

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

Dated: 06/09/2016

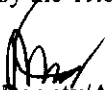
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. AD/A/53335/2016-CU[DB] dated 31/08/2016

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/4713/2012	AD/3735/2012	Hubei Hongyuan Pharmaceutical Co Ltd 428, Yishui North Road, Fengshan, Luotian, HUBEI,-CHINA.

**Name and Address of
Respondent**

2	-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
---	--

Copy To

3 Advocate(s) / Consultant(s):

 **M. S. Pothal, C.A
F-12/4, 1ST FLOOR MALVIYA
NAGAR NEW DELHI-110017
NEW DELHI-110017**

 **Rajesh Sharma (Advocate)
TMR, SOLICITORS &
CONSULTANTS,
K-3/A, SAKET
New DELHI - 110017**

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Guard File

 6/9/16
Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 22.08.2016
Date of decision: 31.08.2016

**Anti Dumping Appeal No. 3735 of 2012 with
Anti Dumping Stay No. 4713 of 2012**

(Arising out of Final Finding No. 40/2012-Cus (ADD) dated 30.08.2012 issued vide Customs Notification No. 15/18/2010-DGAD dated 29.06.2012 issued by the Ministry of Finance, Department of Revenue).

M/s Hubei Hongyuan Pharmaceutical Co. Ltd. Appellant

Vs.

Designated Authority, DGAD, MoF. Respondent

Appearance:

Sh. Rathim M., Advocates for the Appellant
Sh. Amit Singh, Advocate for the D.A.
Sh. Govind Dixit, AR for the Revenue
Ms. Reena Khair, Sh. Rajesh Sharma and Ms. Rita Jha, Advocates for the Domestic Industry.

Coram:

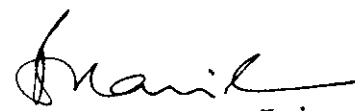
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53335/2016

Per: B. Ravichandran:

The present appeal is by M/s Hubei Hongyuan Pharmaceutical Co. Ltd., China P.R., a manufacturer and exporter of metronidazole (subject goods). The appeal is against the Notification dated 29.06.2012 of the Designated Authority, Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Industry (the D.A.) recommending extension of anti-dumping duty in subset review and Notification No. 40/2012-Cus (ADD) dated 30.08.2012 of Ministry of Finance.

2. The brief facts of the case are that M/s Aarti Drugs Ltd. and M/s Unichem Laboratories Limited filed application with the DA, who initiated a sunset review



investigation on 30.05.2011 under Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The definitive anti-dumping duty was originally recommended on 14.07.2000 on import of subject goods originating in or exported from China P.R. After First sunset review the AD duty was continued vide Notification dated 05.04.2006 (Customs notification No. 61/2006-Cus. dated 15.06.2006). The present impugned notification of the D.A. consequent upon second sunset review is under challenge now.

3. The Id. Counsel for the appellants contested the Findings of the D.A. on various grounds. The main points are-

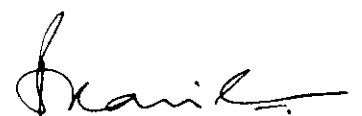
- a) majority of imports are made by domestic producer itself. Hence, the D.A. should have terminated the investigation.
- b) the form of duty is determined by completely ignoring Drugs Price Control order (DPCO) ceiling price.
- c) there is no ~~casual~~^{causal} link and no evidence to show likelihood of dumping and injury.

The Id. Counsel for domestic industry countered the arguments of the appellant and submitted that the sunset review by the DA has been conducted within four corners of prescribed procedure after following all the legal requirements.

The Id. Counsel for the DA and the Id. AR for Revenue supported the findings of the D.A.

4. We have heard all the parties as above and examined appeal records and written submissions. We have carefully perused the findings by the D.A.

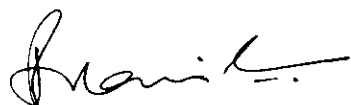
5. The first issue raised by the appellant is that the domestic industry is also one of the major importer of subject goods and hence the investigation on anti dumping should not have continued. We note that this issue was considered by the DA and after noting



these facts excluded M/s Aarti Drugs from the purview of domestic industry. He concluded that M/s Unichem Laboratories Constitutes, the domestic industry, being the only remaining producer of the subject goods and satisfy the requirement of Rule 2(b) of the AD Rules. The Hon'ble Madras High Court in *Nirma Limited vs. Saint Gobain Glass India Ltd. – 2012 (281) ELT 321 (Mad.)* held that even if the only producer of subject goods in the country produced only 4%, by a combined reading of Rule 2(b) and Rule 5(3) proviso the said producer is considered as a domestic industry and is entitled to maintain the application for investigation. As such we find no merit in the appellant's contention on this point.

On the second point regarding incorrect calculation of injury margin by taking wrong DPCO price, we note that the Central Government by Notification dated 04.08.2008 had fixed the maximum sales price of subject goods at Rs. 526/ kg. which was applicable during the POI – 01.01.2010 to 31.12.2010. The price was fixed at Rs. 514/ kg. vide Notification dated 01.07.2011 and again at Rs. 588/ kg. Notification dated 16.11.2012. The DA has correctly applied the rate of Rs. 526/ kg. applicable to the relevant time.

The appellant also contended that the DA failed to establish the casual link for likelihood of dumping/ injury in the event of revocation of AD duties. We note that the exporters/ producers from China P.R. continued to export the subject goods at dumped prices even after the imposition of the AD duty. The original dumping margin of about 48% increased to 69% in First sunset review and was 29% in the present second review. The dumping margin continued to be significant. The D.A. examined the possibility of intensified dumping in case AD duty is revoked. His findings in para 72 to 83 are elaborate and can not be contested on merit. The known capacities available with the Chinese producers (about 24000 MT) and the Indian demand (less than about 2000 MT) indicate the strong likelihood that the entire Indian demand may be met by Chinese producers. There is continued dumping which may intensify unless AD duty measures

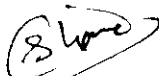


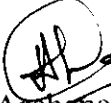
are taken. We find the DA's finding on this count is well reasoned and backed by clear data and analysis.

6. Considering the above discussion and analysis we find that the present appeal is without merit. The same is accordingly dismissed.

(Pronounced on 31.08.2016).




(Justice (Dr.) Satish Chandra)
President


(Archana Wadhwa)
Member (Judicial)


(B. Ravichandran) 26/8/16
Member (Technical)

Ckp