

Sopher and Co. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-06-2000

Reported in : (2001)(131)ELT481Tri(Mum.)bai

Appellant : Sopher and Co.

Respondent : Commissioner of C. Ex.

Judgement :

1. These appeals are against the order of the Commissioner (Appeals) classifying data switches under Heading 84.71 of the Central Excise Tariff.
2. The appellant is absent and unrepresented. We have read the submissions in the memorandum of appeal and heard the departmental representative.
3. In the common order, the Commissioner (Appeals) noted that the data switches were used to connect a number of personal computers to peripheral devices, printers etc. These switches store the data from the central processing units of the computers so that it can be used by any one of a number of peripheral devices to which they are connected so as to speed up operations and expand the total capability. The Commissioner (Appeals) has relied upon Note 5(b) to Chapter 84 in support of his view that these are to be classified as automatic data processing machines under Heading 84.71. He finds that these switches meet the two requirements in this note, that they are connectible to the central processing unit either directly or through one or more other units, and that they are specifically designed as part of such system and are in particular able to accept or deliver data

in a form (code or signals) which is to be used as the system. He has noted that such units even if presented separately are classifiable under Heading 84.71. He also referred to the Explanatory Notes to the Harmonised System of Nomenclature from which in fact this note has been taken.

4. In the appeals before us, the only contention is that the personal computer can function without these switches and they can be connected directly to several output devices. However, the appeal does not have material to show why the provisions of Note 5(b) which the Commissioner (Appeals) has relied upon and which, as we have noted, provided for classification of separately presented units which need not by themselves to be data processing machines, should not apply. The units contemplated in Note 5(b) may not be essential for functioning of a data processing machine, but by virtue of the provisions of that note would, notwithstanding this, be classifiable under Heading 84.71. We therefore find no reason to interfere.

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