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/53518-53521/2016-CU[DB]** dated **14/09/2016**

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/COD/50484/2016, AD/MISC/50485/2016	AD/50348/2016	**Filatex India Ltd** Bhageria House 43, Community Centre New Friends Colony NEW DELHI-110025
2	AD/COD/50486/2016, AD/MISC/50487/2016	AD/50349/2016	**Indo Rama Synthetics India Ltd** 20th Floor, Dlf Square Dlf Phase-2, Nh-8 GURGAON HARYANA-122002
3	AD/COD/50488/2016, AD/MISC/50489/2016	AD/50350/2016	**P T A Users Association** 16, Ndmc Market Naroji Nagar NEW DELHI-110029
4	AD/COD/50490/2016, AD/MISC/50491/2016	AD/50351/2016	**The Bombay Dyeing & Mfg Co Ltd** C-1, Wadia International Centre Pandurang Budhkar Marg, Worli MUMBAI MAHARASHTRA-400025

	Name and Address of Respondent
5	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

6Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, Jangpura Extension,
Link Road,
New Delhi-110014

10 Additional Party's Name & Address :

RELIANCE INDUSTRIES LTD
MAKERS CHAMBES IV NARIMA
POINT, MUMBAI-400021

MCC PTA INDIA CORP PVT LTD
22, CAMAC STREET, BLOCK C
4TH FLOOR, KOLKATA-700016

MCC PTA INDIA CORP PVT LTD
22, CAMAC STREET, BLOCK C
4TH FLOOR, KOLKATA-700016

INDIAN OIL CORPORATION LTD
1, SRI AUROBINDO MARG
YUSUF SARAI, NEW DELHI-110016

KOREA PETROCHEMICAL INDUSTRY ASSOCIATION
6TH FLOOR, YEOJUNDO
BUILDING 190, YULGONGNO,
JONGNO-GU SEOUL 110738,
KOREA RP

SAMSUNG GENERAL CHEMICALS
20TH F 1, 11, SEOCHO-DAERO 74-GIL, SEOCHO-GU SEOUL, KOREA
RP 1237965

SAMSUNG TOTAL PETROCHEMICAL CO LTD
411-1, DOKGOD RI, DAESAN UP,
SEOSAN SI, CHUNG NAM,
KOREA RP-356711

TAEKWANG INDUSTRIAL CO LTD
TAEKWANG B/D, 163-1,
CHANGCHUNG-DONG 2-GA,
CHUNG-GU, SEOUL, 100392
KOREA RP

SAMYANG CORPORATION
263 YEONJI-DONG, JONGNO-GU
SEOUL, KOREA RP

SK PETROCHEMICAL
9F SEORIN-DONG, JONGNO-GU,
SEOUL-110110 KOREA RP

HYOSUNG PETROCHEMICAL
119, MAPO-DAERO, MAPO-GU
SEOUL, KOREA-121720

INDORAMA PETROCHEM LTD
75/93-OCEAN TOWER-35TH
FLOOR SOL SUKHUMVIT,
SUKHUMVIT ROAD, KWAENG
KLONGTOEY BUER, KL
WATTANA, BANGKOK 10110,
THAILAND

SIAM MITSUI PTA CO LTD
1, SIAM CEMENT ROAD,
BANGSUE, BANGKOK-10800,
THAILAND

TPT PETROCHEMICALS PCL
3, I-7 MAP TA PHUT INDUSTRIAL
ESTATE ROAD, MAP PHUT,
MUANG, RAYONG 21150,
THAILAND HYOSUNG
CORPORATION 235, BANPO-
DAERO, SECHO-GU SEOUL,
KOREA RP

**SAMSUNG PETROCHEMICAL
CO LTD**
20TH FLOOR, SAMSUNG
ELECTRONICS BUILDING, 1320-
10, SEOOCHO 2 DONG SEOCHO-
GU, SEOUL 137857, KOREA RP

WELLSPUN POLYSTER LTD
NIRMAN B WING 14TH FLOOR,
BACKBAY RECLAMATION
NARIMAN POINT, MUMBAI-
400021

ALOK INDUSTRIES LTD
PENINSULA TOWERS,
PENINSULA CORPORATE PARK,
GK MARG, LOWER PAREL,
MUMBAI-400013

GARDEN SILK MILLS LTD
MANEK MAHAL 90, VEER
NARIMAN ROAD, CHURCHGATE,
MUMBAI-400020

JINDAL POLYFILMS LTD
PLOT NO. 12, SECTOR B-1,
LOCAL SHOPPING COMPLEX
VASANT KING, NEW DELHI-
110070

SUMEET INDUSTRIES LTD
504, TRIVIDH CHAMBER OPP
FIRE BRIGADE STATION, RING
ROAD, SURAT-395002

J B F INDUSTRIAL LTD
8TH FLOOR, EXPRESS TOWERS
NARIMAN POINT, MUMBAI-
400021

**INDO RAMA SYNTHETICS
INDIA LTD**
20TH FLOOR, DLF PHASE-II, NH
8, GURGAON, HARYANA-122002

**DHUNSERI PETROCHEM & TEA
LTD**
DHUNSERI HOUSE, 4A
WOODBURN PARK, KOLKATA-
700020

FILATAX INDIA LTD
43, COMMUNITY CENTRE, NEW
FRIENDS COLONY, NEW DELHI-
25

NAKODA LTD
15B, 15TH FLOOR, EARNEST
HOUSE 194 NARIMAN POINT,
MUMBAI-400021

**ASSOCIATION OF SYNTHETIC
FIBRE INDUSTRY (ASFI)**
125, UDAY PARK (FIRST FLOOR)
NEW DELHI-110049

PTA USERS ASSOCIATION
SHOP 16, NDMC MARKET
NAROJI NAGAR, NEW DELHI-
110029

RAJ RAYON INDUSTRIES LTD
5C/196 & 197 AKSHAY MITTAL
INDUSTRIAL ESTATE
SAKINAKA, ANDHERI EAST
MUMBAI-59

**THE SOUTHERN GUJARAT
CHAMBER OF COMMERCE &
INDUSTRY**
SAMRUDDHI, MAKKAI POOL
NANPURA, SURAT-GUJARAT

ASSOCIATION OF SYNTHETIC FIBRE INDUSTRY
D-15, F 18-19, NDSE PART II, NEW DELHI-49

SOUTHERN INDIA MILLS ASSOCIATION
POST BOX NO 3783, 41 RACE COURSE COIMBATORE-18

POLYSTER FILM INDUSTRIES ASSOCIATION
B-37, SECTOR 1, NOIDA-201301 U.P.

MITSUBHISHI CORPORATION
MARUNOUCHIPARK BLDG 6-1, MARUNOUCHI-CHOME CHIOYODA-KU, TOKYO, JAPAN

CHEMICAL & PETROCHEMICALS MANUFACTURING ASSOCIATION
FLAT NO. 708, 7TH FLOOR, KAILASH BUILDING, 26, KASTURBA GANDHI MARG, NEW DELHI-1

SAMSUNG C&T CORPORATION
29, SAMSUNG CORPORATION BLDG, 1321-20, SEOCHO, 2 DONG SEOCHO-GU, SEOUL, KOREA RP

11 Bar Association, CESTAT, Delhi
12 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

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

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

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

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

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

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

21 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-~~19, 1st~~ Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
22 C.D.R. **23** Office Copy **24** Guard File

22/09/14

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 06/09/2016.
DATE OF DECISION : 14/09/2016.

Anti Dumping COD Application No. 50484 of 2016 with Misc. Application No. 50485 of 2016 in Appeal No. 50348 of 2016

M/s Filatex (I) Pvt. Ltd. Appellant

versus

Union of India/DA Respondent

Anti Dumping COD Application No. 50486 of 2016 with Misc. Application No. 50487 of 2016 in Appeal No. 50349 of 2016

M/s Indo Rama Synthetics India Ltd. Appellant

Versus

Union of India/DA Respondent

Anti Dumping COD Application No. 50488 of 2016 with Misc. Application No. 50489 of 2016 in Appeal No. 50350 of 2016

M/s PTA Users Association Appellant

Versus

Union of India/DA Respondent

Anti Dumping COD Application No. 50490 of 2016 with Misc. Application No. 50491 of 2016 in Appeal No. 50351 of 2016

M/s The Bombay Dyeing & Mfg. Co. Ltd. Appellant

Versus

Union of India/DA Respondent

[Arising out of the Notification No. 23/2015-Customs (ADD) dated 27/05/2015 issued by the Ministry of Finance. Final Finding of the Designated Authority No. 14/7/2013-DGAD dated 07/04/2015.]

Appearance

S/Shri Atul Gupta and Ankit Sharma, Advocates – for the appellants.

S/Shri Amit Singh, Advocate for DA and Govind Dixit, Authorized Representative (DR) – for the Respondent.

For I.P. :

Ms. Reena Asthana Khair, Shri Rajesh Sharma, Ms. Rita Jha, Advocates and Aastha Gupta, C.A.

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. 53518-53521/2016 Dated : 14/09/2016

Per. B. Ravichandran :-

These are four appeals filed against Final Finding of the Designated Authority (the DA), Directorate General Anti-Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No. 23/2015 – CUS (ADD) dated 27/05/2015 issued by Ministry of Finance.

2. M/s MCC PTA India Corporation Pvt. Ltd. (MCPI) and M/s Reliance Industries Ltd. (RIL) (the DI) jointly approached the DA for initiation of anti-dumping investigation on import of purified terephthalic acid (subject goods) from China PR, EU, Korea RP and Thailand. The DA initiated such investigation. After following the procedure in terms of Customs Tariff (Identification,

Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, the DA recommended imposition of AD duty on subject goods.

3. Before proceeding with the main appeals, we note that there is delay of 189 days in filing these appeals. The learned Counsel for the appellants submitted that upon issuance of impugned Final Findings they have approached Hon'ble Delhi High Court by filing a writ-petition on various grounds. During the pendency of WP, the Government issued Customs notification imposing AD duty. Another W.P. was filed thereafter. The Hon'ble High Court vide order dated 16/2/2016 granted liberty to the appellants to file appeals before the Tribunal under Section 9C of Customs Tariff Act, 1975 within two weeks. Accordingly, present appeals were filed. Having considered the above factual position we condone the delay in filing these appeals and take up the appeals for further disposal.

4. The learned Counsel for the appellants contested the Final Findings on various grounds. The main grounds argued are :-

(a) the DA erred in concluding that DI suffered material injury due to dumped import of subject goods. The price of non-participating domestic unit (IOCL) is much lower than the other two units of DI.

(b) The DI has not been qualified properly. The MCC PTA is related to exporter Samnam through common share holding by Mitsubishi Chemical Corp., Japan.

(c) Final Finding is in violation of principles of natural justice as the appellants were not given all relied upon evidences and no post disclosure hearing was granted.

(d) the Final Finding has been issued after exercise of discretion in arbitrary and seemingly biased manner. The disclosure statement did not contain details like effect of IOCL prices and injury examination in Plant II of MCPL due to new technology found faulty.

5. The learned Counsel for DI contested the submissions of appellants. It is submitted that :-

(a) Price injury is sufficient to determine the injury to DI. There is clear finding on price suppression due to increased imports. The increase in selling price (100 to 145) is not commensurate to increase in cost of sales (100 to 180).

(b) Rule 6 (7) (8) permits drawing adverse inference based on best available data. Rule 8 not applied to non-cooperating parties. No provision for sharing confidential information.

(c) MCPI standing as DI has been elaborately discussed by the DA.

(d) there is no need/practice of providing another round of hearing post disclosure. All interested parties have been heard during investigation.

(e) the technology related problem in MCPI resulting in injury also has been dealt with by the DA. The inter-se competition among domestic units have also been considered.

6. The learned Counsel for the DA supported the Final Findings. He reiterated the DA's Findings, more specifically under paras 67 to 99 on price undercutting due to dumped imports.

7. The learned AR for Revenue drew our attention to provisions of Rule 16 of AD Rules and DA's Findings in para 93.

8. We have examined the grounds of appeals, written submissions and carefully considered arguments of learned Counsels representing all the interested parties as above. The appellants (3 user industry of subject goods in India and the Forth an Association representing such industry) are contesting the levy of AD duty on subject goods.

9. The first issue is on the status of MCPI as domestic industry. It was argued that 66% of shares of this unit is with Mitsubishi Chemical Corp., Japan who also hold 40% of Samnam Petrochemicals who is an exporter of subject goods to India. We have examined the factual and legal position in this regard. During POI Samnam's export of subject goods to India is an exception and not a regular trading activity. Further, Mitsubishi Chemical Corp., Japan does not have controlling effect on the activities of Samnam Korea. We are in agreement with the DA that the facts of the case indicate that no undue benefit accrued MCPI out of the above share holding arrangement in case of levy of AD duty. After noting the detailed reasoning recorded by the DA (para 12 of the Finding) we find that there is no justification for treating MCPI as not eligible for DI.

10. Regarding the allegation of faulty analysis of material injury to DI with reference to IOCL pricing, we note this issue has also been examined by the DA. We note that IOCL has neither supported nor opposed the application for anti-dumping investigation. The other 2 producers of subject goods in India account for more than 50% of production. Hence, the DA is correct in analyzing the data furnished to arrive at conclusion. The absence of support by IOCL is not relevant for the investigation. The sale price of IOCL being lesser than the DI has not been substantiated during investigation by the DA. On the impact of inter-se competition among domestic producers, the DA found that the injury to DI not attributable to the same as nothing relevant was brought before the authority during investigation. In appeal also we find no evidence to this effect.

11. The impugned Findings were also contested on the violation of principles of natural justice. We have noted that the DA did follow the stage by stage procedure set out in the AD Rules. The appellants are aggrieved as no hearing was granted post disclosure by the DA. Admittedly, the DA had conducted public hearing of all the interested parties on 19/11/2014. After analysis of all submissions the DA notified disclosure of such analysis. Post disclosure the interested parties again submitted their comments. The appellant's plea for another hearing again is not tenable. In the name of natural justice a situation cannot be created which will defeat the very process of intended

investigation and remedy thereafter. If appellant's plea is accepted, it follows a second hearing is to be considered for all parties, who after oral hearing have to submit written note of their comments which has to be made available to all the other parties who will insist on further oral hearing and written comments on the issues raised which has to be made known to all interested parties and the cycle will continue indefinitely without any possible conclusion by the DA. The initiation of investigation for AD duty was notified with supporting applications. All interested parties give comments and were personally heard. Thereafter, upon analysis of all facts and comments after due verification the DA discloses the proposals. Again comments are called for. Finally, the DA notifies his Final Findings. This procedure has been followed by the DA. We find no legal infirmity or denial of natural justice by the DA in this case.

12. The Final objection is on injury analysis being arbitrary and on use of excessive discretion by DA. Specific reference was made to MCPI suffering injury in Plant II operation due to faulty technology not due to dumping of subject goods. The DA has recorded that though snags in Plant II of MCC PTA India Co. Pvt. Ltd. have caused injury, the dumping of subject goods has aggravated the injury. We have also considered the injury analysis by the DA. No specific instance of improper discretionary decision was brought to our notice. As a statutory authority vested with the power to analyse and arrive at a clear finding,

the DA acted within his mandate. Adverse finding cannot be ipso-facto basis of allegation of discretionary excess.

13. We have also examined the case laws relied upon by the appellants. The Hon'ble Supreme Court's decision in **Reliance Industries – (2006) 10 SCC 368** is regarding computation of non-injurious price based on best capacity utilization, being improper. The Hon'ble Supreme Court also examined scope of Rule 7 of AD Rules, and held the said Rule does not allow confidentiality of information against that very party. In the present case, we find that for non-cooperative exporters constructed value was arrived at by the DA. Adverse inference can be drawn based on available data. The decision of Tribunal in **Dye Stuff Manufacturers Association of India vs. Government of India – 2003 (157) E.L.T. 154 (Tri. – Del.)** was also referred to by the appellants. We note that Rule 8 of AD Rules deals with accuracy of information supplied by interested parties as a basis of finding. Here, in the present case, the issue on best judgment based on best available data where all the exporters from a subject country are not cooperating. We are not informed about any specific case of reliance on unverified data.

14. After careful consideration of all the issues raised in these appeals and the Final Findings we find no merit in the appeals. Accordingly, we reject all the appeals against the impugned Findings and Customs notification. All the linked miscellaneous applications also stand disposed of.

(Order pronounced in the open court on 14/09/2016.)

(Justice Dr. Satish Chandra)
President

AD/50348-50351 of 2016

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran) 12/9/16
Member (Technical)

PK