ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 27.06.2025

CESTAT Bangalore Quashes Anti-Dumping Duty on CD-R Imports

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore, has quashed the anti-dumping duty demand raised against *Hi-Tech Computers*, Hubli, on the import of CD-Rs from China. This decision aligns with the landmark Supreme Court ruling in *Commissioner of Customs, Bangalore vs. G.M. Exports*, reinforcing the legal position that anti-dumping duty cannot be imposed during the interregnum between expiry of provisional duty and the issuance of final duty notification.

Case Background

Hi-Tech Computers had imported Compact Disc – Recordable (CD-Rs) of Carbon brand from China on 24.04.2007. These imports were deemed liable for anti-dumping duty under Notification No. 105/2006-Cus dated 06.10.2006.

Subsequently, the customs department confirmed a duty liability of ₹6,64,208 along with applicable interest under Section 18(2)(a) and 18(3) of the Customs Act, 1962. The Commissioner (Appeals) upheld the original order by citing both Notification No. 105/2006 and the final Notification No. 78/2007 dated 29.06.2007, applying the anti-dumping duty retrospectively.

Key Issue: Interregnum Period Between Provisional and Final Notification

The main dispute was whether anti-dumping duty could be legally demanded for imports made between:

- Expiry of the provisional anti-dumping notification (issued on 06.10.2006), and
- Issuance of final anti-dumping notification (dated 29.06.2007).

The imports in question occurred between 06.04.2007 and 28.06.2007 — precisely during this "interregnum" period.

Appellant's Argument

The counsel for Hi-Tech Computers relied on the binding precedent set by the Supreme Court in G.M. Exports (2015 (324) ELT 209 SC). The apex court had categorically held that anti-dumping duty cannot be imposed retrospectively during the gap between provisional and final notifications, as it would violate both:

- Rule 13 (limiting the validity of provisional duty to six months), and
- Rule 20(2)(a) of the Anti-Dumping Rules under the Customs Tariff Act, 1975.

Revenue's Position and CESTAT's Observations

The department initially supported the duty demand based on the retrospective language of the final notification. However, during the hearing, the Authorised Representative conceded that the issue had been settled by the Supreme Court in favour of importers.

- The Kerala High Court ruling, earlier relied on by the Commissioner (Appeals), had been overruled by the Supreme Court.
- The Supreme Court's interpretation of Rules 13 and 21 makes it clear that no anti-dumping duty is leviable during the interim period unless explicitly provided by law.

Accordingly, the CESTAT held that the duty demand was illegal and unsustainable.

Outcome

- The Commissioner (Appeals)'s order was set aside.
- Appeal was allowed in full, relieving the appellant from any anti-dumping duty liability.

Legal Significance of the Judgment

This ruling reinforces the principle that:

"Anti-dumping duty cannot be imposed retrospectively to cover the gap between a provisional and final notification unless specifically authorized by statute or WTO-compliant rules."

It upholds importers' right to legal certainty and restricts arbitrary retrospective duty demands. This decision is expected to have far-reaching implications for similar disputes across India.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Bangalore

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COURT-2

Customs Appeal No. 1285 of 2012

[Arising out of the Order-in-Appeal No.54/2014 dated 21.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.]

M/s. Hi-Tech Computers **....Appellant**
No.5, T. B. Road, Deshpande Nagar,
Hubli – 580 029.
Karnataka

Vs.

The Commissioner of Customs **....Respondent**
C.R. Building,
P.B. No.540,
Queens Road,
Bangalore – 560 001.

Appearance:

Mr. Vikas, Advocate **....For Appellant**

Vs.

Mr. K. A. Jathin,
Dy. Commissioner (AR) **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 06/09/2023

Date of Decision: 14/09/2023

FINAL ORDER No. 20940 of 2023

Per R. BHAGYA DEVI:

The appellant, Hi-Tech Computers, filed Bill of Entry No.143982 dated 24.4.2007 for clearance of Compact Disc – Recordable (CD-R) of carbon brand. These goods were imported

from China were liable for Anti-Dumping duty as per Customs Notification No.105/2006 dated 6.10.2006. Accordingly, the Original Authority confirmed an amount of Rs.6,64,208/- along with interest as per Section 18(2)(a) and (3) of Customs Act, 1962. The Commissioner (A) upheld this order in terms of Customs Notification No.105/2006 dated 6.10.2006 read with Notification No.78/2007 dated 29.06.2007.

2. The learned counsel on behalf of the appellant submitted that the matter stands settled vide Hon'ble Supreme Court's decision in the case of **Commissioner of Customs, Bangalore vs. G.M. Exports: 2015 (324) E.L.T. 209 (S.C.).** The Authorised Representative for the Revenue accepts that the issue stands settled.

3. The issue in dispute is whether Anti-dumping duty imposed with respect to imports made during the period between the expiry of the provisional Anti-dumping duty and the imposition of the final Anti-Dumping duty is legal and valid. The appellants imported the said goods from 6.4.2007 to 28.6.2007. The provisional Anti-dumping duty was imposed on CD-R vide Notification No.105/2006 dated 6.10.2006, which is reproduced hereinbelow:

Notification No.105/2006-Cus. dated 6.10.2006

Anti-dumping duty on Compact Discs-Recordable (CD-Rs), originating in, or exported from People's Republic of China, Hong Kong, Singapore and Chinese Taipei

Whereas, in the matter of import of Compact Discs-Recordable (CD-Rs, hereinafter referred to as the subject goods), falling under tariff item 8523 90 50 of the First Schedule to the

Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from the People's Republic of China, Hong Kong, Singapore and Chinese Taipei (hereinafter referred to as the subject countries), the designated authority, in its preliminary findings vide notification No. 14/15/2005-DGAD dated the 28th August, 2006, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 28th August, 2006, has come to the conclusion that –

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and has recommended imposition of provisional anti-dumping duty on all imports of the subject goods originating in or exported from, the subject countries;

Notification No.78/2007 dated 29.06.2007

Anti-dumping duty on Compact Discs-Recordable (CD-Rs), originating in, or exported from People's Republic of China, Hong Kong, Singapore and Chinese Taipei

Whereas, in the matter of import of Compact Discs-Recordable (CD-Rs) (hereinafter referred to as the subject goods), falling under sub-heading 8523 40 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from the People's Republic of China, Hong Kong, Singapore and Chinese Taipei (hereinafter referred to as the subject countries), the designated authority, in its preliminary findings vide notification No. 14/15/2005-DGAD dated the 28th August, 2006, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 28th August, 2006, had come to the conclusion that, -

……
……

2. **The anti-dumping duty imposed under this notification shall be levied with effect from the date of imposition of the provisional anti-dumping duty**, and shall be payable in Indian currency.

The Final Notification No.78/2007-Cus. dated 29.06.2007 as reproduced above stated that the Anti-dumping duty imposed under this Notification shall be levied with effect from the date of imposition of the provisional Anti-dumping duty and shall be paid in Indian currency, therefore, based on these two Notifications, the Commissioner (A) was right in imposing and demanding Anti-dumping duty from the appellant during the intervening period of provisional Anti-dumping Notification and final Anti-dumping Notification. He had rightly relied on the decision of the Hon'ble

High Court of Kerala order dated 15.7.2009 as reported in 2010 (253) E.L.T. 734 (Ker.). This order of the Hon'ble High Court of Kerala along with other appeals was before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 23.09.2015 in the case of **Commissioner of Customs, Bangalore vs. G.M. Exports: 2015 (324) E.L.T. 209 (S.C.)**, after elaborating Section 9A(6) of the Customs Tariff Act, the Customs Tariff (Identification, Assessment and Clearance of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 held that:

> **"46.** We also find force in the submission of learned counsel for the assessees that the revenue's construction of Rule 20 would achieve indirectly what cannot be achieved directly, having regard to the mandatory language contained in Rule 13 second proviso. Here again a simple example would suffice. Say the provisional duty is levied at the rate of Rs. 50/- PMT and comes to an end after 6 months. 6 months later, a final duty is imposed again at the same rate of Rs. 50/- PMT with effect from the date of levy of the provisional duty. If learned counsel for the revenue were right, Rs. 50/- PMT could be recovered under Rule 20(2)(a) for the interregnum period as well which would, in effect, destroy the scheme of Rule 13 second proviso by extending the period of the provisional duty notification beyond a period of 6 months, which clearly cannot be done. We find therefore that on all these counts, the arguments of revenue cannot be countenanced.
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> **49.** The High Court goes on to state that the construction suggested on behalf of the assessee would lead to a manifest absurdity as there would be no reason or justification to hold that the levy of anti-dumping duty must sustain a break during the period between the expiry of the provisional duty notification and the issuance of a notification imposing a final anti-dumping duty. The High Court went on to hold that the object and purpose underlying Section 9A would be defeated, as for the interregnum period where both dumping and material injury to domestic industry are found, no anti-dumping duty can be issued. This conclusion again cannot be countenanced for the simple reason that if Rule 20(2)(a) were to be construed in the fashion suggested by the High Court, it would be *ultra vires* Section 9A for the reasons already given by us. Further, the object and purpose of Section 9A is to impose an anti-dumping duty in consonance with the WTO Agreement, which Section 9A gives full effect to. These basic points have been missed by the High Court in arriving at the aforesaid finding. Further, the High Court fails to give due importance in its judgment to Rules 13 and 21. We have already seen how Rule 21(1) envisages precisely the situation

> spoken of by the High Court, and yet states that, in the circumstances mentioned therein, despite dumping and material injury to the domestic industry, differential duty cannot be collected from the importer. In fact, the High Court goes on to say that the expression "imposed and collected" in Rule 21, not being there in Rule 20(2)(a), cannot therefore be imported into the said sub-rule, so that "levied" cannot mean "imposed and collected". We have already held, in view of our construction of Rule 20(2)(a), that this need not be gone into. What has been missed by the High Court is that the expression "levied" has to be understood as "levied" under Rule 13 and once this is so, it becomes clear that such levy cannot exceed a period of 6 months or a maximum period of 9 months, as the case may be."

4. The apex court held that anti-dumping duty during the interregnum between the expiry of a provisional duty notification and the imposition of a final anti-dumping duty not to be levied and accordingly set aside the orders of Hon'ble High Court of Kerala and Mumbai, which was relied upon by the Commissioner (A) in the impugned order.

5. In view of the above apex court's judgment, the impugned order is set aside and the appeal is allowed.

(Order pronounced in open court 14.09.2023.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

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