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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th May, 2025

\+ **W.P.(C) 6226/2025 & CM APPL. 28444/2025**

ENGEL MACHINERY CHANGZHOU CO LTD .....Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with Ms. Shareen Gupta, Mr. Karan Sachdev, Mr. Tanay Vyas and Mr. Vedant Kohli, Advs.

versus

DIRECTORATE GENERAL OF TRADE REMEDIES & ANR. .....Respondents

Through: Ms. Saumya Tandon, CGSC with Mr. Gaurav Singh Sengar and Mr. Neel Nikhar, Advs.
Ms. Radhika Bishwajit Dubey (CGSC), Ms Gurleen Kaur Waraich & Mr. Kritarth Upadhyay & Mr. Neel Nikhar Advs. (M: 7011431001)
Mr. Nikhil Sharma, Adv. for Domestic Industry.

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\+ **W.P.(C) 6243/2025 & CM APPL. 28467/2025**

ENGEL MACHINERY SHANGHAI CO LTD .....Petitioner

Through: Mr. Balbir Singh, Sr. Adv. with Ms. Shareen Gupta, Mr. Karan Sachdev, Mr. Tanay Vyas and Mr. Vedant Kohli, Advs.

versus

DIRECTORATE GENERAL OF TRADE REMEDIES & ANR. .....Respondents

Through: Ms. Saumya Tandon, CGSC with Mr. Gaurav Singh Sengar and Mr. Neel

Nikhar, Advs.
Ms. Radhika Bishwajit Dubey (CGSC), Ms Gurleen Kaur Waraich & Mr. Kritarth Upadhyay & Mr. Neel Nikhar Advs.
Mr. Nikhil Sharma, Adv. for Domestic Industry.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. M/s Engel Machinery Changzhou Co. Ltd. and M/s Engel Machinery (Shanghai) Co. Ltd. *(hereinafter, 'Engel-1 and Engel-2')* have challenged the impugned final findings dated 27th March, 2025 *(hereinafter, 'the impugned final findings')*, rendered by the Director General of Trade Remedies *('hereinafter, DGTR')* in the anti-dumping investigation concerning imports of the product under consideration- plastic processing machines *('hereinafter, PUC')* originating in or exported from China PR and Taiwan.

3. The case of the Petitioners is that the DGTR had initiated investigation concerning imports in respect of the PUC under consideration on 29th March, 2024. The Petitioners were included as interested parties in the said investigation.

4. It is submitted that the Petitioners had fully participated in the investigation proceedings *vide* written submissions as also through virtual hearings. The notice finalising the PCN methodology to be adopted for the anti-dumping investigation was issued by the DGTR on 8th July, 2024. On 5th September, 2024, the questionnaires were answered by the Petitioners and legal submissions were also made.

5. Thereafter, an oral hearing was scheduled for 24th September, 2024. The Petitioners had circulated their non-confidential version of the questionnaires and legal submissions. Finally, on 13th March, 2025, a disclosure statement was issued by the DGTR which outlined all the necessary facts in respect of the investigation which were to form the basis for the decision that DGTR may arrive upon.

6. The said disclosure statement was responded to by the Petitioners by way of written submissions along with requisite data/ information on 20th March, 2025 and subsequently, the final findings have been issued on 27th March, 2025.

7. As on date, it is not in dispute that the notification pursuant to the impugned final findings is yet to be issued by the competent authority.

8. Mr. Balbir Singh, ld. Sr. Counsel for Petitioner submits that the final findings dated 27th March, 2025, insofar as it relates to the Petitioner, ought to be reconsidered and relooked at, as the submissions given by the Petitioners on 20th March, 2025 have not been considered by the DGTR.

9. It is his submission that the stand of the Petitioner is similar to the position taken by ***Husky Injection Molding Systems Shanghai Ltd***[1] wherein the said company has been given certain benefits and the authority has ultimately come to the conclusion after considering the relevant material that there is no duty that would be liable to be imposed upon the Petitioner as there is no dumping that is taking place. The findings in the case of ***Husky Injection Molding Systems Shanghai Ltd***. are relied upon by the Petitioners.

10. Insofar as the Petitioners are concerned, it is their grievance that the

[1] Related case - ***Husky Injection Molding Systems Shanghai Ltd. & Ors. v. Union of India & Ors. W.P.(C) No. 3431/2025***

submissions made by them dated 20th March, 2025 were not considered by the DGTR and despite the Petitioner being similarly placed to ***Husky Molding Systems Shanghai Ltd.***, a different treatment is meted out to the Petitioners herein.

11. It is further submitted on behalf of the Petitioners that the findings recorded in paragraph 94 to 96 of the impugned final findings are in fact identical to the content of the disclosure statement issued on 13th March, 2025 and the subsequent submissions made by the Petitioner dated 20th March, 2025 are clearly not considered, which is a lapse on the part of the DGTR.

12. On behalf of the Respondent-DGTR, it is submitted by Ms. Dubey, ld. Counsel that the final notification with respect to the impugned final findings are yet to be issued and once the same is issued. Upon the notification being issued, the Petitioners have a remedy for approaching Customs Excise and Service Tax Appellate Tribunal *(hereinafter, 'CESTAT')* under the Anti-Dumping Rules.

13. Ms. Dubey, ld. Counsel also submits that the case of ***Husky Injection Molding Systems Shanghai Ltd.*** and the Petitioners herein is not at all comparable and that all the submissions made by the Petitioners herein have all been considered by the DGTR in the impugned final findings.

14. Heard. In this matter, the domestic industry has not been impleaded, however, ld. Counsel for the domestic industry is present, *albeit* with no instructions.

15. The grievance raised by Mr. Balbir Singh, ld. Sr. counsel is in effect, that the submissions made on 20th March, 2025 by way of an email written by ld. Counsel for the Petitioners ought to have been considered. The final findings *qua* ***Husky Injection Molding Systems Shanghai Ltd.*** and the

Petitioners, are extracted below:

> *"89. Husky Group has only submitted their response in PDF format. No Excel files have been provided for Appendix 1 to Appendix 10.*
>
> *90. Post the issuance of the disclosure statement, Husky Injection Molding Systems Shanghai Ltd. from China had filed a Writ Petition in the High Court of Delhi. The producer challenged the disclosure statement on the ground that the verification of the material filed has not been done in accordance with the law.*
>
> ***91. Husky Injection Molding Systems Shanghai Ltd. was given time till 21st March 2025. The producer has since completed the prescribed requirements. Therefore, in view of the directions given by the Hon'ble High Court of Delhi, the information provided by the producer has been examined.***
>
> ***92. Husky Injection Molding Systems Shanghai Ltd. has claimed market economy treatment but has not established that it is free from any government intervention being located in China. It is noted that the information provided by the exporter does not conclusively establish that the decisions of the company regarding prices, costs and inputs, including cost of output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard. Therefore, the Authority does not find it appropriate to grant market economy treatment to the producer.***
>
> *93. It is seen that the producer has reported exports of *** machines from China to India. The producer has claimed ocean freight, inland transportation, insurance and credit cost as adjustment to arrive at PCN-wise weightage average of export price at ex-factory level. The adjustment claimed has been allowed. The export price is mentioned below in the dumping margin table.*
>
> ***e. Engel Machinery (Shanghai) Co., Ltd.***

94. It was observed that the transactions reported in Appendix 3 A do not allow for the identification of the product exported by the producer. It could not be inferred if the product exported was product under consideration or non-product under consideration. Additionally, the producer failed to assign proper PCNs to these transactions. It was also seen that while the transactions were either at FOB or CIF level, information on expenses pertaining to domestic insurance, port and other related expenses was not provided. While the producer has provided delivery terms, it is seen that no adjustment of credit cost has been provided. The producer has also not provided backup documents for the adjustments claimed in the export price calculation.

95. In the initiation notification, participating interested were given the following instructions for submitting their responses:

> *All communication should be sent to the Designated Authority via email at email addresses jd12-dgtr@gov.in and ad12-dgtr@ gov.in with a copy to adv11- dgtr@gov.in. It must be ensured that the narrative part of the submission is in searchable PDF/MS Word format and data files are in MS-Excel format.*

96. Engel Machinery (Shanghai) Co., Ltd. has only submitted their response in PDF format. No Excel files have been provided for Appendix 1 to Appendix 10. The Authority observes that the response submitted by the producer did not provide enough clarity for a reasonable assessment of the individual dumping margin. Accordingly, the Authority has not granted individual dumping margin."

16. In the case of ***Husky Injection Molding Systems Shanghai Ltd***, the DGTR has come to the conclusion that no anti-dumping duty would be liable to be imposed. However, in the case of the Petitioners, the documents have

not been considered and anti-dumping duty of 63% of the value of goods exported by the Petitioners to India has been recommended. The contrast that has been relied upon by ld. Sr. counsel is that if the submissions had been considered, the Petitioners would have been on the same pedestal as ***Husky Injection Molding System Husky Injection Molding Systems Shanghai Ltd.*** and the dumping duty imposed upon the Petitioners would have been dropped.

17. The Court has heard the submissions made by the parties. The manner in which the scheme of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, *(hereinafter 'ADD Rules')* works is that once the final findings are rendered by the DGTR, a notification is to be issued by the Central Government, accepting the final findings.

18. Further, in terms of Rule 18 of the ADD Rules, the Central Government has to, within three months of the publication of the final findings, decide to impose ADD or take a decision otherwise. The relevant rule reads as under:

> *"18. Levy of duty.*
> *(1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule (17)."*

19. This Court, while discussing the scheme of imposition of Anti Dumping Duty, has passed the following decision in ***W.P.(C) 1856/2025*** titled ***'Exxonmobil Asia Pacific PTE Ltd. v. Union of India & Ors.***':

> *"5. In terms of Rule 18 of the ADD Rules, the Central Government has to, within three months of the publication of the final findings, decide to impose ADD*

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or take a decision otherwise.

6. Ms. Shiva Lakshmi, ld. CGSC appearing for the Government submits that the Central Government is yet to take a decision on whether to accept the final findings of the DGTR or not.

7. It is brought to the notice of this Court that, in terms of Section 9C of the Customs Tariff Act, 1975, once the decision is taken by the Government, an appeal would lie before CESTAT against the imposition of ADD. If the same is not imposed, then the challenge could be by the Respondent No.3 i.e., the Domestic Industry.

8. At this point, Mr. V. Lakshmikumaran, ld. Counsel for the Petitioner/Foreign exporter submits that there is some ambiguity in regard to the availability of the appellate remedy against a Final Finding before the CESTAT. He places reliance on ***Saurashtra Chemicals Ltd. v. Union of India****;* ***(2009) 17 SCC 529*** *and* ***Jindal Poly Film Ltd. v. Designated Authority, 2018 SCC OnLine Del 11395*** *in this regard.*

9. Heard. Even after considering Mr. V. Lakshmikumaran's submission, this Court is of the opinion that the present petition is premature. Irrespective of whether the Central Government accepts the recommendation for imposition of ADD or not, the said decision would be appealable either at the instance of the Petitioner or the domestic industry. Challenge being raised to Final Findings would clearly be pre-mature.

10. In view of the above, the present petition is disposed of as being premature at this stage. The rights and remedies of both the Petitioner and Respondent No.3 are left open to be availed in accordance with law."

20. The settled position in law therefore is that the final findings are not fully binding on the Central Government and, therefore, at this stage, the writ petition is pre-mature in the opinion of the Court. Hence, once the final

findings issued by the designated authority are imposed in the form of notification by the Central Government, it is then that the Petitioners can have a grievance and at that stage, they are free to avail of their remedies in accordance with law.

21. Furthermore, in terms of Section 9C of the Customs Tariff Act, 1975, once a decision is taken by the Central Government, an appeal would lie before CESTAT against the imposition of the Anti-Dumping Duty. Thus, this Court is of the opinion that the present petition does not merit any interference of this Court at this stage.

22. Insofar as the allegation of non-consideration of the submissions made by the Petitioners dated 20th March, 2025 is concerned, ld. Sr. counsel submits that the Petitioners are willing to bring this to the notice of the DGTR by making a representation. The Petitioners are free to do so. In case, such a representation is made, the same shall be considered in accordance with law.

23. It is made clear, however, that this Court has not interdicted the notification or the acceptance or examination of the final findings by the Central Government.

24. The petitions are disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 26, 2025
dj/ss