

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/13 /2007

Date 05/08/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S ARROW COATED PRODUCTS LIMITED
5 D, LAXMI INDUSTRIAL ESTATE, NEW LINK ROAD,
ANDHERI-W MUMBAI
400053

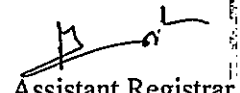
M/S ARROW COATED PRODUCTS LIMITED

Appellant

THE COMMISSIONER OF CUSTOMS,
(PREVENTIVE)DELHI

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. C/275 2008 Customs dated 28.7.08
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CUSTOMS, (PREVENTIVE)DELHI
NEW CUSTOM HOUSE, NEW DELHI

2. Adv. / Consult

MR.ECONOMIC LAW PRACTICE AT DELHI
405, 4TH FLOOR, WORLD TRADE CENTRE, BARAKHAMBA LANE, N DELHI

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7. M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9. Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Customs Appeal Branch)

16. Easy Service Tax online Dot Com Pvt Ltd
407A Iscon mall, above Star India Bazar
Satellite Road, Ahmedabad - 38

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

**COURT NO. II
Customs Appeal No. 13 of 2007**

[Arising out of the Order-in-Original No. 50/06 dated 30/11/2006 passed by The Commissioner of Customs (Preventive), Delhi – I.]

For Approval and signature :

Hon'ble Shri S.S. Kang, Vice President

Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see :
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?
2. Whether it would be released under Rule 27 of :
the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
3. Whether their Lordships wish to see the fair :
copy of the order?
4. Whether order is to be circulated to the :
Department Authorities?

M/s Arrow Coated Products Limited

Appellant

Versus

CC, Delhi

Respondent

Appearance

S/Shri Tarun Gulati and Kishore Kund, Advocates – for the appellant.

Ms. A.P. Tiwari, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : Hon'ble Shri S.S. Kang, Vice President
 Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 28/07/2008.

Gna Order No. C/275/08 Dated : 28/7/08

Per. Rakesh Kumar :-

The appellant imported VUTEK 3360 FC printing machine from supplier M/s VUTEK, U.S.A. for a sum of U.S. \$ 1,50,000/- CIF in November 2005 and filed bill of entry No. 184495 dated 21/11/05 for its clearance at Air Cargo Complex, IGI Airport, New Delhi. The Commissioner vide the impugned order rejected the declared transaction value and loaded the same to U.S. \$ 1,99,000/- on the basis of the price of this machine mentioned in the supplier's price list accessed through internet and on this basis confirmed the duty demand of Rs. 9,24,236/- alongwith interest at the applicable rate, imposed penalty of equal amount and beside this, also ordered confiscation of the goods under Section 111(m) of Customs Act 1962. Since the goods had already been released provisionally, a fine of Rupees Twenty Five Lakhs was imposed in lieu of confiscation. The point of dispute in this case is as to whether simply on the basis of the supplier's price list price for this machine, available on the supplier's web site, the declared

transaction value can be loaded without any evidence of the contemporaneous import of identical or similar goods in comparable quantity at higher prices.

2. Heard both the sides.

2.1 Shri Tarun Gulati, advocate, the learned counsel appearing on behalf of the appellants, pleaded that no evidence in form of contemporaneous imports of identical or similar goods in comparable quantity at higher prices had been cited by the Revenue while enhancing the transaction value to U.S. \$ 1,99,000/- CIF, that the Revenue has ignored that during 2005 a total of 10 such machines have been imported by the appellant from the same supplier, that the allegation of the Revenue that the machines were sold in India at a price Rs. 1,45,00,000/- is without any basis and as per the sale invoices produced by them to the Revenue, the imported machines have been sold at price ranging from Rs. 1,16,35,000/- to Rs. 1,17,00,000/- and that in view of Hon'ble Supreme Court judgment in case of **Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai** reported in 2000 (122) E.L.T. 321 (S.C.) and in case of **Commissioner of Customs, Calcutta vs. South India Television (P) Ltd.** reported in 2007 (214) E.L.T. 3 (S.C.), the declared transaction value can

not be rejected without concrete evidence of under invoicing and that as held by the Tribunal in case of **Shree Sagarmatha Distributors (P) Ltd. vs. CC, Bangalore** reported in **2005 (186) E.L.T. 307**, the declared transaction price cannot be rejected and loaded based solely on the basis of the price declared in the supplier web site.

2.2 Ms. A.P. Tiwari, learned Jt. CDR pleaded that the importer is exclusive selling agent of the supplier in India and the discount from the price list price enjoyed by the appellant is abnormal and , therefore, the declared transaction value cannot be accepted, that when the manufacturer's price list mentions the price of the model as U.S. \$ 1,99,000/-, it is this price which must be adopted as the assessable value, and that in view of Tribunal judgments in cases of **AMN India Ltd. vs. Collector of Customs, Madras** reported in **1999 (110) E.L.T. 1015 (Tribunal)**, and **Bhatia Films Sales (P) Ltd. vs. Collector of Customs, Mumbai** reported in **2000 (123) E.L.T. 687 (Tribunal)** the assessable value can be enhanced on the basis of the supplier's price list.

3. We have given careful consideration to the submissions from both the sides. The declared assessable value of the printing machine is U.S. \$ 1,50,000/- CIF and during the year of import

cannot be the sole reason to reject the transaction value, that a price list is really no more than a general quotation and it does not preclude discounts, which may be granted for a variety of reasons and that production of price list cannot discharge the onus cost in customs authorities to prove the existence of special circumstances indicated in Section 14 (1) of the Customs Act, 1962 and particularised in Rule 4 (2) of the Customs Valuation Rules, 1988. In this case, no evidence of contemporaneous imports of identical or similar goods in comparable quantities at higher prices or evidence of higher value declared by the supplier in the exporting country, has been produced and the declared value is sought to be loads solely on the basis of the supplier's price list.

3.1 It has been pleaded that, as admitted by Shri Prakash Chopra, Director of the Appellant company, the Appellant is the sole selling representative in India of the Suppliers VUTEK, USA and therefore 25% discount over the price list price, being "special discount to Exclusive Agent" attracts the provisions of Rule 4 (2) (c) and have the transactive value has to be rejected. But we find that the Appellants have denied being exclusive agents of VUTEK, USA in India and the Revenue has not produced any evidence in this regard like agreement between

VUTEK, USA and the Appellants appointing them as Sole Selling Agent or Exclusive Agent in India. Therefore, the provisions of Rule 4 (2) (c) are not applicable to this case.

4. In view of the above discussion, the impugned order is not sustainable and the same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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