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 : 13/10/2017.

Anti Dumping Appeals No. 51177-51178 and 51337 of 2017 with Stay Application No. 50644 of 2017

[Arising out of the Notification No. 12/2017-Customs (ADD) dated 11/04/2017 based on Final Findings of the Designated Authority, No. 14/20/2015-DGAD dated 06/03/2017.]

M/s Reliance Industries Ltd.]
M/s Nirma Ltd.] Appellants
M/s Detergent Manufacturers]
Association of India]

Versus

Union of India/DA Respondent

Appearance

S/Shri Setharaman and V. Lakshmikumaran – for the appellants.

S/Shri Ameet Singh, Advocate for DA, M.P. Devrath, Advocate 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. 57153-57155/2017 Dated : 13/10/2017

Per. B. Ravichandran :-

These three appeals are against final findings dated 06/03/2017 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. 12/2017 – CUS (ADD) dated 11/04/2017 issued by the Ministry of Finance, Department of Revenue, New Delhi. Based on the recommendations in the final findings of the DA, the Customs Notification imposed Anti dumping duty on Linear Alkyl Benzene (LAB) originating in or exported from China PR, Iran and Qatar and imported into India. Appellants in appeal No. AD/51177/2017 and AD/51178/2017 are contesting the fixation of separate rate of AD duty, on lesser side, for LAB produced by M/s SEEF Ltd., Qatar and exported by M/s QCPMD (Muntajat), Qatar and M/s Renish Petrochem, FZE, as mentioned in Sl. Nos. 6 and 7 of the duty table. The appellants are domestic manufacturers of LAB and had supported the initiation of Anti dumping investigation on the import of the subject goods.

2. Appeal No. AD/51337/2017 is by M/s Detergent Manufacturers Association of India challenging the final finding and opposing the imposition of AD duty on the subject goods.

3. The brief facts of the case are that M/s Tamilnadu Petro Products Ltd. and M/s Nirma Ltd. had filed application before the DA in accordance with the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 for initiation of Anti dumping investigation and for imposition of AD duty on

the imports of LAB originating in or exported from Iran, Qatar, China PR and Saudi Arabia. The DA initiated such investigation on these imports, excluding Saudi Arabia as the DA found negative injury margin on import from Saudi Arabia. In terms of the procedure laid down by the AD Rules, 1995 the DA conducted detailed investigation, analysed the data and information submitted by various interested parties and finally arrived at his recommendations published as final findings dated 06/03/2017. He recommended imposition of AD Duty on LAB originating in or exported from China PR, Qatar and Iran. Different rates were recommended for imposition of duty depending upon various combinations of country, producer and exporter.

4. Consequently, the Customs Notification dated 11/04/2017 was issued imposing Anti dumping duty at different rates on the subject goods.

5. The learned Counsel appearing for M/s Reliance and M/s Nirma submitted that the DA should not have recommended for individual Anti Dumping Duty (Sl. No. 6 and 7 of the table in para 94 of the final finding) in respect of SEEF, Muntajat and Renish, they should have been brought under residual category as per Sl. No. 9 of the said table. The learned Counsel submitted that M/s SEEF, producer of LAB in Qatar, exported LAB to India through their sole nominated exporter Muntajat. M/s Muntajat exported either directly or through two other channels namely M/s Renish and M/s West Ford. Admittedly M/s West Ford did not cooperate

during investigation and were notified as non-cooperative exporter. Muntajat exported through Renish also which should be considered as non-cooperative. As complete value chain is not available in these transactions individual dumping margins should not have been considered for separate rate of anti dumping duty. The learned Counsel submitted that the weighted average should be based on all transaction. In the absence of complete details of value generally and the transaction the individual dumping margin should not have been extended to these exporters.

6. The learned Counsel for the Detergent Manufacturers Association of India contested the final findings of the DA. First of all, it is submitted that the scope of Domestic Industry (DI) was not properly recognized. There were only two petitioners. M/s Reliance which came into the picture much later was considered as part of DI. There was no disclosure of injury analysis and no sufficient time after the disclosure statement was given to the appellants to submit their defence. Selective post disclosure hearing was conducted by the DA and not all the interested parties, including local consumers of LAB, were called. The relied upon evidences were not disclosed. The raw material price and profit margin were not disclosed. The delay in informing initiation of investigation has violated the principles of natural justice.

7. The learned Counsel for Detergent Manufacturers Association of India further submitted that there is no material injury to the domestic manufacturers of LAB. There are factors

other than imports causing injury to the DI and this was not properly analyzed. The LAB imported by the user in India is of different molecular constitution and, as such, AD duty should not have been imposed.

8. Contesting the above submissions of the domestic users of LAB, the learned Counsel for M/s Reliance and M/s Nirma submitted that the delay in initiation of investigation is due to filing of updated petition. Sufficient time has been given to all the interested parties to file their objections. The trend analysis of import of LAB has been correctly made. Two public hearings have been conducted by the DA. Calculation of normal value cannot be challenged by the importers of subject goods. No material facts were made available from China and Iran and the construction of normal value has been properly done by the DA. The learned Counsel further submitted that provision of Section 9A of Customs Tariff Act, 1965 has been properly followed in this case.

9. The learned Counsel for the DA submitted that the data submitted by M/s SEEF, Muntajat and Renish Petrochem have been duly examined by the DA. M/s West Ford has been declared as non-responding exporter. On considering the overall quantum of exports in different channels the DA arrived at the conclusion that the export through non-cooperative exporter constitutes only a small portion and, as such, the treatment of different channels of exports were considered. Individual dumping margins were arrived at for exports by Muntajat direct or through Renish.

The exports through West Ford was treated in the residual category. There is no legal infirmity in such finding by the DA.

10. Regarding the appeal filed by the domestic users of LAB, the learned Counsel for DA submitted that all the issues now in appeal were in fact examined in detail by the DA and specific findings have been recorded. He drew our attention to specific paragraphs in the final finding on each one of the points.

11. The learned AR representing the Revenue submitted that the DA has published the final findings and the same was available to all the interested parties. No representation has been made before the Revenue after the recommendations were published. The findings recorded in the DA have been examined by the Revenue and upon satisfaction of the correctness, the notification imposing AD duty was issued. There is nothing in the present appeals to warrant any interference in the said levy.

12. We have heard all the sides and perused the appeal records. We take up the appeals filed by M/s Reliance and M/s Nirma first for consideration. Both the appellants contested the recommendations of the DA for imposition of individual AD duty by determining individual injury margin for exports from Qatar. The main thrust of the argument by these appellants is that the DA did not obtain complete details of full value chain in transactions. The investigation is not proper as individual dumping margin could not have been arrived at in the absence of full transaction details and consequently the weighted average

could not be arrived at properly. It is alleged that West Ford having been declared as non-responsive exporter, alongwith Muntajat exports through Renish who has also not cooperated, results in incomplete analysis of relevant data undermining the very basis of recommendation of individual AD duty.

13. We note that Muntajat acted as sole nominated exporter of LAB produced by SEEF, Qatar. The exports are either direct or through two other channels namely, Renish Petrochem and West Ford. We have perused the questionnaire responses filed by Renish Petrochem and Muntajat. The full version of the responses were provided by the learned Counsel for DA for perusal by the Bench. Based on the questionnaire responses the DA examined the required parameters. It is seen that about 88% of exports of LAB produced by SEEF are solely exported through Muntajat either directly or through Renish. The DA has taken into consideration the transaction details as provided in questionnaire responses filed by these exporters and correctly concluded them to be cooperative exporter. West Ford who did not provide questionnaire details were treated as non-cooperative exporter. For non-cooperative exporter, the DA correctly fixed the anti dumping duty under residual category. We find that the DA examined the issue in great detail in his final findings (para 37). On analysis of the questionnaire response and details obtained during investigation, the DA has recorded that Renish has filed questionnaire response, wherein the CIF prices have been provided. The basis for normal value and ex-factory export price

are available for this channel of export from producer – SEEF and its associate, sole exporter Muntajat. The DA correctly rejected the claim to declare Renish as non-cooperative interested party. On careful consideration of questionnaire responses made available to us as well as the analysis made by the DA we have no reason to interfere with the conclusion drawn by the DA regarding individual injury margin and dumping margin resulting in recommendation of individual rates of anti dumping duty for cooperative exporters.

14. On the contention by these appellants regarding the selective participation of export channels in the investigation will jeopardize the overall findings, we note that the DA has followed the standard statutory provision in terms of Rule 17 of AD Rules, 1995. The required basic data is available in respect of substantial portion of exports from Qatar. The non-cooperative export channel is forming a small portion and, as such, has been relegated to residual AD duty. We find no infirmity in the recommendations of the DA on this ground. We also note that public hearings were held twice and the interested parties participated in the same. The DA made disclosure statement on 21/02/2017. Comments were provided from interested parties. The final findings were published on 06/03/2017.

15. We have also examined the various case laws relied upon by these two appellants to contest the recommendation for individual AD duty for exports from Qatar. We find that where the

trader/exporter fails to provide requisite sales information and if the sales by such trader/exporter is insignificant when compared to cooperative exporting/trading channels, then the DA can recommend individual duty rate for the participating trading channels which comprise the bulk of sales to India. We note in a situation where a producer sold the goods through multiple trading channel and one or more trading channel did not participate in the investigation, the DA can proceed to determine the need for fixing individual anti dumping rates based on the data provided by cooperating trading channels. We note such practice has indeed been followed regularly by the DA in various investigations. Reference can be made to final finding dated 10/04/2017 (Posco Korea RP), dated 12/01/2016 (LG Chem Ltd.) and 30/03/2016 (Zhejiang Quhua Flour Chemistry Co. Ltd., China). Considering the above analysis, we find that there is no merit in the contentions raised by these two appellants. Accordingly, we hold that these appeals are to be dismissed.

16. Next, we take up appeal filed by the M/s Detergent Manufacturers Association of India who are the users of LAB. The learned Counsel representing this appellant submitted that the scope of DI was not properly analyzed and recognized by the DA during the investigation. Injury analysis was not disclosed fully. M/s Reliance who entered the picture much later was considered as part of DI. It was also contended that selective post disclosure hearing, by not calling all interested parties and not providing sufficient time after disclosure statement has violated the

principles of natural justice. It was also alleged that relied upon evidence were not fully disclosed and there is a delay in initiating the anti dumping investigation. The learned Counsel also submitted that there are other factors which caused injury to the DI and not the import of LAB. The LAB imported at different molecular constitution and, as such, should not have been subjected to AD levy.

17. We have heard all the sides on the issues raised by the domestic users of LAB in their appeal. The first point is with reference to correct determination of domestic industry by the DA. Rule 2 (b) of the AD Rules defines domestic industry as under :-

> "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 such case the term 'domestic industry' may be construed as referring to the rest of the producers".

18. The initial application for initiating investigation on dumping of LAB was filed by M/s Tamilnadu Petro Products Ltd. and M/s Nirma Ltd. Two other producers of LAB in India, M/s Reliance Industries Ltd. and M/s Indian Oil Corporation Ltd. also supported the application for anti dumping investigation. While defining the scope of the DI for the present investigation, the DA considered

all the objections raised by the interested parties. The applicants accounted for major proportion of production and met the standing and the requirement for DI as per Rule 5 (3) and Rule 2 (b) of AD Rules. M/s Reliance during the course of investigation have provided data with reference to injury and cost of production. The same was considered by the DA. We do not find any infirmity in such finding.

19. Regarding delay in initiation of investigation it is clear that the DA found it appropriate to call for updated information from the petitioners for the period of investigation chosen for the case and thereafter issued the questionnaire with updated data. Sufficient time of 40 days was given to all the interested parties to filed questionnaire response and to provide other information to defend their interest. It is clear that the DA ensured that all interested parties get adequate opportunity to defend their interest.

20. With reference to contest on determination of normal value by the DA, we have examined the findings of the DA. We note that none of the parties in China have claimed market economy treatment. Accordingly, the DA has not determined the aspect of market economy and followed the regular practice of determining normal value on the basis of best available information as per Rule 6 (8).

21. Regarding determination of injury to the domestic industry, we have carefully considered the submissions of the domestic

users and the findings of the DA. The DA is required to examine injury in both the parameters of volume and price. It is clearly recorded that all parameters of injury need not show deterioration. It is the cumulative assessment of effect of such imports which is appropriate to determine the injury. In this regard both volume effect and price effect of imports have been dealt with elaborately by the DA. The contention of the domestic users that there were other factors causing injury to the domestic industry other than import of LAB, has also been examined by the DA. The volume and price of imports from third countries, developments in technology, export performance of the DI and productivity of the DI has been examined by the DA. It is apparent that decline in profits, cash profits and return on capital employed for the DI, is so high that the said decline cannot be attributed to decline in productivity. As such, we find no merit in the contention of the appellant in this regard.

22. The appellant also raised certain objection regarding disclosure and post-disclosure proceedings by the DA. The data provided by M/s Reliance was considered in order to have complete injury assessment and it is necessarily important in order to arrive at a proper conclusion. Regarding violation of principles of natural justice, we note that the DA followed the required process and procedure in disclosure and post-disclosure proceedings. In fact, two public hearings were held and views of interested parties were recorded.

23. Regarding difference in molecular weight between the imported and domestic LAB, we note this aspect has also been examined by the DA. It is recorded that the difference in weight of molecular is a result of difference in raw materials or processes. Apparently this has no impact on injury analysis.

24. On careful examination of the grounds raised by the appellant against the final findings, we find no merit in any of the contentions. Accordingly, the appeal is liable to be dismissed.

25. In view of the above findings, we dismiss all the appeals. Connected stay application also stand disposed of.

(Order pronounced in the open court on 13/10/2017.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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