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

<u>COURT-I</u>

Date of hearing: 27.03.2017
Date of pronouncement: 16/05/2017

Anti-Dumping Appeal No. 52805 of 2015

(Arising out of the Final Findings dated 11.01.2015 and Notification No. 09/2015-Customs (ADD) dated 07.04.2015 passed by the Designated Authority, DGAD and Allied Duties, Ministry of Commerce and Industry).

M/s Manali Petrochemicals Limited Appellant

Vs.

Designated Authority, ... Respondent
Directorate General of Anti-Dumping and
Allied Duties/Ministry of Finance

<u>Appearance</u>:

Sh. Amit Singh, Advocate for D.A. and Sh. Govind Dixit, DR for the Revenue

Sh. Adarsh Ramanujan, Advocate for Respondent No. 3 & 4.

<u>Coram</u>:

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 No. **53344/2017**

<u>Per **B. Ravichandran**</u>:

The appeal is against final finding of the Designated Authority (DA), Directorate General of Anti-Dumping and Allied Duties, Department of Commerce, Ministry of Commerce and Industry and Notification No. 9/2015-Cus (ADD) dated 07.04.2015 issued by the Department of Revenue, Ministry of Finance, Government of India. The said final Findings of the DA recommended AD Duty on a specific variety of Flexible Slabstock polyol (subject goods) originating / exported from specified countries and imported into India. Different rates of AD duty were recommended. The Customs Notification dated 07.04.2015 was issued to give effect to the said recommendations of the DA. The AD duty imposed was effective from 07.04.2015 for a period of five years.

2. The appellant is engaged in the manufacture of Flexible Slabstock Polyol (subject goods) in India and is recognised as Domestic Industry (DI) in terms of Customs Tariff (Identification, Assessment and Collector of Anti-Dumping Duty of Dumped Articles and for Determination of Injury) Rules, 1995 (AD Rules).The appellants filed application under Rule 5 of the AD Rules for initiation of investigation with reference to import of subject goods from specified countries, for imposing AD duty. The Designating Authority initiated the investigation and after due process, concluded that imposition of definitive AD duty is required to offset dumping and consequent injury to DI. Though, AD duty has been recommended and imposed on the subject goods, the appellants are partially aggrieved by the said Final Findings and the Customs Notification. Hence, this appeal.

3. The appeal filed by the appellant was earlier taken up for hearing by the Tribunal. The Tribunal was informed that the impugned final findings have been challenged in the Hon'ble High Court of Delhi by other interested parties, on various grounds including violation of principles of natural justice and the matter is pending disposal, in W.P. No. 3726/2005 and C.M. No. 6651/2015. The Tribunal disposed of the appeal vide Final Order dated 05.09.2016, with a

liberty to approach the Tribunal again after the final decision of the Hon'ble Delhi High Court. The appellants filed a Writ Petition in the Hon'ble Delhi High Court challenging the abovesaid final order. The High Court vide order dated 06.12.2016 directed the Tribunal to decide the appeal on merit. Accordingly, the case was listed, after due notice, for final hearing on 27.03.2017.

4. Ld. Counsel for the appellant vide their letter dated 24.03.2017, to the Registry, submitted that due to cost constraints they, as authorised representative, have received instructions to file only written submission before the Tribunal with a prayer to decide appeal on merits. Accordingly, they have made the written submission for consideration.

5. The appellants in their appeal have stated that they are partially aggrieved by the final finding of the DA and the Customs Notification mentioned above. Various grounds were mentioned in the appeal. We have gone through the grounds and note that the grounds are mostly on general principle of procedure involved in investigation by the DA with no specific reference or specific data. The prayer in the appeal is to modify the final findings and Customs Notification, to the extent challenged in the appeal. We are not clear what type of modification and to what extent is sought to be made by the appellant in the impugned final findings. The grounds of appeal, as already noted mainly elaborated on various general principles like acceptance of excessive claims of confidentiality, consideration of additional documents of exporters without following the procedure, consideration of information submitted by the exporters which is deficient, lack of details regarding

methodology for arriving at normal value etc. The appeal before the Tribunal should be for a relief which is specific and which can be examined and decided by the Tribunal. We find there is no specific grievance to be addressed against the imposition of AD Duty by the Customs Notification dated 07.04.2015. In fact, the appellants sought for imposition of AD Duty on the subject goods. On completion of investigation AD Duty has been imposed. The appellants pleads that they are partially aggrieved by the said finding. We can only presume that, perhaps, they are not satisfied with the quantum of AD Duty imposed on the subject goods. However, the same is not specifically alleged or prayed for modification by the appellant.

6. Having recorded these observations we now proceed to examine the grievance of the appellant as given in the written submission dated 24.03.2017. The appellants themselves framed the ‘key issue’ in the appeal, as construction of normal value for Singapore by the DA. They have elaborated on this key issue in the written submission. The appellant pleaded that the DA ought to have used import prices of major raw material as an indicator of fair prices prevailing in the Singapore market. The export price from Singapore could not form basis for arriving at the normal value. The appellant further pleaded that in terms of Section 9A(1)(c)(ii) of Customs Tariff Act, 1975, the DA should have taken into account the cost of production of the said article in the country of origin. The prevailing price of main raw material, PO, in Singapore could not have been less than US$1713 PMT whereas the DA considered only US$ 1578 PMT on the basis of export price. Further, it is also submitted that the import of raw material Propylene Oxide (PO) was not negligible in Singapore.

