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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: **06/09/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **AD/A/53281-53282/2016-CU[DB]** dated **30/08/2016**

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/Stay/3674/2012	AD/2931/2012	**Perstorp Chemicals Gmbh** Postfach 1409/1410, 59704 Amberg Bruchhausener Strasse 2, 59759 Amberg, Germany
2	AD/Stay/3675/2012	AD/2932/2012	**Perstorp Chemical India Private Limited** Kesar Solitair Building, 501-5th Floor, Sector 19, Plot No 5, Sanpada, Navi Mumbai-400705

	Name and Address of Respondent
3&4	-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

5Advocate(s) / Consultant(s):

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

6 Additional Party's Name & Address :
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

6/9/16

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing : 19.08.2016
Date of Decision 30.08.2016

Anti Dumping Appeal No. 2931-2932 of 2012 with
Anti Dumping Stay No. 3674-3675 of 2012

(Arising out of Final Finding No. 14/39/2010-DGAD dated 10.04.2012 issued vide Customs Notification No. 33/2012 dated 20.06.2012 issued by the Ministry of Finance, Department of Revenue).

M/s Perstorp Chemicals Gmbh. Appellant
M/s Perstorp Chemical India Private Ltd.

Vs.

Designated Authority, DGAD, MoF. Respondent

Appearance:

Sh. Dhruv Gupta, Sh. Ankur Sharma, Sh. Gaurav Gogia, Advocates for the Appellant
Sh. Amit Singh, Advocate for the D.A.
Sh. R. K. Manjhi, AR for the Revenue

Sh. Rajesh Sharma & Ms. Rita Jha, Advocates for Domestic Industry

Coram:

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

Final Order Nos. 53281-53282 **/2016**

Per: **B. Ravichandran:**

These are two appeals by M/s Perstorp Chemical Gmbh, a German company and Perstorp Chemicals (India) Pvt. Ltd., the Indian Importer. The appeals are directed against Final Finding dated 10.04.2012 of the Designated Authority, Directorate General of Anti Dumping and Allied Duties, Ministry of Commerce and Industry and Customs Notification 33/2012-Cus(ADD) dated 20.06.2012 imposing AD duty on Pentaerythritol (subject goods) originating in or exported from European Union, except Sweden . The first originating in or exported from European Union, except Sweden . The first appellant is an exporter of subject goods affected by the AD duty and is challenging the said duty in the present appeal.

2. The brief facts of the case are that the Designated Authority received application from M/s Kanoria Chemicals and Industries Ltd., Gujarat (D.I.) with request for AD duty on the subject goods imported from European Union except Sweden. The Designated Authority initiated the investigation in January, 2011. After following procedure as set out under Customs Tariff (Identification, Assessment and Collection of Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Designated Authority recommended imposition of AD duty on the subject goods originating in or exported from European Union excluding Sweden. Customs Notification dated 20.06.2012 was accordingly issued imposing AD duty.

3. Ld. Counsel appearing on behalf of the appellants contested the findings of the Designated Authority on various grounds. His submissions may be summarized as below:

(a) Price under selling has been exaggerated in view of assuming 22% return on capital employed, for domestic industry. The rate of return has distorted the injury margin. The imports of subject goods is mainly attributable to huge demand-supply gap in India. The conclusion of the D.A. is that even after the increase in market size in India, the D.I, could not increase its market share. This was considered as sign of injury to the Domestic Industry. This conclusion is not correct as the D.I. has very small capacity and as such could not meet the full demand.

(b) The D.A. failed to examine the impact of imports from Saudi Arabia on the injury suffered by the D.I.

(c) The D.I. represented by M/s. Kanoria Chemicals had specific agreement with M/s Asian Paints. The inter-se competition between them has not been analysed by the D.A.

(d) The price under cutting on the injury margin for the appellant exporter should have been determined based on resale price of the appellant importer, not based on landed price.

4. The Ld. Counsel for the D.I. supported the findings of the D.A. It is submitted that D.I. provided sufficient information for initiating the investigation. The appellants' plea that the D.I. has suffered injury on account of alleged un-dumped import from Saudi Arabia is not correct. As per Annexure –II para (v) of the A.D. Rules, the D.A. is required to segregate injury caused by the un-dumped imports. The Ld. Counsel submitted that the Respondent No. 3 (M/s Kanoria Chemicals) constituted D.I. as they hold a major portion of domestic production. Regarding the calculation of return on capital employed, it is submitted that the 22% claimed by the D.I. is reasonable for calculation of NIP. None of the parties objected to this claim during the investigation by the D.A. This is as per the consistent practice of adopting reasonable return. The D.A. has correctly examined the inter-se competition with other domestic producer while analysing the injury. The Indian resale price of imported goods cannot be considered for injury margin.

5. The Ld. Counsel for the D.A. supported the findings of the D.A. He submitted that none of the grounds now raised by the appellants have any merit so as to interfere with the said findings. The procedure prescribed

under A.D. Rules have been strictly followed before arriving at the conclusion.

6. The Ld. AR appearing for the Revenue supported the imposition of A.D. duty.

7. We have heard all the parties as above and examined the appeal records.

8. The appellants contended that the demand for subject goods in India is substantial and as such could not be met by Respondent No. 3. The volume affect of dumped imports have been examined by the D.A. It is seen that the demand for the subject goods has increased in the POI after a decline in 2008-2009. The imports also have increased. The sales of D.I declined significantly in 2008-2009 and thereafter increased during POI. We noticed that the D.A. had examined the actual and potential production, capacity and capacity utilization sales of the subject goods. It is seen that the increase in demand is higher than the increase in production/ sales of the D.I. In spite of improvements in production, sales and capacity utilization, the price parameters of D.I. have significantly deteriorated during the POI. It is brought out in the final findings that the profitability of D.I. improved in 2007-2008 as a result of A.D. duty imposed on imports from other dumped sources. After taking note of other factors which may impact the profitability of the D.I., the D.A. concluded that the profitability deteriorated in POI due to dumping from other sources.

9. Regarding the return on investment, the appellants contended that the earlier period profits should be considered before arriving at a reasonable return on investment. We find that the Tribunal in the Final Order No. 53541 of 2015 dated 27.11.2015 in the case of Merino Penal Products Ltd.

held that the return on investment is adopted based on consistent practice followed by the D.A. and the claim made by D.I. The said claim was not controverted with evidence at any stage nor was there any ground of reason to suspect any manipulation on the part of D.I. in that regard. We find there is no specific point made by the appellant with supporting evidence to hold that the practice followed by the D.A. in arriving at return on investment is patently wrong.

10. Regarding calculation of price under cutting and injury margin based on resale price of subject goods in India, we find that there is no legal basis for such assertion. When pointedly asked, the Ld. Counsel for the appellant conceded that there is no legal basis to adopt the resale price of related party in India for such calculation. We note that the landed price is to be as per Section 9(A)(1b) and the export price of appellant No. 1 is considered correctly by the D.A.

11. Regarding the import of un-dumped imports from Saudi Arabia, we find that the D.A. examined the issue and recorded that it has not been shown that the volume of imports not sold at dumped prices have had significant adverse impact on the D.I. Further, we find the D.A. has considered the data for POI. Apparently, the data for different period cannot be compared. Further, the D.A. categorically recorded, based on the analysis of data, that price under cutting exists. The D.I. suffered price depreciation. The significant adverse impact of dumped imports may be established in terms of any one or more parameters listed as per the A.D. Rules. It is not necessary that the D.I. should have suffered injury in respect of all the injury parameters. Similarly, it is not necessary that the D.I. should have suffered injury during the entire injury period. We also take note that inter-se

competition in D.I. has also been considered and the D.A. who concluded that the same is not principal cause of injury to the D.I.

12. After careful analysis of the points raised by the appellants and findings of the D.A., we find that there is no merit in the present appeals to interfere with the impugned findings of the D.A. and the imposition of A.D. duty by the impugned Customs Notification. Accordingly, the appeals are dismissed.

(Pronounced in open Court on 30.08.2016).

(Justice (Dr.) Satish Chandra)
President

(S. K. Mohanty)
Member (Judicial)

(B. Ravichandran) 24816
Member (Technical)

Neha