

**Hi-tech Computers Vs. Commissioner of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT

**Decided On :** Sep-03-2004

**Reported in :** (2004)(99)ECC294

**Judge :** S Peeran, M T K.C.

**Appellant :** Hi-tech Computers

**Respondent :** Commissioner of Customs

**Judgement :**

1. The appellant is aggrieved with the Order-in-Appeal No. 77/2002 Cus dated 5.11.2002 by which their prayer for classifying the games CDs viz., Force Feed Back Wheel, Vibration Wheel Cybertoy, Typhoon Power Wheel under chapter sub-heading 8471 has been rejected and the authority has classified the items under Chapter sub-heading 9504.10 as Video games can be played with a television receiver. The finding recorded by the Commissioner (Appeals) is extracted below -- "I have carefully examined the facts of the case, order (original), the ground of appeal and the submissions made at the time of personal hearing.

The crux of the appellant's argument is that the games CDs imported are nothing but input devices and have to be understood as a data processing machine. To use the appellant's own language it is claimed that "these are nothing but input devices which are essential for giving the necessary commands to the computer to enable processing of data"..... I am not persuaded to share the appellant's view. The Penguin Dictionary of Computers, Third Edition describes data processing as

under; "Data processing refers to the operations performed on data, usually by automatic electronic equipment, in order to derive information or to achieve order among files. A data processing system may incorporate clerical functions and ancillary machine operations as well as arithmetic and logical operations performed by a computer".

Keeping this definition of data processing in mind it certainly cannot be said that the CDs in question process as no operations can be performed on the CDs in question.

This apart, an examination of the HSN entry of sub-heading 95.04 reflects that the goods covered under sub heading 9504.10 are not only those which can be used with a television receiver but also includes other games of skill chance with an electronic display.

Page 1714 of HSN explanatory notes 1996 edition refers. It is to be mentioned here that the Hon'ble Tribunal in the case of Multronics Private Ltd., 2007 (133) ELT 144 has held that the sub notes (of HSN) amplify the scope of entry at 9504.10 and do not limit the scope to a game which requires a television receiver for it to be played, but brings into it habit (sic) any game that has a printed screen. While on this it is also to be mentioned that heading 84.71 only includes automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included. As can be seen from the above the CDs in question certainly do not qualify to the classified, first of all as a machine and secondly either as data processors or readers or machines for transcribing data etc., as detailed in the heading.

Therefore I have no hesitation in holding that the CDs in question certainly do not merit classification under heading 84.71 but under 9504.10. This is also clear from chapter note 5(A) of chapter 84, which describes the expression automatic data processing machines.

Before concluding it is pertinent to record that the instructional manual and the technical write-ups furnished at the time of personal hearing also do not advance

the case. It is only automatic data processing machines, other machines mentioned in the heading and spares and accessories that merit classified under heading 84.71.

In view of the above facts and findings the appeal filed by Hit Tech Computers, Hubli against order (original) No, 37/2002 dated 27.6.2000 passed by the Deputy Commissioner of Customs, ICD, Bangalore falls on merit and is accordingly rejected." 2. The learned Counsel arguing for the appellants contended that the Video games are required to be considered as accessories to the Computer as they are played only with Computer and cannot be played alongwith television sets as it is a Force Feed Back Wheel. He relied on the various grounds made out in the appeal memo.

3. The learned JCDR appearing for the Revenue contended that the order passed by the Commissioner (Appeal) is just and proper and requires to be upheld, She also relied on the Order (Original) wherein clear finding has been recorded with regard to the items being Video games.

She pointed out that when goods qualified to be classified equally in two or more headings by reference in any of the headings, they shall be classified under heading which occurs last in the numerical order. She also pointed out that the Note 5(E) to chapter, 84 shows that the item is a machine with specific function. She also pointed out that the party has admitted that the Video games software cannot be data and playing on a computer cannot be equated with data processing.

4. We have carefully considered the submissions made by both the sides and perused the records. It is admitted that the item is Video game and specifically it is mentioned in Chapter sub-heading 9504.10. In terms of Rule 3(c) of the Interpretation Rules, when items qualified to be classified more than one heading then the last of the heading is to be accepted. The reason given by both the authorities below is just and proper and we are of the considered opinion that the item cannot be considered as parts and accessories of the computers for classification of item under chapter 8471 as claimed by the party. The items are Video games and Video games are specifically described under Chapter sub-

heading 9504.10. There is no merit in the appeal and the same is rejected.

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