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

REGIONAL BENCH- COURT NO. 3

CUSTOMS Appeal No. 10257 of 2019-DB
(Arising out of OIO-AHM-CUSTM-000-COM-026-18-19 Dated-31.10.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Ms Huarong Plastic Machinery India Plastic Ltd. .....Appellant
M/S Huarong Plastic Machinery India Pvt Ltd, Plot No 7611/C,
Phase-Iv, Gidc, Vatva, Plot No 7611/C, Phase-Iv, Gidc, Vatva
Plot No 7611/C, Phase-Iv, Gidc, Vatva
Ahmedabad-Gujarat

VERSUS

Commissioner of Customs-Ahmedabad ....Respondent
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

WITH

(i) Customs Appeal No. 10255/2019 (Jitesh Virendra Kumar Papaiyawala); (ii)Customs Appeal No. 10256/2019 (Shri Yao Hui Hsiao); (iii)Customs Appeal No. 10147/2019 (C.C. Ahmedabad);
(Arising out of OIO-AHM-CUSTM-000-COM-026-18-19 Dated-31.10.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)
(Arising out of OIO-AHM-CUSTM-000-COM-026-18-19 Dated-05.11.2018 passed by Commissioner of Customs -Ahmedabad)

APPEARANCE:
Shri K.J. Kinariwala (Consultant) appeared for the Appellant
Shri R.R. Kurup, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER No. 11702-11705/2024

DATE OF HEARING:14.05.2024
DATE OF DECISION:29.07.2024

RAJU

These appeals have been filed by M/s Huarong Plastic Machinery India Plastic Ltd (HPMIPL) and its directors Shri Jitesh Virendra Kumar Papaiyawala and Shri Yao Hui Hsiao against the order passed by Commissioner of Customs, Ahmedabad. The appeal has also been filed by Revenue against the said order. The impugned order (i) Changes classification of the goods imported by the appellant from heading 84779000 to 84771000. (ii) It orders reassessment of the three bills of entries by upholding demand of Customs duty (Anti Dumping Duty) to the tune of Rs. 92,36,622/- under section 9(a) of the Customs Tariff Act, 1962 read with Section 28(4) of the Customs Act, 1962 from M/s Huarong Plastic Machinery India Private Limited, Ahmedabad. (iii) It orders confiscation of the goods imported by them declaring the same as four Horizontal Injection Moulding Machines and offered the same on payment of Redemption fine of Rs. 22,00,000/- under Section 125(1) of the Customs Act, 1962 in lieu of confiscation. (iv) Orders confiscation of two Horizontal Injection Moulding Machines valued at Rs. 1,12,33,602/- imported vide bills of entry No. 2443168 dated 13.07.2017, 2492637 dated 17.07.2017 and 2550572 dated 21.07.2017 which were cleared earlier. However since no goods were available, it refrains from imposing any redemption fine under Section 125(1) of the Customs Act, 1962. (v) Imposes penalty amounting to Rs.9,00,000/- under Section 112(a)(ii) of the Customs Act, 1962 upon M/s. Huarong Plastic Machinery India Pvt Ltd, Ahmedabad (vi) It refrains from imposition of penalty under Section 114A of the Customs Act, 1982 upon M/s Huarong Plastic Machinery India Pvt Ltd, Ahmedabad as the imposition of penalty under Section 112(a) of the Customs Act, 1962 stands imposed. (vii) It impose penalty amounting to Rs.70,00,000/- under Section 114 AA of the Customs Act, 1962 upon M/s. Huarong Plastic Machinery India Pvt Ltd, Ahmedabad. (viii) It impose the penalty amounting to Rs. 1,00,000/- on Shri Jitesh Papaiyawala, Director, M/s. Huarong Plastic Machinery India Pvt Ltd, Ahmedabad under Section 112(a)(ii) of the Customs Act, 1962. (ix) Imposes penalty amounting to Rs. 1,00,000/- on Shri Yao Jui Hsiao CEO, M/s. Huarong Plastic Machinery India Pvt Ltd. Ahmedabad under Section 112(a) (ii) of the Customs Act, 1962. (x) It enforced the bond for Rs.1,47,90,459/- and Bank Guarantee for Rs.37,00,000/- furnished by M/s. Huarong Plastic Machinery India Pvt Ltd. Ahmedabad for provisional release of the seized goods and adjust the recovery against the demands of Customs duties, Interest, Fines and penalties imposed upon M/s. Huarong Plastic Machinery India Pvt Ltd, Ahmedabad.

2. The facts of the case are that M/s HPMIPL had filed three bills of entry for import of goods declared as spare parts for injection moulding machine classifiable under Customs Tariff Heading 84779000 with the Country of Origin declared as Taiwan. The details of three bills of entry are as under:-

Sr. No.	Bill of Entry No.	Date
1	2970541	24.08.2017
2	2729490	04.08.2017
3	2970475	24.08.2017

The goods were examined by the Customs officers under the punchnama in presence of Shri Vitthal D Patel of M/s Vitthal & Associates, Chartered Engineer and Government approved Valuer and Shri Pankaj Singh, G Card Holder of M/s Rishabh integrated Logistics Private Limited, a custom broker. In the four containers the goods were found as declared in the packing list submitted along with bills of entry of the respective containers. During the course of examination of goods contained in wooden case numbers Ctn. No. 05, a black colored folder inside a transparent plastic bag was recovered. The said folder contained a printed lable affixed thereon containing particulars "HR150FC-15003 User Manual". The Show Cause Notice describes the following about the content of the said folder.

> *"2.3.1 However, during the course of the examination of the goods contained in Wooden Case numbered Ctn. No.05, a black colored folder inside a transparent plastic bag was recovered. A Printed label was found affixed on the said folder containing the particulars "HR150FC-15003 User Manual". In the said black colored folder, it was found at page no.01: "Huarong Plastic Machinery Co. Ltd. <Accessories/Tools> Packing List". The subsequent pages from Page No. 05 to 35 were also found bearing the name of "Huarong Plastic Machinery Co. Ltd." printed at the bottom of different drawings. Page No. 39 to 45 contained different drawings bearing the name of "Huarong Plastic Machinery Co. Ltd". at the bottom right. Page No. 55 and 57 also contained different drawings. Page No.59 contained drawing titled as "Injection Moulding machine loading by Forklift". Similarly, Page No.61 contained drawing titled as "Injection Moulding machine un-Loading by Forklift". Page No.63 contained drawing with the printed name of Huarong Plastic Machinery Co., LTD. at the bottom right and "BLOCK DIAGRAM OF THE HYDRAULIC SYSTTEM OF AN INJECTION MOLDING MACHINE" at the bottom centre. Page No.65 contained the "HYDRAULIC SYSTEM PARTS LIST" printed on the bottom left side and Huarong Plastic Machinery Co. Ltd. at the bottom right. Page No.67 contained drawings titled at the bottom left as "HYDRAULIC MANIFOLD DISTRIBUTUON DRAWING and Huarong Plastic Machinery Co. Ltd. at the bottom right. The said black folder also contained printed manuals titled as: 1) Huarong Plastic Machinery Co. Ltd. Taiwan Excellent Injection Molding Machine INSTRUCTION ENGLISH MANUAL; 2) Huarong Plastic Machinery Co. Ltd.. Taiwan Excellent Injection Molding Machine BL 920/870 INSTRUCTION MANUAL and 3) HUARONG GROUP Vertical & Horizontal all your molding needs."*

Similar folder were found in some other wooden cases No. CTN No. 06, CTN No. 07 and CTN No. 08. All four black folders recovered from the different containers were withdrawn. The goods contained in the said container were examined by the Chartered Engineer and Government

Approved Valuer on the prima faice belief that the goods imported were complete machines in dismantled condition. Thereafter statements of Shri Jitesh Papaiyawala, Director of the importer firm was recorded who, inter alia stated that the importer firm was a manufacturer of Vertical and Horizontal Injection Molding Machinery of various models and specifications. He stated that he was looking after sales and marketing as well as legal matters. He further stated that from 2011-2017, the importer firm was engaged in providing services like sales, installation, repair and maintenance of Injection Moulding Machines sold by M/s Huarong Plastic Machinery Co. Ltd., Taiwan. That they had not imported any goods prior to July 2017. He further stated that they had rented its factory in Ahmedabad on 01.04.2017 and started operations in July 2017. That they were engaged in assembling of Injection Moulding Machines from parts procured from overseas supplier as well as from local suppliers in India. He further stated that till date they has assembled and sold only one injection moulding machine. He further stated that the details of parts/ components procured locally for the purpose of assembly of machines were known to Shri Yogesh Shirsat, Manager concerned for the technical issues. He further stated that they had earlier filed three bills of entries and the goods cleared by them have been used for assembly of Injection Moulding Machine along with parts/ components procured locally. He further stated that he was not aware for the consignment contained the user manuals of these machines. On being asked, he specifically denied that the goods imported by them were manufactured by M/s Huarong Plastic Machinery Co. Ltd., Taiwan. M/s Vitthal & Associates, the Chartered Engineer and Valuer, submitted their report on 18.09.2017.

3. The said Chartered engineer and Certified valuer gave following report:

(i) "It is certified that total lot of Machinery Imported is new machinery and therefore criteria of machinery certification for Old and Used Machinery does not involve.

(ii) The inspection verification reveals that imported total lot of machinery is interconnected for assembly of production machinery to function for Injection molding operations.

(iii) The four enclosed assembly manuals reveals the precise details with sectional and complete drawings of different models of injection molding machines.

(iv) It is certified that Machinery value claimed in the invoice is as per the present prevailing market for such Injection Molding Machinery.

(v) After overall study in multiple facets of verification of Machinery it is certified that importer has imported this consignment for the purpose of assembling the separate: Spare-parts for producing a Injection Molding Machine for ultimate production. Deficit, if any, are very insignificant in acclaiming a perfect and total production unit.

(vi) Looking to the above and gone much in detail in various facets of study and verification it is certified that there is no any specific discrepancy other than mentioned is noted to further specify in this report."

Further addendum by Chartered Engineer was issued on 09.11.2017 stating as follows:

> *"This addendum is to clarify that the stated machine in the report is Horizontal Injection Moulding Machine and segmental mould stated in the report vide Platen Mould model no. 420 Ton, 320 Ton, 150 Ton, 120 Ton would act adequately suffice for production of 04 horizontal injection moulding machines of different capacities by attachment to the main Injection Moulding Machinery."*

On the strength of the aforesaid certificate, the Revenue issued a show cause notice alleging that the importer has imported complete machinery and not spare parts.

4. The allegations in the notice were that in terms of Notification 09/2016-(ADD) dated 15.03.2016 Horizonal Injection Moulding Machine imported from Chinese Taipei attract anti dumping duty at the rate of 27.98% of the landed value. Consequently, a demand of show cause notice issued to M/s HPMIPL. Revenue also attempted to seek comments from the supplier of the goods by sending an E-mail dated 10.01.2018 to M/s Yao Jui Hsiao, the main Director (and one of the appellant) of the importer firm based in Taiwan on his email id. A reminder was also sent but no reply was sent from M/s Yao Jui Hsiao. In their defense Shri Yogesh Shirsat submitted the details of the parts/ components procured from sources other than these imports. The list is as follow:

S. No.	Description of Goods	Quantity	Value (Rs.)
1	Tokimesc Servo Pump IPVPS-50 601	02 nos	131479
2	Brass Repair Kit for Pump IPVPS-50 601	01 nos	7806
3	Compressor	01 nos	63500
4	Oil	105 ltr	154350
5	Hand Pallet Truck	01 nos	1960
6	Welding Machine	01 nos	7000
7	Hydraulic Pump	01 nos	8190
8	Tools – MI Tube, Braided Hose, Brass Hose Collar, Letter Punch, Rabro Figure Set, Gun Metal Stainer, Teflon Tap, Hose Clamp	Misc. qty.	4215
9	Tools – Hose Clamp, Hacksaw	Misc. qty.	1945

	Frame, Round Basted/ Rough, Water Paper, QRC Plug, Brass Hose Collar, M.S. Adaptor, Anabond Bottle, Hss Blade		
10	Tools – Thinner, Flap Dish, Extra Power Cut off, D.C. Whl. Metal Drill Machine	Misc. qty.	6775
11	Fabrication – MS Table	03 nos	14000
12	MSB Power Box	01 nos	17500

In the aforersaid list they had stated that item at Serial No. 1 and 2 were imported and item at Serial No. 3-12 were procured locally. M/s HPMIPL claimed that these goods were essential components of the Injection Moulding Machine and without the same the Injection Moulding Machine cannot be manufactured.

5. Learned consultant for M/s HPMIPL argued that merely because certain user manuals and drawings were found in the consignments, it does not mean that the goods imported by them were complete machines. He argued that a large number of parts were procured by them from other sources and only after using those parts the Horizontal Injection Moulding Machine could have been manufactured. He argued that in absence of those parts essential character of the machine could not have been achieved. He argued that the parts procured locally and from other foreign sources were critical part of the machine. Learned consultant contested the chartered engineer certificate. He further pointed out that chartered engineer certificate does not describe the essentiality/ importance / vitality of parts imported by them in these consignments. He argued that if the essential parts are found to be missing then it cannot be said that these parts imported from Taiwan constitute complete or incomplete machine. He pointed out that user manuals are assembling manuals which describe step by step procedure for assembling of Injection Moulding Machines. He argued that there is no one to one correlation with the alleged import of Horizontal Injection Moulding Machine in CKS/SKD condition and the user manual found. He pointed out that even on these imported goods certain processes like polishing, grinding, drilling, tapping, “T” slotting, scraping, wiring, painting or some parts like “T” slot in platens, scraping of base for partial adjustment and all these processes were required to be completed with the help of some mechanical/ electrical machines.

6. He further argued that the said goods were imported in different consignment under different bills of entries and in these circumstances,

Rule 2(a) of the Rules of Interpretation of Tariff does not apply. He argued that rule apply only if all components are presented at the same time for customs clearance.

7. He further argued that the notification is to be interpreted strictly and nothing can be added or inserted in the notification. He pointed out that the notification No. 09/2016-Cus (ADD) dated 15.03.2016 provides for levy of Anti Dumping Duty on plastic processing machine or injection moulding machine only and not for parts of Injection Moulding Machine in CKD/SKD condition. In these circumstances, no differential duty can be demanded from them and no penalty can be imposed.

8. Learned consultant relied on the following decisions in support of his arguments that if some essential parts are missing, the CKD pack cannot be said to constitute a complete article.

- M/s Galaxy Agencies vs CCE 2009 (239) ELT 478 (Tri.)
- Ms. Wipro Ge Medical vs CC-2006 (202) ELT 141 (Tri.)

Further, in support of his claim that interpretative Rule 2(a) can only apply when imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding, cited the following decisions.

- UOI vs Ms. Tarachand Gupta & Bros. 1983 (13) ELT 1456 (SC)
- CC, New Delhi vs Sony India Ltd. 2008 (231) ELT 385 (SC)

Learned consultant relied on the following decisions to assert that Notifications have to be read strictly:

- Green Briliance Energy Pvt. Ltd. 2015 (325) ELT 351 (Tri. LB)
- Nippon Precision Bearing Inds. 1997 (90) ELT 57 (Tri.)
- Global Exim vs CC Nhava Sheva 2015 (318) ELT 312 (Tri, Mum)

9. Learned consultant further argued that the show cause notice does not seek to change classification of the goods from Chapter heading 84779000 applicable to parts to 84771000 applicable to complete machines. He argued that since the show cause notice itself does not make a charge for change of classification, no change of classification can be permitted. Consequently, no demand of anti dumping duty can be made as the Revenue has not even charged that the goods are classifiable under heading 84771000.

10. Revenue has also filed appeal against the said order on the ground that the Commissioner has wrongly set aside the penalty under Section 114A on the ground that penalty has already been imposed under Section 112(a) of the Customs Act. The revenue has relied on the decision of Hon'ble Apex Court in Dharmendra Textile & Processors reported at 2008 (231) ELT 3. Learned Authorised Representative argued that in terms of the said decision and the fact that the provisions of Central Excise for imposition of penalty under Section 11AC of the Central Excise are similar to the provisions of the Customs Act for imposition of penalty under Section 114A of the Customs Act, ratio of the said judgments is squarely applicable.

11. We have considered the rival submissions. We find that it is undisputed fact that certain goods have been imported by M/s HPMIPL in three different bills of entry containing in four containers. The bills of entries have been filed on two different dates. It is also undisputed that some of the boxes contained user manuals of different Injection Moulding Machines along with drawings and that the name of M/s Huarong Plastic Machinery Company Limited printed on the same. It is also not in dispute that while assembling the finished Horizontal Injection Moulding Machine, apart from impugned goods, some goods procured locally and some separately imported have also been used for assembly of the Horizontal Injection Mouldng Machine.

12. The allegation of the revenue is that what has been imported is incomplete machines/ unassembled machines classifiable under heading 84771000 and not partly classifiable under heading 84779000. Revenue has placed reliance on the HSN Explanatory Notes(IV) and (V) of Section XVI of the HSN. The note (IV) of HSN Explanatory Note of Section XVI reads as follows:

> INCOMPLETE MACHINES: "Throughout the Section any reference to a machine or apparatus covers not only the complete machine , but also an incomplete machine (i.e. an assembly of parts so far advanced that it already has the main essential features of the complete machine."

Note (V) of the HSN Explanatory Notes of Section XVI:

> UNASSEMBLES MACHINES: "For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are a collection of parts, they are classified as being the machines in question and not in any separate heading for

parts. It further state that same applies to an incomplete machine having the features of the complete machine."

From the above, it is apparent that the arguments of the revenue is that goods imported by the appellant are classifiable as complete machines and they have the essential characters of the complete machines. Now we examine Note (IV) and (V) of Section XVI. Note (IV) of the Section XVI relates to unassembled machines i.e. an assembly of parts so far advanced that it already has the main essential features of the complete machine. In the instant case, there is no allegation that what has been imported is partly assembled. A perusal of the Chartered Engineer Report also indicate that it does not indicate that the goods are either partly assembled or have the essential feature of the complete machine. The Chartered Engineer observes as follows:

(i) "It is certified that total lot of Machinery Imported is new machinery and therefore criteria of machinery certification for Old and Used Machinery does not involve.

(ii) The inspection verification reveals that imported total lot of machinery is interconnected for assembly of production machinery to function for Injection molding operations.

(iii) The four enclosed assembly manuals reveals the precise details with sectional and complete drawings of different models of injection molding machines.

(iv) It is certified that Machinery value claimed in the invoice is as per the present prevailing market for such Injection Molding Machinery.

(v) After overall study in multiple facets of verification of Machinery it is certified that importer has imported this consignment for the purpose of assembling the separate: Spare-parts for producing a Injection Molding Machine for ultimate production. Deficit, if any, are very insignificant in acclaiming a perfect and total production unit.

(vi) Looking to the above and gone much in detail in various facets of study and verification it is certified that there is no any specific discrepancy other than mentioned is noted to further specify in this report."

Further addendum by Chartered Engineer was issued on 09.11.2017 stating as follows:

"This addendum is to clarify that the stated machine in the report is Horizontal Injection Moulding Machine and segmental mould stated in the report vide Platen Mould model no. 420 Ton, 320 Ton, 150 Ton, 120 Ton would act adequately suffice for production of 04 horizontal injection moulding machines of different capacities by attachment to the main Injection Moulding Machinery."

