case of **Collector Vs Wood Craft Products Ltd.** [1995 (77) ELT 23 (SC)], Bakelite Hylam Limited [1997 (91) E.L.T. 13 (S.C.)] & Collector of Customs, Bombay Vs Business Farms Ltd. 2002 (142) ELT 18 (SC) held that for resolving any dispute relating to Tariff Classification, the internationally accepted nomenclature emerging from the HSN is a safe guide, this being the expressly acknowledged basis of the structure of Central Excise Tariff in the 1985 Act and the Tariff Classification made thereon and not only has persuasive value but entitled to the greater consideration in classifying the goods under Central Excise & Customs Tariff. Thus examining the function and technical literature in respect of goods mentioned at Sl No 1 to 6 in table 1, we have no hesitation in concluding that heading 8472, is more specific and appropriate heading to classify the said goods. For coming to said conclusion, Chapter Note 5 to Chapter 84 of the First Schedule to Central Excise Tariff Act, 1985 which is totally akin to the Chapter Note 5 to Chapter 84 of HSN has been taken into account along

with the specific terms of various headings and subheadings in the said chapter of Central Excise Tariff and HSN.

11. Now the items mentioned at Sl No 7 & 8 in table 1 namely I-Watch (Digital ATM Surveillance Solution) & I-watch DVR (Digital Video Recording) are taken up for discussion to determine their classification. Appellant has in his letter dated September 11, 2003 explained the functions and characteristics of the said products as follows:

- DVSS has been perfected to capture the transaction details of the person like Credit/ Debit card number and emboss it on the image captured along with the date and time stamp.
- Fraud detection can be done by just punching in the card number and all images pertaining to the transactions will be displayed for immediate redressal.
- The solution can be viewed locally or it can be viewed on LAN/ WAN
- The DVSS can be centrally monitored that is if the camera of a remote ATM has been tampered with it will send an error message to Central Location Indicating a problem.

- All images are encrypted with a unique watermarking technology thus making it admissible as supportive in the court.

From the submissions made by the Appellant in the said letter it is quite evident that the item the goods in dispute are nothing but digital cameras, which record the image of transaction being undertaken at the remote location. Once the image is recorded it is embossed with other details and then stored for retrieval and viewing either locally or through LAN/ SYSTEM. Since the prime function of these devices as explained by the Appellant is to record images, it is nothing but a digital camera and needs to be classified accordingly. Thus the classification of the said goods cannot be as Automatic Data Processing Machines under heading 8471, but would necessarily be in Chapter Heading 85258090.

12. Central Board of Excise and Customs has also vide its circular dated 11.07.2002 & 23.01.2004 in respect of similar products clarified as follows:

Circular No 41/2002-Cus dated 11.07.2002

"I am directed to invite your attention to the subject mentioned above and to say that a doubt has been raised as to whether cash dispensers can be allowed the benefit of notification No.21/2002-Cus., Sl.No.272 which

prescribes a concessional rate of duty of 15% on Automatic Teller Machines (ATMs).

2. The matter has been examined. It is found that the office equipments referred to above are understood separately and have distinct functions. ***Cash Dispensers are basically machines which can only dispense cash at the valid request of the customers of the bank while ATMs are more sophisticated machines which not only dispense cash but also perform other banking transactions like depositing cash, collecting cheques, bill payments, fund transfers etc. In common banking parlance too, both these equipment are understood separately and have distinct and separate functions. While an ATM can also dispense cash with the help of a cash dispensing mechanism a Cash Dispenser cannot function as an ATM and has limited scope. Therefore, it is clarified that though both Cash Dispensers and Automatic Teller Machines are appropriately classifiable under CTH 8472.90 as office machines****, only ATMs are eligible for benefit of concessional rate of duty under notification No.21/2002-Cus."*

Circular No 74/4/2004-ST dated 23.01.2004

2. The matter has been examined in the Board. It is clarified that computers are essentially data processing machines and their function is to process analog or digital data. There may be machines, which use such processed data to perform certain specified functions. These machines may involve processing of data but their principal function is not processing of data per se, but using such processed data for performing independent functions. These are not "computers" but are computerised machines. <u>ATM is one such machine</u>. For the purposes of Customs Tariff also, whereas computer falls under heading 84.73, ATMs fall under sub-heading 8472.90.

13. In his submissions Appellant has heavily relied on the decision of Tribunal in case of

i. HCL Peripherals Vs Commissioner [2008 (229) ELT 547 (T-Chennai)]. From the facts as recorded in the para 2 of the said decision it is evident that classification of the product namely touch screen kiosk was not a dispute under consideration of the bench. Both department and party had classified the item as Automatic Data Processing Machine under heading 8471. Since the issue in present case is with regards to classification of the specific products listed in table 1, same is clearly distinguishable. Appellant has also cited the decision of High Court and Supreme Court in the matter. High Court had dismissed the appeal filed by the department on the ground of mantainablity and Supreme Court on the ground of Delay. Hence even in that case it could be said that decision has been approved on merits by the High Court or Supreme Court.

ii. Gestner (India) Ltd Vs Commissioner of Customs Mumbai [2006 (17) ELT 498 (T-Mum). The items in dispute in the said decision are Printer/ Scanner – Multi-Function digital printers, which are clearly distinguishable from the products in present case. Even when the chapter note 5(C) clearly excluded the said printer/ scanners etc from the purview of the Chapter Heading 8471, the logic behind the order contrary to express provision in law cannot be appreciated. However the facts in present case are clearly distinguishable and hence the said decision would not be applicable.

iii. Microland Ltd Vs Commissioner of Customs, Chennai [2006 (200) ELT 169 (T-Chennai)]. This decision is stay order and not the final order disposing the appeal. Further the product under consideration in that case was Computer Software for use with Automatic Data Processing Machine classifiable under Heading 8471 and hence clearly distinguishable.

iv. Blue Star Ltd Vs Commissioner of Customs Mumbai [2007 (208) ELT 106 (T-Mumbai)]. The products under consideration are Disk Station connected to Analyzer Modules such as calorimeter and thermal analyzer which is a multi tasking operating system (OS) hence held to classifiable under Chapter Heading 8471. Since the product is distinguishable the said decision do not advance the case of appellants.

14. In view of discussions made above we are inclined to agree with the classification of goods as has been held by the Adjudicating Authority. Since adjudicating authority has confirmed the demand only for the normal period we do not find any merits in the appeal filed by the Appellant.

15. Adjudicating Authority has while deciding the matter, has dropped the demand of Rs 2,05,25,880/- (Rupees Two Crores Five Lakhs Twenty Five Thousand Eight Hundred and Eighty), demanded through Show Cause Notice issued vide F No V-ADj (Misc) 30-36/08 dated 22.05.2008, for the reason that there was no justification for invoking extended period of limitation as

provided by proviso to Section 11A(1). In view of the adjudicating commissioner every fact was well in knowledge of the department and hence there is no case of suppression, misstatement etc against the party. Department being aggrieved by this part of the order is in appeal has come in appeal before us. The ground of appeals being that party has during the period January 2004 to January 2007 suppressed the facts regarding description of goods cleared so as to enable them to avail the exemption/ concession under notifications 2/2004-CE and 6/2006-CE. In their appeal department has also challenged non imposition of penalty by the adjudicating authority under Section 11AC.

16. In para 30 onwards of the order adjudicating authority has dealt both the issues by observing as follows:

"30. So far as suppression is concerned as alleged by the department, this issue has been further examined in depth in terms of replies to the show cause notices, written submissions as well as submissions made during the personal hearing. It is observed that when M/s ISL obtained its first registration they vide their letter reference No ISM/RK/EX/10-2003/11 dated 11.09.2003 addressed to Deputy Commissioner of Central Excise Division K II, Mumbai IV, which was acknowledged by

the divisions office, wherein they have declared the products manufacture d by them, the costing of the products, along with its components, functions etc. The Deputy Commissioner after going through the declaration and proper verification has issued registration on 17.10.2003 classifying the DPM's under chapter sub heading No 84714190. M/s ISL continued paying duty as per statutory changes nearly for four years and during this period no objection was raised by the department. Even during the period in question the Govt. has granted exemption to the products falling under chapter heading no 8471 and accordingly M/s ISL has surrendered their registration and again got registered with CE authority for same products as per the changes made in the budget on CE duty leviable on the products manufactured by M/s ISL. It is further seen that M/.s ISL have not declared the description of the products through oversight due to change in format, for the period from February 2007 to January 2008 and for the remaining period they have given the description of the products manufactured and cleared by them. On 29.01.2008 the Assistant Commissioner vide his letter F No V(Misc) 30/TI/KI/43/07 dated 29.01.2008 has informed the assessee that the machine installed by them is multifunctional and carries various functions, hence it is not eligible for any concessional under Notification No

6/2006-CE dated 01.03.2006 and directed to pay CE duty @ 16% adv as per CETA 1985 immediately.

31. It is further seen from the copies of the export documents submitted by M/s ISL that there were 24 consignments were exported during the period in dispute and the export consignments were physically verified, sealed and the export documents were countersigned by the jurisdictional CE officers.

32. Since, all the information about the products manufactured by M/s ISL was in the knowledge of the department since its first registration and all export consignments were physically supervised, sealed and the corresponding documents were countersigned by the jurisdictional officers from time to time, but at no point of time the department have objected the classification of the products manufactured, on other hand accepted the classification/ declaration as claimed by the assessee and allowed the clearances and assess its monthly returns filed with the department from time to time. In view of the above position I am of the opinion that there is no willful intention to suppress the facts or information from the department by the assessee, in respect of the products manufactured and cleared by them during the relevant period in question. Thus the demand for more than one (1) year raised by the department is hit by *limitation. Therefore, proviso to Section 11A(1) cannot be invoked in this case.*

32. The department vide its letter dated 29.01.08, has informed M/s ISL about correct classification of the products manufactured by them and directed to pay the CE duty at full rate i.e. 16% adv and M/s ISL, immediately after receipt of directions from the department started paying the CE duty. The show cause notice has been issued to M/s ISL on 05.03.08. Thus it is clear that M/s ISL, has started paying the CE duty at full rate i.e. 16% adv., even before the issue of instant show cause notice. The Hon'ble CEGAT in the case of M/s Rashtriya Ispat Nigam Ltd. – reported in 2003 (161) ELT 285 (T) has held that penalty is not imposable under section 11AC or under Rule 173Q when duty is deposited before issue of the show cause notice. I therefore, hold that since M/s ISL, paid CE duty as directed by the department, before issue of the show cause notice, no penalty is imposable under section 11AC or Rule 25 of the Central Excise Rules, 2002."

17. The letter dated 11th September 2003, referred to by the adjudicating authority is reproduced below in verbatim.

Bright Steel Bldg., Mahakali
Caves Road, Andheri (East)
Mumbai - 400 093. INDIA.
www.intellvisions.com
E-Mail: sales@intellvisions.com

SEPT. 11, 2003
Ref: ISL/RK/EX/10-2003/11

To

The Deputy Commissioner of Excise
Division K II
Mumbai

Dear Sir,

We are engaged in the manufacture and sale of following products namely: -

a. **Digital Video Surveillance System**
b. **Bill Payment Terminal or Cheque Depositing Machine**
c. **Banking Kiosk/Information Kiosk**

2.These products have various components and are always supplied along with the computer software. As per the serial no. 261 of notification 6/02, the value of the computer shall be excluding the value of software preloaded on the computer with or without the accompanying media.

3.The process of manufacturing these three products is purely assembling of outsourced / imported components and pre- assemblies into the outsourced metallic enclosures. We are enlisting the process as under:

a) The Shell or the metal body is fabricated as per the drawing. The activity is out sourced. The Vendors manufacture the necessary shell as per order.

b) The shell manufactured is Powder coated, this activity is again out source

c) **Major Components**

DIGITAL VIDEO SURVEILLANCE SYSTEM

- Motherboard
- Video Capture Card
- Hard disk
- Power supply
- Camera
- Network Card
- 2 X 40 LCD
- PCD for LCD
- Shell or Enclosure
- Fan
- Necessary cables

Office of the Dy. Commissioner
14 SEP 2003

Bill Payment Terminal / Cheque Deposit Machine

- ISL's Bill Payment Terminal allows the bank to service customers on 24 * 7 basis.
- Facility of paying their bills for any amount of utility service providers at any time of the day.
- Customers are freed from the hassle of standing and waiting in long queues.
- Increases customer-reach and customer-retention by offering value-added services
- Bank generates additional revenue on" per-instrument" basis and float cash.
- Automated process eliminates data entry has to be done to process cheques.
- Transaction Time – Below 30 seconds.

Banking Kiosk / Information Kiosk

- Information Display
- Balance enquiry and other banking functions
- Can print Long/Short/Balance Statements
- Cheque Book Request/Cheque Book Enquiry
- Pass Book printing facility

d) The Assembly is done by hardware engineers.

e) The software is installed by the software engineer in every appliance.

f) The quality testers test the quality for hardware and software prior to packing and dispatch .

Note: The detailed functionalities of these above machines are described in the various literatures, which we have enclosed for your reference.

It will be thus evident that the product merits classification under chapter heading 8471 and the value of software preloaded on the product is required to be excluded.

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BPT / CHEQUE DEPOSIT MACHINE

- Shell
- Monitor (LCD or CRT)
- Motherboard
- Power Supply
- MICR Reader
- Receipt Printer (56mmx80mm) (Thermal or Dotmatrix)
- Barcode reader (only in BPT)
- Keypad (16 keys)
- Necessary cables
- Fan

BANKING KIOSK / INFORMATION KIOSK

- Shell
- Monitor (LCD or CRT)
- Card Reader
- Touch Screen
- A4 size Thermal Printer
- Motherboard
- Power Supply
- Full keyboard
- Fan
- Necessary cables

Functions of the Machines are as follows: -

Digital Video Surveillance Solution (DVSS)

- DVSS has been perfected to capture the Transaction Details of the person like Credit/Debit Card Number and emboss it on the image captured along with the Date and Time Stamp.
- Fraud detection can be done by just punching in the card number and all images pertaining to the transaction will be displayed for immediate redressal.
- The solution can be viewed locally or it can be viewed on the LAN/WAN.
- The DVSS can be centrally monitored, that is if the camera of a remote ATM has been tampered with it will send an error message to the Central Location indicating a problem.
- All images are encrypted with a unique watermarking technology thus making it admissible as supportive in the court.

INTELLVISIONS
SOFTWARE LIMITED
Design, Develop and Deliver the Digital Enterprise

4. The price negotiated with the supplier is along with the value of the software. Therefore in order to arrive at the value of the product (other than software), the company has computed the cost of production and has added 15% profit to the same as provided in rule 8 of the Central Excise Valuation Rules. It is admitted that rule 8 does not apply to the facts of the case. However in absence of the sales price of the product without software, the value will have to be determined based on the best judgment as provided under rule 11 of the Central Excise Valuation Rules.

5. It is submitted that the best judgment value will be the cost of production + profit. In view of the above, the aggregate value of clearance has been worked out on the basis of cost of production + 15% profit. The aggregate value of clearance till today is Rs. 8,870,566.00 for the financial year 2003-04 and will apply for registration as soon as it is reached near 100 lacs.

If you want any further clarification, we would be glad to provide the same.

Thanking you,

Yours truly,
For Intellvisions Software Limited

Rajan Kapoor
Chief Financial Officer

From the perusal of the said letter it is quite evident that adjudicating authority is correct in making the observations to the effect that party had disclosed all the information in respect of the goods manufactured by them to the departments as early as in 2003. There can be no dispute in respect of the disclosure made by them. There can be error in claiming the classification of the products under 8471. Once they had disclosed the entire information about their products onus was on the department to determine the correct classification and determine the duty liability. In this case department has failed to discharge it function for determining the correct classification at the appropriate time and demand the duty. For the said failure to determine the correct classification department can subsequently not resort to proviso to the Section 11A(1) for demanding the duty by invoking the extended period of limitation. The said view is in line with the decision of Bombay High Court in case of Commissioner of Central Excise Vs Reliance Industries Ltd. [2008 (223) ELT 586 (BOM)]. Since the necessary ingredient to invoke extended period of limitation are not available in this case penalty under Section 11 AC cannot be justified. Accordingly we do not find any merit in the appeal filed by the Revenue.

18. In view of above both the appeals, filed by the Appellant and that filed by revenue are without any merits and hence dismissed. Cross objection is also disposed of.

(Pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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