Collector of Central Excise and Vs. Allied Computers and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-25-1987

Reported in : (1987)(13)ECC87

Appellant : Collector of Central Excise and

Respondent : Allied Computers and ors.

Judgement :

1. After having heard the above two appeals, the two learned Members constituting the Special Bench B1 differed on the following point :- "Whether the subject machine is classifiable under TI 33DD(sic) or TI 68 of the First Schedule of the Central Excises and Salt Act?" The case was accordingly referred to the President in terms of the proviso to Section 129C(5), Customs Act, 1962j' as applicable to Central Excise. The matters were heard on 30-4-1987.

2. Although the question as framed refers to TI 33D, the reference is obviously to TI 33DD; and the hearing was on this basis. The article in question will for convenience be referred to as "the Trainer". Further, since there are 2 appeals, in which M/s. Allied Computers are respectively respondent and appellant, the 2 parties are referred to for convenience as "the manufacturer" and "the Department".

3. On behalf of the Department, Shri H.L. Verma, SDR, submitted that the appropriate tariff item was No. 33DD. He pointed out that this item covered "Computers (including central processing units and peripheral devices), all sorts".

The use of the words "all sorts" made this an inclusive definition, which would cover even computers meant only for training purposes. The item was not limited to computers for use by professionals. In support of his contention that the words "all sorts" would cover even goods whose inclusion was less obvious, Shri Verma cited the Tribunal's decision in the case of Shellya Industries v.Collector of Central Excise, Bangalore (1983 ELT 1827). He also relied oh the decision of the Bombay High Court in the case of Ravji Industrial Corporation v. Union of India 1981 ELT 734 (Bombay) to submit that the Word "including" implied that the items named were not exhaustive but illustrative.

4. Shri Verma submitted that notifications could be used for interpreting the scope of a tariff entry. In this connection he relied on the judgment of the Supreme Court in the case of J.K. Steel (1978 ELT 355 SC). Based oh this, he referred to Notification No. 25 4/77-CE, dated 22-7-1977, granting exemption from excise duty to computers sold to approved educational and research institutions. This exemption would show that even computers adapted for educational purposes were liable to duty under the tariff.

5. It was pointed out from the Bench that although there was a reference in the Appellate Collector's order to a letter dated 28-2-1980 from Shri R. Bandyopadhyay, Senior Scientific Officer in the Department of Electronics, there was no copy of it on the record.

Thereupon Shri Lakshmi Kumaran, the learned advocate for the manufacturers, produced a copy of the aforesaid letter. An attested copy was taken on record.

6. Shri Verma did not deny that in this letter the Senior Scientific Officer had recommended that the goods in question should be classified under TI 68 and not under TI 33DD. He however submitted that the advice carried no weight as the writer did not give any reasons. Referring to the further letter dated 15-4-1980 from the Department of Electronics, Shri Verma pointed out that this letter was signed by the Cost Accounts Officer. The writer did not give any indication that it was based on the opinion of an expert in electronics. The opinion of a Cost Accounts Officer on such a question was not authoritative. Therefore according to him neither of the two letters should be given any weight.

7. Shri Verma referred to para 23 in the order of the learned Member Shri Santhanam, setting out the reasons why according to him the Trainer could not be considered to be a computer. The first reason given was that the key board was very primitive. Her submitted that this did not prevent it from functioning as a computer.

8. The second reason was that since the machine operated on the principle of" microprocessing its scope was restricted, arid it was only for the purpose of imparting knowledge of the mechanism of a computer. He submitted that this reasoning also was not correct. The leaflet of the manufacturer showed that the machine could perform the functions of a computer.

9. Reasons 3, 4 and 5 were all on the same lines, namely that the machine could not be used as a computer in the commercial sense, and could not execute major processing of the nature which a computer normally performs. Shri Verma contested these reasons. He referred to the manufacturer's leaflet, which showed that the machine could perform the functions of a computer. It could execute programmes, as seen from the following sentence in the leaflet :- "It is intended to highlight various operations of MICROPROCESSORS while executing programmes down to machine cycle level. The programme can be executed at two speeds...." 10. Shri Verma accordingly submitted that the view expressed by the learned Member (Technical) Shri H.R. Syiem should be upheld.11. On behalf of the manufacturer, Shri Lakshmi Kumaran submitted that the show cause notice issued by the Central Government under Section 36(2), as in force at the relevant time, was defective. Although it proposed to set aside the order of the Appellate Collector, it gave no reasons why this should be done. The show cause notice did not set out, clearly what according to the revisional authority was a computer, and why the Trainer should be regarded as a computer.

12. The learned Member (Technical), in para 10 of his order, had quoted the Encyclopaedia Britannica article on "computer fundamentals". This set out the basic features and functioning of computers. The Trainer was designed to indicate how a computer functions. However, it could not carry out an operation as a computer could.13. A query was made from the Bench whether the Trainer could

be used to solve a simple problem such as finding the average number of letters per line in a printed page. Such a problem could be solved by any computer with the aid of a simple programme. In response, Shri Lakshmi Kumaran submitted that the point might be clarified by the proprietor of the factory, Shri K. Siva Ramakrishna Sastry, who was present. Shri Sastry stated that the Trainer could not solve this problem. By way of further explanation, he stated that when the Trainer was set to execute a programme, it would carry out in sequence the various operations which normal computer would carry out in executing that programme. The steps executed, and the sequence in which this was done, would be signalled by the flashing of different bulbs set out on the "machine cycle display". It was by seeing what the various steps were and in what sequence they were executed that a student would get an understanding of the principles of programming and computer functioning. It was this which gave the Trainer its utility as a training device, and it had no other utility.

14. Shri Sastry was asked whether the display referred to above was actually an indication of processes going on within the Trainer, of the same kind as the processes inside a normal computer: or whether it was merely a simulated display, which indicated the correct sequence, of operations but without such operations actually taking place. Shri Sastry stated that this was not a case of simulated display. The operations did actually take place inside -the Trainer with the help of the microchip. However, there was no output. Shri Sastry submitted that the Trainer could be compared to an engine, While an ordinary engine could be yoked to a load and could draw it, this Trainer was like an engine which could not draw any load.

15. Shri Sastry was asked how many such Trainers he had manufactured, and whether he was still doing so. He stated that he had manufactured 15 to -20 such Trainers upto 1982. Thereafter he had stopped the manufacture. At present a number of other manufacturers were making similar Trainers.

16. Resuming his arguments, Shri Lakshrm Kumaran submitted that no doubt the manufacturer's brochure used the term "computer". However, it did not describe the Trainer as a computer.

17. Referring to the two letters from the Department of Electronics, Shri Lakshmi Kumaran submitted that they should be given due wekht as the Department of Electronics was the appropriate technical authority in this field. With reference to Shri Verma's submissions in this regard, particularly that the letter dated 15-4-1980 was from a Cost Acco1 its Officer, Shri Lakshmi Kumaran submitted that the letter gave rea ins for the view expressed. If the Department had any doubt in the mailer, they could have asked for a clarification. Since they had not done so, the opinion should be treated as authoritative.

18. For these reasons Shri Lakshmi Kumaran submitted that the Trainer was not a computer but only a training device. Therefore the view expressed by the learned judicial Member, namely that it was classifiable under TI 68, was the correct view and should be upheld.20. I have carefully considered the facts of the case, the orders of the two learned Members, and the submissions, made before me.

21. The learned -Technical Member, Shri Syiem, has made out a formidable case for regarding the Trainer as a computer falling under TI 33DD. He has analysed the functions of computers in general and of the computer Trainer with which we are concerned. He has pointed out that this item covers "computers all sorts". He has controverted various arguments given by the manufacturers, and agreed with the tentative view of the Central Government that the Trainer is a computer within the meaning of TI 33DD.22. The learned Member has recorded that the learned advocate for the manufacturers had referred to the opinion of the Department of Electronics, and stressed that it is necessary to attach great weight to the opinion of such experts. He has not in terms analysed the opinion given in the two letters dated 28-2-1980 and, 15-4-1980 from the Department of Electronics. His approach was that "we will, however, have to find bur own way, in this problem" (para 7). His own analysis of the matter leads to the implicit conclusion that the opinion of the Department of Electronics is not correct.

23. The learned Judicial Member, Shri Santhanam, on the other hand, as referred with approval to the advice given by the Department of Electronics (vide para 24). He has also, after referring to definitions and descriptions of computers and microcomputers, come to the conclusion, for reasons given in para 23 of his order,

that the Trainer cannot be considered to be a computer.

24. The arguments of the learned representatives of both sides at the hearing were on the same lines as those contained in the orders of the two learned Members.

25. The basic argument put forward on behalf of the manufacturers is that the Trainer shows how a computer is programmed and how it operates, but cannot by itself be harnessed to do any useful work with reference an actual problem. It was in this context that I had asked Shri Lakshmi Kumaran whether the Trainer could solve a simple problem such as finding the average number of letters per line in a printed page. Shri Lakshmi Kumaran requested that Shri Sastry be permitted to reply to the question. Shri Sastry gave the positive reply that it could not. He also added that it was like an engine which could not be yoked so as to draw any load. The question then arises whether the Trainer actually performs the functions or operations which a normal computer does, but is only not designed to deliver the results: or whether its function is to represent (by flashing of lights in sequence) what a computer does, but without actually doing this. When this question was put to him, Shri Sastry frankly stated that this was not a case of a simulated display, but the operations did actually take place.

26. In arriving at my conclusions I have assumed that these statements made by Shri Sastry, the proprietor of the factory, who is himself a technocrat, are factually correct. (These statements were not controverted by Shri Verma, though in fairness to him it must be said that he was hardly in a position to do so, for lack of a sufficient factual and technical background). Shri Sastry stated that no such Trainers were manufactured by his factory after 1982. If the conclusions reached in this case are sought to be applied to other similar cases, they would be valid only if the factual position is similar to what has been stated by Shri Sastry.

27. It may be accepted that the Trainer has most of the essential components of a computer. At the same time it has features distinguishing it from the computers which are used for practical purposes (vide para 15 of Member Shri Syiem's order and para 23 of Member Shri Santhanam''s order). A very important difference is that there is no means of displaying the result or the solution.

28. No doubt computers come in a large variety of models, designs and capabilities. But it is a basic feature of a computer that it must be able to perform arithmetic and logic functions. Further, it must have a means of displaying the results or output of its operations. Thus, according to the Encyclopedia Britannica (para 10) the basic functions of a digital computer include the "output". If a machine cannot give an output, it would not be fulfilling the basic function of a computer.

One or two analogigs would help to illustrate this point.

29. Member, Shri Syiem had, in para 15 of his order, cited the analogy of a model internal combustion engine. With great respect, it appears to be that the analogy is not fully applicable, because the Trainer is not merely a simplified version of a computer, but is incomplete in an important respect. A different analogy would better illustrate this point.

30. In order to show how a clock with the conventional mechanical movement is constructed and how it functions, one could have the essential mechanism, but without a case or a dial, so that the entire inner workings would be visible. It would then be possible to wind up the "clock" and see how the gradual relaxation of the mainspring is transmitted through various cogs and wheels, and how it makes two hands move round at different speeds. But without a dial such a "clock" would not help anyone to tell the time. It appears to me that, notwithstanding that such an article has almost all the parts of a clock and functions exactly in the manner of a clock, it could not be called a "clock" as ordinarily understood.

31. Let us take another example. For giving training in firearms to cadets or fresh recruits, use is made of "dummy" weapons, such as rifles. A rifle used for this purpose would have all the parts of a functional rifle, except the part which would enable it to explode a catridge and thereby propel a bullet. In fact, such "dummy" rifles are obtained from old functional rifles, by merely removing the particular part (firing pin etc.)' which would make the cartridge explode. These dummy rifles are excellent for purposes of training, because they handle exactly like ordinary rifles, and their mechanism, with a single important exception, is the same. They can be used to show how a rifle is to be cleaned, loaded, unloaded and fired. In fact, they

have all the functions and capabilities of an ordinary rifle except that of actually firing a bullet. In other words they do everything except give an "output". Could one call such an article "a rifle" as ordinarily understood? 32. These analogies should be of some help in deciding on the question before us. The matter is no doubt highly debatable. In reaching a conclusion, two guiding principles are relevant. One is the normal understanding of persons in general and of those in particular who have to deal with such articles. The other is the general principle of classification of goods within a tariff entry. The first principle finds support from many Court pronouncements, including that by the Supreme Court in Dunlop India Ltd. & Madras Rubber Factory Ltd. v.Union of India and Ors. (1983 ELT 1566 SC). With reference to this principle, it appears to me that the trade as well as the layman's understanding of a computer would not include a machine which may have practically all the attributes of a computer but cannot give an output.

Apart from this, there is ;the informed view of Department of Electronics as contained in the two letters dated 28-2-1980 and 15-4-1980. It is true that in the first letter dated 28-2-1980, from the Senior Scientific Officer, no reason was given and the second letter dated 15-4-1980, in which reasons were given, was from a Cost Accounts Officer. But the Department could legitimately have sought further clarification from the Department of Electronics. This however was not done. The result is that there are on record two letters from the Department of Electronics, which as an institution is definitely an authority in the field. These letters 'took into account both the tariff items, namely TI 33DD and TI 68. They have preferred TI 68 over TI 33DD. This opinion of the Department of Electronics might not have over-riding weight, but it cannot be ignored.

33. The other principle is that it is basically for the Department to show that the article sought to be taxed comes within the scope of the relevant tariff entry. [See the decision of the Bombay High Court in Navin Chimanlal Sutaria v. Union of India and Anr., 1981 ELT 913 (Bom.)]. In my view, in the light of the discussion above, it cannot be said that the Department has shown beyond reasonable doubt that the Trainer comes within the scope of TI 33DD.34. For completeness, it is necessary to deal briefly with certain arguments advanced by the learned SDR. He had submitted that the words "all sorts" would cover even goods whose inclusion

was less obvious. It is true that these words give a wide scope to the item. However, the amplification "all sorts" would come into play only if the article can in the first place be termed a computer. Shri Verma had also submitted that the word "including" implies an illustrative and not exhaustive list. In the light of the wording of Item 33DD, this submission does not help the case of the Revenue. Again, Shri Verma had sought to derive help from exemption Notification No. 254/77. That notification certainly shows that a computer used by an educational or research institution was liable to duty unless the conditions in the notification were fulfilled, put it does not prove that a computer-like article used for training purposes must be classified and assessed to duty as a computer. Thus, none of the above arguments is of service in classifying the Trainer as a computer.

35. One more aspect may be mentioned. Despite Shri Lakshmi Kumaran's submission (para 16) that the manufacturer's brochure did not describe the Trainer as a computer, it is a fact that in about 10 places in the brochure it has been referred to as a "computer". In the light of the submissions vehemently made by the manufacturers, they should have been aware that this was not a correct description. Their use-of it was apparently "for sales promotion only", in the words of their reply dated 27-1 0-1979 to the show cause notice, without being overly concerned with accuracy. Claims or statements made in catalogues or brochures it would not, however, be conclusive for purposes of assessment, if the factual position is shown 1:o be otherwise.

36. Accordingly, I would decide the present reference by holding that the Trainer which is the subject matter of these proceedings was classifiable under TI 68 and not under T! 33DD.37. The case should now go back to the Members of the original Bench for disposal in the light of this order.New Delhi, (S. Venkatesari)Dt. 25-5-1987.

President The Appellate Collector of Central Excise, Madras by order-in-appeal No, 55/81, dated 15-7-1981 decided that the microcomputer trainer model MCT-1 manufactured by M/s. Allied Computers was not assessable under Item 33DD of the Central Excise Tariff. In arriving at his conclusion, he gave much weight to the opinion of the Department of Electronics, Government of India, which said that the

product was not 'a computer falling under Tariff Item 33DD of the Central Excise Tariff.

2. The Government of India by a notice dated 28-12-1981 issued under Section 36(2) of the Central Excises and Salt Act, 1944, wanted to review the decision of the Appellate Collector. It is this notice that is the cause for this hearing before us.

3. The learned Counsel for the manufacturers, Mr. Lakshmi Kumaran, placed before this Tribunal the facts regarding this microcomputer. He referred not only to the opinion of the Department of Electronics but also and chiefly, to the printed literature, their letter dated 27th October, 1979 addressed to the Deputy Collector explaining the basics and the features of this computer, and the technical description of the microcomputer model MCT-1 prepared by the factory.

4. According to the learned Counsel, this computer cannot even compute.

It has numeric keys only 0 to 7 which means that it cannot do any operation involving the numerals 8 and 9. A computer must have arrangement for attachments of inputs and outputs, that is to say, independent units capable of being attached to the computer for giving directions and instructions, and units for displaying the processed informtion. Display of information is either done by means of a monitor screen or by means of a printer the information being printed on a strip of paper. The model MCT-1 is designed primarily to train a person in the functions of a microcomputer and to understand the various operations of microprocessors, on which this microcomputer is based.

With the help of this model one can learn microcomputer programming and identify the steps therefor, learn methods of detecting flaws and mistakes, learn steps to be taken in executing programmes and the roles of steps like INPUT-RFAD and OUTPUT-WRITE, MEMORY READ and WRITE, WRITING SOFTWARE and VERIFYING RESULTS. It tells a programmer how he should prepare not only his programme, but how to feed it into the computer for executing it. But even though it does all this, model MCT-1 does not compute like a computer does and cannot be put to uses to which computers are put.

5. It is necessary to attach great weight to the opinion of experts like the Department of Electronics and they have unequivocally pronounced that model MCT-1 is not a computer assessable under Item 33DD.6. The learned Counsel for the department said that even though this is a computer trainer, it is a computer, and the manufacturers themselves in their illustrated booklet call it a microcomputer - a microprocessor-based microcomputer. She said she did not agree with the argument of the learned Counsel that because the price was Rs. 18,000/- or so, it could not be a computer. She read from the KIRK-OTHMER ENCYCLOPAEDIA OF CHEMICAL TECHNOLOGY a passage which said that a microprocessor chip was sold in quantity for about. $ 10 in 1978. She says that this would indicate that the price of microprocessor chips had been coming down steadily over the years and that the price of Rs. 18,000/- for this model MCT-1 is not such a surprising one. She also read from certain authorities like TOP POCKET COMPUTER DICTIONARY, DICTIONARY OF DATA PROCESSING (Maynard) containing articles on microcomputers, microprocessors and so on.

7. We will, however, have to find our own way in this problem. We can do no better than take a look at the printed sheets containing an illustration of this model. As we know, computers normally use the binary codes of two digits 0 and 1. This model, however, uses an octal code of the numerics 0 to 7. This is the reason why the learned Counsel said that the numerics 8 and 9 cannot be written or used on this machine. But that is only to be expected since the two numerics are absent. The argument loses sight of the fact that every machine has its own code and that most computers use a binary code, this microprocessor-based microcomputer uses the octal code. This octal code, according to the description on the printed leaflet, contains the numeric keys through which programmes, data, are entered, one after the other in octal code; that the model executes a programme can be seen from the explanation for key G which explains "when this key is pressed, your programme will be executed from memory location as indicated by HI and LO address display". The machine has another key (key T) which when pressed after a programmed HALT, allows the computer to execute the programme following the HALT Instruction. Depression of key J "allows the computer to execute one Instruction at a time.

Repeated pressings will allow the computer to execute Instructions as they appear in programme flow". There is a display for Address Display used in the memory location transferred data. And very importantly, there is a decimal counter display for any of the functions switched on by i.e. counter switch, these being ; 8. The illustrated literature tells us that there are test signals provided for MEMORY READ, HALT ACKNOWLEDGE, STACK READ, STACK WRITE, INPUT READ, OUTPUT WRITE, INTERRUPT ACKNOWLEDGE, INPUT, HOLD, INT and so on.

9. The paper repeats at different places that the machine can execute programmes. It may be true that the programme may be done only by limited numeric keys of the keyboard and, therefore, the programming will not be as wide in range as a programme fed in by an external unit; but this machine in spite of its limitations provides facilities for writing software, debugging, interrupt programmes; and entry of programmes is made through an economically designed keyboard and controls, which act as an integrated input device through which programmes are entered, checked and executed. Evidently, since the model is to be used largely for training, it does not need high-value peripherals that frequently go with professional commercial and other computers such as card or paper tape reader or punch, magnetic tape handler or line printer, video screen reader floppy. But it is useful to remember that peripheral equipments are not the computer itself, and that the computer is distinct from its peripherals. The computer is the machine that does the work of receiving, computing, storing, processing, reading, logic application of information etc. etc. The peripherals are only aids to the people who use the computer to put in programmes and to obtain the result of the processing by the main or chief machine, the computer or computing machine.

