(2004) 02 SC CK 0026

In the Supreme Court Of India

Case No : Civil Appeal 10185 of 2003

Commissioner of Central Excise, Pondicherry APPELLANT

Vs

Acer India Ltd. RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2, 3, 4

Citation : (2004) 93 ECC 659 : (2004) 166 ELT 21 : (2004) 10 SCC 111

Hon'ble Judges : S. N. Variava, J;H. K. Sema, J

Bench : Division Bench

Advocate : Raju Ramachandran, ASG, Dileep Tandon and B. Krishna Prasad, for the Appellant; V. Lakshmikumaran, Rajesh Kumar, Alok Yadav and R. Nambirajan, for the Respondent

Judgement

1. Heard parties.

2. Appeals admitted.

3. In the case of M/s. PSI Data Systems Ltd. Vs. Collector of Central Excise, , it has been held that a computer and its software are distinct and separate items. It is held that a computer may not be capable of effective functioning unless loaded with software, but still these are not parts of computer and even if they are sold along with the computer their value does not form part of assessable value.

4. With greatest of respect, to the learned Judges concerned, we find ourselves unable to agree with the view that even though a computer may not function without a software, still that would not be part of a computer. Section 4 of the Central Excise Act reads as follows :-

"4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed,

(2) The provisions of this Section shall not apply in respect of any excisable goods for which a tariff value has been fixed u/s 2 of Section 3.

(3) For the purpose of this section. -

(a) ....(b) ....(c) .... (d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organisation expenses, storage, outward handling, servicing, warranty, commission or any other matter, but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods." (emphasis supplied).

Thus, any amount which a buyer has to pay "by reason of or in connection with the sale" is part of the transaction value. There are software?s without which computer cannot work at all. There may be software?s which contain additional or ancillary applications which a customer may want to buy separately. An additional or ancillary application would, of course, be classifiable separately and cannot be included in the value of a computer. But a buyer has to buy software without which the computer cannot work. The computer would otherwise be a dead box, if software, without which the computer cannot work, is not purchased. When one talks of a computer, as understood in the trade, it is not just the box or the hardware. A computer contains of both hardware and the operating software. The price of such software?s is thus the amount which a buyer is bound to pay by reason of or in connection with the sale of computers. It appears to us that the price of such software is thus includable in the value for purposes of excise duty. We, therefore, feel that the matter requires reference to a Larger Bench. The papers may be placed before the Hon'ble Chief Justice of India for appropriate orders.