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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **30/08/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53202-53206/2016-CU[DB]** dated **24/08/2016**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **9C of the Customs Tariff Act,1975.**

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	AD/Stay/978/2012	AD/6/2012	**Honest Enterprises Ltd** 118-meghdoot Aptt. , Nr Apsara Cinema, Pratapnagar Road, Vadodara-390004
2	AD/Stay/979/2012	AD/7/2012	**Navnidhi Steel & Engineering Company Pvt Ltd** Shop No.1, Lehri Mansion, 236/240, S V P Road, Opp. Alankar Cinema, Mumbai-400004
3	AD/Stay/980/2012	AD/8/2012	**Shree Ramdev Metal Mart** 60, 1st Floor, 1st Carpenter Street, Off. N.d. Road, C.p. Tank, Mumbai-400004
4	AD/Stay/981/2012	AD/9/2012	**Siddhivinayak Steel** 31, 7 Th Khetwadi Lane, S.v.p. Road, Mumbai-400004
5	AD/Stay/982/2012	AD/10/2012	**Reliance Stainless Steel** 21/23, A.d. Street, Near Alankar Cinema, Mumbai-400004

			Name and Address of Respondent
6			-DESIGNATED AUTHORITY DIRECTORATE GENERAL OF ANTI-DUMPING AND ALLIED DUTIES, 1. MINISTRY OF COMMERCE AND INDUSTRIES. GOVERNMENT OF INDIA UDYOG BHAWAN, NEW DELHI 110001 2. UNION OF INDIA MINISTRY OF FINANCE SECRETARY - REVENUE GOVERNMENT OF INDIA NORTH BLOCK, NEW DELHI

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

APJ-SLG Law Offices,
F-21, GEETANJALI ENCLAVE,
NEW DELHI-110017

8 Additional Party's Name & Address :

9 Bar Association, CESTAT, Delhi

10 Director Publications, Customs, Excise. I.P. Estate, Delhi

11 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3

12 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

13 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

14 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

18 The ICFAI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

19 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

20 C.D.R.   21 Office Copy   22 Guard File

31/8/16

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSPTGMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:17/08/2016
Date of Decision:24/08/2016

AD/Stay/978, 979, 980,981 & 982/2012 in Appeals Nos.AD/6,7, 8, 9 & 10/2012

(Arising out of common Final Finding No.14/12/2010-DGAD dated 11.10.2011 & notification no.104/2011-Cus dated 25.11.2011 passed by the Designated Authority (DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi)

M/s. Honest Enterprises Ltd. — Appellants
M/s.Navnidhi Steel & Engg. Co.Pvt.Ltd.
Shree Ramdev Metal Mart,
M/s.Siddhivinayak Steel
M/s.Reliance Stainless Steel

Vs.

Designated Authority, — Respondent
Directorate General of Anti-Dumping and
Allied Duties/Ministry of Finance

Appearance:

Rep. by Shri Dhruv Gupta, Advocate for the appellant.
Shri Amit Singh, Advocate for the Designated Authority, Ministry of Commerce,
Shri Govind Dixit, AR for the Revenue.
Shri Sharad Bhansali, Advocate for the Domestic Industry.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order NO.53202-53206/2016

B. Ravichandran:

These five appeals are on the same issue, challenging the Final Findings dated 11.10.2011 of Designated Authority (DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce & Industry and notification No.104/2011-Cus dated 25.11.2011 of Ministry of Finance. The appellants are importers of hot rolled flat products of stainless steel (subject goods). Anti-dumping duty (AD duty) has been imposed on subject goods originating in or exported from European Unin, Korea, RP. South Africa, Taiwan and USA.

2. The brief facts of the case are that based on a petition filed by the domestic industry, the DA initiated anit-dumping investigation in April, 2010. The period covered is 1.4.2008 to 30.09.2009. The injury for the domestic industry was examined for period from April, 2005 to Sept. 2009. After following the procedure set out by the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the D.A. arrived at Final Findings dated 11.10.2011. The D.A. concluded that imposition of anti-dumping duty is required to offset dumping and injury to domestic industry. Notification No.104/2011-Cus dated 25.11.2011 was issued imposing AD duty on subject goods.

3. Ld. Counsel appearing for appellants contested the Final Findings on various grounds. His submissions can be summarized as below:-

a) no anti-dumping duty could be recommended when the landed value of import was higher than the non-injurious price of domestic industry. The price underselling for EU, Korea and Taiwan are in the negative. Therefore, there cannot be any injury from imports from these countries.

b) The domestic industry is selling the subject goods at prices higher than the non-injurious prices and hence there is no injury.

c) There is self-contradiction in the Findings of the D.A. when there is no price under-selling of subject goods from Taiwan, the D.A.

attributed a positive injury margin against all exporters from Taiwan. The negative injury margin attributed to exports from Korea is inexplicable when none of the exporters were co-operating. There is no consistency in the approach by the DA in analyzing the impact of exports from cooperating exporters/country and from non-cooperating exporters/country. In fact the findings penalizes the cooperating exporters / country by giving sweeping /general recommendations against them.

d) The market share and sales volume of domestic industry has increased while the market share and sales volume of exports from subject countries have declined. This will show that there is no injury to domestic industry.

e) No information regarding country-wise quantity imported and assessable value has been provided by the DA. Only a cumulative figure for the subject countries has been given. The appellants could not put up an effective defence in their support in the absence full discolosure of information by the D.A.

4. Ld. Counsel for the D.A. supported the Final Findings. He reiterated that while dumping and injury margins are determined for participating producers and exporters from a country individually, dumping and injury margins for all non-participating producers and exporters from that country are determined in terms of Rule 6(8) of AD Rules using adverse data available. He emphasized that in case of Taiwan, the argument of the appellants that despite of negative underselling for the country as a whole AD Duty was imposed for exports is not revealing full

background facts. The investigation clearly established, based on data of the cooperating exporter, that the margins of dumping and injury of that exporter was significantly high.

5. Ld. Counsel for D.A. has relied on certain decided cases to state that the D.A. acted within his powers in analyzing data and recommending AD duty.

6. Ld. AR for Revenue and ld. Counsel for domestic industry supported the Final Findings of the D.A. and customs notifications.

7. We have heard all the sides and examined appeal records. As already noted, the appeals are to set aside the Final Findings and customs notification imposing AD duty on subject goods from stated countries. We have perused the Final Findings dated 11.10.2011 carefully. The D.A. after examining the information furnished by the cooperating exporters and also arriving at the normal value for residual category further worked at the dumping margin. Such margin is arrived by comparing normal values and export prices of subject goods. Para-40 of the Findings listed the dumping margin arrived at consequent upon such analysis. As the anti-dumping investigation covered imports from various countries simultaneously the DA followed the procedure in terms of para (iii) of Annexure-II of AD Rules for cumulative assessment. Accordingly, the injury to domestic industry cumulatively from the subject countries was considered by the D.A.

8. The appellants contested the Findings on the ground of decline in volume of imports. We note that there is increase in absolute terms during POI compared to base year (para 48 of Finding). Regarding increase in market share of domestic industry it has been noted that they chose not to increase the prices commensurate

with the increase in costs in order to retain the market share and consequently suffered significant loss. It is apparent that market share alone is not a fair indicator of presence of injury or otherwise in a given case.

9. We also note that domestic prices have been undercut by imports from the subject countries throughout the injury investigation period. Further, the prices of domestic industry has not increased in line with increase in costs. The profitability of the domestic industry has been shown to be adversely affected during the said period.

10. The appellant strongly contended that the injury analysis for Taiwan is contradictory. The facts recorded show that there was negative injury for country as a whole, hence the AD duty imposed vide Sl.nos.13 to 16 of table to notification are not tenable. We note that the investigation has shown, based on data of the cooperating exporter from the said country, that the margins of dumping and injury of that exporter was significantly high. Further, as per the data recorded (para 49 of Finding) for EU the injury margins for the cooperating exporters was negative and country as a whole also the margins was negative. But adverse inference has been drawn by the DA against the other non-cooperating exporters and residual duty has been imposed based on facts available, taking the lowest transaction value, as per standard procedure. The same has been done for Taiwan also.

11. We note that the Hon'ble Supreme Court in **D.A. Vs. Haldor Topsoe – D.A. No.487 of 2000/4109 of 2000** decided on 20.07.2000 held that when interested party withholding necessary information or does not cooperate with the

investigation, thus cause impediment to the investigation – Investigation Authority has discretion to rely on material as available before it and not bound to look into material which is produced by the interest party – Discretion of the authority in the area of appreciation of evidence cannot be restricted on the ground that Anti-dumping Duty is 'manufacturer specific' or 'country specific'- Investigation Authority can make "Best Judgement Assessment" and can draw adverse inferences as per Rule 6(8) of the Customs Tariff (Anti-dumping Duty on Dumped Articles), Rules, 1995 – Section 9A (1) (c) of the Customs Tariff Act, 1975.

12. Further, the Tribunal in **Kothari Sugars & Chemicals Limited Vs. Designated Authority [Final Order No.14/2005-AD and Misc. Order No.M/06/2005-AD, dated 4.8.2005 in Appeal Nos.C/270/2003-AD]** held that if the volume of imports at a particular price level is sufficient enough to have adverse impact on domestic selling prices, the same should not be taken into account and given due weightage in the analysis. It otherwise meant that even if there are high priced transactions and low price transactions from a country, the very fact that the low priced transactions cause injury (with positive injury margin) justifies imposition of duty on the entire country.

13. Regarding appellant's plea on non-disclosure certain information by the DA we have perused specifically the disclosure details, contests by interested parties and examination by the DA, post disclosure. Regarding source data it has been recorded that the DGCI & S and IBIS data have been used wherever required. The methodology for arriving the NIP has been disclosed. 22% return on investment has been granted to domestic industry as per consistent practice followed in this regard. We have noted that the injury margin calculation for residual exporters of

a country follows a methodology different from that adopted for price underselling which is determined in respect of a country as a whole.

14. In view of the discussion and analysis as above, we find no merit in the present appeals and accordingly dismiss the same and stay applications are also disposed of.

[Order pronounced on 24.08.2016]

CKP

[Justice ~~Dr. Satish Chandra~~]
President

23/8/16
[Archana Wadhwa]
Member (Technical)

[B. Ravichandran] 22/8/16.
Member (Technical)