(1997) 08 DEL CK 0071

In the Delhi High Court

Case No : Civil Writ Petition No. 3137 of 1997 and C.M. No''s. 6137-6138 of 1997

Indian Express Newspapers Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 — Rule 12

Citation : (2003) 157 ELT 138

Hon'ble Judges : R.C. Lahoti, J;J.K. Mehra, J

Bench : Division Bench

Advocate : C.S. Vaidyanathan, K. Vishwanathan, Anil Aggarwala and Jayant Tripathi, Dipankar Gupta, K.V. Mohan, R.N. Karanjawala and B.R. Pradhan, Arjun Jaitley, Sham Mehta and Deepak Prakash, for the Appellant; Harish N. Salve, Pallavi S. Shroff, Ajay K. Roy, T.S. Murthy, Pritesh Kapoor, Rakesh Tikku and B.S. Saini, for the Respondent

Final Decision : Dismissed

Judgement

1. This common order shall govern the disposal of four writ petitions filled by four different newspaper owners importing newsprint from USA, Canada and Russia.

2. The petitions lay challenge to preliminary findings on anti-dumping investigation concerning imports of newsprints from USA, Canada and Russia, recorded by Shri Deepak Chatterjee, Designated Authority under the Customs Tarrif (Identification, Assessment and Calculation of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter the Rules, for short). The Rules have been framed in exercise of the powers conferred by Sub-section (6) of Section 9A and Sub-section (2) of/Section 9B of the Customs Tariff Act, 1975.

3. The respondent No. 3 is the Indian Newsprint Manufacturers Association. On 14-10-1996, it filed a statutory complaint before the Designated Authority, i.e.

respondent No. 2, complaining of newsprint dumping activities being pursued by certain Corporations in USA, Canada and Russia. The Designated Authority initiated investigation under Rule 5 having felt satisfied of the need of such investigation. A public notice was issued on 20-12-1996 and published in the Gazette of India (Extraordinary). Copies of the public notice were forwarded to the known exporters and industries association. Questionnaires eliciting important information were sent by the Authority to the several exporters, some of whom filed response to it. A number of exporters, importers and consumers having appeared before the Authority requested for extension of time which was allowed till 28-2-97. The investigation was carried out covering the period starting from 1-4-96 to 31-10-1996. The authority has recorded a preliminary finding (which is impugned in these writ petitions) regarding export price, normal value and margin of dumping, etc as contemplated by Rule 12.

4. It was admitted at the bar that a hearing as contemplated by Rule 17 read with Sub-rule (6) of Rule 6 is fixed before the Authority today i.e. the 7th August, 1997. As recorded in para 36 of the report, called preliminary finding the known exporters, importers, petitioners and other interested parties, who may like to make known their views were being informed by the Authority that such views if made known within 40 days from the date of publication of these preliminary findings would be available for consideration by the Designated Authority.

5. The maintainability of these writ petitions has been seriously objected to by the respondents 1, 2 and 3, mainly on two grounds. It is submitted that the petitions are premature inasmuch as the Designated Authority has not finally concluded its proceedings. The hearing is yet to take place where after the final findings would be submitted to the Central Govt. The Central Govt. ''may'' on the basis of the preliminary findings recorded by the Designated Authority impose a provisional duty not exceeding the margin of dumping under Rule 13. Such provisional duty shall remain in force only for a period not exceeding six months. Under Rule 17 the Designated Authority shall submit its final finding where after the Central Govt. may levy duty under Rule 18. Whether a provisional duty or a duty, it shall be open to appeal u/s 9C of the Customs Tarrif Act, 1975. It was also submitted that the levy of the duty is the legislative activity intended to protect the domestic newspaper industry and any judicial interference with the process of such levy is not only unwarranted but may cause irreparable damage to the domestic newspaper industry which may be ruined unless protected. In substance, it was submitted that if the Central Govt. may impose duty then the petitioners would have the statutory remedy of filing an appeal and also of invoking writ jurisdiction of this Court at an appropriate stage.

6. We have heard S/Shri Deepanker Gupta, and Arun Jaitley and Mr. C.S. Vaidyanathan Sr. Adv. Shri Harish Salve Sr. Adv. assisted by Ms. Pallavi Shroff for respondent No. 3 and Mr. Rakesh Tikku Standing Counsel for respondent No. 1 and 2.

7. The learned counsel for the petitioners have mainly concentrated on Rules 4 to 12 read with Rule 2(c) and submitted that several principles and procedural safeguards contemplated by the Rules have been violated while conducting investigation by the Designated Authority and this has caused serious prejudice to the petitioners. On the contrary, the learned counsel for the contesting respondents have pointed out that none of the procedural safeguards and principles governing the investigation have been violated. The petitioners were well aware of the investigation proceeding from its very beginning. They did not appear and point out before the Designated Authority, if there were lapses, if any, and if the petitioners were entitled to supply of any documents or information. The exporters have participated in the proceedings. They have not come up to this Court. Instead they have projected these petitioners to file these petitions making available their documents.

8. The learned counsel for the petitioners have invited attention of the court to Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), , Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others, Indian Express Newspapers v. UOI - and submitted that the cases of the newspapers have to be dealt with on a different footing by the High Court. It was submitted that it is not the newspaper merely but the citizenry at large, which has vital interest in newspaper industry and fundamental right to information and dissemination of knowledge would be in jeopardy if indulgence is not shown by the Court.

9. We are not impressed by the several submissions so forcefully advanced by the learned counsel for the petitioners. In our opinion, the petitions are premature. The petitioners are at liberty to raise their contentions whatever they may be before the Designated Authority who is still seized of the investigation and is admittedly holding a hearing today. In spite of the preliminary finding having been submitted to the Central Govt. imposition of duty whether provisional or otherwise would not follow as a matter of course or routine. The Central Govt. may or may not impose duty. If the Central Govt. may decide in favor of imposing duty, whether provisional or otherwise, the petitioners would have the remedy available to them under the law. It cannot be lost sight of that the imposition of provisional duty is guided by the paramount consideration of protecting the domestic newsprint industry and eliminating dumping. Tampering with the process midway, may delay the imposition of provisional duty, which if warranted otherwise would itself amount to causing an injury not capable of being repaired at all.

10. It was also submitted on behalf of the petitioners that any imposition of duty would ruin the newspapers; in the name of protecting domestic newsprint manufacturers the newspapers cannot be killed. We are not impressed. There is no foundation laid for such an assumption. There is no reason to assume why the Central Govt. would not keep in view the interests of all sections of the society (including newspapers) while taking a decision on imposition of duty.

11. For the foregoing reasons we are of the opinion that no case is made out for

interfering at this stage with the preliminary findings. The petitions are dismissed in limine.

12. The prayer for the grant of ad interim relief also falls to the ground. The CMs are dismissed as in fructuous. No order as to costs.

