

**Vijay Traders and ors. Vs. Cc**

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**SooperKanoon Citation :** [sooperkanoon.com/38477](http://sooperkanoon.com/38477)

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

**Decided On :** Mar-15-2005

**Reported in :** (2005)(184)ELT272TriDel

**Judge :** J Balasundaram, Vice, A T V.K.

**Appellant :** Vijay Traders and ors.

**Respondent :** Cc

**Judgement :**

1. The value of old and used photocopiers imported by the appellants herein has been enhanced and goods have been confiscated for the reason that they are consumer goods requiring valid licence for their clearance which the appellants did not possess; option to redeem the goods on payment of fine has been extended; penalties have been imposed. Details of the appeal are as under

Appeal	No.	Value	Value	Enhanced	Fine
Penalty					

Vijay Traders E/136/05-A 32,04,109.47 37,87,801.00 10,00,000/- 10,00,000/-2

Tushar Impex E/137/05-A 30,80,207.95 35,27,429.30 10,00,000/- 10,00,000/-3.

Tushar Impex E/138/05-A 30,81,390.81 36,20,541.87 10,00,000/- 10,00,000/-

Machines E/156/05-A 50,19,077.31 62,01,053.15 20,00,000/- 15,00,000/-5.

J.N. Enterprise E/157/05-A 22,31,583.76 26,62,409.78 15,00,000/- 10,00,000/-6.

H.S. Enterprises E/158/05-A 29,82,587.37 32,05,063.10 15,00,000/-  
5,00,000/----- 2. We

have heard both sides. The assessable value has been enhanced on the basis of Chartered Engineer's certificate compared with the evidence of value available with the appraising group. The Chartered Engineer has not furnished the year of manufacture of the goods which is very relevant for the purpose of determining whether their transaction value is required to be rejected. There is no evidence furnished of contemporaneous imports. In these circumstances, the Tribunal's decision in the case of S & S International v. CCE - Final Order No. 366/2005 dated 22.2.2005 holding that in the absence of any evidence of contemporaneous imports, the transaction value is required to be accepted, is squarely applicable to the facts of the present case. The Tribunal's decision in the case of Competent Business Machine v. CC Thiruchirappalli - Final Order No. 18/2005-NB(A) dated 31.12.2005 further buttresses the above view. Following the ratio of the above decisions, we hold that loading of value is not justified and accordingly, set aside the same.

3. As regards confiscation, in view of DGFT Policy Circular No.20(2004-2009) dated 23.2.2005, holding that second hand photocopiers are in the nature of consumer goods, we uphold that same. However, having regard to the fact that in the past the Tribunal has been holding that the second hand photocopiers are capital goods and not consumer goods requiring licence for import and clearance, we reduce the fines and penalties as under :-

S.No.	Appeal	No.	Fine
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Penalty-----6.

C/158/05 1.5 lakhs 50,000/-----