REGISTERED / AD

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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: **15/09/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53462/2016-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/Stay/52130/2015	AD/53487/2015	**Eximcorp India Pvt Ltd** 87/1, Mundka Industrial Area, Delhi Rohtak Road, NORTH DELHI-110041

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):

V. Lakshmi Kumaran
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Link Road,
New Delhi-110014

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

4 Additional Party's Name & Address :

HINDUSTAN ORGANIC CHEMICALS LTD
HERACHANDRAI HOUSE,
81 MAHARISHI KARVE ROAD, MARINE LINE,
MUMBAI 400002

SI GROUP INDIA LTD
PLANT D-2, MIDC, TTC-INDUSTRIAL AREA,
THANE BELAPUR ROAD,
VASHI, NAVI MUMBAI-400075

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 05.09.2016
Date of pronouncement: 12.09.2016

Stay Application No.52130 of 2015 and Anti-Dumping Appeal No.53487 of 2015

Arising out of the Final Findings F.No.15/21/2013-DGAD dated 27.4.2015 passed by the Designated Authority and Customs Notification No.32/2015-Customs (ADD) dated 10.7.2015 passed by the Ministry of Finance, Department of Revenue.

Eximcorp India Pvt. Ltd. ... Appellants

Vs.

Designated Authority, .. Respondent
Directorate General of Anti-Dumping and
Allied Duties/Ministry of Finance

Appearance:

Present S/Shri Atul Gupta, T.D. Satish, Advocates for the appellants
Present Shri Amit Singh, Advocate for the Designated Authority, Ministry of Commerce
Present Shri Govind Dixit, A.R. for the Revenue
Present Ms. Reena Khair, Shri Rajesh Sharma with Ms.Rita Jha, Advocates for the interested party

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. S.K. Mohanty, Judicial Member
Hon'ble Mr. B. Ravichandran, , Technical Member

Final Order No. 53462/2016

Per B. Ravichandran:

The present appeal is against the final findings dated 27.4.2015 of the Designated Authority, Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No. 32/2015-Cus ADD dated 10.7.2015 issued by the Ministry of Finance, imposing AD duty on imports of Phenol (subject goods)

2. The above findings and the Notification are consequent upon the sunset review of anti-dumping duty on imports of subject goods originating in or exported from South Africa. The AD duties were

originally recommended in a finding dated 13.2.2003 and was imposed vide Customs Notification dated 24.3.2003.The mid term review was also conducted and was notified on 13.7.2007. The first sunset review was initiated on 10.8.2007 resulting in final findings dated 4.8.2008. Customs Notification was issued on 31.10.2008.Second mid term review was also conducted resulting in final finding dated 6.2.2013. Anti-dumping duty was continued on subject goods from South Africa vide Customs Notification dated 3.5.2013.The present sunset review was initiated by the DA on 28.10.2013. M/s HOCL and M/s SI Group India (DI) filed application before DA alleging likelihood of continuation of dumping of the subject goods from South Africa and requested for continuation and enhancement of AD duties. After following the procedure set out as per Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 [(AD Rules], the DA recommended continuation and definitive anti –dumping duty on subject goods originating in or exported from South Africa.

3. The ld. Counsel for the appellants submitted that there were only two unit manufacturing subject goods in India. HOCL closed down during post POI. This aspect was not examined by the DA. Further, the DA has violated Rule 23 of AD Rules as the review has not been completed within 12 months of initiation. It was also submitted that consideration of 22% as return on investment for DI is not proper.

4. Ld. Counsel for the Domestic Industry (DI) submitted that the appellant did not even file the detailed imported questionnaire response except for some details submitted at various points of time. No supporting evidences were given by the appellant. Hence, the ld. Counsel submitted that the appellant cannot be even considered as "interested party". They have no locus to call for any document as

they have not participated in the investigation after filing of detailed questionnaire response.

5. Regarding violation of Rule 23, it is submitted that provisions of Rule 17 are made applicable to review under Rule 23 and as such the Central Government has power to extend the period of investigation.

6. Ld. Counsel for the DA submitted that HOCL has apart from other factors also suffered due to dumping . HOCL could not operate the plant to its peak capacity due to effect of dumping

7. Regarding principle of natural justice , it was submitted that though the appellant did not participate by filing imported questionnaire response, their submissions were taken on record addressed to the extent they are relevant. Post disclosure, there is no need for additional hearing of all parties.

8. Ld. A.R. for Revenue supported the levy of anti-dumping duty on the subject goods. He submits that dumping margin is more than 40 % and as such, levy is justified.

9. We have heard all the sides as above and examined the appeal records including written submission. The appellants are contesting levy of anti-dumping duty on subject goods imported from South Africa. It is their claim that there is no injury to the DI due to import of subject goods. HOCL suffered due to other factors. SI Group, the other manufacturer, is doing well in this regard. We note that the DA determined the export price in respect of import from South Africa on the basis of best available information in accordance with Rule 6(8) of AD Rules. Dumping margin has been arrived at 40 - 50%. The DA has taken note of Rule 11 of AD Rules read with Annexure -II while determining the injury to Domestic Industry. Volume of import during injury investigation grew by 70%. Demand grew by 33% . On the price effect, the DA has noted that there is undercutting of price from the subject country with or without anti-dumping duty. The landed value of the subject goods fom subject country is lowest compared to other countries.

10. Regarding performance of HOCL, it was noted that they were operating at full capacity in 2010-11 and thereafter, the production as well as sales declined. The lack of working capital was given as reason. This was attributed to the reason that dumping import affected realization of fair selling price in the domestic market. We find the injury margin has been calculated as per norms by the DA. We also note that there is no violation of Rule 23 in the present case. We find that Hon'ble Delhi High Court in Fairdeal Polychem LLP vs. UOI - 2016 (334) ELT 241 (Del.) held that Rule 23(2) of AD Rules has to be harmonized with Article 11.4 of WTO Agreement. On application of first proviso to Rule 17(1) with necessary changes, period of 12 months can be further extended by Central Government in its discretion. As such we find no infirmity in the investigation by the DA.

11. Regarding return on investment for the DI, we are informed that 22% is taken as per long standing practice in terms of agreed norms.

12. After careful consideration of the various points raised in the appeal and the findings, now under challenge, we find no merit in the present appeal. There is no reason to interfere with the findings of the DA and accordingly the appeal is rejected.

(Pronunced on 12.09.16)

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

(S.K. Mohanty)
Judicial Member

(B. Ravichandran) 8/9/16.
Technical Member

scd/