CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

Anti Dumping COD Application No. 50654 of 2018 with Miscellaneous Application No. 50655 of 2018
(on behalf of the appellant)
IN
Appeal No. 51852 of 2018

[Arising out of the Notification No. 07/2017-Customs (ADD) dated 17/02/2017 based on Final Findings of the Designated Authority, No. 14/2/2015-DGAD dated 09/12/2016.]

M/s Mita India Private Ltd. **Appellant**
Plot No. 21/2, Site 2,
Loni Road, Mohan Nagar,
Ghaziabad, Uttar Pradesh – 370 415.

VERSUS

Designated Authority, **Respondent**
Directorate General of Antidumping and Allied Duties
Ministry of Commerce & Industry,
Parliament Street,
Jeevan Tara Building, 4th Floor,
New Delhi – 110 001.

Appearance

Dr. Ms. Karnika Seth, S/Shri Navya Singh and Sarvesh Roy, Advocates – for the appellant.

S/Shri Ameet Singh and Amar Anand, Advocates – for Designated Authority.

Ms. Reena Khair, Shri Rajesh Sharma, Ms. Rita Jha and Ms. Shreya Dahiya, Advocates – for the Domestic Industry

Shri Sunil Kumar, Authorized Representative (DR) – for the Respondent.

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 51312/2019

DATE OF HEARING : 30/09/2019.
DATE OF DECISION: 30/09/2019.

JUSTICE DILIP GUPTA

The Anti Dumping Appeal was filed by the Appellant before the Tribunal on 23 April 2018 to assail the Notification dated 17 February 2017 that was published in the Gazette of India, Extraordinary Part II on 17 February 2017. The appellant also filed an application for condoning the delay as Section 9C (2) of the Customs Tariff Act, 1975[1] provides that every appeal under Section 9C (1) of the Act shall be filed within 90 days of the date of order under appeal but the Appellate Tribunal may entertain any appeal after the expiry of the said period of 90 days if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

2. The averments made in the delay condonation application are as follows :-

> "1. The Appellant Mita India Pvt. Ltd. has preferred this appeal against the Final Findings Notification No. 14/2/2015-DGAD dated 09/12/2016, issued by the Respondent No. 2, Designated Authority, Directorate General of Anti Dumping and Allied Duties, Department of Commerce, Government of India, as notified by the Respondent No. 1, Ministry of Finance vide Notification No. 7/2017- Customs (ADD) dated 17/02/2017. The contents of the appeal are not being repeated herein for the same of brevity and the same may be read as part and parcel of the present application also.
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> 2. The Appellant respectfully submits that there has been a delay in filing the appeal, which delay is neither willful nor deliberate. There is sufficient cause for the Appellant not being able to file the appeal on time. The Appellant became aware of the imposition of final duties in the second week of May 2017. Since the Appellant could not participate in the investigation, it was advised that it should first obtain the documents from the Respondent No. 2 to determine whether any case can be made out to challenge the imposition of definitive duties.
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> 3. The Appellant's counsel contacted the office of the Designated Authority in the third week of May 2017 and requested for inspection of the public file. The office informed the counsel that they would check with the concerned officer and call back. Even the Appellant made a follow-up to the office of the Respondent No. 2.

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1. the Act.

4. Since the Appellant did not receive any reply from the office of the Respondent No. 2, it counsel formally wrote to them on 27/06/2017 requesting the inspection of the public file, the list of interested parties, and a copy of the disclosure statement.

5. The Additional Director General in the office of the Respondent No. 2, vide letter dated 10/07/2017, wrote to the Appellant's counsel refusing access to the public file. The Respondent chose not to even furnish the list of interested parties, which is necessary for purposes of filing an appeal before this Hon'ble Tribunal.

6. Aggrieved by the order dated 10/07/2017, the Appellant preferred a writ petition (W.P. (C) no. 7887 of 2017) before the Hon'ble High Court of Delhi praying inter alia, for a direction to the Respondent Designated Authority to provide documents and also to permit inspection of the public file. Vide order dated 06/09/2017, the Hon'ble High Court dismissed the writ petition.

7. The Appellant challenged the order dated 06/09/2017 by way of Special Leave Petition (C) no. 7690 of 2018 before the Hon'ble Supreme Court. Vide order dated 19/03/2018, the Hon'ble Supreme Court observed, even while dismissing the SLP, that it was open to the Appellant to approach the Appellate Authority alongwith a condonation of delay application, having spent this period of time before the High Court and Supreme Court.

8. It is in this background that the Appellant is filing this appeal in the month of April 2018 being aggrieved by the Final Findings of the Designated Authority and the anti dumping duties imposed by the Ministry of Finance in the Government of India.

9. It is in these circumstances that there has been a delay in filing the instant appeal. It is in the interest of justice that the present application is allowed. Accordingly, this Hon'ble Tribunal may be pleased to condone the delay to exercise of its powers under Section 9 C (2) of the Customs Tariff Act, 1975 (as amended)".

3. In order to appreciate the submission made by Dr. Karnika Seth, learned Counsel appearing for the Appellant/Applicant, Ms. Reena Khair, learned Counsel appearing for Domestic Industry, Shri Ameet Singh, learned Counsel appearing for Designated Authority and Shri Sunil Kumar, learned Counsel appearing for Union of India, it will be appropriate at this stage to examine certain facts leading to the issuance of the final notification that was published in the Gazette by the Ministry of Finance.

4. The anti dumping investigation concerning imports of seamless tubes, steel pipes and hollow profiles of iron alloy or non-alloy steel (other than cast iron and stainless steel), whether hot finished or cold drawn or cold rolled of an external diameter not exceeding 355.6 mm or 14" OD" originating in or exported from China PR was initiated by a Notification dated 8 July 2015 that was published in the Gazette of India. The preliminary findings were rendered on 31 March 2016 and on the basis of the preliminary findings, a provisional duty was imposed by Notification dated 17 May, 2016 that was published in the Gazette on the same date i.e. 17 May 2016. The final findings were rendered by the Designated Authority on 9 December 2016 which were also published in the Gazette on 9 December 2016. The decision was thereafter notified by the Ministry of Finance by a Notification dated 17 February 2017 that was published in the Gazette on 17 February 2017.

5. The second paragraph of the delay condonation application mentions that the appellant became aware of the imposition of final duties in the second week of May 2017. However, since the appellant could not participate in the investigation, it was advised to first obtain the documents from the Designated Authority. For this purpose, it has been stated in paragraph 3 of the application that the Counsel of the Appellant contacted the office of the Designated Authority in the third week of May, 2017 and requested for an inspection of the public file. Paragraph 4 mentions that a formal letter was written to the Designated Authority on 27 June, 2017, but this request was denied by the Additional Director General in the office of the Designated Authority on 10 July, 2017. This order dated 10 July 2017 was thereafter assailed by the appellant by filing a writ-petition in the Delhi High Court, being writ-petition no. 7887 of 2017. Paragraph 6 mentions that the prayer that was made before the Delhi High Court was to issue a direction to the Designated Authority to provide all documents and also permit inspection of the public

file. Paragraph 6 further mentions that the Delhi High Court dismissed the writ-petition by judgment and order dated 6 September 2017. Subsequently the Appellant challenged the judgment and order dated 6 September 2017 of the Delhi High Court by filing a Special Leave Petition bearing no. 7690 of 2018 in the Supreme Court which Petition was dismissed on 19 March 2018 but it was left open to the Appellant to approach the Tribunal with a delay condonation application. Paragraph 8 mentions that the Appeal was thereafter filed before the Tribunal in the month of April 2018 with a delay condonation application.

6. As noted above, Section 9 C (2) of the Act requires that the Appeal can be filed before the Tribunal to assail an order passed by the Designated Authority **within 90 days of the date of the order under appeal**. The date of order under appeal would be the date when the notification issued by the Ministry of Finance is published in the Gazette. The records indicate that the notification was published in the Gazette on 17 February 2017. The Appeal, therefore, should have been filed before the Tribunal within 90 days of this date.

7. According to the Appellant, it became aware of the imposition of final duties in the second week of May 2017 only. The plea of the Appellant is that it was not aware of the list of the interested parties or a copy of the disclosures statement. The Appellant, therefore, filed a writ-petition in the Delhi High Court.

8. It would be appropriate at this stage to reproduce the judgment dated 6 September 2017 of the Delhi High Court in the writ-petition filed by the Appellant and the same is as follows :-

> "1. The Petitioner seeks a direction to the Designated Authority, Directorate General of Anti Dumping and Allied Duties, Department of Commerce, Ministry of Commerce & Industry ('DA') to permit inspection of the public file pertaining to the anti-dumping investigation concerning imports of "Seamless tubes, pipes and hollow profiles of iron, alloy or non-alloy steel' (other than cast iron and stainless steel) whether hot

finished or cold drawn or cold rolled of an external diameter not exceeding 355.6 or 14" OD" from China PR.

2. It appears that the Initiation Notification was issued on 8 July, 2015. Thereafter the Final Finding was issued by the DA on 9 December 2016, followed by the Notification dated 17 February 2017.

3. It is not disputed that, against the Final Findings and Notification, there is remedy available to the Petitioner before the Customs Excise, Service Tax Appellate Tribunal ('CESTAT').

4. On 27 June 2017, the Petitioner addressed a letter to the DA stating that, for the purposes of filing an appeal before the CESTAT, it required the list of interested parties alongwith their complete addresses and a copy of the disclosure statement. The above request was made more than four months after the Notification dated 17 February 2017.

5. Learned counsel for the Petitioner claims that the Petitioner became aware of the Notification dated 17 February 2017 only in the second week of May, 2017 and therefore could nto make the above request earlier. This explanation is not convincing. The Notification, having been Gazetted, is presumed to have been in the knowledge of the Petitioner. Further, the provisional duty during the period of investigation was already in force for more than a year and was to the knowledge of the Petitioner. It appears to the Court that, having missed its opportunity of filing its appeal in the CESTAT within time, the Petitioner was seeking to build an alibi to explain its delay and therefore applied for inspection of the DA's file.

6. Learned counsel for the Petitioner states that, without the address of the interested parties, it cannot file an appeal before the CESTAT. It is noticed that the names of the interested parties are set out in the Final Findings itself. With most of them being companies, it should not have been difficult for the Petitioner to ascertain their addresses. The Court is not satisfied about the bonafides of the Petitioner's request to the DA".

9. A perusal of the aforesaid judgment of the Delhi High Court clearly shows that the aforesaid prayer of the Appellant that it became aware of the Notification dated 17 February 2017 only in the second week of May, 2017 was also examined by the Delhi High Court. The High Court did not find this explanation to be convincing and the High Court observed that the notification having been Gazetted, it is presumed to have been in the knowledge of the Petitioner. The High Court also noticed that the provisional duty during the period of investigation was already in force for more than a year and was to the knowledge of the

Petitioner. The High Court also observed that it appeared that having missed the opportunity of filing an Appeal before the Tribunal within time, the Petitioner was seeking to build an alibi to explain the delay and had, therefore, applied for inspection of the file of the Designated Authority. The plea of the Appellant that it could not file appeal in the absence of the addressee of the interested parties was also not found to be convincing as the High Court observed that most of them were big companies and so it should not have been difficult for the petitioner to ascertain the addresses.

10. This judgment of the Delhi High Court was assailed by the Appellant before the Supreme Court. The Supreme Court did not interfere with the judgment passed by the Delhi High Court and, accordingly, dismissed the Special Leave Petition. However, the Supreme Court observed that it is always open to the petitioner to approach the Appellate Tribunal in accordance with the law with a delay condonation application. The judgment of the Supreme Court is reproduced here below :-

> "Delay condoned.
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> We do not see any reason to interfere with the impugned order. The special leave petition is dismissed.
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> We may, however, observe that it is always open to the petitioner to approach the Appellate Authority in accordance with law with a condonation of delay application, having spent this period of time before the High Court and Supreme Court, in the inappropriate forums.
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> Pending application (s), if any, stand disposed of".

11. The judgment of the Delhi High Court dated 6 September 2017, therefore, attained finality. The observations of the Supreme Court regarding approaching the Tribunal for filing a delay condonation application is in the context of Section 14 of the Limitation Act, 1963. The Supreme Court observed that the time spent by the Appellant in the inappropriate forum namely

High Court and the Supreme Court should be excluded while computing the period of limitation.

12. The Appeal should have been filed by the Appellant within 90 days from the date of the order i.e. within 90 days from 17 February 2017. The only reason given by the Appellant for not filing the Appeal within the stipulated period is that it was not aware of the addresses of the parties nor documents were made available to them. The request of the Appellant was specifically considered and rejected by the Delhi High Court and this order has attained finality on the dismissal of the Special Leave Petition by the Supreme Court. It is, therefore, not open to the Appellant to again raise the same plea before the Tribunal in the application filed for condoning the delay in filing the appeal. Even if the time spent by the Appellant in the Delhi High Court between 31 August 2017 and 6 September 2017 is excluded as also the time spent in the Supreme Court in filing the Special Leave Petition on 6 December 2017 and it dismissal on 19 March 2018 is excluded, only benefit of 103 days can be granted to the Appellant. However, the entire period of limitation expired even before the writ-petition was filed by the Appellant in the Delhi High Court.

13. Further, it needs to be noticed that the Appellant had been paying provisional duty in accordance with the preliminary findings that were published in the Gazette on 17 May 2016. The Appellant was, therefore, aware that the anti dumping duty investigation was in process. This was also observed by the Delhi High Court.

14. Though the Appellant claimed that it was in the second week of May 2017 that it approached the Designated Authority, but what is seen is that the formal application was filed by the Appellant only on 27 June, 2017. The Delhi High Court observed that the Appellant had approached to the Designated Authority for documents only to subsequently explain the delay in filing the Appeal before the Tribunal.

15. We are, therefore, not satisfied that the Appellant was prevented by sufficient cause from preferring the Appeal before the Tribunal within time. The delay application is, accordingly, rejected.

16. As the delay application has been rejected, the Appeal stands dismissed.

17. All other miscellaneous applications stand rejected.

(Dictated and pronounced in open court.)

(Justice Dilip Gupta)
President

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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