

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 221 of 2012

(Arising out of OIA No. 59/2012/CUS/COMMR (A)/KDL dated 30.07.2012 passed by
Commissioner (Appeals) of Customs-Kandla)

C.J.Shah & Co.

105TH, 10TH FLOOR, BAJAJ BHAVAN,
ANARIMAN POINT, MUMBAI-400021

.....Appellant

VERSUS

C.C.Kandla

CUSTOM HOUSE, NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

.....Respondent

APPEARANCE:

Shri J.C. Patel and Rahul Gajera (Advocate) appeared for the Appellant
Shri G. Kirupanandan, Superintendent (Authorized Representative) for the
Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10096 /2023

DATE OF HEARING: 26.09.2022
DATE OF DECISION: 23.01.2023

RAMESH NAIR

The brief facts of the case are that the appellant have imported two consignments of Propylene Glycol from USA falling under CTH 29053200 and filed two Bills of Entry dated 09-10-2009 and 16-10-2009 and cleared the goods, which were duly assessed by the Customs. In respect of the said import, the Anti-dumping Duty was levied as per the Notification No. 117/2009-Cus., dated 13-10-2009 extending the Notification No. 105/2004-Cus., dated 8-10-2004. Subsequent to such assessments and clearances of the goods, Less Charge Demand/SCN dtd. 17.11.2009 was issued to the Appellant under Section 28 of the Customs Act, 1962 demanding Anti -dumping duty along with interest. In adjudicating, Ld. Additional Commissioner of Customs vide OIO dtd. 02.08.2011 confirmed the demand. Being aggrieved with the order Appellant filed appeal before the Commissioner (Appeals), who vide impugned Order-In-Appeal dtd. 30.07.2012 upheld the Order. Therefore Appellant filed the present appeal before us.

2. Shri J.C. Patel, Ld. Counsel appearing on behalf of the appellant submits that the issue involved in this matter stands settled in the Appellant's own case in C.J. Shah & Co. Vs. CCE- 2019 (370)ELT 1094. The ratio of the said decision squarely applies to the facts of the present case and accordingly the imports made by the appellants after the expiry of said Notification No. 105/2004 dtd. 01.10.2004 which came to an end on 08.10.2009 are not liable to anti-dumping duty.

3. On the other hand, Shri G. Kirupanandan, learned Superintendent (Authorized Representative) appearing for the Revenue reiterates the findings of the impugned orders.

4. We have carefully considered the submission made by both the sides and perused the records. The issue involved in the present matter is whether Anti-dumping duty on Propylene Glycol, which was imposed by Notification No. 105/2004 dtd. 08.10.2004 and which came to an end on 08.10.2009 by virtue of Section 9A(5) of the Customs Act, 1962, can be demanded in respect of goods imported after 08.10.2009, when the same had not been extended before the said expiry on 08.10.2009 and whether the extension after the said expiry by Notification No. 117/2009 dtd. 13.10.2009 is valid in law.

5. We find that in the identical facts in appellant's own matter this tribunal vide final order dtd. 25.06.2019 held as under:--

4. We have carefully considered the submission made by both the sides and perused the records. We find that in the identical facts and on the legal issue, the Hon'ble Supreme Court in the case of Union of India &Anr. v. M/s. Kumho Petrochemicals Co. Ltd. (supra) decided. The relevant part of the order is reproduced below :

31. After giving due consideration to the arguments advanced by the Learned Counsel for the parties, we are inclined to agree with the High Court that proviso to sub-section (5) of Section 9A of the Act is an enabling provision. That is very clear from the language of the said provision itself. Sub-section (5) of Section 9A gives maximum life of five years to the imposition of anti-

dumping duty by issuing a particular notification. Of course, this can be extended by issuing fresh notification. However, the words 'unless revoked earlier' in sub-section (5) clearly indicate that the period of five years can be curtailed by revoking the imposition of anti-dumping duty earlier. Of course, provision for review is there, as mentioned above, and the Central Government may extend the period if after undertaking the review it forms an opinion that continuation of such an anti-dumping duty is necessary in public interest. When such a notification is issued after review, period of imposition gets extended by another five years. That is the effect of first proviso to sub-section (5) of Section 9A. However, what we intend to emphasise here is that even as per sub-section (5) it is not necessary that in all cases anti-dumping duty shall be imposed for a full period of five years as it can be revoked earlier. Likewise, when a review is initiated but final conclusion is not arrived at and the period of five years stipulated in the original notification expires in the meantime, as per second proviso 'the anti-dumping duty may continue to remain in force'. However, it cannot be said that the duty would automatically get continued after the expiry of five years simply because review exercise is initiated before the expiry of the aforesaid period. It cannot be denied, which was not even disputed before us, that issuance of a notification is necessary for extending the period of anti-dumping duty. Reason is simple. There is no duty or tax can be imposed without the authority of 'law'. Here, such a law has to be in the form of an appropriate notification and in the absence thereof the duty, which is in the form of a tax, cannot be extracted as, otherwise, it would violate the provisions of Article 265 of the Constitution of India. As a fortiori, it becomes apparent that the Government is to exercise its power to issue a requisite notification. In this hue, the expression 'may' in the second proviso to sub-section (5) has to be read as enabling power which gives discretion to the Central Government to determine as to whether to

exercise such a power or not. It, thus, becomes an enabling provision.

...

36. As noticed above, the High Court has held that once the earlier Notification by which anti-dumping duty was extended by five years, i.e. up to January 1, 2014, expired, the Central Government was not empowered to issue any Notification after the said date, namely, on January 23, 2014, inasmuch as there was no Notification in existence the period whereof could be extended. The High Court, in the process, has also held that the Notification extending anti-dumping duty by five years, i.e. up to January 1, 2014 was in the nature of temporary legislation and validity thereof could be extended, in exercise of powers contained in second proviso to sub-section (5) of Section 9A of the Act only before January 1, 2014.

...

40. Two things which follow from the reading of the Section 9A(5) of the Act are that not only the continuation of duty is not automatic, such a duty during the period of review has to be imposed before the expiry of the period of five years, which is the life of the Notification imposing anti-dumping duty. Even otherwise, Notification dated January 23, 2014 amends the earlier Notification dated January 2, 2009, which is clear from its language, and has been reproduced above. However, when Notification dated January 2, 2009 itself had lapsed on the expiry of five years, i.e. on January 1, 2014, and was not in existence on January 23, 2014 question of amending a non-existing Notification does not arise at all. As a sequitur, amendment was to be carried out during the lifetime of the Notification dated January 2, 2009. The High Court, thus, rightly remarked that Notification dated January 2, 2009 was in the nature of temporary legislation and could not be amended after it lapsed.

From the above judgment of the Hon'ble Supreme Court, we find that the Hon'ble Supreme Court observes that once a notification

enforcing anti-dumping duty is expired and non-existent, such non-existent notification cannot be extended. In the facts of the present case, the Notification No. 105/2004-Cus., admittedly expired on 8-10-2009. Thereafter, the said notification was extended vide Notification No. 117/2009-Cus., dated 13-10-2009. Since the Notification No. 105/2004-Cus. was expired on 8-10-2009, on 13-10-2009 the Notification No. 105/2004-Cus. was not in existence. Accordingly, on 13-10-2009, it could not have been extended. Therefore, the result is that no anti-dumping duty can be levied in view of Notification No. 105/2004-Cus. which was extended vide Notification No. 117/2009-Cus. during the period after 8-9-2009. Accordingly, the demand is not sustainable. Consequently, the impugned order is set aside. The appeal is allowed.

6. By following the ratio of above judgment, we hold that the demand confirmed by the adjudicating authority is not sustainable. Hence the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 23.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha