

(2010) 11 SC CK 0066
In the Supreme Court Of India
Case No : Civil Appeal No. 1583 of 2003

Xerox India Ltd.

APPELLANT

Vs

Commissioner of Customs, Mumbai

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Customs Act, 1962 — Section 130E

Citation : (2010) 182 ECR 1 : (2010) 260 ELT 161 : (2011) 2 KCCR 114 SN :
(2010) 12 SCALE 281 : (2010) 10 UJ 5185

Hon'ble Judges : H. L. Dattu, J;D. K. Jain, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

H.L. Dattu, J.—In this appeal, the only question, that arises for our consideration and decision is, whether the Multi-Functional Machines imported by the appellants fall under Chapter Heading 8479.89 (Residual Heading) as claimed by the Revenue or under Chapter Heading 8471.60, as claimed by the appellants, under Customs Tariff Act (hereinafter referred to as, "the Act").

2. The appellants are engaged in the trading of High Technology reproduction and Duplicating machines, printers and Multi-Functional Machines capable of discharging number of functions. During the period March, September and November, 1999, the appellants imported Xerox Regal 5799, Xerox Work Centre XD100 and Xerox work Centre XD 155df respectively and filed Bills of Entry before the Customs Officer. The appellants sought classification of these imported machines under Sub-Heading 8471.60 of the Act. The Deputy Commissioner of Customs, vide his order dated 22.02.2000 classified the imported machines under Chapter Heading 8479.89 (Residual Heading) of the Act. Being aggrieved by the same, the appellants filed an appeal before the Commissioner of Customs (Appeals), Mumbai, who by his order dated 27.02.2000, rejected the appeal and thereby confirmed the order passed by the Deputy Commissioner of Customs. The appellants questioned the said order before Customs, Excise and Gold

(Control) Appellate Tribunal, New Delhi (hereinafter referred to as, "the Tribunal"). The Tribunal, by its order dated 5.11.2002, has rejected the appeal and has confirmed the order passed by the First Appellate Authority. Aggrieved by the order passed by the Tribunal, the present appeal has been preferred u/s 130E of the Customs Act, 1962.

3. To put it broadly, the controversy between the appellants and the Revenue is with regard to the classification of Xerox Regal 5799, Xerox Work Centre XD100 and Xerox Work Centre XD155df which, according to the appellants, are Multi-Functional Machines performing the functions of printers, fax machine, copier and/or scanner and therefore, requires to be classified as Printers in Automatic Inter Processing Machine (ADD) under Chapter Heading 8471.60 and the view of the authorities under the Act and the Tribunal is that the aforesaid machines require to be classified under Chapter Heading 8479.89 (Residual Heading).

4. Before examining this question, the relevant Headings and sub-Headings may be noted. Heading 84.71 and 84.79 of the Customs Tariff Act at the material point of time stood as under:

84.71 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data not elsewhere specified or included.

8471.60. Inputs or output units whether or not containing storage units in the same housing.

84.79: Machines and mechanical appliances having individual functions not specified or included elsewhere in this Chapter.

5. The Deputy Commissioner of Customs, while holding that the imported machines require to be classified under the residual heading, was of the view that the digital printer was not a unit of the automatic data processing unit as such. To qualify as a unit of an automatic data processing machine, it should be able to work only with a computer as per Chapter Note 5B. The moment it is able to perform independently of a computer, its claim to be a unit of the computer ceased to exist. Merely working in conjunction with a computer did not bestow the status of a unit of the computer as a machine. Since digital printer was not classifiable under any specific heading, the same requires to be classified under residual heading. It is also observed that the machine is capable of functioning as a stand alone digital copier even without a computer and therefore, in terms of note 5(E) of Chapter 84 of the Act, the imported machine cannot be classified under heading 84.71. The Appellate Authority while deciding the appeal filed by the appellant has concurred with the finding and conclusion reached by Deputy Commissioner of Customs. The Tribunal, while accepting the view of the authorities under the Act, inter-alia, has observed that the machines in dispute are Multi-Functional Machines based on digital technology and performs the functions of a printer, scanner and digital copier and the said machines are not solely or principally used in an automatic data processing machine and further

observed that the earlier decisions rendered by the Tribunal in the case of 2004 (113) ECR 784 (Tri-Del) is clearly distinguishable on facts.

