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 : 04/07/2017.
DATE OF DECISION : 01/08/2017.

Anti Dumping Appeals No. 50814-50815 and 50977-50978 of 2017 with COD Applications No. 50417, 50419, 50507 and 50509 of 2017 with Stay Applications No. 50418, 50420, 50508 and 50510 of 2017

[Arising out of the Notification No. 22/2015-Customs (ADD) dated 22/05/2015 based on Final Findings of the Designated Authority, No. 14/22/2012-DGAD dated 19/12/2014.]

M/s Sandisk Trading (Shanghai) Co. Ltd.]
M/s Sandisk Semiconductor Shanghai Co. Ltd.] Appellants
M/s Sandisk Manufacturing Unlimited Co.]
M/s Sandisk International Ltd.]

Versus

Union of India/DA Respondent

Appearance

Shri S. Seetharaman, Advocate – for the appellants.

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

Ms. Reena Khair, Advocate – for Domestic Industry.

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. 55624-55627/2017 Dated : 01/08/2017

Per. B. Ravichandran :-

These 4 appeals are by inter-related companies namely, M/s Sandisk Manufacturing Ireland, M/s Sandisk Semiconductor

(Shanghai) Co. Ltd. (SDSS), China PR, M/s Sandisk International Ltd. (SDI), Ireland and M/s Sandisk Trading (Shanghai) Co. Ltd., China PR dealing with Sandisk brand, USB flash drives in different capacities. These appeals are against final finding dated 19/12/2014 of the Designated Authority (DA), Directorate General of Anti Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No. 22/2015-CUS (ADD) dated 22/05/2015 of Department of Revenue, Ministry of Finance. The Customs notification imposed Anti Dumping Duty (ADD) on USB flash drives originating in or exported from Peoples Republic of China and Taiwan (subject countries) and imported into India.

2. All the 4 appellants, alongwith the appeals, filed applications for condonation of delay in filing these appeals. It is submitted that though in view of the facts of the case, there is no delay in filing these appeals, still the applications are filed as abundant caution and to explain the background for the intervening period, before filing these appeals. The applicants submitted that one of them (SDI) had filed a writ-petition No. 744/2015 challenging the final finding of the DA. The Hon'ble Delhi High Court vide their order dated 18/03/2015 quashed the said final finding. The DA and the Domestic Industry (DI) filed SLPs before the Hon'ble Supreme Court. The Hon'ble Supreme court vide their order dated 16/02/2017 set aside the order of the Hon'ble Delhi High Court. The Apex court gave the option to the aggrieved parties to challenge the final notification dated 22/05/2015 before the appellate Tribunal under Section 9C of the

Customs Tariff Act, 1975. The applicants filed these appeals on 12/05/2017. The applicants submitted that as the final finding of the DA was set aside by the Hon'ble Delhi High Court and was brought into legal existence again by the order dated 16/02/2017 of the Apex court, it is prayed that the time limit to file the present appeals is to be reckoned from that date only.

3. On perusal of the applications and after hearing all the interested parties, we note that in view of the facts and chronology of the events, as narrated above, the applications for condonation of delay can be allowed and the appeals may be taken up for final hearing. Accordingly, the main appeals are taken up for disposal.

4. M/s Storage Media products Manufacturers and Marketers Welfare Association filed an application on behalf of domestic producers represented by M/s Moser Bear India Ltd. (DI), before the DA for initiation of Anti Dumping Investigation relating to imports of USB Flash Drives (subject goods) originating in or exported from subject countries. The DA conducted investigations by following the detailed procedure in terms of Rule 5 of Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles for Determination of Injury) Rules, 1995. He had issued exporter's/producer's questionnaire and based on the responses and also upon detailed enquiry in terms of the said rules arrived at his final finding which was notified on 19/12/2014. He recommended imposition of ADD of different

amounts on import of USB flash drive from subject countries. Based on the recommendation, the Ministry of Finance issued the impugned Custom Notification on 22/05/2015. The present appeals are contesting such imposition of ADD on the subject goods.

