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 : 19/09/2017.
DATE OF DECISION : 09/10/2017.

Anti Dumping Appeals No. 51344-51346 and 51490, 51489, 51403-51404 of 2017 with Stay Applications No. 50648-50650, 50723, 50722 and 50672-50673 of 2017

[Arising out of the Notification No. 23/2017-Customs (ADD) dated 16/05/2017 based on Final Findings of the Designated Authority, No. 14/06/2015-DGAD dated 10/03/2017.]

M/s G.M. Alloys Pvt. Ltd.	]	
M/s Unistone Panels Pvt. Ltd.	]	
M/s Alstrong Enterprises India Pvt. Ltd.	]	
M/s Bilcare Limited	]	Appellants
M/s Tetra Pak India Private Limited	]	
M/s Imperia Décor Industries	]	
M/s Alstone International	]	

Versus

Union of India/DA — Respondent

Appearance

S/Shri Ritesh Singh, Advocate, Sudhir K. Mathur, Senior Advocate (Sl. No. 7), Saumya Gupta, Advocate (Sl. No. 5,6,8,9) – for the appellants.

S/Shri Ameet Singh, Advocate for DA, M.P. Devrath, Advocate (respondent Sl. No. 13,14,15,16) and Ms. Reena Khair, Advocate for DI 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. 57064-57070/2017 Dated : 09/10/2017

<u>Per. B. Ravichandran</u> :-

These are seven appeals directed against final findings dated 10/03/2017 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. 23/2017 – CUS (ADD) dated 16/05/2017 issued by the Ministry of Finance, Department of Revenue, New Delhi. The said customs notification imposed Anti Dumping duty on aluminium foil originating in, or exported from China PR in terms of Section 9A of the Customs Tariff Act, 1975 readwith Rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. Appellants in appeal No. AD/51344/2017, AD/51345/2017, AD/51346/2017, AD/51403/2017 and AD/51404/2017 are against the final finding and the customs notification for not excluding the colour coated aluminium foil from the scope of product under consideration for imposition of Anti Dumping Duty. These appellants are engaged in the manufacture of aluminium composite panels for which colour coated aluminium foil is the major raw material.

2. Appellants in appeal No. AD/51489/2017 and ADF/51490/2017 are against the impugned final findings and customs notification for non-exclusion of Ultra Light Gauge (ULG) foil, zero is pinhole foil as well as aluminium foil of alloy 8021 below 40 microns. These appellants are users of these raw

material and they are aggrieved by the non-exclusion of these type of aluminium foils from the scope of product under consideration for imposition of Anti Dumping Duty.

3. The brief facts of the case are that based on an application filed by Domestic Industry for initiation of Anti Dumping investigation and imposition of Anti Dumping Duty concerning imports of aluminium foil originating in or exported from China PR, upon prima facie finding of sufficient evidence of dumping of the subject goods from subject country, injury to the Domestic Industry and causal link between the alleged dumping and injury, the Designated Authority (DA) initiated the said investigation in terms of Rule 5 of the AD Rules, 1995. Initiation notification dated 15/12/2015 was issued by the DA. The product under consideration in the investigation is "Aluminium Foil whether or not printed or backed with paper, paper board, plastics or similar packing materials of a thickness ranging from 5.5 micron to 80 micron excluding Alu Alu Laminate and Ultra Light Gauge Converted and Capacitor". The period of investigation is from 01/04/2014 to 30/06/2015. The injury investigation period is from April 2011 to March 2012, April 2012 to March 2013, April 2013 to March 2014 and the period of investigation.

4. After following the due process in terms of AD Rules 1995, the DA recorded his final finding dated 10/03/2017 and submitted the same to the Ministry of Finance. On consideration

of the said recommendations, the Ministry of Finance issued the Customs Notification dated 16/05/2017 imposing AD Duty on aluminium foil originating in or exported from China PR. The table annexed to the said notification indicated the amount of Anti Dumping Duty payable per kg. of import, depending upon the producer/exporter of China as detailed therein.

5. The learned Counsel appearing on behalf of the 5 appellants who are pleading for exclusion of colour coated aluminium foil from the scope of product under consideration, submitted that the DA did not record separate finding on the request made by the appellants for exclusion of colour coated aluminium foil from the scope of investigation and imposition of AD duty. The said colour coated aluminium foil is a basic and main raw material for manufacture of aluminium composite panel. The learned Counsel submitted that though the appellants submitted elaborate details regarding non-availability or non-manufacture of colour coated aluminium foil by D.I., no specific finding was recorded by the DA. In fact, it would appear that, by error, the impugned final findings excluded aluminium composite panel from the scope of product under consideration instead of colour coated aluminium foil. The learned Counsel submitted that the said colour coated aluminium foil was excluded from safeguard duty in 2009 and the same reason is valid even now. The Domestic Industry (DI) has no capacity to manufacture the said product. Accordingly, the learned Counsel prayed for an

order to exclude the colour coated aluminium foil from the scope of AD levy in terms of the above-mentioned customs notification.

6. The learned Counsel appearing on behalf of the Domestic Industry supported the submissions made by the above appellants on the excludability of colour coated aluminium foil from the scope of AD levy. It is submitted that the Domestic Industry do not manufacture the said product and, as such, there is no injury for them in case of import of the same.

7. The learned Counsel for the DA admitted that there is no separate finding recorded with reference to colour coated aluminium foil. As the appellants and the Domestic Industry are in agreement on this proposal, he has nothing further to submit.

8. We note that there is no specific finding regarding the inclusion or exclusion of colour coated aluminium foil in the final findings by the DA. However, in the overall scope of recommendation of AD duty on aluminium foils in the absence of specific exclusion the apprehension of the appellants will be correct to the effect that AD duty will get attracted by default. We note that the product is not being manufactured in India. The DI had specifically supported in the submissions before us that the product under consideration can exclude colour coated aluminium foil as the same is not manufactured in India.

9. We note all the parties before us are in agreement to the effect that the colour coated aluminium foil is not specifically discussed for Anti Dumping duty and there are valid grounds for its exclusion from the scope of the AD levy. Noting the consent as pleaded before us, we find it fit and proper to order for the exclusion of the said product, namely colour coated aluminium foil from the scope of Anti Dumping duty imposed vide Customs Notification dated 16/05/2017. Accordingly, we order that in para 1 of the said notification after entry (viii) the following shall be inserted :-

"(ix) colour coated aluminium foil".

10. Accordingly, the appeals filed by these 5 appellants are allowed in the above manner.

11. The other two appeals are for exclusion of certain types of aluminium foils based on the width (above 1614 mm) and also on pinhole count. In appeal No. AD/51489/2017 the appellants specifically contested the non-exclusion of ULG foil as the pinhole count is not within the requirement of the user industry. Though there are other submissions made in the appeal, the learned Counsel for the appellant restricted his arguments only on this issue.

12. In appeal No. AD/51490/2017, the appellant is aggrieved by non-exclusion of aluminium foil (alloy 8021) below 40 microns as the pinhole count is not within the requirement zero pinholes aluminium foil which is not capable of being manufactured by the DI. The DA has not given a specific finding on alloy 8021. Further, it was also contested that the findings based on the aluminium prices without reference to LME rates is faulty.

13. The learned Counsel for the Domestic Industry contested both these appeals on the ground that the DA has given his clear findings regarding product under consideration. The decision of the Tribunal in **Andhra Petrochemicals vs. Designated Authority – 2006 (201) E.L.T. 481 (Tri. – Del.)** is not relevant to the facts of the present case. In the present case, the aluminium foil is of various varieties and the scope of the product has been brought out in the analysis by the DA.

14. The learned Counsel for the DA submitted that the point raised now by the appellants regarding certain types of aluminium foil for the exclusion is mainly concerning the quality issue. The DA has clearly recorded in his findings regarding the availability of aluminium foil with required standards of pinhole count in India. It is submitted that M/s Hindalco Industries have the capacity and did supply the product of required quality. It is also submitted that the LME prices of aluminium is not considered as the varieties involved in the final products are substantial and

the reason for not considering the base metal price in terms of LME has been analyzed by the DA. The present appeal did not bring out any reason for varying the said finding.

15. The learned AR appearing for Revenue supported the findings of the DA and the Customs notification for imposition of AD duty.

16. We have heard all the sides and perused the appeal records carefully. Regarding these two appeals we note that the issue has been examined in detail by the DA who recorded as below :-

> "20. Ultra Light Gauge Aluminium foil – A number of interested parties have sought for exclusion of ultra-light gauge Aluminium foil from the scope of investigation. Some interested parties have sought exclusion of 5.5 micron ultra-light gauge stating that the domestic industry does not produce this kind of product type. A number of interested parties have sought exclusion of ULG foil on the grounds that ULG foil produced and supplied by the domestic industry does not meet the quality standards required for this product. Further, some interested parties have sought exclusion of ULG having width 1800 mm on the ground that the domestic industry does not produce and supply this width of material.
>
> 21. As far as exclusion of ULG 5.5 Micron is concerned, the domestic industry has provided documentary evidence in the form of commercial invoice showing product sale of ULG 5.5 Micron, Since the domestic industry has produced and supplied ULG 5.5 Micron, the claim of interested

parties, that the domestic industry did not produce and supply this type of a product is factually incorrect and therefore could not be accepted.

22. A number of interested parties have contended that the pinholes in the aluminium foil supplied by the domestic industry are far higher than the pinholes in the aluminium foil produced and supplied by the Chinese suppliers. It has also been contended that the consumers of ULG foil do not accept aluminium foil having pinholes beyond 150. It is, however, noted from the document provided by the parties requesting exclusion that Chinese producers and suppliers have produced and supplied the aluminium foil having pinhole upto 500. In fact, the product specification of the Chinese supplier clearly mentions pinhole as 600. It is also noted that there is no standard prescribed by BIS with regard to maximum pinholes that may be in an aluminium foil. Since product specification sheet of the Chinese producers and the domestic industry show pinholes in the region of 200-800 sq./mtr, it cannot be contended that the ULG produced and supplied by the Chinese producers have pinholes upto 500. The authority notes in this regard that if the government has prescribed certain standards of a product and the same are supplied by the domestic industry, the consumers cannot demand that the product type produced by the domestic industry does not meet the desired standards.

23. It has also been contended that the capacities for ULG available with the domestic industry are far lower than the demand for ULG in the country.

24. The DI also contended that Hindalco, one of the petitioner company, has significant capacity for this kind of product type. For this purpose, there are machines lying in stock and the company has not been able to install them

yet. M/s Hindalco has submitted that it has five production line, each of which having 18000 MT capacities, which are capable of making ULG Film out of which the company has installed and made operational only one product line till POI. Further, the company is now in the process of installing one more production line and has still not decided to install the three production lines and inventories. M/s Hindalco has submitted that dumping of this product type has actually prevented the company from making operational these production capacities.

25. M/s Ravi Raj, being one of the producers of the PUC has provided evidence that they are now in the process of setting up another production line having capacities of 21,000 MT which shall also be dedicated to the production of ULG. The authority notes that the present and potential capacities shall be 40,000 MT as against existing demand for this product type.

26. As regards the request for exclusion of ULG having 1800 mm width, the authority notes that the questionnaire response file by the importer and the import data do not show the import of ULG in desired width. Since the importer has not imported ULG having 1800 mm width, and further since the import data does not show import of ULG 1800 mm, in any case the argument of interested party appears without basis. Further, it is noted that PUC is eventually not consumed in such a vide width. In fact, the PUC is eventually consumed in much smaller width. Thus, the product type produced and supplied by the domestic industry and product type imported from China are interchangeably used. Since the domestic industry has produced and sold an article comparable to imported product, it would not be appropriate to exclude this kind of product from the scope of PUC.

> 27. As regards the contention that the domestic industry does not have sufficient capacity to meet the demand of ULG in the country, the authority notes if there is a demand supply gap in the country, the foreign producers can certainly fill the gap in the country by bringing the product at a fair price. Demand supply gap does not justify dumping of the product".

17. Against the above finding, the present appellants did not bring out any material fact to persuade us to interfere with the same. The appellants did raise certain quality parameters of a few types of aluminium foil to claim that these should be excluded as the required quality standards are not available from Domestic Industry. This has been answered after detailed analysis by the DA. We find no reason to interfere with such finding. The product type, admittedly covers a vide variety of finished goods. We note that the product specification of Chinese producers and the Domestic Industry did indicate the overall coverage of scope of the said goods. The appellants are submitting to make a fine distinction on certain qualities. As already noted, we do not appreciate that the scope of investigation and the imposition of Anti Dumping duty can be varied on such a fine distinction of certain qualities, the existence of the same itself has not been established categorically by the appellants. We are in agreement with the detailed findings recorded, as above, by the DA.

18. In view of the above analysis, we find no merit in these two appeals and accordingly the same are dismissed.

19. All the 7 appeals and the connected stay applications are disposed of in the above terms.

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

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK