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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: **05/09/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53302-53305/2016-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/56114/2013	**Technova Imaging Systems P Ltd** E1/2/3,m.i.d.c.taloja RAIGAD MAHARASHTRA-410208
2	AD/COD/57665/2013	AD/57090/2013	**Fujifilm India Pvt Ltd** C-1/114, Ground Floor, Janakpuri, NEW DELHI
3	AD/COD/57673/2013	AD/57102/2013	**Fujifilm Printing Plate (china) Co Ltd** No. 202, Longtan Road, Suzhou Industrial Park 215024, Suzhou City, JIANSU PROVINCE, P.R. CHINA
4	AD/COD/57674/2013	AD/57103/2013	**Fujifilm Printing Plate Co Ltd** N0. 56 Jingha Road North, Yanjiao Economic And Technical Development Zone, Sanhe City, HEBEI PROVINCE, CHINA

5

Name and Address of Respondent

-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

Other Appellants and Respondents as per Annexure

Copy To

6Advocate(s) / Consultant(s):

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

7 Additional Party's Name & Address :
8 Bar Association, CESTAT, Delhi
9 Director Publications, Customs, Excise. I.P. Estate, Delhi
10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
11Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
13 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
14 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
15 TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070
16 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
17 The ICFAI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
18 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
19 C.D.R. **20** Office Copy **21** Guard File

6/9/16

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 : 24/08/2016.
DATE OF DECISION : 31/ 08/2016.

Anti Dumping Appeal No. 56114 of 2013

M/s Technova Imaging Systems (P) Ltd. Appellant

versus

Union of India/DA Respondent

[Arising out of the Notification No. 51/2012-Customs (ADD) dated 03/12/2012 issued by the Ministry of Finance. Final Finding of the Designated Authority No. 14/7/2011-DGAD dated 03/10/2012.]

Anti Dumping Appeal Nos. 57090, 57102, 57103 of 2013 with COD Application Nos. 57665, 57673-57674 of 2013

Fujifilm (I) Pvt. Ltd.]
Fujifilm Printing Plate (China) Co. Ltd.] Appellants
Fujifilm Printing Plate Co. Ltd.]

Versus

Union of India/DA Respondent

Appearance

S/Shri Parthasarthi, Ankur Sharma and Darpan Bhugan, Advocates – for (M/s Technova) the appellant.

Ms. Reena Asthana Khair, Shri Rajesh Sharma and Ms. Rita Jha, Advocates – for (M/s Fujifilm) the appellants.

S/Shri Amit Singh, Advocate for DA and Govind Dixit, Authorized Representative (DR) – for the Respondent.

S/Shri Balbir Singh, Senior Advocate, Shivar Patodia, Ms. Juhi Chawla and Mayank Singhal, Advocates – for (respondent 3 in Technova) the appellant.

For I.P. :

S/Shri Suhail Nathani and Somnath Shukla, Advocates

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53302-53305/2016 Dated : 31/08/2016

Per. B. Ravichandran :-

These are four appeals against final findings dated 03/10/2012 by the Designated Authority (the DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No. 51/2012 – CUS (ADD) dated 03/12/2012 of Ministry of Finance.

2. Before proceeding further with the merits of the appeal, it is necessary to examine and decide three applications filed by three appellants [Fujifilm India Pvt. Ltd., Fujifilm Printing Plate (China) Co. Ltd. and Fujifilm Printing Plate Co. Ltd.] for condonation of delay in filing their appeals. As these appeals challenged customs notification issued on 03/12/2012, the statutory period for filing the appeal under Section 9C of Customs Tariff Act, 1975 expired on 03/3/2013. These appeals were filed on 28/3/2013, resulting in a delay of 26 days. The learned Counsel for the appellants explained the reasons for delay. The Counsel who had handled the matter was down with swine flue

and hence process of filing got delayed. Medical records in support were submitted. Considering that the delay caused has been satisfactorily explained we condone the delay and allow the appeals to be taken on record for disposal.

3. The brief facts of the case are that based on an application filed by M/s Technova Imaging System Pvt. Ltd., Mumbai (the Domestic Industry/DI), the DA initiated investigation regarding dumping of digital plates (subject goods) from China and Japan. On 16/3/12, in a preliminary finding the DA recommended reference – price based AD duty on various types of subject goods from China/Japan. Provisional AD duty was levied with effect from 04/6/2012 vide Customs Notification No. 3/2012 – CUS (ADD). After following the set procedure in terms of Customs Tariff (Identification, Assessment and Collection of Anti – Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the DA issued Final Findings on 03/10/12. AD duty was recommended only for China with reference to benchmark form for various types of subject goods. The impugned customs notification dated 03/12/2012 was issued imposing AD duties as recommended by the DA.

4. The learned Counsel appearing for three appellants – one Indian importer an two Chinese producers – all part of same group company – Fujifilm – submitted that the DA's Findings are

based on erroneous interpretation of facts and legal provisions. Her arguments can be summarized as below :-

(a) the Chinese producers are operating under market economy conditions and the provision of para 1 to 6 of Annexure I of the AD Rules are applicable to them.

(b) there would be no injury from China, if the effect of safeguard duty imposed on import of aluminium flat rolled products are removed. These are raw material imported by DI which affected their production cost of subject goods.

(c) the NIP was fixed wrongly. The enhanced capacity of DI was not considered in correct perspective by the DA.

(d) there is no valid ground for the finding regarding injury. The DI production has increased by 400% during the injury period, negating the claim of injury. The market share has gone up dramatically, from 51% to 71% during POI. Further, the competition between analog plate and digital plate is one of the 'other' cause of injury to the DI. The requirement of causal link and non-attribution analysis laid down under Annexure – II specifically refers to injury parameters and not non-injurious price.

5. The learned Counsels for M/s Technova Imaging Systems P. Ltd., the DI, the fourth appellant in this case, submitted that the NIP calculation was not correctly made. The injury to DI was not correctly arrived at. Increase in production and market share are not the only criteria for determining injury. Though the demand increased by 3 times the capacity increase in DI is not commensurate with the demand.

6. The learned Counsel for the DA supported the Final Findings of the DA. He submitted that price undercutting from China is significant during POI. In spite of increase in market share and capacity utilization the DI suffered injury as analyzed by the DA in his findings.

7. The learned AR for Revenue supported the Final Findings of DA and the AD duties levied by the impugned customs notification. He submitted that there is a causal link as per Rule 11 (2) and Annexure II of AD Rules. There is increase in import and dumping.

8. We have heard the parties as above. Considered the appeal papers and written submissions.

9. The legality and correctness of levy of AD duties on subject goods are under challenge. The first point of agitation is that the Chinese producers should have been considered as operating in market economy conditions. We note that the DA has recorded that in the past three years China PR has been treated as non-market economy in the anti-dumping investigations by other WTO Members. Hence, a rebuttable presumption of non-market economy status has been made in terms of para 8 (2) of Annexure I of AD Rules. The DA on analyzing the responses provided by the producers/exporters of the subject goods from China PR and the DI, concluded that there is significant

government interference in the aluminium industry in China. Reliance was also placed on the findings of Canadian authorities in their anti-dumping and subsidy investigation. It was concluded that the price of major raw material, aluminium, is not market determined and hence, the market economy treatment was denied by the DA to the appellants. On careful perusal of the analysis, we find no material reason to differ from such finding.

10. The second point was regarding impact of safeguard duty on imported raw material by the DI and consequently the determination NIP. The transitional, product specific, safeguard duty was in force on the imports of aluminium coils from China PR from 23/3/2009 to 22/3/2011. Safeguard duty of 14% and 12% for first and second year were imposed. The duty was to remedy the market disruption caused by increased imports. The DA examined the impact of this duty on domestic industry who use this as raw material to produce subject goods. Noting that such imports by DI are only negligible, the DA concluded that the impact of safeguard duty on arriving at NIP is not significant.

11. The next point of contest was on erroneous fixation of NIP by the DA. We have perused the detailed analysis made by the DA in this regard. All the points raised now in appeal have been dealt with extensively by DA in the Final Findings. The methodology adopted for arriving at the NIP is well within the guidelines framed under AD Rules. The rate of return, costing

parameters, differential treatment to violet and thermal plates, exclusion of selling/distribution cost, exchange note fluctuation etc. have all been taken into consideration by the DA. We find no material point in the present appeal to interfere with the reasoning adopted by the DA while arriving at the NIP.

12. The final point of contest by the appellants is relating to wrong determination of injury to DI. The imports from subject countries have shown significant increase in absolute terms during injury period including POI. The demand for subject goods increased every year. The DA categorically recorded that there has been a significant price undercutting by the dumped imports as compared with the price of like product in India. The table in para 169 of the Final Findings brought out the impact on domestic prices due to dumped imports. The NSR, NIP of DI has been compared with the landed cost of imports from China. It was noted that the DI is adversely affected by the reason of price depression (decline in NSR). Upon examination of various factors like capacity, production and capacity utilization, domestic sales, inventories, profits, cash flows, return on capital employed and ability to raise investments, employment, wages and productivity etc. the DA concluded that there is a significant increase in the volume of dumped imports from subject countries at the absolute level. The dumped imports have adversely impacted the inventory levels of DI and had adverse price effect. The DA held that there is material injury to DI caused by the dumped imports

of subject goods. Recommendation was, thereupon, made for imposition of AD duties. We find no material ground with supporting evidence to interfere with the findings of the DA and the final customs notification imposing AD duties. Accordingly, we hold that these appeals are devoid of merit and accordingly dismiss the same.

(Order pronounced in the open court on 31 / 08/2016.)

(Justice Dr. Satish Chandra)
President

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran) 29.8.16.
Member (Technical)

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