

Xerox Modicorp. Ltd. Vs. Commissioner of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-2000

Reported in : (2001)(130)ELT165TriDel

Appellant : Xerox Modicorp. Ltd.

Respondent : Commissioner of Cus.

Judgement :

1. The appellants imported what they described as "Xerox Document Work Centre 365c" and classified as an output unit of computer under Customs Tariff sub-heading (CTH) 8471.60 in their Bill of Entry dated 5-1-1999 filed for clearance of the goods at Customs. The Assistant Commissioner of Customs assessed the Bill of Entry by classifying the goods under CTH 9009.21. The Commissioner (Appeals) upheld the Assistant Commissioner's decision. Hence the present appeal by the assesseees.

3. We note that the authorities below preferred to classify the goods under CTH 9009.21 by following Rule 3(c) of the General Rules of Interpretation (GRI). Both the lower authorities concurrently found that the imported item had printing, scanning, fax and copying functions incorporated in it. They, however, found none of these functions to be predominant over the others and, therefore, rejected the assesseees' contention that the item was principally and essentially a printer. The lower appellate authority also did not accept as applicable the case law cited by the party, which was the decision of the Tribunal as per Final Order No. 146/99-B, dated 8-12-1999 passed in the same party's case, wherein the imported item was

"Xerox Document Centre DCS 230ST". That authority observed that the said item did not function as a copier.

4. Shri A.R. Madhav Rao, Id. Advocate for the appellants invited our attention to the catalogue pertaining to the imported item, which de-scribed the various functional features of the goods as follows : Ld. Advocate also submitted that, out of the 59 parts of the machine, 35 parts [59%] related to the printing function, 13 parts [22%] related to the scanning function and 11 parts [19%] related to the fax function. 59% of the total number of parts related to the printing function. The product could do printing both in black and colour, the printing speed being 3 ppm (pages per minute), which speed conformed to the industrial standards for printing but was sub-standard for photocopying. Even for copying purposes, the scanner was first used for scanning the original document and then the printer was used for printing the scanned image. In other words, the machine's printing function was used even for its utility as a copier. The product with its inbuilt software etc. was specially designed for connectivity to Automatic Data Processing (ADP) machines through parallel port cables which came with the machine itself. For all these reasons, Id. Counsel submitted, the machine was essentially and principally a printer and it required to be classified under CTH 8471.60 as an input-output unit of ADP machine. He relied, in this connection, on Chapter Note 7 to Chapter 84 of the Customs Tariff as well as Note 5(D) read with Note 5(B)(b) & (c) to the said Chapter. Ld. Advocate also relied on the relevant HSN Explanatory Notes. Counsel also relied on two expert opinions on classification of similar products, given by US authorities. One of these opinions was rendered by the Director, National Commodity Specialist Division, in respect of a machine described as "Xerox Document Work Centre Pro 535" and the same was given in letter dated 26-9-1996, copy of which is available on record.

In the said letter, it was stated that the above machine incorporated features which allowed it to function as a facsimile transceiver, digital scanner, telephone transceiver and local photocopier. It was also stated that the goods incorporated an electrostatic laser print engine, capable of printing ADP output from a central processing unit (CPU) at a rate of four pages per minute. It was further stated that the machine was a composite goods made up of different components which was

described under different provisions of the Harmonised Tariff Schedule [HTS]. Although the device was capable of use as a facsimile transceiver, digital scanner, telephone transceiver and local photocopier, its principal use appeared to be as an output printer for ADP machines. On this basis, it was opined that the D-535 multifunction printer would be classifiable under sub-heading 8471.60.6200, Harmonized Tariff Schedule of the United States (HTS). The other opinion was contained in letter dated 30-7-1997 of the Chief, Metals and Machinery Branch, National Commodity Specialist Division, and the same was in respect of "Canon" CLC 1000, which was also a multifunctional colour laser copier/printer. The machine was capable of printing @ 31 pages per minute. It was opined that CLC 1000 multifunctional colour laser copier/printer appeared to be principally designed for use as a colour printer for ADP systems and networks. The digital copying function was a subsidiary function which also utilised the laser printing components of the product. It was categorically opined that although the device was capable of use as a digital photocopier, its principal use appeared to be as an output printer for ADP machines. On this basis, it was advised that the applicable sub-heading for the product under the Harmonized Tariff Schedule of the United States would be 8471.60.6100. Ld. Counsel pointed out that Legal Note 7 of Section XVI of the HTS of the United States was *pari materia* with Chapter Note 7 to Chapter 84 of the Indian Customs Tariff and that the above expert opinions, based on the aforesaid Legal Note 7 would be applicable to the impugned goods in the instant case, in which the appellants relied on Chapter Note 7 *ibid* and contended that the goods, being multifunctional, required to be classified on the basis of its principal and essential function namely printing. Ld. Counsel, therefore, prayed for setting aside the impugned order and for classification of the goods under CTH 8471.60.

5. Ld. JDR, Shri M.P. Singh submitted that, for classifying the item under CTH 8471.60 as claimed by the party, it should be found to be an input or output unit of computer. The impugned goods could copy documents by scanning and printing. It was essentially a photo-copier and therefore merited classification as such under CTH 9009.21. Though it was connectable to computer, it could not be considered as dedicated printer or scanner for computer. Ld. DR added that a scanner was not exclusively meant for feeding signals to computer. With reference to opinion of

US experts relied on by Id. Advocate, Id. DR submitted that the question of considering such opinion arose only where it was impossible to fix the classification in terms of the Section notes/Chapter notes in the Tariff or with the aid of HSN Explanatory Notes. In the instant case, according to Id. DR, the imported goods could be classified under CTH 9009.21 in accordance with Rule 3(c) of the GRI inasmuch as it was found to be a composite machine having multiple functions none of which, according to him, was predominant over the other functions. In such circumstances, there was no warrant for relying on any expert's opinion, argued Id. DR. On this basis, he prayed for rejecting the present appeal and upholding the classification under 9009.21 as decided by the authorities below.

6. We have carefully considered the rival submissions. We note that it is an undisputed fact that the impugned machine had the functional features of a printer, scanner, fax, copier etc. Both the lower authorities have concurred in this respect. Id. DR has also admitted that the machine is connectable to ADP machines (computers). He has, thus, virtually conceded the position that the imported machine could be used as an output unit for computers, though he has contended that the item was not 'dedicated' as printer for computer. On an examination of CTH 84.71, we find that this Tariff heading nowhere requires a machine to be a 'dedicated' input or output unit for automatic data processing machines for the purpose of classification under sub-heading 8471.60, nor does any HSN note indicate any such requirement. It is sufficient that the machine is capable of being used as output unit for computer. On a careful examination of the catalogue, we find that the machine could be used as a printer for computer vide the following data (including compatibility) given in the catalogue :Print Speed : Up to 8 ppm in black (draft mode) upto 3 ppm in colourResolution : 600 x 600 dpi mono & colourTechnology : InkjetCompatibility : Windows 3.1 /3.11, Win 95/98 and DOSInkjet Cartridges : Colour cartridge included, black cartridge optional As per the uncontroverted materials furnished by the appellants to the Customs authorities in their letter dated 11-8-1999 (available on record) the major part of the machine involves the printing function of the machine. The opinion of the US authorities on similar multifunction devices was also to the effect that the principal use of such machines was as output printer for ADP machines, which justified

classification of such goods under heading 8471.60 of the Harmonized Tariff Schedule of the United States, which corresponds to the Tariff sub-heading 8471.60 of the Indian Customs Tariff. We note that the correctness of the data furnished in the catalogue has not been disputed by Id. DR. It is not in dispute that the functional features of the impugned machine are similar to those of the machines considered by the US authorities.

The US experts' opinion has also not been contested. The description of the machine and its functions as submitted by the appellants' Counsel has also not been materially controverted. We are inclined to accept the evidence of the catalogue coupled with the submissions of the appellants, in holding that the essential and principal function of the imported machine was its printing function, and therefore, by virtue of Note 7 to Chapter 84 of the Tariff, the machine could only be classified under CTH 8471.60. We would also take aid from the US experts' opinion with regard to similar machines in this context.

7. We have also perused the Tribunal's Final Order dated 8-12-1999 relied on by the appellants, which held that "Xerox Document Centre DCS 230ST" was classifiable as a printer under CTH 8471.60 as claimed by the importer and not under CTH 8479.89 as held by the Commissioner (Appeals). In that case, it was contended, inter alia, by the Revenue that the goods in question could function as a digital copier and hence could be classified under CTH 84.79. The lower appellate authority held the Tribunal's decision to be inapplicable to the facts of the present case on the ground that the item covered by the above order did not function as a copier. We are unable to sustain this reasoning of the Commissioner (Appeals) inasmuch as it was the definite case of the Revenue in that case that the impugned goods could function only as a digital copier. The Tribunal found that the impugned goods was of a kind principally used in an ADP system and hence was classifiable under CTH 8471.60. The Bench relied on Chapter Note 5(D) to Chapter 84 of the Tariff. Though, in the cited case, the dispute was whether to classify the impugned goods under CTH 8471.60 or under CTH 8479.89, we have the advantage of relying on that decision for the parameters for classifying goods (like the one involved in the instant case) under CTH 8471.60.

8. In view of the above findings, the impugned order cannot be sustained. The appellants' machine requires to be classified as an output unit for computer under sub-heading 8471.60 of the Customs Tariff as claimed by them and not as photocopier under sub-heading 9009.21 as decided by the lower authorities. Accordingly, we allow this appeal by setting aside the impugned order.

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