10. To understand generally what a computer is, we reproduce the ENCYCLOPAEDIA BRITANNICA article on computer fundamentals ; The basic functions of any digital computer are (1) input, (2) storage, (3) control, (f) processing, and (5) output. A computer receives data in the form of binary codes of Is and Os and stores them on tapes, disks, drums, cores, or other media. The computer has properties similar to those of an adding machine; it can add, subtract, multiply, divide, and list; but in addition it can make decisions - i.e., select on the basis of stored instructions. This stored-program concept and the memory

capability are the two primary characteristics differentiating the computer from a high-speed calculator. The control function involves following instructions precisely as stored. The computer must be instructed (programmed) for every step. The output of the computer takes many forms.

Generally, it is printed, put on cards or tape, stored in memory, displayed on a cathode-ray tuber or communicated to other remote devices. The nanosecond (1/1,000,000,000 second) computing speed, the random-access information retrieval (any bit of data from among billions of numbers and characters may be almost instantly retrieved), and the stored sequential or adaptive instructions (program steps) represent the differences between the computer and the calculator; these differences are of tremendous importance. A simplified sketch (Figure 2) can illustrate the basic functions. The control units are used to interface or synchronize the varying speeds of numerous input and output units to those of the central processing (arithmetic and logic) unit. The processor must also translate the relatively simple language used by the programmer into the more detailed computer-code form used internally by the computer.

The programming can be completed by people other than those skilled in management or engineering. Problem discoverers, analyzers, and solvers who fully understand computer capability need not necessarily know the intricacies of computer operation or programming. Several of the most important steps in computer usage are those of operations analysis.

A computer system or an electronic data-processing system is physically a collection of electromechanical and electronic components and devices assembled in metal cases (modules) and cabinets. These contain switching and communications components such as transistors, diodes, capacitors, resistors, and integrated circuits, all combined into various types of circuitry, together with memory systems, power supplies, delay lines, and various types of magnetic media such as tapes and wires for carrying and transforming data and information, as coded, into instructions and computations.

11. The figure reproduced above schematically shows what are the parts and units of a computer system. The heart of the system is the processing, arithmetic and

logic and the storage; and the others are adjuncts and auxiliaries to the main frame.

12. here seems to have been some misunderstanding in the mind of the department that because this microcomputer is based on a microprocessor, it should be assessed under Item 33DD. A microprocessor is only the semi-conductor chip that carries the resistance, transistors, circuits and so on. Its greatest advantage is that because of its small size, the speed of operation is greatly accelerated since the distance required for the electrical pulse to travel is drastically reduced. The employment of his microprocessor silicon chip has enabled not only high speed to be achieved but has reduced the size of the machines as well as their cost. But it would not do to say that the microprocessor is the microcomputer, and that the cost of the microprocessor is the cost of the microcomputer. Computers may have a number of silicon chips which will enhance their application and range, but their cost may or may not thereby be affected.

13. Computers have been put to various uses and the variety of their application is getting larger and larger, and the speed with which they can do highly complex jobs is truly bewildering. The computers can aid design and they can also aid manufacture, and are widely used, therefore, in industries. They are used in typesetting by printers and publishers; they can read and forecast the weather, they can predict wind currents and a host of works that would not be, possible to list here. But each work requires different kinds of computers and most of them specialise in one job or another. The computer that a printer uses in his printing shop will not be much good in aiding design and manufacture in a machine-making factory. And while one computer will be highly sophisticated, another, which does not need to do complex processings, will be relatively simple. Inputs can be by a dedicated keyboard and it is enough for the purpose that the computer is designed.

