

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Stay Application No. 50290 of 2022
in
Customs Appeal No. 51231 of 2022 [DB]

[Arising out of Order-in-Appeal CC(A)/Customs/D-II/IMP/ICD/TKD/1514/2021-22 dated 10.01.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

Principal Commissioner of Customs
(ICD TKD), New Delhi

Inland Container Depot (Import),
Tughlakabad, New Delhi - 110020

...Appellant

VERSUS

M/s. Sun N Sand Exim (I) Pvt. Ltd.

3420-1st Floor, Block-B,
Street-1, Regharpura,
Karol Bach, New Delhi-110005

...Respondent

APPEARANCE:

Shri Rakesh Kumar, Authorized Representative for the Appellant
Shri Abhas Mishra, Advocate for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 03.06.2024
DATE OF DECISION: **30.09.2024**

FINAL ORDER No. 58744/2024

DR. RACHNA GUPTA

Present is an appeal filed by the department to assail the Order-in-Appeal bearing No. 1514/2021-22 dated 11.01.2022. The brief facts culminating into the said adjudication are that the respondent is an importer who imported a consignment covered under Bill of Entry No.8422708 dated 25.02.2015 filed through their customs broker namely M/s. Amethi Shipping and Clearing for importing goods declaring them as Aluminum PS Printing Plates classifying them under CTH 84425020. The department based on

the specific intelligence about misdeclaration being committed by the importer, examined the container covered under the said Bill of Entry in the presence of representatives of the Customs Broker of the appellant and formed the opinion that goods/plates imported by the appellants are CTCP plates however for comparison they drew the sample and sent the same for testing initially to the department of Printing Technology, Pusa Polytechnic, New Delhi.

1.1 A test report dated 03.06.2015 was received confirming the samples in question to be CTCP Printing Plates. But the report was withdrawn as the testing was out sourced for want of proper infrastructure with the said Institute. The Central Revenue Control laboratory, Pusa (CRCL) also refused to give a Report as they have any facility to test on those four parameters as were demanded by the department. Finally, with mutual consensus, the samples were sent to a private lab namely M/s. Don Bosco Technical Institute. The test report from M/s. Don Bosco dated 14.05.2016 reported that the goods are the aluminum plates with PS coating for printing purposes and the plates are CTCP printing plates. The report denied the plates to be violet printing plates are to be thermal printing plates. It was also reported that after testing the plates on CTCP machine, that the plates are found sensitive to normal ultraviolet light and can be developed manually with PS developer.

1.2 Based on that report and on the Notification No. 51/2012-Cus. (ABD) dated 03.12.2012 which imposes anti-dumping duty on digital offset Printing Plates (CTCP) and the Notification No. 25/2014-Cus. (ABD) dated 09.06.2014 which imposes anti-dumping duty even on PS Printing pre sensitized aluminum plates

department alleged that the appellant had evaded the payment of anti-dumping duty imposed on the goods imported by them. The department also has been of the opinion that the goods have wrongly been declared under CTH 8442 as they are classifiable under CTH 3701. The later entry attracts the Basic Customs Duty (BCD) at the rate of 10%. The appellant is alleged to have mis-declared the nomenclature/classification to evade the payment of BCD.

1.3 With these observations and allegations, a Show Cause notice bearing No. 18/2015 dated 20.05.2019 was served upon the appellant proposing to recover the differential BCD on account of mis declaration, amounting to Rs.1,4,233/- to be recovered from the appellant. The differential anti-dumping duty amounting to Rs.23,33,840/- was also proposed to be recovered. The penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 was also proposed to be imposed. The proposal was confirmed vide Order-in-Original No. 10/2021 dated 29.01.2021. The appeal filed by the importer against the said order has been allowed while setting aside the findings in the said Order-in-Original. Being aggrieved the department is before this Tribunal.

2. We have heard Shri Rakesh Kumar, learned Authorized Representative for the department and Shri Abhas Mishra, learned Advocate of the respondent.

3. Learned Departmental Representative has submitted that the issue in the appeal pertains to classification as well as imposition of anti-dumping duty pursuant to Notification No.51/2012 dated

03.12.2012 and Notification No.25/2014 dated 09.06.2014 on the goods imported by the respondent-importer. The respondent by wrongly declaring the imported goods as Pre Sensitized (PS) aluminium plates has wrongly classified them under CTH 84425020 instead of classifying those under CTH 3701. The BCD under CTH 8442 is at the rate of 7.5% whereas under CTH 3701 it is at the rate of 10%. The differential amount of BCD thus has been evaded by the appellant and despite the mandate of the aforesaid both notifications vide which anti-dumping duty at the rate of 4.87 USD per square meter was imposed on the impugned goods, the same has been evaded by the respondent.

3.1 It is further submitted that sample were drawn in the presence of representatives of the importer's customs broker and were got tested through the lab as was mutually agreed by the importer. The importer was allowed to cross-examine the technical person from the said laboratory (M/s. Don Bosco). The cross-examination has also revealed that the subject goods are CTCP plates only. The Commissioner (Appeals) has wrongly relied on the aspect of the cross-examination to state that once the test was outsourced, the test report cannot be relied. Most importantly nowhere the respondent could prove that the impugned goods are not CTCP plates. Irrespective that M/s. Don Bosco has also outsourced the testing, it is also an undisputed fact on record that the subject goods are having pre sensitized coating on it. Hence not only the respondent-importer is liable to pay anti-dumping duty but is also liable to pay additional BCD as the goods which merit classification under CTH 3701.

3.2 While impressing upon the Chapter Heading of Chapter 8442 and that of 3701 learned Departmental Representative has impressed upon that since the subject goods are principally used as photographic plates instead of being the machinery or equipment for preparing such plate, the right classification is CTH 3701. The Commissioner (Appeals) has wrongly held CTH 8442 as the right classification and have wrongly denied respondent eligible for payment of anti-dumping duty. Learned departmental Representative has relied upon the decision of Hon'ble Supreme Court in the case of **Wood Crafts Products Pvt Ltd. reported as 1995 (77) ELT 23 (SC)** to impress upon that the HSN explanatory notes have persuasive values for determining the right classification.

3.3 The decision of this Tribunal in appellant's own case vis-à-vis imposition of anti-dumping duty, is also relied upon where the Commissioner (Appeals) after referring to the available literature held that the goods imported by the respondents (Sun n Sand Pvt Ltd) are CTCP aluminium plates which are pre sensitized plates and are covered under the notification which prescribes the anti-dumping duty on such plates. With these submissions and impressing upon that the act of evading duty is an act of suppression that the extended period has rightly been invoked while issuing the show cause notice, learned Departmental Representative has prayed for the Order-in-Appeal to be set aside and the department's appeal to be allowed.

4. While rebutting these submissions, learned counsel for the respondent-importer has submitted that the cross-examination of

technical person of M/s. Don Bosco Technical Institute has falsified the case of the department that the plates in question are CTCP plates on which is imposed anti-dumping duty in terms of Notification No. 51/2012. The findings of Commissioner (Appeals) on this aspect have been reiterated as given in Para 5.3 of the Order-in-Appeal. It is submitted that the sole basis to hold the imported goods to be CTCP plates was the test report when the same has been found unreliable, there remains no ground to differ from the declaration made by the respondent-importer in the Bill of Entry.

4.1 With respect to the appropriate CTH, it is mentioned that the imported goods are alleged to fall under CTH 3701 purely on the basis of Notification No. 25/2014 dated 09.06.2014. Under the said notification anti-dumping duties leviable on PS plates and digital printing plates falling under Chapter 37, 76 or 84. Learned counsel has impressed upon that this clarifies that the analogue and digital plates can fall under any of the said three chapters. Applying the General Rules of Interpretation of Customs Tariff Act Rule 3(c) when the goods fall under more than one heading, it should be classified under the heading which occurs last in numerical order. Resultantly, it is chapter 8442 under which the goods imported by the respondent merit classification. With these submissions, no infirmity in the order under challenge is impressed upon and the appeal filed by the department is prayed to be dismissed.

5. Having heard both the parties at length and perusing the entire records, we observe following two issues need adjudication:

(i) Whether the goods imported by the respondent-importer have rightly been reported as CTCP printing plates attracting anti-dumping duty in terms of Notification No. 51/2012 dated 03.12.2012 as is the case of department or the goods are the aluminum PS printing plates to which there is no anti-dumping duty liability as is the case of the respondent.

(ii) Whether the goods imported are liable to be classified under CTH 3701 as alleged by department instead of CTH 84425020 as declared by the respondent the respondent is liable to pay additional BCD.

6. Issue No. 1

The goods imported by the appellants are aluminium plates used for printing purposes. The appellant declared them as pre sensitized aluminium plates. The department alleged them to be computer to conventional plates (CTCP Aluminum Plates). To ascertain the correct nature, the department drew the sample of the imported goods and got them tested. Initial test report dated 03.06.2015 was from the Government department of Printing Technology, Pusa confirming the sample to be CTCP printing plate but the report was later withdrawn on the ground that the testing was outsourced for want of proper infrastructure required for the testing of requisite parameters. The another government laboratory of CRCL also refused to conduct test for the same reason. The test report dated 14.05.2016 from the M/s. Don Bosco Technical Institute has been the basis of the impugned show cause notice vis-à-vis demand of anti-dumping duty.

6.1 The said report has confirmed that the imported goods are aluminium plates with PS coating for printing purpose. Simultaneously, it has been reported that the plates are CTCP Printing plates. The cross-examination of the technical expert from M/s. Don Bosco Laboratory, as has been relied upon by Commissioner (Appeals) to set aside the imposition of anti-dumping duty demand, reveals that the CTCP plates are acknowledged to be green in colour and he also admitted that they also conducted manual testing and the testing on CTCP machine was outsourced by them. However, no details from the different source about machine testing were ever placed on record. Since outsource testing had been the reason for not having test report from the Government institute the test report from a private institute which is also lacking the proper infrastructure for CTCP machine testing and which also has outsourced the testing, should not have been relied upon. There is no other evidence on record than the said test report. We do not find any infirmity in such findings arrived at by Commissioner (Appeals). Resultantly, we hold that there is no evidence on record to prove that the pre-sensitized aluminum plates imported by the appellants are CTCP aluminum plates covered under anti-dumping Notification No. 51/2012 dated 03.12.2012.

6.2 Irrespective of the above findings, it is coming from the show cause notice itself that another notification no. 25/2014-Cus.(ADD) dated 09.06.2014 imposes anti-dumping duty on pre sensitized aluminium plates at the rate of .22 USD per kg. The Notification No. 25/2014 dated 09.02.2014 is perused which has been issued

pursuant to the review in matter of continuation of anti- dumping duty on imports of pre-sensitized positive offset aluminum plates of thickness ranging from 1.5 mm to .40 mm falling under Chapter 37, 76 or 84. Pursuant to the findings of said review, the notification 25/2014 had extended anti-dumping duty on PS aluminum plates originating in or exported from China PR at the rate of .22 per USD per kg for a period of 5 years. It becomes clear that though the plates imported by the respondent are not proved to be CTCP aluminum plates but these admittedly are pre sensitized aluminum plates against which also there is an imposition of anti dumping duty w.e.f. 10.03.2014 till 09.03.2019. The impugned Bill of Entry is of February, 2015. Hence it stands clear that the respondent-importer is liable to pay anti-dumping duty at the rate of .22 USD per kg. Commissioner (Appeals) has ignored the said notification while setting aside the order of imposition of ADD by the original adjudicating authority. Though the quantum confirmed by original authority has to be recomputed at the .22 USD instead of .40 USD per kg.

6.3 It is apparent from the documents placed on record by the department in the form of test memos and test reports that the goods imported through Bill of Entry No. 8422708 dated 25.02.2015, the country of origin is China. The sample thereof had thickness of 0.27 mm. It stands clear that both these parameters also confirm the criteria specified under Notification No. 25/2014 dated 09.06.2014. As such it is held that the entire demand of anti dumping duty on the impugned goods has wrongly been set aside. The anti dumping duty at the rate as prescribed in Notification No.

25/2014 is still liable to be recovered from the respondent-importer.

7. Issue No. 2

The appellant has declared the goods i.e. PS Aluminum plates under 84425020. The department is alleging the concerned CTH as 3701. The Commissioner (Appeals) has held 8442 as the correct classification holding that as per Notification No. 51/2012 the digital printing plates can fall under Chapter 37, 76 or 84. It has been held that when the goods fall under more than 1 heading it should be classified under the heading which occurs last in the numerical order. To adjudicate the correctness of the said findings we foremost perused the chapter headings of both the CTH. Chapter Heading 8442 reads as follows:

HS Codes of Heading 8442: Machinery, apparatus and equipment (other than the machine-tools of headings 8456 to 8465), for type-founding or type-setting, for preparing or making printing blocks, plates, cylinders or other printing components printing type, blocks, plates cylinders.

Chapter Heading 3701 reads as follows:

Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles, instant print-film in the flat, sensitized, unexposed, whether or not in packs.

7.1 The bare perusal is clear enough to hold that Chapter Heading 8442 essentially talks about machines, apparatus or equipments for making printing components whereas Chapter Heading 3701 specifically talks about of photographic plates and films in flats. As per Rule 1 of General Rules of Interpretation the Tariff Heading of goods is to be ascertained on the basis of terms of heading of

relevant sections and the chapter notes. The rules further state that in case the goods are not classified under rule 1 subsequent rules has to be sequentially followed. We observe that Commissioner (Appeals) has jumped upon Rule 3(C) of GIR which is not acceptable. While going through the Chapter notes and explanatory notes of 8442 no doubt 84425020 include plates, cylinders and other printing components prepared for printing purposes but there has been an exclusion clause to this section note according to which the sensitized plates (consisting of metal or plastics, coated with a sensitized photographic emulsion or of a sheet of photo sensitive plastic, whether or not affixed to a support of metal of other material) are excluded. There is no denial to the fact that the imported aluminum plates are sensitized plates. Hence, the plates are excluded from Chapter 8442. Otherwise also, as already observed above 8442 mainly talks about equipments and machines for preparation of printing plates whereas CTH 3701 talks specifically about photographic printing plates. Hence the goods in question are more precisely and specifically classifiable under CTH.

7.2 The Hon'ble Supreme Court in the case **LML Limited reported as 2010 (258) ELT 321** has held that the safe guide to resolve dispute on tariff classification is internationally accepted nomenclature emerging from Harmonized System of Nomenclature (HSN). HSN explanatory notes are the dependable guide for interpretation of Customs Act. The above findings are arrived at keeping in view of this law laid down by Hon'ble Apex Court. In the light of discussion we hold that Commissioner (Appeals) has committed an error while holding that goods imported fall under

CTH 8442 based whereupon the demand of differential amount of basis customs duty is held to have been wrongly been set aside.

8. In view of the entire above discussion on both issues, findings of Commissioner (Appeals) are hereby set aside. The anti dumping duty at the rate .22 USD per kg is ordered to be recovered from the respondent-importer. In addition the differential BCD amounting to Rs. 1,43,233/- along with the interest is also held to be the respondent-importer's liability. Finally, we restore the original order imposing the penalty of Rs. 2.40 lakhs under Section 112(a) and the same amount of penalty under Section 114AA of the Customs Act as was imposed by the original adjudicating authorities. With these findings, the order of Commissioner (Appeals) is hereby set aside and the department's appeal stands allowed.

[Order pronounced in the open court on **30.09.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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