

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

To

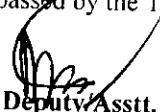
Dated: 13/12/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. AD/A/55760-55762/2016-CU[DB] dated 08/12/2016

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/52804/2016	SINOCHEM ENVIRONMENTAL PROTECTION CHEMICALS TAICHANG CO LTD CHINA 18, BENJIANG SOUTH ROAD, PORT DEVELOPMENT ZONE, TAICHANG CITY, JIANGSU PROVINCE, PR CHINA JIANGSU PROVINCE PR CHINA

2	AD/52805/2016	SINOCHEM MODERN ENVIRONMENTAL PROTECTION CHEMICALS XIAN CO LTD JINGHE INDUSTRIAL AREA, XIAN ECONOMIC TECHNOLOGICAL DEVELOPMENT ZONE, XIAN CITY SHANXI PROVINCE, P.R CHINA SHANXI PROVINCE P.R CHINA
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3	AD/Stay/51629/2016 AD/52812/2016	NAVIN FLUORINE INTERNATIONAL LTD 2ND FLOOR, SUNTECK CENTRE, 37/40 SUBASH ROAD, VILE PARLE EAST MUMBAI MUMBAI , MAHARASHTRA -400057
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ABLD

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(P.T.O)

Name and Address of
Respondent

4

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.

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5

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GOVERNMENT OF INDIA
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MINISTRY OF FINANCE
SECRETARY - REVENUE
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI.

Copy To

7 Advocate(s) / Consultant(s):

**KARNIKA SETH
ADVOCATE
SETH ASSOCIATES, B-10,
SECTOR 40, NOIDA U.P
LAKSHMIKUMARAN & SRIDHARAN,
ATTORNEYS
5 LINK ROAD JANGPURA EXTENSION NEW
DELHI 110014**

8 Additional Party's Name & Address :

**UNION OF INDIA
THROUGH THE
SECRETARY
DEPARTMENT OF
REVENUE , MINISTRY
OF FINANCE
NORTH BLOCK , NEW
DELHI-110001**

**DESIGNATED
AUTHORITY,
DIRECTORATE
GENERAL OF ANTI
DUMPING AND ALLIED
DUTIES, DEPARTMENT
OF COMMERCE,
JEEVAN TARA
BUILDING, 4TH FLOOR, 5,
PARLIAMENT STREET
NEW DELHI-110001**

**SRF LTD
NEAR UNITECH
BUILDING, BLOCK - C,
GREEN WOOD CITY,
SECTOR- 45, GURGAON ,
HARYANA -122003**

**SINOCHEM MODERN
ENVIRONMENTAL
PROTECTION
CHEMICAL XI AN CO
LTD
JINGHE INDUSTRIAL
AREA XI-AN
ECONOMICAL
TECHNOLOGICAL ZONE
XI AN PR CHINA**

**E I DU PONT INDIA
PRIVATE LTD**
DLF CYBER GREENS 7TH
FLOOR C TOWER 25A-
DLF CITY PHASE III
GURGAON 122002
HARYANA INDIA

NAVINE FLUORINE
KALPATARU POINT IST
FLOOR KAMANI MARG
SION EAST MUMBAI-
400022 INDIA

**STALLION
ENTERPRISES**
2 A-WING KNOX PLAZA
MINDSPACE OFF LINK
ROAD MALAD (W)
MUMBAI
MAHARASHTRA

**VALUR REFRIGERATIS
PRIVATE LTD**
343 SHIP NO 27 MNOTH
CENTRE I FLOOR TRIP
ICANE HIGH ROAD
CHENAI-600005 TAMIL
NADU

**MANGALI PETROCHEM
LTD**
47-48 INDUSTRIAL
DEVELOPMENT COLONY
DELHI ROAD HISAR
HARYANA-125005

**KPL INTERNATINAL
LTD**
STATESMAN HOUSE
10TH FLOOR 148
BARAKHAMBHA ROAD
NEW DELHI-110001

REFEX REFRIGERANTS
COROORATE OFFICE NO
67 BAZULLAH ROAD T
NAGAR CHENNAI-600017
INDIA

**KIRO REFRIGERANTS
PVT LTD**
ROOM NO 23
KAUSHALYA BUILDING
4380/4B ANSARI ROAD
DARYAGANJ NEW
DELHI-110002 INDIA

**HONEYWELL
INTERNATIONAL (I)
PVT LTD**
UNITECH TRADE
CENTRE GROUND
FLOOR SECTOR 43
BLOCK C SUSHANT LOK
PHASE 1 GURGAON
INDIA

