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REGISTERED / AD

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

Dated: **15/09/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53485/2016-CU[DB]** dated **12/09/2016**

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/MISC/51481/2016	AD/50208/2016	**Phillips Carbon Black Ltd** 31, Netaji Subhas Road KOLKATA WEST BENGAL-700001
			Name and Address of Respondent
2			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.

Copy To
3Advocate(s) / Consultant(s):

Rajesh Sharma (Advocate)
TPM CONSULTANTS, K-3/A
SAKET,
NEW DELHI-110017

4 Additional Party's Name & Address :

JIANGXI BLACK CAT CARBON BLACK CO LTD
LIYAO JINGDEZHEN CITY,
JAINGXI PROVINCE, PR CHINA

WUHAI BLACK CAT CARBON BLACK CO LTD
WUSUYUAN, HAINAN DISTRICT,
WUHAI CITY, INNER MONGOLIA
PROVINCE PR CHINA

HANDAN BLACK CAT CARBON BLACK CO LTD
NORTH CHENZHUANG VILLAGE,
SHICUNYING, CI COUNTRY,
HANDAN CITY, HEBEL
PROVINCE, PR CHINA

CHAOYANG BLACK CAT CARBON BLACK INC LTD
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CANGIJANG ROAD, LONGCHENG
DISTRICT, CHAOYANG CITY,
LIAONING PROVINCE, CHINA PR

HANCHENG BLACK CAT CARBON BLACK CO LTD
XIZAN COAL INDUSTRY PARK,
HANCHENG, SHANXI, CHINA

TANGSHAN BLACK CAT CARBON BLACK CO LTD
GAO BAI INDUSTRIAL PARK,
QINGXU COUNTRY, TAIYUAN
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(HARYANA)

AUTOMOTIVE TYRE MANUFASTURERS ASSOCAITION (ATMA)
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ASIAN GAMES VILLAGE, SIRIFORT
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ASSOCAITION OF CARBON BLACK MANUFACTURERS
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SKI CARBON BLACK INDIA PVT LTD
ADITYA BIRLA CENTRE, S K AHIRE MARG, WORLI, MUMBAI-400030

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

15/09/16
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 : 07/09/2016.
DATE OF DECISION : 12/09/2016.

Anti Dumping Appeal No. 50208 of 2016 with Misc. Application No. 51481 of 2016

[Arising out of the Notification No. 54/2015-Customs (ADD) dated 18/11/2015 based on Final Findings of the Designated Authority, No. 15/08/2014-DGAD dated 01/10/2015.]

M/s Phillips Carbon Black Limited — Appellant

Versus

Union of India/DA — Respondent

Appearance

Ms. Reena Asthana Khair, Shri Rajesh Sharma and Ms. Rita Jha, Advocates – for the appellant.

Shri Amit Singh, Advocate for DA and Mrs. Suchitra Sharma, Authorized Representative (Jt. CDR) – for the Respondent.

For I.P. :

S/Shri Dhruv Gupta and Saurav Dugal, Advocate – for the respondent – 12.

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. 53485/2016 Dated : 12/09/2016

Per. B. Ravichandran :-

The appeal is against final findings in Sunset review of Anti Dumping Duty on import of carbon black used in rubber applications (subject goods) imported from China PR, Russia and

Thailand. The Anti Dumping investigation with reference to the subject goods was initiated by the Designated Authority (DA), Directorate General of Anti Dumping and Allied Duties, Ministry of Commerce and Industry on 26/12/2008. Based on preliminary finding provisional AD duty was imposed vide Customs Notification dated 30/07/2009. Based on final finding dated 24/12/2009, a definitive anti dumping duty was imposed vide Notification dated 28/1/2010. A mid-term review was also conducted and the AD duty was continued after enhancement vide Notification dated 26/4/2013. Based on application from the appellants and M/s Hi-Tech Carbon (DI) sunset review investigation was conducted by the DA. Final finding dated 01/10/15 was notified by the DA on conclusion of the review. Customs Notification No. 54/2015 – CUS (ADD) dated 18/11/15 was issued imposing AD duty on the subject goods imported from subject countries. While the appellant is supporting the imposition of the said anti dumping duties, they are aggrieved by the quantification of the same.

