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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

Appeal No. AD/10 /2009-12 /2009 - CU[DB] Date **20/06/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To : M/S MIRC ELECTRONICS LTD.
ONIDA HOUSE, G-1, MIDC MAHAKALI CAVES
ROAD, ANDHERI (EAST), MUMBAI-400093.

M/S MIRC ELECTRONICS LTD. & OTHERS Appellant

Vs

DESIGNATED AUTHORITY / M.O.F. Respondent

I am directed to transmit herewith a certified copy of **Final order No. AD/15-17/ 2011 CU[DB]** dated 17.06.2011 passed by the Tribunal under THE CUSTOMS TARIFF ACT, 1975.

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent DESIGNATED AUTHORITY DIRECTORATE GENERAL, ANTI-DUMPING & ALLIED DUTY, UDYOG BHAWAN, MINISTRY OF COMMERCE, NEW DELHI.

   SECRETARY - REVENUE
   MINISTRY OF FINANCE,
   NORTH BLOCK, NEW DELHI.

2. Adv. / Consult
MR.SYEDNAQVI KOCHHAR & CO. ADVOCATES
S-454, GREATER KAILASH-II,
NEW DELHI-110048

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. SPS to Hon'ble President
15. SPS to Hon'ble Member (Technical)
16. SPS to Hon'ble Member (Judicial)

Assistant Registrar
(Customs Appeal Branch)

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

COURT NO.1

Date of Hearing: 27.04.2011
Date of decision: 17.06.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Dr. Chittaranjan Satapathy, Member (Technical)
Hon'ble Shri M.V. Ravindran, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

ANTI-DUMPING APPEAL NO. 10/2009

(Arising out of final finding under Notification No. 14/8/2007-DGAD dt. 17.04.2009 and corrigendum dated 17.04.2009 and the notification No. 50/2009 dated 15.05.2009 passed by the

M/s. Mirc Electronics Ltd. Appellants

Vs.

D.A./MOF Respondent

Appearance:

Shri S. Ganeshan, Sr. Advocate with Sh. N.K. Sharma, Advocates.
Shri Ameet Singh & Ms. Pooja Sharma, Advocates for the Respondent
Sh. S. Seetharaman with Sh. Atul Gupta, Advocates for domestic industry.

ANTI-DUMPING APPEAL NO. 11/2009

(Arising out of final finding under Notification No. 14/8/2007-DGAD dated 17.4.2009 and corrigendum dated 17.4.2009 and the Customs Notification No. 50/09-Cus dated 15.5.2009)

M/s. Panasonic AVC Network India Co. Ltd. `Appellants

Vs.

D.A./MOF Respondent

Appearance:

Shri Rajesh Kumar Advocate for the appellants
Shri Ameet Singh & Ms. Pooja Sharma Advocates for the Respondent

ANTI-DUMPING APPEAL NO. 12/2009

(Arising out of final finding under Notification No. 14/8/2007-DGAD dated 17.4.2009 and corrigendum dated 17.4.2009 and the Customs Notification No. 50/09-Cus dated 15.5.2009)

M/s Samsung India Electronics Pvt. Ltd. Appellants

Vs.

D.A./MOF Respondent

Appearance:

Shri Rajesh Kumar Advocate for the appellants
Shri Ameet Singh & Ms. Pooja Sharma Advocates for the Respondent

CORAM: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Dr. Chittaranjan Satapathy, Member (Technical)
Hon'ble Shri M.V. Ravindran, Member (Judicial)

Final **ORAL ORDER NO.**AD/15-17/**2011**

PER: SHRI JUSTICE R.M.S. KHANDEPARKAR:

Heard at length the learned Advocates for the parties on both the sides and perused the records.

2. The notification regarding the initiation of the investigation in terms of the Customs Tariff (Identification, Assessment, and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules,

1995 came to be issued on 19.11.2007. The investigation was carried out during the period from 01.07.2006 to 30.06.2007. The injury analysis covered the period from 01.04.2004 onwards. The preliminary finding under Notification No. 90/2008 dated 24.07.2008 recommending imposition of provisional anti-dumping duty on different types of CPTs originating and exported from the subject countries came to be issued. The disclosure statement, after public hearing, was issued on 27.01.2009 inviting comments of the interested parties and such comments were submitted by the interested parties including the appellants by 09.02.2009. The final findings were issued under Notification No. 14/8/2007-DGAD dated 17.02.2009. Further, under Notification No. 14/8/2007-DGAD dated 27.02.2009, the Designated Authority issued corrigendum to the final findings dated 17.02.2009. The said corrigendum was sought to be challenged by way of Writ Petition before the Hon'ble High Court of Delhi being Writ Petition No. (C) 7649/2009. By order dated 20.03.2009, the Hon'ble Delhi High Court set aside the said corrigendum and directed the petitioners to appear before the Designated Authority with further clarification that all the objections which were sought to be raised in the petition were left open to be decided by the Designated Authority. On remand of the matter, the Designated Authority after hearing the petitioners issued a fresh corrigendum dated 17.4.2009 under Notification No. 14/8/2007-DGAD. Pursuant thereto, the custom Notification No. 50/2009-Cus dated 15.05.2009 came to be issued imposing levy of anti-dumping duty.

