IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI

Appeal No. C/758/2011

Arising out of Order-in-Original No. 65/2011/CC(I) JNCH, Dated: 18.10.2011
Passed by Commissioner of Customs (Imports), Nhava Sheva

Date of Hearing: 25.01.2019
Date of Decision: 25.01.2019

MAHARAJA WHITELINE INDUSTRIES LTD
VILL. MALKUMAJRA, PARGANA DHARAMPUT
NALAGARH, SOLAN (HP)

Vs

COMMISSIONER OF CUSTOMS (I)
N.S. JNCH, POST URAN, DT. RAIGAD
SHEVA-400707

Appellant Rep by: Shri Rohan Shah with Ms Divya Jaswant & Shri Satabdi Chatterjee, Advs.
Respondent Rep by: Ms P V Sekhar, AR

CORAM: D M Misra, Member (J)
Sanjiv Srivastava, Member (T)

Cus - Assessee had filed B/E for clearance of imported goods declared as *"Component of Injection Moulding Machine"* shipped from China by M/s Tederic Machinery Manufacturing (Co) Ltd. - The imported goods were examined with Assistance of representatives of chartered Engineers M/s Intertek Testing Services India Pvt Ltd and it was found that the goods were essentially six sets of Injection Moulding Machine without clamping units and they have been imported in SKD condition - Since mere absence of clamping unit would not effect the classification of the goods, which are in SKD condition, by application of Rule 2(a) of the General Rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, for the purpose of assessment the goods were treated to be complete machine classifiable under heading 8477.10.00 of Customs tariff - As per notfn 39/2010-Cus, anti dumping duty is leviable on injection moulding machine classifiable under CTH 8477.10.00 imported from China and having clamping force between 40 tons to 1000 tons - As per S No 6 of the said Notification, anti dumping duty @ 68% of CIF value is imposed on injection moulding machines imported from M/s Hangzhou Tederic Machinery Co Ltd - As per the manufacturers catalogue and also admitted by importer the three models imported were having clamping force of 320 Tons, 500 Tons and 650 Tons - Since assessee is not pressing any point taken in appeal and do not wish to claim the goods, Tribunal do not pass order on the merits - The goods covered by B/E have been confiscated and assessee have been allowed the option to redeem on payment of redemption fine - The impugned order is upheld: CESTAT

Appeal dismissed

Case law cited:

Fortis Hospital Ltd - 2015-TIOL-57-SC-CUS... Para 3.2

FINAL ORDER NO. A/85717/2019

Per: Sanjiv Srivastava:

This appeal is directed against order in original No 65/2011/CC(I) JNCH dated 18.10.2011 of the Commissioner Customs (Import) JNCH Nhava Sheva. By the said order Commissioner has held as follows:

i) I order classification of goods under CTH 84771000 of Customs Tariff

ii) I confirm the SADD of Rs 73,86,295/- (Rupees Seventy Three Eighty Six Thousand Two Hundred and Ninety Five only) as demanded in the SCN.

iii) I confiscate the goods valued at Rs 1,09,70, 820/- under Section 111(m) of the Customs Act, 1962. However, I allow redemption of the same on payment of Rs 11,00,000/- (Eleven Lakhs only).

iv) I impose a penalty of Rs 5,00,000/- (Rs Five Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s Maharaja Whiteline Industries. Penalty under Section 114A and 114AA is not applicable in the present case .

v) I do not impose any penalty on Managing Director, Vice President and Manager of the firm as per discussions above.
2.1 Appellants had filed B/E No 681816 dated 25.01.2011 for clearance of imported goods declared as "Component of Injection Moulding Machine" shipped from China by M/s Tederic Machinery Manufacturing (Co) Ltd. The declared value being US $ 238206.10 CIF.

2.2 The imported goods were examined with the Assistance of representatives of chartered Engineers M/s Intertek Testing Services India Pvt Ltd and it was found that the goods were essentially six sets of Injection Moulding Machine without clamping units and they have been imported in SKD condition. Since mere absence of clamping unit would not effect the classification of the goods, which are in SKD condition, by application of Rule 2(a) of the General Rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, for the purpose of assessment the goods were treated to be complete machine classifiable under heading 8477.10.00 of Customs tariff.

2.3 As per notification No 39/2010-Cus dated 23.03.2010. anti dumping duty is leviable on injection moulding machine classifiable under CTH 8477.10.00 imported from China and having clamping force between 40 tons to 1000 tons. As per S No 6 of the said Notification, anti dumping duty @ 68% of CIF value is imposed on injection moulding machines imported from M/s Hangzhou Tederic Machinery Co Ltd (Now known as Tedric Machinery Manufacturers (China) Co Ltd). As per the manufacturers catalogue and also admitted by the representatives of importer the three models imported were having clamping force of 320 Tons, 500 Tons and 650 Tons.

2.4 A show cause notice was issued to the appellants calling them to show cause as to why:-

(i) the value of the individual parts imported under Bill of Entry No 681816 dated 25.01.2011 and as declared in the said Bill of Entry should not be rejected and the consignment be assessed as "ix sets of complete injection moulding machines without clamping unit" and total assessable value of the consignment should not be taken as Rs 1,09,70,820.15 instead of individual value of parts as declared in the bill of entry.

(ii) The goods imported under Bill of Entry No 681816 dated 25.01.2011 should not be classified under Tariff Item No 8477.10.00 of the Customs Tariff.

(iii) The goods imported under Bill of Entry No 681816 dated 25.01.2011 not be held liable to anti dumping duty amounting to Rs. 73,86,295/- @ 68% of the CIF value, as per S No 6 of the Notification No 39/2010-Cus dated 22.03.2010..

(iv) The goods imported under the Bill Of Entry No 681816 dated 25.01.2011 having total assessable value of Rs 1,09,70,820.15 should not be held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

v. M/s Maharaja Whiteline Industries Ltd., its Managing Director, Shri Harish Kumar, Shri S P Jaiswal, Vice President and Shri Gopal Krishnan Manager (Import) should not be held liable to penalty under section 112(a) and/ or 114AA of the Customs Act,1962.
2.5 This show cause notice was adjudicated by the Commissioner by his order as referred to in para 1, supra. Aggrieved by the order of Commissioner, appellants have filed this appeal.

3.1 We have heard Shri Rohan Shah, Advocate for the Appellants and Ms P V Sekhar Joint Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the Appellants learned Counsel submitted that with the passage of time the goods confiscated have become junk and they do not wish to claim the same. Since they are not redeeming the goods in view of the decision of Hon'ble Apex Court in case of *Fortis Hospital Ltd [2015 (318) ELT 551 (SC)] = 2015-TIOL-57-SC-CUS* redemption fine and anti dumping duty confirmed against the said goods is not required to be paid by them. In fact since the goods would not be cleared by them there would be no liability towards payment of customs duty. He asserted that since appellants do not intend to claim the goods they are not pressing any point taken in the appeal filed.

3.3 Learned Authorized representative reiterated the findings of Commissioner.

4.1 We have considered the submissions made during the course of arguments and the impugned order.

4.2 Since appellants are not pressing any point taken in the appeal and do not wish to claim the goods, we are not passing order on the merits of the case.

4.3 The goods covered by the B/E No 681816 dated 25.01.2011 have been confiscated and appellant have been allowed the option to redeem on payment of redemption fine. Hon'ble Supreme Court has in case of *Fortis Hospital Ltd [2015 (318) ELT 551 (SC)] = 2015-TIOL-57-SC-CUS* held as follows:

"18. As already mentioned above, Section 124 deals with confiscation of goods and penalty and does not deal with payment of import duty. No doubt, such a payment of import duty becomes payable by virtue of sub-section (2) of Section 125 but only when condition stipulated in the said provision is fulfilled, namely, fine is paid in lieu of confiscation of goods. When the Department chose to take action under Section 124 of the Act, it should have been alive of the situation that the Noticee may not exercise the option and in such case, duty would not be payable automatically.

"19.It is not that the Department is without any remedy. We have gone through the provisions of Notification No. 64/88, dated 1-3-1988. As pointed out above, importer would be exempted from payment of import duty on hospital equipment only when the conditions contained in the said notification are satisfied. Some of the conditions, as pointed out above, are to be fulfilled in future. If that is not done and

the importer is found to have violated those conditions, show cause notice could always be given under the said notification on payment of duty, independent of the action which is permissible under Section 124 and Section 125 of the Act. It is also important to mention that under certain circumstances mentioned in the notification, the importer can be asked to execute a bond as well. In those cases, action can be taken under the said bond when the conditions contained therein are violated. Therefore, if the Department wanted the Institute to pay the duty, which may have become payable, it could have taken independent action; de hors Section 124 of the Act, for payment of duty, simultaneously with the notice under Section 124 of the Act or by issuing composite notice for such an action. No doubt, it could have waited for option to be exercised by the Institute under Section 125(1) of the Act as well and in that eventuality, duty would have automatically become payable under Section 125(2) of the Act. But when such an option was not exercised, it could have taken separate and independent action by issuing show cause notice to the effect that the Institute had violated the terms of exemption notification and therefore, was liable to pay duty.

20.What is emphasised is that when in the show cause notice issued under Section 124, nothing was stated about the payment of import duty, there could not have been direction to that effect in the final order. Further, insofar as Section 125(2) is concerned, the contingency contained therein did not occur in the present procedure for want of exercise of option to pay fine. We, thus, are of the opinion that the view taken by the CESTAT is correct and the contrary view taken by the High Court in the impugned judgment is not warranted on the interpretation of Section 125(2) of the Act."

5.1 In view of discussions as above we uphold the impugned order and dismiss the appeal.