

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 3

Customs Appeal No. 51433 of 2019

(Arising out of Order-in-Appeal No. CC (A)/Cus/D-II/PPG/384/2019-20 dated 02.04.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

**M/s Hanon Climate Systems India
Private Limited**

Appellant

VERSUS

**Commissioner of Customs, ICD
Patparganj, New Delhi.**

Respondent

Appearance

Shri Rajat Dosi, Advocate – for the Appellant.

Shri Rakesh Kumar, Authorized Representative – for the Respondent.

**CORAM : HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**DATE OF HEARING: 09/02/2023
DATE OF DECISION: 15/02/2023**

Final Order No. 50126/2023

P.V. Subba Rao

M/s. Hanon Climate Systems India Pvt. Ltd.¹ filed this appeal to assail the Order in Appeal² dated 2.4.2019 passed by the Commissioner of Customs (Appeals), New Delhi rejecting the appellant's appeal and upholding the Assessment Order dated 6.12.2017 passed by the Deputy Commissioner. We have heard

1 Appellant

2 Impugned order

learned counsel for the appellant and learned authorised representative and perused the records.

2. The appellant claims to manufacture air conditioning systems for automobiles and for this purpose imported Aluminium Alloy coils and filed two Bills of Entry dated 16.11.2017 to clear the imported goods through with Inland Container Depot Patparganj, New Delhi. The appellant did not include anti-dumping duty on the imported goods while self assessing duty. On a query raised by the assessing officer, the appellant took the stand that no anti-dumping duty as per Notification No. 23/2017-Cus (ADD) dated 16.5.2017 as alleged by the department, was leviable on the imported goods because the goods were covered by the exclusion clause (vii) of the notification. Not agreeing with this contention, the Deputy Commissioner passed Assessment Orders levying the anti-dumping duty which the appellant paid and cleared the goods and appealed to the Commissioner (Appeals) who passed the impugned order rejecting the appeals.

3. The goods imported in the Bills of Entry were as follows:

Sl. No.	Item Description	CTH	Qty (in kgs)
1.	Aluminium Alloy Foil-SC-MA-19D925-AA (60 Micron Clad) Alloy HF 8501, H16 use for Car Condensor	76071190	1245
2.	Aluminium Alloy Foil-Part/N. SCMA-9M438-CA (60 Micron Non-Clad) Alloy HF 308, H16 use for Car Radiator	76071190	1292
3.	Aluminium Alloy Foil-Part/N. SCMA-9M438-DA (60 Micron Non-Clad) Alloy HF 308, H16 use for Car Radiator	76071190	1277
4.	Aluminium Alloy Foil-Part/N. SCMA-9M437-DB (60 Micron Non-Clad) Alloy HF 303, H18 use for Car Radiator	76071190	1375

Of the four, it is the case of the Revenue that S.No. 2, 3, and 4 are liable to Anti-Dumping Duty levied by Notification No.23/2017 dated 16.5.2017. It is the case of the appellant that no Anti-Dumping Duty is imposable on these three products under the above notification because the notification provided some exceptions on which no ADD is leviabale. According to the appellant, these goods are exempted from Anti-Dumping Duty by exclusion clause (vii) of the notification which reads as follows:

“(vii) Clad with compatible non-clad Aluminium Foil: Clad with compatible non clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater.”

4. It is undisputed that if the disputed goods are covered by this clause, no anti-dumping duty is leviabale on the goods. The dispute in this case is only whether the goods are covered by this clause or not. According to the appellant they are covered by this clause and according to the Revenue they are not.

5. Learned counsel for the appellant submitted as follows to assert that the disputed goods were covered by clause (vii) of the Notification.

a) The Directorate General of Anti-Dumping duties (DG for short) conducted detailed investigation into allegations of dumping and published his Final Findings based on which Anti-Dumping Duty was imposed by the Government by issuing the notification under Section 9A of the Customs Tariff Act, 1975.

b) A clarification was sought from the DG as to whether unclad Aluminium foils (which were imported) were covered by exception from Anti-dumping duty provided by clause (vii) of the Notification and by letter dated 10.3.2017 clarified as follows:

"5. The aforesaid exclusion was granted as the domestic industry had admitted that it could not produce the above products, namely i) clad aluminium; and ii) compatible unclad aluminium. This is also recorded in the final findings at several places, extracts of which are given below:

ii. Exclusion accepted by the domestic industry:

c. Clad with Non Clad Aluminium- 'Aluminium - Manganese- Silicon based and/or clad Aluminium- Manganese- Silicon based alloys, whether clad or unclad: with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.

d. Some interested parties require clad with compatible non clad aluminium foil which is used in heat exchangers used specifically only in radiators in vehicles and engines in cooling systems. This is excluded by petitioner.

6. Further, Para 79 clearly mention that the following is excluded from the scope of PUC.

Aluminium- Manganese- Silicon based and/or clad Aluminium- Manganese- Silicon based alloys, whether clad or unclad: with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof."

c) The High Court of Bombay examined this matter in **Mahle Anand Thermal Systems Pvt. Ltd. Vs Union of India**³ and ruled as follows:

"13. Subsequently, there is a clarification issued by the Directorate General of Anti-Dumping And Allied Duties on 1st February, 2018 which is quoted earlier. Therefore, it is quite clear that clad as well as clad with compatible non-clad or unclad aluminium foil has been excluded from anti-dumping duty. Respondent No. 4 therefore not justified in insisting on payment of anti-dumping duty for clearance of unclad or

non-clad consignment of aluminium foil, more so, when the same product is allowed to be imported from other ports without insisting on payment of levy of anti-dumping duty.

14. In view of the above, we allow the petition in terms of prayer clauses (a1) and (e) and the same read as under:

“(a1) that this Hon’ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India declaring that levy and collection of ADD on unclad or non-clad aluminium foils for automobile industry imported from China PR in terms of Notification No. 23/2017-Cus. (ADD), dated 16.5.2017, is incorrect and contrary to Section 9A read with 9B(b)(iii) of the Customs Tariff Act, 1975 and read with paragraph(s) 9(ii)(c), 12, 31, 79 and 136(xIix) of Final Findings dated 10.3.2017.

(e) that this Hon’ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing the respondents by themselves, their officers, subordinates, servants and agents to forthwith grant refund of Anti-dumping Duty paid by the petitioner under protest on import of unclad/non-clad aluminium foil from China PR in terms of Notification No. 23/2017-Cus. (ADD), dated 16.5.2017 during the period from August 2017 to December 2018.”

- d) Thus, not only has the DG clarified that unclad Aluminium foils were covered by the exclusion in clause (vii) of the Notification but the High Court of Bombay has also, after considering the issue including the clarification provided by the DG, held that no Anti-Dumping Duty is leviable on the disputed goods.
- e) Further, when the appellant imported the goods through other Customs formations, it was not required by the Department to pay Anti-Dumping Duty. In one case, where Anti-Dumping Duty was erroneously paid, it was refunded to it by the Deputy Commissioner of Customs, Gandhinagar by order dated 25.9.2018.

6. Learned authorised representative submitted as follows to assert that the disputed goods were not covered by clause (vii) of the notification.

- a) The disputed goods are different from the goods in the case where refund was given to the appellant in Gandhinagar and the case before the High Court of Bombay in **Mahle Anand**. Before the Deputy Commissioner, Gandhinagar, the goods under consideration were 'Aluminium alloy foil'. In **Mahle Anand**, the goods 'Aluminium Manganese-Silicon based alloy, unclad or non clad Aluminium foil' were under consideration of Bombay High Court.
- b) The clarification given by the DG also will not come to the aid of the appellant because it does not say that any non-clad aluminium foil was covered by clause (vii) of the notification and hence no anti-dumping duty is leviable.
- c) If the appellant is claiming the benefit of an exemption clause of the Notification, it should be strictly interpreted and any benefit of doubt should be given to the Revenue.
- d) The judgment of the High Court of Bombay was in a Writ Petition under Article 226 and any relief provided under it cannot automatically extend to all.
- e) The impugned order is therefore, correct and proper and calls for no interference.

