Circular No.- 51/2002-Customs

F. NO. - 528/44/2002 - CUS (T.U.)

Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

12th August, 2002

Subject: Classification of software. - Reg.

I am directed to invite your attention to the subject mentioned above and to say that a doubt has been raised regarding classification of records, tapes and other media when presented with the equipment or apparatus for which they are intended. On account of amendments carried out in Chapter Note 6 to Chapter 85 of the Customs Tariff consequent to the amendments in HS Nomenclature, which came into effect from 1.1.2002, a view has been expressed that software imported along with the equipment or apparatus would need to be classified along with the equipment/apparatus and duty charged at the rate applicable to the equipment/apparatus.

2. The matter has been examined. Prior to the amendment, Chapter Note 6 of Chapter 85 read as under :

"Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings, whether or not they are presented with the apparatus for which they are intended".

After the amendment, the revised Chapter Note 6 reads as under.

"Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.

This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended."

3. It appears that the doubt has been raised on account of the words, "those headings" mentioned in Chapter Note 6 to Chapter 85 of the Customs Tariff. A plain reading of Note 6 as it stands, makes it amply clear that the reference to "those headings" in this Chapter Note refers to headings "85.23 or 85.24" and not to the headings of the equipment/apparatus. Therefore, the question of software being classified under headings/sub-headings applicable to equipment/apparatus for which it is intended does not arise. A comparison of the revised Chapter Note 6 with the Chapter Note 6 as it stood prior to the amendment would reveal that the objective of the amendment was to restrict the coverage of software contained in media under CTH 85.23 or 85.24 only to such of those software which is presented along with the apparatus for which it is intended. Prior to the amendment, regardless of whether or not such software was intended for the apparatus along with which it was presented, the classification remained under CTH 85.23 or 85.24.

4. This aspect is clear from the remarks column of the Correlation Table which compares the changes between the HS-1996 and HS-2002 version. It states that

"Records, tapes, etc., presented with articles other than the apparatus for which they are intended can be classified with these articles if they constitute a set".

Hence it is evidently clear that the revision in the above Chapter Note was effected keeping in view the situations where recorded media (audio cassette, video cassette, software on floppy/CD, etc.) was imported along with merchandise for which it is not intended, for e.g., a book, which as a set would form educational material for retail sale. The earlier Chapter Note posed difficulty in classifying such goods. The amendment has been effected to solve this difficulty.

5. It is hereby clarified that in cases where the software presented along with the main equipment or apparatus is not intended for use with such equipment or apparatus, the classification would still remain under heading 85.24 except in situations where the software accompanying the imported article or articles make up a set put up for

retail sale. In such cases, the set taken as a whole will be classified by application of GIR 3(b). Where the software accompanying the imported article does not constitute a set put up for retail sale under GIR 3(b), they will have to be necessarily classified separately under their own appropriate heading, namely, heading 85.24.

6. Difficulties if any faced in implementing the above instructions may be brought to the notice of the Board.

Please acknowledge receipt of this Circular.

IndiaCode