7. Respondents No. 3 and 4 who are exporting the subject goods were represented by the ld. Counsel Sh. Adarsh Ramanujam. He elaborated on the written note submitted by them. He contested the appeal on the ground that the various points raised were all of general and academic in nature and the Tribunal cannot examine such academic, general, vague assertion and in any case the appeal is totally lacking in specific grievance and as such has no merit, Ld. Counsel also submitted on the correctness of normal price arrived at by the DA.

8. Ld. Counsel Shri Ameet Singh appearing for the DA supported the final findings and the Customs Notification. He drew our attention to specific findings recorded by the DA regarding construction of normal value for the subject goods in Singapore. He also submitted that the present appeal is vague and mostly on procedural/ academic issues which will have no effect on the final findings of the DA. The grievances were not identified and the mere prayer for modifying the final finding is devoid of merit.

9. Shri Govind Dixit, ld. AR represented the Customs Department and submitted that there is no infirmity in the final finding of the DA and consequent notification issued imposing AD Duty on the subject goods. He also pleaded that the present appeal is devoid of merit on the ground that no specific grievance has been identified against the impugned findings.

10. We note that the DA have examined in detail all the relevant parameters before arriving at the normal value, export price and dumping margin. Three exporters/ producers from Singapore have submitted response to the questionnaire issued by the DA. The submissions made by the DI were also

considered. On determination of normal value, we note that, the DA has followed the provisions of Section 9A(1)(c) of the Customs Tariff Act, 1975. The DA has recorded the following, with reference to normal value in case of producers/ exporters from Singapore:

> "37. *As already mentioned that due to non-filing of EQR by the related parties of SEPL/SETL, the Authority has rejected the EQR filed by them. As there is no other producer of subject goods other than SEPL, the Normal Value for the producers/ exporters in Singapore has been determined by the Authority on the basis of international prices of major raw materials and constructed costs of production, duly adjusted to include selling, general & administrative costs and packing costs of the domestic industry by adding reasonable profits*".

11. On examination of the issue, post disclosure statement, the DA recorded as below:

> "92. *As regards the contention of domestic industry that import prices of the raw material (PO) is relevant for the purpose of determining constructed normal value, the Authority notes that the imports of PO in Singapore as per UN Comtrade data are high very negligible as compared to the production of PO in Singapore and its exports to other countries. The Authority, therefore, holds that export price of PO from Singapore is more relevant as compared to the import price of PO in Singapore for the purpose of determining the price of PO in Singapore. The domestic industry has requested not to consider the export price of PO from Singapore to China and Korea on the ground that SEPL/BASF have related or group entities. In this regard, the Authority has compare the import price of PO from Saudi Arabia with the export price of PO to China and Korea and found that the prices were comparable. The Authority, has therefore, adopted the price at which PO had been exported from Singapore to world for the purpose of constructing normal value.*
>
> *93. With regard to submission of domestic industry that no new information/ documents can be considered post public hearing. The Authority notes that in order to clarify the matter, the Authority can seek additional information/ documents from the interested parties including the domestic industry during the course of the investigation. The Authority notes that the fact and circumstances of the investigations mentioned by the domestic industry in support of their contention are different from the present case as in the investigation concerning Saccharin, the Authority notes that the exporter's related parties had failed the MET and Exporters' Questionnaire response at much belated stage, which were not accepted. Whereas in the instant case, the*

Authority has sought additional documents/ information in support of the claims made by SEPL/SETL in their response".

12. We note that the DA has determined the normal value for Singapore based on the international prices of raw material as noted above. The appellant also have specifically submitted that the DA should use international prices of major raw material such as PO and ethylene oxide as the only responding producer from Singapore failed to provide complete details of the cost of the raw material of their related parties. We note that it is not the contention of the appellant that the export price of PO from Singapore was not reliable or not representing the international prices of the said product. Neither there is a contention that export price of PO from Singapore is not comparable with the import price from Saudi Arabia. We have also noted that the DA has followed an accepted, consistent practice of relying on the international price of raw material for determining normal value of non-cooperating exporters for a subject country.

13. As noted, in detail, earlier in this order we find that the appellants are mainly focusing on the methodology adopted by the DA in determining the normal value in Singapore. We have already taken note of the detailed findings of the DA and the points raised by the appellant against the method followed by the DA. The DA has recorded that the net export price for the export made from Singapore has been determined on the basis of information available on record. Due adjustment on account of commission, credit cost, bank charges, inland freight and port handling charges in order to arrive at the net export price at ex-factory level has been made. Having so arrived at the export price at ex-factory level, the dumping margin was arrived at by the DA. The DA examined

the import volume and market share of subject goods, price effect and evolution prices over the period. On detailed examination of various parameters the DA concluded that the profitability of DI has declined clearly showing injurious impact of dumped imports from the subject countries on the price of the DA. The DA concluded that the domestic countries has suffered material injury during the period of investigation. The magnitude of injury margin is arrived at by comparing the non-injurious price of the subject goods produced by the DI with the landed value of the export from subject countries and thereafter the injury margin has been arrived at in percentage terms. The final recommendation of imposition of definitive AD Duty on import of subject goods of subject country has been arrived at after due consideration of all relevant factors.

14. Having examination the detailed final findings of the DA and the points raised in appeal, we are of the considered opinion that the final findings of the DA cannot be interfered with. Accordingly, the appeal praying for modification of the final finding is dismissed, as devoid of merit.

(Pronounced on **16.05.2017)**

(Justice Dr. Satish Chandra)
President

(S. K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant