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 : 16/02/2018.
DATE OF DECISION : 16/03/2018.

Anti Dumping Appeal No. 51864 of 2017 with Stay Application No. 50999 of 2017 and Misc. Application No. 50101 of 2018

Anti Dumping Appeal No. 51865 of 2017 with Stay Application No. 51000 of 2017 and Misc. Application No. 50100 of 2018

Anti Dumping Appeal No. 51866 of 2017 with Stay Application No. 51001 of 2017 and Misc. Application No. 50105 of 2018 and

Anti Dumping Appeal No. 50063 of 2018 with COD Application No. 50018 of 2018

[Arising out of the Notification No. 44/2017-Customs (ADD) dated 12/09/2017 based on Final Findings of the Designated Authority, No. 14/01/2016-DGAD dated 01/08/2017.]

M/s Solar Industries India Limited]
M/s Ideal Industrial Explosives Ltd.] Appellants
M/s IDL Explosives Limited]
M/s SIA Uralchem Trading]

Versus

Union of India/DA Respondent

Appearance

S/Shri V. Lakshmi Kumaran, Dhruv Gupta and Darpan Bhuyan, Advocates – for the appellants (for appellant – M/s Solar Industries India Ltd., M/s Ideal Industrial Explosives Ltd. and M/s IDL Explosives Ltd.) and S/Shri Rathesh M. and Pramod Kumar Rai, Advocates (for M/s SIA Uralchem Trading).

Ms. Reena Khair, Shri Ameet Singh and Amar Anand, Advocates for DA, and Shri R.K. Majhi, Authorized Representative (DR) – for the Respondent.

Shri Mikhail A. Shepanov LA – for Russian Federation.

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. 51009-51012/2018 Dated : 16/03/2018

Per. B. Ravichandran :-

These four appeals are against final findings dated 01/08/2017 of the Designated Authority (DA), Directorate General of Anti Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No. 44/2017-CUS (ADD) dated 12/09/2017 issued by the Ministry of Finance imposing definitive Anti Dumping Duty on import of Ammonium Nitrate (product under consideration – PUC) originating in or exported from Russia, Indonesia, Georgia and Iran and imported into India.

2. The brief facts of the case are that the DA received application from M/s Deepak Fertilizers and Petro Chemicals Corporation Ltd. and M/s Smartchem Technologies Ltd. jointly praying for investigation by the DA regarding possible dumping of the PUC from subject countries. The DA issued Initiation Notification on 05/08/2016. Thereafter following the procedure as prescribed under the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Article and for Determination of Injury) Rules, 1995, the DA completed the investigation and issued the final finding dated 01/08/2017 recommending AD duty on the PUC. The Finance Ministry, accepting the recommendation, issued the Customs Notification

dated 12/09/2017 imposing the anti dumping duty on the subject goods. The said imposition of AD duty is challenged by the three appellants (M/s Solar Industries India Ltd., M/s Ideal Industrial Explosives Ltd. and M/s IDL Explosives Ltd.) who are importer/ user of the subject goods in India. The 4th appeal is by M/s SIA Uralchem Trading, the Exporter of the subject goods. The Exporter is aggrieved against not fixing individual AD duty for the exports made by them.

3. The learned Counsel appearing for the first three appellants (Indian importer/user) submitted mainly on the following lines:-

(a) the scope of the PUC and the DI has not been properly assessed by the DA. It is the submission of the learned Counsel that Ammonium Nitrate should have been considered after properly appreciating the process of manufacture and nature of Ammonium Nitrate melt and low density Ammonium Nitrate. The DA failed in not considering Ammonium Nitrate melt as like article. This has consequences in examining the question of dumping as the Indonesia does not have production of high density Ammonium Nitrate. In fact M/s PT Kaltin Nitrate, Indonesia vide their letter dated 09/09/2016 stated that only low density Ammonium Nitrate is manufactured. Referring to earlier investigation by the DA resulting in final finding dated 19/03/2004, the learned Counsel submitted that the present finding of excluding "melt" is contrary to the said finding. This affected the injury analysis and outcome of investigation for dumping. "Melt" is not another product.

