Circular No. 107/2003-Cus
Dec 16, 2003

F.No. 528/39/2002-Cus(TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

Subject : Classification of software protection locks whether as software under CTH 8524 or as hardware under 8473-reg.

I am directed to say that divergence of practice regarding the classification of "software protection locks" has been brought to the notice of the Board. This item is being assessed under CTH 8524 or 8473.30 by different Commissionerates.

1. It has been observed that many kinds of CD"s containing software are provided with a lock to be used at the USB port of the computer. After loading of the software on to a system (computer), and before the said software starts to function in the system, the software looks for protection lock. If the software lock is fixed on to the US13 port of the system, the software will work, otherwise not.

2. The Board"s Circular No.51/2002 Cus. dated 12.08.2002 at para (5) covers a similar issue. It states that "software imported along with equipment for which it is intended shall be classifiable under 85.24. If software imported with equipment is not for use with such equipment, it will still be classified under CTH 85.24 except in situations where the software accompanying the imported article or articles make up a set 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, it will have to be classified under CTH 85.24".

3. This matter was discussed in the Tariff Conference of Chief Commissioners of Customs held at Visakhapatnam on 25th and 26th September, 2003 [Agenda Item A-2].

4. The Conference considered the issue whether to treat the software protection locks as a piece of hardware or as an integral part of the main software. Three kinds of situations were contemplated in this regard, viz-

(i)	when the software lock is imported, pre-programmed for use with a specific software, but the software is not imported along with it ;
(ii)	when the software lock is imported without being pre-programmed for use with the intended software ; and
(iii)	when the software lock is imported along with software recorded on a CD or other media, as a set.

5. The Conference decided that in the first two situations, the product as presented for assessment, would be treated as hardware and classifiable under CTH 8473.30, as part of a computer. In the third situation, when the CD and the software lock are clearly meant to be used together and these are imported together as a set, it would qualify for classification as an item of "software" under CTH 8524. Moreover, in the third situation classification will be done as per rule 3(b) of the General Interpretative Rules This would be consistent with the Board"s Circular No. 51/2002-Cus. dated 12.8.2002.

6. The Board has accepted the recommendation of the Conference and it is accordingly clarified that classification of software protection lock shall be done as discussed at para 5 above.

7. The field formations may finalise pending assessments accordingly.

H.K. Sharma
STO (TU)

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