

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

1st Floor, WTC Building, FKCCI Complex, K. G. Road,

BANGLORE-560009

REGIONAL BENCH COURT-2**Customs Appeal No 772/2010**

[Arising out of Order-in-Appeal No.14/2010-ST dated 19.01.2010
Passed by the Commissioner of Customs (Appeals), Bangalore.]

Commissioner of Customs,

C.R. Buildings,
No.1,Queen's Road,
Bangalore - 560 001.

....Appellant**Versus****M/s. NCR Corporation****India Pvt. Ltd.,**

No.111,Thirumalathayar,
Villianur Rd.,
Puducherry - 605010.

.....Respondent**Appearance:**

Mr. B.V. Kumar, Advocate For Appellant

Mr. K. Vishwanath Authorized Representative (AR) FOR Respondent

CORAM:**Hon'ble Mr. P. A. Augustian, Member (Judicial)****Hon'ble Mrs. R. Bhagya Devi, Member (Technical)****Date of Hearing: 05/07/2023****Date of Decision: 04.01.2024****FINAL ORDER No. 20028 of 2024****Per P. A. AUGUSTIAN:**

1. Issue in the present appeal is regarding classification of goods imported under Bill of Entry dated 11/02/2009 & 20/02/2009. While filing the Bill of

Entry, Respondent sought classification of "IT software" under CTH 85238020 with tariff duty and the "Software License" under CTH 49070030 seeking benefit of NIL rate of duties under Sl. No.157 of Custom Notification No.21/2002 dated 01.03.2002. When appellant objected classification of "Software License" under CTH 49070030, respondent submitted that the software imported in media form and the licence imported in paper form and the licences enabled them to multiple copies of the software are to be classified under CTH 49070030. However, original authority rejected the classification sought by the Respondent and classified the 'Software Licences' under CTH 85238020. Aggrieved by the said order, the appellant filed appeal before the Learned Commissioner (Appeals) and the Commissioner (Appeals) vide impugned order held that the software license is to be classified under CTH 49070030. Aggrieved by the said order, present appeal is filed by the Revenue.

2. When the matter came up for hearing, Learned Authorised Representative (AR) submitted that the value declared for the license was actually royalty/fee paid for using the software and hence should be included in the value of software in terms of Rule 10(c)

of the Customs Valuation Rules, 2007. He also submitted that the software license has an intellectual value which is the outcome of a research, which has gone into the development of software. Hence, the license cannot be compared as a mere paper document and it needs to be treated as part of the software itself, thus classifiable under CTH 85238020. It is further claimed that the license and the software are not two distinct commodities, it is an integral part of the IT software and hence it needs to be treated as one and the same for the purpose of classification.

3. The Learned Counsel appearing for the respondent submits that "Software and the software Licenses imported under the two Bills of Entry are different and are in no way related to each other and are not meant for each other. He submitted that the observation of the authorities that the License and the software are not two distinctive commodities and that one without the other is useless is factually incorrect. It is submitted they are distinct products one is a software and the other is a manual and they are specifically classified under different headings as per the Customs Tariff.

4. Learned counsel also drew our attention to the entry no.157 in the general exemption notification which reads as:

- (i) Information Technology software, and
- (ii) Document of title conveying the right to use Information Technology software.

He also submitted that the supplementary notes under chapter 49 states 'For the purpose of tariff item 49070030 "Information Technology Software" means any representation of instrument data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to an user, by means of an automatic data processing machine.

5. Learned Counsel for the respondent also drew our attention to the description of tariff item CTH 4907 0030 "Document of title conveying the right to use Information Technology Software", while CTH 8523 80 20 relates to "Information Technology Software". Learned Counsel for the respondent also drew our attention to the circular No.107/2003 dated 16.12.2003 and the order of the Tribunal in the case of **Onward Novell (India) Ltd. Vs. Commr. Of Customs (Airport), Mumbai 2003-(151)-709(Tri.Del.)**.

6. Heard both sides. The only issue before us is whether the software licence imported in paper form is classifiable under CTH 4907 or CTH 8523. The relevant entries read as follows:

4907 00 30 --- Documents of title conveying the right to use Information Technology software.

Chapter 49 Supplementary Notes reads as "For the purposes of tariff item 4907 00 30, —Information Technology software means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine".

Chapter 8523: Discs, Tapes, Solid-State Non-Volatile Storage Devices, "Smart Cards" and Other Media for the Recording of Sound or of other Phenomena, whether or not Recorded, Including Matrices and Masters for the - Production of Discs, but excluding Products of Chapter 37.

8523 80 20 --- Information technology software.

Notification 21/2002 reproduced below :

Effective rates of basic and additional duty for specified goods falling under chapters 1 to 99

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2001-Customs, dated the 1st March, 2001 [G.S.R. 116(E), dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or

column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) **from so much of the duty of customs** leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) **from so much of the additional duty** leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table :

Provided that nothing contained in this notification shall apply to -

(a) the goods specified against serial Nos. 239, 240, 241 and 242 of the said Table on or after the 1st day of April, 2003;

(b) the goods specified against serial Nos. 250, 251, 252 and 415 of the said Table on or after the 1st day of March, 2005.

Explanation. - For the purposes of this notification, the rate specified in column (4) or column (5) is *ad valorem* rate, unless otherwise specified.

157.	49 or 85.24	The following goods, namely :-	Nil	-
		(i) Information Technology software, and		
		(ii) Document of title conveying the right to use Information Technology software.		
		<i>Explanation.</i> -		
		“Information Technology software” means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine.		

7. From the above chapter headings it is very clear that documents such as manuals which are

meant to be the instructions to activate the software are to be classified under Chapter 49. Therefore, the Commissioner was right in disregarding the fact that only because the value is high cannot be the criteria for classification of the product as software. The only ground on which appeal is filed is that the license has an intellectual value and the software and the license should be considered as a set fails in as much as the classification depends upon the description of the product at the time of import. Moreover, the supplementary notes under Chapter 49 supra and the description at sl.No.157 of Notification 21/2002 clearly show that the documents which convey the right to use the software are rightly classifiable under CTH 49.

8. In view of the above we do not find any reason to interfere with the impugned order and accordingly the appeal is dismissed.

(Order pronounced in Open Court on ...04.01.2024..)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)