5. The learned Counsel appearing for the appellants submitted elaborately on the grounds of these appeals. The main thrust of his argument can be summarized as below :-

(a) the products scope for ADD investigation was not properly considered. The subject goods should have excluded USB flash drives with capacities of above 64 GB and USB flash drives of 3.0 specification. These products are not produced by the DI and, as such, no ADD can be imposed on them ;

(b) while examining the scope of products to be covered for ADD investigation, the DR failed in properly appreciating the difference between various types of USB flash drives based on storage capacity and also technological specification for transfer of data. The concept of "like article" has not been properly appreciated during the investigation and finding by the DA. ADD was imposed on USB flash drives of above 64 GB capacity without arriving at dumping margin and injury margin for those items ;

(c) the DA did not furnish transaction by transaction import data to the appellants and this has vitiated the entire proceedings in view of denial of natural justice. Reliance was placed on the decision of Apex court in **Union of India vs. Meghmani Organics Ltd. and ors.** reported in **(2016) 10 SCC 28**. The data analysis by the DA contained wide variety of products and the classification of these products were also made under different tariff headings. In such situation, it is important for the DA to disclose the methodology in refining the data and arriving at the volume of import. In view of import statistics being not correctly collected and examined, the entire injury analysis price undercutting/underselling analysis are tainted and are unreliable. This will seriously undermine the causal link analysis and ultimate recommendation.

(d) DI admitted to being an importer of Chip on Board (COB) based flash drive and, as such, the DI has no standing under Rule 2 (B) of the AD Rules.

(e) the appellants were cooperating during the investigation by the DA and filed all the responses. Denial of nil rate of duty for the appellants is not justified.

(f) Reliance was also placed on various decided cases to support the above submissions of the appellants.

6. The learned Counsel for the DI raised a preliminary objection on the *locus-standi* of the appellants. She submitted that the appellants are neither recognized as producers or as exporters of the subject goods from the subject countries. The relationship between these 4 appellants and role of each one in the manufacturing/marketing chain of activity has been well examined by the DA. The DA has recorded that Ireland, not being a subject country, normal value cannot be determined based on information of SDM, Ireland. Similarly, SDSS China also held to be not a producer of subject goods for determining normal value and dumping margin. The DA clearly recorded that the entire production of subject goods is admittedly carried out by a host of

other producers, majority of whom have not cooperated with the DA and they have not filed questionnaire responses in the present investigation. The learned Counsel submitted that the present appellants cannot be considered as either producers or exporters of the subject goods and, as such, they have no *locus-standi* to file these appeals challenging the levy of ADD on the subject goods.

7. On the merits of the findings issued by the DA, the learned Counsel for DI submitted that though the DI provided data at different times during the course of investigation, the DA had obtained data from DGCIS and did not rely on the private data submitted by the applicant. Since, the classification of subject goods have been made under wide variety of tariff headings, the DA examined the data with reference to the description and not by customs tariff classification. Individual transactionwise data is never provided, due to the commercial confidentiality. Regarding the treatment of "like goods" the learned Counsel submitted that clear finding has been recorded by the DA regarding the scope of investigation and how he considered all the USB flash drives are of similar nature, irrespective of the different levels of storage capacity. The learned Counsel supported the findings of the DA and the custom notification for imposition of ADD on the subject goods.

8. The learned Counsel for the DA submitted that all the issues now raised by the appellants have already been dealt with

elaborately by the DA. The appellants are mainly contesting the scope of subject goods for investigation and alleged incorrectness in the data which formed basis of such analysis. The DA initiated the investigation after *prima facie* satisfied that there is a case for investigation concerning import of subject goods. At the stage of *prima facie* satisfaction, the full accuracy of data is not subjected to thorough scrutiny. However, during the course of investigation, the data submitted by the applicants are verified and the DA also obtained data from DGCIS who is maintaining official data of import of various commodities into India. Regarding non-disclosure of transaction level data to the interested parties, the learned Counsel for the DA categorically stated that even for answering parliament questions DGCIS does not provide transaction level data due to commercial confidentiality. He further submitted that the transaction level data was provided for dumping investigation. It is the submission of the learned Counsel that the transaction level data cannot be made public in view of commercial confidentiality. However, the relevant non-confidential data which formed the basis of investigation and finding are always revealed to the interested appellants during disclosure and the comments were obtained. There is no violation of principles of natural justice in such procedure. He also reported that none of these appellants have been recognized as producer or exporter, individually by the DA during the course of investigation. The reasons are recorded in the final finding. The appellants had business arrangement in such a manner that individually they never stand in the full capacity of either a producer or an exporter of the subject goods from subject countries.

9. The learned AR for Revenue supported the imposition of ADD on the subject goods. He further submitted that the Hon'ble Supreme Court had set aside the order of Hon'ble Delhi High Court passed in a writ-petition filed by one of the appellants. The Hon'ble High Court finding was on the violation of principles of natural justice. It is submitted, on behalf of the Revenue that due process has been followed by the DA as per the procedure laid down by the AD Rules. All the points now being agitated in the present appeals have been addressed in detail by the DA and there is nothing new in the present grounds of appeal.

10. We have heard all the interested parties at length. We have also perused the case file including the final finding of the DA, written submissions made by the appellants and the decided case laws relied upon by them. To begin with, we note that the points which are now being agitated by the appellant have been dealt with elaborately by the DA in his final findings. The correctness of such finding can be examined one by one on the issues raised by the appellant.

11. Before we proceed with merits of the case, we take up the preliminary objection raised by the learned Counsels for the DI and the Revenue on the *locus-standi* of the appellants. A perusal of the final finding shows that these appellants did file

questionnaire response and participated in the proceedings by the DA. The DA did examine each one of their status by considering the nature of activity carried out by them and the inter-connectivity in business dealing among the appellants. Rebutting the challenge on *locus-standi* of the appellant, the learned Counsel for the appellants did submit that Section 9C of the Customs Tariff Act did not specify that the appeal should be by producer or exporter of impugned goods only. Even otherwise by their participation in the proceedings before the DA and they being seriously affected by the imposition of ADD, claimed to have a *locus* to contest the said findings.

12. We note that the very status of these appellants were part of the findings by the DA. The position of the appellants were examined in connection with determination of normal price, injury margin and other analysis made by the DA. He held that the data provided by appellant in Ireland cannot be taken for considering of normal price etc. as Ireland is not a subject country of investigation. Regarding the status of appellants in China it was observed that SDSS who physically exported the product to India do not have any legal right over the product concerned. SDM, Ireland declared the factory address of SDSS in China. SDM Ireland have toll processing contract with SDSS China and have technology service agreement with Sandisk Information (Technology) Shanghai Company Ltd.; for R&D services and distribution agreement with SDI Ireland and others. SDM Ireland sells products in India through SDI Ireland. The

export to India move directly from SDSS and the invoicing is done by SDM, Ireland in favour of SDI, Ireland who in turn issue invoice of subject goods to the Indian importers. The DA concluded that SDM Ireland owns the subject goods through out the production process, passes the legal title over the subject goods to SDI Ireland who in turn passes the legal right to the importers in India. The third party contractual arrangement for manufacture in China by Ireland company created a situation that none of the appellants in individual capacity fall in the category of the producer or exporter within the scope of investigation carried out by the DA for subject goods. However, since the issue of status of the appellants is inter-lined to their grievance in the present appeal, we find that these appeals can be taken up for a decision on merits. In other words, the merits of the case are inter-mixed with the status of the appellant and in our considered opinion it will be fit and proper to take up the appeals for disposal on various points raised by the appellants.

13. The first point to be considered is regarding the scope of subject goods under investigation for ADD. The appellants submitted that USB flash drives having storage capacity of above 64 GB and USB flash drives of 3.0 specification are not to be included for ADD enquiry. We are not in agreement with such proposition. It is in common knowledge that the USB flash drive, in use for two decades, have undergone dynamic changes in technology and storage capacity over a period. The very nature of technology is so dynamic that no distinction can be made

merely based on the capacity of storage of flash drives. Admittedly, a flash drive of 64 GB is not substantially different from a flash drive of 128 GB. It is in the degree of storage space. As the demand for more storage expands, the technology keeps pace with such demand. At the time of introduction of USB flash drive even storage of 64 MB was sufficient for a USB flash drive to be marketed. Now, we are in a situation where flash drives are regularly marketed with very huge storage space of 32 GB, 64 GB. As noted already, the technology is dynamic, we find no reason to make a distinction based on storage capacity to consider USB flash drives into two categories. It is also to be noted that the inter-changability of higher capacity flash drives, if available on competitive price, for low capacity usage also cannot be ruled out. It is not incorrect on the part of the DA to consider such dynamic change in technology and potential threat of like products while examining the case for ADD levy. Similar reasoning can be adopted in respect of flash drives with 3.0 specification. The advancement in technology and the possibility of inter-changeable use and threat to USB flash drive of 3.0 specification, also requires consideration. This aspect has been examined at length by the DA and he recorded the following findings :-

> "12. The various submissions made by the interested parties with regard to the scope of PUC and domestic like article and considered relevant by the Authority are examined and addressed as follows;

i. As regards the contention that the scope of the PUC defined in the present investigation is too wide and not appropriate, the Authority notes that the PUC in the present investigation i.e. USB Flash drives has been defined comprehensively and appropriately keeping in mind the technicality and functionality of the product. A USB flash drive is a data storage device that includes flash memory with an integrated Universal Serial Bus (USB) interface. USB flash drives are typically removable and rewritable data storage devices with different capacities. A USB flash drive consists of a small printed circuit board carrying circuit element and a USB connector insulated electrically and protected inside a plastic, metal, or rubberized case. USB connector may be protected by removable cap or retracted in to the body of the drive. USB flash drives come in various shapes, colour, sizes, capacities and even material.

ii. As regards the contention that the applicant has included all types of UFDs within the scope of the PUC, irrespective of the fact whether these types are being produced by the domestic industry or not and the differences in features such data retention capacity, erase cycle, read/write speed, weight etc, the Authority notes that the basic function of USB flash drive is data storage. Development of style, design, size and capacity of USB flash memory is an on-going process, depending upon the demand in the market. Accordingly the associated cost and price do also differ within a reasonable range. However, the differences in style, design, size, capacity etc. and the associated cost and price difference do not make the resultant products different. The USB Flash Drives ranging from 16 MB to 256 GB have essentially the same product characteristics and similar functional usage. Therefore, the

USB flash drives of all styles and sizes/capacities are technically and commercially substitutable in the market.

iii. As regards the contention that USB flash drives that are 2.0 and 1.1 compliant are not compatible with USB 3.0 ports, the Authority notes that the compatibility lies with the computer system and not the USB. The USBs that are 1.1, 2.0 and 3.0 compliant can function on the same computer system, but may not give the desired speed and efficiency. As informed by the domestic industry, they have the capacity to manufacture the 3.0 port USB, depending upon the demand in the market. The import of 3.0 port USB is minimal during the POI as the demand for the same is yet to pick up in the Indian market. The imports of 3.0 port USB flash drives constituted only 0.37% of the total imports of the subject goods during the POI.

iv. The opposite interested parties claimed that there is significant difference in cost of both the varieties of USB. But, as reported by domestic industry, often the price of 3.0 port USB in Indian market is lower than the other varieties. The landed price of imports shows that the consumers were getting the material at comparable prices indicating direct competition between 2.0 and 3.0 products. Commercial substitutability is also visible between 2.0 and 3.0 products as the price difference between 2.0 and 3.0 products is not significant. On the basis of relied upon imports data, the Authority notes that during the POI the import price of USB Flash Drives of 3.0 port and 2.0 port per piece is US$ *** and US$ *** respectively. Nonetheless, in a situation of dumping, the cost and price does not matter much. What matters is whether both the varieties of USBs are technically and functionally substitutable and whether one is capable of replacing the other in the market. If yes, then imposition of anti-dumping measures on the imports of one variety does not give the desired result since the other one being kept out of the purview of the anti-dumping measures can flood the market to the detriment of the domestic industry.

v. As regards the contention that UFDs supporting USB 3.0 ports have higher power saving capabilities and offer higher transfer speeds than those supporting USB 2.0 ports and therefore falls beyond the scope of the PUC, the Authority notes that power efficiency and functional speed may make USB 3.0 ports more efficient than UFDs supporting USB 2.0.ports, but do not make them different.

vi. It is a well-settled jurisprudence that quality and efficiency are not relevant for defining the scope of the Product under Consideration in an anti-dumping investigation. Since the products of both are ultimately used for data traveler, the consumers perceive 2.0 and 3.0 products as one single product. Therefore, it is a common man's knowledge that 2.0 and 3.0 products are directly competing with each other in the market and are therefore functionally substitutable. Moreover, the price difference between 2.0 port and 3.0 port flash drives is not significant enough to deter the consumers to optfor 3.0 port flash drive in the event of exclusion of the same from the purview of the anti-dumping measures. Further, speed per se in data/file transfer does not render any restraints on the end user.

vii. The Authority notes that USB 3.0 is compatible with USB 2.0 and 1.1. USB 3.0 flash drive can be plugged into a USB 2.0 port, but the transfer speeds will be limited by 2.0 specifications. Thus, UFDs supporting USB 2.0 ports and USB 3.0 ports are like articles and, therefore, the scope of the PUC need not exclude UFDs supporting USB 3.0 ports.

viii. As regards the contention that the domestic industry does not manufacture UFDs having a storage capacity of 64 GB or more and, therefore, UFDs having a storage capacity of 64 GB or more must be excluded from the scope of the PUC, the Authority notes that difference in data storage capacities does not make the USBs different.

ix. As regards the contention that Authority should not impose duties on products not manufactured by the Domestic Industry such as 64 GB, 128 GB and 256 GB USB Flash Drives, flash drives that meet the 3.0 USB specification and USBs with differentiated features such as the SanDisk Dual Drive and the SanDisk Connect Wireless Flash Drive, the Authority notes that all these varieties are technically and commercially substitutable in the sense of being flash drives and as per the Anti-dumping Rules it is not obligatory on the part of the domestic industry to manufacture all the substitutable varieties of a PUC.

x. As regards the contention that Circuits/Chip on board (COB) are merely intermediate products, which in themselves are not exported to India by any of the identified exporters and therefore, the subsequent inclusion of the volume of COB by the petitioner is without any legal basis, the Authority notes that the import data relied upon in the present investigation reported imports of COB based flash drives from the subject countries during the POI. The Authority further notes that COB or Chip on Board based flash drives for short is a type of flash memory that looks very similar to other types of flash drives. What makes COB based flash drives different than a traditional flash drive for example is that instead of having the controller chip and flash memory chip separate, on a COB based flash drive both the controller and the flash memory are built together.

xi. As regards the contention that if COB is considered as a part of the PUC, Mosar Baer should not be considered to be a part of the domestic industry on account of it admittedly importing COB, the Authority notes the clarification given by Mosar Baer that they have imported the components for manufacturing of COB flash drives. Therefore, the imports of components by Mosar Baer do not affect the standing of the company as domestic industry under the Rules.

xii. As regards the contention that the import statistics provided by the domestic industry was revised and later withdrawn, the Authority notes that although for the initiation of the investigation the imports data 19 provided by the petitioner from the secondary source was relied upon prima facie, the imports data received from the DGCI&S source has been relied upon in the present findings. Therefore, the changes import statistics provided by the domestic industry has no impact on the present findings.

xiii. As regards the contention that the domestic industry has not disclosed what methodology it adopted to segregate the imports of COB from the total import statistics which was originally before the authority, the Authority notes that the USB flash drive and COB flash drives are technically and commercially substitutable and therefore like article. The COB that is pre-assembled is as such described in the database relied upon by the Authority.

xiv. As regards the contention that the exact nature of how the domestic industry uses COB is not known, the Authority notes that the domestic industry has clarified in their submissions that they have imported components for manufacturing of COB flash drives and not fully built or ready to use COB in COB substrate based flash drives.

xv. As regards the contention that it is not clear whether COB is an input used in the manufacturing of a flash drive or is it merely a stage in the production process, on the basis of clarification given by the domestic industry, the Authority notes that COB is a component which has been imported by the domestic industry for manufacturing COB based flash drives.

xvi. As regards the contention that UFDs of different capacities cater to different consumers based on their uses and therefore they are different from each other, the Authority notes that UFDs are basically data saving devices differentiated by their style, design, size, capacity etc. Such differences do not make them different from each other as they are technically and commercially substitutable and functionally alike.

xvii. As regards the contention that the UFDs of different storage capacities differ with regard to the raw material i.e. NAND used, the Authority notes that NAND determines the capacity of memory of the UFDs, but do not make them different from each other as they are technically and commercially substitutable and functionally alike.

xviii. As regards the contention that costs and prices of the product under consideration vary significantly with changes in storage capacity and therefore they cannot be considered as alike, the Authority notes that the cost and price difference between capacity to capacity USBs is reasonable. Considering the functional substitutability, keeping aside some capacity USBs out of the purview of anti-dumping measures would encourage the exporters to dump the same and replace the domestic industry's products in the market.

xix. As regards the contention that a consumer requiring a UFD of 128 GB for large data storage will not opt for UFDs of storage capacity 32 GB, the Authority notes that nothing prevents the consumer to store the required data in more than one UFD.

a. As regards the contention that UFDs of higher storage capacities differ significantly from UFDs of smaller capacities based on the raw material used, costs, prices, function and uses, the Authority notes that considering the functional substitutability of the products, keeping certain categories of UFDs out of the purview of anti-dumping measures would enable continued dumping of the same and replace the domestic industry's products in the market.

b. As regards the contention that product type of higher capacity not manufactured by the domestic industry cannot be considered as 'like article' and should be excluded from the PUC the Authority notes different varieties of the PUC are technically, commercially and functionally substitutable and it is not mandatory on the part of the domestic industry to manufacture all the substitutable varieties of the PUC. The Authority further notes that the evidence available on record shows that domestic industry is manufacturing 2.0 up 64 GB and supplied in the market. Further domestic industry has capacity and capability to manufacture more than 64GB and supply the same as and when demand increased. Domestic industry is not manufacturing more than 64GB just because of negligible demand of higher GB in the relevant period.

> 13. In view of the above position, the Authority notes that USB flash drives of all styles and sizes/capacities are technically and commercially substitutable in the market. The Authority further notes that USB flash drives of 2.0 and 3.0 ports are also technically and commercially substitutable in the market. The Authority further notes that USB flash drives and COB based flash drives are also technically and commercially substitutable. In view of this position, the authority notes that none of the types/varieties of flash drives, submitted for exclusion by the opposite interested parties, can be excluded from the purview of the product under consideration.
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> 14. The Authority further notes that USB flash drives produced by domestic industry and imported from the subject countries are technically and commercially substitutable and are like article within the meaning and scope of Rule 2(d) of the Anti-dumping Rules.

14. As already noted by us, the DA has examined at length the points raised by the interested parties and on careful consideration, for the reasons recorded earlier in this order, we find no merit in the objections raised by the appellants regarding treatment of scope of products under consideration by the DA.

15. The next point is relating to violation of principles of natural justice by the DA by not providing transaction by transaction import data to the appellant. In this connection, we have already taken note of the submissions made by the learned Counsel for the DA. The appellants strongly contended that the DI gave different type of data at different times and there were huge

inconsistencies in this data indicating the volume of import as projected by the DI during the investigation is totally unreliable. We note that the DA had examined this issue. It is apparent that the DI submitted different sets of import data before the DA. This aspect was examined by the DA. He recorded that import data from DGCIS has been relied upon in the present investigation. As already noted that transaction level data could not be made available to the interested parties due to commercial confidentiality. Examining the application of Rule 7 of AD Rules, the DA recorded his conclusion regarding disclosure of non-confidential version of questionnaire responses. During the course of arguments, the learned Counsel for DA had submitted to the Bench, confidential data analysis made by the DA. We note that the DA had examined the DGCIS data with private CYBEX data submitted by the interested parties. On perusal of such examination, we are satisfied that the DA did act with deligence while collaborating the data during the course of analyzing the parameters for the need to impose ADD on the subject goods. We also note that many meetings have been held by the DA with interested parties and the aspects of import data have been disclosed and discussed. This is not being denied by any interested party. However, the dispute is relating to disclosure of complete transactionwise details. We find such disclosure is governed by the confidentiality condition put in by the DGCIS. We find the non-disclosure of individual transaction details by itself did not vitiate the proceedings of the DA and adversely affected the interest of the appellants. Here we note the following findings of the DA, are relevant :-

> "iii. As regards the contention that Authority has rejected the responses/submissions made by SanDisk in violation of the principles of natural justice, the Authority notes that adequate opportunities were provided to the interested parties including SanDisk during the course of the investigation. But, despite opportunities provided, all the parties involved in the value chain did not file EQ response with complete information concerning production and sale of the subject goods exported to India during the POI. In view of this position, the Authority did not grant individual margins to SanDisk.
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> iv. As regards the contention that the petition filed by the domestic industry was unreliable as it did not contain basic evidences relating to dumping, injury and causal link, the Authority reiterates that the present investigation was initiated on the basis of prima facie evidence furnished by the domestic industry showing dumping, injury and causal link and justifying initiation of the investigation in accordance with the Act and Rules. The essential facts of the investigation disclosed by the Authority amply revealed the presence of dumping, injury and causal link. Moreover, the present final finding is self explanatory in this regard.
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> ………..
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> ix. As regards the contention of the interested parties that the detailed transaction-by-transaction import statistics obtained from DGCI&S and relied upon by the Authority has not been provided, the Authority notes that the assessed volume and value of the imports of the subject goods relying upon the imports data obtained from

DGCI&S have been declared in this finding. The transaction-by-transaction import data, as claimed by the interested parties cannot be made available being confidential in nature and containing information concerning name of the importers, IE Code No. of the importers, Bill of Entry No. of the importers, Port of import, date of import, etc. In terms of Rule 6(7) of Anti-dumping Rules, "The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation," and in terms of the said provisions, the non-confidential information presented to it by the interested parties participating in the present investigation have been made available in the public file maintained by the Authority. DGCI&S provides the transaction level imports data to the DGAD for anti-dumping investigations only. Designated Authority is not authorized to make available the said transaction-by-transaction import statistics to the interested parties. In view of the above, the transaction-wise imports data obtained from DGCI&S and relied upon by the Authority in the present investigation is not made available to the interested parties".

16. We find no merit in the points raised by the appellants regarding inconsistency in import data and also violation of principles of natural justice.

17. The appellants contested the injury analysis price under cutting/under selling analysis on the ground that there were serious inconsistencies in such analysis. We have closely examined the final findings of the DA in this regard. We note that the causal link regarding existence of material injury, volume and

price effects of dumped imports on the prices of Domestic Industry, in terms of its price under cutting, under selling and price suppression and depression effects, other negative parameters as per the AD Rules have been examined by the DA. It is noted that import of subject goods from third countries are negligible and could not have caused injury to the DI. The economic parameters of the DI, the price under selling, price suppression and depression, of the subject goods has been examined in detail for different grades of subject goods starting from 1 GB to 64 GB and others of USB flash drives. The inconsistency in analysis as claimed by the appellants are based on comparison of CYBEX import data and DGCIS import data. As already noted that the DA has mainly relied on the data furnished by DGCIS. As such, we find no merit in the submission of the appellants that the analysis suffered inconsistency because of inconsistency between date of CYBEX and DGCIS.

18. On careful examination of various points raised by the appellant and the final finding of the DA, we find no merit in these appeals. Accordingly, the appeals are dismissed. The miscellaneous applications for stay are also disposed of.

(Order pronounced in the open court on 01/08/2017.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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