(2021) 02 DEL CK 0069

In the Delhi High Court

Case No : Civil Writ Petition No. 1493 Of 2021, Civil Miscellaneous Application No. 4293 Of 2021

Bridgestone India Pvt Ltd & Anr APPELLANT

Vs

Designated Authority And Anr RESPONDENT

Date of Decision : 05-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty On Dumped Articles And For Determination Of injury) Rules, 1995 — Rule 6(6), 17, 18
Customs Tariff Act, 1975 — Section 9C

Citation : (2021) 02 DEL CK 0069

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Anurag Ojah, Shivam Malhotra, Mrinal Singh, Anurag Ahluwalia, Albeena Wali, Sandeep Sethi, Rajesh Sharma, Tushar Jarwal, Vivek Aggarwal, Rahul Sateeja, Jatin Puniyani G.P.

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode (physical and virtual hearing).

CM Appl.No. 4294/2021

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 1493/2021 & CM Appl.No. 4293/2021

3. The Petitioners in the present case have challenged the final findings dated 27th November, 2020 issued by the Respondent No. 1 â?" Designated

Authority, Directorate General of Trade Remedies, Department of Commerce, Ministry of Commerce and Industry, Govt. of India (hereinafter â??DAâ??).

4. The background is that the Petitioners had filed their materials and submitted various documents with respect to the anti-dumping investigation

relating to import of New Pneumatic Radial Tyres of Rubber for Buses and Lorries, initiated by the DA vide notification dated 2nd December, 2019.

The Petitioners submit that they had suo motu filed their responses along with documents. On 25th August, 2020, Petitioners submitted verification

documents to the DA in compliance with the email/notice dated 3rd August, 2020. On 21st October, 2020, the Petitioners participated in the oral

hearings conducted by the DA, in accordance with Rule 6(6) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty

on Dumped articles and for Determination of injury) Rules, 1995 (hereinafter, Anti-Dumping Rules, 1995). However they were surprised to see a non-

confidential version of the disclosure statement dated 13th November, 2020 issued by the DA, wherein all the responses/submissions made by the

Petitioners were rejected on the simple ground that it was not in the proper format and the prescribed rules in submission of these information was not

followed by the Petitioners.

5. The challenge in the present petition is on the ground that since none of the material submitted by the Petitioners has been considered, the final

findings are liable to be set aside and the Respondent ought to be directed to consider the said material.

6. On behalf of the Respondents it is submitted that the writ petition is pre-mature. Reliance is placed on the following two judgments of Designated

Authority & Ors. v. Sandisk International Limited & Ors., (2018) 13 SCC 402 and Saurashtra Chemicals Limited v. Union of India, (2009) 17 SCC

529.

7. Mr. Sandeep Sethi, Sr. Advocate and Mr. Tushar Jarwal, appearing for the Applicant/JK Tyre and Industries Limited before the authority has also

taken the same stand that the writ petition is pre-mature and cannot be entertained at the stage of final finding.

8. This Court has been consistent in its view on challenges raised at the stage of final finding which is clear from perusal of judgment in Suncity Sheets

Pvt. Ltd. v. Designated Authority, Directorate General of Anti-Dumping and Allied Duties/Ministry of Finance, [W.P.(C) 6267/2017, decided on 24th

July, 2017], the Division Bench has held as under:

â??6. This Court has in its order dated 16th May, 2017 in W.P.(C) 2632/2017 (Hindustan Lever Ltd. v. Union of India) declined to

entertain a writ petition, challenging the Final Finding of the DA on account of the availability to the Petitioner there of an efficacious

statutory remedy of appeal before the CESTAT. In the said decision, this Court referred to and distinguished the above decision of the

Gujarat High Court in Nirma Limited v. Union of India (supra). This Court preferred to follow its earlier decisions in Alcatel-Lucent India

Ltd. v. Designated Authority 2016 (338 ELT 397 (Del.); PTA Users Association v. Union India 2016 (340) ELT 125 (Del.) and Balaji Action

Buildwell v. Union of India 2016 (337) ELT 166 (Del.) in which this Court had consistently declined to entertain a petition under Article 226

of the Constitution of India challenging the Final Finding of the DA without the Petitioner exhausting the statutory remedy of an appeal

before the CESTAT. In Hindustan Lever Ltd. v. Union of India (supra), the Court explained:

10. The question is not whether this Court can entertain the present writ petition. The question is whether, in the facts and circumstances, it

should? The power under Article 226 of the Constitution is an extraordinary one and should not be exercised in a routine manner especially

when the Petitioner has an efficacious and adequate alternative statutory remedy available. Otherwise, the Court would be supplanting the

functioning of the statutory appellate authority tasked specifically with reviewing the correctness of the orders of the subordinate statutory

authorities. Therefore, while acknowledging that this Court does have the jurisdiction to entertain the writ petition, in the facts and

circumstances of the present case the Court finds that no case has been made out to persuade it to exercise its jurisdiction under Article 226

of the Constitution to examine the correctness of the Final Finding of the DA. The Court is of the firm view that every ground urged in the

present writ petition can well be urged before the CESTAT.

7. This Court is not persuaded to take a different view in the present petition for both the reasons noted hereinbefore viz., the petition is

premature since no notification has yet been issued by the Central Government consequent upon the Final Finding dated 4th July, 2017 and

secondly, even if such a notification is issued, the Petitioner has an alternative statutory remedy of an appeal before the CESTAT.â??

9. The Supreme Court has also categorically settled the legal position in Designated Authority & Ors. (Supra) as under:

â??6. From a perusal of the aforesaid materials on record we find that there are seriously disputed questions with regard to the locus of

the respondent M/s Sandisk International Ltd. to file the writ petition before the Delhi High Court and also as to whether the information

sought for by the said respondent was actually furnished to it by the Designated Authority in the above communications and orders. Though

we would not deem it appropriate to lay down any inflexible proposition of law that in no case the final findings of the Designated Authority

can be subject to challenge under Article 226 of the Constitution of India, we are of the view that in the facts of the present case the High

Court was not justified in exercising its writ jurisdiction and in setting aside the final findings of the Designated Authority. Rather,

according to us, the High Court should have asked the writ petitioner before it to await the issuance of the final notification under Rule 18

of the Rules and to challenge the same before the appropriate appellate forum under Section 9-C of the Customs Tariff Act, 1975 as and

when such a notification is issued. In such an eventuality the final findings of the Designated Authority were bound to be considered by the

appellate authority which authority would also have been better equipped to examine such a challenge.â??

10. While the Petitioner may have a grievance that on a mere technical objection or a technical non-compliance, substantive material of the Petitioner

has been ignored, the Petitioner would have to wait for the final notification, if any, issued by the Government in order to challenge the same in

accordance with law. The final findings issued by the designated authority under Rule 17 of Anti-Dumping Rules, 1995 are submitted to the Central

Government which `mayâ?? impose anti-dumping duty under Rule 18 of the said rules. Unless and until the notification under Rule 18 is issued, the

duty does not take effect.

11. Accordingly, following the judgements extracted above, the writ petition is

dismissed as being pre-mature, however leaving open the Petitioners

right to avail its remedies. In any such remedy is availed of by the Petitioners, challenging the final notification, if any, under Rule 18 of the Rules, the

Petitioner is permitted to urge the grounds raised herein.

12. The petition and all pending applications are disposed of in the above terms.

