Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10288 of 2022 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-310-21-22 dated 07/03/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

AMANTA HEALTHCARE LIMITED ....**Appellant**
5th Floor Heritage
Nr Gujarat Vidyapith Off Ashram Road
Ahmedabad, Gujarat

VERSUS

Commissioner of Customs-MUNDRA ......**Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

APPEARANCE:
Shri Vipul Khandhar, Chartered Accountant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 11550/2024

DATE OF HEARING: 30.04.2024
DATE OF DECISION: 12.07.2024

RAMESH NAIR

The brief facts of the case are that the appellant has filed one Bill of Entry No. 8080727 dated 04.07.2020 for clearance of 01 No. Injection Stretch Blow Moulding Machine. The import was made from China and the goods as per certificate of origin were also of Chinese Origin. As per Notification No. 57/2015-Customs(ADD) dated 04.12.2014, anti-dumping duty (ADD) @29% of landed value was applicable on plastic processing or injection moulding machines falling under Tariff heading 84771000, having clamping force equal to or more than 40 tonnes and equal to or less than 1000 tonnes. Accordingly, Ld. Additional Commissioner vide Order-In-Original No. MCH/ADC/AK/56/2020-21 dated 31.08.2020 rejected the classification declared by the Appellant under Chapter heading 84773000 and re-classified the said machine under Chapter heading 84771000; ordered to impose ADD @29% under S.No. 1 of the Notification No. 57/2015- Customs (ADD). He also ordered for confiscation of the machine valued at Rs. 2,84,78,876.10 under Section 111(m) with an option to redeem the same on payment of redemption fine of Rs. 20,00,000/- under Section 125; and imposed a penalty of Rs. 10,00,000/- under Section 112(a) of the Customs Act. Being aggrieved with the order, Appellant filed appeal before the Commissioner (Appeals).

1.1 By the impugned order-in-appeal dated 07.03.2022, the Commissioner (Appeals) rejected the appeal filed by the Appellant. Hence, the Appellant filed present appeal before this Tribunal.

2. Shri Vipul Khandhar, Learned Chartered Accountant appearing on behalf of the Appellant submits that under Common heading 84.77 there are the 2 distinct sub-heading:-

1. 8477 10/8477 10 00 – Injection-moulding Machines.
2. 8477 30/ 8477 30 00- Blow Moulding Machines.

For both the sub-headings the heading is the same 84.77 meaning that the 2 sub-heading wise distinct goods do not fall under two or more headings; but fall under respective two sub-heading as different goods and not as the same goods under two or more headings or even sub-headings in HSN/CTA, 1975. IMM and BMM fall under sub-heading 8477 10 and 84 7730 respectively.

2.1 He further submits that the General Rules for interpretation of the schedule, Rule 3(a) applies only when the same (and not different) goods are classifiable under two or more headings, if there is case, like the present one, when different and not the same goods are classifiable only under one heading (and not two or more) i.e. under the same heading but classifiable under two or more different sub-heading there under, then also the General Rules, Rule 6 applies and not General Rules, Rule 3(a) provided the same goods are classifiable under two or more sub-headings at the same level.

2.2 He also submits that both the sub-heading 84771000 and 84773000 description are distinct equally specific; none is most specific or more general. Each is most specific and distinct, one as IMM (which does not fall under two or more sub-headings) and the other is BMM (which also does not fall under two or more sub-headings.) The IMM or the BMM are classifiable under two or more sub-headings; IMM is classable only under 8477 10 and BMM only 8477 30. There is case of two machines fitted together forming a whole, part of which is IMM and the remaining BMM known as ISBMM which requires to be classified either under IMM sub-heading or BMM sub-heading depending on the most specific or more general description in the sub-heading but solely on principal function or the clearly defined function- whether Injection Moulding or Blow Moulding when both the features are present in a combination.

2.3 He further submits that it is permissible to claim that the ISBMM is classifiable under 847710 or 847730 (same goods –two conflicting sub-headings) but then the determination can never be on the false notion that 847710 Injection Moulding Machines is most specific and 847730 Blow Moulding Machines more general –both are most specific. Since there are no goods falling under two or more heading at the same level but there are two sub-headings each equally specific and none being most specific or more general but both being most specific and the goods being a composite integrated whole machine of items of two sub-headings the only scope left, for correct classification determine, is to resort the relevant Section or Chapter Note and Explanatory Notes.

2.4 He also submits that in the ISBMM the principal and the clearly defined and the sole function is emergence of the required end product the empty 100ml or 550ml Infusion hollow bottle with a welded hanger out of a blow mould and not out of an injection mould. There is nothing likely only on or only primary function of injection moulding and nothing else; there is proof that there is one function of injection moulding and the second function of blow moulding none being primary or secondary but complementary and sequential in tandem in continuing series of operation of IM and BM carried out together in a composite machine. The assessing authority has ignored the substance and picked only a part of the composite machine to suit his purpose. The Assessing Authority ought not to have ignored the fact that there is a composite machine and therefore, the said statutory Section and the Chapter Notes have to be applied in all earnestness. On the contrary the Assessing authority was duty bound to refer the Notes, apply the same and then determine whether the notes otherwise do not require the application of the GRI Rule 2 to 6 sequentially.

2.5 He also submits that the determination is based on its injection portion clamping force above 40 tonnes specification which is a specification not in the Tariff but especially for the purpose of applicability or not of the said ADD Notification and not a Tariff Entry. The Notification excludes from its scope and applicability of IMMs below 40 and above 1000 tonnes clamping force and also blow moulding machine, vertical injection moulding machine and certain other moulding machines. A description and specification given in a ADD Notification is not a tariff entry, description and specification in a Notification does not offer any criteria for determining the correct classification. Thus, for the ISBMM, based on its principal and clearly defined function, of production of the fillable and sealable empty hollow IV Fluids infusion bottles of 100ml and 500ml capacity through a combined uninterrupted operation of first injection moulding followed by blow moulding then by application of Tariff section XVI Notes 3 and 4 and Chapter 84 Note 7 the said disputed ISBMM squarely falls only under Heading 8477 sub-heading 847730 and Tariff Entry 84773000 (BMM) and therefore not covered by the said ADD Notification 57/2015- Cus. dtd. 04.12.2015 which applies only to certain specified IMMs and specifically excludes BMMs.

2.6 He also argued that regarding the applicability of the Anti dumping duty on item No. 1 i.e. Injection Stretch Blow Molding Machine Model GZ-D 750 FSIII, the department stated that to tonnage of the machine is an importer declaration which the appellant has failed to declare at the time of filing of the documents and have intentionally attempted to avoid the payment of Anti dumping Duty on the goods in terms of Section 17 of the Customs Act, 1962. If as per the Section 28(1)(b)(i) or (ii) read with Section 28(2) post import clearance (upto 2 years) no notice is mandated to be served though duty not paid, short paid is fully recovered there is no question of misdeclatation and consequential penalty as far as the incorrect self-provided, that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria. However, on contrary the self-assessment is correct and not all incorrect.

The only thing that is incorrect is the perception and the belief only in the mind of the Assessing authority that though the Imported machine is an ISBMM yet because only the clamping force of its injection molding section was selectively inquired into without any detailed examination it is still to be classified as ISBMM but under sub-heading 847710 pertaining to IMM. The Appellant was even compelled to seek from the DGFT a change of the HS code to 847710 from 847730 in the relevant EPCG Authorization. The allegation does not survive as there is no change made in the BE, except the disputed change of Tariff Entry, which is interpretational and does not call for any allegation, confiscation, imposition of penalty and fine.

3. On the other hand Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the grounds of impugned order.

4. Heard both sides and perused the records.

4.1 We find that the Appellant imported the Injection Stretch Blow Moulding Machine (ISBMM) from China and claimed the classification of the goods under tariff entry 84773000. The contention of Revenue is that the machine in question is classified under tariff entry 84771000 which covers "Injection Moulding Machines". Hence liable for Anti-Dumping Duty under Notification No. 57/2015-Cus (ADD) dated 04.12.2015. In order to address the dispute, the rival tariff entries are reproduced as under :-

8477 10 00	- Injection-moulding machines
8477 30 00	- Blow moulding machines

4.2 As can be seen from the above relevant tariff heading, the heading 84771000 deals with the Injection Moulding Machines and 84773000 deal with blow moulding machine. As per the submission of the Appellant, the disputed machine is a composite machine i.e two machines fitted together forming a whole, part of which is Injection Molding Machine (IMM) and remaining part is Blow Moulding Machine (BMM). As per revenue appellant is engaged in manufacture of pet preform through the function of injection moulding and the impugned machine has a primary function as injection mouding machine. Hence, classification of the impugned machine is under Tariff entry 8477 1000.

4.3 We have also gone through the Chartered Engineer Certificate submitted by the Appellant before the department. The Chartered Engineer in his certificate dated 20.07.2020 certified that from technical perspective, this Injection Stretch Blow Moulding Machine (84773000) is different than the Injection Moulding Machine (84771000). The said Injection Stretch Blow Moulding will be used for the development of IV Fluid containers which is being used in Pharmaceutical Industry. In Injection Stretch Blow Molding machine is able to process high quality and high clarity bottles from the polymers. In this machine the polymer (Plastics) first melted at high Temperature inside the melting zone and then the said polymer in molten conditions injected into the mould to develop the preform. The said preform which is residing in the mould of the machine is then inflated with air pressure and simultaneously stretched to desired length to develop the IV fluid bottles with hanger. The process of injection molding and inject stretch blow moulding are totally different. The said machine, the firm has imported is having a technical feature of simultaneous stretching and blow moulding, which is absent in Injection moulding machine. In Injection moulding machine, the moulds can be fastened either vertical or horizontal to develop the moulds. Due to this feature, the machine is able to produce the IV fluid bottle with 'hanger' attached to it.

4.4 We find that operation of the machine i.e ISBMM and IMM are not the same. Clearly, the ISBMM machine imported by the Appellant is a composite machine comprising of IMM and BMM and cannot be classified under tariff entry 84771000.

4.5 Further Section XVI Notes 3 and 4 which is relevant in this matter read as under :-

> *"3.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.*
>
> *4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."*

4.6 Further Chapter 84 Note 7 provide as under :-

> *"7. A machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose. Subject to Note 2 to this Chapter and Note 3 to Section XVI, a machine, the principal purpose of which is not described in any heading or for which no one purpose is the principal purpose is, unless the context otherwise requires, to be classified in*

> *heading 8479. Heading 8479 also covers machines for making rope or cable (for example, stranding, twisting or cabling machines) from metal wire, textile yarn or any other material or from a combination of such materials"*

4.7 A perusal of above Notes indicates that where composite machines consisting of two or more machines are used to perform complementary or alternative function, the composite machine is to be classified under the heading of 'machine' which performs the principal function. In the instant case ISBMM being a composite machine comprising of IMM and BMM producing in end a Blow Moulded empty hollow 100ml or 500ml capacity bottle to hold pharmacopeia IV Fluid for infusion to patients in hospitals and the clearly defined function of the combination machine is Blow Moulding which is to be considered as the sole function. Therefore we have no hesitation in holding the classification of imported goods i.e. Injection Stretch Blow Moulding machine (ISBMM) under tariff heading 84773000.

5. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any as per law.

(Pronounced in the open court on 12.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha