



Read:- 1. Application dated 10th June, 2005 under Section 56 of the Maharashtra Value Added Tax Act, 2002 by M/s. Thakral Computers Pvt. Limited., holder of Registration Certificate No.400018/S/1283 and No. 400018/S/982 under Bombay Sales Tax Act, 1959 and Central Sales Tax Act, 1956 respectively.

2. Letters dated 12th August, 2005 and 31st October, 2005 from the applicant.

3. This office letter dated 14-10-2005 calling the applicant for hearing on 18-10-2005.

Heard :- Shri. P. V. Sodha, Chartered Accountant.

PROCEEDINGS

(Under section 56 of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/25/B-01

Mumbai, dt. 12th Jan. 2006

An application is received from M/s. Thakral Computers Pvt Limited., having its office situated at 8, Sumer Kendra, P. B. Marg, Worli, Mumbai-400 018, and holding Registration Certificate No.400018/S/1283 and No. 400018/C/982 under Maharashtra Value Added Tax Act, 2002 and Central Sales Tax Act, 1956 respectively for determination of the tax rate applicable to their product " **IPOD 4 GB Mini Green –FAF (M9434FE/A)**" sold by Invoice No. PLAS/2005-06/015 dated 7th May, 2005. The applicant has described his product coterminous as hard disk in which data can be stored. The product is mainly used as an audio player. The latest version of the product also plays videos. The applicant has collected tax @ 4% on the sale of the said product being under impression that the product falls under Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002 pertaining to Information Technology products but he, is yet, doubtful about his opinion and hence seeking clarification about same by this application.

BACKGROUND OF THE CASE :

02. The applicant has recently started trading activity in PC based product (MAC + PC) more specifically - Apple I-Pod. The product is mainly used as an audio player. Some versions are also capable to play videos. The data can be stored only from the computer. The device has a very huge memory and can store up to 20,000 songs. The applicant is of the view that the product being fully dependent on computer it would fall under Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002, attracting 4% tax.

DETAILS SUBMITTED ALONGWITH THE APPLICATION :

03. The applicant has submitted the following details in support of the claim of the product being covered by Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002 attracting tax @ 4%.

- [1] Copy of purchase invoice. [Purchase is from M/s. Apple Computer International Private Limited, Bangalore @ 4% tax under Central Sales Tax Act, 1956].
- [2] Copy of sale invoice.
- [3] Copy of product Information Guide containing features and technical Specification.
- [4] Copy of proof of payment of application fees.

CONTENTION OF THE APPLICANT :

04. The applicant highlights the following features of the product on the basis of which the product according to

- 1) The product is fully dependant on computer and the data can be stored only through computers.
- 2) It is as good as "Hard Disk" in which data can be stored and accessed and audio songs can also be stored and played.
- 3) It falls under the notification on Information Technology products for the purpose of Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002 and covered by the Excise heading 84.71.

PRODUCT DESIGN AND SPECIFICATION :

05. Before going through the application and deciding as to the rate applicable to the product, let me first have a clear understanding of the product in terms of its design, specifications and use.

PRODUCT DETAILS

06. It is a recent invention. It is one type of a digital audio player. It was introduced first in 2001 by Apple Computers. It has a built in hard disk which stores songs which could be played as per individual's wish by a scroll disk or click wheel. Normally Disk stores up to 15000 songs and 20,000 photos. The recent version of the ipod also allows viewing the videos and downloading it from computer. The ipod models are sleek, compact and portable. The new ipod boasts of up to 20 hours of battery life.

PRODUCT FEATURES

The product helps to -

- (a) Put all music in a pocket, Browse the photo slide shows with music, Watch video pod casts, music video and TV shows, Consult calendar or look up by an email address, Check the time in another city, Access to entire music, video and photo library, Play video or photo slides on TV via the optional Dock .

The purchase and sale bill of the applicant describes the product as highlight " IPOD 4 GB Mini Green –FAF (M9434FE/A)" i.e. the applicant has traded in the product "IPOD Mini". The product information guide submitted by the applicant gives features and technical specifications of the following products :-

ipod shuffle, ipod Mini, ipod, ipod photo, ipod U2, Airport Express.