3. The challenge in all these appeals is to the corrigendum dated 17.04.2009. The challenge is on the following grounds:-

1. The Designated Authority failed to comply with the directions issued by the Hon'ble Delhi High Court under its order dated 20.03.2009 inasmuch as that it failed to take into consideration the contentions sought to be raised on behalf of the appellants.
2. The Designated Authority has no power to issue such corrigendum as it became functus officio in law immediately after the issuance of the final finding dated 17.02.2009 and only jurisdiction which the Designated Authority had thereafter was in terms of Rule 23 of the Anti Dumping Rules to make a mid term review.
3. The Designated Authority has no power to impose Anti Dumping duty in terms of any foreign currency and anti dumping duty can be imposed only in Indian rupees.
4. The imposition of anti dumping duty could have been only be in terms of the Final Findings dated 17.02.2009 issued by the Designated Authority unless those were altered in appeal by the Appellate Tribunal, and not otherwise.

4. Learned Advocate for the appellants drawing our attention to the order of the Hon'ble Delhi High Court submitted that the impugned corrigendum apparently discloses various submissions made by the appellants including relating to the absence of jurisdiction to the Designated Authority to issue corrigendum to the Final Findings and yet the authority failed to deal with the same and thereby erred in non complying with the specific directions issued by the Hon'ble High Court. He submitted that the Designated Authority's function comes to an end moment his recommendations are

submitted to the Government and only jurisdiction which the Authority enjoys thereafter is in relation to mid term review in terms of Rule 23 of the Anti Dumping Rules. According to learned Advocate, the Designated Authority has no power to issue corrigendum to the Final Findings. He further submitted that the imposition of the duty could be only on acceptance of the Final Findings and there can be no occasion for referring to any corrigendum to such Final Findings for imposition of anti-dumping duty. The Rules framed by the Government do not permit the Designated Authority to modify or alter the Final Findings and, therefore, the notification regarding the imposition of anti-dumping duty has necessarily to be on the basis of Final Findings and not on the basis of any alteration or modification therein by the Designated Authority. He further submitted that the law does not permit imposition of anti-dumping duty in foreign currency. The impugned notification which is based on corrigendum imposes duty in foreign currency and, therefore, the same is bad in law. He further submitted that in the absence of any power to review the order, the corrigendum issued by the Designated Authority is to be held as without jurisdiction and in that regard placed reliance in the decision in the matter of **Harbhajan Singh** vs. **Karam Singh and Others** reported in AIR 1966 SC 641. Attention was also drawn to the decision of the Apex Court in the matter of **Ram Chandra Singh** vs. **Savitri Devi** reported in 2004 (172) ELT 446 (SC).

5. The Advocates appearing on other side submitted that the Final Findings and the corrigendum are merely recommendatory in nature and they are not the orders as such and, therefore, the provisions of law

applicable to the orders would not *ipso-facto* apply to such recommendation. It was further submitted that the contention that on submission of Final Findings, the Designated Authority becomes functus officio is absolutely incorrect and being an authority empowered to make recommendations is entitled to make further recommendations including modification and alteration in the Final Findings till the recommendations are either accepted or rejected and attains finality in that regard. It was further submitted that in the absence of any specific provision restricting the Designated Authority from making further recommendations, it cannot be presumed that the Designated Authority is debarred from making any such further recommendations including in the nature of alteration or modification of the final findings. It was also submitted that the modification in relation to currency from Indian rupee to $ (US) was in terms of the requirement of law and, therefore, no fault can be found in that regard. It was mere error or accidental slip and hence could have been corrected even under inherent power by the Designated Authority. Reliance was also placed in the decision of the Madras High Court in the matter of **Madras University Teachers' Association** vs. **The Chancellor, University of Madras and Ors.** reported in (1995) 1MLJ13, as well as or of the Supreme Court in **Saurashtra Chemicals Ltd.** vs. **Union of India** reported in 2000 (118) ELT 305 (SC). Reliance was also placed in the decision in the matter of **Pig Iron Manufacturers Association** vs. **Designated Authority** reported in 2000 (116) ELT 67, **Hari Singh** vs. **Sher Singh** reported in 1988 RLR 658 = MANU/DE/0110/1988.

