

**2008 (226) E.L.T. 367 (Tri. - Bang.)**

IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE  
**Dr. S.L. Peeran, Member (J) and Shri T.K. Jayaraman, Member (T)**

**COMMR. OF CUS. & C. EX., HYDERABAD-II**

*Versus*

**DELL INDIA PVT. LTD.**

*Final Order No. 57/2008, dated 17-1-2008 in Appeal No. C/355/2007*

**Server is a computer/automatic data processing machine, used for managing a network in conjunction with other computers, to and from which it gives and takes input - In itself, it cannot be considered as networking equipment - It is classifiable under Tariff Item 8471 50 00 of Customs Tariff Act, 1975 and not under Tariff Item 8517 50 99 ibid. [para 6]**

***Appeal dismissed***

**CASES CITED**

Hewlett Packard India Sales Pvt. Ltd. v. Commissioner — [2007 \(210\) E.L.T. 549](#) (Tribunal) — *Referred* [Para 5]  
 Modi Xerox Ltd. v. Commissioner — [1999 \(111\) E.L.T. 369](#) (Tribunal) — *Referred*..... [Para 5]

**DEPARTMENTAL CLARIFICATIONS CITED**

C.B.E. & C. Circular No. 497/63/99-CX, dated 30-11-1999..... [Paras 5, 6]  
 C.B.E. & C. Circular dated 30-12-2004..... [Para 2]

REPRESENTED BY : Shri K. Sambhi Reddi, JDR, for the Appellant.  
 Shri G. Shiva Dass, Advocate, for the Respondent.

**[Order per : T.K. Jayaraman, Member (T)].** - This appeal has been filed by Revenue against Order-in-Appeal No. 71/2006 (H-II), dated 28-12-2006 passed by the Commissioner of Customs and Central Excise (Appeals-II), Hyderabad-II Commissionerate.

2. The Respondent is the importer of computers, servers, storage units and other computer peripherals from its group company. The issue involved is the correct classification of the consignments of Dell Power Edge referred to as Servers imported from Malaysia. The respondent-classified the item server under CTH 84715000, whereas the Deputy Commissioner assessed them under the classification CTH 85175099. The respondent was aggrieved over the decision of the Deputy Commissioner in the classification. Therefore, they approached the Commissioner (A). The Commissioner (A) in the impugned order set aside the Order-in-Original and held that the servers are more appropriately classifiable under CTH 84715000 of the Customs Tariff Act. Revenue is aggrieved over the decision of the Commissioner (A). The main contention of the Revenue is that there is a draft Circular dated 30-12-2004 wherein it has been stated that servers are classifiable under Chapter Heading 8517.50. Further, Revenue has also relied on Chapter Note 5 (E) of Chapter 84, wherein it is stated machines performing its specific function other than data processing and incorporating or working in conjunction with an automatic processing machine are to be classified in the headings appropriate to their respective functions or in the residual headings and accordingly, a server which performs the specific function of managing the network should be classified along with the networking equipment under Chapter 85. This is the main contention of the Revenue.

3. Shri K. Sambhi Reddi learned Departmental Representative appeared on behalf of the Revenue and Shri G. Shiva Dass, learned Advocate for the Respondent.

4. The learned Departmental Representative reiterated the grounds of appeal.

5. The learned Advocate pointed out that the issue is settled by the Circular of the Board dated 30-11-1999 and also in terms of the following decisions :

(a) *Modi Xerox Ltd. v. CC, Bombay* - [1999 \(111\) E.L.T. 369](#) (T).

(b) *Hewlett Packard India Sales (P) Ltd. v. CC, Bangalore* - [2007 \(210\) E.L.T. 549](#) (Tri.-Bang.).

Further, he pointed that the draft Circular was relied on by the department to hold that the servers are classifiable under Chapter Heading 8517.50. He stated that the perusal of the Circular would indicate that it was essentially dealing with classification of networking equipment like routers, hubs, bridges, etc. The reference to servers in the last line was more as a passing reference with no discussion on the nature of servers as an equipment. On the other hand, the earlier Circular dated 30-11-1999 specifically refers to server as a Father Computer which can be classified under Chapter Heading 8471.00. He also pointed out that Chapter Note 5(E) would refer to a machine that performs a specific function other than data processing and works in conjunction with an Automatic Data Processing (ADP). In other words, it has to be a machine which is not an ADP.

6. On a very careful consideration of the issue, we find that the server is also a computer which is used in conjunction with other computers in managing a network. In other words as pointed out in the Board's Circular, Server is the Father Computer. The server performs various functions. It actually receives the inputs from the other computers in the networks and

it also sends its output to the other computers. The server *per se* cannot be considered as networking equipment. The server along with the other computers in conjunction with the networking equipment would form a computer network. We are not impressed with the Revenue's argument that Note 5(E) would refer to a server. The server itself is an Automatic Data Processing Machine (ADP). Further, the case-laws relied on by the Respondents are very relevant. In these case laws, it has been clearly held that servers are classifiable under CTH No. 8471 only. We reproduce the relevant Paragraph 2 from the Board's Circular No. 497/63/99-CX, dated 30-11-1999 cited by the learned Advocate;

2. The matter has been examined by the Board. It is observed that, Computers and computer network are covered under Heading 84.71 of Central Excise Tariff. A computer network can be defined as two or more computers and devices like printers connected together. A network is built in order to share the devices like printer or scanner among many computers and to share the information available on different computers network enables simultaneous work on different computers which is coordinated by the father-computer called "server". It also facilitates communication between two computers by different means.

In view of the above, the Commissioner (A)'s order is legal and correct. We do not find any grounds to interfere with the same. Thus, we dismiss the Revenue's appeal.

(Operative portion of this Order was pronounced in open court on conclusion of hearing)

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