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 : 03/07/2017.
DATE OF DECISION : 20/07/2017.

Anti Dumping Appeals No. 50452-50455 of 2017 with COD Applications No. 50226-50229 of 2017

[Arising out of the Final Findings of the Designated Authority, No. 14/31/2014-DGAD dated 27/09/2016.]

M/s Panasonic Energy India Co. Ltd.]
M/s Association of Indian Dry Cell Manufacturers] Appellants
M/s Eveready Industries Limited]
M/s Indo National Ltd.]

Versus

Union of India/DA Respondent

Appearance

Ms. Reena Khair and Shri Rajesh Sharma, Advocates – for the appellants.

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

Shri A. Hidaytulla, Senior Advocate and Shri Jitendra Singh, Advocate – for Respondent No. 3.

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. 55305-55308/2017 Dated : 20/07/2017

Per. B. Ravichandran :-

These 4 appeals are filed against final finding dated 27/09/2016 of the Designated Authority (DA), Directorate

General of Anti Dumping and Allied Duties, Department of Commerce and Industry, Government of India, New Delhi. All the appellants are aggrieved by the non-imposition of Anti Dumping Duty (ADD) on "AA Dry Cell Batteries" originating in or exported from China PR and Vietnam. Earlier, the DA received application from Association of Indian Dry Cell Manufacturers (one of the appellant) alleging dumping of impugned goods and for initiating investigation to impose ADD. The DA initiated investigation and issued a final finding on 27/09/2016. He concluded that dumped imports have not caused material injury to the Domestic Industry (DI) as the DI has realized much higher selling price as compared to the landed price of the subject goods from the subject countries, and earned huge profit. Accordingly, he has not recommended for imposition of ADD, in this case.

2. The appeals in the present case are against these final findings. However, the appellants pleaded that they have obtained particulars of further developments on this Final Finding, through RTI application with the Department of Revenue. Vide letter dated 23/12/2016, the CPIO of the Department of Revenue has forwarded details which indicated that no further action was taken by the Department of Revenue, on such recommendation of DA.

3. The present appeals were filed on 24/01/2017 alongwith miscellaneous application for condonation of delay. We note that the final finding was issued on 27/09/2016. Thereafter on

23/12/2016 received reply for RTI application from the Department of Revenue. Subsequently, they have filed the appeal on 24/01/2017. However, on receipt of defect memo from the Registry on 04/02/2017 they have filed the miscellaneous application for condonation of delay on 14/03/2017. The learned Counsel for the appellants prayed for condonation of delay of 30 days and to decide the case on merit.

4. On examining the submissions made by the learned Counsel, we condone the delay in filing all these appeals and take up the case for decision.

5. As already noted, all these appeals are mainly against final finding of the DA. The learned Counsel for the appellants submitted that based on the final finding of the DA, the Department of Revenue had decided not to proceed further in this mater and apparently the whole proceedings came to an end. The learned Counsel submitted that they have obtained the decision of the Department of Revenue and such decision is put to challenge in the present appeals and accordingly, she maintained that these appeals are maintainable under Section 9C of the Customs Tariff Act, 1975.

6. The learned Counsel for respondent No. 3 (M/s Godrej & Boyce Manufacturing Co. Ltd.) strongly objected to these appeals on the ground of maintainability. It is submitted that the Central Government has been vested with power to impose ADD in terms of Section 9A of Customs Tariff Act, 1975. Customs Tariff

(Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 were framed in terms of Section 9A (6) and Section 9B (2). The DA is only an Investigating Authority and his finding are only recommendatory. Under Rule 18 of the said rules, the Central Government may, within three months of publication of final finding of the DA, can impose ADD. Section 9C specifically provided that an appeal against order of determination or review thereof, can only be filed. In the present case, there is no determination or review with reference to imposition of ADD on the subject goods. The learned Counsel for the respondent also relied on the decision of Hon'ble Supreme Court in **Saurashtra Chemicals Ltd. vs. Union of India** reported in **2000 (118) E.L.T. 305 (S.C.)**.

7. The learned Counsel for the DA as well as the learned AR for Revenue also contested the maintainability of these appeals on the ground that these are not against an order of Central Government, determining the imposition of ADD.

8. We have heard all the interested parties on this preliminary objection regarding maintainability of these appeals, under Section 9C of the Customs Tariff Act. Admittedly, in the present case, the Government of India, Ministry of Finance, Department of Revenue who is the Competent Authority to impose any ADD on goods in terms of Section 9A, did not issue any order either imposing or reviewing the imposition of ADD on subject goods.

Though the DA initiated investigation in terms of the statutory powers conferred on him, on conclusion of the investigation he issued the final findings stating that there is no case for imposition of ADD. Thereafter no order has been passed or notification issued in terms of Customs Tariff Act or the Rules of 1995, in this regard.

9. The appellants did get some information through RTI application. As per the appeal papers, the Technical Officer, TRU, Department of Revenue, had put up a office note on 17/10/2016 explaining the background of the case, starting from initiation of investigation and final recommendation of the DA. It is recorded that as no ADD was recommended for imposition no further action lies at the end of Department of Revenue. The said note was approved by the Chairman, CBEC. Apart from this office file note sheet, no order issued by the Department of Revenue formed subject matter of this appeal.

10. This brings us to the main question, whether present appeals are maintainable under Section 9C of the Customs Tariff Act. The Tribunal in **Indian Spinners Association vs. Designated Authority** reported in **2000 (119) E.L.T. 299 (Tribunal)** held that the DA is purely a recommending authority. The determination of levy of ADD is by the Central Government. As the Central Government did not determine imposition of ADD, no appeal could be considered against the finding of the Designated Authority. The Tribunal relied on the decision of

Hon'ble Supreme Court in **Saurashtra Chemicals Ltd.** (supra). It is clear that no appeal can lie against recommendatory final finding of the DA in the absence of a determination of such AD duty by the Central Government. We also note that the Hon'ble Delhi High Court in **Deepak Fertilizers and Petrochem vs. Designated Authority** reported in **2006 (203) E.L.T. 370 (Del.)** held that the DA only assists the Central Government in making the determination and his recommendation is not binding on the Central Government. The Hon'ble High Court further held that the report of the DA being only a recommendation does not create any rights or liabilities.

11. When the final finding of the DA alone cannot be a subject matter of appeal under Section 9C, as held in the above judicial pronouncement, we are left with the question regarding whether any information obtained under RTI Act can be considered as an order amenable to appeal under Section 9C of the Tariff Act. We find no legal justification for inferring such finding, as pleaded by the appellants. Rule 18 of the 1995 Rules talks about the powers of Central Government to impose ADD by notification in the official gazette. Admittedly, in the present case, there is no notification in the official gazette. An information obtained under RTI Act cannot be equated to a notification issued under official gazette in terms of exercise of statutory powers vested in the Central Government. Incidentally, we also note that the appellants in their prayer have only impugned the final findings of the DA, which is a recommendation only.

12. In view of the above factual position and legal analysis, we note that there is no determination of ADD levy by notification as published in the official gazette by the Central Government under Rule 18 and, as such, the appeals under Section 9C in the present case are not maintainable. Accordingly, we dismiss all these appeals.

(Order pronounced in the open court on 20/07/2017.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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