The aforesaid report of the Chartered Engineer does not indicate that the goods imported are in partly assembled condition or if they have any essential feature of the finished goods. In view of above Note (IV) of the Section XVI of HSN cannot be applied to the instant case.

13. Note (V) of the HSN Explanatory Notes relates to unassembled machines. The said note applies to machines which are imported in unassembled state for the convenience of transportation. It further states that although in effect the goods are a collection of parts, they are classified as being the machines in question and not in any separate heading for parts. It further state that same applies to an incomplete machine having the features of the complete machine. Learned consultant has relied on the decision of the Hon'ble Apex Court in the case of Commissioner of Customs vs Sony India Ltd. (supra) it observes as follows:

> ***16.*** *Our attention was invited to a very interesting decision reported in Modi Xerox Ltd. v. CCE, New Delhi [1998 (103) E.L.T. 619] which was confirmed by this Court in 2001 (133) E.L.T. A91 (it must be noted that the decisions in Woodcraft Products is specifically confirmed in this decision). In this case, the Tribunal had relied on Tara Chand's case as also the CC v. Mitsuny Electronics Works [1987 (30) E.L.T. 345 (Cal. HC)] which we have made reference in the earlier part of this judgment. The Tribunal had held that the fax machine in completely knocked down condition imported by the appellant being not a fax machine but part thereof, the benefit of exemption under Notification No. 59/88/Cus., dated 1-3-1988 would not be available. Very interestingly, it was claimed by the importer that it had imported the fax machine and not the components obviously because the duty payable on the components was more. The Tribunal came to the conclusion that in view of Section Note 2 to Section XVI Rule 2(a) would not apply and confirmed the import of goods as components. While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding. It came to the conclusion that fax machines were not the type of goods which were normally traded or transported in knocked down condition and therefore, the imports were that of the components and not of fax machines. Shri Lakshmikumaran also invites our attention to the fact that Chapter 64 dealing with footwear does not have a note similar to Note 2 in Section XVI. Thus this position would render support to the proposition that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. We have already pointed out in the earlier part of our judgment that the complicated process would be required for the user of those parts.*

It clearly lays down that Rule 2(a) would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. In the instant case, there is no evidence that the parts imported by the appellants can be assembled into machines by simple procedures. The report of Chartered Engineer is silent on this aspect. Whereas the appellants have claimed that the individual parts need processes like polishing, grinding, drilling, tapping, "T" slotting, scraping, wiring, painting or some parts like

"T" slot in platens, scraping of base for partial adjustment and all these processes were required to be completed with the help of some mechanical/ electrical machines. The said argument that these processes are necessary for assembly of the finished Horizontal Moulding Machines has not been contested by the adjudicating authority. Thus, the goods cannot be treated as complete or incomplete machines.

14. Learned consultant has also pointed out that the show cause notice does not propose to classify the goods under the chapter heading 84771000. He argued that the Anti Dumping Duty is leviable under only if the goods falling under heading 84771000 and since the show cause notice does not contain any charge to classify the goods under heading 84771000, the impugned order cannot change the classification of the goods. A perusal of the show cause notice shows that there is no charge seeking to change the classification of goods from 84779000 to 84771000. Having not made the charge for change in classification the goods cannot be classified under head 84771000 and therefore, the Anti Dumping duty under tariff cannot be imposed as the same is applicable to goods falling under heading 84771000 and not to goods falling under heading 84779000.