The impugned product is described as – ipod mini – available on Mac and Windows.

The features of the impugned product are the same as mentioned above.

HEARING :

07. The case was fixed for hearing on 18-10-2005. Shri. P. V. Sodha, Chartered Accountant duly authorized to attend on behalf of the applicant attended the hearing. He argued that the impugned product gets covered by the Central Excise Tariff Heading 84.71 which is included in the notification on Information Technology products for the purpose of Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002, thereby attracting tax @ 4%

The product is claimed to be an "Information Technology Product" by the applicant's representative. The applicant was asked to submit a copy of the exact description of the excise classification applicable to his product. The applicant is a trader and not a manufacturer.

In a supplementary letter dated 12-08-2005 to their application of dt. 10-06-2005, the applicant claims

can be stored and accessed and audio songs also can be stored and played.

In a communication to this office dated 31-10-2005 i.e. after hearing, the applicant has sought to draw my attention to the new notification on Information Technology products dated 17-10-2005. He claims that he gets covered by this notification under Central Excise Tariff Heading No. 8471.50 and accordingly would be taxed @ 4% under the Maharashtra Value Added Tax Act, 2002.

The applicant is making a two fold argument. Since the device has a hard disk and is capable of storing data, it is to be called a storage device. Alternatively, it is prayed that the product may be classified as a data processing unit.

The applicant has not provided the exact classification, "description" applicable to his product neither in the application nor during hearing. Even after hearing, the applicant was requested by letter dt. 7th Dec.2005 to furnish evidence as to under which heading the impugned product "i-Pod" has been cleared by the Excise Department. The applicant was also provided with the alternative that if it was not possible to furnish a copy of bill of entry, a certificate from the importer mentioning the excise or customs code of the said product, may be furnished. The applicant expressed his inability either to produce the copy of Excise invoice or a certificate from an importer.

OBSERVATIONS :

08. I have carefully gone through the submissions and product description provided by the applicant in support of his claim of the impugned product being covered by the notification on Information Technology products.

From the details as regards the product submitted by the applicant, I proceed to form an opinion about the product as thus :-

I have referred to various sources to get an idea about the product such as the news paper reports, the information available on internet, etc., product information guide giving features and technical specifications of the products as submitted by the applicant.

The applicant has sold the product "iPOD Mini" by his invoice dated 7-5-2005. The product description guide as submitted by the applicant on "ipod mini" describes the product as ***"lets you bring along music for a three day weekend getaway in a package so small you'll forget you're carrying it until people ask you about it"***.

This introduction itself brings the product under the ambit of an "audio player", digital to be precise. All the information about the product describes the product to be used as to listen to a certain number of songs which otherwise cannot be possible on a normal audio player. Its features are that of an extended version of an audio player. The product can also be used to listen to songs even when one is moving as it can be attached to the arm. All the description and information available about the product project it to be an audio video player of an advanced technology and configuration with only limitation that the data can be stored from computer only.

The product is very popular among the younger generation with its utility. It is a one type of "digital audio player". Its popularity is based on the fact that a small, sleek compact box can store up to 15000 songs, 20000 photos which can be carried in pocket.

The applicant in his letter dated 12-08-2005 describes the product as ***"hard disk since the data can be stored in it."*** Though at the end of the above description, but the applicant admits the use of the product as regards storing and playing songs.

being by the popularity of the product, its use, common parlance, product description, data about the product available from the newspaper cuttings as well as from the internet, I treat the impugned product as higher version (by virtue of technology used therein) of a digital audio video player.

09. Having formed a opinion of the product, I proceed to ascertain its coverage by the notification on Information Technology products issued for the purpose of Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002.

The Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002 is for Information Technology [IT] products as may be notified by the State Government. The items in the notification are the items covered by the headings or sub-headings of tariff of the Central Excise Tariff Act, 1985. The notification need not be a replica of the Central Excise Tariff Classification. It covers only those products as notified by the Government.