14. ha manufacturers have not told us in detail how a trainer learns about software writing, debugging, monitoring machine cycles, involved in executing programmes; but it is evident, if the trainer is to learn all these steps, the microcomputer model MCT-1 has all that the trainer needs to see and read in order to understand that

his programme has been successfully executed. He cannot do so unless there is an intelligible output following the input and processing, logical application etc. etc. which the trainer can follow. In fact, it is not easy to understand how the various operations of the microprocessors while executing programmes can be understood unless the machine does what a computer or a microcomputer can do. It is instructive to read their Block diagram which shows CPU, ROM, RAM, COUNTER DISPLAY ELECTRONICS, MACHINE STEP, two or three LOGIC UNITS, DATA DISPLAY, ADDRESS DISPLAY, I/O Connector, all the requisites for a computer, though perhaps, as in this case, a computer with a limited range and application.

15. In their hard-hitting letter dated 15-2-1982 in reply to the notice of review under Section 36(2) of the Central Excises and Salt Act issued by the Government of India, M/s. Allied Computers attack the department unsparingly. Unfortunately, the letter though well phrased does not throw much light on the problem. They do say that the MCT-1 cannot be operated by programmers, as it does not know any type or programming like any commercial computer; which may all be quite correct. But it is good enough for a trainer or a learner, and imparts to them the basic principles of a microprocessor. They say that the MCT-1 cannot be used for data acquisition or industrial automation which are the main applications of commercial computers; but the department did not say that the model was a commercial computer or that it was a business or scientific computer. Its limited range alone will not allow its application to these highly Specialised fields; but it is good enough to teach microprocessor functions to a beginner and no machine can do that unless it is a computer. It is, like a model internal combustion engine which though lacking in several supplementary devices and attachments is nevertheless an engine if it enables a trainee to understand how an internal combustion engine functions, the cycles of turnings and the events at each stroke of the piston, and the function of the ports, inlet/outlet etc. etc. The principle of internal combustion can still be seen and understood by a trainer who is given a cylinder engine to study. After the initial lessons, he may graduate on to more powerful, bigger, higher-rated 8-cylinder engines; but whether higher rated or low rated, whether less powerful or more powerful, the first engine on which he trains is no less an internal combustion engine than the engines which he eventually makes, manufactures or operates.

16. The letter dated 15-2-1982 writes that the MCT-1 is a highly scaled-down version, designed to explain only the basic principle operations of microprocessors. They say it cannot replace a commercial computer and they are, perhaps, right. That would not stop its being a computer, a highly scaled-down computer. It cannot operate on computer languages like ALGOL, FORTRAN, COBOL; but that is not surprising. A computer can take only what it is designed for; no computer can do everything.

17. At page 5 of the letter they say the MCT-1 cannot be expanded, unlike other commercial computers which must have a built-in memory capability of almost equal amount. However, at the Block DIAGRAM, we see a block for Memory Expansion Scheme. If this means something different, we are not told by the manufacturers.

18. The government is right in saying that the Appellate Collector was in error in saying that model MCT-1 is not assessable under Item 33DD of the Central Excise Tariff which covers computers (including central processing units and peripheral devices) all sorts. Since the item covers computers all sorts, it will be able to cover this. The department is directed to assess the machines under this heading and take all other necessary actions. However, the penalty is set aside.

19. I have carefully gone through the orders passed by my learned brother, Shri H.R. Syiem, Member (T). I regret that I am not able to agree with his findings for the following reasons :- Item 33DD refers "Computer (including Central Processing Units and peripheral devices) all sorts". It is well known that to attract Central Excise Duty, the goods must be known as such in Trade parlance.

When the Legislature has used the. words "Computers all sorts", it is reasonable to conclude that the leviability of duty would be attracted only on such goods which are "computers" that come into the main stream of the trade. In this background, we have to find out whether the product in question could be considered as a computer.

20. The computer has been defined in the Dictionary of Electronics by S.W. Amous as follows :- "An equipment which accepts information, carries out

specified mathematical and/or logical specifications upon it and supplies the required answer. Computers are sometimes called Data-Processing Equipment." "Computer is a device that receives, processes and presents information." Time Chart of Computer Technology, from 1945-1970 reveals that the technology has progressed from computer questions to Micro Processors.

