

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85993 of 2017

(Arising out of Order-in-Original No. 115/2016-17/CC/NS-I/JNCH dated 31.01.2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva)

M/s JH-Welltec Machines (India) Pvt. Ltd. Appellant

Plot No. 410, Palki 1000 Sq. Yard, Kathwada GIDC No. 10,
Kathwada, Ahmedabad – 382024

Versus

Commissioner of Customs (NS-I), Nhava Sheva Respondent

JNCH, Nhava Sheva, Dist. Raigad, Maharashtra - 400707

WITH

Customs Appeal No. 85989 of 2017

(Arising out of Order-in-Original No. 115/2016-17/CC/NS-I/JNCH dated 31.01.2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva)

Jayesh Patel

.... Appellant

C/o JH-Welltech Machines (India) Pvt. Ltd.
Plot No. 410, Palki 1000 Sq. Yard, Kathwada GIDC No. 10,
Kathwada, Ahmedabad – 382024

Versus

Commissioner of Customs (NS-I), Nhava Sheva Respondent

JNCH, Nhava Sheva, Dist. Raigad, Maharashtra - 400707

AND

Customs Appeal No. 85990 of 2017

(Arising out of Order-in-Original No. 115/2016-17/CC/NS-I/JNCH dated 31.01.2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva)

Hitendra Rameshchandra Nagadia

.... Appellant

C/o JH-Welltech Machines (India) Pvt. Ltd.
Plot No. 410, Palki 1000 Sq. Yard, Kathwada GIDC No. 10,
Kathwada, Ahmedabad – 382024

Versus

Commissioner of Customs (NS-I), Nhava Sheva Respondent

JNCH, Nhava Sheva, Dist. Raigad, Maharashtra - 400707

AND

Customs Appeal No. 85991 of 2017

(Arising out of Order-in-Original No. 115/2016-17/CC/NS-I/JNCH dated 31.01.2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva)

Sanjay Sutariya**.... Appellant**

C/o JH-Welltech Machines (India) Pvt. Ltd.
Plot No. 410, Palki 1000 Sq. Yard, Kathwada GIDC No. 10,
Kathwada, Ahmedabad – 382024

Versus

Commissioner of Customs (NS-I), Nhava Sheva**.... Respondent**

JNCH, Nhava Sheva, Dist. Raigad, Maharashtra - 400707

AND**Customs Appeal No. 85992 of 2017**

(Arising out of Order-in-Original No. 115/2016-17/CC/NS-I/JNCH dated 31.01.2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva)

Sanjay Gupta**.... Appellant**

C/o JH-Welltech Machines (India) Pvt. Ltd.
Plot No. 410, Palki 1000 Sq. Yard, Kathwada GIDC No. 10,
Kathwada, Ahmedabad – 382024

Versus

Commissioner of Customs (NS-I), Nhava Sheva**.... Respondent**

JNCH, Nhava Sheva, Dist. Raigad, Maharashtra - 400707

Appearance:

Shri Gajendra Jain a/w Rajesh Ostwal & Saurabh Bhise, Advocates for the Appellants

Shri Ashwini Kumar, Authorized Representative for the Respondent

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)****FINAL ORDER NO. A/87165-87169/2023**

Date of Hearing: 08.08.2023

Date of Decision: 23.11.2023

Per: S.K. Mohanty

Brief facts of the case, leading to these appeals, are summarized herein below:

1.1 The appellant M/s JH-Welltec Machines (India) P. Ltd., *inter alia*, is engaged in the manufacture of Plastic Injection Moulded Machines (PIMM) and is duly registered with the Central Excise department, having jurisdiction over the factory of such manufacture of the excisable goods. PIMM is a machine used for manufacturing wide variety of plastic products like caps of plastic bottles, automobile parts etc., by injection moulding process. For the purpose of manufacture/assembly of the PIMM, the appellant had imported various parts from M/s Welltec Machinery Ltd., China. The appellant and the overseas supplier are related persons in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and accordingly, the appellant got itself registered with the Special Valuation Branch (SVB), New Custom House, Mumbai for the purpose of valuation of the imported equipment/parts. The appellant had also claimed that it had domestically procured certain parts and equipment for manufacture of the complete PIMM and that it had discharged the Central Excise duty liability on manufacture of such goods.

1.2 In the matter of import of all kinds of plastic processing or injection moulding machines, an investigation was conducted by the Designated Authority (DA) in the Department of Commerce. In the preliminary findings, vide Notification No. 14/12/2008-DGAD, dated 10.02.2009, the DA had concluded that the subject goods had entered the Indian market from the subject country at the prices less than the normal value in the domestic market of the exporting country; that the dumping margins of the subject goods imported from the subject country were substantial and above *de minimis*; and that the domestic industry had suffered material injury and the injury had been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods, originating in or exported from the subject country. On the said findings, the DA had recommended for imposition of provisional anti-dumping duty on all imports of the subject goods, originating in or exported from China. Subsequently, based on detailed investigation, the DA vide Notification dated 31.12.2009, issued from file F. No. 14/12/2008-DGAD had recorded the final findings, in confirming the preliminary findings recorded in the Notification No. 14/12/2008-DGAD, dated 10.02.2009. Pursuant to such final findings, the Central Government vide Notification No. 39/2010-Cus. dated 23.03.2010 had

imposed the anti-dumping duty on 'plastic processing or injection moulding machines', originating in, or exported from China PR. The levy of anti-dumping duty as per the said notification was for a period of five years from the date of imposition of the provisional anti-dumping duty i.e., 12.05.2009.

1.3 In this case, the officers of Central Intelligence Unit (CIU), in the Customs department had conducted an inquiry with regard to horizontal plastic injection moulding machines imported by the appellant. They had alleged that the appellant had imported such goods from M/s Welltec Machinery Ltd., China in the guise of "parts and components" with the sole intention to evade anti-dumping duty leviable as per notification dated 12.05.2009, as amended by notification dated 23.10.2010. The consignment covered under Bill of Entry No. 8161563 dated 09.10.2012 were seized by officers of CIU on 30.11.2012. Subsequently, during the search operation at the appellant's factory, the said officers found that in respect of past consignments, the appellant had evaded payment of anti-dumping duty. During the course of investigation, the Department recorded statements from various persons with regard to the issue of importation of the subject goods. On the basis of investigation, the department had concluded that the appellant in connivance with its related foreign supplier had adopted various *modus operandi* and imported assemblies/sub-assemblies of PIMM of capacity between 90 Ton to 750 Ton in SKD/CKD condition by willfully mis-declaring and mis-classifying the imported goods as parts, components and spare parts with the intention of evading ADD amounting to Rs.19,68,98,069/-. It has further been observed by the department that the appellant had planned the evasion meticulously in collusion with other directors of the importing firm and representative of the related foreign supplier to suppress the actual description of the goods, by mis-declaring them as parts and components to import all essential assemblies/sub-assemblies of PIMM manufactured by the related foreign supplier in CKD/SKD condition to evade payment of ADD. On the basis of investigation, the department had proposed for rejection of classification of imported parts of PIMM under CTI 8477 9000 /7318 1100 and classified the same under CTI 8477 1000 for the purpose of confirming the demand of ADD under Section 28(4) of the Customs Act, 1962. For this purpose, the department had applied the provisions of Rule 2(a) of the General Rules

for the Interpretation (GIR) to the First Schedule to Import Tariff to hold that items imported should be classified as complete PIMM. Further, the department had also entertained the belief that the appellants herein, are exposed to the penal consequences provided under the statute.

1.4 On the above backdrop of the issue, the department had issued the show cause notice dated 28.07.2015 to the appellants, calling upon them to show cause as to why the subject goods seized under the provisions of Section 110 *ibid*, and subsequently released provisionally, shall not be confiscated under Section 111(d) and 111(m) *ibid*; the declared classification of the imported goods under CTI 8477 9000 / 7318 1100 shall not be rejected and to be classified under CTI 8477 1000 for the purpose of assessment and levy of ADD amounting to Rs.19,68,98,069/- as per notification dated 12.04.2009 and 23.03.2010 (*supra*); interest on the ADD payable under the disputed Bills of Entry shall not be charged under Section 28AA *ibid*; and penalty shall not be imposed on the appellants under Section 112(a) and 114A *ibid*.

1.5 The matter arising out of the SCN dated 28.07.2015 was adjudicated vide Order-in-Original No. 115/2016-17/CC/NS-I/JNCH dated 31.01.2017 by the Principal Commissioner of Customs, NS-I, JNCH, Nhava Sheva (for short, referred to as the 'impugned order'), wherein the learned adjudicating authority has confirmed the proposals made in the SCN. The following adjudged demands were confirmed on the appellants:

Appeal No. & Name of appellant	Period	ADD demand (in Rs.)	Penalty imposed (in Rs.)
C/85993/2017 JH-Welltec Machines (India) Pvt. Ltd.	30.9.2011 to 9.10.2012	19,68,98,069	19,68,98,069 under Section 114A
C/85989/2017 Jayeshkumar Patel		-	10,00,000 under Section 112(a)
C/85990/2017 Hitendra Nagadia		-	10,00,000 under Section 112(a)
C/85991/2017 Sanjay Sutariya		-	10,00,000 under Section 112(a)
C/85992/2017 Sanjay Gupta		-	10,00,000 under Section 112(a)

1.6 Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

2.1 Shri Gajendra Jain, learned Advocate appearing for the appellants has submitted that the parts of PIMM imported by the appellants are classifiable on their own merits, individually and independently by virtue of Section Note 2 to Section XVI of the Customs Tariff Act, 1975 read with Rule 1 of GIR. Thus, he submitted that the provisions of Rule 2(a) of GIR shall not be applicable for determination of the ADD liability on the subject goods. He further submitted that the said rule has the application only to assembly operations and will not apply in a case, where extensive manufacturing activities are involved. Hence, he submitted that the components imported by the appellants cannot be classified as finished goods imported in un-assembled condition. In this context, he had relied upon the judgement of the Hon'ble Supreme Court, in the case of *Chief Commissioner Vs. ACER India* – 2004 (172) E.L.T. 289 (S.C.) and *Shriram Vinyl & Chemicals Industries Vs. Commissioner of Customs* – 2001 (129) E.L.T. 278 (S.C.); Order of the Tribunal in the case of *LG Electronics India P Ltd., Vs. Commissioner of Customs*- 2022(8) TMI 873 – CESTAT Allahabad, *Ellora Time Ltd. Vs. Commissioner of Customs, Kandla* – 2005 (188) E.L.T. (491) (Tri.).

2.2 Learned Advocate also submitted that even if, Rule 2(a) *ibid* is applicable for proceedings under Section 9A of the Customs Tariff Act, 1975, but the notification dated 23.03.2010 shall not be applicable inasmuch as import of PIMM in CKD/SKD condition was not a stipulated condition therein for levy of ADD. To support such stand, learned Advocate has relied upon the order passed by the Tribunal in the case of *Anchor Daewoo Inds. Ltd. Vs. Commissioner of Customs, Kandla* – 2007 (214) E.L.T. 230 (Tri. – Ahmd.), which was upheld by the Hon'ble Supreme Court [2016 (331) E.L.T. A138 (S.C.)], in dismissing the Civil Appeal Nos. 5999-6000 of 2007 filed by the Commissioner of Customs, Kandla. Further, learned Advocate has also relied upon the judgements delivered by the judicial forum in the case of *Wipro Limited Vs. Commissioner of Customs, Chennai* - 2007 (217) E.L.T. 558 (Tri. – Chennai); *Philips India Ltd. Vs. Commissioner of Customs, Mumbai* - 2004 (166) E.L.T. 49 (Tri. – Mumbai); *Plaza Lamps and Tubes Ltd. Vs. Commissioner of Customs* – 2007 (209) E.L.T. 182 (Del.) and *Delta Electronics Vs. Commissioner of Cus. & C. Ex., Meerut* – 2012 (283) E.L.T. 68 (Tri. – Del), to state that notified goods alone should be

subjected to levy of ADD and not the parts and equipments imported for manufacture/assembly of such machine/ machinery.

2.3. Learned Advocate further submitted that the appellants had also procured substantial parts from within the country for carrying out the manufacturing activity in their factory premises. He has referred to the item 'Base Frame', one of the important parts, to say that the same was procured locally and that without such base frame, it is impossible to conceive the idea of manufacture of the PIMM. To support such stand, learned Advocate has referred to the certificate issued by the IIT Professor and contended that without locally procured goods and activities undertaken in India, it is not practically possible to conceive the imported goods as constituting the PIMM. With regard to the opinion furnished by the IIT Professor, learned Advocate submitted that such opinion was given in the capacity of an expert in the field and the same has not been challenged otherwise by the adjudicating authority. Thus, he submitted that the opinion furnished by the Expert in the field must be given due credence and should not be ignored, without proper substantiation of the case. In this context, he had relied upon the judgement of the Hon'ble Supreme Court in the case of *Commissioner of Customs, Mumbai Vs. Konkan Synthetic Fibres* – 2012 (278) E.L.T. 37 (S.C.), *BPL Pharmaceuticals Ltd. Vs. Commissioner of Customs* 1995 (77) E.L.T. 485 (S.C.) and the order of this Tribunal passed in the case of *Diamond Cements Ltd, Vs. Commissioner of Central Excise* – 2012 (283) E.L.T. 226 (Tri.), to state and submit that opinion of an expert in the field of trade, who deals in subject goods, should not be ignored and should be given due importance.

2.4 As regards the certificate of Chartered Engineer M/s Sai Siddhi Associates, relied upon by the Revenue for confirmation of the adjudged demands, learned Advocate submitted that the said certificate cannot at all be relied upon and that, if the said certificate is considered, then it goes in appellants' favour, inasmuch as it has been specifically confirmed therein that '*assemblies presently imported contribute to approximately 25% to 30% of the respective complete unit*' i.e., PIMM.

3. Shri Ashwin Kumar, learned Authorised Representative (AR) appearing for the Revenue submitted that the adjudged demands

confirmed in the impugned order are in conformity with the statutory provisions. In this context, he submitted that the appellants had imported complete PIMM by mis-declaring the same as parts, spare parts, components, sub-assemblies and assemblies of complete machine, with the malafide intention to evade payment of ADD, levied under Sl. No.12 of the table appended to notification No.39/2002-Cus. dated 23.03.2010. He further submitted that the levy of ADD is on PIMM classifiable under CTI 8477 1000. He also submitted that the chartered engineer M/s Sai Siddhi Associates had issued the certificate only in respect of the consignment covered under the B/E No. 8161563 dated 19.12.2012. With regard to other consignments covered under separate bills of entry, he submitted that since, the department upon proper analysis, had confirmed that the same are assemblies/parts of the PIMM, which are simply to be fitted with the help of nuts and bolts, the appellants are liable to pay ADD in terms of the notifications issued by the Designated Authority, considering the imported consignments as a complete machine by itself. Learned AR has relied upon the conversations made through e-mail and skype between the parties to the contract and claimed that the base frame parts, controller, hydraulic motors, valve hydraulic hose etc., were in fact imported by the appellants for mere carrying out the activity of assembling the same within the factory premises. Therefore, he submitted that since the vital components were imported by the appellants, just for the purpose of assembly of PIMM, it cannot be said that those vital items were sourced by the appellant locally in order to complete the process of manufacture of PIMM. To strengthen the case of Revenue, that the subject goods imported by the appellants are liable for payment of ADD, the learned AR has relied upon the Order of this Tribunal in the case of *Ankit Asthana Vs. Commissioner of Customs (Import), Nhava Sheva* – 2015 (327) E.L.T. 162 (Tri. - Mumbai). Thus, he contended that confirmation of the adjudged demands against the appellants are sustainable under the law.