6. Sri V. Lakshmi Kumaran, learned Counsel appearing for the appellants, has argued in great detail for the classification of imported machines - Digital Printer under heading 84.71.60. In the course of his detailed submissions, he has explained that a printer performs the function of printing documents, which works alongside a computer. The printing is carried out by the computer giving orders in the form of a digital signal, which is transmitted through wires, converted into a readable language, and then printed. He has gone on to explain the function of a scanner, which converts documents into digital signals for storage in the computer. In this way, the scanner and printer serve as input and output devices for the computer. He further explains the purpose of a digital scanner, which copies the document and sends it to the central processing unit of the computer; independently, the copier can also print on its own after scanning. Thus, according to the learned Counsel, a copier serves as a combined scanner-cum-printer. The learned Counsel submits that while the Multi-Functional Machines (which includes printer, scanner and copier) are not Automatic Data Processing Machines (in short, "ADPM"), they serve as input and output devices of an ADPM (computer) and thus they fall under sub-heading 84.71.60. It is further contended that the Chapter heading 84.71 covers ADPM and units thereof, which when read with chapter note 5(C) to chapter 84 of the Act clearly establishes that the heading would include both ADP Ms as well as separately presented units of ADP Ms. He also relies on some of the explanatory notes of the Harmonized System of Nomenclature (for short "HSN") to buttress this contention (specifically, internal page number 1406 of the HSN Handout). He submits that the "unit" referred to in Chapter heading 84.71 is not restricted to essential parts and components of an ADPM, as there is a separate Chapter heading 84.73 which deals with the same, and that does not apply in the instant case. It is also pointed out by Sri V. Lakshmi Kumaran that the decision of the Tribunal is erroneous on three grounds, namely, (i) the Tribunal ought not to have placed reliance on chapter note 5(B)(a); (ii) the relevant chapter notes 5(B)(b) and 5(B)(c) have not been relied on; (iii) after relying on chapter note 5(B)(a), there has been incorrect application of the same. He further submits that the requirement of the Chapter, that to be regarded as a unit of an ADPM, a three-fold test, as laid out in chapter note 5(B), should be fulfilled, i.e. Chapter 5(B)(a): it is of a kind solely or principally used in ADPM; (2) 5(B)(b): it is connectable to the Central Processing Unit either directly or through one or more other units; and (3) 5(b)(c): it is able to accept or deliver data in a form (codes or signals) which can be used by the system. He submits that it is undisputed that the Multi-Functional Machines meet the requirements of chapter notes 5(B)(b) and 5(B)(c) as they are connected to a Central Processing Unit and can accept and deliver recognizable data. Further, it is argued that the term "principally" in chapter note 5(B)(a) implies "meant for" and it is clear that the Multi-Functional Machines in the present case are meant to be used with an

ADPM, as neither the printing nor the scanning function can be performed without an ADPM, and little purpose will be served to the consumers if they do not perform these essential functions. Thus, there has been an erroneous finding by the Tribunal that chapter note 5(B)(a) does not apply and that the Multi-Functional Machines are not qualifiable under chapter note 5(B). As chapter note 5(B) is to be read with chapter note 5(E), he points out that the wording of chapter note 5(E) is "machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine", which does not apply as neither are the Multi-Functional Machines in the case incorporating an ADPM, nor are they presented with an ADPM, but rather are presented independently. Therefore, he submits that chapter note 5(E) has no application for the purpose of classification of the machines in dispute. Referring to chapter note 5(D), which includes printers under Chapter heading 84.71, the learned Counsel submits that upto 85% of printer-related components are present in the machine and they are to function as printers. Thus, he argues the machines in dispute require to be classified only under this heading.

7. Sri V. Lakshmi Kumaran also invites our attention to Rule 3 of the General Rules for the Interpretation of the Import Tariff Schedule, in particular, Rule 3(a) which provides that specific headings are to be preferred to non-specific residual headings, and Rule 3(b) which provides for classification of goods to be done based on the material or component which gives them their essential character. The learned Counsel reiterates that upto 85% of the imported components are dedicated to the printing function and the product technology is specifically intended for use as a network printer with "add-ons". He has also pointed out how in the United States of America, Xerox Documents Work Center Pro 535, Cannon CLC 1000 and three models in the Cannon GP series, which are similar to the Multi-Functional Machines, have been placed under heading 84.71. The learned Counsel drew our attention to the Judgment of the Tribunal in MX Software Services (*supra*) and 2001 (127) ELT 285 (Tri-Del) to contend that on identical facts, the Multi-Functional Machines are classified under the heading 84.71.60.