**O B FLUORO CHEMS
PVT LTD**
211 2ND FLOOR
VARDHMAN CROWN
MALL PLOT NO 2
SECTOR 19 LSC DWARKA

**BRENNTAG INDIA PVT
LTD**
ACKRUTI CENTRE POINT
301 3RD FLOOR MIDC
CENTRAL ROAD
ANDHERI (EAST)
MUMBAI 400093 INDIA

CIPLA LTD
MUMBAI CENTRAL
MUMBAI 400008 INDIA

**ZHEJIANG JUHUA
GROUP I/E CO LTD**
NO 849 JIANGCHENG
ROAD HANGZHOU-
310009

**SHANDONG DONGYUE
CHEMICAL LTD**
8TH FLOOR HUANTAI
INDUSTRIAL &
COMMERCIAL BUILDING
HUANTAI COUNTRY
ZIBO SHANDONG CHINA
2564000

**SINOCHEM TAICANG
SINOCHEM TAICANG
CHEMICAL**
INDUSTRIAL PARK 365
BINJIANG SOUTH ROAD
TAICANG PORT
DEVELOPMENT AREA
SHIHUA DISTRICT
JIANGSU PROVINCE
CHINA

**JIANGSU KANGTAI
FLUROINE CHEMICAL
CO LTD**
99 NOTH DANYANG MEN
ROAD JINTAN CITY
CHANGZHOU JIANGSU
PROVINCE-CHINA

**CHANGSHU 3F
ZHONGHAO NEW
CHEMICAL MATERIALS
CO LTD**
CHANGSHU
INTERNATIONAL
CHEMICAL INDUSTRY
PARK JIANGSU
(FUSHAN) CHINA - 215522

**ZHEJINAG FOTECH
INTERNATIONAL CO
LTD**
ROOM NO 606 WEILING
MANSION NO 380
JIANGNAN
STHANGZHOU ZHEJIANG
CHINA - 310052

**DU PONT CHINA HOLDING
CO LTD**
BLDG 11399 KE YUAN ROAD
ZHANGJIANG HI-TECH
PARK PUDONG NEW
DISTRICT SHANGHAI CHINA
201203

**ZHEJIANG PUJIANG
BAILIAN CHEMICAL CO
LTD**
NO 85 BAILIAN ROAD
PUJIANG COUNTY
ZHEJIANG PROVINCE
DOMESTIC SALES CALL 86-
579-84156720

**MITSUI DUPONT
FLUOROCHEMICALS
CO LTD**

CHIYODA HONSHA
BLDG 5-18 1-CHOME
SARUGAKUCHO
CHIYODA-KUTOKYO
JAPAN 1010064

**JIANGSU BLUESTAR
ENVIRONMENTAL
PROTECTION
TECHNOLOGY CO LTD**

NO 99 DANYANGMEN
NORTH ROAD JINTAN
CITY JIANGSU
PROVINCE ZIP CODE
213200

**SINOCHEM MODERN
ENVIRONMENTAL
PROTECTIN
CHEMICALS XI AN CO
LTD**

JINGHE INDUSTRIAL
AREA XIAN ECONOMIC
& TECHNICAL
DEVELOPMENT ZONE
SHAN XI CHINA

**JIANGSU JIN XUE
GROUP CO LTD**
NORTH OF HARBOR OF
HAIMEN CITY NANTONG
JINGSU PROVINCE
CHINA

**JINHUA YONGHE
FLUOROCHEMICAL CO
LTD**

QING LIAN ROAD JINXI
DEVELOPMENT AREA
JINHUA CITY ZHEJIANG
PROVINCE CHINA

**ZHEJIANG SANMEI
CHEMICAL IND CO LTD**
HUCHU INDUSTRY AREA
218 QINGNIAN ROAD
WUYI COUNTY
ZHEJIANG PROVINCE
CHINA ZIPCODE 321200

**CHINA CHAMBER OF
COMMERCE OF
METALS MINERALS &
CHEMICALS
IMPORTERS &
EXPORTERS**

22 CJAEWAI STREET
CHAO YANG DISTRICT
BEIJING CHINA POST
CODE 100020

**SINOCHEM
ENVIRONMENTAL
PROTECTION
CHEMICALS (TAICANG)
CO LTD**

NO 18 SOUTH BINGJIANG
ROAD SHIHUA
INDUSTRIAL PARK
TAICANG PORT JIANGSU
PR CHINA

**ZHEJIANG QUHUA
JUXIN FLUOR
CHEMISTRY CO LTD
KECHENG DISTRICT
QUZHOU CITY ZHEJIANG
PROVINCE PR CHINA**

**ZHEJIANG QUZHOU
LIANZHOU
REFRIGENRATS CO
LTD
95 CHANGQIAN ROAD
KECHENG DISTRICT
QUZHOU CITY ZHEJING
PROVINCE CHINA**

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

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

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

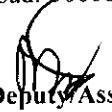
15 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

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

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

52 The ICFAI society , 52, Nagarjuna Hill,Punjabgutta Hyderabad.-500082

53 C.D.R. 54 Office Copy 55 Guard File


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 : 10/11/2016.

DATE OF DECISION : 08/12/2016.

**Anti Dumping Appeals No. 52804-52805 and 52812 of
2016 with Stay Application No. 51629 of 2016**

[Arising out of the Notification No. 30/2016-Customs (ADD) dated 11/07/2016 issued by the Central Government based on Final Findings of the Designated Authority, No. 15/23/2014-DGAD dated 30/05/2016.]

M/s Sinochem Environmental Protection]
Chemicals (Taichang) Co. Ltd.]

M/s Sinochem Modern Environmental]
Protection Chemicals (Xi'an) Co. Ltd.]

M/s Navin Fluorine International Ltd.]

Appellants

Versus

Union of India/DA

Respondent

Appearance

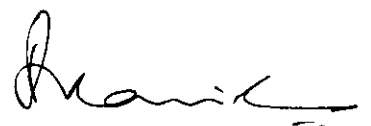
Ms. Karnika Seth, Advocate – for the appellant.

Shri Rajesh Sharma, Advocate for DA and Ms. Reena Khair, Shri Amit Singh, Advocate – for (M/s Domestic Industries).

Shri Govind Dixit, Authorized Representative (DR) – for the Respondent.

**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. 55760-55762/2016 Dated : 08/12/2016

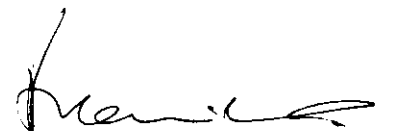


Per. B. Ravichandran :-

These three appeals are directed against Notification No. 30/2016 – ADD dated 11/07/16, issued by the Ministry of Finance, imposing Anti Dumping duty on import of Tetrafluoroethane (subject goods) from China PR based on final finding of the Designated Authority, Directorate General of Anti Dumping and Allied Duties, Ministry of Commerce vide Notification dated 30/05/16. The first appellant (Sinochem Environmental Protection Chemicals [Taichang] Co. Ltd., China is producer exporter of the subject goods to India. The first appellant is a subsidiary company of second appellant – Sinochem Modern Environmental Protection Chemicals (Xi'an) Co. which is a parent company incorporated in China. The third appellant (Navin Fluorine International Limited) is domestic importer of the subject goods and have filed the appeal against the above said notification.

2. The impugned notification dated 11/07/16 was issued consequent of review of Anti Dumping duty imposed in terms of Notification No. 61/2011 – ADD (CUS) dated 15/07/11, the main grievance of the appellants can be summarized as below :-

(a) The Designated Authority (DA) has not done a proper analysis of likelihood of continuation or recurring of dumping by the main appellant and all exports from China PR. The production capacity of the appellant has not changed since last 5 years and the parent company did not export the subject goods during the period of investigation.



The target market of Chinese exporters is Europe, Northern Africa and West Asia and not India ;

(b) The DA failed in not granting individual dumping margin to the appellant by incorrectly assuming that Sinochem Ningbo belongs to the Sino Chem group. The appellants have produced sufficient evidence to show they are not related to Sinochem Ningbo ;

(c) the decrease in export price to India during POI was due to decrease in the price of raw materials in China. The price of raw material has also come down in India. There is no reasonable ground for the DA to conclude of the causal effect between alleged dumping, injury caused to domestic industry and imports of subject goods from appellant in China. The injury caused to domestic industry is due to unreasonable increasing installed capacities which added to the fixed cost as well as semi-variable cost of the finished goods ;

(d) The DA fixed 22% as return on capital for determining non-injurious price. There is no reason for such a high return determined by the DA.

3. In their appeal the domestic importer contended that the import data relied upon by the DA was incorrect as no segregation was made between import of prohibited gas R 22 and the subject goods while examining the data. It was also submitted that the other factors which are causing injury to the domestic industry have not been examined by the DA.

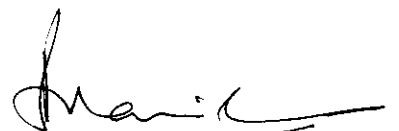
4. The learned Counsel appearing on behalf of all the three appellants elaborated further on the above points and prayed for



setting aside the impugned notification for continued imposition of Anti Dumping duty on the subject goods imported from China PR.

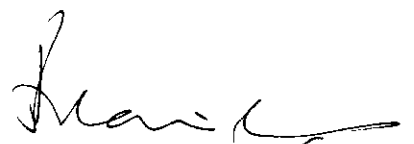
5. Learned Counsel appearing on behalf of the domestic industry opposed the submissions of the appellants and submitted that the import volume from China has remained significant in absolute terms throughout the injury period despite of Anti Dumping duty imposed. The dumping margin has been fairly proved in the analysis by the DA. Regarding return on investment, it is submitted that the domestic industry claimed 26% which was reduced by the DA to 22% while arriving at the non-injurious price for the subject goods. It was also submitted that the import data made available to all the interested parties was not challenged for any specific instances of import of hazardous material taken together with subject goods. The data has been obtained as per the normal practice from Director General of Commercial Intelligence.

6. The learned Counsel for the DA drew our attention to the categorical findings of the DA regarding continued imports, injury to the domestic industry and the link between these two. He further submitted that the DA has been adopting consistently 22% as reasonable return on investment for the domestic industry. The appellants have not provided any supporting evidence for fixing any other percentage for the said purpose.

A handwritten signature in black ink, appearing to be 'M. K. Singh', written in a cursive style.

7. The learned AR appearing on behalf of the Revenue supported the findings of the DA and consequent customs notification imposing the anti dumping duty on the subject goods.

8. We have heard all the sides and perused appeal records including written submissions. As noted already the impugned notification was for continued imposition of anti dumping duty on the subject goods for further period of 5 years based on the recommendation of the DA who conducted a Sunset Review investigation on such duties. We have carefully perused the final findings dated 30/05/16 of the DA. Regarding the first appellant's request for individual dumping margin we note that the said aspect has been examined by the DA. It was recorded that Sinochem Ningbo belongs to Sino group. We note that the assertion made by the first appellant that Sinochem Ningbo was no longer part of Sino group has also been dealt with by the DA. The DA noted that any development post POI cannot be considered and further there is no documentary evidence in support of whatever development claimed by the first appellant. We have noted that in the written submission made by the first appellant before the DA it was submitted that Sinochem Taichang and Sinochem Ningbo as, two formerly related companies in the 300 subsidiaries, have no transaction between each other and it is impossible for Sinochem Taichang to know about operation of all its related companies. We further note that in a report dated 28/10/2005 of World Trade Organization, it was recorded that a

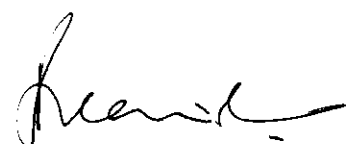


single dumping margin only will be applicable when companies in the same group were involved in trading as well as exporting.

9. Regarding incorrect determination of non-injurious price the main submission by the appellant is that the return on investment is fixed high at 22%. We note that originally the domestic industry claimed on higher percentage of return which was fixed at 22% as per the consistent norms followed by the DA. The return on investment has been fixed as per the standard practice in terms of agreed norms and in the absence of commodity or industry specific recorded evidence to show different percentage of such return we find no reason to interfere in such finding.

10. We have also examined the methodology for injury determination and causal link between import and such injury as done by the DA. We note that the demand and consumption of the subject goods increased during the injury period including the POI. The imports remained significant despite of imposition of anti dumping duty. We have also noted that in the Sunset Review the DA examined parameter of import of the subject goods as per the terms similar to the original investigation.

11. The appellants also contended that there are various other factors which caused injury to the domestic industry. Special mention was made regarding excess idle capacity. The DA has taken note of these facts and concluded the increased demand motivated the domestic industry to expand the capacity.

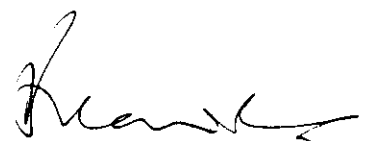


However, continued dumping from China prevented the domestic industry to maximize its capacity utilization.

12. The volume effect as well as price effect of dumped imports with reference to price under cutting/under selling and price suppression and depression have been examined in detail by the DA. It was also noted that inventory levels of the domestic industries increased over the injury period. The DA concluded that the dumping margin of imports from China is substantial.

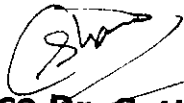
13. The appellants pleaded that there is no proper analysis of likelihood of continuation or recurring of dumping and injury caused by such dumping in the review done by the DA. We have noted that despite imposition of anti dumping duties there is continuous dumping of the subject goods from China causing continued injury to the domestic industry which apparently indicates likelihood of continued or intensified dumping of subject goods causing injury to the domestic industry. The DA has noted that in case of termination of anti dumping duty the dumping may intensify causing injury to the domestic industry.

14. On careful perusal of the various grounds raised by the appellants and the detailed examination of the review findings of the Designated Authority, we find that the appellants have not made out any case with supporting evidence to persuade us to interfere with the findings of the DA and consequent customs notification imposing the anti dumping on the subject goods imported from China. Accordingly, we find no merit in these



appeals and dismiss the same. The miscellaneous application for stay filed by the third appellant is also disposed of.

(Order pronounced in the open court on 21/2/2016.)


(Justice Dr. Satish Chandra)
President


(S.K. Mohanty)
Member (Judicial)


(B. Ravichandran) 21/2/16
Member (Technical)

PK