7. We have considered the submissions. The disputed goods were described as 'Aluminium alloy coils' and there is no dispute that these were not clad. Non-clad or unclad aluminium coils are exempted from the Anti-Dumping Duty notification as per clause

(vii) as per the clarification provided by the DG in his letter which was as follows:

"5. The aforesaid exclusion was granted as the domestic industry had admitted that it could not produce the above products, namely i) clad aluminium; and ii) compatible unclad aluminium. This is also recorded in the final findings at several places, extracts of which are given below:

ii. Exclusion accepted by the domestic industry:

c. Clad with Non Clad Aluminium- 'Aluminium - Manganese- Silicon based and/or clad Aluminium- Manganese- Silicon based alloys, whether clad or unclad: with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof.

d. Some interested parties require clad with compatible non clad aluminium foil which is used in heat exchangers used specifically only in radiators in vehicles and engines in cooling systems. This is excluded by petitioner.

6. Further, Para 79 clearly mention that the following is excluded from the scope of PUC.

Aluminium- Manganese- Silicon based and/or clad Aluminium- Manganese- Silicon based alloys, whether clad or unclad: with post brazing yield strength greater than 35 MPA, falling under tariff heading 7607 for use in heat exchangers including radiators, charge air coolers, condensers, oil coolers, heater cores, evaporators, heat ventilation and air conditioning (HVAC) systems and parts thereof."

8. Learned authorised representative submitted that the nature of goods has to be seen and the disputed goods are different from the goods under consideration of the Bombay High Court and also the goods imported through Gandhinagar. We find that the disputed goods were described as Aluminium alloy foils while the goods under consideration by the Bombay High Court were Silico-Manganese-Aluminium alloy foils. The goods imported through Gandhinagar were described as Aluminium alloy foil.

9. This submission of the learned authorised representative for the Revenue cannot be accepted. Firstly, the composition of the disputed goods is not in question that they were an alloy of aluminium and so it cannot be presumed that the alloy had a different composition than the alloy under consideration before the Bombay High Court. Secondly, clause (vii) nowhere specifies that it excludes alloys of particular composition. Neither does the letter of the DG stipulate that the exclusion under clause (vii) was available only to a particular type of alloys.

10. Another submission of the learned authorised representative was that the judgment of the Bombay High Court was in a Writ Petition. We find a writ of mandamus was issued by the High Court in **Mahle Systems** as follows:

14. In view of the above, we allow the petition in terms of prayer clauses (a1) and (e) and the same read as under:

“(a1) that this Hon’ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India declaring that levy and collection of ADD on unclad or non-clad aluminium foils for automobile industry imported from China PR in terms of Notification No. 23/2017-Cus. (ADD), dated 16.5.2017, is incorrect and contrary to Section 9A read with 9B(b)(iii) of the Customs Tariff Act, 1975 and read with paragraph(s) 9(ii)(c), 12, 31, 79 and 136(xIix) of Final Findings dated 10.3.2017.

(e) that this Hon’ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing the respondents by themselves, their officers, subordinates, servants and agents to forthwith grant refund of Anti-dumping Duty paid by the petitioner under protest on import of unclad/non-clad aluminium foil from China PR in terms of Notification No. 23/2017-Cus. (ADD), dated 16.5.2017 during the period from August 2017 to December 2018.”

11. It is evident that it was not a relief provided to the petitioner but it is a ruling regarding interpretation of the notification. Therefore, its benefit will equally apply to anybody else.

12. For all these reasons we find that the impugned order cannot be sustained. We allow the appeal and set aside the impugned order with consequential relief to the appellant.

(Pronounced in open Court on 15/02/2023)

(P. V. Subba Rao)
Member(Technical)

(Binu Tamta)
Member(Judicial)

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