4. Heard Shri Gajendra Jain, learned Advocate, Shri Ashwin Kumar, learned AR and examined the case records, including the written notes submitted by both sides.

5. Learned Advocate appearing for the appellants prayed for abating the appeal being No. C/85991/2017 on the ground that the appellant Sanjay Kumar M Sutariya had expired on 25.02.2023. We have also perused the death certificate dated 16.03.2023 issued by Amdavad Municipal Corporation, certifying that Sanjay Kumar Mithabhai Sutariya died on 25.02.2023 and the case was registered vide Sl. No.190 in the record of the Corporation. Since, the deceased appellant is no more in existence, the appeal filed by him should abate in terms of Rule 22 of the CESTAT (Procedure) Rules, 1982. Accordingly, the appeal filed by him abated.

6.1 The Directorate General of Anti-Dumping and Allied Duties, in the Ministry of Commerce & Industry, Government of India had initiated anti-dumping investigation, concerning import of 'Plastic processing machinery', originating from China PR. The said proceedings were initiated pursuant to the application filed by M/s L&T Demag Plastic Machinery Ltd., Chennai. In the Notification dated 08.07.2008, issued from file F. No. 14/12/2008-DGAD, the authorities had initiated investigation proceedings, concerning the products i.e., "all kinds of plastic processing or injection moulding machines, also known as injection presses, having clamping force not less than 40 tonnes, used for processing or moulding of plastic materials". On primary round of investigation into the matter, the Designated Authority had submitted its preliminary findings by Notification No.14/12/2008-DGAD dated 10.02.2009, with the conclusion that (a) the subject goods had entered the Indian market from the subject country at prices less than their normal values in the domestic market of the exporting country; (b) the dumping margins of the subject goods imported from the subject country were substantial and above *de minimis*; (c) the domestic industry had suffered material injury and the injury had been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods, originating in or exported from, the subject country. On the basis of such preliminary findings, the Designated Authority had recommended for imposition of provisional anti-dumping duty on all imports of the subject goods, originating in or exported from, the subject country, i.e., China PR.

6.2 On the basis of such recommendation (supra), the Central Government, in exercise of the powers conferred by sub-section (2) of Section 9A of the Customs Tariff Act, 1975, read with the Rules 13 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, had issued the Notification No.47/2009-Customs dated 12.05.2009, in imposing an anti-dumping duty @ of 223% of the C.I.F. value of imports of the subject goods. Such imposition of ADD was on provisional basis. Subsequently, on detailed investigation into the matter, the Designated Authority had issued the notification dated 31.12.2009 (from file F. No.14/12/2008-DGAD), in recording his final findings. Vide the said notification, the Designated Authority had recommended for imposition of definitive anti-dumping duty on the subject goods, imported from China PR. Pursuant to such notification, the Central Government vide Notification No.39/2010-Cus. dated 23.03.2010 had finally imposed the anti-dumping duty.

7. On conjoint reading of the notifications issued by the authorities in both the Ministries i.e., Ministry of Commerce & Industry and the Ministry of Finance, it makes the position clear that the authorities had intended to levy anti-dumping duty on the plastic processing or injection molding machines originating in, or exported from China PR. In other words, when such machine is imported in 'as it is condition' or 'in CKD/SKD condition' (without any further value addition thereto), then the same are liable for payment of anti-dumping duty. The appellants herein, had claimed that they had manufactured the PIMM (an excisable commodity), out of the imported and locally procured parts and components and that on such manufacturing activity, they had discharged appropriate Central Excise duty liability. The details of the imported/indigenously procured goods, as submitted by the appellants in the tabular form, are extracted herein below:

S. No.	Imported part description	S. No.	Local part description
I001	Mould platen, tie bar with lock nuts and toggle links	L001	Base frame
I002	Lubrication hose and Fittings	L002	Programmable Logic Controller (PLC)
I003	Mould adjustment motor and chain	L003	Hydraulic valves

S. No.	Imported part description	S. No.	Local part description
I004	Screw & barrel set	L004	Hose pipe
I005	Heater band	L005	Linear transducer
I006	Servo systems	L006	Hydro motor
I007	Hydraulic safety valve back pressure adjustment valve	L007	Seamless pipe
I008	Electric cabinet with all Wirings	L008	Hydraulic fittings
I009	Controller cabinet	L009	Aluminum checker sheet
I010	Limit switches and proximity switches	L010	Paint materials
I011	Guard cover and safety Doors	L011	Electrical panel & parts
I012	Hydraulic manifold	L012	Machine oil & grease
I013	Pressure transducer	L013	Allen bolts & hardware
I014	Oil cooler and filter	L014	Tools
		L015	Hardware items
		L016	Lubrication pump & fittings
		L017	Acrylic sheet

8.1 During the course of inspection of the imported goods covered under the B/E No. 8161563 dated 09.10.2012, the Customs Department had engaged the Chartered Engineer M/s Sai Siddhi Associates, who on inspection of the goods, vide certificate dated 09.11.2012 had confirmed that the goods are assemblies for injection molding machines and not parts as such, as declared in the import documents. Further, vide paragraph 3.1 in the said certificate, the Chartered Engineer had commented on the subject goods imported by the appellants, as under:

"We also confirm that even if all the above tabulated Assemblies are assembled altogether, they do not form either of the complete injection moulding machine. Rather we on our past experience on similar type of goods opine that the Assemblies presently imported contribute to approximately 25% to 30% of respective the complete units."

(emphasis supplied)

8.2 Further, to inspect the goods and for confirmation of the fact as to whether, the import component thereof should alone be considered as the complete PIMM or otherwise, the appellant had engaged Shri K.P. Karunakaran, Institute Chair - Professor of Mechanical Engineering, in the Indian Institute of Technology, Bombay. Upon in-depth study of the process, the following technical opinion dated 02.08.2016 was furnished by the said expert Professor:-

"To Whomsoever It May Concern

Technical Opinion on Plastic Injection Molding Machines (PIMMs)

After almost a decade of industrial experience in Hindustan Aeronautics Limited since 1984 specializing in the areas of CNC technology and sheet metal manufacture, I took up teaching and research career in IIT Bombay in 1994. I am presently an Institute Chair Professor in the Department of Mechanical Engineering. My areas of interest are CNC Technology, Manufacturing Automation, 3D Printing, Computer Graphics and Innovating Product Development. Application of 3D printing to produce injection molds with conformal cooling channels is one of my specializations.

I visited JH Welltech Machines (India) Pvt. Ltd., Ahmedabad, along with a research scholar on March 23, 2016 (Wednesday). We studied the Plastic Injection Molding Machines (PIMMs) being manufactured in their premises. We also visited a nearby factory where it was in use and witnessed its operations.

JH Welltech imports certain parts like clamping unit, injection unit, servo drive, etc. They also domestically procure vital parts like machine base frame, PLC, hydraulic valves etc. In our opinion, it is not possible to conclude that the imported goods per se would constitute complete PIMM since without domestically procured parts and components, the imported goods cannot form a machine by any stretch of imagination. A detailed report is enclosed as Annexure-I to justify our opinion."

(emphasis supplied)

Further, Shri K.P.Karunakaran, in his technical opinion (supra) had also discussed about design, manufacture of PIMM and also its important sub-systems such as base frame, clamping unit, heating system, hydraulic system, PLC system etc., in forming the part of or participation in the manufacture of final product i.e., PIMM. Upon detailed study of the function of various machines, the said Professor in his opinion dated 02.08.2016, had concluded as follows:

"In our view, the significance of the domestically procured parts & the activities undertaken by JH Welltech in their premises cannot be ignored while judging the emergence of the complete PIMM. The contributions of the indigenous parts of the PIMM manufactured in India are as vital as the imported ones. The activities in India are also substantial. Furthermore, there are continuous efforts in the company to indigenize more and more parts like electrical cabinet, tie bars, cylinders etc. While PIMMs are very important machine tools in view of the ever increasing use of plastic parts, there are very few players today.

In our opinion, JH Welltech do not simply assemble the imported parts and make the complete PIMM; they use several vital indigenous parts for making it. In our opinion, it is not possible to conclude that the imported parts by themselves constitute a complete PIMM. In other words, without the locally procured goods and the activities undertaken in India, it is impossible to conclude that the imported goods per se can be called as a complete PIMM.

(emphasis supplied)

8.3 The appellant had also engaged another Chartered Engineer M/s A.G. Associates to study the process of manufacture of PIMM and the constituent parts used for manufacture of the same. Upon detailed study of the manufacturing process and on consideration of the technical parameters, the said Chartered Engineer vide its certificate 10.05.2016, had confirmed that *"an injection molding machine comprises of thousands of small and big parts and components of which the major are imported by the manufacturer. However, there are also some major and minor parts and components which are being locally purchased by the manufacturer. ... Of the goods locally purchased the most crucial component / assembly is the base frame, which plays a vital role in the assembly/manufacturing of any particular injection molding machine."*

8.4. Furthermore, the financial aspects of the appellants' company were also verified by M/s Avtar & Bhavesh, Chartered Accountants, who vide certificate dated 25.01.2016 had provided the details of cost of machine manufactured by using both domestic/imported parts. The certificate together with the cost sheet (both value and quantity wise) attached thereto, are extracted herein below:



Avtar & Bhavesh

CHARTERED ACCOUNTANTS

H. O. : 304/A, Harekrishna Complex, B/h. City Gold Cinema, Ashram Road, Ahmedabad-380 009.
Voice : 079-30252654, E-mail : ab_ca2005@yahoo.co.in

CERTIFICATE

This is to certify that M/s. JH-WELLTEC MACHINES (INDIA) PVT. LTD. having registered office at B/3, Mayurpankh Apartments, B/h. Daxini Society, Maninagar, Ahmedabad – 380 008 and factory at Road No. 10, Plot No. 410, Kathwada G.I.D.C., Kathwada, Ahmedabad – 382 430 is a closely held company registered with ROC vide CIN : U29100GJ2010PTC063100 and is engaged in manufacturing of injection molding machines. Details of cost of machines manufactured along with Gross Margin and Net Margin earned on the sales invoice randomly selected in terms of imported parts used, domestic parts used and labour used and direct expenses to manufacture the machine as well as indirect expenses is attached herewith.

The above certificate is issued on the basis of books of accounts and other necessary documents produced before us for our verification and at the request of client. Certificate is issued without assuming any risk and responsibility on our part.

PLACE : AHMEDABAD

DATE : 25.01.2016



FOR AVTAR & BHAVESH
CHARTERED ACCOUNTANTS

T. Shetty
(CA. B.S. THAKKER)
PARNTER
M.NO. 113020

PROFIT MARGIN STATEMENT																					
Invoice No.	Invoice Date	Machine No.	Machine Model	S.I. NO. & DATE	USD VALUE OF IMPORTED PARTS USED	Value of Imported parts used	Value of domestic parts used	Assembling Charges	Painting Charges	Piping Charges	Other direct expenses	Total cost of manufacturing	Basic Sales value of machine	Gross Margin	Other Misc. Income	Directors Remuneration	Exhibition Exps.	Foreign Exchange loss	Sales Commission	Other Indirect Exps.	Net Profit / (Loss) per machine
1	21/03/2011	JHW-01	SE-130	713604 DT.10/02/11	11500	539350	307283	124700	4000	4500	176241	1156074	1247000.00	90926	1798	163792	371264	0	0	89728	-532060
2	25/03/2011	JHW-02	SE-160	713604 DT.10/02/11	13000	609700	311180	140000	4000	4500	197865	1267245	1400000.00	132755	2019	183888	416816	0	0	100737	-566667
3	29/03/2011	JHW-03	SE-160	713604 DT.10/02/11	13000	609700	291327	135000	4000	4500	190798	1235325	1350000.00	114675	1947	177320	401990	0	0	97139	-559768
1	18/05/2011	JHW-04	SE-130	713604 DT.10/02/11	11500	539350	283331	130000	4000	4500	90381	1051562	1300000.00	248438	5453	38422	46484	34771	28437	38108	67669
2	02/06/2011	JHW-05	SE-160	322142 DT.15/04/11	12400	578224	300871	135000	4000	4500	91857	1116452	1350000.00	233548	5662	39900	48272	36108	29530	39573	45826
10	10/08/2011	JHW-13	SE-190	322142 DT.15/04/11	15060	701796	349044	180000	4000	4500	125143	1364483	1800000.00	435517	7550	53200	64362	48144	39374	52765	185222
2	29/04/2012	JHW-048	SE-130	596025 DT.09/02/12	11384	646500	259608	140000	4000	4500	60195	1114803	1400000.00	285197	12363	63210	23289	36095	1449	34911	138606
3	04/05/2012	JHW-095	SE-880	5539079 DT.22/12/11	35800	2112233	469053	327500	6000	5500	148813	3061100	3275000.00	213900	28922	147867	54480	84436	3389	81666	-129016
4	04/05/2012	JHW-038	SE-160	4807476 DT.30/09/11	12725	729374	315767	160000	4000	4500	68794	1282435	1600000.00	317565	14130	72240	26616	41251	1656	39898	150033



9. On careful reading of the contents in the certificates dated 09.11.2012, 10.05.2016 and 02.08.2016 (referred supra) issued by the Chartered Engineers and the certificate dated 25.01.2016 issued by the Chartered Accountants (supra), the factual position is amply clear that the appellant had imported certain components of the PIMM from outside the country and indigenously procured some of the vital components for manufacture of the resultant final product i.e., PIMM. Further, the annexure to the certificate issued by the Chartered Accountant, as above, had also reflected that the indigenously procured components, both in terms of value and quantity wise, were also commensurate with the quantity reflected in the certificate furnished by M/s Sai Siddhi Associates, Chartered Engineers engaged by the Revenue. However, on perusal of the impugned order, we find that though the above referred certificates were produced by the appellants before the adjudicating authority, but the same were completely brushed aside and no findings were recorded therein, countering the expert opinion furnished by the authorities in the field. In this context, we find support from the judgement relied upon by the learned Advocate for the appellants in the case of *Konkan Synthetic Fibre* (supra), wherein the Hon'ble Supreme Court had held that the opinion of the expert in the field of trade who deals in the subject goods, should not be ignored, rather the same should be given due importance, while dealing with fiscal or taxation laws.

10. Even assuming that the case of the appellant falls under the purview of levy of ADD, then in that case, the background of levy and imposition of ADD has to be looked into in terms of various notification(s) issued by the Ministry of Commerce & Industry.

The whole scheme envisaged under Section 9A *ibid*, read with Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, is for consideration of a particular article only, which is the subject matter of investigation pursuant to the complaint lodged by the domestic industry. The whole process of determining "domestic industry", "margin of dumping", "export price", "normal value", "injury", initiation, investigation, etc. is in relation to a particular article liable for Anti-dumping Duty. The Designated Authority identified PIMM alone as an

article liable for Anti-dumping Duty. The Designated Authority did not identify "PIMM in SKD condition" or "parts and components of PIMM" as an article liable for Anti-dumping Duty, which is evident from the fact that the inquiry was conducted, based on the representation of the domestic industry only in context with complete plastic processing or injection molding machines (PIMM) and not on any other article.

11.1 In context with the issue of levy of ADD, which is identical to the issue for legal interpretation, the co-ordinate Bench of the Tribunal in the case of Anchor Daewoo Industries Ltd. (supra), had dealt with the notification No.139/2002-Customs and held that the levy of ADD was only on the compact fluorescent lamps (CFL) and not on parts thereof. The relevant paragraphs in the said order are extracted herein below:

"8. We find that the issue of whether the parts of CFL would in itself be liable for imposition of anti-dumping duty was a issue between two ministries of Govt. of India. The Office Memorandum No. 162/2006-DGAD, dated 1-5-06 as issued by DGAD is as under:

"No. 162/2006-DGAD
Government of India
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Anti Dumping and Allied Duties

Room N. 260-A, Udyog Bhawan,
New Delhi

Dated the 1st May, 2006

OFFICE MEMORANDUM

Sub. : Parts of CFL imported under HS code 98539.90 being classified under 8539.31 ready to use CFL - regarding.

Please refer to your Office Memorandum No. 354/205/2001-TRU (Part I) dated 20th April, 2006, forwarding copy of representation dated 4th April, 2006 of M/s. Khaitan Electricals Ltd., whereby clarification has been sought on the scope of the product CFL imported from China PR and covered under Anti-Dumping Investigation conducted by the Designated Authority. In this regard, it is clarified that :

(a) Anti-dumping duties were recommended/imposed on the following two types of CFLs:

- (i) Complete, ready to use compact fluorescent lamps wherein choke is integrated within the lamp.*
- (ii) Complete, ready to use compact fluorescent lamps wherein choke is external.*

(b) Anti-dumping duties were not recommended on parts/components of CFL.

(c) "CFL with choke" is complete ready to use compact fluorescent lamps wherein choke is an internal part.

(d) CFL without choke as defined in the final findings is complete ready to use compact fluorescent lamps wherein choke would be external part.

2. This issues with the approval of the Designated Authority.

Sd/-
(Rajesh Jain)
Jt. Director (Cost)
Tele : 23081732
Fax : 23083418

Shri J. Sahay, Technical Officer (TRU)
Ministry of Finance
Department of Revenue, Tax Research
Unit, North Block,
New Delhi."

(Emphasis provided)

9. *It can be noticed from the above reproduced office memorandum, the authority that recommends imposition of definitive anti-dumping duty, have clearly indicated in the above memoranda that (a)(i), (ii) that the anti-dumping duty were recommended on ready to use compact fluorescent lamp, whether chokes are integrated within the lamp or whether the choke is external. It is to be understood that the authority which recommends anti-dumping duty has clearly indicated that the anti-dumping duty has to be imposed only on ready to use CFL. It is not brought on record by the Revenue in this case that the goods imported by the appellant and which were sought to be cleared are "ready to use" compact fluorescent lamps. In the absence of any evidence to suggest that the imported goods were ready to use CFL, we have hold that imported goods are parts of CFL and they are not liable for imposition of anti-dumping duty as per the office memorandum (as reproduced above)."*

11.2 We find that Civil Appeal being Nos.5999-6000 of 2007 filed by the Revenue in the case of Anchor Daewoo Industries Ltd. (supra), was dismissed by the Hon'ble Supreme Court (supra). Thus, the law is amply clear that the product under consideration for levy/imposition of ADD should confine only to the product, on which investigation was initiated by the Designated Authority under the Ministry of Commerce & Industry and not on any other product. In the present case, since the product in question under investigation was confined to 'plastic processing or injection molding machines', the action on the part of the Customs department to consider some other product to fall within the ambit and scope of the product under investigation cannot hold good, having lack of authority conferred under the statute. Therefore, in our considered view, ADD shall not be levied on the goods imported by the appellants on this ground also.

12.1 The provisions for levy of Customs duties are contained in Section 12 of the Customs Act, 1962. It has been mandated that duties of customs shall be levied at the rates as specified under the Customs Tariff Act, 1975 (for short, referred to as 'the Act of 1975'). On importation of the disputed goods, the appellants had filed the Bills of Entry classifying the imported goods under different customs tariff items (CTI), as per Chapters 73, 84 and 85 provided under the Act of 1975. The B/Es filed by the appellant were finally assessed by the Customs

department at the port of import, accepting the declaration furnished by the appellant. The provisions regarding levy of ADD on the dumped articles are contained in Section 9A of the Act of 1975. Since, levy under Section 9A *ibid*, is confined only to the dumped articles and is not a general levy in respect of the imported goods as provided under Section 12 *ibid*, the notifications issued for the purpose of levy of ADD have to be minutely studied. Since, the goods in question imported by the appellants were not the complete PIMM by itself, and not brought under the CKD/SKD condition, the same in our considered opinion, cannot be subjected to levy of ADD and should be outside the scope and purview of section 9A *ibid*. In other words, the authorities functioning under the Act 1975, have to read the notification(s) in the proper perspective and the same cannot be interpreted in a different way to bring something else within their ambit for levy and collection of ADD. With regard to levy of ADD on articles, the law is well settled that the provisions of Section 9A read with Rule 2(a) of General Rules for Interpretation (GIR) are applicable to the 'product under consideration' for levy of ADD by the competent statutory authority.

12.2 The Act of 1975 provides the General Rules for the Interpretation (GIR) of the First Schedule, concerning the import tariff. Rule 1 of the GIR states that "*the titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions*", which are contained in subsequent rules viz., Rule 2 to Rule 6. On reading of Rule 1 (*supra*), it transpires that the classification of imported goods shall be determined with reference to the heading, section notes and chapter notes. Thus, when the classification of imported item is possible and determinable with reference to heading, section notes and chapter notes, then recourse to Rule 2(a) of GIR cannot be resorted to.

12.3 Now coming to the provision of Rule 2(a) of GIR to Act of 1975, it has been provided as under:

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be

classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”

Reading of Rule 2(a) of GIR makes the position clear that the said rule does not enact a special rule for classification, but only recognizes the existing practice in trading of goods in CKD/SKD condition. For example, a ceiling fan is sold in CKD condition only. Similarly, ready-to-assemble or do-it-yourself, furniture items or bi-cycle are sold in CKD condition. In those cases, when the goods are imported as CKD kit, then they are classified as fan or furniture or bi-cycle and not as parts. The articles envisioned under the Rule 2(a) of GIR are (i) incomplete article possessing essential character of the complete or finished article; (ii) unfinished article possessing essential character of the complete or finished article; (iii) complete or finished article, in unassembled condition; and (iv) complete or finished article, in disassembled condition.

12.4 According to the department, the finished goods imported by the appellant were in un-assembled condition. The phrase “presented unassembled/disassembled” has been explained in the HSN Explanatory Notes as under:

“(V) The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

*“(VII) For the purpose of this Rule, ‘articles presented unassembled or disassembled’ means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolt, etc.) or by riveting or welding, for example, **provided** only assembly operations are involved.*

*No account is to be taken in that regard of the complexity of the assembly method. **However, the components shall not be subjected to any further working operation for completion into the finished state.***

Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.”

[Emphasis Supplied]

12.5 In addition to the above explanation, it has further been contemplated in the HSN Explanatory notes to Rule 2(a) of the GIR that the following aspects should also be considered for classifying the components as unassembled article:

- a) the article has been imported in unassembled condition for the convenience of handling, transportation and packing;
- b) components imported should not undergo any further processing or working thereon;
- c) the assembly operation is done either through fixing devices or by riveting or welding.

12.6 In the case in hand, the imported goods were not presented by the appellant in un-assembled condition as alleged by the department for the purposes of convenience of packing or handling or transportation. Rather, the post importation activities do not merely involve assembly of the imported goods, but involved procurement of the essential components/parts for ultimate manufacture of PIMM in India, the facts of which have also been endorsed by the Chartered Engineers in their respective certificates (referred supra). The process involved for completion of the manufactured goods since, have taken place post importation of the goods in question, in our considered view, the provisions of Rule 2(a) of GIR shall not be applicable for change in classification of the imported goods and to bring such goods under the purview of Rule 9A *ibid*, for the purpose of levy of ADD thereon.

13. In support of the findings that appellants had imported the complete PIMM, the impugned order has mainly relied upon the e-mail correspondences and skype conversations made between the appellants and the representatives of the overseas supplier/entities. We have gone through such relied upon documents and found that the subject matter of discussions therein was principally confined to the area of development of manufacturing facility of the product in India etc. Further, we find that nowhere in such retrieved documents/records, there is any whisper regarding importation of the complete PIMM machine. Rather, it transpires from such documentation that the appellants had not imported the complete machine and the items imported are only 'in part'. Furthermore, the statements relied upon in the impugned order are also not specific with regard to supply of the complete PIMM machine by the overseas supplier. Thus, we are of the view that blind reliance cannot be placed on such documents to conclude that the appellants had imported the complete machine, in order to fall within the purview of Rule 9A *ibid* read with the notifications issued by

the Government of India in the Ministry of Commerce & Industry and the Ministry of Finance for the purpose of levy of ADD.

14. On the basis of the analysis made herein above, we conclude that the appellants herein had not imported the complete PIMM in order to fall within the purview of the notification(s) referred supra for levy of ADD. In this case, admittedly since the PIMM, complete in all respects was manufactured in India by using the domestically procured goods also, such imported equipment, in our considered view, should not be subjected to levy of ADD. Therefore, the adjudged demands confirmed in the impugned order cannot be sustained for judicial scrutiny. Further, it is not the case of Revenue that the appellants did not pay central excise duty on the PIMM manufactured by them in their factory located in Ahmedabad. Since, manufacturing activity undertaken by the appellants and payment of Central Excise duty on such activity was acknowledged and not disputed by the jurisdictional Central Excise authorities, the same cannot be questioned by the Customs department without any clinching evidence that such machine in question was imported into India as such or in un-assembled condition, and no further activities were undertaken thereto to complete the process of manufacture and installation etc.

15. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants. Therefore, by setting aside the impugned order, the appeals (excepting Appeal No. C/85991/2017) are allowed in favour of the appellants. Appeal No. C/85991/2017 abates in view of the discussions made in paragraph No.5 above.

(Order pronounced in open court on 23.11.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)