

**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 : 15/01/2018.
DATE OF DECISION : 15/01/2018.

**Anti Dumping Appeal No. 51787 of 2017 with ROA
Application No. 50984 of 2017**

[Arising out of the Notification No. 53/2016-Customs (ADD)
dated 25/11/2016 based on Final Findings of the Designated
Authority No. 14/9/2015-DGAD dated 20/10/2016.]

M/s Indian Metals and Ferro Alloys Limited Appellant

Versus

Union of India/DA Respondent

Appearance

Shri Mansimran Singh, Advocate – for the appellant.

Shri Suresh Kumar, Advocate For DA, Shri M.P. Devnath,
Advocate for DI & Sh. R.K. Manjhi, 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. 50336/2017 Dated : 15/01/2018

Per. Justice (Dr.) Satish Chandra :-

By the miscellaneous application the appellant seeks to
restore their appeal which was dismissed on 04/12/2017 for non-
prosecution. Accepting the plea the appeal is restored.

2. By this appeal the appellant contested Customs Notification No. 53/2016-Customs (ADD) dated 25/11/2016 imposing anti-dumping duty on "low ash metallurgical coke" originating in or exported from PR China and Australia.

3. The learned Counsel for the appellant submits that first of all they have challenged the said notification in the writ-petition (C/9284 of 2017) before the Hon'ble Delhi High Court. The High Court vide order dated 31/10/2017 has asked the appellants to approach the CESTAT within a period of two weeks. In compliance of the order, this appeal has been filed.

4. With this background, we have heard all the sides. It appears that the said notification has already been assailed by the other parties in the case, M/s Kalyani Steels Limited and M/s Association of India Mini Blast Furnaces, on identical grounds, before the Tribunal. But the appellant at the time, was perhaps, before the Hon'ble High Court. No new ground has been taken by the appellant in the present appeal.

5. The learned Counsel for DI categorically submits that the issues now raised in the present appeal were the same as dealt with by the Tribunal in the final order No. 52735-52736/2017 dated 07/04/2017, where it was observed that :-

"9. We have perused the initiation notification dated 30/12/2015 and the final findings dated 20/10/2016 of the

DA, carefully. The DA has examined the application for initiating the anti-dumping investigation and, upon prima facie satisfaction, commenced the investigation. Regarding the product under consideration and like articles the DA recorded the following findings :-

"8. The product under consideration (PUC) in the present investigation is Low Ash Metallurgical Coke (Met Coke). The product under consideration does not include other Metallurgical Coke with high ash content which is in excess of 18%.

9. Low Ash Met Coke is produced by destructive distillation of coking coal in the absence/regulated presence of oxygen at high temperatures (ranging between 1100 to 1350 degree centigrade) causing the coal to soften, liquefy and then re-solidify into hard but porous lumps. Met Coke is a form of carbon along with some mineral and residual volatile material. Met Coke is used as a primary fuel in industries where a uniform and high temperature is required in kilns or furnaces.

10. Met Coke is used in various industries including pig iron, foundries, ferro alloys, chemical, integrated steel plants and others. Met Coke is normally produced and sold in terms of weight expressed in KG or MT. The Met Coke imported into India is also with Low Ash content and that the ash content does not exceed 18%. Low Ash Metallurgical Coke is classified under Chapter Heading 27040030 of the Customs Tariff Act, 1975. The customs classification, however, is only for indicative purposes and is not binding on the present investigation.

11. The interested parties have merely quoted from the investigation conducted for Met Coke in the past without advancing any justification for the exclusion as to how Met Coke with ash content of above 15% can be excluded from the purview of the current investigation. It is stated by the domestic industry that the Met Coke with Ash content between 15%-18% is technically and commercially substitutable with the Met Coke below 15%. The impact of using Met Coke between 15%-18% in place of Met Coke below 15% would be reduction in productivity and that it would be compensated with the cost savings on account of lower price of Met Coke with ash content between 15-18% as compared to Met Coke of ash content below 15%. Further, the input-output norms laid down by the DGFT are not binding on the product definition in the anti-dumping investigations as they are prescribed for different purpose. With regard to the exclusion of Met Coke containing low ash (upto 12.5%), low phosphorous (up to 0.018%) and low sulphur (upto 0.65%) or with moisture content of upto 5% from the scope of the product under consideration, it is noted that the domestic industry has provided sufficient evidence to show that they have produced and supplied the subject goods of the above description. The Authority also notes that there is no case for exclusion of lump coke from the scope of the product under consideration. It is noted from the third party test reports supplied by the domestic industry that it manufactures Met Coke with ash content below 12.5%. The Authority also notes that it does not require any specific technology to manufacture Met Coke with low or high ash content. The production of Met Coke is dependent

upon the ash contained in the coking coal. Lower the ash content of coking coal, the lower ash content would be there in Met Coke produced and vice versa. Therefore, there is no case of the interested parties for any exclusion from the product scope under the investigation.

12. With regard to like article, Rule 2(d) of the Rules provide as under:

"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation."

13. After considering the information on record, the Authority has determined that there is no known difference in the subject goods produced by the domestic industry and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from the subject countries are comparable in terms of their characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods. The users are using the dumped goods from the subject countries and the goods produced by the domestic industry interchangeably".

10. The appellants contested that the DA has wrongly considered the scope of subject goods and metallurgical coke having ash content of above 15% and less than 12.5% should have been excluded from the scope of subject goods. In this connection, we have carefully considered the submissions made by the DI and the findings recorded in the DA. During the course of argument and written submissions thereafter, the DI produced documentary evidences to show that steel companies used metallurgical coke with ash content above 15% in their blast furnace. Documents also show recent supply to the appellant units, of metallurgical coke with ash content below 12.5%. Documentary evidences submitted also indicated that user industry of metallurgical coke received product with ash content of below 12.5% during the period of investigation. Supporting evidences were also submitted to show similar supplies during injury period and proof of import low ash coking coal by DI. We have perused these documentary evidences, which were claimed as confidential information, and we find that the findings of the DA on the scope of subject goods cannot be faulted either in law or on fact.

11. The appellants strongly contested the findings of the DA on the ambit and scope of Domestic Industry as considered by the DA. The main thrust of the argument is that captive consumption producers should not have been excluded from consideration. In this connection, we note that the DA recorded as below :-

"16. The application has been filed by the Indian Metallurgical Coke Manufacturers Association (IMCOM) on behalf of the domestic producers of Low Ash Metallurgical Coke in India, namely, Saurashtra

Fuels Pvt. Ltd., Gujarat NRE Coke Ltd., Carbon Edge Industries Ltd., Bhatia Coke and Energy Ltd. and Basudha Udyog Pvt. Ltd. Further, the applicant has stated the present application is filed by or on behalf of the manufacturers who are marketing / selling their production of Met Coke. It is stated that there are two different categories of producers of Met Coke in India, i.e., manufacture of Met Coke for captive use and manufacture of Met Coke for marketing / sales. The manufacturers who are producing Met Coke for their captive use are being excluded from the purview of the current investigation as their production is not in competition with the imported subject goods. Further, the economics of producers for captive consumption and of producers for sale are very different. The former saves on the costs of marketing sales, inventory etc. The applicant has stated that there are some steel manufacturers who produce Met Coke for their captive consumption. The applicant has provided the details of the names of the steel producers as available having production of Met Coke for captive consumption, namely, Steel Authority of India Limited, Tata Steel Ltd., JSW Steel Ltd., Jindal Steel & Power Ltd., Bhushan Steel Ltd., Jayaswal Neco Industries Ltd., Rashtriya Ispat Nigam Ltd., Bhushan Power and Steel Ltd., Jai Balaji Industries Ltd. and Usha Martin Ltd. The applicant has also provided the details from their respective annual reports for the above companies that there are either no sales of Met Coke by the major captive producers or the sales are negligible by some of the producers as compared to their total production of captive Coke. In this regard, the Authority has seen from the evidence on record that these companies are primarily using Met Coke for their captive

consumption and in some cases, their domestic sales are negligible as compared to their total production of captive Coke. In addition, it is noted that there is one more captive producer, namely, Neelachal Ispat Nigam Ltd. and it is seen that its sales are also not significant. Therefore, the captive producers are being treated as a separate category of producers and have been excluded from the purview of the current investigation while determining the domestic industry”.

12. The DA also examined the decision of appellate body of WTO with reference to cases cited by the appellant. We have examined the decisions with reference to hot rolled steel products and combed cotton yarn dealing with export from Japan and Pakistan. We note that these aspects have been specifically examined and commented by the DA. The decisions have no direct relevance to the dispute in the present case and we are in agreement with the submissions made by the learned Counsel for the DI regarding the scope of those decisions, recorded earlier in this order. We find no infirmity in the conclusion of the DA while determining the scope of DI in the investigation.

13. The appellants strongly contested that there is no injury to domestic industry due to import of subject goods from the specified countries. The loss or injury, if any, to the domestic industry is not relatable to import of subject goods but are due to other reasons. The AD duty is not legally sustainable as there is no causal link between the injury and the import. In this connection, we have examined the findings of the DA on the injury to the Domestic Industry. It is clearly recorded that import of subject goods, from subject countries, have significantly

increased during POI. As compared to base year 2011-2012, the increase in import is almost 15 times. The import in relative terms has also increased by about 43%. It was concluded that the imports in relation to production and consumption have significantly increased over the injury investigation period. On careful analysis of the price under cutting and price under-selling, the DA recorded there is a high level of price under selling and there is positive price under cutting of import of subject goods from subject countries. The conclusion drawn was that the DI has suffered injury with regard to all parameters of injury. We are in agreement with such detailed analysis and conclusion drawn by the D.A.

14. The appellants argued that the Domestic Industry (DI) suffered due to other reasons which are not relatable to import of subject goods. In this connection, we note that the import from subject countries has increased significantly and the market share of domestic sales has actually come down, in spite of increase in total demand. The magnitude of dumping has been examined by the DA. On the causal link, the point raised by the appellant, like high inland freight cost and poor performance of DI due to other factors, due consideration was given by the DA in his investigation. The DA also specifically taken note of the imports made by Gujarat NRE from related party and their financial performance. It was noted that Gujarat NRE stopped buying coal from Australia in October 2013. Hence, there is no basis in the submission, that the losses are because of high coal prices, when importing from relating party”.

6. The Tribunal has passed the order on 07/04/2017 where the appeals were dismissed after the detailed examination. By

following our earlier orders (supra) the present appeal filed by the appellant is dismissed.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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