15. It is also not in dispute that some of the parts used to manufacture machines are procured from sources other than the supplier in the present case. Some of such parts are imported and others are procured locally. The list of said parts is already reproduced in para 4 above. A perusal of the certificate of Chartered Engineer does not indicate that the consignment contains all the essential parts needed for manufacture of Injection Moulding Machine. It only states that the importer has imported this consignment for the purpose of producing the Injection Moulding Machine. It also states "Deficit, if any, are very insignificant in acclaiming a perfect and total production unit." It is seen that the Chartered Engineer Certificate is dated 18.09.2017. The list of parts and components purchased from India and also imported from abroad and used for manufacture of all machine was obtained in the statement of Shri Yogesh Shirsat recorded on 12.12.2017 i.e. three months after the report of the Chartered Engineer. The Chartered Engineer did not have benefit of going through the list of items required for assembly of finished goods. The fact that these goods were required to be used in production of finished goods has not been contested by Revenue. Moreover, the report of chartered engineer does not talk about these

missing parts which are needed for final assembly of the finished goods. In view of this, it is apparent that the report of Chartered Engineer is not accurate.

16. Another reason cited in the impugned order for classifying the said goods as complete machines is discovery of the black coloured folders with printed lable which were user manuals. The fact that these user manuals were recovered from the consignment does not in any way imply that the goods imported by them are complete machines. User manuals usually imported with machine however it can also be imported along with parts of the machines with intention of assembly of complete machines from the said parts as well as parts procured from other sources. The presence of user manual does not in any way indicate that the goods are complete machines. Further it is seen that the impugned order notice highlights the content of the folder in following terms:

> *"2.3. In the said black coloured folder, it was found at page no.01: "HUARONG PLASTIC MACHINERY CO., LTD. <Accessories/Tools> Packing List". The subsequent pages from Page No. 05 to 35 were also found bearing the name of HUARONG PLASTIC MACHINERY CO., LTD. printed at the bottom of different drawings. Page No. 39 to 45 contained different drawings bearing the name of HUARONG PLASTIC MACHINERY CO., LTD. at the bottom right. Page No. 55 and 57 also contained different drawings. Page No.59 contained drawing titled as "Injection Moulding machine Loading by Forklift". Similarly, Page No.61 contained drawing titled as "Injection Moulding machine un Loading by Forklift". Page No.63 contained drawing with the printed name of HUARONG PLASTIC MACHINERY CO., LTD. at the bottom right and "BLOCK DIAGRAM OF THE **HYDRAULIC SYSTTEM** OF AN INJECTION MOLDING MACHINE" at the bottom centre. Page No.65 contained the "**HYDRAULIC SYSTEM PARTS** LIST" printed on the bottom left side and HUARONG PLASTIC MACHINERY CO., LTD. at the bottom right. Page No.67 contained drawings titled at the bottom left as "HYDRAULIC MANIFOLD DISTRIBUTUON DRAWING" and HUARONG PLASTIC MACHINERY CO., LTD. at the bottom right. The said black folder also contained printed manuals titled as 1) HUARONG PLASTIC MACHINERY CO., LTD. Taiwan Excellent Injection Molding Machine INSTRUCTION ENGLISH MANUAL; 2) HUARONG PLASTIC MACHINERY CO., LTD. Taiwan Excellent Injection Molding Machine BL 920/870 INSTRUCTION MANUAL and 3) HUARONG GROUP Vertical & Horizontal all your molding needs."*

A perusal of the above description of material found in the black coloured folder, it is apparent that it runs into more than 60 pages. It not only contains the details of assembly but also details of a lot of sub-systems of the machines. The page 65 contains hydraulic system parts list printed on the bottom left side. From the list of parts annexed to the report of Chartered Engineer, we find that there is no mention of any hydraulic system or hydraulic manifold distribution in the list of parts imported. From the above, it is also apparent that the details of the parts necessary for manufacture of the complete machine was available however, the Engineer has not made any attempt to compare the said list with the actual imports to identify the parts which were missing.

17. In view of the above findings we do not find any merit in the order changing the classification and demanding duty. The impugned order is therefore, set aside and appeals of M/s Huarong Plastic Machinery India Limited, Jitesh Virendra Kumar Papaiyawala and Shri Yao Hui Hsiao are allowed. The appeal of revenue seeking imposition of penalty under section 114A is dismissed.

(Pronounced in the open court on 29.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha