

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No. C/134/2009

[Arising out of Order-in-Appeal C.Cus.No.48/2009 dt. 29.01.2009
passed by the Commissioner of Central Excise (Appeals), Chennai]

Hydro S & S Industries Ltd.

Appellant

Versus

Commissioner of Customs (Seaport-Imports)
Chennai

Respondent

Appearance:

Shri M.Karthikeyan, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing : 16.08.2017

Date of Pronouncement : 16-09-2017

FINAL ORDER No. 42112/2017

Per Bench

The facts of the case are that Hydro S & S Industries Ltd., the appellants herein, had registered a project contract under Project Import Regulations (PIR), 1986 for import of goods declared as "1 no. Twin screw Extruder ZSK 58 MEGA Compounder with



standard accessories" vide Bill of Entry dt. 07.10.2004 from Germany. The goods had been imported for implementation of substantial expansion project for manufacture of 6000 MTs p.a reinforced/filled thermo plastic compound. The goods were assessed provisionally extending concessional duty under CTH 9801 read with Notification No.21/2002-SI.No.441 as amended. During finalization of the contract, it appeared to lower authority that impugned goods should be classified under CTH 8477 and since same being a single machine, the notification benefit cannot be extended as per para-3 of PIR, 1986. Accordingly, original authority denied benefit under CTH 9801 read with PIR 1986 for the goods valued at Rs.2,25,73,297/-, ordered final assessment under CTH 84772000 with merit rate of duty, and confirmed demand of differential duty of Rs.26,78,241/- along with interest liability. Aggrieved, appellant filed appeal before Commissioner (Appeals) who vide impugned order dt. 29.01.2009 upheld the order of the original authority and rejected the appeal. Hence this appeal.

2. On 16.08.2017, when the matter came up for hearing, on behalf of appellant, Shri M.Karthikeyan, Advocate made oral and written submissions which can be broadly summarized as under :

(i) Heading 9801 includes all items of machinery required for initial setting up of a 'unit' or for substantial expansion of an existing 'unit' of a specified 'industrial plant', etc.



(ii) Note 2 of Chapter 98 provides that the Heading 9801 is to be taken to apply to all goods which are imported in accordance with the PIR and expressions used in the said heading shall have the meaning assigned to them in the said regulations.

(iii) Their factory qualifies as an industrial plant and there is no dispute in this regard. In terms of heading 9801 all items of machinery required for initial setting up of a unit or for substantial expansion of an existing unit of an industrial plant can be imported. In this case, the import is for expansion of an existing unit of their factory. The process flow chart of the appellant factory is available at Page 30 of the paper book and the extruding process carried out by compounding machinery is a self-contained portion of the factory and has an independent function, and accordingly, it qualifies as an 'unit'. The appellant already had three extruding lines in this extruding unit and the imported machinery installed additionally in the said unit of the appellant factory, has doubled the capacity of the existing unit of the extruding process.

(iv) As per the definition of "industrial plant" single/composite machine is excluded. In other words, a single/composite machine would not make an industrial plant. But there is no such exclusion contained in the definition of 'unit' which has defined as a 'self-contained portion of an industrial plant with independent function'. As such, a single/composite machine can form a unit of the industrial

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plant if it is a self-contained portion of the industrial plant with independent function. Such machineries can be imported either for initial setting up of a unit or for substantial expansion of an existing unit and there is no bar to it. Accordingly, denial of the benefit of project import in this case is not at all sustainable at all.

3. On the other hand, on behalf of department, Ld. A.R Shri B.Balamurugan supports the adjudication and also made further submissions which can be summarized as under :

(i) As per para 3 (a) (ii) of PIR 1986, single machine is not eligible for project import benefit.

(ii) Authorization letter issued by Department of Chemicals and Petro Chemicals is not binding on Customs department to decide eligibility of project benefit. There is absolutely no doubt that imported item is a single machine utilized for manufacture of thermo plastic compound and single machine or composite machine is excluded from the Project Import Regulations.

4. Heard both sides and have gone through the facts of the case.

5.1 The core issue that comes up for appellate decision concerns eligibility of the impugned goods for the purpose of availing benefit of project import to be considered as a 'project import' falling under Chapter 9801 and read with Project Import Regulations, 1986.

5.2 In the ordinary course, the Extruder ZSK 58 MEGA Compounder, if imported on its own without attendant claim of project

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import benefit, would normally be classifiable under CTH 84772000. However, if the said items had been eligible for benefit of exemption for project import, they would ordinarily be classifiable under CTH 9801. The lower authorities have denied benefit of project import concession to these goods on the grounds that they comprised single or composite machine.

