
(2023) 07 CESTAT CK 0039

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40478 Of 2014

Commissioner Of Customs

APPELLANT

Vs

M/S.First Engineering Plastics India Pvt. Ltd

RESPONDENT

Date of Decision : 24-07-2023

Acts Referred:

Citation : (2023) 07 CESTAT CK 0039

Hon'ble Judges : Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : R. Rajaraman, Dr. S. Krishnanandh

Final Decision : Dismissed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that that the respondent filed Bill of Entry for import of used and second hand Injection Moulding Machine / Star Robotic Arm under EPCG Scheme against Notification No.102/2009- dt. 11.09.2009. Since the goods were second hand and used, these were subjected to first check examination and the value was appraised by the Chartered Engineer as USD 1,18,650 FOB against the declared value of USD 94,195 FOB derived from the estimated value of the new machinery as on the year of manufacture. The valuation of the Chartered Engineer was accepted by the department. Further, it was noticed by the department that injection moulding machine exported / originated from China attracts Anti Dumping Duty (ADD) at the rate of 174% as per the provisions of Sl.No.13 of Customs Notification No.39/2010 dt. 23.03.2010. The same was informed to the importer and accordingly the Bill of Entry was assessed. The respondent filed appeal against such assessment contending that such goods are used and second hand and anti-dumping duty cannot be levied. The Commissioner (Appeals) vide order impugned herein held that the goods being used and second hand goods levy of Anti Dumping Duty (ADD) is not attracted. It was also noted that in a similar a case in C.Cus.No.103/2010 dt. 01.02.2010 in

respect of an appeal filed by M/s.Trinity Exporters the order to levy ADD on second hand machinery was set aside. Aggrieved by the order passed by Commissioner (Appeals), the department has filed the present appeal.

2. Ld. A.R Sri R. Rajaraman appeared and argued for the Department. It is submitted that under the Customs Tariff Act, 1975, the duty leviable on used and new goods is the same and the Act does not differentiate between used and new goods for levying duty. The Commissioner (Appeals) has set aside the demand of ADD observing that such duty cannot be levied on old goods but can be levied only on the import of new goods. The Commissioner (Appeals) has relied upon the decision in the case of M/s.Trinity Exporters wherein the duty demand of ADD was set aside on second hand Injection Moulding Machine. Ld. A.R prayed that after considering the grounds of appeal, the appeal may be allowed.

3. Ld. Counsel Dr. S. Krishnanandh appeared and argued for the respondent. It is submitted that the Commissioner (Appeals) has referred to the decision in the case of Trinity Exporters wherein the demand of ADD on second hand machinery was set aside by the Commissioner (Appeals). The department had filed appeal against the order of Commissioner (Appeals) before the Tribunal and vide order as reported in 2019 (369) ELT 1076 (Tri.-Chennai) the order passed by the Commissioner (Appeals) setting aside the ADD was upheld by the Tribunal. Ld. Counsel argued that the Commissioner (Appeals) has rightly considered the issue and held that there is no provision for levy of ADD on second hand Injection Moulding machine though it originates from China. It is prayed that the appeal may be dismissed.

4. Heard both sides.

5. The issue that arises for consideration in this appeal is whether Anti Dumping Duty (ADD) is leviable on the used and second hand injection moulding machine imported / originated from China. It is not disputed that the goods imported are used and second hand goods. The Chartered Engineer who examined the goods apprised the value which has been accepted by the department. The value has been filed on the basis of estimation of the new product. Merely because the value is based on a new product originated from China, it cannot be said that the second hand goods is subject to levy of ADD. The ADD is levied to protect domestic industry. The findings in respect of an investigation for levy of ADD are in regard to manufacture / price of new machinery. It cannot be said that the manufacturers of new machine will suffer material injury due to import of second hand and used machine. The Tribunal in a similar issue in the case of Trinity Exports observed as under :

"11. In this background, it is evident that the Anti-dumping measures are targeted at goods which are dumped by a foreign country and as a resultant, the domestic industry is adversely affected. Obviously, the domestic industry would only be concerned about the products that it releases into the market, namely, the new items thereof and not the second-hand sales of the products that they

have sold earlier. Comparison has to be of two comparables, namely, of new domestic products against new imported goods, as there cannot be a comparison between new domestic output and second-hand imported goods. Once we recognize that the basic purpose of the ADD is to serve as a price leveller to protect the domestic industry, we find that the same intent and purpose is served even in case of second-hand machinery imports by way of reappraisal of the declared value, based on the present condition of the imported item, by the Chartered Engineer.

12. The proposition of the Ld. AR is that after second-hand machinery has been re-appraised by such Chartered Engineer and its value enhanced, it should now be considered as a new machine and ADD imposed. This in one view does not make legal sense. Reappraisal of second-hand machinery and enhancement of its value, and imposition of Anti-dumping duty on top of that, is nothing but double jeopardy, if not an overkill. We are therefore of the considered opinion that the import of second-hand machinery cannot be subjected to imposition of Anti-dumping duty by the particular notification, which evidently would only be applicable for the import of new machinery or goods listed therein.

13. It is also pertinent to note that the impugned machinery in question had been manufactured in 2007 and it was first exported to South Africa from where it has made its circuitous journey back to this country. The Anti-Dumping Duty Notification which came about in 2009, cannot be back-pedalled to be imposed on goods which have been manufactured and exported in 2007 from a particular country."

5. After appreciating the facts and following the above decision, we are of the considered opinion that there are no grounds to interfere with the impugned order. The same is sustained. The appeal is dismissed being devoid of merits.