

(2005) 04 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ Petition No. 548 of 2005

J.K. Industries Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 14, 226, 227
Customs Act, 1962 — Section 12, 129, 15, 46, 58
Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 — Rule 18, 3
Customs Tariff Act, 1975 — Section 3, 8C, 9, 9A, 9B
Finance Act, 2000 — Section 9AA
Finance Act, 2003 — Section 15(1), 8(8), 8B, 8C
Income Tax Act, 1922 — Section 34
Income Tax Act, 1961 — Section 148

Citation : (2005) 103 ECC 152 : (2005) 186 ELT 3

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : S. Ganesh, Rajendra Mehta and Arun Bhansali, for the Appellant; Mohan Parasaran, Addl. Solicitor General, V.K. Mathur, SCGSC, Krishnan Venu Gopal, Umapati and Dinesh Mehta, for the Respondent

Judgement

Rajesh Balia, J.—The petitioner is a limited Company incorporated under the provisions of Companies Act, 1956. Amongst others, the petitioner Company is engaged in the business of manufacture of tyres for which it has its manufacturing facility at Kankroli, Rajasthan. For the purposes of its manufacturing in Rajasthan of such tyres, the petitioner imports Nylon Tyre Cord Fabric (NTCF) from various manufacturers/exporters of other countries including from those situated in Peoples Republic of China. The NTCF so imported is comprised of three different varieties namely, the grey fabric, dipped fabric and Cycle Tyre Cord Fabric (CTC). The petitioner is also a member of Automotive Tyre Manufacturer Association (ATMA). The association represents the collective interest of tyre manufacturers.

2. The Association of Synthetic Fibre Industry (ASFI), whose members are the manufacturers of synthetic fibre in India, including NTCF, submitted a written application before the Designated Authority appointed by the Central Government under Rule 3 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter the Anti Dumping Rules/Rules of 1995) on behalf of the domestic manufacturers that the exporters from China are dumping the NTCF in Indian Market and it is causing injury to domestic industry of NTCF and that there is a causal connection between such dumped articles and the injury to domestic industry.

3. In the said petition, it was also alleged that in addition to the material injury already inflicted on the domestic industry, imports from said countries are posing threat of material injury to the domestic industry in future also.

4. On receipt of this petition, the respondent No. 1, the Designated Authority, issued an initiation Notification dated 29-10-2003 for initiating investigation into the imports of NTCF originating or exported from China and in terms of Rules of 1995 framed under Customs Tariff Act, 1975 (hereinafter called "the Act of 1975").

5. The petitioner is represented before the Designated Authority through the ATMA. The ATMA filed its detailed submissions dated 29-12-2003 setting out its objections regarding maintainability of the petition regarding alleged dumping of NTCF by exporters from China PR. The exporters also filed objections to initiation of anti dumping investigation itself. The ASFI representing the domestic industry of NTCF manufacturers also made its submission.

6. Notwithstanding submission of the detailed objections by ATMA as well as by the exporters as to maintainability of the application, it is alleged by the petitioner that Designated Authority neither called for any information from ASFI nor from ATMA nor from the exporters of the article subject of investigation to India. It was also alleged that Designated Authority did not supply any material/data on which reliance has been placed by the domestic industry and which in the submission of the petitioner was in public domain. No confidentiality could be claimed about it.

7. The petitioner also brought to the notice that applicant ASFI had previously also filed an application before the Designated Authority praying for imposition of Anti Dumping Duty on the alleged imports of the very same article viz. NTCF from Indonesia, Korea, Thailand and Taiwan. On finding causal connection between the exports from the named countries to India with injury to domestic industry as a result of dumping, the Designated Authority in the first instance vide its final findings dated 22-2-2000 recommended imposition of Anti Dumping Duty. However, in its mid term review findings dated 20-3-2003, the Designated Authority recommended to discontinue the said Anti Dumping Duty on the ground of absence of causal link between the dumped article and injury suffered

by the domestic industry. This has happened shortly before the fresh petition was filed by the ASFI in relation to imports from China of the very same article NTCF.

8. Significantly, it is pointed out that period under investigation is from 1st April, 2002 to 30th June, 2003 (15 months) apart from it being a departure from normal period under investigation usually taken is 12 months, the period overlapped the period covered by previous investigation in respect of which no causal link was found in midterm review dated 20-3-2003.

9. After the initiation of proceedings and after the filing of objections against initiation of investigation by the ATMA and the exporters from China, the Designated Authority was informed by letter dated 7-4-2004 by the petitioners that appeal filed by the domestic industry against the mid term review findings dated 20th March, 2003 has been withdrawn and therefore, present proceedings are not maintainable as the domestic industry failed to establish causal connection even prima facie.

10. Thereafter, by Notification dated 30th June, 2004 the Designated Authority published its preliminary findings under Rule 12 of the Rules of 1995 and recommended the imposition of provisional Anti Dumping Duty on import of NTCF originating and exported from China. On the basis of the preliminary finding notified by the Designated Authority, the provisional Anti Dumping Duty was imposed by the Central Government vide Notification dated 26-7-2004. Before that on 5-7-2004, the copy of preliminary findings were supplied to the interested parties.

11. The Notification of preliminary findings inter alia informed about further procedure as under :

"(a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings.

