
(2024) 07 CESTAT CK 1537

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No. 53938 of 2023

**M/s. Vijex Vyapaar Private Limited @APPELLANT @Hash Commissioner
of Customs (Import) @RESPONDENT**

Date of Decision : 23-07-2024

Acts Referred:

Customs Act, 1962 — Section 17(1), 17(4), 17(5)

Citation : (2024) 07 CESTAT CK 1537

Hon'ble Judges : Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Ashish Bansal, M.K. Shukla

Final Decision : Allowed

Judgement

Dilip Gupta, J

1. M/s. Vijex Vyapaar Private Limited, the appellant has sought the quashing of the order dated 17.11.2022 passed by the Commissioner of Customs (Appeals), the Commissioner (Appeals), by which the speaking order dated 20.04.2022 passed by the Assistant Commissioner of Customs, the Assistant Commissioner has been upheld and the appeal has been dismissed. The Assistant Commissioner, by the said order, had rejected the self-assessment of the goods imported by the appellant through a Bill of Entry dated 07.02.2022 and re-assessed the goods under section 17(4) of the Customs Act, 1962, the Customs Act in terms of Serial No. 2 of the Anti-Dumping Notification dated 05.03.2021.

2. The appellant had filed a Bill of Entry dated 07.02.2022 for clearance of the goods declared as 'Printer Color Toner'. The goods were imported from China and the details of the goods imported through the said Bill of Entry are as follows:

S. No.

Item Description

UQC

Declared Quantity

Declared CTI

Declared Unit Price per UQC (USD)

Assessed Unit Price per UQC (USD)

Assessable Value (INR)

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

1.

Printer Color Toner TS-07 10KGX2/CTN

KGS

2280

37079090

7.680263

7.680263

1401331.99

2.

Printer Color Toner TS-07 338G/Bag

KGS

101.4

37079090

8.87574

8.87574

72023.23

Total

1473355

3. The assessing officer raised a query that it appeared from examination of the goods imported that they were 'black toner in powder form', which product attracted anti-dumping duty under the Notification dated 05.03.2021. The appellant filed a reply to the aforesaid query stating therein that the color toners required for color printers are Cyan, Magenta, Yellow and Black (commonly called as CMYK) toners, but for print out of any color print, black toner is consumed more when compared to other three color toners. The appellant also pointed out that a black toner for printers is costly than the normal black toner and that a black toner, if part of the color toner, had been kept out of anti-dumping investigation and, therefore, the goods imported by the appellant would not attract anti-dumping duty. The reply filed by the appellant is as follows:

"a) The color toner required for color printers are Cyan, Magenta, Yellow and Black for printing any color print out black toner is required and it is consumed more compare to other colors. Black Toner for color is costly than the normal toner and particles of color black toner are finer (in terms of microne) than normal black toner, we attach herewith product list of various supplier which clearly indicate the black toner is a must part of color toner (CYMK).

b) we disagree to query raised and state in support of the toner we have submitted:-

1. Invoice of exporter
2. Certificate of Origin duly signed by exporter and certified by the customs of exporting country.
3. A letter from exporter confirming that the exported toner is a part of color toner-black.
4. anti dumping investigation for black toner were confined to only black toner for printers which have been imported at the lower price than the cost.

The following category of black toner were kept out of investigation

- a. black toner a part of color toner
- b. black toner of MICR toner
- c. liquid toner
- d. black toner in cartridge form
- e. black toner imported by OEM as per the notification 6/6/2020DGFT 18.06.2020.

This has been clarified in clear terms of final finding by the anti dumping authority. We once again state that we disagree to the query raised and request you to release the goods at the earliest as the duty for the same has been paid on 18.02.2022, COO and self declaration of shipper uploaded vide IRN Nos. 2022031000028017 & 2022031000028018"

(emphasis supplied)

4. The reply submitted by the appellant did not find favour of the Assistant Commissioner and, therefore, the self-assessment done by the appellant under section 17(1) of the Customs Act was rejected and re-assessment was done under section 17(4) by imposing anti-dumping duty @ USD 1458 per MT. The relevant portion of the order passed by the Assistant Commissioner is reproduced below:

"9.1 The ADD Notification No. 12/2021-Customs (ADD) dated 05.03.2021 excludes color toner from the scope of ADD leviability. I find that importer's claim that the goods being imported are "Black Toner in Powder Form" and are part of color toner, does not hold merit as the Notification vide F. No. 6/6/2020-DGTR clearly states the uses of 'Black Toner in powder form', as used in Laser Printer. It does not anywhere states/implies that "Black Toner in powder form", used in Black and white/monochrome laser printers only.

10. During verification of self-assessment of Bill of Entry No. 739090 date 07.02.2022 and documents submitted/uploaded by the importer in e-Sanchit, I find that the importer has imported the goods from China, vide Invoice No. TOM20220002 dated 03.01.2022. The same goods were imported from China. The importer did not provide any documentary evidence for the producer of the goods. Hence, I am of considered view that Anti-dumping Duty is payable as per Sl. No. 2 of the Notification No. 12/2021-Cus(ADD) dated 05.03.2022.

11. In view of foregoing, I hold that self-assessment done by the importer is liable to be rejected under Section 17(4) of the Customs Act, 1962. Therefore, I find that Anti-dumping Duty in respect of subject goods is payable as per Sl. No. 2 of the Notification No. 12/2021-Cus(ADD) dated 05.03.2021."

(emphasis supplied)

5. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals), who by order dated 17.11.2022, dismissed the appeal. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:

"5.2 I note that the Adjudicating Authority and Appellant is not contesting classification of goods. The issue to be decided in the instant appeal is whether the impugned goods attracted Anti-Dumping Duty under Notification No. 12/2021-Customs (ADD) dated 05.03.2021, or not.

5.3 It is undisputed that impugned goods are "black toner in powder form". However, the Appellant is contending that the 'black toner' is part of 'color toner' for color printing as it is of fine quality and costlier and is excluded from scope of Notification No. 12/2021-Customs (ADD) dated 05.03.2021.

5.5 However, I note that distinction made by the Appellant is an artificial distinction to escape ADD. The Final Findings of the DGTR published vide Notification F. No. 6/6/2020-DGTR dated 28.01.2021 (case no ADD-(OI)-05/2020

clearly says-

"C. Product under consideration and like Article

5. At the stage of initiation, the product under consideration was define as:

The product under consideration is Black Toner in powder form. Toner is used in laser printers, photocopies, digital multifunction devices (MFD), etc. to form the printed text and images on the paper."

It is nowhere specified that black toner must be used for monochromatic printing only. Further, exclusion clause specifies 'color toner'. In common parlance, 'color toner' is different from 'black toner'. Thus, I fully agree from the Adjudicating Authority and do not find any reasons to differ with impugned order.

5.5 The plea of the Appellant that their product is of fine quality and costlier has no relevance as Notification No 21/2021-Customs (ADD) refers to "Black Toner in Powder Form" and does not make any distinction on basis of fineness and cost."

(emphasis supplied)

6. It is this order dated 17.11.2022 passed by the Commissioner (Appeals) that has been assailed in this appeal.

7. Shri Ashish Bansal, learned counsel for the appellant submitted that the goods imported by the appellant were outside the purview of levy of anti-dumping duty as the anti-dumping duty was initiated in respect of black toner and not color toners which contain 'CMYK' toners. Learned counsel also pointed out that the declaration in the Bill of Entry was made as per the supply invoice. Learned counsel also submitted that as the speaking order was not passed within the period of fifteen days from the date of re-assessment of the Bill of Entry as contemplated under section 17(5) of the Customs Act, the re-assessment order deserves to be set aside on this ground alone.

8. Shri M.K. Shukla, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference. According to the learned authorized representative, the goods imported by the appellant from China are 'black toner in powder form', which toner would attract anti-dumping duty.

9. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

10. The appellant had filed the Bill of Entry dated 07.02.2022 in which the relevant details contained in Part-II relating to Invoice and Valuation details are reproduced below:

1. S. No.

2. CTH

3. DESCRIPTION

4. UNIT PRICE

5. QUANTITY

6. UQC

7. AMOUNT

1.

37079090

PRINTER COLOR TONER TS-07 10KGX2/CTN

7.680263

2280.000000

KGS

17511.00

2.

37079090

PRINTER COLOR TONERTS-07 338G/BAG

8.875740

101.400000

KGS

900.00

(emphasis supplied)

11. It needs to be noted that TS-07 in the description of the product is for black toner. Thus, the declaration of 'Printer Color Toner Black' in the invoice denotes 'black color toner'. However, as noticed above, a query was raised by the assessing officer that the goods imported would attract anti-dumping duty. The appellant filed a reply to the query contending that though a color toner has four color toners, including black toner, and that a black color toner is consumed more than the other three color toners and is also costlier than the normal black toner. The appellant also pointed out that a black toner is a necessary part of the color toner required for color printers and as color toner was kept out of the anti-dumping investigation, the product imported by the appellant would not attract anti-dumping duty.

12. The appellant had, however, agreed to pay the additional anti-dumping duty under protest and requested for a speaking order to be passed. The speaking order dated 20.04.2022 was passed by the Assistant Commissioner against

which the appeal filed by the appellant was dismissed by the Commissioner (Appeals).

13. It is not in dispute that what was imported by the appellant, as stated in the Bill of Entry, is 'Color Toner Black'. Though, it is correct that the Anti-Dumping Notification dated 05.03.2021, levied anti-dumping duty on 'black toner in powder form', but the Notification also mentions that 'black toner in powder form' would exclude a color toner. The relevant portion of the Notification dated 05.03.2021 is reproduced below:

Sl. No.

HS Code

Description of Goods

Country of Origin

Country of Export

Producer

Amount

Unit

Currency

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

1.

2.

3707

Black Toner in Powder Form*

China PR

Any country including China PR

Any producer other than at serial number 1

1458

MT

USD

*Black Toner in Powder Form excluding the following:

i. Color Toner

ii. MICR Toner (Specialized Toner used for printing in Cheques)

iii. Toners imported for the use by Original Equipment Manufacturers of Printing Equipment.

iv. Toner in Cartridges

v. Toner in liquid form

14. It would be seen that a color toner is excluded from levy of anti-dumping duty under the Notification dated 05.03.2021.

15. A color toner has four colors CMYK. 'K' denotes black color. What was imported by the appellant was black color toner for color printers and not a black toner for black and white printers which, as noticed above, attracted anti-dumping duty. The Assistant Commissioner merely noticed that the goods imported by the appellant were 'black toner in powder form' and completely failed to appreciate that the Anti-Dumping Notification itself stipulated that 'black toner in powder form' would exclude a color toner. This fact was specifically pleaded by the appellant in reply to the query raised by the Assistant Commissioner.

16. The Commissioner (Appeals) observed that the distinction sought to be drawn by the appellant was artificial in nature and also failed to appreciate that the Anti-Dumping Notification itself excluded a color toner from levy of anti-dumping duty. The Commissioner (Appeals) also fell in error in observing that in

common parlance 'color toner' is different from 'black toner'. A color toner, as noticed above, has four different color toners, namely CMYK, and a black color toner is one of the four color toners constituting a color toner.

17. In view of the aforesaid discussion, it has to be held that black color toner would not be subjected to levy of anti-dumping duty under the Notification dated 05.03.2021.

18. Such being the position, the order dated 17.11.2022 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed with consequential relief.

(Order pronounced on 23.07.2024)