(2011) 03 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Appeal Nos. 11, 12, 13 Of 2007, 01 Of 2008

?Automotive Tyres Importers Association & Others — APPELLANT

Vs

Designated Authroity & Others — RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Customs Tariff (Identification, Assessment And Collection Of Anti Dumping Only On Dumped Articles And For Determination Of Injury) Rules, 1995 — Rule 2(c)
Anti-Dumping Rules, 1995 — Rule 11

Citation : (2011) 03 CESTAT CK 0001

Hon'ble Judges : R.M.S. Khandeparkar, J;Dr. Chittaranjan Satapathy, Technical Member;D.N. Panda, J

Bench : Full Bench

Advocate : Shailender Saini, Rashmi Malhotra, Ameet Singh, Reena Khair, Rajesh Sharma

Final Decision : Dismissed

Judgement

1. On a complaint filed by the Automotive Tyre Manufacturers' Association (Domestic Industry), the DA initiated anti-dumping investigations leading to issue of:-

(i) Final Finding Notification dt.29.6.2007

(ii) Customs Notification No.88/2007 dt.24.07 .2007 imposing anti-dumping duty on tyres, tubes and tyre-flaps (subject goods).

2. In appeal Nos.AD/11 & 12/07 and AD/01/08, the final findings and imposition of anti-dumping duty have been challenged respectively by:-

(i) Automotive Tyres Importers Association (ATIA),

(ii) All India Confederation of Goods Vehicle Owners' Association (ACOGOA).

(iii) M/s.Shandong Jinyu Tyre Co.Ltd.(Exporter).

Learned Advocate, Shri Sailender Saini appearing for the first two appellants (ATIA and ACOGOA), who claim to represent the users of the subject goods in India, and the third appellant, who is a foreign exporter, makes common submissions opposing the final findings and the levy.

3. Ms.Reena Khair, learned Advocate appearing for the Domestic Industry supports the impugned final findings and the levy while questioning the locus standi of the first two appellants (ATIA and ACOGOA). She states that ATIA and ACOGOA have not demonstrated their credentials to be considered as Interested Party in the proceedings before the D.A. To be an Interested Party, only business associations, a majority of members of which are importers qualify under the definition in Rule 2 (c) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for

Determination of Injury) Rules,1995 known as the Ant-Dumping Rules. ATIA and ACOGOA have furnished no such information regarding their eligibility to be considered as Interested Parties despite specific objections raised by the Domestic Industry. She states that ATIA and ACOGOA can not also be considered as aggrieved persons before the Tribunal having not produced any information regarding their credentials including registration under any law and their objects and purpose. She states that neither the associations nor the majority of their members have filed the importer questionnaire.

4. In reply, the learned Advocate, Shri Saini merely produces a copy of letter dated 22.9.06 from a chartered accountant (without enclosures) addressed to the Director in the DA's office purportedly furnishing information in respect of 4 members of ATIA. He also produces a copy of ACOGOA's letter fy/16/10/2006 to the Director in D.A.'s office intimating that ACOGOA is an association of State/ District level Truck Owners' Associatlorg and that its object is to promote the interests of the people engaged in goods transport business. These two copies of letters submitted by the learned Advocate, Shri Saini are grossly deficient in proving the credentials of ATIA and ACOGOA as 'Interested Party' under the Anti-Dumping Rules. Rule 2(c) of the said Rules reads as follows:-

"Interested Party" includes -

(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business associationJ a majority of which are producers, exporters or importers of such an article;

(ii) X X X X X X

(iii) X X X X X X

ATIA and ACOGOA do not qualify as 'Interested Party' on the basis of the two documents furnished by the learned Advocate, Mr.Saini. There is also no finding by the DA holding them to be 'Interested Party' which he was required to give on the face of objection raised by the Domestic Industry. ATIA and ACOGOA cannot also be considered as Aggrieved Persons in the proceedings before the Tribunal as Interested Party.

5. We have also considered the arguments advanced on merit, on behalf of the appellants ATIA and ACOGOA and the foreign exporters by their common advocate, Shri Saini. He is not basically challenging the DA's findings on dumping. His challenge is against the findings on injury and causal relationship. He states that the share of imports compared to total consumption is insignificant and cannot be a cause of injury to the domestic industry. He also states that many of the economic indicators taken into consideration by the DA reveals that the domestic industry has not suffered any injury and some of the other negative indicators are due to other factors and not attributable to subject imports. He argues that sales, production, ability to raise capital investments, employment and productivity of the Domestic Industry has increased as also its market share, capacity utilization etc. which do not justify imposition of anti-dumping duty. On behalf of the appellant exporter, he also makes a point that the DA has not compared like goods for the purpose of the present investigation.

6. Ms.Reena Khair, learned Advocate for the domestic industry and Mr.Ameet Singh, learned Advocate for the DA argue in support of the levy stating that the findings of the DA are detailed on each aspects of the case examined by him. He has taken an overall view after analysing all factors and the same cannot be faulted with. The Domestic Industry has taken additional grounds in its appeal seeking re-determination of dumping margin without accepting the Chinese exporters' belated and incomplete response, and levy of anti-dumping duty in rupee terms However, these grounds were not pressed during arguments before us.

7. We have considered arguments advanced before us as well as the case records relating to merits of the imposition of anti-dumping duty in this case. We find that the DA has duly considered all aspects of the case and has come to a reasoned finding considering various parameters. In particular, we note the following findings of the DA in the context of arguments advanced before us:-

(i) There is no difference in subject product imported from China and Thailand, and produced by the domestic industry (para 18).

(ii) Dumping is established in respect of the subject goods and the dumping margin is in the ranage of 233°/a to 294°/a (para 56).

(iii) Imports of subject goods from the subject countries have increased in absolute terms as well as in relation to imports into India and in relation to total demand in India. Resultant increase in market share of dumped imports show adverse volume effect (para 61).

(iv) Effect of dumped imports on the price in the domestic market has been adverse for the reason stated in para 62 of the Final Findings.

(v) Various economic factors have been analysed by the DA in paragraph 63 onwards and arguments against injury have also been considered by the DA in paragraph 77 onwards before coming to an overall conclusion in para 79 of the Final Findings that the Domestic Industry has suffered material injury.

(vi) Similarly, after a detailed examination, the DA has arrived at a fair conclusion that the dumped imports have caused material injury.

8. We find that the DA has taken into consideration the provisions of Rule 11 of the Anti-Dumping Rules and the Annexure-11 to the Rules referred to therein in regard to determination of injury. He has examined both the volume effect and the price effect of the dumped imports referred to in clause (i) of the said Annexure II and he has examined the relevant economic factors referred to in clause (iv) of the said Annexure II. It is well settled that the DA is required to examine the overall impact of the dumped imports by evaluation of all the economic factors as a whole and not be guided by evaluation of any particular economic criterion. That is what has been done in this case. The DA himself has fairly recorded his findings on evolution of various economic factors and has then taken an overall view. We need not repeat here his detailed findings recorded in paragraphs 62 to 78 which are objective and fair and these findings have led him to the conclusions he has drawn in paragraph 79 of the Final Findings. It is clear from his conclusions that he has also taken into consideration parameters which have not shown any decline such as sales and production. But his overall conclusion is based upon various other factors such as significant increase in volume of dumped imports, landed price of dumped imports are significantly below the selling price and non injurious price of domestic industry, existence of price under-cutting, consistent decline in landed price of dumped imports, decrease in market share of domestic industry, decline in profit of the domestic infdustry per unit of sales and deterioration in return on capital employed etc. As such D.A.'s overall conclusions on material injury is justified. Similarly, the conclusion of the DA on causal link in paragraph 83 follows a fair analysis and cannot be faulted with.

9. No arguments have been advanced before us to demonstrate that the finding of the DA in regard to determination of dumping, injury and causal relationship between the two) are either malafide or perverse. The quantum of anti-dumping duty recommended by the DA and imposed by the Government has also not been assailed before us. Under these circumstances, we find that no reason to interfere with the impugned Final Findings or the customs notification imposing anti- dumping duty. Consequently, all the 4 appeals are dismissed.

(Pronounced in the open court on 31.03.2011)