(b) Exporters, importers, applicant and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days of the despatch of this Notification. Any other interested party may also make known its views within forty days from the date of publication of these findings.

(c) The Authority would provide opportunity to all interested parties for oral submissions.

(d) The Authority would disclose essential facts before announcing the final findings."

12. After the preliminary findings were notified comments/objections were invited from all interested parties.

13. From the procedure adopted by the Designated Authority, as it appears from the material on record, oral hearing was held on 1st September, 2004 before Shri Abhijit Sen Gupta, then the Designated Authority. A complaint was made vide

letter dated 3-9-2004 that request for inspection of public file to enable them to file effective reply was made. However, the approval of Designated Authority was not received until then. By reiterating their earlier submission made before the Designated Authority, a number of objections to preliminary finding were submitted. After oral hearing took place on 1-9-2004, on 10-9-2004 the written submissions were submitted on behalf of one of the exporters M/s. Ningbo Nylon Company Ltd., China and Automotive Tyre Manufacturers Association (ATMA).

14. Thereafter, on receipt of copy of submission made by domestic industry and some of the exporters of China, rejoinder to the new submissions raised thereunder was submitted vide letter dated 17-9-2004 (Annex. P/9) on behalf of M/s. Ningbo Nylone Company Ltd. (NNC) and Ningbo Jinlun Import and Export Co. Ltd. (NJIE) and ATMA Automotive Tyre Manufacturers Association. In this rejoinder submission, an objection was also raised against not granting market economy treatment to NNC by the Designated Authority.

15. It further appears that Mr. A. Sengupta was the Designated Authority when the preliminary findings were notified and aforesaid proceedings have taken place including oral hearing on 1st September, 2004. Said Mr. A. Sengupta, the Designated Authority, was transferred before the investigation was concluded and Mr. Christy L. Fernandez, IAS, Additional Secretary to the Government of India was appointed as new Designated Authority under Rule 3 of the Rules of 1995 somewhere in November, 2004.

16. We may notice here that initiation Notification was issued by Mr. L.V. Saptharishi as Designated Authority on 20-10-2003.

17. Vide letter dated 6-1-2005, the request was made to Mr. Fernandez on behalf of M/s. NNC and NJIE that "hearing in this case was granted by your predecessor who has since relinquished charge without passing any order in this case. We would earnestly urge you to appreciate that the principle of administrative proceedings would require that orders are passed by the authority who had actually heard the submission of various interested parties. In view of the above position, we would request you to kindly grant us a fresh hearing before any finalisation is taken in the matter."

18. The Designated Authority responded letter dated 6-1-2005 by making final disclosure under Rule 16, copy of which was annexed with letter dated 12-1-2005.

19. The final disclosure statement consisted of 4 Annexures relating to (i) general disclosure, (ii) Assessment of dumping-methodology and parameters (confidential for co-operating exporters only); (iii) Assessment of injury and; (iv) Methodology for arriving at non-injurious price (confidential copy for Domestic Industry only).

20. It was stated to be in terms of Rule 16 of the Rules of 1995. It was further stated therein that the Annexures stated above contained the essential facts

under consideration of a Designated Authority which would form the basis of final findings. It was clarified that the reproduction of facts thereunder is neither acceptance nor rejection of any fact/argument, and that most of the issues brought out in the preliminary findings were not repeated for the sake of brevity.

21. Apart from this, significantly it was stated in the letter that "Arguments raised by interested parties after the Notification of the preliminary findings and thereafter at the time of oral hearing are reflected in this Disclosure Statement to the extent they are considered relevant to this investigation."

22. It was also clarified that "notwithstanding all facts given in this disclosure (including facts given on a confidential basis), the Designated Authority would consider all replies given, on merits in order to arrive at a final determination.

23. It further invited comments from all interested parties by 24th January, 2005 pointing out that the anti-dumping investigations are time bound and no request for extension of time shall be entertained.

24. It is stated by the petitioner that vide letter dated 17-1-2005, it was urged before the Designated Authority that several basic issues raised in the course of hearing and in the written requests for information/clarification have not been responded to even in the disclosure statement, seriously affecting the right of the petitioner. It was submitted that :

"The response to our numerous requests is still awaited even at this stage of the proceedings. You may kindly appreciate that lack of response, clarifications and information has seriously jeopardized the ability of our clients to represent their case effectively on the issues raised. Our ability to respond to disclosure statement continues to be seriously affected in view of the above. Even at this stage we find that normal value calculations have not been disclosed and no reasons have been given for not calculating grade wise normal value when sufficient information was indeed available within the authority. In the absence of such vital information or reasoning our clients would not be in a position to make any meaningful attempt to file comments to the disclosure statement.

We would also request the Designated Authority to provide us the rejoinder statement filed by the all the parties to the proceedings. Please note that the same have been provided in other cases. If the same are not provided, we would not be in a position to appreciate the submissions in the proper perspective especially when it appears from the disclosure statement that several new submissions of the domestic industry have been brought on record which were not available in the public file or in the written submissions pursuant to the public hearing. Serious prejudice would be caused to the interest of the cooperating exporters and importers if such prayer is not allowed. Such an opportunity would enable us to effectively participate in the present proceedings as mandated by law of natural justice."