6. Considering the rival contentions in the matter, it would be appropriate to take note of certain undisputed facts in the matter:-

i) The preliminary findings were issued on 24.07.2008.

ii) Disclosure statement was issued on 27.01.2009.

iii) Final Findings were issued on 17.02.2009.

iv) Corrigendum was issued on 27.02.2009

v) High Court set aside the corrigendum dated 27.02.2009 for reconsideration of the matter by the Designated Authority leaving all the issues open.

vi) After hearing the parties, the fresh corrigendum was issued on 17.04.2009.

vii) Final notification was issued on 15.05.2009.

viii) Prior to 15.05.2009, no other notification imposing anti dumping duty on the basis of the final findings dated 17.02.2003 was issued by the Government.

7. The order dated 20.03.2009 of the Hon'ble High Court of Delhi clearly recorded that the learned Additional Solicitor General had refuted the legal correctness of the proposition sought to be canvassed in relation to corrigendum on behalf of the petitioners. However, as regards opportunity of hearing not being given by the Designated Authority, there was some amount of concession on behalf of the Additional Solicitor General and accordingly the corrigendum dated 27.02.2009 was set aside and the petitioners were directed to appear before the Designated Authority with the specific observation that the appearance before the Designated Authority shall not be construed as waiver by the petitioner of its objection as to

jurisdiction and the said objection can be raised before the Designated Authority who shall decide the same. Pursuant to the said order passed by the High Court, the matter came up before the Designated Authority and the said fact has been clearly recorded in para 2 of the corrigendum dated 17.04.2009.

8. The said corrigendum dated 17.4.2009 apparently discloses all the submissions made on behalf of the parties and based on those submissions, the Designated Authority framed the following issues for consideration:-

(i) Whether the Designated Authority becomes functus officio after giving final recommendation/ findings or is authorized to issue corrigendum to the final recommendation /findings?

(ii) Whether the authority can issue corrigendum to its final recommendation before the same are accepted or notified by the Central Government?

(iii) Whether the authority requires any extension to the investigation period for issuance of corrigendum?

9. While dealing with the first issue, the Designated Authority after taking into consideration the provisions of Customs Tariff Act, 1975 and Rules framed thereunder observed thus:-

> "The Central Government may within three months of the date of publication of Final Findings, impose the duty, by notification in the official gazette. It may be seen that the inherent power to notify duties are with the Central Government. The use of word 'may' give an option to the Central Government to agree with the recommendations of the authority or not. The recommendation of the

authority attains finality only after these are notified by the Central Government".

Having observed as above, the Designated Authority came to the following finding:-

"Thus, it is after acceptance and notification of the recommendations of the authority under the Customs Tariff Act, 1975 that it becomes the order of the Central Government and attains finality and then only the issue of functus officio arises. Till such notification, the recommendation of the Designated authority does not attain finality".

10. Perusal of the Notification No. 2/95-Cus (NT) dated 1.1.1995 as amended from time to time which is comprised under Customs Tariff (Identification, Assessment, and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter called as "Anti Dumping Rules") disclose that the same are framed under sub-section 6 of Section 9A and sub-section 2 of Section 9B of the Customs Tariff Act, 1975. The Anti Dumping Rules clearly disclose that on conclusion of the investigation and before arriving at Final Findings, the Designated Authority has to inform all of the interested parties about the essential facts which could form the basis for the Final Findings. The Final Findings can be issued within one year from the date of initiation of investigation and this period can be extended by six months by the Central Government in its discretion in special circumstances. Such findings are to be submitted to the Central Government recommending the amount of duty, which, if levied, would remove the injury which would be otherwise suffered by the domestic industry.

11. Rule 18(1) specifically provides that Central Government may within three months of the date of publication of the Final Findings by the Designated Authority under Rule 17, impose by notification in the official gazette, upon importation into India of the article covered by the Final Findings, anti dumping duty not exceeding the margin of dumping as determined under Rule 17.

12. It is also pertinent to note that Rule 23 of the Anti Dumping Rules specifically deals with the power of mid-term review to the Designated Authority. Sub-rule (1) thereof, provides that the Designated Authority shall from time to time review the need for continuation of imposition of the anti dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for continuation of imposition of such duty, it can recommend to the Central Government for its withdrawal.

13. The above provisions of law clearly disclose that the Final Findings to be arrived at by the Designated Authority are purely recommendatory in nature and they attain finality only after acceptance thereof and issuance of notification imposing the levy. However, that by itself does not make the Designated Authority functus officio in relation to its recommendations. Even after issuance of notification imposing the duty by the government, the Designated Authority continues to enjoy the power to review the situation and about the effect of imposition of the duty and based on such review, to make further recommendations. The power of review made available to the Designated Authority under Rule 23 clearly discloses that it is the obligation of the Designated Authority to make necessary recommendations based on

factual data about alteration in the imposition of such duty. Undoubtedly, such recommendations are to be made only on satisfaction about the information that there is need for such alteration in the imposition of duty. Occasion to get satisfied accordingly can arise only after necessary investigation in that regard pursuant to the review of the situation including the Final Findings which preceded the imposition of levy and further obligation to make necessary recommendations based on such review. Very fact that the Designated Authority has such power of review even after issuance of the notification imposing the duty subsequent to the submission of the final recommendation would disclose that in the absence of specific provision debarring the Designated Authority from making further recommendations for alteration or modification in the Final Findings before such findings are accepted by the Government, such prohibition for modification or alteration or for making further recommendation by the Designated Authority to the Central Government cannot be read into the said Rules.

14. In the case in hand, undisputedly, the records disclose that the notification imposing duty was issued only on 15.05.2009. The corrigendum which undoubtedly comprised of certain modification regarding the currency were issued on 17.04.2009, that is much prior to issuance of notification imposing the duty.

15. To the specific query to the learned Advocate as to whether there is anything on record to disclose that the Government had accepted the Final Findings prior to issuance of the corrigendum dated 17.04.2009, the learned

Counsel fairly conceded that there is no such material available to disclose that the Government had accepted the Final Findings prior to 17.04.2009. Being so, there is absolutely no substance in the first ground of challenge.

16. It is sought to be strenuously argued on behalf of the appellants that there was no consideration of the points canvassed by the appellants regarding the absence of jurisdiction while issuing the corrigendum by the Designated Authority. In fact, this contention already stands answered by the observations and the finding in the corrigendum quoted herein above. Taking note of the exact nature of the objection which was sought to be raised on behalf of the appellants, the Designated authority framed the two issues quoted above and clearly arrived at the finding that neither the Designated Authority was functus officio after issuance of Final Findings nor there was absence of powers to issue corrigendum. The corrigendum apparently discloses elaborate discussion of the objections raised on behalf of the appellants in this regard and the logical conclusion arrived at on analysis of those contentions. There is, therefore, absolutely no substance in this ground of challenge also.

17. The Apex Court in **Harbhajan Singh** case (supra) was dealing with the matter regarding the power of review in relation to the order passed by the authority under East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The decision of the Apex Court clearly discloses that the issue involved in the said matter was whether the Director, Consolidation of Holdings under the said Act had power to review its earlier order or not. After taking note of the fact that there was no provision in the

said Act granting express power of review, it was held that the Director cannot review its order. There was no inherent jurisdiction to the Director and, therefore, he could not have reviewed his earlier order. Reference was made to the decision of Lord Esher in **Drew** vs. **Willis** reported in 1891-1 QB 450 and of the Madras High Court in **Anantharaju Shetty** v. **Appu Hegade** reported in AIR 1919 Mad. 244. In sum and substance, it was held that the authorities passing order in exercise of revisional jurisdiction exercises quasi-judicial function and in the absence of specific power to review such orders under the statute under which they function, it is not permissible for such authorities to review their earlier order. One fails to understand the applicability of this decision to the matter in hand. It is nowhere held that the Designated Authority functioning under the Anti-dumping Rules to be the quasi-judicial authority. Undoubtedly, the proceedings in the course of investigation by such authority are held to be on par with those before any quasi-judicial authority. Merely because the proceedings partake the colour of quasi-judicial proceedings that does not transform the investigating agency into a quasi-judicial body. There is a distinction between authority itself being a quasi-judicial authority and the proceedings conducted before a non quasi-judicial authority partaking the colour of quasi-judicial proceedings.

18. In **Ram Chandra Singh** case, the Apex Court were dealing with the matter wherein an application for clarification and order for modification of a judgement was filed on the ground of factual error having crept in the judgement as those could not be pointed out at the time of hearing of the appeal on account of absence of the party. While dealing with the said case, it was ruled that under the garb of correction of mistakes arising out of accidental slip or typographical error, the judgement cannot be altered or modified by the Court in exercise of its inherent power. Apparently, the Apex Court was dealing with the powers of the Court in relation to its jurisdiction to review and to correct the mistake in the judgement and orders passed by the Court.

19. In **Madras University Teachers' Association** case, the High court was dealing with a matter relating to the validity of the order appointing a person to the office of Vice Chancellor of Madras University. The grievance of the petitioner therein was that the recommendation of names by the second search committee was bad in law as the search committee had become functus officio as they had already submitted a panel of three persons all of whom were willing and available for appointment and in those circumstances there was no occasion to submit a panel of three different names subsequently. The Madras High Court after going to the provisions of the Madras University Act held as under:-

> "16. As long as it is the duty of the Second Committee to submit an effective panel of three persons who would be available for consideration by the Chancellor for appointing one of them as the Vice Chancellor, it is not possible to hold that the Second Committee became functus officio, no sooner it submitted a panel of three names for consideration for appointment of any one of them as Vice Chancellor. The Proviso to Section 11(1) came to be inserted with an avowed object to ensure that no vacuum is created in the matter of appointment of Vice Chancellor".

Apparently, the decision was on the basis of statutory provisions comprised under the University Act. Being so, it cannot be of much help in the matter in hand to justify the action.

20. The order of the Apex Court in **Saurashtra Chemicals Ltd.** case clearly holds that the findings by the Designated Authority are purely recommendatory in nature. Obviously, therefore, the decision supports the view that we are taking in the matter.

21. The decision in **Hari Singh** case can be of no help to the respondent, it was in relation to the power of the civil court under Section 151 and 152 of the Court of Civil Procedure Code.

22. Before we deal with the third ground of challenge, it would be also necessary to deal with the one more aspect of the matter to which a passing reference was made by the learned Advocate of the appellants in the course of his arguments and that relates to the period of investigation. It was sought to be contended that in terms of the provision of law comprised under Anti Dumping Rules, a specific period of one year and further extension of six months is prescribed for the completion of investigation, the Designated Authority cannot have powers beyond the said period to make further recommendations. In fact, the said issue does not arise at all in the matter.

23. Undisputedly, the initial notification was issued on 19.11.2007. Preliminary findings were issued on 24.07.2008. The disclosure was issued on 27.01.2009. The Final findings issued on 17.02.2009. The corrigendum was issued on 27.02.2009. Undisputedly, the period of investigation was

extended by six months. In other words, the period of investigation which started from 19.11.2007 was required to be completed on 18.05.2009. In other words the original corrigendum was issued within the period prescribed under the provisions of law.

24. As regards the corrigendum dated 17.04.2009 is concerned, obviously, the same was also issued within the period prescribed for the completion of the notification, even the final notification was issued on 15.05.2009. Being so, the issue regarding bar of limitation as such does not arise for consideration in the matter

25. As regards the last ground of challenge which relates to the powers of the Designated Authority to refer the duty element in US$ instead of Indian currency, the respondents are justified in drawing our attention to the decision of the Larger Bench of the Tribunal in **Pig Iron Manufacturers Association** case. Therein, it was clearly held that Section 14 of the Customs Act relates to valuation of goods for customs duty and Section 15 relates to exchange rate to be adopted for the purpose of customs duty. It was clearly ruled that "We do not find any bar in either of the Sections to fixing anti-dumping duty in dollar terms, but payable /recoverable in Indian rupee. We also consider such action to be highly warranted in respect of anti-dumping duties. Anti-dumping duty is fixed after a finding that foreign goods are sold at less than their normal value in the Indian market causing injury to domestic producers. The amount of dumping margin is worked out in dollar terms as all aspects of trade are in US$. Section 9A stipulates that anti-dumping duty shall not exceed dumping margin. Thus, the law's

intention and purpose is to afford a protection to the domestic industry at rats not exceeding dumping margin and injury margin. We are, therefore, of the firm opinion that anti-dumping duty should be fixed in dollar terms so that erosion of the quantum of protection does not take place on account of changes in the exchange rate". Evidently, the Larger Bench has clearly answered the point sought to be raised on behalf of the appellants. In this regard, no further discussion is called for. Apart from the binding nature of the decision of the Larger Bench, we are in respectful agreement with the said view expressed by the Larger Bench on the said issue.

26. Taking into consideration all the above aspects, the appellants have not made out any case for interference in the impugned order and hence the appeals fail and are hereby dismissed.

Pronounced in Open Court on 17-06-2011.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

17.6.11
(DR. CHITTARANJAN SATAPATHY)
MEMBER (TECHNICAL

17/6/11
(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Pant