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F. No. 528/28/2004-Cus (TU)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(TARIFF UNIT)

Subject- Classification of Mobile Pen/Pen Drive - reg.

I am directed to say that divergence of practice regarding classification of Mobile Pen/Pen drive has been brought to the notice of the Board.

2. The issue pertains to classification of an item described as "mobile pen". The item in question comes packed in a typical pen box, is supplied along with cable for connecting the device to the personal computer, spare refill (ball point) and a CD containing the mobile pen driver software. In terms of functionality, it comprises/combines the following three functions:

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(a)	the storage(drive) function, similar to what is performed by the storage(drive) devices falling under various sub-headings of 847170 (like floppy disk drives, etc.)
(b)	the storage media, similar to the items falling under various sub-headings of 852320 (for example, floppy disks etc.) and
(c)	writing function performed by pens falling under various sub-headings of 96.08.

3. The lower half of the item is a simple ballpoint pen. The upper half comprises the pen drive, which is a USB flash memory drive. It comes in various storage capacities ranging from 16 MB to 2GB and can simply be plugged into a PC via the supplied cable. The PC is not required to have a separate drive for reading the data on this device (as is required in the case of floppy disk) and thus, it combines functions of a drive and storage media.

4. This matter was discussed in the Tariff Conference of Chief Commissioners of Customs held at Shillong from 13th to 15th May, 2004 [Agenda Point T-1].

5. The Conference noted that Chennai Commissionerate was earlier classifying mobile pens/pen drives under tariff item 847170.90. However, later they changed the classification provisionally to sub-heading 8473.30, where the applicable duty rate was higher. The Conference decided that the classification of the item should be based on its essential character. However, there was some divergence of opinion regarding the essential character of mobile pen. The opinion was divided for classification under sub-heading 8471.70, 8473.30 and 8523.90. It was ultimately decided at the Conference that a meeting would be convened in the Board, where representatives from Deptt. of Information Technology will also be called.

6. Accordingly, a meeting was convened by Member (Customs) and it was attended by Sr. Director, Ministry of Communications and Information Technology (Deptt. of Information Technology) and some other officers from the Deptt. of Revenue. The technical features of the mobile pen and its possible classification were discussed in detail. However, it was decided that the classification issue may be referred to World Customs Organization (WCO) and their opinion would be taken into account before a final decision is taken in this regard.

7. A reference was, accordingly, sent to the Director (Tariff), WCO, Brussels in June 2004. The World Customs Organisation Secretariat replied in August 2004, stating that the decision regarding classification of mobile pen could be taken on the basis of an earlier decision of the Harmonised System Committee(HSC) on classification of 'Palm V with installation software' under heading 84.71. The decision of the HSC in case of 'Palm V' was taken on the basis that the installation software is installed/inserted in the main ADP machine and not in the PalmV. Hence, in terms of Note 6 of Chapter 85, this media (installation software) can not be classified under heading 85.23/85.24. Also, it was considered that PalmV imparted the essential character to the set. Therefore, the HSC decided that PalmV and all the other articles or components presented with it, would be classified together as a set in heading 8471.30 by application of GIR 1 [Note 5 (A) to chapter 84] and 3(b).

8. By applying the ratio of the above decision, classification of 'mobile pen/pen drive imported along with a cable for connecting the device to an ADP machine, a spare refill and a CD containing the mobile pen driver software' would fall under sub-heading 8471.70 (Tariff Item 8471 70 90). This is because the driver software in this case is meant to be installed in the ADP machine and not in the device in question (pen drive) and hence it cannot be classified independently. The essential character of the pen drive is imparted by the storage + drive functions. Hence, the appropriate classification of the complete set would be under Tariff item 8471 70 90 which covers storage units.

9. The Board has accepted the recommendation of the World Customs Organization (WCO) in this regard.

10. Field formations may finalise pending assessments, if any, accordingly.

11. Suitable Public Notice may be issued for the benefit of the Trade.

12. Hindi version will follow.

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