

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

Appeal No. C/454 /2008 - CU[DB]

Date 21/05/2012

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

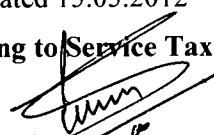
To :
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.
C.C. (ICD) NEW DELHI

Appellant

Vs
Respondent

M/S DIGITAL COMPUTERS

I am directed to transmit herewith a certified copy of **Final order No.C/A/135/ 2012 CU[DB]** dated 15.05.2012 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

M/S DIGITAL COMPUTERS
V&PO GURUNANAK COLONY,
NEAR DHURI, RAILWAY CROSSING,
GILLCANAL, LUDHIANA

2. Adv. / Consult

MR. SAURABH KAPOOR,
11, YADVINDRA COLONY,
THE MALL, PATIALA – 01 PB.

3. C.D.R

4. Bar association. CESTAT. New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

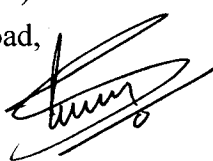
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file


Assistant Registrar
(Customs Appeal Branch)

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

Date of Hearing : 15.5.2012

Custom Appeal No. 454 of 2008

[Arising out of the Order-in-Appeal No. CC(A)/CUS/ICD/D-II/94/08 dated 27.2.2008 passed by the Commissioner of Customs (Appeals), New Delhi]

For Approval & Signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CC, ICD, TKD, New Delhi

Appellant

Vs.

M/s Digital Computers

Respondents

Appearance:

Appeared for Appellant : Shri Amrish Jain, A.R.

Appeared for Respondent : None

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. CC(A)/135/12 - Cus. dated.....

Per Mathew John :

The Respondents imported old and used CPU, monitors and power supply system of computers and filed Bill of Entry No. 468583 dated 17.4.2007 in ICD, Tughlakabad. At the time of assessment of the Bill of Entry, the Customs held that these

were prohibited goods and liable for confiscation under Section 111(d) of the Customs Act, 1962, since the goods were imported in violation of the import policy. This matter was adjudicated by the Commissioner of Customs by confiscating the goods and allowing it to be redeemed on payment of redemption fine of Rs. 2.5 lakhs and imposing penalty of Rs.50,000/- on the importer.

2. Subsequently for release of the goods when the goods were assessed, the custom officers increased the value of goods from the declared value of Rs.15,21,837/- to Rs.24,97,931/- holding that the value was not declared correctly. Against such assessment order on Bill of Entry the Respondents filed an appeal before the Commissioner (Appeals).

3. Revenue has now filed appeal against the order of the Commissioner (Appeals). The Revenue's first contention is that this is a case where the Commissioner (Appeals) has passed order against adjudication orders passed by the Commissioner of Customs and for that reason impugned order is not legally sustainable. Revenue also contests that there were contemporaneous imports of identical goods at much higher prices and that is a good reason for rejecting the transaction value as decided by the Calcutta High Court in the case of **Atma Ram Agarwal** – 1992 (60) ELT 217 (Cal.H.C.). Revenue further submits that the value has been increased on the basis of NIDB

data compiled from imports made at all parts in India by the customs showing contemporaneous import of such goods.

4. It is also submitted by Revenue that the Commissioner (Appeals) has set aside the order dated 27.4.2007 in toto which would mean that the fine and penalty imposed by the Commissioner of Customs for violation of import policy also is set aside and such consequence cannot follow because there was violation of the import policy and that matter was not before the Commissioner (Appeals).

5. No appeal filed by the Respondents against the order of the Commissioner of Customs confiscating the goods under Section 111(d) and imposing redemption fine and penalty for contravention of import policy has been placed before us. The Respondents went in appeal to the Commissioner (Appeals) only in respect of the increase in value ordered by the assessing officer and such order was passed on the Bill of Entry. It has been held by the Courts that an assessment order on the Bill of Entry is itself an appealable order and it is such enhancement in value that was agitated before the Commissioner (Appeals) and there is nothing illegal about the order passed by the Commissioner (Appeals).

6. Further in the case of old and used computers there cannot be any identical goods or similar goods. In fact the Bill

of Entry itself shows that these goods were of assorted brands. The year of manufacture and extent of use and the condition of the equipment cannot be assessed easily to compare the goods to goods imported by another importer and appearing in NIDB data. Revenue has not been able to adduce any evidence showing any payment of extra consideration by the Respondents to the supplier abroad. That being the case there is no ground for rejection of transaction value.

7. Thus in the appeal before us ^{in the matter} ~~the~~ increase in assessable value, ordered by the assessing officer and set aside the Commissioner (Appeals) only is under consideration. The transaction value was rejected without any evidence to suspect bona fide nature of the transaction value. Further the goods are of a type where no other goods could be compared to the goods imported on a reasonable basis. Therefore we are of the view that the order passed by the Commissioner (Appeals) is legal and proper and therefore we reject the appeal filed by the Revenue.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM