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 : 06/11/2017.
DATE OF DECISION : 05/12/2017.

Anti Dumping Appeals No. 51318, 51400, 51397 and 51406-51407 of 2017 with Misc. Applications No. 50674-50675 of 2017 and Stay Applications No. 50627, 50669 of 2017

[Arising out of the Notification No. 15/2017-Customs (ADD) dated 03/05/2017 based on Final Findings of the Designated Authority, No. 14/29/2015-DGAD dated 24/03/2017.]

M/s Vardhman Textiles Limited	]	
M/s Arvind Limited	]	
M/s Indorama Industries Limited	]	Appellants
M/s Hyosung Vietnam Co. Ltd.	]	
M/s Hyosung Corporation	]	

Versus

Union of India/DA Respondent

Appearance

S/Shri V. Lakshmikumaran, Darpan Bhuyan, Advocates (for appellant No. 1,2), S/Shri Jitender Singh and Sharad Bhansali (For appellant No. 3,4), S/Shri Sanjeev Sachdeva, Ashish Chandra, Tanvi Praveen and Tarun Bhati (for appellant No. 4,5) – for the appellants.

S/Shri Ameet Singh, Ms. Albeena Advocate for DA, M.P. Devrath, Advocate (For Sl. No. 3 – R – 13,14,15,16) and Ms. Reena Khair, Advocate for DI, S/Shri Jitender Singh and Sharad Bhansali, Advocate (For Sl. No. 3) 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. 58202-58206/2017 Dated : 05/12/2017

Per. B. Ravichandran :-

These five appeals are against final findings dated 24/03/2017 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. 15/2017 – CUS (ADD) dated 03/05/2017 issued by the Ministry of Finance, Department of Revenue, Government of India, New Delhi imposing Anti Dumping duty on Elastomeric Filament Yarn (EFY or product under consideration PUC), originating in or exported from China PR, Korea, Taiwan and Vietnam (subject countries) and imported into India.

2. The DA based on a request from M/s Indorama Industries Limited (Domestic Industry – DI) initiated Anti Dumping investigations regarding import of subject goods from the subject countries. On completion of the detailed enquiry in terms of Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the DA published notification dated 24/03/2017 containing his final findings. He recommended imposition of AD duty of different rates for these imports from subject countries. The Department of Revenue, accepting the recommendations, issued the Notification dated 03/05/2017 imposing AD duty on the subject goods imported into India. M/s Vardhman Textiles Limited and M/s Arvind Limited filed appeals

in their capacity as user and importer of subject goods on which AD duty was imposed. M/s Hyosung Vietnam Company Limited and Hyosung Corporation, Korea RP filed appeals in the capacity as exporters of the subject goods to India. The DI is partially aggrieved by the above-mentioned final findings and Customs notification to the extent different quantum of AD duty should not have been fixed for different exporters.

3. First, we take up for consideration the two appeals filed by the user importers of the subject goods in India. The learned Counsel appearing for both the appellants submitted mainly on the following lines :-

(a) injury and causal link determination is not in accordance with the provision of Annexure II to the AD Rules ;

(b) determination of Non-Injurious Price (NIP) is not in accordance with the provisions of Annexure III to the AD Rules ;

(c) principles of natural justice have been violated in so far as the DGCIS data relating to imports from subject countries have not been made available to the interested parties. All the interested parties have not been called for the third oral hearing ;

(d) the determination of "like article" is not in accordance with Rule 2 (d) of the AD Rules.

4. The learned Counsel appearing for these two appellants elaborated the above points during his submission. He submitted

that the volume effect is to be evaluated in terms of sales, market share, capacity utilization, production and inventory levels. Doing the cumulative analysis of each of these parameters it can be clearly seen that there was no adverse volume effect due to import of subject goods. It is submitted that the sale by DI has increased and more demands were met domestically. The imports have come down during the period of investigation. As such, it is contended that there is no injury to the DI due to imports.

5. The learned Counsel also submitted that there is no price under cutting. The DA examined "price under selling" which is not an injury parameter at all. Reliance was placed on the decision of Hon'ble Gujarat High Court in **Nirma Limited (SCA NO. 16426 of 2016**).

6. The investigation conducted for safeguard duty concluded that there is no injury to DI during the material time. The period examined for safeguard duty was almost same which is considered by the DA in the present case. Admittedly, the DI increased the profit and capacity utilization. The increase in inventory is not due to any injury attributable to imports. Drawing specific reference to para 96 of the final finding, the learned Counsel submitted that the conclusion drawn is based on wrong appreciation of facts.

7. The principles of natural justice have been violated in the present investigation. The appellants were not called at the time

of third oral hearing which denied them the opportunity to put-forth their case in full. They have not been provided full details of DGCIS statistics which deprived them the chance to defend their case.

8. Finally, the learned Counsel submitted that the goods manufactured by the DI cannot be considered as like articles with imports. The goods produced in India have low finished quality, stretching in the fabric is not as per the desired level, growth and recovery of the fabric upon stretching is not as desired by the user industry. The finding by the DA was not based on actual facts as there is no basis to submit on machine compatibility as the same is irrelevant. The importers have not raised any complaint against the imported subject goods.

9. The learned Counsel for the DI contesting the appeals by the user – importers, submitted that the only unit in India (M/s Indorama Industries Limited) started production in March 2012 only. As a new company the DI took some time to stabilize. It is clear from the investigation conducted by the DA that the imports have gone up from 2013-2014 to 2014-2015. There is no profit for DI and there is only decrease in loss during the injury period. Further, the learned Counsel for the respondent DI submitted that the investigation for safeguard duty is not directly relevant for a finding by the DA. The findings for safeguard duty were not appealable and are for a different scope. Contesting the reliance placed by the appellants on the decision of Hon'ble Gujarat High

Court in **Nirma Limited** (supra), the learned Counsel submitted that the same is with reference to injury margin not to be connected to price under selling.

10. The learned Counsel appearing for Hyosung Vietnam Co. Ltd., Hyosung Korea RP, submitted that the impugned final findings and the Customs Notification are not justifiable for various reasons with reference to appeal filed by Hyosung Vietnam. He submitted that the calculation of net ex-factory export price was incorrect. The entire income of Hyosung India office was applied for adjustment instead of commission amount for the PUC received by Hyosung India. Hyosung India deals with several products. The income under "commission" received by Hyosung India is on account of sales and marketing services. The Commissioner relatable to PUC only should have been taken for consideration. The factual position was brought to the notice of the DA. If proper data was considered by the DA then the net ex-factory export price would have resulted in *de minimis* dumping margin. Further, there is violation of principles of natural justice. The DA has not considered the evidences submitted by the appellants and acted in a pre-determined manner. The order was not reasoned based on the evidences submitted.

11. The learned Counsel elaborating the grounds of appeal filed by Hyosung Corporation Korea submitted that they should not have been included in the notification for imposition of AD duty. The DA recommended nil duty rate. However, the name of the

appellant was included in the table for AD duty overlooking the requirement of termination of investigation in situations where the dumping margin is less than 2% of the export price. A reference was made to Rule 14 of AD Rules. Relying on various decisions, the learned Counsel submitted that the anti dumping investigation against the appellant should have been terminated. He prayed for removing the name of appellant from the customs notification.

12. Rebutting the submission made by the learned Counsel for Hyosung Vietnam and Hyosung Korea, the learned Counsel for the DI submitted that the appellant did not give details of commission and other income properly before the DA. There was no clear and transparent disclosure of income and other financial transactions by the appellant (Hyosung Vietnam) with reference to their India office. By non-disclosure of relevant facts, the appellant actually suppressed material evidence and cannot plead against the findings of the DA.

13. On appeal filed by the Hyosung Korea, the learned Counsel for DI submitted that Rule 14 of AD Rules does not contemplate part closure of investigation. The DA has to consider the overall import picture for the PUC and determine various connected parameters before recommending any further action. As such, he supported the findings of the DA with reference to notification of AD duty on the export made by these two appellants to India.

14. M/s Indorama Industries Ltd. (DI) filed an appeal to contest, partially, the findings of the DA. The learned Counsel appearing for the DI submitted that the DA erred in accepting excessive claims of confidentiality on the part of the exporters. Several additional documents were taken on record without following the provisions of Rule 7 of AD Rules. The DI was not provided effective opportunity to deal with the submissions of producer/ exporters at different stages. The DA erred in determining the dumping margin with respect to Hyosung group. The methodology adopted for reaching normal value and export price for each of the cooperating exporter was not properly explained. The learned Counsel also contested the fixing of individual dumping margin for combination of producers/exporters. Such dumping margins will dilute the effect of AD duty as the producer will resort to supply through an entity with lowest dumping margin.

15. The learned Counsel for the DA and the learned AR for Revenue supported the final findings as well as Customs notification imposing anti dumping duties. They drew our attention to specific findings recorded by the DA with reference to each one of the contentions now raised by the appellants. It is submitted that there is nothing in the present appeals which can legally or factually contest the findings recorded by the DA. The DA has gone through the process of investigation and final finding in a methodical and prescribed way. They prayed for dismissing the appeals as having no merit.

16. We have heard all the parties to the dispute as summarized above. We have carefully considered the final findings and the customs notifications alongwith the appeal papers.

17. On the appeal filed by the domestic importers and users we note that the main contest is with reference to imposition of anti dumping duty. It is claimed that there is no injury to the DI and there is no reason for imposition of AD duty. The thrust of the argument is that the DI is doing well and is having good commercial return and there is no apparent injury caused to the DI due to import of the subject goods. In this connection, we note that the various submissions with reference to increased capacity utilization, better financial position of the DI were specifically taken into account by the DA while examining the parameters for investigation. It is clear that in spite of cost of sales of DI declining during POI and the DI operating on full capacity, still could not make profits due to price pressure exerted by the dumped imports from the subject countries. It is also to be noted that the DI was forced to match the discounted landed price offers by the exporters for subject goods. Even though the selling price has shown upward trend upto 2013-2014 it declined in the POI. The selling price consistently remained below the cost of sales of the DI resulting in continued loses due to overall pressure on the selling prices. A detailed analysis made by the DA regarding the status of the DI vis-à-vis the imports of subject goods clearly brings out that in spite of improved commercial parameters like capacity utilization, market share

etc. the DI could not make any profit. We are in agreement with the DA in his finding that the decline in the production and the capacity utilization in the growing market reflect the adverse impact of imports from the subject countries on the DI. The increase in production in POI as compared to base year is largely due to the fact that base year was first year of operation of DI. However, production declined in the POI when compared to preceding year 2014-2015. There is no ground to support the claim of the appellants that there is no material injury to the DI due to imports of subject goods. It is clear that a comparison of landed values with the non-injury prices of the DI reveals significant price under selling. The DA had concluded that the performance of DI remained negative in respect of profit, return on investment and inventory level. In the face of such conclusion based on facts we have no reason to arrive at any contrary finding.

18. We have also considered the decision of Hon'ble Gujarat High Court in **Nirma Limited** (supra). The learned Counsel for the appellant submitted that the decision of the High Court that the DA cannot rely on "injury margin" and "price under selling" while considering the question of likelihood of injury to the DI. In the present case, we have noted that various commercial parameters of DI have been examined by the DA. Cumulatively based on such parameters the final finding of the DA with reference to material injury to the DI has been recorded. We find no infirmity in the analysis and the finding recorded by the DA. In

the facts of the present case, as recorded by the DA elaborately at para 94 and 95 of the final finding. We note that the reliance placed by the appellants on the case laws are not appropriate. In **Bridge Stone Tyre Manufacturing (Thailand) vs. Designated Authority – (2011) 270 E.L.T. 696**. The Tribunal was examining a situation where the DI made increased profit. Considering the facts of the said case, the Tribunal held that there is no injury to the DI considering various parameters like production, sales, profitability etc. Similarly, in **Forum of Acrylic Fibre Manufacturers vs. Designated Authority – (2006) 202 E.L.T. 257**, the Tribunal was examining a case of no dumping for imports from U.K. It was also recorded that the profits of domestic industry have improved during the POI. Further, in **Indian Spinners Association vs. Designated Authority – (2004) 170 E.L.T. 144**, the Tribunal observed that the DI should consider whether there has been a significant price under cutting by the dumping import as compared with the price of like product in India. Applying the facts as recorded in the said case, the Tribunal rejected the appeal by the DI. As noted earlier in this order, all commercial parameters with reference to DI have been examined in detail and such facts are not identical to the cases relied upon. Further, it is relevant to note that there is only one unit in the DI which started operation in the year 2012 and engaged in commercial production and sale of the PUC with gradual increase in production and sales in India. The various relevant parameters which will determine the material injury of the DI has been examined by the Original Authority and as already noted, we have no reason to interfere with the same. Accordingly, there is no merit in the appeals filed by the user – importer of PUC in India.

19. We have also considered the other submissions with reference to principles of natural justice. We note that more than one hearing was held with due notice. The appellants did submit their side of the case. In our opinion, there is no breach of due process in the present case.

20. On the question of "like articles" we have noted the detailed examination by the DA. The subject goods are described in deniers. DI has full range of capacity; presently producing upto 150D only. The question of quality comparision also has been examined by D.A. We find no infirmity in the findings by D.A.

21. On the appeals filed by Hyosung Corporation, Hyosung Vietnam we note that Hyosung group had stated that no commission has been paid to Hyosung Delhi office, however, Hyosung Vietnam provides monetary support to Hyosung Delhi office which undertakes various activities on their behalf. We note that the DA had asked Hyosung Corporation and Hyosung Vietnam to respond to the representation of DI regarding payment of large commission to their Delhi office. The submissions made in this regard have been examined by the DA to arrive at the net ex-factory export price for Hyosung group. In fact, the producer had exported directly to India. The

adjustments on account of inland freight, overseas freight, handling charges, marine insurance, credit cost, bank charges and drawback reimbursement have been accepted after necessary verification. An additional adjustment has been made on account of commission paid to their Delhi office. The DA accordingly arrived at normal value and export price for the producer/exporter. We find no infirmity in such process. Accordingly, there is no merit in the appeal filed by Hyosung Vietnam.

22. On the appeal filed by Hyosung Corporation, Korea we note the DA had recommended nil duty rate for PUC produced and exported by Hyosung Corporation from South Korea. The Customs notification also did not impose any anti dumping duty on such imports. The appellants claimed that the DA should have terminated the anti dumping investigation against the appellant on the ground of *de minimis* dumping margin. We have perused Rule 14 of AD Rules. The said rule provides for the Designated Authority to issue public notice terminating an investigation under various circumstances. The said rule does not provide for part termination of investigation with reference to single exporter or producer. A combined reading of the said rule indicates that the termination of investigation is with reference to a particular PUC which will include 'like products'. As such, we find no justification in the claim made by the appellant for termination of the investigation only for them. In any case, as already noted no AD duty has been recommended or imposed on the exports made

by the Hyosung Corporation, as mentioned in Sl. No. 7 of the table attached to the Customs Notification dated 03/05/2017. As such, there is no merit in the present appeal.

23. Finally, we take up the appeal by the DI. The DI is partially aggrieved by the impugned final findings and customs notification. We have perused the grounds of appeal. The various points raised by the appellant are generic in nature lacking in specific details. These are nothing but a general assertions. On careful consideration of the grounds mentioned by the DI, we are unable to discern any specific point of grievance with supporting details to enable us for a detailed examination to address such grievance. The DI appeared to be mainly concerned with individual dumping margin for different combination of producers/exporters. This, they apprehend, will result in dilution of effect of AD duty as producer will supply through entity having lowest dumping margin. We are not able to appreciate such assertion. The relationship between various producers and exporters in their financial dealing and the export value and other parameters were examined by the DA in his findings. We could not appreciate any basis for such apprehension expressed by the DI. The DI also submitted that the DA allowed excess claim of confidentiality. Here again, no specific instances were brought to our notice. It is claimed generally that the producer/exporters claimed excess confidentiality. In the absence of specific instances, we could not identify the source of grievance for the DI. The applicability of Rule 7 of AD Rules to various data

submitted by interested parties have been examined by the D.A. The sufficiency of the claim of confidentiality has been recorded by D.A. As such, we find no merit in the present appeal filed by the DI.

24. In view of the discussion and analysis, recorded as above, we find no merit in any of the appeals filed against the impugned final findings and the customs notification imposing anti dumping duty on the subject goods imported from subject countries. As such, all the appeals are dismissed.

(Order pronounced in the open court on 05/12/2017.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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