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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/53620-53622/2016-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/Stay/50448/2016	AD/50307/2016	**Acerinox Europa** S.a.u. C/santiago De Compostela N 100, 28035 MADRID-SPAIN
2	AD/Stay/50449/2016	AD/50308/2016	**Columbus Stainless Pty Ltd** Po Box 133, Middleburg 1050 MIDDLEBURG SOUTH AFRICA
3		AD/50480/2016	**JINDAL STAINLESS LTD** OP JINDAL MARG, HISAR, HARYANA HAVING ITS REGISTERED OFFICE AND WORKS AT OP JINDAL MARG HISAR HARYANA-125005
			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.

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, Jangpura Extension,
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JITENDRA SINGH ADV
F-21, GEETANJALI ENCLAVE,
NEW DELHI,
DELHI

8 Additional Party's Name & Address :

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

22/09/16

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: 02.09.2016
Date of decision: 16.09.2016

AD/50307/2016 to AD/Stay/50448/2016,AD/50308/2016 to AD/Stay/50449/2016 & AD/50480/2016-Customs Branch

(Arising out of Final Finding No.15/04/2014-DGAD dated 12.10.2015 issued by the Designated Authority. Directorate General of Anti-Dumping Duties, Deptt. Of Commerce & Industry and Customs Notification No. 61/2015-(ADD) dated 11.12.2015 issued by the Ministry of Finance, Department of Revenue).

M/s.Acerinox Europe, S.A.U
M/s.Columbus Stainless Pty Ltd.
M/s.Jindal Stainless Ltd.

Appellants

Vs.

DA/UOI

Respondent

Appearance:

For the Appellant: Shri Sharad Bhansali.Adv.
Shri Jintendra Singh, Advocate

For the Respondent:-Sh. Amit Singh, Advocate for the D.A.
Sh. Govind Dixit, AR for the Revenue

For Int. Party :-Shri Dhruv Gupta, Advocate
Shri Ankur Sharma. Advocate

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. 53620-53622/2016

Per: **B. Ravichandran**:

These three appeals are directed against the same impugned Final Findings dated 12.10.2015 of the Designated Authority (DA), Directorate General of Anti-dumping and Allied Duties, Ministry of Commerce and Industry and Notification No.61/2015-Customs (ADD) dated 11.12.2015 of Ministry of Finance. The said findings and Customs Notification are consequent upon sunset review of anti-dumping duty imposed on cold rolled flat products of stainless steel (subject goods) imported from China PR, Korea, EU, South Africa, Taiwan, Thailand and USA (subject-countries).

2. The brief facts of the case are that the DA initiated investigation for AD duty on subject goods on 25.11.2008 based on application from domestic industry (DI).Based on preliminary finding dated 27.03.2009, provisional AD duty was imposed vide Customs Notification dated 22.04.2009. Final Findings were notified on 24.11.2009 and definitive AD duty was imposed on 20.02.2010 effective from the date of imposition of provisional duty. The DI approached the DA in January 2014 for continuation and enhancement of AD duty on subject goods. The sunset review was initiated on 17.04.20104. After following the procedure set out in Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on Dumped Articles and for Determination of Injury) Rules, 1995, the DA recommended extension of AD duty on subject goods at appropriate rates. The same was notified vide Customs Notification dated 11.12.2015. These proceedings are now under challenge in these appeals.

3. Appellants 1 and 2 (Acerinox and Columbus) are producer/exporter of subject goods from subject countries. The ld. Counsel for these appellants contested the findings in sunset review on various grounds. The main points are –

(a) there is no justification to continue AD duty on subject goods. When the DA categorically recorded that the DI has shown healthy performance during injury investigation period, the conclusion on material injury is faulty.

(b) the volume of imports declined during the period, as such the justification to continue AD duty is without basis.

(c) The Director General (Safeguard) gave his findings on 23.3.2015 stating that there is no serious injury or threat of serious injury to the DI in the period of investigation and hence, no protection is required under safeguard law. Hence, on same set of facts the DA could not have reached different conclusion.

(d) the question that injury to DI is possibly caused by higher width of subject goods imported without AD duty and slit before marketed, has not been properly examined by DA.

(e) the injury to DI, if any, is due to their higher fixed cost, not due to dumping of subject goods.

4. Ld. Counsel for DI supported the finding of the DA so far as imposition of AD duty is concerned. However, the DI is aggrieved by imposition of low AD duty on two exporters. These points are taken up later in this order. Regarding plea against the AD duty, it was submitted that the DA has categorically recorded the facts about continued dumping of subject goods, injury to DI and causal effect for such material injury. The scope of sunset review is different as it focuses more on likelihood of continuation or recurrence of material injury to DI. With reference to DG (safeguard) finding on injury, it was argued that those are on different scope of examination dealing mainly with sudden surge /disruptive imports of subject goods. The AD duty investigation is more on fault based analysis focusing more on deliberate acts of dumping directly causing material injury to DI.

5. The ld. Counsel for third appellant (Jindal/DI) contested the final finding only on the point of alleged low AD duty on two exporters. It is submitted that two of the exporters of subject goods, POSCO, Korea and POSCO, Thainox, Thailand should not have been considered as cooperating exporters for injury analysis. The DA failed to take into consideration that there is one more related party in India viz. POSCO, Pune, who chose not to file questionnaire response. In net result, it is the plea of the appellant that the actual export price of POSCO could not have been properly constructed by the DA in terms of Section 9A(1)(b).

6. Ld. Counsel for the DA supported the final findings of the DA and strongly opposed the submissions made by the appellant in both sets of appeals. Regarding the appeals filed by the producers/exporters, ld. Counsel submitted that the final finding is the outcome of sunset review and the emphasis is more on likelihood of continuation or recurrence of injury to the DI in case of withdrawal of AD duty. While analyzing the parameters, through sunset review, the DA has to be carefully take into account the potential or possible injury in case of termination of AD duty. As such, the sunset review is different from the original investigation in these aspects. He further pleaded that the emphasis by the appellants on the findings of the DG (safeguards) is of no relevance as it is an admitted fact that the DG (safeguards) and the DA have different mandate for examination of import of subject goods.

7. Regarding appeal filed by the DA with reference to improper construction of normal price, the ld. Counsel for DA submitted that POSCO, Pune, the 3rd party referred to in the appeal, did not import at all during the injury period and hence, there is no error in the construction of export price calculation by the DA. It is also

submitted that the said third party in India also did not deal with the subject goods by buying from other related importers. Ld. Counsel submitted that the DA is well aware of the relationship among the group companies and has considered this aspect before constructing the export price in respect of the subject goods.

8. We have heard all the interested parties as above and perused the appeal records including the written submissions.

9. The appellant nos. 1 and 2 are contesting the imposition of anti-dumping duty. The first point is that there is no justification to continue the AD duty in absence of material injury to the DI attributable to the dumped imports. Strong reliance was placed on the findings of the DG (safeguards) dated 23.03.2015.We note that admittedly the DA and DG (safeguards) act in different circumstances and scope. The investigation by the DA is to find out a deliberate act of dumping, which has direct impact causing injury to the DI. Further, presently, we are dealing with sunset review, where the likelihood of continuation of injury or recurrence of injury to the DI is considered. The DA noted that the DG (safeguard) investigation is of different nature and for a part of the product covered under the present investigation. The periods covered were also not identical. We have carefully considered the final findings of the DA. It is seen that the subject goods continued to enter in the Indian market from the subject countries at substantially dumped price. Examination of the injury indicates that domestic industry continues to suffer injury on account of import at very low price from subject countries against which anti-dumping duties are in force. In terms of AD Rules, the DA is required to determine whether revocation of the AD duty would lead to continuation or recurrence of dumping and injury. One relevant factor noticed is that the subject

goods of higher width above 1250 mm. has increased during the injury investigation period. The claim of the DI that higher width products are imported and are easily converted into lesser width product by simply slitting, has also been considered by the DI before the final finding. He concluded that the dumping and injury are continuing and are likely to continue or recur, if the duties are revoked. Accordingly, he recommended for continuation of AD duties on subject goods imported form sub-countries.

10. Another point was raised by the appellant regarding the higher fixed cost of the DI being the reason for injury and not the dumping of the subject goods. We note that other parameters of the DI have been examined in detail by the DA. The capacity of DI has increased by about 137% and the production increased by 84% in the POI compared to the base year. It was recorded that the capacity addition of the DI appears to be in consonance with the increase in demand of the subject goods. The DA noted that the cost of production has been duly normated to account for additional cost, if any, due to ramp up operation and under utilization of capacity while fixing NIP. It was concluded by the DA that the non-attribution analysis does not show any other factor that could have significantly contributed to the injury suffered by the DI.

11. After careful consideration of the points raised by the appellant nos. 1 and 2 and the analysis as recorded in the final findings, we find no merit in these appeals warranting inference with the said findings.

12. Regarding the plea of the appeal nos. 3 representing domestic industry, specifically with reference to improper fixation of export price in respect of the POSCO, Korea/Thailand, we find that the DA has taken into account the

relationship between the group companies of POSCO before arriving at the decision. The relevant findings are as below:-

> *"46 In its post disclosure submissions the domestic industry has argued that nine of the cooperating exporters should be granted individual treatment as they have suppressed significant information with regard to their related parties involved in production and supply of the subject goods in various countries. It has been further argued that though two of the related importers of POSCO, Korea have filed importers' questionnaire response, the third related importer and processor located at Pune has not filed questionnaire response, therefore, the response of POSCO should be rejected. The domestic industry has quoted the decision of the Authority in a recent finding of the Authority where the responses of certain exporters were rejected on the grounds that the related companies of the responding exporters did not file questionnaire response. In this connection, the Authority notes that the questionnaire responses filed by the producers and exporters in this case provide sufficient and complete information required for the determination to the extent relevant and necessary and the information filed have been verified to the extent required. Determination in the present case have not been in any way affected by alleged non-participation of the related parties of the cooperating exporters in other countries. If some related party of the responding producer/exporter in a third country, involved in production or sale of the subject goods, has not filed questionnaire response, the said party will automatically be covered under the non-cooperating residual duties. Therefore, neither the determination nor the interests of the domestic industry have been affected due to non-participation of the so called related parties of the cooperating exporters in other countries. In view of the above, the objections of the domestic industry in this regard have not been accepted."*

13. We have also taken note of the submissions by the ld. Counsel for the DA, who reiterated that POSCO, Pune did not import the subject goods and did not deal with the sale by buying from other related importers.

14. Considering the above factual position, we find no material evidence in support of the contention of the appellant in this regard. Accordingly, we find that the appeal by M/s. Jindal Stainless Ltd. (DI) is also liable to the rejected.

15. On careful consideration of the above discussions and analysis, we find no merit in these appeals and accordingly, reject the same.

[order pronounced on ...16-09-2016.......................................]

(Justice (Dr.) Satish Chandra)
President

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran) 14916.
Member (Technical)

Ckp