

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**ANTI DUMPING REVISED COD APPLICATION NO. 50675/2019
& ANTI DUMPING COD APPLICATION NO. 51292/2018**

(on behalf of Appellant)

IN

ANTI DUMPING APPEAL NO. 53873 OF 2018

(Arising out of Order No. 14/49/2016-DGAD dated 25 January, 2018 passed by the Designated Authority, Directorate General of Anti Dumping & Allied Duties, New Delhi)

Alok Industries Limited

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Appellant

Tower B, 2nd & 3rd Floor, Peninsula Business Park
Ganpatrao Kadam Marg, Lower Parel
MUMBAI – 400 013

VERSUS

**Designated Authority, Directorate
General of Antidumping & Allied Duties**

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Respondent

Department of Commerce & Industry
Parliament Street
Jeevan Tara Building, 4th Floor
NEW DELHI – 110 001

APPEARANCE :

Ms. Reena Khair, Shri Rajesh Sharma, Ms. Rita Jha and Ms. Shreya Dahiya,
Advocates, for the Appellant

Shri Ameet Singh, Advocate for Designated Authority

Shri Amit Randev, DGTR

Shri Rakesh Kumar, Authorised Representative for the Revenue

Ms. Tanay Bhushan & Ms. Nandita Chauhan, Advocates for Respondent No. 18 & 28

Shri Arpit Bhargava, CA & Ms. Radhika Sharma, Advocate for Respondent
No. 15,21,23,25 & 33

Ms. Reena Khair and Ms. Rita Jha, Advocates for Respondent Nos. 39 & 40

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

FINAL ORDER NO. 51250/2019

DATE OF HEARING/DECISION : 26 August, 2019

JUSTICE DILIP GUPTA :

Alok Industries Limited¹ filed the appeal in the Registry on 05 December, 2018 to assail the Final Findings dated 25 January, 2018 of the Designated Authority.

2. The appeal has to be filed before the Tribunal within ninety days of the date of order under appeal as provided for in Section 9C of the Customs Tariff Act, 1975². The period of 90 days expired much earlier than the filing of the appeal on 05 December, 2018. The Appeal was accompanied by an application for condoning the delay in filing the appeal.

3. Subsequently, the Applicant filed another application for condoning the delay on 13 August, 2019. The reasons stated in the application to explain the delay are as follows :

"a. Pursuant to discussion between the constituent of the domestic industry before Respondent No. 1, it was decided to file writ petition before Bombay High Court as no appeal under Section 9C of the Customs Tariff Act is maintainable in case of negative recommendation as held by the Hon'ble CESTAT in the matter of *M/s Panasonic Energy India Co. Ltd. & Ors. Vs Union of India* (Anti Dumping Appeal No. 50452-50455 of 2017).

1. the Appellant
2. the Act

- b. Thus, without having an alternate remedy and in bonafide believe one of the constituent of domestic industry i.e. Bombay Dyeing & Mfg. Co. Ltd. decided to file writ petition before Hon'ble Bombay High Court on 20.04.2018.
- c. Thereafter having discussion with the other constituent of the domestic industry namely Indo Rama Synthetics (India) Ltd. who were under process to file writ petition before Delhi High Court.
- d. The applicant came to know that there is matter pending before the Hon'ble High Court of Delhi on the issue of maintainability of writ against Designated Authority's recommendation not to impose anti-dumping duty.
- e. The appellant was advised by their legal counsel to await the decision of the Delhi High Court.
- f. On 20.09.2018, Hon'ble High Court of Delhi pronounced its Judgment in the matter of Jindal Polyfilm Ltd. vs Designated Authority wherein has held that statutory appeal under Section 9C of the Customs and Tariff Act is maintainable against the Designated Authority's recommendation not to impose anti-dumping duty/negative recommendation.
- g. Thereafter, appellant again approached the legal counsel in first week of October, 2018, the

appellant was told that Hon'ble Delhi High Court has already held that appeal is maintainable against negative recommendation. But again the legal counsel advised the applicant to await the decision of the Hon'ble Bombay High Court in the pending writ petition filed by the constituent of the domestic industry against the impugned final finding. Since the writ petition is already pending against the impugned final finding the Hon'ble CESTAT may not hear the appeal arising out of the same impugned Final Findings.

- h. The Bombay High Court vide its order dated 02.11.2018 disposed of the writ petition filed by the one of the domestic industries against the impugned Final finding inter-alia stating as follows :

"5. However, we note that the petitioner had moved this Court under Article 226 of the Constitution of India within a period of 90 days from the impugned order on the basis of a bona fide understanding that no appeal is available under the Tariff Act. The time to file an appeal under Section 9C of the Act is 90 days from the date of the impugned order which is sought to be challenged. Therefore, in the above view, it would only be fair that in case the petitioner does file an appeal from the impugned order under Section 9C of the Tariff Act within a period of three weeks from today, then the Tribunal shall entertain the appeal on merits without raising any issue of limitation. This as we have condoning the delay, if the appeal is filed to the Tribunal from the

impugned order dated 25th January, 2018 within three weeks from today".

Since the Hon'ble Bombay High Court granted three weeks time to the petitioner to file appeal. The applicant approached the concerned counsel on 15.11.2018 for obtaining their opinion on whether the impugned finding and consequent notification should now be challenged before CESTAT.

- i. Thereafter relevant papers were also forwarded to the counsel for drafting the appeal on 17.11.2018.
- j. Thereafter the first draft of appeal was received on 26.11.2018.
- k. The applicant checked the factual aspect of the appeal on 30.11.2018 and requested the concerned counsel for finalization and filing of the appeal.
- l. The Final draft of Appeal was sent on 01.12.2018 to the applicant. The applicant confirmed the same on 01.12.2018 and requested to file the same."

4. The learned Counsel for the Applicant/Appellant submitted that earlier, in view of the decision of this Tribunal in **M/s Panasonic Energy India Company Limited & Others vs Union of India³**, the Appellant was under the impression that no

3. 2017 (357) ELT 110

appeal would lie against the negative determination by the Designated Authority. The issue as to whether a Writ Petition or an appeal can be filed against the negative determination by the Designated Authority was the subject matter of a Writ Petition filed by Jindal Polyfilm Ltd. before the Delhi High Court, which, ultimately, on 20 September, 2018 held that a statutory appeal under Section 9C of the Act is maintainable before the Tribunal even against a negative recommendation of the Designated Authority. Learned Counsel also pointed out that the judgment on the maintainability of the Writ Petition in Jindal Polyfilm Limited was reserved by the Delhi High Court on 06 March, 2018 and it was delivered only on 20 September, 2018. The learned Counsel also pointed out that thereafter, one constituent of the domestic industry, namely, M/s Bombay Dyeing & Mfg. Co., filed a Writ Petition before the Bombay High Court which was disposed of on 02 November, 2018 granting liberty to the Petitioner therein to file an appeal before the Tribunal within three weeks from the date of the decision in the Writ Petition. It has, therefore, been submitted that since the Bombay High Court granted three weeks' time to the Petitioner therein to file an appeal before the Tribunal, the Appellant was also advised to file an appeal within three weeks. Accordingly, the present appeal was filed on 05 December, 2018 which would be beyond 12 days from the time granted by the Bombay High Court in M/s Bombay Dyeing & Mfg. Co. The submission, therefore, is that the delay should be condoned.

5. The learned Counsel appearing for the Respondents have objected to the application and submitted that the delay in filing the appeal is not bonafide as the Appellant deliberately kept quiet for a substantial period of time and it is only when the Bombay High Court granted liberty to the Petitioner therein, M/s Bombay Dyeing & Mfg. Co., to file an appeal before the Tribunal within three weeks, that the Appellant woke up and filed this appeal in the Tribunal. It has, therefore, been submitted that the application should be rejected.

6. We have given our thoughtful consideration to the submissions advanced by the learned Counsel for the Appellant and the learned Counsel for the Respondents.

7. It is true that this Tribunal in **Panasonic Energy India Company Limited** held that an appeal cannot be filed before the Tribunal against a negative determination by the Designated Authority, but in such a situation when the view of the Tribunal was very clear, nothing prevented the Appellant from filing a Writ Petition before the High Court to challenge the determination by the Designated Authority, if it felt aggrieved. However, the Appellant neither availed the remedy of filing a Writ Petition in the High Court nor did it file an appeal before this Tribunal within the stipulated time. According to the Appellant, it waited for a decision to be given by the Delhi High Court in a Writ Petition filed by Jindal Polyfilm Ltd. to challenge the negative

determination by the Designated Authority. Learned Counsel also pointed out that the judgment was reserved by the Delhi High Court on 06 March, 2018 on the maintainability of the Writ Petition and was delivered only on 20 September, 2018. Mere filing of a Writ Petition by another party or its pendency, cannot be said to be a good reason for the Appellant to not to file a Writ Petition before the appropriate High Court or an Appeal before the Tribunal within the time provided for. The Appellant had to itself avail the remedy. There was no reason for the Appellant to await the decision of a Writ Petition filed by some other party and that too not against the determination made by the Designated Authority on 25 January, 2018. If the Appellant was really aggrieved by the negative determination by the Designated Authority, it could have also filed a Writ petition before appropriate High Court.

8. It is also sought to be contended that one of the constituent domestic industry, feeling aggrieved by the negative determination by the Designated Authority, filed a Writ Petition in the Bombay High Court directly without availing the remedy of filing an appeal before the Tribunal and it is only when the Bombay High Court permitted the said Petitioner to file an appeal before the Tribunal, in view of the decision of the Delhi High Court in **Jindal Polyfilm Ltd.**, that the Appellant filed this appeal.

9. This contention of the learned Counsel for the Appellant cannot also be accepted. Bombay Dyeing & Mfg. Co. had filed a

Writ Petition in the Bombay High Court in April, 2018. Likewise, the Appellant could also have filed a Writ Petition in the Delhi High Court. Any decision by the Bombay High Court would not have come to the aid of the Appellant for explaining the delay in filing an Appeal subsequently.

10. In any view of the matter, the present appeal was filed beyond 12 days from the time granted by the Bombay High Court in Writ Petition filed by another Domestic Industry.

11. We are, therefore, not satisfied by the explanation offered by the Appellant for condoning the delay. The application deserves to be rejected and is, accordingly, rejected. The appeal also stands dismissed.

(Dictated & pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)