REGISTERED

FAX : 011-26108426

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

Dated: **16/12/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/55769-55771/2016-CU[DB]** dated **09/12/2016**

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/51637/2016, AD/MISC/51638/2016	AD/52841/2016	**THE BOMBAY DYEING & MFG CO LTD** NEVILLE HOUSE. J. N. HEREDIA MARG. BALLARD ESTATE. MUMBAI, MUMBAI , MAHARASHTRA -400038
2	AD/Stay/51642/2016	AD/52850/2016	**INDO RAMA SYNTHETICS INDIA LIMITED** 20TH FLOOR, DLF SQUARE DLF PHASE-2, NH-8 GURGAON, HARYANA-122002
3	AD/Stay/51643/2016	AD/52851/2016	**PTA USERS ASSOCIATION** 16, NDMC MARKET, NAROJI NAGAR, NEW DELHI, DELHI, DELHI-110029

Name and Address of Respondent

4 Designated Authority-
DESIGNATED AUTHORITY
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5 Designated Authority-
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-

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Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

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HIGH COMMISSION OF MALAYSIA
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TAIWAN

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FLOOR, NO.201, TUNG
HWA N. ROAD, TAIPEI
105, TAIWAN

CHINA AMERICAN PETOCHEMICAL CO. LTD.
(CAPCO) 9TH FLOOR
NO.392, RUEI KUANG
ROAD, NEIHU, TAIPEI,
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PT ASIA PLCIFIC FIBERS TBK
DESA KIARA PAYUNG
KECAMATAN KLARI,
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KARAWANG41300
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WELLKNOWN POLYSTER LTD
NIRMAN B WING 14TH
FLOOR, BACKBARY
RECLAMATION,
NARIMAN POINT,
MUMBAI-400021

ALOK INDUSTRIES LTD.
PENINSULA TOWERS,
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THE BOMBAY DYEING & MFG. COMPANY LTD.
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PLOYPLEX CORPORATION LTD,
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C.D.R. Office Copy Guard File

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

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

Date of Hearing: 10.11.2016
Date of Decision: 04-12-2016

AD/Misc/51638/016, AD/Stay/51637/2016, AD/Stay/51642/2016 and 51643 of 2016 in Appeals Nos.AD/52841, 52850 and 52851/2016-AD(DB)

(Arising out of Notification no.28/2016-Customs (ADD) dated 5.7.2016 issued by the Central Government based on Final Findings of the Designated Authority No.14/8/2015-DGAD dated 9.6.2016]

The Bombay Dyeing & Mfg. Co. Ltd.
Indo Rama Synthetics India Ltd.,
PTA Users Association — Appellants

Vs.

Union of India/DA — Respondent

Appearance:
Shri Dushyant Manocha, Shri Aditya Mukherjee, Shri S.Sitharaman, Shri Darpan Bhuyan, Advocates for the **Appellants.**
Shri Amit Singh, Advocate for **DA** and
Ms.Reena Khair and Shri Rajesh Sharma, Advocates for **Domestic Industry (DI)**

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

Final Order No. 55769-55771/2016 /Dated:

Per B. Ravichandran:

These are three appeals filed against the imposition of Anti dumping duty by the Customs Notification no.28/2016-Cus ADD dated 5.7.2016 based on the final findings dated 9.6.2016 of the designated authority, Directorate General of Anti-dumping and Allied Duties, Ministry of Commerce and Industries. The Anti-dumping duty was imposed on import of Purified Terephthalic Acid ("PTA") into India from China PR, Iran, Indonesia, Malaysia and Taiwan (subject countries).

2. The main submissions of the appellants can be summarized as below:-

(a) The DA has wrongly excluded the Reliance Industries Ltd. (RIL) from the purview of domestic industry while conducting the investigation as per request of the domestic industry. It is submitted that the exclusion of RIL from the purview of domestic industry is not legally tenable as DA has not exercised the discretion vested on him in terms of Rule 2(b) of the Anti Dumping Rules, properly.

(b) In the event of such exclusion of RIL, the DA should not have conducted a simultaneous cumulative investigation to determine injury to the domestic industry and causal link, if any. The DA should have conducted two simultaneous investigations i.e. one with subject countries other than Malaysia and other only for Malaysia.

(c) The principles of natural justice have been violated in the present investigation by the DA. M/s. Indian Oil Corporation Ltd., who were only supporting the petition filed by the other two domestic industrial units, however, provided certain data, which was not disclosed to the appellants before a decision was arrived at by the DA.

(d) The injury analysis made by the DA is based on the data of M/s. MCCPTA India Corporation Pvt. Ltd., who is a sick company and apparently, the injury analysis has not reflected the true status of the domestic industry.

3. Ld. Counsels appearing on behalf of the appellants elaborated on each of the above points during the course of arguments.

4. The appeals were opposed by the domestic industry. Ld. Counsel appearing on behalf of the domestic industry (respondent no.3 & 4) rebutted each one of the above points with detailed submissions.

5. Ld. Counsel for the DA submitted that the DA has examined all the points now raised by the appellant. He drew our attention to the paras 17 to 21 of the final findings of the DA to state that the issues have already been examined and settled

by the DA. There is nothing in the present appeals to warrant interference with the final findings.

6. We have heard all the sides as mentioned above and examined the appeal records along with the written submissions.

7. The imposition of ADD on PTA imported from subject countries is under challenge. We have perused the final findings of the DA carefully. The first point raised by the appellant is regarding exclusion of RIL from the purview of the domestic industry. Admittedly, both the domestic producers (MCPI and RIL) had filed the petitions praying for imposition of anti dumping duties. However, RIL had disclosed that they are related to the company in Malaysia, who is the sole producer of the subject goods in that country. There were substantial exports to India from the said company during the POI. We have seen that DA has examined the legal position, more specifically, Rule 2(b) of the AD Rules and came to the conclusion that the RIL has to be excluded from the purview of the domestic industry in view of their relationship with the Malaysian producer of the subject goods. We note that the appellants contested the said findings on the ground of unreasonableness. The reference made by the appellant to another investigation relating to the soda ash is not found appropriate. In the said case, the quantum of export by the related entity is only about 8%. In the present case, the related company of RIL, located in Malaysia, is exporting substantial quantity to India. We find that the DA's findings on this ground cannot be assailed.

8. The appellant also raised the correctness of considering MCPI as a domestic industry for injury analysis in view of the fact that the said unit is sick and is under BIFR. In this connection, we find that the same has been taken note of by the

DA. The DA has recorded that MCPI suffered technical problems in their plant but that is not the only cause of injury. The DA found that the imports had adversely affected the profits, cash flow, return on investment of MCPI. The injury of domestic industry has been properly analysed and we find no reason to disagree with the DA on this account.

9. The appellants also pleaded that separate assessment should have been made in respect of Malaysia and for other subject countries. We note that cumulative assessment is proper subject to fulfillment of certain conditions. The dumping margin in the case of China is 20 to 30% and the quantum of export is above 3%. The subject goods imported from China are in direct competition with the like articles made in India. As such, the conditions for commutations are met. We note specifically the findings recorded in para 118 of the final findings of the DA. The reason for cumulative analysis has been appropriately recorded by the DA.

10. Regarding violation of principles of natural justice during the course of investigation, we note that though originally, the IOCL was only supporting the petitions filed by the other domestic industry, later they have provided some data regarding production, sales and profitability of subject goods during the POI, on confidential basis. We note that the DA has not considered the said data for injury analysis and investigation. This has been clearly recorded in para 155 (vi) of the Final Findings by the DA. As such, we find no ground to sustain the plea of the appellant regarding violation of principles of natural justice.

11. Regarding separate analysis and investigation for Malaysia and other subject countries, we note that there cannot be separate category of domestic industry for separate subject countries. As per the provisions of AD Rules, injury on account of

dumping of the subject goods from various countries is to be determined in respect of the domestic industry only. As already noted, RIL has been disqualified as an eligible domestic industry for the reason of their related company situated in Malaysia producing and exporting the subject goods to India. We find no justification on legal basis for a separate investigation with reference to Malaysia and other countries.

12. In view of the above discussions and analysis, we find that the appellants have not made out any case either on facts or on legal principles against the final findings and the customs notifications impugned in the appeals. Accordingly, the appeals are rejected. The misc. applications linked with these appeals stand disposed of.

[Order pronounced on 09-12-2016]

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

[S.K. Mohanty]
Member (Judicial)

[B. Ravichandran] 8.12.16.
Member (Technical)

Ckp.