4.3 The Project Import Regulation, 1986 is a facilitator mechanism for import of goods under one or more specific contracts for the entire project. Regulation 3(a) (ii) excludes import of a single or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to Section XVI of the First Schedule to the Customs Tariff Act. The relevant CTH 9801 covers all items of machinery as well as components (whether finished or not) or raw materials for the project contract, or raw material for the manufacture of such items required for the initial setting up of a unit, or substantial expansion of an existing unit, of a specified (i) industrial plant (ii) irrigation project (iii) power project (iv) mining project (v) project for the exploration for oil or other minerals, and (vi) such other projects as the Central Government may, having regard to the economic development of the country notify in the Official Gazette in this behalf.

4.4 What is not in dispute that the imported Twin screw Extruder MEGA Compounder for extrusion process is to cater to the extrusion purposes only. From the facts on record, it emerges that the



appellant themselves had conceded that rest of the machinery is to be procured indigenously.

4.5 From a close reading of the PIR 1986, it emerges from Regulation 4 that assessment under Heading 98.01 shall be available only for those goods which are imported against one or more specific contracts, which have been registered with appropriate Custom House in the manner specified in Regulation 5. There is no dispute that appellant had registered a project contract with the concerned Custom House. This fact has been acknowledged in page 3 of the impugned order. It is also noted by the lower appellate authority that impugned goods were imported for implementation of "substantial expansion project" for manufacture of 6000 MT p.a reinforced/filled thermo plastic compound. Hence there is no dispute on this score also. It is also not in dispute that impugned items had indeed been imported for implementation of the project as registered under Custom House. There is also sufficient facts brought out to hold that imported machine is a single machine.

4.6 Thus it is seen that the provisions of the PIR 1986 themselves do not bar the import of machine in question.

4.7 What is then to be seen is whether import of single machine is foul of Chapter 98 of the Schedule to the Customs Tariff Act. From the chapter notes therein clearly specify that the chapter is to be taken to apply to all goods which satisfy the conditions prescribed therein even though they should be covered by a more specific



heading elsewhere in the schedule. Chapter Note 2 lays down that Heading 9801 is to be taken to apply to all goods which are imported in accordance with PIR. We find that lower authorities are seeking to disallow benefit of classification under 9801 and attendant benefit under PIR 1986 on the basis of definition of "industrial plant" given in Regulation 3(a) of PIR. The said definition reads as follows :

(a) "industrial plant" means an industrial system designed to be employed directly in the performance of any process or series of processes necessary for manufacture, production or extraction of a commodity, but does not include-

(i) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops; or

(ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to Section XVI of the said First Schedule;

Explanation :- For the purposes of sub-clause (i) the expression "establishments designed to offer services of any description" shall not include video recording or editing units, cinematographic studios, cinematographic film processing laboratories, and sound recording, processing, mixing or editing studios;

4.8 We are unable to agree with such an argument. The Project Import Regulations are beneficial provisions to facilitate persons for setting up substantial expansion of an existing unit. The definition of "industrial plant" excluding industrial system having a single machine or a composite machine is relevant. True, the definition is to identify whether "industrial plant project" per se falls within scope and purpose of CTH 9801 and the PIR 1986. Certainly, that is not the dispute here. On the other hand, there is no allegation that the project per se cannot be "industrial plant project" because there will be installation of only one machine or a composite machine. On the





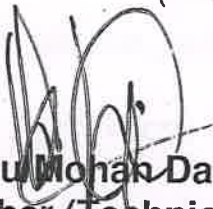


other hand, that bridge has verily be crossed as evidenced by lower appellate authority conceding in page 3 of the impugned order that the goods had been imported "for implementation of substantial expansion project". Thus what is relevant is whether the goods imported are for a project having only a single machine or a composite machine. Such an allegation is not forthcoming from the records. In any case, the importers as evidenced from the replies during the adjudication proceedings etc. have been crying hoarse that importer had already made an investment of Rs..8.32 crores in plant and machinery before the importation. The imported machinery is only meant for substantial expansion of installed capacity to the extent of 100% as certified by the Chartered Engineer.

5. In the event, we do not find any other bar for the imported goods to be disqualified from classification under CTH 9801 and read with PIR 1986.

6. Viewed in this light, impugned order cannot be sustained and requires to be set aside which we hereby do. Appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court on 18-09-2017)


(Madhu Mohan Damodhar)
Member (Technical)


(Sulekha Beevi C.S.)
Member (Judicial)

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