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FAX : 011-26108426

REGISTERED / AD

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

Dated: **21/09/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53598-53600/2016-CU[DB]** dated **16/09/2016**

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/51963/2016	**DEEPAK NITRITE LTD** ADITYA-I, NATIONAL HIGHWAY NO. 8, CHHANI ROAD VADODARA GUJARAT-390024
2	AD/MISC/50951/2016, AD/Stay/50952/2016	AD/51982/2016	**P T PETRO OXO NUSANTARA** JALAN GUBERNUR SURYO 134, TIOGOJOK, GRESIK JAWA TIMUR INDONESIA-61118
3	AD/Stay/50968/2016	AD/51998/2016	**B A S F PETRONAS** **CHEMICALS SDN BHD** 2, JALAN ASTAKA U8/87 SEKSYEN U8, BUKIT JEKUTONG, 40150 SHAH ALAM SELANGOR DARUL EHSAN MALAYSIA

Name and Address of Respondent

4,5,6,

Designated Authority-DESIGNATED AUTHORITY DIRECTORATE GENERAL OF ANTI-DUMPING AND ALLIED DUTIES
1. Department Of commerce, Jeevan Tara Building,4Th Floor, 5,Parliament Street 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

7Advocate(s) / Consultant(s):

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Rajesh Sharma (Advocate)
TPM CONSULTANTS, K-3/A SAKET,
NEW DELHI-110017

8 Additional Party's Name & Address :

ANDHRA PETROCHEMICALS
VENKATARAYAPURAM
TANUKA-534215 WEST
GODAVARI DISTRICT ANDHRA
PRADESH

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ZAK S.A UL MOSTOWA 30-A SKR
POCZT 163 47-220 KEDZIERZYN
KOZLE POLAND

E I F ATOCHEM
S.A, 4, COURS MICHELET 92091
PARIS LA DEFENCE CEDEX
FRANCE

SOLVENTS DOCUMENTATION SYNTHESES
S.A B.P.4, 13124 PEYPIN FRANCE

EXXONMOBIL CHEMICAL HOLLAND
BV ROTTERDAM OXO ALCOHOL
PLANT MERWEDEWEG 213198
LH EUROPORT, ROTTERDAM,
THE NETHERLANDS

B A S F
WOHLESTRASSE 15, 67056
LUDWIGSHAFEN
RHINELADPALATINATE,
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SAUDI BASIC INDUSTRIES CORPORATION SABIC
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ESTIENNE D ORVES 92705
COLOMBES CEDEX FRANCE

PT PETRO OXO NUSANTARA
OFFIEC & FACTORY JALAN
GUBERNUR SURYO 134
TLOGOJOK GRESIK JAWA
TIMUR 61118 INDONESIA

NAN YA PLASTICS CORPORATION
201 TUNG HWA NORTH ROAD,
TAIPEI, TAIWAN

VINMAR INTERNATIONAL LTD
16800 IMPERIAL VALLEY DR
SUITE NO. 499, HOUSTON
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I C C CHEMICAL CORPORATION
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ROAD FREEPORT-TEXAS 77541
USA

DOW CHEMICALS
TEXAS CITY OPERATIONS, P.O.
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0471 USA

EASTMAN CHEMICAL CO
TEXAS OPERATIONS BOX 7444
LONGVIEW TEXAS 75607-7444
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C J SHAH & CO
105. BAJAJ BHAVAN, 10TH
FLOOR NARTIMAN POINT,
MUMBAI-400021

PETROCHEM MIDDLE EAST-INDIA PVT LTD
201 BUSINESS SQUARE B-WING
ANDHERI KURLA ROAD
OPP:APPLE HERITAGE ANDHERI
E, MUMBAI-400093

K L J RESOURCES & GROUP OF COS
KLJ COMPLEX, 70/B-39 SHIVAJI
MARG NAJAFGARH ROAD NEW
DELHI-110015

PAYAL POLYPLAST PVT LTD
PAYAL PETROCHEM PVT LTD
PAYAL PETROPACK PVT LTD
E-24, NETAJI SUBHASH MARG
DARYA GANJ NEW DELHI 110002

LALITHA CHEM INDUSTRIES PVT LTD
SUBRAY CATAL CHEM PVT LTD,
G-42, D WING DEWAN
APARTMENT NO II CHSL VASAI
ROAD E DIST-THANE-401202

DEEPAK NITRITE LTD
ENTERPRISE CENTRE, 301, III
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VILEPARLE E MUMBAI-400099

PETCHEM PRODUCTS
GUJ-713, 7TH FLOOR CRYSTAL
PARADISE DATTAJI SALAVI
ROAD OFF VEERA DESAI ROAD,
ANDHERI W MUMBAI-400053

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POLICE STN, KHAR W MUMBAI
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P C L OIL & SOLVENTS LTD
LIBERTY CHEMTRADE RITZY
POLYMERS RITZY CHEMICALS,
703, DLF TOWER-B DISTRICT
CENTER JASOLA, NEW DELHI-
110044

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

27/09/16

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing:06/09/2016
Date of pronouncement : 16/9/ 2016

Anti-Dumping Appeal No.51963 of 2016

Arising out of the Final Findings F.No.14/24/2014-DGAD dated 18th February, 2016 passed by the Designated Authority and Customs Notification No.10/2016-Customs (ADD) dated 29th March, 2016 passed by the Ministry of Finance, Department of Revenue.

1. Deepak Nitrite Ltd. ... Appellant

Vs.

Designated Authority, Directorate General of Anti-Dumping and Allied Duties .. Respondent

Miscellaneous Application No.50951 of 2016
Stay Application No.50952 of 2016 and
Anti-Dumping Appeal No.51982 of 2016

Arising out of the Final Findings F.No.14/24/2014-DGAD dated 18th February, 2016 passed by the Designated Authority and Customs Notification No.10/2016-Customs (ADD) dated 29th March, 2016 passed by the Ministry of Finance, Department of Revenue.

2. P.T. Petro –Oxo Nusantara ... Appellant

Vs.

Designated Authority, Directorate General of Anti-Dumping and Allied Duties .. Respondent

Stay Application No.50968 of 2016 and
Anti-Dumping Appeal No.51998 of 2016

Arising out of the Final Findings F.No.14/24/2014-DGAD dated 18th February, 2016 passed by the Designated Authority and Customs Notification No.10/2016-Customs (ADD) dated 29th March, 2016 passed by the Ministry of Finance, Department of Revenue.

3. BASF Petronas Chemicals SDN, BHD ... Appellant

Vs.

Designated Authority, Directorate General of Anti-Dumping and Allied Duties .. Respondent

Appearance:

Present S/Shri Piyush Kumar, Mrs. Reena ~~Khair~~ Rawat , Advocates and Vishwadeep Sharma, C.A. for the appellant at serial No.1;
Present S/Shri Atul Gupta and Ankur Sharma, Advocates for the appellants at serial No.2 and 3
Present Shri Amit Singh, Advocate for the Designated Authority
Present Shri Govind Dixit, A.R. for the Revenue
Present Mrs. Reena Khair, Shri Rajesh Sharma and Ms. Rita Jha, Advocates for Domestic Industry.

Coram:

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

Final Order No. 53598-53600/2016

Per B. Ravichandran:

These are three appeals against the common Final Findings dated 18.2.2016 of Designated Authority (DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No.10/2016-Customs (ADD), dated 28.3.2016 of Ministry of Finance. Through these proceedings, anti-dumping duty was levied on 2 Ethyl Hexanon, (the subject goods) originating in or exported from EU, Indonesia , Korea RP, Malaysia , Saudi Arabia, China Taipei and USA. (the subject countries). The appellant No.1 is a domestic user and importer of the subject goods. The appellantsNo.2 & 3 are producer and exporter of subject goods for Indonesia and Malaysia, respectively.

2. Ld .Counsel for the appellants submitted various common grounds opposing imposition of AD duties on the subject goods. During the argument , he emphasized on two main points. These are,

(a) The normal value of subject goods have not been properly determined by the DA in terms of Section 9A (1)(c) of Customs Tariff Act, 1975. It was submitted that sale transaction to related party ~~for~~ in exporting country is in "Ordinary Course of Trade" and should not be discarded. The sale to China is an international sale and should have been considered while arriving at normal value. Various errors in data in the disclosure statements were pointed out but were not considered.

(b) Injury analyses by the DA is erroneous. The Domestic Industry was suffering injury due to 'other factors' like fire accident in the unit of raw material supplier and also shut down of raw material supplier for a long period. Normation made has not properly considered these factors. The price undercutting is negative throughout injury period and hence conclusion on material injury is factually incorrect.

3. Ld. Counsel for the Domestic user/importer submitted that injury to Domestic Industry (DI) has not been properly analysed. He supported the plea of other two appellants as above, regarding existence of other factors which disrupted the supply of raw material causing injury to the DI. He also submitted that the time lag between placing of order and receipt of subject goods has not been properly appreciated by he DA as petroleum prices were falling and the comparison should have been properly made keeping such time lag.

4. Ld. Counsel for the Domestic Industry defended the final findings of the DA recommending AD duties on the subject goods. The related party sale within exporting country cannot be considered as sale during "Ordinary Course of Trade". The sale being above cost price will not automatically become 'sale in ordinary course of trade'. Regarding international sale to China, the status of China as non-market economy impacts the export price to that country also. The local competing market is non-market economy based. The export price does not truly reflect the price of international trade in ordinary course.

5. Ld. Counsel for the Designated Authority submitted that certain corrections sought for by the appellant based on purported error in freight adjustment cannot be made on the basis disclosure as it will involve further detailed investigation. When the disclosure was made based on original submissions of the exporters, post disclosure, the exporter cannot vary his data on the ground of error. On the point of DI suffering injury due to other factors, the ld. Counsel submitted that period of investigation (POI) is April 2013 to June 2014. The shut-down of the DI is on two reasons

(a) non-availability of main raw material from HPCL due to fire accident/maintenance.

(b) un-remunerative price of subject goods. The ld. Counsel submitted that a detailed chart in respect of each reason, with number of days shut-down. The DI was shut-down for 145 days due to non-supply of raw materials, 118 days due to unremunerative price attributable to dumped imports. The data is for period of investigation. It is the case of the DA that there is price suppression of subject goods and the sale realization is lower than the cost. All these have been examined by DA before Final Finding.

6. Ld. Counsel for the DA submitted that existence or otherwise of price of undercutting alone cannot be considered during injury analyses. The DI's price was depressed due to dumped imports. He reiterated the findings of the DA specifically recorded at paras 78 and 79.

7. Ld. A.R. for Revenue supported the Notification imposing AD duties and also relied on the supporting arguments as above.

8. We have heard all the interested parties and examined the appeal records including written submissions. All the appeals are challenging imposition of AD duties on the subject goods. The first point for consideration is improper fixation of normal value by the DA. While determining the normal value, we note that the DA has discarded the sale of subject goods to related party in Indonesia and also sale to third country in China. We note that the related party transaction cannot be considered as 'sale in ordinary course of trade'. The sale being above cost price by itself does not make it sale in ordinary course of trade. Further, China being non-market economy will have impact on the export price to that country also. These factors have been analysed and we do not find any reason to differ with the conclusion of the DA.

9. Regarding error in the data submitted by the exporter we note that data submitted by interested parties were considered due analyses was based on verification. If some party post disclosure denied certain data and claims error in earlier analyses, the same is not to be considered. Such course will call for further detailed verification post disclosure. It is neither viable nor admissible in view of time from within which the DA has to operate.

10. Regarding the appellant's plea of improper analyses of injury, we have carefully examined the findings of the DA and the submissions of the appellant. The main thrust of the arguments by the appellant is that DI suffered injury due to other factors and not due to dumping of the subject goods. In other words, the shut-down of unit of DI is attributable to the disruption in raw material supply. We have perused the break-up of data and also the examination of the DA on this issue. The plant of DI was shut down for 263 days in 15 months. We have perused month-wise details indicating the number of days the unit was shut down during POI and the reason for the same. As already noted out of 263 days, the non-supply of raw materials accounted for 145 days, shut down for 118 days was attributed to unremunerative price due to dumped imports of subject goods. The said factual position has been correctly reflected in the Final Findings. We note that DA calculated the production capacity utilization of Domestic Industry assuming that there was no shut down in order to isolate plant shut-down as factor of injury. It was recorded that even if raw material supplies were not affected, the DI had reached only 62% of

the operation. There is healthy growth in ~~dumped~~ demand. While cost has increased, the prices were suppressed due to presence of significant volume of dumped imports. On this ground also we find no merit in the argument of the appellant.

11. We have noted that DA, on analyses of various parameters in terms of AD Rules, 1995, concluded the price of DI is significantly depressed because of increasing volume of dumped imports at a price below the cost of production, preventing DI from realising remunerative price to remain in production/ sale. He established causal link between dumping and injury suffered by DI. On careful analysis of all the issues presented before us, we find no merit in the present appeals and accordingly dismiss them. Miscellaneous Application and the stay application linked to main appeals are also disposed of.

(Pronounced on 16.09.2016)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran) 15.9.16
Member (Technical)

scd