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 : 12/03/2018.
DATE OF DECISION : 27/03/2018.

Anti Dumping Appeal No. 50003 of 2018 with Stay Application No. 50001 of 2018

[Arising out of the Notification No. 1/2017-Customs (CVD) dated 07/09/2017 based on Final Findings of the Designated Authority, No. 14/18/2015-DGAD dated 04/07/2017.]

M/s Suncity Sheets Pvt. Ltd. Appellant

Versus

Union of India/DA Respondent

Appearance

S/Shri Tarun Gulati, Kishore Kunal, Abhishek Boob and Ms. Anshul Verma, Advocates – for the appellant.

S/Shri Ameet Singh and Amar, Advocates for DA, Ms. Reena Khair and Shri Rajesh Sharma, Advocates for DI and Shri R.K. Majhi, 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. 51101/2018 Dated : 27/03/2018

Per. B. Ravichandran :-

This appeal is directed against final findings dated 04/07/2017 of the Designated Authority (DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Industry and Notification No.1/2017 CUS.(CVD) dated

07/09/2017 issued by the Ministry of Finance imposing Countervailing duty on “certain hot rolled and cold rolled stainless steel flat products” originating in or exported from China PR.

2. The brief facts of the case are that, based on an application filed before the DA on behalf of the Domestic Industry (DI), for imposition of anti-subsidy/Countervailing duty on the import of subject goods from China, the DA initiated investigation in terms of provisions of Customs Tariff Act, 1975 and Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995. On completion of the investigation, he recommended for imposition of definitive Countervailing duty on the imports of subject goods from China PR. Following the Lesser Duty Rule, the DA recommended CV duty equal to the lesser of margin of subsidy and marginal injury, from the date of issue of notification by the Government, so as to remove injury to the DI. The duty amount recommended is 18.5 % of landed value. Accepting the recommendations of the DA, the Ministry of Finance issued notification dated 07/09/2017 imposing such CV duty on the subject goods.

3. The learned Counsel appearing for the appellant submitted that the imposition of CV duty is not sustainable in terms of the applicable legal provisions. First of all, he submitted that the scope of subject goods have been expanded in the initiation

notification issued by the DA. His main grievance is that both HR and CR steel products should not have been considered together. These are distinct and not substitutable without each other. The DA erred in assuming that the difference between the two products is only with reference to shape, size, metallurgical composition and rolling condition. The appellant submitted that the conditions of manufacture, their nature and end use are wholly different. In the past, the investigation by DA were always separate for HR & CR steel products.

4. Having treated China as non-market economy, the DA cannot proceed with further investigation for imposition of CV duty for subsidy. All aspects of dumping were taken care of when the export price from non-market economy is arrived at. There is no scope for further imposition of duty attributable to "subsidy" with reference to such non-market economy. No CV duty under Section 9 of the Customs Tariff Act, 1975 can be imposed when Anti-Dumping Duty was imposed on the same products in terms of Section 9A. Referring to the provisions of Section 9B, the learned Counsel submitted that no article shall be subjected to both Countervailing duty and Anti-Dumping Duty to compensate for the same situation of dumping or export subsidization for the said goods. As AD duty is already imposed, a further imposition of CV duty recommended and followed-up for the subject goods is not legally tenable. The learned Counsel also referred to the decision of WTO Report of the Appellate Body

dated 11/03/2011 which dealt with exports from China and also regarding the concept of double remedies. He also referred to the decision of Apex Court in **Gujarat Industries – 2015 (326) E.L.T. 625 (S.C.)** to support his case of difference between CR and HR sheets.

5. The learned Counsel for the DI contested the grounds of appeal in all aspects. She submitted that the scope of products along with the statutory provisions of Rule 2(d) with reference to "like articles" have been properly analyzed by the DA before concluding the investigation. She drew our specific attention to para 5 & 9 of the final finding. The DI had manufactured all the subject goods and the impact of dumping on the DI has been correctly analyzed by the DA.

6. Regarding the bar of imposing double duty as per Section 9B of the Act, she submitted that the AD duty will cover the situation even in case of non-market economy only with reference to domestic subsidy. In other words, the normal value in non-market economy is arrived at by taking domestic (Indian) valuation. The said analysis do not take into consideration export subsidization. As such, the bar under Section 9B has no application to the present case. Further, the subject goods suffer AD duty in US$ terms which is specific. The CV duty presently imposed is on percentage basis. The overall duty implication, taken together, did not exceed the injury margin. As

such, there is no double taxation of subject goods. Referring to the WTO Appellant body decision relied on by the appellant, the learned Counsel submitted that USA imposed duty on full dumping margin whereas in India, Lesser Duty Rule is followed. The duty is equal to lower of the dumping or injury margin. Similarly, For subsidy also, India followed lower of the subsidy or injury margin. In this principle, India follows the practice of EU which is not similar to USA. It is again emphasized that both the duties put together never exceed the injury margin. As such, there is no illegality in the proceedings to impose CV duty on the subject goods.

7. The learned Counsel for DA defended the findings with reference to the scope of subject goods and also standing of the DA. Regarding the recommendations, he drew our attention to para 561 of the final finding.

8. The learned AR supported the findings of the DA and the Customs Notification imposing CV duty.

9. We heard all sides of the case and perused the appeal record. On the first issue, regarding the scope of the subject goods, we note that the appellant made great emphasis on the distinction between the HR and CR steel products. Admittedly, the product under consideration is first produced in hot-rolled conditions and thereafter rolled in cold conditions. Various

properties of the products are achieved either by right combination to the material at the time of melting of inputs in the furnace by processing in the plant. The producers of the said goods, both in China and in India, hold sufficient facilities to produce products of specifications as required by the consumers. We note that there is no legal requirement of internal homogeneity within the subject goods or for inter-se substitutability of various types of subject goods. The DA examined the production process and concluded that both HR and CR firms can be included for investigation. Even the Customs Tariff main heading did not specify the products for classification separately. It was also noted that substantial cost of production is on raw materials and utilities upto the stage of steel melting. Expenses involved at rolling stage, whether hot or cold, and are not so significant. The DI produces both HR and CR products in a wide range of shape, size and metallurgical composition as per requirement of the customer. The DA also relied on the scope of "lesser principle" in terms of WTO agreement on subsidies for Countervailing measures. As such, we find no infirmity in considering the scope of subject goods for the present investigation. Regarding the contention of the appellant that both AD duty and CV duty for subsidy cannot be levied on the same subject goods, we note that this aspect has been examined by DA and his findings are as follows:

> "561. With regard to the contentions raised by the interested parties about Section 9(B) of the Customs and

> Tariff Act prohibits imposition of both CVD and ADD to compensate for the same situation of dumping of export subsidization. The Authority notes that the POI of both the ADD investigations and present CVD investigation are different and therefore it is not a case of providing dual remedy. However, keeping in view the facts and circumstances of the present case and the overall interest of consumers of the product under consideration, the Authority has recommended to the Central Government to impose the CVD after adjusting the Anti-dumping duty, if any, payable on the imports of articles covered under this investigation. The Authority holds that the measure will address the contention of users of the product under consideration."

10. We note that the AD duty investigation with reference to non-market economy like in the present case could deal with only the normal value arrived at from the parameters of another country. The same will take care of only the subsidy at the manufacturing stage/domestic subsidy. As correctly pointed-out by the learned Counsel for the DI, the export subsidization is not captured and dealt with in such analysis and investigation. We note that various other countries including EU follow the practice of imposing CV duty and AD duty on the same subject goods. However, the duties together never exceed the injury margin. In other words, if the dumping margin, as established in the investigation, is 30% with subsidy margin worked-out at 10%, injury margin at 25%, the duty imposed are 10% CV duty to offset subsidy and 15% AD duty. It is seen that the CV duty and AD duty put together did not exceed the injury margin though

the dumping margin is higher. The same principle of Lesser Duty Rule is followed in India also. As such, we find no infirmity in the final findings of the DA and customs Notification imposing CV duty with reference to subsidy on the subject goods. Accordingly, we dismiss the appeal. The misc. application also stands disposed-of.

(Order pronounced in the open court on 27/03/2018.)

(Justice Dr. Satish Chandra)
President

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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