(b) injury analysis as recorded in the earlier finding dated 19/03/2004 and the present finding dated 01/08/2017 are contrary. The Net Sales Realization (NSR) of the DI was more than its Non-Injurious Price (NIP). The trend of price under selling being lesser than the price under cutting is seen in respect of imports from all subject countries. The DI is earning more than 22% of return on capital employed while selling the subject goods. There is no injury to the DI and as such the DA failed in proper analysis of the status of DI and existence of injury to the DI.

(c) Indonesia should have been excluded from the subject countries for AD levy. As already mentioned only low density Ammonium Nitrate is exported from Indonesia. The DA or DI could not have supporting data for import of bulk density Ammonium Nitrate from Indonesia. M/s PT Kaltim Nitrate, Indonesia could not filed more detailed EQR as they had not exported any product which was covered under PUC, to India. The DA also did not call for further clarification from them.

4. On the fourth appeal the learned Counsel for the exporter of the subject goods, at the outset submitted that there was a delay of 25 days in filing this appeal. He prayed for condonation of the same and to admit the appeal for an order on merit. Having considered the prayer and noting the reason for delay, we condone the delay and admit the appeal for decision on merit. The COD application is thus allowed.

5. The learned Counsel for SIA Uralchem Trading (Exporter) submitted that they are aggrieved by the denial of DA to fix individual dumping margin and individual duty to the appellant. Complete information for such fixation of individual dumping/injury margin and consequently individual AD duty was available with the DA. The appellant could not be put to adverse finding only on the basis that some of the unrelated parties in the

chain of transaction did not participate in the investigation. The DA, having all the particulars required, should have proceeded to examine individual dumping/injury margin with reference to the present appellant and to accordingly fix individual AD duty. Relying on Rule 17 (3), the learned Counsel submitted that the DA erred in not following proper procedure. Reliance was also placed on the decision of the Tribunal vide final order dated 13/10/2017 in the case of **Reliance Industries Ltd. and others**.

6. The learned Counsel appearing for the DI contested all the above 4 appeals. She submitted that though Indonesian export is only low density Ammonium Nitrate, it is not established that Indonesia does not have production of high density Ammonium Nitrate. In fact submission of blank questionnaire response by M/s Kaltim with endorsement of "NA" in most of the details resulted in lack of clarity on this crucial issue. Further, it is submitted that when there is no grievance by the exporter, the Indian importer cannot raise this issue as they are not the parties to provide factual details to defend their assertion.

7. On the contradiction between earlier and present finding of the DA with reference to scope of the product under consideration, it is submitted that in the earlier investigation importers claimed distinction between "melt" and "solid" Ammonium Nitrate. She drew our specific attention to paras 16, 23 and 27 of the earlier finding dated 19/03/2004 and also paras 14, 20, 22, 38 and 83 of the present findings dated 01/08/2017.

The process of converting "melt" to prill is sophisticated and advanced. She also laid emphasis on the scope of "like article" specified under Rule 2 (d) of AD Rules, 1995.

8. The learned Counsel for the DI claimed that the injury analysis is not contrary to provisions of Annexure II of AD Rules. Relying on the decision of the Tribunal in **All India Glasses Manufacturers Federation vs. Union of India – 2016 (342) E.L.T. 563 (Tri. – Del.)** and also Hon'ble Gujarat High Court in M/s Nirma Limited (SCA 16426-2016 dated 23/02/2017), the learned Counsel submitted that there is no legal provision to mandate the DA to compare NIP with NSR in order to determine the price effect.

9. The learned Counsel for the DA reiterated the final findings of the DA. He specifically drew our attention to relevant paragraphs of the final finding which, he asserted, covers all the points now being raised by these 4 appellants. He submitted that the scope of PUC as well as DI were correctly examined and analyzed by the DA. With reference to the prayer for individual dumping margin by the Exporter, the learned Counsel for DA submitted that full data for entire chain of sale operation is required for a due analysis by the DA. As the ultimate exporter of the Russian goods did not file the required questionnaire response such export by the Exporter through third party cannot be given an individual treatment for determining injury margin and AD duty.

