CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70206 of 2020

(Arising out of Order-in-Appeal No.51-CUS/APPL/LKO/2020 dated 17.02.2020 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

M/s Narayani Laminates Pvt. Ltd., **.....Appellant**
(A-1/21A, Sector-15, GIDA, Gorakhpur-273209)

VERSUS

Commissioner of Customs, Lucknow **....Respondent**
(Kendriya Bhawan, Aliganj, Lucknow)

APPEARANCE:

Shri S. R. Agarwal, Advocate & Ms. Stuti Saggi, Advocate for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70776/2024

DATE OF HEARING : 14.08.2024
DATE OF DECISION : 28.11.2024

P. K. CHOUDHARY:

The instant Appeal arises out of Order-in-Appeal No.51-CUS/APPL/LKO/2020 dated 17.02.2020 passed by the Commissioner (Appeals) Customs, GST & Central Excise, Lucknow.

2. The brief facts of the case are that M/s. Narayani Laminates Pvt. Ltd[1]., Gorakhpur holding IEC No. AAFCN1148N had imported two consignments of Colour Coated Aluminium Coil from China. Accordingly, they filed Bills of Entry for Color Coated Aluminium Coil (Bright Silver) as per the description of the invoice issued by the Exporter.

3. Both the Bills of Entry were assessed provisionally to ascertain if the goods imported by the Appellant attract Anti Dumping Duty or not in terms of Notification No.23/2017-ADD

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[1] Appellant

dated 16.05.2017. The Appellant furnished Bank guarantee for the purpose, for an amount of Rs.18,21,531/- and Rs.14,04,220/- respectively issued by Punjab National Bank, Bank Road, Gorakhpur.

4. The samples of goods were sent to CRCL, New Delhi vide Test Memo Nos.163/IMP/T/2018-19 dated 05.11.2018 & 174/IMP/T/2018-19 dated 26.11.2018 to ascertain as to whether the subject goods are "Color coated Aluminium Foil" with either PE (Polyester) coating of PVDF Fluorine- Carbon coating falling under CTH 7607 and what is its thickness.

5. It was reported by CRCL that the samples were in form of cut pieces of Metallic Foil coated on one side with **Polymeric material.** The metallic Foil is made of Aluminium. On further reference, CRCL vide their letter dated 08.02.2019 reported that "coated material present answer's test for **Styrene/Butyl Methacrylate Copolymer**. It is other than PE/PVDF".

6. On the basis of the test report, it was opined that the goods attract Anti-Dumping Duty and accordingly, the Appellant was asked to deposit Anti-Dumping Duty. In response to the said letter dated 22.02.2019, the Appellant explained their case that the designated authority confirms that Anti-Dumping Duty is applicable only on Aluminium Foil and not on **Colour Coated Aluminium Coil**. Accordingly, it was submitted that their product does not attract Anti-Dumping Duty.

7. The Adjudicating Authority passed Order-in-Original No.014/DC/ICD/JRY/KNP/SPK/CUS/2019-20 dated 07.09.2019 wherein he finalized Bills of Entry No.8895222 dated 17.11.2018 and Entry No.8636943 dated 27.10.2018. He imposed and ordered for recovery of Anti-Dumping Duty amounting to Rs.13,54,263/- and Rs.10,44,003/- respectively, alongwith interest thereon. He also ordered for appropriation of Bank Guarantee furnished by the Appellant and appropriated the Bank Guarantees for amount of Rs.18,21,531/- and Rs.14,04,220/- respectively issued by Punjab National Bank, Bank Road, Gorakhpur.

8. Being aggrieved with the order passed by the Adjudicating Authority, the Appellant filed an appeal before the Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow.

9. The appeal filed by the Appellant was disposed of vide the impugned Order-in- Appeal No.51-CUS/APPL/LKO/2020 dated 17.02.2020 and the Appeal filed by the Appellant has been dismissed. Hence the present appeal before the Tribunal.

10. The Ld. Advocate Shri S. R. Agrawal appearing for the Appellant submitted that the Appellant is manufacturer of Aluminum Composite Panel[2] and that color coated aluminum coil imported by the Appellant is the basic and main raw material for manufacture of ACP. He also submitted that the color coated aluminum coil is undisputedly coated with **Polymeric material** which is akin to PE/ PVDF**.** He submitted that it has been decided by the Tribunal in the case of M/s. G.M. Alloys Pvt. Ltd. And Others vs. Union of India as reported in 2017 (11) TMI 491-CESTAT, New Delhi that the color coated aluminum coil is not specifically discussed for anti dumping duty and there are valid grounds for its exclusion from the scope of the AD Levy. He also pointed out that color coated aluminum coil irrespective of coating material is outside the purview of anti dumping duty.

11. He also submitted that the purpose of imposition of anti dumping duty is to safeguard the interest of domestic industry engaged in the manufacture of similar goods. He pointed out that during the relevant time there was no manufacturer in India manufacturing color coated aluminum coil. He also pointed out that on the directions of the Tribunal in the case of G.M. Alloys supra, Circular No.45/2017-Customs (ADD) dated 22.11.2017 was issued by the TRU. He also relied on the decision of the Tribunal in the case of ACP Manufacturer Association vs. Union of India reported in 2023 (385) E.L.T. 529 (Tri.-Del.) to buttress his argument. He also pointed out that the Appellant is a member of ACP Manufacturers Association.

12. On the contrary, Mrs. Chitra Srivastava, Authorized representative submitted that the color coated aluminum coils

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[2] ACP

imported by the Appellant are coated with Styrene/ Butyl Methacrylate Copolymer other than PE/ PVDF and therefore it is liable to anti dumping duty.

13. Heard both the sides and perused the appeal records.

14. We find that the Commissioner (Appeals) while passing the impugned order has observed as under: -

> *"5. I have gone through the case records. As per the TRU Circular No.45/2017-Customs (ADD) dated 22.11.2017, only the colour-coated Aluminium Foil with PE/ PVDF coating is excluded from levy of anti-dumping duty. Whereas as per the CRCL report, the impugned consignments are Aluminium Foil coated with Styrene/ Butyl Methacrylate copolymer i.e. other than PE/ PVDF. In the facts of the case, anti-dumping duty has been correctly levied. I don't find any merit in the appeal and the same is dismissed."*

15. We have also considered the Order-in-Original passed by the Adjudicating Authority and also the submissions made by the Departmental Authorized Representative. We find that the only dispute is as to whether color coated aluminum coil coated with Polymeric material other than PE/ PVDF will attract anti dumping duty or the color coated aluminum coil is outside the purview of anti dumping duty.

16. We find in this regard that in the matter of G. M. Alloys Pvt. Ltd. & Others v/s Union of India reported in 2017 (11) TMI 491- CESTAT New Delhi, the Tribunal held as under: -

> *"8. We note that there is no specific finding regarding the inclusion or exclusion of colour coated aluminium foil in the final findings by the DA. However, in the overall scope of recommendation of AD duty on aluminium foils in the absence of specific exclusion the apprehension of the appellants will be correct to the effect that AD duty will get attracted by default. We note that the product is not being manufactured in India. The DI had specifically supported in the submissions before us that the product under*

consideration can exclude colour coated aluminium foil as the same is not manufactured in India.

9. We note all the parties before us are in agreement to the effect that the colour coated aluminium foil is not specifically discussed for Anti Dumping duty and there are valid grounds for its exclusion from the scope of the AD levy. Noting the consent as pleaded before us, we find it fit and proper to order for the exclusion of the said product, namely colour coated aluminium foil from the scope of Anti Dumping duty imposed vide Customs Notification dated 16/05/2017. Accordingly, we order that in para 1 of the said notification after entry (viii) the following shall be inserted :-

"(ix) colour coated aluminium foil".

10. Accordingly, the appeals filed by these 5 appellants are allowed in the above manner."

17. We find that on the basis of these directions, TRU vide Circular No.45/2017- Customs (ADD) dated 22.11.2017,clarified that- "color coated aluminum foil with either PE (Polyester) coating of PVDF (Fluorine- carbon), coating falling under CTH 7607" is excluded from the scope of PUC."

18. We also observe that although the Tribunal has in para 9 of their order in the matter of G. M. Alloys (supra) specifically directed to exclude color coated aluminum foil from the scope of anti dumping duty, but while issuing the circular the TRU added the words- "with either PE (Polyester) coating of PVDF (Fluorine-carbon), coating falling under CTH 7607". This is the reason why the revenue is restricting the exclusion.

19. We also observe that the Principal Bench of this Tribunal had noted that **"the product is not being manufactured in India. The DI had specifically supported in the submissions before us that product under consideration can exclude color coated aluminum foil as the same is not manufactured in India."**

20. We find force in the contention of the counsel for the Appellant that the purpose of imposition of anti dumping duty is

to safeguard the interest of domestic industry engaged in the manufacture of similar goods.

21. We also observe that the Appellant is a member of ACP Manufacturer Association and the Principal Bench of this Tribunal in the case of ACP Manufacture Association vs. Union of India in their Final Order dated 13.04.2023 reported in 2023 (385) E.L.T. 529 (Tri.-Del.) has again excluded color coated coil from imposition of anti dumping duty though in different Notification dated 06.12.2021. It is, therefore, our considered view that anti dumping duty is not attracted on color coated aluminum coil imported by the Appellant. The Appeal filed by the Appellant is accordingly allowed with consequential relief.

(Order pronounced in open court on – **28th November, 2024**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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