

**Tech Nova Imaging Systems Ltd. Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-31-1999

**Reported in :** (1999)(85)LC103Tri(Delhi)

**Judge :** G Brahmadeva, R T Lajja

**Appellant :** Tech Nova Imaging Systems Ltd.

**Respondent :** Cc

**Judgement :**

1. The appellants had imported one machine namely Panther Pro-46 Image Setting System and "Application Software for Image Setting comprising of RIP and ESCOR II Screening" through a bill of entry filed on January 8, 1996.
2. According to the department, there was a mis-declaration in the value of the goods with an intention to evade duty. The machine and the Software are always sold together and since Software attracted lower duty, separate values were shown as a deliberate attempt to evade duty.
3. It was the contention of the party that they were distributors of the supplier, M/s. Prepress Systems, USA and as a distributor they had been invoiced the subject goods in accordance with the international distributor price list of the exporter. It was also the contention of the party that the exporter had confirmed the distributor price for the item as US \$ 51,460 and that a discount of 15% has been granted on the said distributor price in view of the fact that the item was meant only for

demonstration at an exhibition and not meant for commercial use/resale. The Commissioner determined the value of the Hardware based upon the similar goods imported by the other importer clubbing the value of the Software with Hardware System. Accordingly, he imposed a redemption fine of Rs. 4,00,000/- and a penalty of Rs. 1,00,000/-.

4. Arguing for the appellants, Shri V. Lakshmi Kumaran, Counsel submitted that the enhancement of the declared value based on the import by the end user is not tenable because of the fact that end users and distributors are two different classes of persons. He submitted that a discount of 15% was given on the distributor price and this important fact has not been considered by the adjudicating authority. According to him, the two issues are to be considered in this appeal. Whether the Panther Pro-46 Image Setting System and the Application Software for the said machine are to be classified as one product or separately and consequently, value of the software is to be included therein. He submitted that since the separate price lists were given by the suppliers to the distributor, there was justification in declaring the price separately as they were imported separately and are classifiable under different headings.

5. The Id. Advocate contended that the value of Software cannot be included in the value of the Hardware System since both of them are classifiable as separate items under their respective tariff entries.

He also submitted that discount to the distributor is an accepted practice in the international trade and same was available to the distributor in this case and accordingly, price offered to the other distributor/actual user cannot be taken a basis in determining the assessable value. Further, it was submitted by him that the Commissioner had held that the appellants did not produce the international distributor price list of M/s. Pre-Press Solutions. He said that the appellants have produced the relevant documents given by the supplier and if the Commissioner had insisted the production for the international price list the same would not (sic) have been placed before him. He drew our attention to the relevant international price list in page 18 of the paper book. In this context, Shri S. Ramanathan, JDR submitted that since the price list was not before the adjudicating authority, the

same cannot be taken into consideration and in the absence of this, the Commissioner was right in determining the value based on the contemporary import.

6. We have carefully considered the matter. There is some force in the argument advanced on behalf of the appellants that they have produced the relevant documents issued by the supplier showing the value declared by the appellants and if the Commissioner have asked for the production of international price list, the same would have been placed before him. Since the same was not produced before the adjudicating authority and in the absence of any finding by the Commissioner with reference to the international price list, we are of the view that the matter will have to go back for re-consideration. Accordingly, we are remanding this matter to the Commissioner to decide the issue afresh based upon the international distributor price list and to pass an appropriate order in accordance with law after providing an opportunity to the appellants to present their case. All the other connected issues also may be raised by the appellants during the re-adjudication proceedings. Thus, this appeal is allowed by way of remand. Ordered accordingly.

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