In 1970, a Micro Processor has been classified as 4 bit, 8 bit, 16 bit or bit sliced. The major components of Micro Processors are : "Digital Computer where Control Processor Unit (CPU) is a Micro Processor". Difference between Micro Processor and Micro Computer though very small and a mini computer may sometimes be thought of as a large micro computer and a micro computer may occasionally look like a small mini computer. The tribunal has to come to the conclusion on the basis of the nature of the goods without attaching much importance to the product being called "Micro Computer Trainer" by the appellants in their Brochure. This Trainer is a Micro Processor and is intended to highlight various operations of Micro Processor like executing the programmes down to, machine cycles.

21. The object of this Micro Processor is to impart knowledge which is essential for designing programmable process controls, signal processing telecommunication equipment, measuring instruments etc. This unit only provides the facilities to write soft ware, debug, interrupt programme, acquire computing concepts and peripheral interfacing through sequence of events associated with programme execution.

22. The learned Counsel for the appellants rightly urged that in order to be a computer, it should have (i) Key Board; (ii) Video; (iii) Printing Facility; (iv) Control Processor which accepts commands performs mathematical functions and stores the results. In other words, it is an information, media which would display the results on a video screen. The appellants have also indicated in their letter to the Superintendent on 24-1-1979 that this machine is intended to highlight various activities of micro processor while executing the programme. In reply to the show cause notice, they have pointed out that term "Computer" is a generic word and is useful for sales promotion only.

This machine has nothing to do with "computer" at all. The machine cannot even add, substract, multiply or divide numericals 8 & 9 which are the fundamental tasks of a computer. Peripheral devices like teleprinting, floppy disc controllers, paper tape punch etc., aid the utility of the main computer. None of the attachment can be directly attached to this machine. There is no facility of programming through disc. The Appellate Collector has also adverted to the definition of Electronics Computer and has stated that this machine is intended to highlight only some basic elements of arithmetic unit and control unit and it is mainly used to impart necessary training to the students seeking knowledge about a computer.

23. In my view, the machine cannot be considered to be a computer for the following reasons :- (i) It does not have peripheral facility for recording external/inter actions. The Key Board in the Micro Computer Trainer is very primitive and has limited functions; (ii) The machine operates on the principle of the Micro Processing.

In other words, the operation of the machine is designed according to the codding in the chip. This operational limitation restricts the scope of the machine. In other words, it is only for purpose of imparting knowledge of the mechanism of a computer to a student; (iii) This machine cannot be used as a computer in the commercial sense. There is no Video for display or printing which could record the output; (iv) The machine cannot execute major processing like word processing, business data, market fluctuations etc., which a computer normally performs; (v) It must be remembered that this machine- though it contains some of the features of a computing system, cannot perform all the tasks which a computer could normally perform. The use of the machine is very limited and the responses are also very restricted. The Brochure issued by the party indicates that it provides a thorough insight into the working of a micro processor. Beyond that, it is incapable of delivering the goods which a computer is normally expected to accomplish; and (vi) The machine cannot be considered as a peripheral equipment which is usually associated with the input or output or leading stores of the computer e.g. card reader printers and display units.

24. It is significant to note that the matter was referred by the Asstt. Collector to the Director of Electronics for his views in the matter. I notice that the matter has been disposed of by the Asstt.

Collector even without adverting to the communication of the Department of 'Electronics. The Deptt. has compared the Office Machine and a Computer. It was rightly suggested as follows:- "Computers are general purpose reorogrammable automatic data processing machines which are externally programmable through media other than Key Board." All these have been considered as essential to make a product as computer. In these days when there is substantial progress in Technology and Science, more so in the concept of computers as a revolutionary invention for development and advancement of knowledge, a Micro Computer Trainer can hardly be equated as a computer itself. The limited facility provided by this machine has to be borne in mind before it is assessed to duty. Under these circumstances, 1 am of the view that machine is not classifiable as computer under Item 33DD. It is rightly classifiable under TI 68.

I agree with my learned brother that the penalty is not justified.

Sd./-New Delhi, (M. Santhanam)Date: 25th Feb., 1987.

Member (J) 25. Following the findings of the Hon'ble President, we hold that the goods are classifiable under TI 68 and not under TI 33DD. Penalty set aside. Appeal disposed of accordingly. Consequential reliefs to follow.