IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI
PRINCIPAL BENCH,

COURT NO.1

ANTI-DUMPING COD APPLICATION NO.AD/COD/50559 & 50560/2017-CU [DB] in
ANTI-DUMPING APPEAL NO.AD/51112 & 51113/2017-CU [DB]

[Arising out of Final Findings of the Designated Authority No15/29/2014 dated 01.07.2016 in Anti-Dumping Appeal No.AD/51112/2017-CU [DB] & 15/05/2015-DGAD dated 01.07.2016 in Anti-Dumping Appeal No.AD/51113/2017-CU [DB]]

M/s. Hindustan Organic Chemicals Limited ...Appellant

Vs.

Designated Authority and others ...Respondent

Appearance

Smt. Reena Khair, Advocate and Shri Rajesh Sharma, Ritu Jha, Advocates for the appellant

Shri Govind Dixit, DR for Dept. of Revenue, Respondent

Shri Ameet Singh, Advocate for the Designated Authority, Respondent-No.2

Shri M.P. Devnath, Advocate for Domestic Industry/Respondent parties

CORAM
HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision : 17.08.2017

FINAL ORDER No.56443-56444/2017

Per: B.RAVICHANDRAN

These two appeals are by M/s. Hindustan Organic Chemicals Limited (HOCL) against two different final findings of Designated

Authority (DA), Directorate General of Anti-Dumping and Allied Duties, Department of Commerce, Ministry of Commerce and Industry. Since the issue involved is almost identical, both the appeals have been taken up together. Before proceeding with the main appeals, we note that there is a delay of 246 days in filing these appeals, before the Tribunal.

2. The ld. Counsel appearing for the appellant submitted that though the final findings in both the cases were notified on 01.07.2016 recommending that there is no need for continued imposition of Anti-Dumping Duties on the import of subject goods from the subject countries, the appellant consulted their Counsels regarding feasibility of filing appeals against such final findings, in terms of Section 9 C of the Customs Tariff Act, 1972. Based on information that one of the other Domestic Industry, namely, M/s. S.I. Group India Pvt. Ltd. filed appeal based on RTI reply, the appellant further consulted their Counsels and finally filed this appeal. The ld. Counsel prayed for condonation of delay and for admission of these appeals.

3. On preliminary hearing of the matter, we find that though there is a long delay in filing these appeals, the admissibility of these appeals itself is a matter to be examined in terms of legal provisions of Section 9C of the Tariff Act, we note that these appeals may be taken up, condoning the delay.

4. Appeal No. AD/51112/2017 is against final finding No. 15/29/2014 dated 01.07.2016 of the DA pursuant to sunset review.

Originally, the DA initiated investigation regarding possible dumping of Acetone, originating in or exported from Japan and Thailand. After following procedure, the DA issued the final finding on 19.01.2011 recommending definitive Anti-Dumping Duty on Acetone. Consequently, Customs Notification No. 36/2011 – Cus - ADD dated 18.04.2011 was issued imposing ADD on the subject goods from subject countries, for 5 years. The period was extended upto 08.04.2016 vide Notification No.16/15-Cus ADD dated 22.04.2015. As per the request of the appellant, sunset review was initiated by the DA. On completion of enquiry the impugned final findings dated 01.07.2016 was issued by the DA. He recommended that there is no need for continued imposition of ADD on the import of subject goods from the subject countries.

5. In appeal No.AD/51113/2017, almost identical situation is with reference to Anti-Dumping Duty on phenol originating in or exported from Japan and Thailand. The DA vide his final finding dated 08.10.2010 recommended imposition of definitive ADD on the subject goods which were notified under Customs Notification No. 120/2010-CUS/ ADD dated 01.12.2010 for 5 years extended further up to 18.04.2016 vide Notification No.14/15-CUS/ADD dated 17.04.2015. The present impugned final findings dated 01.07.2016 is pursuant to a sunset review undertaken by the DA. On completion of enquiry, the DA recommended that there is no need for continued imposition of ADD on the subject goods.

6. The ld. Counsel submitted that the appellant is aggrieved by non-continuation of ADD on the subject goods in both the above proceedings. Hence, these appeals.

7. Ld. Counsel for the DA and the ld. AR for the Revenue contested the maintainability of these appeals on the ground that the DA is only recommending authority and there is no Notification or Order by Revenue Department and as such, these appeals are not maintainable under Section 9 C of the Tariff Act.

8. Ld. Counsel for Respondents 3, 4, 5, 6 & 7 supported the Final Findings of the D.A. on merit. He submitted that the D.A. followed the required procedure and recorded his findings. He opposed the appeals on merit.

9. We have heard all the sides and perused the appeal records. We note that, admittedly, in these 2 appeals before us, there are no orders by the Department of Revenue regarding imposition of Anti-Dumping Duty on the subject goods. In fact, the present appeals are only against the recommendations made by the DA. We note that similar appeals came up before the Tribunal, where there was no order by the Department of Revenue, Ministry of Finance to impose any ADD on goods in terms of Section 9 A. In the case of Panasonic Energy India Co. Ltd. & Others, the Tribunal vide Final Order No. 55305-55308/2017 dated 20.07.2017 observed as below:-

> *"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."

10. In the present cases, we find in the absence of any order or Notification issued by the Department of Revenue in terms of Customs Tariff Act or the Anti-Dumping Rules, 1995, no appeal lies with the Tribunal. Following the ratio of the Tribunal in the Final Order dated 20.07.2017, we hold that these appeals are not maintainable. Accordingly, the appeals are dismissed.

[Operative part pronounced in the Open Court]

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(B.RAVICHANDRAN)
MEMBER (TECHNICAL)

Anita