

**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 : 17/08/2017.
DATE OF DECISION : 09/10/2017.

Anti Dumping Appeals No. 50696-50701 of 2017

[Arising out of the Notification No. 01/2017-Customs (ADD) dated 05/01/2017 based on Final Findings of the Designated Authority, No. 14/19/2015-DGAD dated 20/10/2016.]

M/s Anwar Jute Spinning Mills Limited	]	
M/s Sagar Jute Spinning Mills Limited	]	
M/s Pride Jute Mills Limited	]	
M/s Jute Products Importers Association	]	Appellants
M/s Sidlaw Textile Bangladesh Limited	]	
M/s Sharif Jute Mills Limited	]	

Versus

Union of India/DA	Respondent
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Appearance

Shri Jitender Singh, Advocate – for the appellants.

S/Shri Ameet Singh, Advocate for DA and Ms. Reena Khair, Advocate for DI and Govind Dixit, Authorized Representative (DR) – for the Respondent.

and

**Anti Dumping Appeal No. 50856 of 2017 with COD
Application No. 50430 of 2017**

M/s Indian Jute Mills Association (IJMA)	Appellant
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Versus

Union of India/DA	Respondent
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Appearance

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

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

**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. 57057-57063/2017 Dated : 09/10/2017

Per. B. Ravichandran :-

These are seven appeals against final findings dated 20/10/2016 of the Designated Authority (DA), Directorate General of Anti Dumping and Allied Duties, Department of Commerce, Ministry of Commerce and Industry, New Delhi and Customs Notification No. 01/2017 – CUS (ADD) dated 05/01/2017 issued by the Ministry of Finance, Department of Revenue, New Delhi. The Designated Authority (DA) initiated investigation concerning imports of jute products namely jute yarn/ twine (multiple folded/cabled and single), Hessian fabric and Jute sacking bags from Bangladesh and Nepal. Based on an application filed by Indian Jute Mills Association (IJMA), the DA initiated investigation in terms of Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. On completion of investigation, the DA recommended imposition of Anti Dumping Duty of different quantum in respect of various jute products originating in or exported from Bangladesh or Nepal. Based on the recommendations of the DA, the Department of

Revenue issued the above-mentioned customs notification imposing anti dumping duty on these jute products.

2. Out of these 7 appeals, six appeals are challenging the findings of the DA recommending imposition of AD duty on jute products. Five of the appellants are exporters in Bangladesh. The sixth one is the association of Indian importers. The Domestic Industry (DI) also filed an appeal contesting certain aspects of the finding by the DA.

3. The learned Counsel for the appellants who are opposing the imposition of AD duty mainly focused his arguments on the improper initiation of anti dumping investigation by the DA. He submitted that Rule 5 of AD Rules has not been strictly followed by the DA. It is submitted that Rule 5 (3) mandates that unless the DA determines that the application has been made by or on behalf of DI and accuracy and adequacy of the evidence provided in the application satisfies regarding dumping, injury and causal link between dumped imports and alleged injury no investigation can be initiated. The learned Counsel submitted that the DA failed in appreciating the distinction between different varieties of jute products namely yarn, fabrics and bags. He should have independently subjected these goods to separate investigation.

4. While considering the scope of DI, the DA has failed to appreciate that many constituent entities of DI are themselves importing or related to importing parties. Such entities should have been excluded from the investigation. The supporting

companies imported jute products from Bangladesh/Nepal and hence the DA has failed in proper examination of the scope of DI. In respect of some of the jute products there is no export price and investigation was faulty. For example when there is no export price for jute yarn there could not be any investigation of dumping.

5. The learned Counsel submitted that the DA should have complete data that justified prima facie existence of grounds for initiating investigation. The like articles – yarn, fabric and bag of jute are not substitutable with each other and the DA failed to define the proper scope for the subject goods which are investigated. As such, the learned Counsel appearing for exporters from Bangladesh and Indian importers of jute products, mainly focused his arguments on the faulty initiation of investigation by the DA. On this ground, he prayed for setting aside the recommendation of the DA and the customs notification imposing AD duty on the subject goods.

6. The learned Counsel for the Domestic Industry contested the above appeals. She submitted that what is relevant is the type of product. All products under investigation are jute articles. At the initiation stage, there is no legal role for the exporters and they cannot raise objection on initiation. She drew our attention to the provision of Rule 6 of AD Rules. Rule 6 (2) talks about public notice notifying the decision of the DA to initiate investigation to be forwarded to known exporters of the article

alleged to have been dumped. At that time, the DA shall also provide copy of the application made by the affected parties (DI) under Rule 5 (1). Post initiation all particulars were made known to all the aggrieved persons. On this ground there could be no grievance in these appeals.

7. Regarding satisfaction of the scope of DI, it is submitted that it is necessary for the DI to satisfy their status with reference to product and not under multiple product type. Reference was made to the provisions of Rule 2 (d) which defines "like articles". All the three categories of jute products are rightly covered under the said scope and there is no infirmity in the final finding on this account. It is the discretion of the DA while determining the scope of DI, to include or exclude a particular entity when there were some imports by such entity.

8. On the appeal filed by the DI, the learned Counsel submitted that there is a delay of 42 days in filing this appeal. It is submitted that the appellant being an Association of Industry had taken some time to convene committee meeting and to take legal opinion on the further course of action. Considering the administrative reasons for delay and also substantial justice should not be denied due to delay, she pleaded for condonation of delay of 42 days in filing the appeal.

9. Having examined the miscellaneous application we are inclined to condone the delay and admit the appeal. Accordingly, the appeal is taken on record.

10. On their appeal, the learned Counsel for the DI appellant submitted that the DA should have considered yarn, fabric and bags of jute as constituting one article for the purpose of recommending AD duty. Individual dumping margin for the responding exporters should not have been determined in view of deficient questionnaire response and delay in providing information for the relevant period. The learned Counsel submitted that based on these data submitted by the exporters the dumping margin has been fixed on the lower side. The appellant (DI) expressed their apprehension that the export prices claimed were high and not supported by comprehensive data. In the absence of reliable data, the dumping margin should not have been fixed on the lower side. It was also submitted that full particulars were not disclosed to the DI to present their case effectively.

11. The learned Counsel for the DA supported the final findings of the DA and drew our attention to the decision of the Tribunal in **Huawei Technologies Co. Ltd. vs. Designated Authority** in **2016 (334) E.L.T. 339 (Tri. – Del.)** to submit that the DA has followed the provision of Rule 5 and it requires only a prima facie satisfaction of the DA and no detailed enquiry is required to be carried out at that stage. The learned Counsel submitted all these appeals, now under consideration, are without merit and did not bring out any material evidence to persuade the Tribunal for a change in the final finding or customs notification.

12. The learned AR supported the customs notification imposing anti dumping duty. He reiterated that the initiation of investigation has been properly done and at that stage no detailed verification of various data was required. It is the preliminary satisfaction of the DA which is relevant. In the present case, the same is satisfied.

13. We have heard all the sides and perused the appeal record. We note that the learned Counsel for the exporters from Bangladesh and the Indian importers submitted a written note after the hearing. In the said note, he raised multiple issues contesting the final findings of the DA. It is clear that during the course of oral submissions before the Bench the learned Counsel only raised the issue of faulty initiation of the investigation by the DA and improper defining of the scope of DI during investigation. However, in the written submission various other points were also raised.

14. On the main issue which was only argued during oral submission by the learned Counsel, regarding the faulty initiation of anti dumping investigation, we have considered the factual background, carefully. On receipt of a written application from IJMA for initiation of anti dumping investigation for imposing anti dumping duty on import of jute products originating in or exported from Bangladesh and Nepal, the DA examined the application. On the basis of sufficient prima facie evidence of dumping of the subject goods, the DA initiated investigation in

terms of Rule 5 of AD Rules. A public notice dated 21/10/2015 was published in the Gazette of India, Extra ordinary, initiating anti dumping investigation.

15. Regarding the product under consideration following are the findings of the DA :-

"26. The product under consideration in the present investigation is "Jute Products" comprising of Jute Yarn/twine (multiple folded/cabled and single), Hessian Fabrics and Jute Sacking bags. At the time of initiation the classification was considered under Chapter 53 and 63 of the 1975 Act and further sub-classified under customs heads 5307,5310 and 6305. It was stated that the said customs classification is however only indicative and is in no way binding on the scope of the present investigation. However, it is later noted from the data filed by producers/exporters from Nepal that the exports of yarn/twine have also been made by exporters/producers of the product from Nepal under Custom heading no.5607, which covers Twine, Cordage, Ropes and Cables whether or not Plaited or Braided and whether or not impregnated, coated, covered or sheathed with rubber and plastics.

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30. As regards the definition of the product under consideration, the Authority notes that the raw material of all three products type under PUC is raw jute. From raw jute, first jute yarn/twine is produced. This jute yarn can either be sold in the market or processed further to make fabric and bag. Producers in India, Nepal and Bangladesh produce significant volume of the products from raw jute stage. Some producers produce fabric and bag from

purchased yarn while some are integrated backwards being composite.

31. With regard to like article in India, Rule 2(d) provides as follows:

"Rule 2(d) relating to the definition of "the article" specified that "like article" means an article which is identical or alike in all respects to the article under investigation, or in the absence of such an article, another article having characteristics closely resembling those of the article under investigation."

32. The petitioners claimed that the subject goods exported from subject countries into India are comparable to the goods produced by the domestic Industry. Jute products produced by the domestic industry and imported from subject countries are comparable in terms of physical and chemical characteristics, manufacturing process & technology, functions and uses, products specifications, pricing, distribution and marketing and tariff classification of the goods. Consumers can use and are using the two interchangeably. The two are technically and commercially substitutable and hence, should be treated as 'like article' under the AD Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the petitioner companies in India are treated as 'like article' to the subject goods being imported from the subject countries.

33. For the purpose of evaluating dumping margin, comparison of constructed normal value with ex-factory export price has been made amongst similar product types of Product under consideration. The same approach has been adopted for producers/exporters from Nepal as the

basis on information made available in the questionnaire responses and on site data verification”.

16. Against the above finding, the exporters and importers in their appeals, stated that the DA failed to identify the articles liable for AD duty in terms of Rule 4 (b). The term “jute products” comprises of more than one article and the DA has fallen in error in identifying three different products and clubbing them under the category of jute products. We, on careful examination of the facts of the case, note that the only source of these products is raw jute. There is no substantial transformation in the formation of jute yarn/twine to fabric or sacks. In our considered opinion the definition of “like article” under Rule 2 (d) of AD Rules, 1995 rightly covers the determination as done by the DA. The products under consideration need not be identical or homogenous with each other. In this connection, we refer to the decision of the Tribunal in **Huawei Technologies Co. Ltd.** (supra). The DA has examined the scope of products under consideration and recorded his reasons. We have perused the statutory scope, the findings of DA and the contest by the appellant against such finding. We are of the considered opinion that there is no infirmity in defining the scope of product under consideration in the present investigation. It is not tenable to have a separate investigation for jute yarn, fabric and bag. Such type of action, apart from being impractical, will result in certain anomalous results as these products are closely interlinked in trade and usage. As such, to consider them together as jute products for

the purpose of anti dumping investigation is proper and justified. In any case, we note that the conclusion arrived at by the DA in the final finding specified different description of goods like yarn, bag, fabric and recommended different duty rates for imposition with justified reasons. Accordingly, we find no merit in the submissions of the appellants against the process adopted by the DA.

17. The appellant (exporters and importers) also contested the examination of the DA regarding the standing of the DI. Rule 2 (b) defines "domestic industry" as below :-

"2(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry."

18. The requirement under the above definition is the applicants should have a major proportion in Indian production. The Tribunal examined the term "major proportion" in **Lubrizol India Pvt. Ltd. vs. Designated Authority** in **2005 (187) E.L.T. 402 (Tri. – Del.)**. As per the finding of the Tribunal in the said case, the standing of the DI has to be considered for the product as a whole and not articles or each type of product

individually. We also refer to para 6 (i) of Annexure I of AD Rules, 1995. It is stipulated while arriving at margin of dumping the DA shall make a fair comparison between export price and the normal value. The comparison shall be made at the same level of trade. Due allowance has to be given for differences in physical characteristics or any other differences which will affect the price comparability.

19. We have examined the final findings on the above issue. The DA specifically dealt with the particular parameters, product typewise and recommended AD duty accordingly. The same is clear from the findings recorded at paras 72 and 93 to 96 of the final finding.

20. Regarding the submission of the appellants that the DI is importing jute products we note that the DA examined the scope of DI and acted within his discretion in terms of Rule 2 (b) of the AD Rules. Even if some of the entities in DI were importing or related to importers of jute products, the DA is not prevented in considering those entities in DI while arriving at the overall scope of DI. The DA also examined this aspect and recorded his finding at paras 38, 40 and 45. It is specifically recorded that the imports made in investigation period alone are relevant. In cases where domestic producer has bought jute from a trader who procured the same from Bangladesh or Nepal, such procurement by the producer does not disqualify them from being treated as DI. It is also recorded that the volume of jute yarn produced in subject countries and procured by the DI is quite low and should not

disqualify them from being treated as DI. Referring to Rule 2 (b), the DA concluded that DI is defined as domestic producer as a whole. The DA has included as many as possible producers of the like products in India. Considering carefully the submissions of the appellant and the findings of the DA, we hold that there is no infirmity in defining the scope of DI by the DA.

21. As noted already in this order, the learned Counsel for the appellants (exporters/importers), during oral submission only contested regarding the initiation of the investigation by the DA. This aspect has already been dealt by us in the above finding. However, in the written note submitted after the hearing, the learned Counsel again brought in many other issues which were not argued during oral submission. It is a settled position of law that only arguments which are pressed by the appellant during the oral hearing need to be examined by the Tribunal. It is clear that the learned Counsel for the appellant confined his arguments only to the validity of initiation of investigation. He did not advert to any of the contest on merits or quantification or legality of recommendation for AD duty. Since, arguments were restricted to points already discussed, neither the Counsel for DI, Counsel for the DA nor the Revenue had opportunity to address and give their submissions except the ones already discussed above.

22. Though we have given clear reasons for examining only the submissions made in the oral argument, the additional points mentioned in the written submission is also looked into by us so that no grievance is left to the appellants on this ground. The

findings of the DA was contested regarding application on residuary rate for non sample cooperating exporters when dumping margin for sample exporter was found to be nil for Hessian Jute fabric. In this connection, we refer to Rule 18 of the AD Rules which states that the AD duty for non sample producers cannot exceed the weighted average margin of dumping established with reference to sample exporters. Proviso to Rule 18 (2) provides for disregarding any zero margin which are less than 2% of export price. We note that the DA has correctly examined this aspect and recorded his finding in para 72 (12). The weighed average of export price of Hessian fabric to India has been adopted for the purpose of evaluating dumping margin and injury margin for this product type, for the residual category producers/exporters.

23. Another point raised in the written note is whether adjustment for cash subsidiary granted by the Government of Bangladesh could be denied while arriving at ex-factory export price. We note that this aspect was specifically examined by the DA who recorded as below :-

"As regards claim on adjustment on export subsidy by the producers/exporters of Bangladesh, the Authority holds that this adjustment is not specifically provided under Article 2.4 of WTO provisions and that the Authority while reporting ex-factory export price in the disclosure statement had categorically stated that all adjustments as admissible under Article 2.4 of WTO have only been considered".

24. There is no irregularity in the above findings of the DA.

25. The appellants also questioned the claim of confidentiality in respect of DGCIS data. It is claimed that the data should have been disclosed under Rule 7 of AD Rules. We note that the DA had placed the DGCIS data in the public file and there was adequate opportunity for the appellants to examine and provide their comments. The cost of production and related data of the DI are necessarily of confidential nature and commercially sensitive. The same cannot be made available to others.

26. The appellants also raised various other miscellaneous points like failure of DA to consider the fact of procurement by the Government, of jute bags for injury analysis; the sales by DI remained static; construction of normal value is not proper and is contrary to Article 2.4 of WTO agreement. We have considered these points also. We note that the DA has made injury analysis taking into account the Government procurement of jute bags. This is clear from para 88 of the final findings. Regarding sales turnover of DI, the appellants did not support their claim with any verified data. We have no reason to question the analysis made by the DA which is based on the data furnished by the DI. Finally, regarding construction of normal value, we note the normal value was arrived at based on cost of production/cost of sales basis. The same was disclosed in the disclosure statement after considering the reasonable return on the cost of production

as per the consistent practice the DA arrived at the normal value. We could not find any infirmity in such finding.

27. In view of the above detailed analysis, we find no merit in the appeals filed by the exporters from Bangladesh and Indian importers of the subject goods.

28. We have also considered the appeal filed by the DI challenging certain aspects of the findings of the DA. The contest of the DI is mainly on the principles of natural justice and disclosure of incomplete data. The DI questioned the correctness of the data and non-disclosure of non-confidential version of the verification report of the DA. We note that the points raised in the appeal were also submitted by the DI, post-disclosure by the DA. On the question with reference to reliability of data, non-disclosure of non-confidential information, we note that the DA recorded that he had disclosed actual or indexed data considering confidentiality of information. We note that while the DI is supporting the imposition of AD duty on various items listed in the notification, they did make certain points regarding inadequacy of quantum of duty in certain cases. However, no pointed reference with reference to specific infirmity in the recommendations of the DA was made in their appeal. We find that the DA has examined at length the submissions of all the interested parties including the DI and proceeded as per the mandates of AD Rules, 1995. As noted already, we can examine only specific areas which are contested with contrary facts. In the absence of the same, we find that the detailed findings based on

the established procedure cannot be interfered with. Accordingly, we are of the considered view that there is no merit in the present appeal by the DI also.

29. In view of the above discussion and analysis, all the appeals filed against the impugned customs notification and final finding of DA are dismissed.

(Order pronounced in the open court on 09/10/2017.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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