

National Radio and Electronics Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-17-1998

Reported in : (1999)(105)ELT59Tri(Mum.)bai

Appellant : National Radio and Electronics

Respondent : C.C.E.

Judgement :

1. The issue for decision in this appeal is the includibility in the assessable value of data processing system manufactured by the appellant charges payable for the software supplied, charges paid by the customers for training of the persons and technical charges.

2. Advocate for the appellant says that he does not wish to press the appeal with regard to the includibility of technical charges, and they may be included in the assessable value. He says that the software in all cases are application software and not operating software and that the charges payable for the software, and the charges payable for the training are not to be included in the assessable as held by the Supreme Court in PS7 Data Systems Ltd. v. CCE -1997 (89) E.L.T. 3 (S.C.). He further contends that, in arriving at the value of the goods by including the technical charges, the duty payable on that portion of the value which the technical charges constitute should be deducted from the assessable value.

3. The Departmental Representative does not say that it has to be verified in each case that the software in question is application software or operating software.

She reiterates the finding of the Collector in Page 11 where he says that since the price is not a sole consideration for the rule (sic) by application of Rule 5 of the Valuation Rules, the value of the goods should be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

4. The price paid for application software and training would not form part of the assessable value in terms of the Supreme Court's judgment.

Paragraph (ii) of Sub-clause (d) of Clause (4) of Section 4 referred to in Rule 5 excludes taxes payable and the amount paid on account of these taxes will have to be deducted in arriving at the assessable value.

5. We therefore allow the appeal in part and set aside the impugned order. The Commissioner shall determine the duty payable on the goods by excluding the value of the application software (only application software), training charges and by arriving ex duty at the price of the value of technical charges.

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