The applicant in his submission dated 12-08-2005 claims the product to be covered by Tariff Heading 84.71 and in his letter dt. 31-10-2005 claims the Excise Heading to be 8471.50.

Now let us take a look at the Excise Tariff Heading 84.71 and 8471.50 as appearing in the Central Excise Act and in the notification on IT products for the purpose of Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002.

EXCISE TARIFF HEADING: 84.71

Excise Tariff Heading	<u>As per Central Excise Act :</u>	<u>As per notification dt. 1.4.2005 :</u>
84. 71	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.	Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data. Analogue or hybrid automatic data processing machine, Electronic Diaries , Portable digital automatic data processing machine, personal computer, computer systems including personal computers, other Digital automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit whether or not combined, micro computer/processor, large/ mainframe computer, computer presented in form of systems, digital processing units, storage units, input units, output units. Teletypewriter, Data entry terminal, Line printer, Dot Matrix printer, Letter quality daisy wheel printer, Graphic printer, Plotter, Laser Jet printer, Key board, Monitor, storage units, floppy disc drive.

		Removal/ exchangeable disc drives, magnetic tape drives, Cartridge tape drive, other units of automatic data processing machines, Uninterrupted power supply units (UPS).
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EXCISE TARIFF HEADING: 8471.50

Excise Tariff Heading	As per Central Excise Act :	As per notification dt. 17.10.05 :
8471 50 00	Digital processing units other than those of sub-heading 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit : storage units, input units, output units.	Digital processing units other than those of sub-headings 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit : storage units, input units, output units.

Let me discuss both the notifications i.e. dated 1.4.2005 and 17.10.2005 in the light of the applicant's claim.

(A) NOTIFICATION dt. 01.04.2005 :

10. The applicant claims that his product is covered by Excise Heading 84.71 of the notification dated 1-4-2005. Let us take a look at Excise heading 84.71 as per both the Central Excise Act, and the notification dated 1-4-2005 under Maharashtra Value Added Tax Act, 2002 as reproduced above.

The notification is not an exact replica of the Central Excise Tariff heading 84.71. The words "**not elsewhere specified or included**" as appearing the Central Excise Tariff Heading are not found in the notification.

Also not all items from the sub-heading 8471.10 to 8471.90 00 of the main heading 84.71 are covered in the notification as can be seen from the sub-headings reproduced below. **Only the items highlighted are the ones covered in the notification dated 1-4-2005**

SUB HEADINGS FROM 8471.10 TO 8471.90 UNDER CENTRAL EXCISE :

8471 10 00	Analogue or hybrid automatic data processing machines.
8471 30	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display :
8471 30 10	Personal computer
8471 30 90	- Other
	- Other digital automatic data processing machines :
8471 41	Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined :
8471 41 10	Micro computer
8471 41 20	Large or main frame computer.
8471 41 90	Other
8471 49 00	Other, presented in the form of systems.
8471 50 00	Digital processing units other than those of sub-heading 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit : storage units, input units, output units.
8471 60	Input or output units, whether or not containing storage units in the same housing :
8471 60 10	- Combined input or output units.
	- Printer :
8471 60 21	Line Printer
8471 60 22	Dot matrix printer

8471 60 24	Graphic printer
8471 60 25	Plotter
8471 60 26	Laser jet printer
8471 60 27	Ink jet printer.
8471 60 29	Other
8471 60 30	Monitor
8471 60 40	Keyboard
8471 60 50	Scanners
8471 60 60	Mouse
8471 60 90	Other
8471 70	Storage units.
8471 70 10	Floppy disc drives
8471 70 20	Hard disc drives
8471 70 30	Removable or exchangeable disc drives
8471 70 40	Magnetic tape drives
8471 70 50	Cartridge tape drive.
8471 70 60	CD ROM drive.
8471 70 70	Digital video disc drive
8471 70 90	Other
8471 80 00	Other units of automatic data processing machines
8471 90 00	Other

Hence as per notification dated 1-4-2005 wherein all the items of Excise Heading 84.71 were not covered, the applicant's claim that his product is covered vide Excise classification 84.71 is not acceptable. Also the applicant has failed to submit the proof of excise description applicable to his product.

