(38)

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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: **02/09/2016**

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

Final Order No. **AD/A/53301/2016-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/11/2012	**Association Of Synthetic Fibre Industry (asfi)** D-15, F18-19, Ndse Part-ii New Delhi 110049

Name and Address of Respondent

2 -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

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

Rajesh Sharma, Adv
trm, solicitors & consoltants,
k-3/a, saket,
New Delhi

4 Additional Party's Name & Address :

J C T LTD
THAPAR HOUSE, 124
JANPATH NEW DELHI
110001

CENTURY ENKA LTD
7TH FLOOR, BHAKTAWAR, NARIMAN POINT, MUMBAI-400021

PRAFFUL OVERSEAS LTD
M-14, CANNAUGHT CIRCUS, (MIDDLE CIRCLE), NEW DELHI-110001

P T SUSILIA INDAH SYNTHETIC FIBER INDUSTRIES
IMAM BONJOL NO. 133 KARAWACI TANGERANG 15115, INDONESIA

P T INDONESIA TORAY SYNTHETIC, ITS
JL. MOH. TOHA KM 1 TANGERANG, WEST JAVA, INDONESIA

P T MITRA P T E LTD
SINGAPORE 101, CECILSTREET 16-05 TONG ENG BUILDING, SINGAPORE 069533

INDAHCHI PRIMA
DESA CIBINONG, UBRUG, JATILUHUR, P.O. BOX 104, PURWAKARTA 41152, JAWA BARAT, INDONESIA

THAI TAFFETA COMPANY LTD
NO. 75/96-99. OCEAN TOWER2.36TH FLOOR, SOI SUKHUMVIT19 ASOKE, THAILAND

RECRON (MALAYSIA) SDN BHD COMPANY
NO. 781769-K LEVEL 9, WISMA GOLDHILL 67, JALANLUMPUR MALAYSIA

COLON FASHION MATERIAL
KOREA RP KOLON TOWER, 1-23, BYULYANG-DONG KWACHON CITY, KYONGGI-DO SOUTH KOREA

SUNTEX FIBRES
91, PF1 YUAN ROAD HOME 1,
CHANGHWA, TAIWAN

JAINVATI IMPEX
2007, 2ND FLOOR, WORLD
TRADE CENTRE, PARAG
HOUSE, RING ROAD, SURAT,
GUJARAT

WOONGJIN CHEMICALS CO LTD
KOREA RP 23F, 7F (TEXTILE
DIVISION), KUKDONG BLDG..,
CHUNGMURO 3-GA, JUNG-GU,
SEOUL, KOREA

GOENKA INDUSTRIES
225, SUPER YARN MKT,
ZAMPA BAZAR, SURAT,
GUJARAT

SOUTH GUJARAT NYLON TRADERS ASSOCIATION
2007, WORLD TRADE CENTER,
RING ROAD, SURAT

SCHIFFER AND MENZES INDIA PVT LTD
CMM BUILDING, RUA DE
OUREM, PANJIM, GOA

S G P INDIA
2015, WORLD TRADE CENTRE,
RING ROAD, SURAT,
GUJARAT

HYOSUNG CORPORATION
CPO BOX 1851 SEOUL,
REPUBLIC OF KOREA

G P P L LTD
BLOCK NO. 492, N.H. 8,
PALSANA, SURAT-394315

GUJARAT STATE FERTILIZERS & CHEMICAL LTD
P.O. FETILIZER NAGAR, DIST:
VADODARA, GUJARAT-391750

SKY INDUSTRIES LTD
MUMBAI C-58, T.T.C.
INDUSTRIAL AREA, THANE
BELAPUR ROAD, PAWNE,
VASHI, NAVI MUMBAI

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

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 : 29/08/2016.
DATE OF DECISION : 31 / 08/2016.

Anti Dumping Appeal No. 11 of 2012

[Arising out of the Notification No. 3/2012-Customs (ADD) dated 13/01/2012 based on Final Findings of the Designated Authority, No. 15/14/2010-DGAD dated 19/11/2011.]

M/s Association of Synthetic Fibre Industry — Appellant

Versus

Union of India/DA — Respondent

Appearance

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

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

For I.P. :

S/Shri Dhruv Gupta and Darpan Bhuyan, Advocates] R-6 and 13

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. 53301/2016 Dated : 31/08/2016

Per. B. Ravichandran :-

The appellants are aggrieved by the Final Findings dated 19/11/2011 of the Designated Authority (the DA), Ministry of

Commerce and Industry and Notification No. 3/2012-CUS (ADD) dated 13/1/2012 of Ministry of Finance.

2. The above findings and notification are consequent upon sunset review conducted by the DA of the AD duty imposed on Nylon Filament Yarn (subject goods) imported from China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea RP. Originally, the AD duty was imposed on the basis of Final Findings dated 03/7/2006 vide Notification No. 85/2006-CUS dated 29/8/2006. The DA initiated sunset review investigation on 27/8/2010. The AD duty was extended upto 26/8/2011 and further extended to 28/11/2011. After following the procedure set out under Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Industry) Rule 1995, the DA recommended imposition of definitive AD duty on subject goods. The DA recommended specific AD duty on various categories of imports of subject goods. The appellants are only aggrieved with Proviso B category of subject goods, after the main table in the Customs Notification No. 3/2012. Proviso B relates to AD duty on Nylon Monofilament Yarn. No AD duty on such yarn is leviable at specific rates if their landed price is above US $ 5.17. In other words, such goods will have no AD duty if the landed price upon import is not below US $ 5.17.

3. The learned Counsel for the appellant submitted that such special treatment to a class of subject goods based on bench

mark reference price is not justifiable. When the Final Finding on dumping and injury is categorical, the exemption to one variety of subject goods linking to bench mark landed price is arbitrary and does not meet the requirement of protecting DI from injury. The price of caprolactum, the main raw material, to manufacture subject goods, increased not only within the POI but also subsequently. There is no justification for dual form of duty on the same subject goods. The constituents of domestic industry are selling significant volumes of mono filament yarn in the present period, though it was low during the period of original investigation. The injury caused to DI has been recognized by the DA. However, exclusions made in proviso to the table is contradictory.

4. Learned Counsel, representing respondent Nos. 6 and 13 (Foreign exporter and Indian importer) submitted that the present appeal is frivolous. The appellant had not contested the form of AD duty at the time of Final Finding or mid-term review. They cannot raise this issue at such a belated stage. India follows the lesser duty rule. The DA recommended duty only to the extend to remove injury. No rule prescribes that the DA should follow a particular method of calculation of AD duty. The exemption based on bench mark price as per proviso is in consonance with past practice of the DA.

5. The learned Counsel for DA and learned AR for Revenue supported the findings of the DA and Customs notification for AD duty.

6. We have heard all the parties as above. We have carefully perused the appeal records and written submissions. The proviso B clause of the Notification No. 3/2012 – CUS (ADD) dated 03/1/2012 is under challenge. While the table in the notification fixes various specific amounts of AD duty on subject goods, the proviso provides for exemption to certain class of subject goods if their landed price is above a particular bench mark price. In other words there will be AD duty if the price goes below this mark.

7. We were informed that originally,the bench mark price was fixed at Rs. 172/- k.g. for all types of categories. Later,the same was enhanced to 4.24 US $ and 5.17 US $ for two distinct groups for purpose of exemption. Proviso B group, which is now in dispute carries a bench mark landed price of 5.17 US $. Thus we note that the DA had taken note of trend in normal price, NIP with reference to changed parameters including price fluctuation for caprolactum. The concern of DI in this regard has been dealt by the DA. In para 68 of his final findings the DA had noted his analysis of the stocks of raw material, purchases of raw material and its consumption. No unusual trends were noticed during POI. After assessing various factors like, volume effect of dumped imports, demand, market share, price effect, price suppression/depression and economic parameters affecting the

DI, the DA concluded that the subject goods are entering the Indian market at dumped prices and dumping margin is significant. Without AD duty the price undercutting and price underselling are significant from these countries. The DI continued to suffer material injury on account of continued dumping of subject countries. Hence, the DA recommended extension of AD duties. The exemptions, subject to certain conditions of bench mark prices, are also out come of these detailed analysis.

8. We find the appellant in the present appeal have not brought out any material evidence to interfere with the final finding of the DA. Accordingly the appeal is dismissed as being without merit.

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

(Justice Dr. Satish Chandra)
President

(Archana Wadhwa)
Member (Judicial)

30.8.16.
(B. Ravichandran)
Member (Technical)

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