25. Its request for fresh hearing in terms of its letter dated 6-1-2005 was also

reiterated.

26. The petitioner has also placed on record his letter dated 10th August, 2004 complaining that till date the complete public file in accordance with the procedure prescribed in the Anti Dumping Rules has not been maintained and not made available for inspection.

27. Be that as it may, on receipt of the letter dated 12th January, 2005 and after making request on 17-1-2005 for supply of relevant material and a request for 15 days time to have meaningful comments and for fresh oral hearing, the present petition was filed on 24th January, 2005 making the following prayers :

"A. Issue a writ of Certiorari or in the nature thereof or any other Writ, Order or Direction, quashing and setting aside the investigation proceedings for imposition of Antidumping duty on NTCF originating in or exported from China P.R., initiated at the behest of Respondent No. 4.

B. Issue a writ or Certiorari or in the nature thereof or any other Writ, Order or Direction, quashing and setting aside Preliminary Findings dated 30-6-2004 (Annex. P-4) issued by Respondent No. 3 recommending imposition of provisional Anti-dumping duties;

C. Issue a writ of Certiorari or in the nature thereof or any other Writ, Order or Direction, quashing and setting aside the Notification dated 26-7-2004 bearing No. 72.2004-Custom (Annexure P-4A) issued by respondent No. 2 notifying Anti dumping duty on NTCF originating in or exported from China P.R. into India;

D. Issue a writ of Certiorari or in the nature thereof or any other Writ, Order or Direction, quashing and setting aside the Disclosure Statement dated 12-1-2005 (Annexure P-11);"

28. Two separate replies have been submitted to the writ petition. One on behalf of respondents No. 1, 2 and 3 viz., Union of India and authorities under the Act of 1975 and another on behalf of respondent No. 4, ASFI. However in both the replies all averments made by the petitioner in the writ petition on facts have not been traversed but the submissions have been confined to preliminary objections as to the maintainability of this petition on the grounds of lack of territorial jurisdiction in this Court to entertain the petition, want of locus standi of the petitioner to maintain this writ petition and that the petition is pre mature and ought not to be entertained at this stage. An objection to delay and latches in raising the grounds of lapses in procedure has also been raised.

29. A rejoinder has been submitted refuting all preliminary objections and asserting that the petition is not pre mature and that it is not an attempt to scuttle the proceedings initiated in respect of said facts but due to faulty procedure and erroneous approach adopted by the Designated Authority has vitiated the proceedings in its roots and if in spite of this, the Designated Authority is allowed to reach final findings and recommend the rate of Anti Dumping Duty to the Central Government, it shall result in irreparable injury

which is likely to be caused to the interest of the petitioner and that the petition does not suffer from laches. It was stated in response to objection as to lack of territorial jurisdiction of this Court that the petitioner is an importer as well as a user industry of article under investigation having its user in the State and facilities of using the article in question in manufacture of tyres set up in Kankroli, Rajasthan. The petitioner is a licensee to maintain a bonded warehouse situated within the precincts of his factory at Kankroli in the State of Rajasthan under the provisions of Section 58 of the Customs Act, 1962 where the imported goods are to be removed on reaching Indian Territory without payment of duty. u/s 58 of the Customs Act, within week of the imported articles reaching the Indian Territory petitioner is entitled to remove the imported goods to the warehouse at factory site without payment of duty under a bond. These provisions allowed the petitioner to make clearance from the said bonded warehouse for home consumption on payment of appropriate duties and other charges. Then only the goods are permitted to be removed. The petitioners are licensed to have such bonded warehouse at its factory at Kankroli since 1977 and the license for the appointed warehouse at Kankroli has been renewed upto year 2005. Such licence has been issued by Assistant Commissioner, Central Excise, Udaipur within the State of Rajasthan. Relevant material about these facts have been placed on record.

Contentions about territorial jurisdiction :

30. The respondents have submitted firstly that this Court has no territorial jurisdiction to entertain this petition because no part of cause of action relating to lis, subject matter of these proceedings arose or arises in the territory of Rajasthan. The investigation has taken place at Delhi. The goods are imported from China. The import takes place at the point when goods enter the territorial waters of India or at best are unloaded where the land territory of India commences. The Company has its registered office at Calcutta. All these facts have taken place out of Rajasthan State. Therefore, merely because the petitioner has a factory premises at Kankroli within the State of Rajasthan and it carries on its business of manufacture and sale of tyre from within the territory of Rajasthan, cannot be said to be a part of cause of action having nexus with the lis in question. The reliance was placed by the respondents on the decision of the Supreme Court in Union of India and Others Vs. Adani Exports Ltd. and Another, and National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others,

31. The learned counsel for the petitioner has urged that imposition of Anti Dumping Duty on imposition of goods is an impost in the nature of customs duty which is chargeable under Customs Act, 1962 read with Custom and Tariff Act, 1975. Since, the petitioner is having its bonded warehouses at factory site at Kankroli in Rajasthan where the imported goods are brought without payment of duty and the duty leviable under Act of 1962 read with Customs Tariff Act shall become payable when the goods are removed from the bonded warehouse

situated at Kankroli under the order issued by the competent authority which is situated at Udaipur. Therefore, the assessment of Customs Duty shall take place by the authority situate in Rajasthan at the time when imported goods are removed from bonded warehouse, where goods have been brought without payment of duty. Obviously, liability to pay Customs Duty in such case will arise only at Kankroli when goods are removed from the bonded warehouse. The liability to pay Anti Dumping Duty under the Customs Tariff Act, 1975 read with Act of 1962 shall arise at Kankroli in Rajasthan when the non-duty paid goods will be removed from bonded warehouse. The proceedings which are subject matter of petition are part of the procedure required to be followed for imposition of Anti Dumping Duty u/s 9A of the Act of 1975. There is a direct nexus between the proceedings under challenge and the liability of the petitioner to pay the Anti Dumping Duty chargeable u/s 9A of the Act of 1975 in Rajasthan to which the petitioner is likely to be subjected to. So far as the petitioner is concerned, there is a direct territorial nexus between the liability arising in the State of Rajasthan and determination of Anti Dumping Duty to be levied as a result of the proceedings in question. Therefore, the jurisdiction of this Court cannot be ousted merely because the other parts of cause of action relating to the said proceedings may arise in other State or States also. It was also urged that petitioner as an industrial user is also a necessary party to proceedings relating to finding about injury to domestic industry and causal linked in the dumping and such injury. The injury which the petitioner is likely to suffer as a result of dumping also arises in Rajasthan. Since, essential part of investigation is to determine the fact of injury to domestic industry likely to be caused on account of import and causal connection between the two forms a part of cause of action, the petitioner has rightly invoked the jurisdiction of this Court.

Conclusion :

32. We have given our careful consideration to the rival contentions and are of the opinion that the preliminary objection on the basis of territorial jurisdiction cannot be sustained in the facts of the present case.

33. u/s 12 of the Customs Act of 1962, all custom duties are levied at such rate as has been specified under the Customs Tariff Act, 1975 which has replaced Indian Tariff Act, 1934 or any other law for the time being in force on goods imported into or exported from India. Section 12 makes importing or exporting of goods itself a taxing event and the liability to pay the duty of custom in any of its manifestation arises on principle of ex hypothesi on the date when the goods are imported into and exported from India.

34. However, the scheme of the Customs Act, 1962 for making levy complete and effective by providing machinery of assessment and collection, the charging Section 12 has to be read with Section 15. Section 12 declares that the rate of duty shall be as provided under the Customs Tariff Act, 1975 as is the case in the case of income tax, where the rate of tax is provided by the Finance Act each year. Evaluating the goods for the purpose of determining the amount of duty

and the rate of duty to be levied is essential part of making the charge effective. Section 15 inter alia provides the date for determination of rate of Duty and tariff valuation of imported goods. It envisages that the rate of duty and tariff valuation, if any applicable to any imported goods shall be the rate endorsed in the case of goods entered for home consumption u/s 46 on the date when a bill of entry is presented under that Section. It further says under Clause (b) of Sub-section (1) that where the goods are removed to the bonded warehouse from the port of import without payment of duty and the goods are stored in the bonded warehouse, the quantification of Duty can take place only at rate of duty and valuation of goods in force on the date when the bill of entry is presented before competent authority before goods are cleared from warehouse u/s 68.

35. Until Section 15(1)(b) was amended vide Finance Act, 2003, the rate of duty and valuation of tariff was to be done as per the date on which goods stored in bonded warehouse without payment of Duty, when the goods were removed. Since amendment, the rate of duty and tariff evaluation of such goods removed to bonded warehouse without payment of duty is to be on the date the bill of entry is presented u/s 68 before competent officer removing therefrom the goods for home consumption under authorisation from competent officer.

36. The Custom Authorities under whose jurisdiction the bonded warehouse is situate, is the person before whom application seeking permission to remove goods for home consumption is to be made. The bill of entry is also required to be presented to him and liability to pay Customs Duty on such goods be removed for home consumption also arises then.

37. Thus, clearly the machinery provision for quantification and calculation of Duty shall become operative when the bill of entry is presented before Competent Authority while seeking permission to remove goods from the bonded warehouse under proper authorisation or is otherwise deemed to be improperly removed u/s 72. Therefore, in the case where imported goods are removed without payment of Duty to a bonded warehouse, the place where such warehouse is situated, the liability to pay the tax would arise and levy shall be at the place where bonded warehouse is situated, from where the goods are to be removed.

38. In *M/s. Priyanka Overseas Pvt. Ltd. and another Vs. Union of India and others*, , it has been laid down that the rate has to be determined on the basis of rate applicable on date on which the goods are actually removed from the warehouse.

39. The facts of the case and the ratio laid down by the Supreme Court clearly establishes that Section 15(1)(b) read with Section 68 is an integral part of the process of determining the liability to be discharged by the assessee where the goods are removed to the bonded warehouse without payment of duty. Therefore in a case relating to validity of levy of duty and the process which is statutorily provided for the purpose of bringing such duty in existence in the aforesaid

manner, the part of cause of action arises where the goods are stored in a bonded warehouse removal from which will result in quantification and determination of liability actually incurred by the concerned importer affecting his rights directly.

