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FAX: 011-26108426

REGISTERED / AD

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

Dated: **14/09/2016**

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. **AD/A/53452-53453/2016-CU[DB]** dated **09/09/2016**

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/COD/51306/2016, AD/Stay/51307/2016	AD/52358/2016	**RISHIROOP POLYMERS PVT LTD** 65, ATLANTA, NARIMAN POINT MUMBAI MAHARASHTRA-400021
2	AD/COD/51484/2016, AD/Stay/51485/2016	AD/52478/2016	**KUMHO PETROCHEMICALS CO LTD** SIGNATURE TOWER #100, CHEONGGYECHEON ROSEOL SOUTH KOREA , KOREA RPO 12 MANHAR OAK, LD RUPAREL CROSS LANE, MALABAR HILL MUMBAI Maharastra-400006

	Name and Address of Respondent
3&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

5Advocate(s) / Consultant(s):

**LAKSHMIKUMARAN & SRIDHARAN, ATTRONEYS
5 LINK ROAD JANGPURA
EXTENSION NEW DELHI 110014**

**V. Lakshmi Kumaran
5, Jangpura Extension,
Link Road,
New Delhi-110014**

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

6 Additional Party's Name & Address :

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

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

**NATIONAL ORGANIC
CHEMICAL INDUSTRIES LTD**
C-37, T.T.C INDUSTRIAL AREA ,
OFF THANE-BELAPUR ROAD,
NAVI MUMBAI-400705

LANXEES INDIA PVT LTD
KOLSET ROAD, THANE WEST
MAHARASHTRA-400607

**PMC RUBBER CHEMICALS
INDIA PVT LTD**
103, GT ROAD WEST, PO RISHRA
HOOGLY, WEST BENGAL-712248

MERCHEM LTD
2ND FLOOR, MALANKARA
CENTRE, M G ROAD,
EMAKULUM, COCHIN

AUTOMOTIVE TYRE MANUFACTURERS ASSOCIATION
PHD HOUSE (4TH FLOOR), OPP.
ASIAN GAMES VILLAGE, SIRE
FORT INSTITUTIONAL AREA,
NEW DELHI-110016

RISHIROOP POLYMERS PVT LTD
65, ATLANTA, NARIMAN POINT,
MUMBAI-400021

SINORGCHEM CO. SHANDONG
NO. 1, BEIHUAN ROAD, COASIAN
, SHANDONG, PEOPLES
REPUBLIC OF CHINA

SWAROOP CHEMICALS PVT LTD
SWARUP BHAWAN, 35-A, CIVIL
LINES, BAREILLY-243001

J. K. INDUSTRIES LTD
7, COUNCIL HOUSE STREET,
KOLKATA-700001

SINORGCHEM SHANGAI
8F, NO.289, DEPING ROAD,
PUDONG NEW AREA,
SHANGHAI-200136, CHINA PR

7 Bar Association, CESTAT, Delhi
8 Director Publications, Customs, Excise. I.P. Estate, Delhi
9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
14 TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070
15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
16 The ICFAI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

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

18 C.D.R. **19** Office Copy **20** 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 : 09/09/2016.

Anti Dumping Appeal No. 52358 of 2016 with COD Application No. 51306 of 2016 and Stay Application No. 51307 of 2016 and
Anti Dumping Appeal No. 52478 of 2016 with COD Application No. 51484 of 2016 and Stay Application No. 51485 of 2016

[Arising out of the Notification No. 04/2016-Customs (ADD) dated 29/01/2016 based on Final Findings of the Designated Authority, No. 14/05/2007-DGAD dated 30/10/2015.]

M/s Rishiroop Polymers Pvt. Ltd.]
M/s Kumho Petrochemicals Co. Ltd.] Appellant

Versus

Union of India/DA Respondent

Appearance

Shri S. Seetharaman, Ms. Prinka Mohsh and Shri Ankur Sharma, Advocates – for the appellant.

S/Shri Amit Singh, Advocate for DA and Dr. S.K. Sheoran, Authorized Representative (DR) – for the Respondent.

For I.P. :
Ms. Reena Khair, Shri Rajesh Sharma and Ms. Rita Jha, Advocates.

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. 53452-53453/2016 Dated :09/09/2016

Per. B. Ravichandran :-

Both the appeals are against final finding dated 30/10/15 of the Designated Authority, Directorate General of Anti Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No. 4/2016 – CUS (ADD) dated 29/1/2016 of Ministry of Finance. This is a second round of litigation.

2. Before going into merits of the case, we noticed that there is a delay of more than three months in filing these appeals. Application for condonation of delay has been filed. The learned Counsel for the appellants submitted that after issue of the impugned Customs Notification, the appellant challenged the same before the Hon'ble Supreme Court by filing SLP No. 12596-12598 of 2016, on various grounds. The Hon'ble Supreme Court vide order dated 29/7/2016 while dismissing the SLPs gave the liberty to the appellants to file appeal before the Appropriate Authority within two weeks. Accordingly, they filed these appeals before the Tribunal. Having considered the above submissions, we condone the delay in filing these appeals and take up the appeals for decision on merit.

3. The brief facts of the case are that M/s National Organic Chemicals Industries Ltd. (DI) approached the DA for imposition of Anti Dumping Duty on specified rubber chemicals originating or exported from China PR and Korea RP. The DA conducted investigations in terms of Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the Rules or AD Rules) and gave his final findings on 01/10/2008. Notification No. 133/2008-Customs dated

12/12/2008 was issued imposing AD duty on subject goods. Aggrieved by the said proceedings, the appellants filed appeals before the Tribunal challenging the finding and notification. The DI also filed appeal for modifications/ enhancement of AD Duties for Korea RP. The Tribunal vide final orders No. 54808-54810/2014 – CU (DB) dated 26/12/2014 remanded the matter back to the DA to grant post-decisional hearing to the parties with reference to determination of 6 PPD export price, normal value and dumping margin with reference to Kumho Petrochemicals. On remand proceedings the DA complied with the directions of the Tribunal and issued final findings dated 30/10/15 which is now under challenge.

4. The learned Counsel for the appellant submitted that violation of principles of natural justice by the DA in the original proceedings will make his findings bad in law. The said findings cannot be allowed to continue by a post-decision hearing in terms of the Tribunal's remand order dated 26/12/14. In other words, it is the plea of the appellants that the original finding cannot be cured and sustained in the remand proceedings on merit. The learned Counsel admitted that the directions of the Tribunal regarding disclosure of information to affected parties and post-decisional hearing has been complied with by the DA. The present appeal is not on that issue. The present appeal is on the validity of the finding regarding construction of cost of production of 6 PPD.

5. The learned Counsels for the Domestic Industry and the DA strongly opposed the appeal on the ground that the remand directions are clear and have been complied with by the DA. It is not open to the appellant to go beyond the remand order to agitate fresh issue again regarding principles of natural justice and the validity of the order itself. The learned AR supported the findings of the DA.

6. We have heard ~~of~~ all the interested parties and perused the appeal records including the written submissions. We note that in the first round of appeal, the Tribunal examined two issues for decision. The first one being the correctness of cost construction for production of 6 PPD (one of the subject goods) for arriving at normal value and consequently, the dumping margin and injury decision on the said goods. After elaborate discussion, the Tribunal recorded that the DA rightly rejected the price of 4 ADPA from Sinorgchem and after for construction of normal value based on the international price of 4 ADPA which is a main raw material for 6 PPD. The Tribunal upheld the rejection of 4 ADPA price from China and arriving of normal value based on international price of 4 ADPA. Hence, the issue relating to methodology adopted by the DA in constructing the normal value for the appellants has reached finality. The conclusion of the Tribunal has not been challenged before any higher judicial forum.

7. On the second issue, the Tribunal observed that the DA should have made adequate disclosure and call for information/comments from the interested parties regarding evidence of international price of 4 ADPA. For this limited purpose, the matter was remanded to the DA. The background data for fixing normal value, export price and dumping margin are to be made to all interested parties. Admittedly, the directions of the Tribunal have been complied with fully. In such situation, we find that there is no merit in the present appeals which plead~~s~~ to over throw the original finding of the DA which was affirmed by the Tribunal earlier, in this second round of litigation.

8. In view of the above factual position, we find no merit in the present appeals and accordingly dismiss the same. The application for stay filed alongwith the appeals are also disposed of.

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

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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