

**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/50230 &
50231/2017-CU [DB] in
ANTI-DUMPING APPEAL NO.AD/50456 & 50457/2017-CU [DB]**

[Arising out of Final Findings of the Designated Authority No15/29/2014 dated 01.07.2016 in Anti-Dumping Appeal No.AD/50230/2017-CU [DB] & 15/05/2015-DGAD dated 01.07.2016 in Anti-Dumping Appeal No.AD/50231/2017-CU [DB]]

M/s. SI Group India Pvt. Ltd.**...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.56445-56446/2017****Per: B.RAVICHANDRAN**

These two appeals are by M/s. SI Group India Pvt. Ltd.
against two different final findings of the Designated Authority,

Directorate General of Anti-Dumping and Allied Duties, Department of Commerce, Ministry of Commerce and Industry. The issue involved is similar in both these appeals and hence, these are taken up together.

2. Before proceeding with the main appeals, we note that the appellant filed Misc. Applications for condonation of delay in filing these appeals. There is delay of 125 days. The Id. Counsel appearing for the appellant submitted that both the final findings are dated 01.07.2016. On being aware of the final findings, they approached their Counsel for filing appeal against the same. The Counsel advised them on the legal provisions of Section 9C of the Customs Tariff Act, 1972. Later they approached the Ministry of Finance by filing an application under RTI Act to know the decision of the Ministry on such final findings. On receipt of reply, they filed these appeals. The Id. Counsel prayed for condonation of delay and admission of these appeals.

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

4. Appeal No.AD/50456/2017 is against final fining No.15/29/2014 dated 01.07.2016 of the D.A. consequent on a sunset review of anti-dumping duty on import of acetone

originating in or exported from Japan and Thailand. The D.A. had earlier investigated the issue of possible dumping of acetone coming from subject countries. On completion of the investigation, he issued the final finding on 19.01.2011 recommending imposition of definitive anti-dumping duty on acetone. 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 18.04.2016 vide Notification No. 16/2015-Cus-ADD dated 22.04.2015. The present final findings are consequent on sunset review undertaken by the D.A. as per the request of the appellants. In his final finding dated 01.07.2016 the D.A. recommended that there is no need for continued imposition of ADD on the import of subject goods come from subject counties.

5. The appellant submitted communication dated 23.12.2016, which is issued by CPIO of Department of Revenue as a reply to request for information under RTI Act. The Note-sheet of the file of the Ministry reveals that the recommendation of the D.A. for not continuing A.D. Duty was accepted by the Ministry of Finance.

6. In appeal No. AD/50457/2017, 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.

7. The appellant submitted a communication dated 23.12.2016 issued by CPIO, Department of Revenue in the form of reply to request for information under RTI Act. It is seen that the recommendation of the D.A. for not continuing A.D. Duty on import of phenol was accepted by the Ministry of Finance.

8. The Id. Counsel for the appellant submitted that they are aggrieved by non-continuation of A.D. Duty on the subject goods in both the above cases. It is prayed that the D.A. has erred in arriving at his conclusion. The appellants contested the findings of the D.A. on various grounds.

9. The Id. Counsel for the D.A. and the Id. A.R. for the Revenue contested the maintainability of these appeals on the ground that the D.A. is only recommending authority. There is neither any Notification nor any order by the Department of Revenue which can be subjected to appeal in terms of Section 9C of the Tariff Act.

10. The Id. Counsels appearing for the respondent No.3, 4, 5 & 6 contested the appeal on merit. It is submitted that the D.A. is correct in not recommending the continuation of A.D. Duty on the subject goods.

11. We have heard all the sides and perused the appeal records. These 2 appeals are basically against final findings of the D.A. recommending that there is no need for continued imposition of ADD on the import of acetone/phenol. There are no orders by the Department of Revenue regarding imposition of ADD. The appellants apart from contesting the final findings in sunset review by D.A., submitted replies received under RTI Act from the Ministry of Finance, Department of Revenue. We have considered the submissions of the Id. Counsel and the objections raised by the Id. Counsels for the D.A. and the Id. A.R. for Revenue. We are considering first the maintainability of these appeals before the Tribunal. We note that similar issue came before the Tribunal 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.”

12. We note, the present appeals are also filed in similar facts and circumstances as discussed above. 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. Accordingly, following the ratio of the Tribunal in the Final Order dated 20.07.2017 as mentioned above, we hold that the present 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)