40. In view thereof, in the present case, the material produced by the petitioner shows that he was licensed to maintain a bonded warehouse at Kankroli, to which imported goods by the petitioner were to be removed without payment of duty, and its liability to customs duty accrued against the petitioner on removal of the goods from the said bonded warehouse which was situated at Kankroli in Rajasthan. That being the position, there is a direct nexus between the place where liability to duty in question is to arise, which is within the State of Rajasthan for the petitioner.

41. The scheme of Investigation to be held under Custom Tariff Act, 1975 read with Anti Dumping Rules of 1995 reveals that before anti dumping duties levy can be imposed findings are to be reached by the Designated Authority about three essential facts necessary to establish the fact of dumping. Such are the findings about Export price of subject commodity, normal price of the subject commodity and margin of dumping. The essential requirement that is to be investigated and found further is causal link between dumping of subject commodity and injury to domestic industry. Thus export from foreign country into India, import, and injury to domestic industry vis-a-vis dumping margin found on the basis of export price and normal price of subject commodity from exporting countries or originating country are essentials which has to be investigated before Designated Authority can reach its conclusions about existence of dumping and extent of injury taking place through exportation to or importation in India of any commodity and its injury to domestic industry because of such importation and extent of injury will be relevant factor to determine margin of dumping, on the basis of which alone recommendation can be made by the Designated Authority about the rate of anti dumping levy which would be sufficient to remove the injury to domestic industry.

42. Thus, for the purpose of investigation, the cause of action will consist of export, which emanates from a foreign country, import in India and the injury to domestic country. Such injury is measured in terms of injury to manufacturers of similar article in India and to the industrial users of article under investigation. This position of necessity interests to be heard as affected parties is apparent from definition of interested parties in Rule 2(c) and mandatory requirement to offer opportunity to industrial users and/or to representative consumer organisation where article is commodity ordinarily sold at retail level under Rule 6(5) of the Rules of 1955.

43. Therefore, part of cause of action to be investigated arises (i) at place from where export to India takes place from a foreign country or territory; (ii) at place where import in Indian territory takes place; and (iii) at a place where injury to domestic industry is caused viz. where like articles as under investigation are

manufactured in India and/or at a place where the article under investigation is put to industrial use. This is apart from the place where investigation is initiated and proceeded with.

44. Applying the aforesaid test, if we look at the facts of the present case, the petitioner is an industrial user of the article under investigation at Kankroli, a place situated in Rajasthan. The petitioner is also an importer. He has the bonded warehouse to store the imported article NTCF in question at its factory site at Kankroli in State of Rajasthan. In terms of Section 12, 15/68 of the Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975, the Anti Dumping Duty on goods imported in India shall be payable by the importer when such goods are removed from bonded warehouse situated at Kankroli by seeking permission u/s 68 of the Customs Act, 1962.

45. Thus a part of cause of action about levy on collection of Anti Dumping Duty that may be imposed as a result of proceedings under Anti Dumping Rules, 1995 arise in Rajasthan at Kankroli.

46. There is no dispute that on levy of Anti Dumping Duty and other duties of custom if any dispute arises as to assessment and levy thereof in respect of the petitioner, the territorial jurisdiction shall vest in this Court.

47. In this connection, we may notice a very recent decision of the Supreme Court in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another,

48. It was a case in which petitioner has challenged the vires of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 before the Delhi High Court. The petitioner was a company having its registered office at Mumbai. Loan was obtained from Bhopal Branch, State Bank of India. Notice for repayment was issued by the Bank from Bhopal purporting to be in terms of the said Act.

49. The writ petition was not entertained by the Delhi High Court on the ground that the Delhi High Court did not have the territorial jurisdiction because no part of cause of action arose within territorial jurisdiction of Delhi High Court.

50. In appeal before the Supreme Court, it was contended that since petitioner was challenging an act of parliament, which was enacted at Delhi at the seat of parliament, Delhi High Court has necessary territorial jurisdiction.

51. The Supreme Court negated the contention of the appellant and affirmed the decision of Delhi High Court. The Court said :-

"Passing of a legislation by itself does not confer any such right to file a writ petition, unless a cause of action arises therefor."

52. In such cases, the Court said that it is trite to say that a legislation is not confined to a statute enacted by Parliament or the legislature of a State, it would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. For

determining the question of territorial jurisdiction in such cases, the test laid down by the Supreme Court in following terms :-"

"A parliamentary legislation when it receives the assent of the President of India and is published in the official gazette, unless specifically excluded, will apply to the entire territory of India. A passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner."

Article 265 ordains that no tax shall be levied and collected except by authority of law.

53. It is well settled that the expression "law" in the context of Article 265 means an Act of legislature. . While imposition has to be authorised by the Act of legislature, the details can be provided by delegated authority. The instrument by which a tax can be imposed cannot be an executive act.

54. In the context of present case, Parliament has authorised the levy of Anti Dumping Duty on existence of certain fact circumstances. On existence of such fact circumstances Central Government has been authorised to impose Anti Dumping Duty at a specified rate by issuing a Notification to that effect u/s 9A of the Act of 1975. The issuance of such Notification is a legislative function and Notification is a legislative instrument issued by Central Government as delegate of Parent Legislature, Parliament. The procedure has been prescribed for determining facts, existence of which is a condition precedent to impose the levy of Anti Dumping Duty by the Central Government. Thus, the procedure of investigation to find about existence of necessary facts is an exercise in aid of legislative function of the State. On the implementation of such levy, the cause of action will arise where as a result of implementation civil or evil consequences fall on the petitioner.

55. In the present case, the civil or evil consequences, on implementation of Anti Dumping Duty, if levied as a result of alleged illegal and invalid proceedings, will fall on the petitioner at Kankroli in State of Rajasthan as discussed above. Hence if the petitioner is to challenge the validity of levy, the High Court of Rajasthan will have territorial jurisdiction to entertain such challenge and decide upon it.

56. On the anvil of the aforesaid principle, the Notification dated 26-7-2004 issued by Central Government imposing provisional Anti Dumping Duty on import of NTCF from China was a delegated legislation. In implementation of such imposition the petitioner as an importer of NTCF was subjected to Anti Dumping Duty on its import. That duty in terms of Section 15 read with Section 68 of the Customs Act, 1962 shall become payable in Rajasthan when removing goods, on which duty has not been paid, from bonded warehouse at Kankroli, under permission from competent authority.

57. The consequence of levy of Anti Dumping Duty and its liability in the case of petitioner, arising in Kankroli because of licensed bonded warehouse situated at factory site at Kankroli were not disputed in view of material about a licenced bonded warehouse situated at Kankroli were placed on record. The petitioner has asked for quashing of Notification dated 26-7-2004 also.

58. In view of the above position, it cannot be said that any part of cause of action relating to lis in the writ petition did not arise in Rajasthan.

59. Both the part of causes arising in Rajasthan have direct nexus to the lis which is being proceeded with and are relevant for determining territorial jurisdiction of Court.

60. We have reached above conclusion about place where part of cause of action arises relating to befalling of injury resulting from import of article under investigation and the place of invoking machinery provision for assessing and recovering duty under the statutory provision covers within the territory of State of Rajasthan. We have no hesitation in coming to the conclusion that this Court has territorial jurisdiction to entertain the petition challenging the validity of proceedings under Rules of 1995, without prejudice to end conclusions that may be reached on the merit of other contentions raised in this petition. The preliminary objection as to want of territorial jurisdiction of Rajasthan High Court to entertain the present writ petition, therefore, cannot be sustained.

61. The principle enunciated in *Union of India and Others Vs. Adani Exports Ltd. and Another*, and in *National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others*, also do not militate against the conclusion which we have reached. In both the cases, the Court reiterated the principle that each and every fact pleaded by the applications in their application does not ipso facto lead to conclusion that those facts have given rise to cause of action wholly or partly within the territorial jurisdiction, unless those facts are such which have a nexus or relevance with the lis that is involved in the case. In the *Kusum Ingots & Alloys* case (supra), the Supreme Court specifically dealt with the situation when in pursuance of a legislative act cause of action arises. The conclusion to which we have reached is within the parameter of test laid by the Apex Court for determining the question of territorial jurisdiction as per the decision relied on by the respondents.

Objection to Locus Standi of the Petitioner

62. Mr. Mohan Parasaran, learned Additional Solicitor and Mr. Krishna Venugopal, learned counsel for the ASIF and other intervening parties have further submitted that petitioner, a registered Company, does not have locus to maintain this petition. It has been urged that firstly, the petitioner does not have an individual interest in matter hence, the cause cannot be pursued individually. Secondly, petitioner himself has not participated but his interest has been represented before the Designated Authority through a representative body ATMA. If at all only ATMA could pursue the remedy in respect of any grievance

relating to investigation conducted by the Designated Authority.

63. Learned counsel for the petitioner has asserted its locus to maintain the petition as an importer of NTCF and as an industrial user of the product in question. He also pointed out that notwithstanding that its interest is represented through ATMA, but the petitioner has been individually served with the notices by the Designated Authority and has also made submission in its own right before the Designated Authority.

64. Factually, the latter position, on verification was found to be correct by respondents also and much of its vehemence was lost.

65. From the Scheme of Rules of 1995 also it is apparent that petitioner cannot be denied the relief in the ground of locus.

66. We may notice that Rule 2(c) of the Rules of 1995 define the term interested party which reads as under :

Rule 2(c) "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 association a majority of the members of which are producers, exporters or importers of such an article;

(ii) the Government of the exporting country; and

(iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;..."

67. Apparently, an importer of the subject article as well as an association of importers of subject article, apart from the exporter, foreign producer, domestic producer and manufacturer or association of manufacturers of subject article has been specifically recognised as a person interested. There is no dispute about the fact that the petitioner is an importer of subject article. He has been statutorily recognised as interested party to investigation. His locus, therefore, cannot be doubted, in a lis relating to investigation under Rules of 1995.

68. The fact that the law permits individual as well as Association representing such interest to participate in investigation does not result in depriving the individual importer of his locus to participate and raise grievance in respect of the proceedings under the Rules of 1995.

69. That apart, Rule 6(5) of the Rules, 1995 makes it abundantly clear that apart from interested parties defined under Rule 2(c), an industrial user individually and a representative consumer organisation where subject article is commodity ordinarily sold at the retail level, as necessary participants in the investigation proceedings under Rules before Central Government can exercise its authority to impose Anti Dumping Duty u/s 9A of the Customs Tariff Act, 1975. Rule 6 delineates the principles of governing investigation. Sub-rule (5) of Rule 6 reads

as under :

"(5) The Designated Authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organizations in cases where the article is commodity sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality."

70. Sub-rule (5) mandates Designated Authority to give opportunity to industrial user and representative consumer organisation in cases subject goods are ordinarily sold at retail level to furnish information regarding dumping, injury where applicable, and causality. It makes a distinction between two classes of persons namely, industrial users and retail buyers. In the case of former, the opportunity is required directly to be offered to the industrial user, but in the latter case, opportunity to be given is confined to representation consumer organisation. The requirement is directly in mandatory form by using expression "shall also provide opportunity." It is not within the domain or discretion of the Designated Authority.

71. The petitioner is undisputably and undeniably an industrial user of the subject article NTCF apart from being its importer. An interested party who is mandatorily required to be offered an opportunity to participate in the investigation by the Designated Authority, cannot be held to be stranger to proceedings and denied locus standi. This also explains why individual notice was served on the petitioner and was responded to by it.

72. In this view of the matter, preliminary objection as to lack of locus of the petitioner is overruled.

Delay and Laches :

73. The respondents have contended that the petition is grossly belated. The petitioner challenges the initiation of investigation because condition precedents for initiation of investigation under Rule 5 of the Rules of 1995 have not been complied with. Specifically, it has been urged that conditions precedent under Sub-rule (3) which has been couched in negative expression viz. "the Designated Authority shall not initiate investigation pursuant to a complaint under Sub-rule (1) unless...." Therefore, the condition prescribed must exist before assumption of jurisdiction by the Designated Authority to initiate proceedings. The proceedings were initiated in October, 2003.

74. Coming to other ground of challenge to publication of preliminary findings on 30th June, 2004 in furtherance of which Notification imposing provisional Anti Dumping Duty was issued on 26-7-2004.

75. The petition has been submitted on 24-1-2005 more than one year after initiation of proceedings and 6 months after publication of preliminary finding. At the time of commencement of hearing 9 months, maximum period upto which Provisional Duty can remain operative, has almost elapsed. Thereafter, unless

Notification under Rule 18 pursuant to final finalisation is issued, levy of Provisional Duty cannot continue. Hence it is too late to challenge provisional imposition of duty and further proceedings on the alleged invalidity attached to preliminary findings.

76. It is true that had the petition rested on the above two grounds only perhaps the contention of respondent would have carried substance.

77. However, the petition has been triggered by denial of fresh oral hearing by the successor Designated Authority, after the predecessor Designated Authority has granted oral hearing on 1-9-2004, who had demitted the office on transfer in November, 2004. The demand for fresh hearing was made on 6-1-2005 and it was responded by publishing information on the basis of which Designated Authority intends to reach final finding on the matters required to be determined by him. In which, we stated that substance of oral hearing has been noticed in information published. The petition has been filed on 24-1-2005 after serving a notice dated 17-1-2005 demanding certain information, time of 15 days to furnish comments and reiterating demand of fresh oral hearing as per request dated 6-1-2005.

78. Without commenting on merit of the contentions, it can be safely inferred that even if the challenge to initiate investigation under Rule 5 and publication of preliminary finding under Rule 12 and consequent imposition of Provisional Duty be suffering from delay, the challenge to continued proceedings on the basis of denial of fresh oral hearing by successor in office, when predecessor in office after giving oral hearing has demitted office without deciding the case, if such a lapse renders the whole proceedings void, cannot be said to be suffering from delay or laches so as to refuse to examine the merit of contention.

79. Hence, we are unable to sustain the objection to entertain hearing on merit on the ground of delay and laches also.

Whether Writ Petition is Premature -- Contentions :

80. The respondents have urged that the petition is pre mature inasmuch as no final findings have so far been reached by the Designated Authority. One does not know what these findings will be. Even if the final findings are recorded by the Designated Authority that the import of commodity under investigation results in dumping of the commodity in India by the exporters and results in material injury to the domestic industry and it recommends the rate of anti-dumping duty which would remove the injury to the domestic industry, still no liability can arise until the Central Government accepts the recommendation with or without modification and the imposing duty Notification is published. It was urged by the learned counsel for the respondents that the findings recorded by the Designated Authority are recommendatory in nature and not binding on the Central Government. It is within the Central Government ultimately to act or not to act on such findings and recommendations. In this connection, it is further submitted that after the Central Government issues Notification levying Anti

Dumping Duty, aggrieved interested party may avail the remedy of appeal to CESTAT wherein all the findings are open to be reviewed both on procedural as well as substantive aspect.

81. On this premise, it was urged that the petition is pre mature as no present cause of grievance arises for the petitioner and ultimately if the Designated Authority finds it to be a case of dumping needing imposition of anti dumping duties, and recommends the rate of such duty if levied will remove the injury where applicable and on such findings, the Central Government issues Notification imposing duly, the aggrieved person will have an efficacious remedy to challenge the levy. Therefore, the petition should be dismissed on that count alone. Reliance in this connection was placed on Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, G. Sarana Vs. University of Lucknow and Others, Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others, and Indian Express Newspapers Ltd. Vs. Union of India (UOI), a Division Bench decision of the Delhi High Court, the SLP against which is stated to have been dismissed by the Supreme Court - 2003 (158) E.L.T. A225 (S.C.). Last of the decisions relates to Anti Dumping Duty. Reliance was also placed on judgment of the Gujarat High Court in Appollo Tyres Ltd. v. Union of India, Civil Special Application No. 8747/2004, decided on 20th July, 2004. The decision of the Gujarat High Court has been rendered in relation to the very investigation which is subject matter of the present writ petition. The Gujarat High Court has declined to inquire into the matter at the stage before the final findings are recorded in the matter.