8. Contending to the contrary, Sri V. Shekhar, the learned senior counsel appearing for the Revenue, after referring to the order of the Tribunal, submitted that unless the Tribunal's order is found to be perverse or arbitrary, this Court may not interfere with the conclusion reached by it. He also submitted that the imported machines are performing specific functions other than data processing, and are working in conjunction with an ADPM, and thus, as per chapter note 5(E) to Chapter 84 of the Act, they are to be either classified under heading appropriate to their respective functions, or under Residuary heading. He submits that since the copy unit in the device cannot be consider as a photocopier so as to fall under Chapter 90, it, therefore, must essentially come under Chapter Heading 84.79.89. He further argued that the machines in question are not printer simpliciter attached to a computer, but are capable of performing

multifunction input and output facility, and, therefore, it is difficult to say that the machine is performing only one function, i.e. printing. His argument is that no single function of the machines, printing or otherwise, can be said to be predominant and the device/system in the machine has variable number of separate units capable of performing separate function. He also submitted that on a reading of chapter notes 5(B)(b), 5(B)(c) with 5(E), only a printer, keyboard, x-y co-ordinate input devices and disk storage unit, which satisfy conditions of Notes 5(B)(b) and 5(B)(c), are classifiable under heading 84.71.60. The rest including the Multi- Functional Machines in this case, as per Note 5(E), has to be classified under the residuary heading of 84.79.89.

9. Chapter note 5 of Chapter 84, during the relevant period, was as under:

5(A) For the purposes of heading No. 84.71, the expression "automatic data processing machines" means:

(a) Digital machines, capable of (1) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;

(2) being freely programmed in accordance with the requirements of the user;

(3) performing arithmetical computations specified by the user; and

(4) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;

(b) Analogue machines capable of simulating mathematical models and comprising at least: analogue elements, control elements and programming elements;

(c) Hybrid machines consisting of either a digital machine with analogue elements or an analogue machine with digital elements.

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions:

(a) It is of a kind solely or principally used in an automatic data processing system;

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) Separately presented units of an automatic data processing machine are to be classified in heading No. 84.71.

(D) Printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraph (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 84.71.

(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

10. In order to determine the classification of the Multi Functional Machines, it is necessary to look into some relevant provisions. Rule 3(a) of the General Rules for the Interpretation of the First Schedule (which along with the Second Schedule specifies the rates at which duties of customs shall be levied under the Customs Act) provides:

The heading which provides the most specific description shall be preferred to headings providing a more general description....

11. Further, Rule 3(b) of the same reads as follows:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(emphasis supplied)

12. In addition, Note 3 of Section XVI (which includes both Chapter 84 and Chapter 85) reads as follows:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

(emphasis supplied)

13. It is not in dispute that the Multi-Functional Machines in question, Xerox Regal 5799 has about 85% of the its total parts and components along with manufacturing cost allocated to printing, as does 74% of the Xerox XD155df model. This clearly shows that the printing function emerges as the principal function and gives the Multi-Functional Machines its essential character. Having such a nature, it also clearly meets the three-fold requirement of chapter note 5(B), as it is to be used principally in ADPM, it is connectable to the Central Processing Unit, and it is able to accept data in a form (codes or signals) which can be used by the system. Further, there would be no application of chapter note 5(E) as correctly pointed out by the learned Counsel for the appellants, as the Multi-Functional Machines are presented independently. Moreover, since

predominant components are relating to printing function, chapter note 5(D) also becomes relevant which includes printers under heading 84.71. We are also satisfied with the contention of the appellants that based on the nature of the functions they perform, the Multi- Functional Machines would serve as input and output devices of an ADPM (computer) and thus serve as unit of an ADPM, which on a reading of chapter note 5(C), clearly classifies them as falling under heading 84.71.60 of the Act.

14. We are not in agreement with the submission made by the learned senior counsel for the Revenue. The primary contention of the respondent is that no one function of the Multi-Functional Machines, even printing, can be seen as predominant. This has clearly been shown to be incorrect on facts, and in light of the submissions by the appellants, there has been no case made out for classification of the goods under the residuary heading 84.79.89. We may also notice that the Tribunal, while considering the decision on which reliance was placed by learned Counsel appearing for the appellants, has stated that those decisions are distinguishable on facts without appreciating that in principle, the case cannot be distinguished.

15. In view of the above, we are of the opinion that the correct classification for the imported Multi-Functional Machines involved in this case, namely models Xerox Regal 5799, Xerox Work centre XD 100 and Xerox Work centre XD 155df should be under Customs Tariff Chapter heading 84.71.60. Accordingly, the appeal is allowed and the order passed by the Tribunal in Appeal No. C/300/2002-B dated 05.11.2002 is set aside. Parties to bear their own costs.