10. We have heard all the sides and perused the appeal records. We take up the appeals filed by the Indian importer/user of the subject goods. First of all, we note that the status and nature of goods manufactured in Indonesia is not clearly coming out from the information submitted by interested party of the said subject country. In fact, there is no grievance or appeal by the Indonesian exporter. The point raised by the Indian importer without having a categorical assertion on the correct factual position of nature of goods manufactured in Indonesia cannot be considered. In any case, we note that the DA categorically recorded that the interested parties themselves have contended that Ammonium Nitrate cannot be imported in melt form. Since, there is production and sale of solid Ammonium Nitrate having density above 0.83 it is inappropriate to consider another article as like article to the imported product under consideration. It is recorded that only in a situation where there was no production of solid Ammonium Nitrate in the country, Ammonium Nitrate melt could be considered as like article to the imported product. With reference to claim of the appellant that Ammonium Nitrate solids converted out of Ammonium Nitrate melt it is seen that none of the interested parties provided any verifiable evidence of such production of solid Ammonium Nitrate from melt. Apparently, the DA was not in a position to take such solid Ammonium Nitrate on part of the DI. Regarding the claim of PT Kaltim Nitrate, Indonesia, we note that they did not file exporter's questionnaire response and merely submitted certain arguments. There is no verifiable information with regard to the

goods exported by the company. The DA treated PT Kaltim Nitrate, Indonesia as non-cooperative in view of incomplete exporter response filed by them.

11. Regarding the submissions of the first three appellants (importers in India) with reference to injury analysis, we note that the same has been done in compliance of provisions contained in Annexure II to AD Rules. A close perusal of the final finding reveals that the volume of import has gone up; imports of PUC have increased in relation to consumption in India; price under cutting is positive and significant; the prices of DI were suppressed on account of dumped imports, as the DI was not able to increase its prices in proportion to increase in its costs. We note that the DI was in loss and the ROCE is negative during 2014-2015 and 2015-2016. It is clear that the performance of DI has deteriorated over the injury period as can be seen that imports from subject country have increased not only in absolute terms, but also in relation to production and consumption in India. Such imports under cut prices of DI leading to significant price depression in the market. The DI suffered in terms of market share, inventories, profit, cash profits and return on investment. We note that the conclusion of the DA regarding injury margin and causal link for such injury due to dumped imports cannot be contested either on law or on facts.

12. In **All India Glass Manufacturers Federation** (supra), this Tribunal held that NSR is not the only parameter to decide on AD duties. The other price effects of imports such as price

suppression and price depression are to be examined. In the present case it is apparent and clear that the domestic industry suffered injury which is attributable to dumped imports of the subject goods from the subject countries and the findings of the DA in this regard are sustainable. Accordingly, we find the three appeals by Indian importer/user are without merit and accordingly dismiss the same.

13. Regarding the appeal filed by Exporter, we note that M/s Joint Stock Company United Chemical Company, Uralchem, exported the subject goods to Indian through SIA Uralchem Trading, Latvia who in turn exported the goods through another exporter/trader namely Sultera Group Dubai, who again exported the goods through another exporter/trader namely Cosmoss Vu Ltd., Hongkong. This ultimate exporter of subject goods from Hongkoing to India did not file exporter questionnaire. As such, the DA following consistent practice held that when a foreign producer exported through different channels, a separate dumped margin may not be desirable for each export channel. Since, the ultimate actual exporter of subject goods to India did not file E.Q.R. the producer/exporter had been treated as non-cooperative. We note that it is necessary to have a complete data of the trade chain alongwith required E.Q.R. for the DA to arrive at a proper finding. In this, we are in agreement with the DA in not fixing individual dumping margin and consequently individual AD duty for the present appellant/exporter of the subject goods.

We find no merit in the appeal filed by the M/s SIA Uralchem Trading in this regard. The said appeal is accordingly dismissed.

14. In view of the above discussion and analysis all the appeals filed against the final finding and the Customs notification contested in the present appeals are dismissed. The COD and other miscellaneous applications also stand disposed of.

(Order pronounced in the open court on 16/03/2018.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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