2. The learned Counsel for the appellant submitted that the calculation of Non-Injuries Price (NIP) for DI is erroneous. When there is a clear finding by the DA on the causal link between dumping of subject goods and the injury to DI, the method adopted by the DA to construct NIP based on best utilization of raw materials, utilities and of production capacities over the past three years and the period of investigation is not correct. It is the case of the appellant that the cost construction should be on

actual basis unless there is a finding that there is an inefficient utilization of raw materials or utilities by the DI. In the absence of such finding the actual cost of production for the period of investigation should be considered and not the costing on normation basis based on best utilization of raw materials or utilities.

3. The learned Counsel for the DA submitted that in terms of Annexure III to AD Rules, 1995, the principles of determination of non-injuries price have been notified w.e.f. 01/3/2011. These principles are part and parcels of statutory provisions. Para 4 of Annexure III categorically states that the following elements of cost of production are required to be examined for working out the non-injuries price, namely :-

> "*(i) The best utilization of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of raw materials ;*
>
> *(ii) The best utilization of utilities by the constituents of domestic industry, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of utilities ;*
>
> *(iii) The best utilization of production capacities, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify*

injury, if any, caused to the domestic industry by inefficient utilization of production capacities".

He further submitted that though various representations have been received from the DI on this issue as the provisions stand now it is clear that best utilization of raw material or utilities are to be considered. Legally, such principle is to be adopted by the DA. Any contrary method will be against the statutory provisions. The learned AR for Revenue supported the findings of the DA and the customs notification impugned in appeal.

4. The learned Counsel for the respondent No. 12 representing importer and user of subject goods in India supported the findings of the DA with reference to calculation of NIP. It was submitted that the consumption norms of raw material are to be considered on best utilization basis so that inefficiency in DI can be nullified and normatted.

5. We have heard all the interested parties, as above, perused the appeal papers including written submissions. The only point raised in the appeal is that the DA should have arrived NIP on actual cost data submitted by DI instead of constructed costing based on best utilization of raw material/utilities by the DI. We have examined the principles laid down in Annexure III of AD Rules, 1995. We note that India is following lesser duty rule for fixing anti dumping duty. Article 9 of the Agreement on Anti Dumping specifically provides that the amount of anti dumping

duty should not exceed the margin of dumping under Article 9.3 and recommends imposition of lesser duty, if such lesser duty would be adequate to remove the injury to the Domestic Industry. We note that determination of NIP (Fair Selling Price) involves complex issues as it is to arrive at a selling price in a hypothetical situation. The appellant is pleading that in the present case no other factor causing injury to the DI has been identified by the DA. Hence, there is no justification to follow best utilization principle to fix price. We find that the principles laid down in Annexure III for cost of production categorically state best utilization of raw material/utilities/production capacities are to be considered. The reason is mentioned in the said principles. This is to nullify injury, if any, caused to DI due to inefficiency. It is not necessary for the DA to specifically identify such inefficiencies while constructing cost in normal situation. Wherever there is identified 'other causes' which are causing injury to the DI, apart from dumping of subject goods, the cost construction has to be arrived at after applying the normation principle. In a normal situation, where no other causes were alleged or identified for injury the cost construction has to be followed in terms of the principles laid down under para 4 of Annexure III. We note that the DA is bound by the principles laid down in the said Annexure as it is part of the statutory provisions of AD Rules, 1995. We note that in overall concept of fair competition and also protection of interest of consumers of subject goods in India such principles have been laid down by the

Government and are to be followed. It is always open to the appellant or to any DI to submit, with supporting evidence, details for costing and to contest NIP if it is incorrect on facts. However, when the DA is following the statutory principles, as discussed above, the same cannot be faulted on the ground of perceived grievance. Further, we also note in the present case no specific empirical data has been pleaded by the appellant to challenge the correctness of cost construction by the DA. Rather, the challenge is on the principles laid down in Annexure III. In such situation, we find no reason to interfere with the findings of the DA. Accordingly, we dismiss the appeal. M. A. also disposed of.

(Order pronounced in the open court on 12/09/2016.)

(Justice ~~Dr.~~ Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran) 9.9.16
Member (Technical)

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