(2003) 03 SC CK 0035

In the Supreme Court Of India

Case No : Civil Appeals Nos. 4936-37 Of 2000

Designated Authority APPELLANT

Vs

Indian Refractory Makers'' Assocn. RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Citation : (2003) 88 ECC 1 : (2003) 154 ELT 349 : (2003) 11 SCC 28

Hon'ble Judges : S. N. Variava, J;B. N. Agrawal, J

Bench : Division Bench

Advocate : Shreekant N. Terdol, Krishnan Venugopal, K.K. Kaushik and B. Krishna Prasad, for the Appellant; Kirit Rawal, S.G., K. Venugopal, K.C. Kaushik, Ajit Kumar Sinha and Ejaz Maqbool, Suresh A. Shroff and Co. and K.J. John and Co., for the Respondent

Final Decision : Allowed

Judgement

1. Heard the learned Counsel for the parties.

2. Parties are agreed that no reasons be recorded for setting aside the impugned order.

3. Even though the impugned order is being set aside without giving any reasons we record that one of the contentions raised by the respondents was that the only Indian manufacturer of Sintered Magnesia viz. Birla Periclase has already closed its operations and, therefore, the continuation of the anti-dumping duty can serve no purpose. Without going into the merits of this controversy, we direct that the Designated Authority may consider the factual position and assess whether the closure of the factory of Birla Periclase factory (which was manufacturing Sintered Magnesia) was a result of the dumping carried out by the Chinese exporters of fused magnesia or not and whether the closure was subsequent to the investigation or prior thereto. The Designated Authority will also consider whether in the facts and circumstances of the case, the continuation of anti-dumping duty is justified. Depending upon its view in the

matter, the Designated Authority may consider whether levy of the anti-dumping duty should be reviewed and, if so, from what date.

4. Our attention has been drawn to Rule 23, which provides for a limited power of review for the purpose of continuing with the anti-dumping duty but confers no power for retrospectively withdrawing the same. Since we are passing this order in the peculiar facts of this case with a clear understanding that the same should not be cited as a precedent in other cases, we direct that the Designated Authority may consider the entire matter including whether the duty can be withdrawn for any period from February 2, 1999, i.e., the date of the final findings of the Designated Authority.

5. The Designated Authority will complete the Review after affording a hearing to all interested parties within a period of 3 months from the receipt of this order, provided all the parties cooperate. If any party chooses not to appear, the Designated Authority will proceed in the absence of such party. Pending such a Review, the existing arrangement of importing fused magnesia on the basis of duly executed bonds shall continue. In the event the Designated Authority concludes that the levy of anti-dumping duty is justified for any period, the Bonds shall be duly honoured by the importers who have executed the same. Duties, if any, collected shall abide by the result of such a Review in accordance with law.

6. We set aside the impugned order. The Appeals stand disposed of with the above directions. There will be no order as to costs.

