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**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/53208-53211/2016-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/15/2012 | **Sandeep Organics Pvt Ltd** 104,nain Krupa,1st Floor, 118/122, Kazi Syed Street, Vadgadi, Mumbai-400003 |
| 2 | AD/16/2012 | **Vipur Enterprises** D-43, Silver Arc Building, Near Gujrat, College, Railway Crossing, Ellisbridge, Ahmedabad-38006 (gujrat) |
| 3 | AD/17/2012 | **Shlok Chemicals** 77/81, Kazi Sayed Street 3a,avsar Building, Mazjid (wet) Mumbai-400003 |
| 4 | AD/18/2012 | **B M Jain & Sonns Pvt Ltd** 412/413, Mandvi Navjeevan, 4th Floor,121/127, Kazi Syed Street, Mumbai-400003. |

| | | **Name and Address of Respondent** |
|---|---|---|
| 5 | | -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**

6 Advocate(s) / Consultant(s):

**Prem Ranjan Kumar,Adv**
**LGF 6/33, VIKRAM VIHAR,**
**LAJPAT NAGAR PART-IV,**
**NEW DELHI-110024**

7 Additional Party's Name & Address :

8 Bar Association, CESTAT, Delhi

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

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

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

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

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

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

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

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

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

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

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

31/08/16

**Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)**

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

Date of Hearing:18.08.2016
Date of Decision :24/08/2016

Anti-Dumping Appeal Nos.15, 16, 17 & 18 of 2012

(Arising out of common Final Finding dated 10.2.2012 and notification no.13/2012-Cus dated 22.02.2012, passed by the Designated Authority (DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi)

M/s.Sandeep Organics Pvt. Ltd. — Appellant
M/s.Vipur Enterprises
M/s.Shlok Chemicals
M/s.B.M. Jain & Sons Pvt. Ltd.

Vs.

Designated Authority, DGAD, Mof — Respondent

**Appearance**:

Rep. by Shri Darpan Bhuyan, Shri Dhruv Gupta and Shri T.D. Satish,Advocates
Rep. by Shri Amit Singh, Advocate for Designated Authority.
Rep. by Shri Govind Dixit, AR for the Revenue.

**Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
**Hon'ble Shri S.K. Mohanty, Member (Judicial)**
**Hon'ble Mr. B. Ravichandran, Member (Technical)**

**Final Order NO.**53258-53211/2016

**Per B. Ravichandran:**

There are four appeals against the final finding dated 10.02.2012 of Designated Authority (DA), Directorate of Anti-dumping and Allied Duties, Ministry of Commerce and consequent notification no.13/2012-Cus dated 22.02.2012 imposing anti dumping duty on Sodium Tri Poly Phosphate (subject goods) (STPP) imported from China PR.

2. The brief facts of the case are that M/s. Tata Chemicals Ltd. supported by M/s.Albright and Welson Chemicals India Ltd. have filed an application for imposing anti-dumping duty on the subject goods. The DA initiated original investigation on 5.11.2009. Further, on 21.05.2009 based on preliminary finding, the DA recommended provisional anti-dumping duty on the import of subject goods. The same was imposed vide notification no.96.10-Cus dated 21.09.2010. After due inquiry, the DA notified final finding, recommending definitive anti-dumping duty on the imports of subject goods originating in or exported from China PR. The definitive Anti-dumping duty was imposed vide Customs Notification no.58/2011-Cus dated 8.7.2011.

3. M/s. Tata Chemicals Ltd. vide their letter dated 21.07.2011 informed the DA that they have closed down the STPP Plant and there is no domestic industry for STPP in India. They requested for withdrawal of anti-dumping duty applicable on STPP imported to India. The other domestic manufacturer, M/s. Albright also informed the DA vide their letter dated 17.08.2011 about the stoppage of production of the subject goods by them. Accordingly, in terms of Rule 23 of the Rules, the DA initiated mid-term review. After due inquiry, he recommended withdrawal of anti-dumping duty vide final finding dated 10.02.2012. The anti-dumping duty was withdrawn vide notification no.13/2012-Cus dated 22.02.2012, which rescinded the earlier notification no.58/2011-Cus dated 8.7.2011.