(B) NOTIFICATION DATED 17-10-2005 :

11. Now the applicant claims that his product is covered by the notification dated 17-10-2005 under Excise classification No. 8471.50.

The heading description as per central excise as well as the notification does not differ. What this means is that if the Excise Tariff heading 8471.50 applies to the applicant's product then his product falls under the notification thereby getting covered by Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002 attracting tax @ 4%.

The above finding now leads to the discussion as to whether the description of excise classification 8471.50 is applicable to the applicant's product or not. I, therefore, proceed to decide the same.

The wording could be reproduced thus :

8471.50	Digital processing units other than those of sub-heading 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit : storage units, input units, output units.
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Heading 84.71 pertains to *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*. The explanatory note to Chapter 84.71 of HSN speaks as follows - Appliances such as measuring or checking instruments adapted by the addition of devices (signal converters, for example), which enable them to be connected directly to a data processing machine, are, in particular not to be regarded as of a kind solely or principally used in automatic data processing systems. Such appliances fall to be classified in their own appropriate heading. This means that

- Ø a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose.

5(A)(a) to the Chapter 84 of Central Excise Tariff defines digital data processing machines as a machine capable of fulfilling simultaneously the following conditions:-

- 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 ;
- 4) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

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

Digital data processing machines usually consist of a number of separately housed interconnected units. They then form a "system". A complete digital data processing system must comprise, at least :

- 1) A central processing unit capable of performing arithmetical algorithms.
- 2) An input device, and
- 3) An output device.

In the context of the above discussion on automatic data processing machines, we could take a look at the decisions given under CET Act, which supports my above view point.

[1] Master Minds v/s. Commissioner of Central Excise, Nagpur [dt. 7-6-2001, 2001 (131) E.L.T 621 (Tri. – Del.)] :

Time recording terminal (TRT) working as a time recorder for recording the attendance of personnel in offices/industries was held classifiable under heading 84.73 of Central Excise Tariff Act, 1985 Since classification of similar item is ruled out under heading 84.71 ibid in earlier case in 2000 (119) E.L.T. 375 (Tribunal). The TRT can note late comings and early going and absentee of an employees. It reads the unique code punched on a plastic card issued to each of the employees, when inserted into it and also records the time at which the card is inserted. These two informations are clubbed and can be communicated to a computer for further processing. The TRT also has a capacity to store this data for a period of about 24 hours. The machine thus processes data in coded form appearing on each different plastic card specially designed for working with TRT. The mode of installation of the TRT to a computer works through cables and TRT could not be used for programming and thus did not perform any independent functions without attaching to a computer. The Tribunal held that the classification of TRT would be under the heading 84.73 and not 84.71 which is for the automatic data processing machines.

[2] H.C.L Limited V/s. Commissioner of Customs, New Delhi [dated 14-09-1998 - 108 ELT 765] :

The question involved in the present appeal is whether a machine described as "Canofile 510", a desktop electronic filing system falls under Tariff Heading 84.71 or under Tariff Heading 84.72.

It is observed by the Tribunal that heading No. 84.71 includes only, such digital machines which fulfill the conditions as mentioned in Note 5A(a) of Chapter 84. It is noted that

manufacturer keeping in view the ultimate use. Further it is not able to make arithmetical computations. Digital machines of heading 84.71 pertains to data processing machines do not include machines which operate only on fixed programs. The Tribunal therefore held that "Canofile" merits classification under heading 8472.90 as "other office machines" because canofile has a base for fixing or for placing on table, is used for keeping and retrieving files to save space in offices. It was further observed that the catalogues produced by the appellants showed that the "Canofile 510" is only a machine for management of documents that saves time, space and money. It does not satisfy the definition of automatic data processing machine given in the **Chapter Note 5A(a) to Chapter 84. This tariff entry is aligned with HSN and, therefore, HSN Explanatory Notes will be of high persuasive value which has excluded fixed programme machines from the scope of Tariff Entry 84.71.**

[3] Indchem Electronics Ltd. V/s. Commissioner of Central Excise, Chennai (dated 10-7-1997 – 1997 (95) ELT 580 Tribunal) :

The question involved was of classification of Add-on-Cards and Mother Board whether data processing machines falling under Excise heading 84.71.

It was held that the goods are not capable of performing any automatic data processing function on their own, but need to be linked up with certain other components to perform such functions. As such, they are not automatic data processing machines of Excise heading 84.71. Instead they were classified under Excise heading 84.73.

The applicant mentions in his application that his product fully depends on and runs through computer. Here, I would like to mention that the item 'modem' so integral to a computer which modulates in transmittable form over a telephone network, information obtained from an automatic data processing machine and reconverts it into digital form is also excluded from sub-heading 84.71.

Thus, as discussed above, the applicants product cannot be termed as a data processing unit, so as to be covered by the notification to schedule entry C-56 of Maharashtra Value Added Tax Act, 2002.

The applicant's alternate argument that since it has a hard disk and is capable of storing the data, the product is to be called a "storage device" which is also covered by Central Excise Sub-heading 84.71.

Let us analyze the first claim of the applicant as regards the product being a "hard disk" and hence to be called a "storage device". The dictionary meaning of "**storage**" is "**a storing or being stored, space for storing, the charge for storing.**" Also the word "**device**" means "**something designated or adapted for a special purpose**". Hence storage device means a device designed or adapted to store or having space for storing. Now let us look at the product and its characteristics. Can we say that the product is solely used as a storage device as a Floppy disk or CD? Is the product used only as a means of storing data? The answer to this question must be given in negative. The Explanatory Note-7, to Chapter-84 of the Central Excise Tariff states that "**if a machine is used for more than one purpose then for the purpose of classification, it is to be treated as if its principal purpose were its sole purpose**".

The word "ipod", in common parlance, being used more popularly as a digital audio player. The applicant's effort to treat the product as a "storage device" only because it has a storage unit and capable of storing the data. I am of the opinion that it is not a storage device.

We could also take a look at the reports published in the news papers regarding i-pods. All of them convey the same message of i-pod being a digital music player. A statement from an article in the Times of India dt. 20.12.2005 on 'i-Pod' reads thus, "Users of i-pods and other personal digital music players have been warned that they risk permanent damage to their hearing". Here an i-pod is treated as another personal digital music player.

the word of study, as in 2005 the term iPod has been declared word of the year by the New Oxford American Dictionary. The term is defined as "digital recording of a radio broadcast or similar programme, made available on the internet for downloading to a personal audio player. The word is derived from the combination of "broadcasting" and i-pod.

Besides the product being a fairly new introduction, one finds no mention of the same in the Harmonized Commodity Description and Coding System. Now the product not being specifically mentioned in either the notification on Information Technology products or in the Central Excise Tariff Headings, it goes without saying that the impugned product is not eligible to be covered by the notification on IT products for the purpose of Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002. The notification seeks to bestow concessional rate of tax on products meant for IT industry and hence the words and description in the Schedule Entry as well as the notification needs to be construed strictly.

CONCLUSION :

13. In view of the deliberations mentioned hereinabove, I am of the opinion that the product does not fall in the excise heading 8471.50 and therefore not covered by the scope of schedule entry C-56 of the Maharashtra Value Added Tax Act, 2002 to be termed either as an automatic data processing machine or a storage device. It would be covered by schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002 attracting tax @ 12.5%.

ORDER

(Under Section 56(1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/25/B-01

Mumbai, dt. 12th Jan. 2006

The applicant's question as regards the product "**IPOD 40 GB Mini Green –FAF (M9434 FE/A)**" being covered by Excise Tariff Heading No. 8471.50 under notification on Information Technology products for the purpose of Schedule Entry C-56 of the Maharashtra Value Added Tax Act, 2002, thereby attracting tax @ 4%, is hereby answered in the negative. The product would attract tax @ 12.5% as per schedule entry E-1 of the Maharashtra Value Added Tax Act, 2002.

(B. C. KHATUA)

Commissioner of Sales

Tax,

Maharashtra State,

Mumbai.

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