

**Cc Vs. Aver Digital Imaging Inc.**

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**SooperKanoon Citation :** [sooperkanoon.com/39218](http://sooperkanoon.com/39218)

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

**Decided On :** May-31-2005

**Reported in :** (2007)(208)ELT123Tri(Mum.)bai

**Judge :** S T S.S., T Anjaneyulu

**Appellant :** Cc

**Respondent :** Aver Digital Imaging Inc.

**Judgement :**

1. After hearing both sides and considering the issue of classification of the Sienna FP 5000, 220 V Digital Printer (Computerised) settled by the CC(Appeals) under heading 8471 is to be upheld for the reasons- a) The acceptance of argument that the entity performs the functions as envisaged of an apparatus of heading 9010 and can perform the function of development of a photo sensitive film albeit with the assistance of a digital Computer Command will not be in accordance with the rejection of the very similar arguments advanced to place a photocopier working in tandem with a Computer in the case of Xerox Modi Corporation Ltd. as seen from para 5, was not accepted by the Tribunal to classify the entity as a photocopier. No contrary decision is shown.

b) It is on record that earlier similar apparatus/appliances of model FP-500 were considered to be classified under 84.71. The plea now made that model FP 5000 not only exposes but also develops photo sensitive paper which model FP-500 could not, that cannot be a ground to change and depart from the classification

under 8471 arrived at in case of model FP-500 which decision is followed by Commissioner (Appeal).

c) The classification opinion for the very same/model to be classified under 8471 by United State of America Department of Commerce Bureau of Export, which is relied upon by the Ld CC(Appeal), cannot be lightly brushed aside as in the present appeal filed by Revenue has no ground why such an opinion on classification based on HSN, the internationally adopted Classification System should be departed from d) Examining the chapter notes 5 to chapter 84 of the Custom Tariff especially the admitted fact by both sides that sans use of a Computer, the entity cannot perform any independent function the classification under 8471 is called for and approved.

2. We find the CC(Appeal)'s order to be logical and find no reason to depart from the same on the grounds made out herein.

3. Consequently the Revenue appeal of classification under Chapter 9010 cannot be upheld. The same is rejected.

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