4. The common plea of all the appellants in the present appeals is that no anti-dumping duty can be levied from the date of closure of plant of domestic manufacturer i.e. 1.3.2011 till the actual revocation of duty viz. 22.02.2012. It was argued that the anti-dumping duty is to eliminate injustice caused to the domestic

industry by unfair trade practices of dumping. In the present case, when there is no domestic industry, during the relevant period, there is no question of imposing anti-dumping duty. In other words, the ld. Counsel submitted that while recommending for revocation of anti-dumping duty, the Designated Authority should have recommended such revocation from the date of closure of domestic industry.

5. Ld. Counsel appearing on behalf of the Designated Authority submitted that the initial inquiry was based on the application by affected domestic industry. Due action was taken as per the procedure laid-down by the law. Thereafter, on receipt of the intimation about stoppage of the production by the domestic industry, the Designated Authority exercising his powers under Rule 23, recommended for revocation of the said anti-dumping duty. There is no provision for recommending revocation of anti-dumping duty with retrospective effect. As such, ld. Counsel for the Designated Authority submitted that the Designated Authority has followed the laid down procedure and there is nothing in the present appeal to contest the impugned findings.

6. Ld. Authorised Representative appearing for Revenue reiterated the above submissions.

7. We have heard all the sides and examined the appeal records.

8. The admitted facts are that the action for anti-dumping duty was initiated and finalized based on the applications received from the domestic industry. Thereafter, upon stoppage of production by the domestic industry, the said anti-dumping duty was withdrawn. The only point of dispute is that the said withdrawal

should have been from the date of closure of manufacture by the domestic industry. We have perused the impugned order dated 10.02.2012. It is clear that both during initial proceedings of imposition of provisional anti-dumping duty and of definitive anti-dumping duty, all the interested parties have taken part in the proceedings. The Designated Authority followed the procedure and there is no contest on these admitted facts. We find that the following observation by the Designated Authority correctly brings out the factual and legal position relevant to the present appeals:-

> *"The Authority had notified the Final Findings in the original investigation on 3.5.2011 recommending imposition of definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject country. The definitive anti dumping duty was imposed by the Central Government on 8th July, 2011. After the final findings were issued by the Authority and after the imposition of the duty by the Central Government, M/s. Tata Chemicals and M/s. Rohdia informed the Authority about stoppage of production of subject goods by them. Even other interested parties did not bring the facts to the notice of the Authority with documentary evidence. Under the Rules, the Designated Authority has no power either to impose or terminate duty. The Rules empower the Designated Authority only to investigate and to recommend. By the time the concerned domestic producers brought to the notice of the Authority the fact of stoppage of production by them, the duty was already in place. In view of that, instead of initiating action under Rule 14 of the Rules,*

*the Authority initiated the present mid-term review for reviewing the changed circumstances under Rule 23 of the Rules.*

*vi. There is no provision under the Rules empowering the Designated Authority to recommend suspension of collection of anti-dumping duty.*

*vii. The Authority has initiated the present MTR in terms of Rule 23 of the Rules and the investigation has been conducted as per the rules/procedure.*

*viii. With regard to the submission of the opposite interested parties that the Designated Authority should allow relief back dated and the importers should be allowed refund of anti-dumping duty on retrospective basis, the Authority notes that the subject MTR anti-dumping investigation has been conducted under Rule 23 of the Anti-dumping* Rules. *There is no provision under the said Rules for backdated relief in such circumstances."*

9. We, specifically, asked the ld. Counsel for the appellants as to provision under which the relief is sought by them, with retrospective effect. No pointed submission on such legal provision could be made by the ld. Counsel for the appellants. He repeated that for the period when there is no production by the domestic industry, anti-dumping duty cannot be imposed. We find that the Designated Authority has followed the procedure as mandated by the Rules in respect of all the proceedings relevant to the present case. In absence of any legal provision for acceding to the plea of the appellants, as recorded by the Designated

Authority in his findings, we find no merit in the present appeals. Accordingly, all the appeals are dismissed.

[Order pronounced on..........22 . 08 . 2016..]

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

CKP.

[ S.K. Mohanty ]
Member (Judicial)

[B. Ravichandran ] 22.8.16.
Member (Technical)