82. On the other hand, the petitioner has urged that the petition cannot be dismissed as pre mature for two reasons. Firstly, because the preliminary findings having already been reached and the rights of the petitioner already having been affected by levy and collection of provisional anti dumping duties, the petitioner can challenge preliminary findings and provisional levy of Anti Dumping Duty. The grounds of such challenge may include challenge to very initiation of investigation for the purposes of levying Anti Dumping Duty u/s 9A and violation of statutory provision in conducting investigation until reaching preliminary findings and consequent issue of Notification imposing provisional Anti Dumping Duty. Such right has been recognised by a Division Bench of this High Court in Rajasthan Textile Mills Association v. Director of Anti Dumping - 2002 (149) E.L.T. 45 wherein the Court has held that a petition is maintainable under Articles 226 and 227 challenging the preliminary findings as it affects the tax payer. However, whether the Court would interfere in any particular case at the stage of preliminary findings is a matter of discretion to be exercised by the Court in the totality of the facts and circumstances of the case and considering comprehensively the attending circumstances. In the Rajasthan Textile Association Case, the Court has declined to interfere in the matter. Therefore, the present petition cannot be said to be pre mature as the preliminary findings and the levy of provisional Anti Dumping Duty is also the subject matter of challenge in the petition. Secondly, because the petitioner is challenging the very validity of proceedings which are pursued by the Designated Authority inter alia on the

ground that it suffers from violation of fundamental and mandatory requirement of Rules 1995 which vitiates the whole enquiry and it cannot be allowed to be continued and completed, with such obvious breaches of statutory provisions which vitiates the entire proceedings. Its continuance will be in derogation of principles of fair procedure. It was also urged that the very initiation of enquiry is void because of non compliance of conditions precedent required to be fulfilled before initiation of investigation under Rule 5 of the Rules 1995. Therefore, the petitioners are within their rights to seek a direction to Designated Authority not to proceed with the inquiry. Particularly, it has been urged that there is a patent breach of principles of natural justice inasmuch as oral hearing has been provided by one officer and decision will be taken by the other, without affording fresh hearing, which is against all canons of principles of natural justice. Reliance was placed in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another,

83. It was urged that since the petitioner challenges the very initiation of the investigation and also, the preliminary finding reached by the Designated Authority being in violation of the procedure prescribed by the Statute and subsequent proceedings were also taken in breach of natural justice at every step and finally, the Designated Authority's denial to afford opportunity of fresh oral hearing in spite of a demand having been made and his insistence on proceeding with the investigating without affording oral hearing which was given by his predecessor-in-office and to act on the oral hearing given by the predecessor in office vitiates the whole enquiry and cannot be proceeded with. Until the investigating is not complete, the claim to an appropriate writ directing the Designated Authority not to continue with already vitiated proceedings cannot be said to be pre mature.

84. The learned counsel for the respondents rejoined that, the investigation by the Designated Authority is governed by the procedure laid down under the Rules of 1995 and under the Rules, there is no requirement of an oral hearing as essential part of procedure. What is required is that all interested parties can have an opportunity to furnish information to the Designated Authority orally also for the purpose of assisting him to arrive at an objective findings as to the normal value, the export price, the injury to the domestic industry, margin of dumping and the causal connection between the activity of the importation to India and the injury caused to the domestic industry which provides the foundation for enabling the Central Government to act u/s 9A to levy or not to levy Anti Dumping Duty in respect of articles under investigation and in respect of the goods to be imported in India from a particular country or from particular customers. But such information furnished orally is mandatorily required to be followed with written submission about such oral information. In the absence of subsequent written submission, the information submitted orally cannot be taken into consideration.

Conclusion :

85. The question whether the petition is pre mature is integrally linked with the question whether a cause of action has arisen for the petitioners to challenge the preliminary findings, Notification imposing Provisional Duty and whether the oral hearing is necessary part of the procedure to be followed by the Designated Authority in the manner in which it is urged by the learned counsel for the petitioner, are questions which cannot be considered in isolation. Therefore, we propose to consider these questions together.

86. This will necessitate to view the nature of function that is discharged by the Designated Authority, the nature of proceedings before the Designated Authority and also the nature of levy of Anti Dumping Duty and the scheme unfolded in the Act of 1975 and Rules 1995 laying down the procedure which the Designated Authority during investigation has to adhere to before the duty can be imposed in terms of Section 9A of the Custom Tariff Act, 1975.

Scheme of provisions relating to Anti-Dumping Duty :

87. We have noticed above that the principal Act authorising levy of customs duties in terms of Entry 81 of the List I of schedule VII of the Constitution is the Customs Act, 1962. Section 12 of Customs Act provides that the duties of custom shall be levied at the rate prescribed under the Customs Tariff Act, 1975. Thus, Customs Act, 1962 and Custom Tariff Act, 1975 are to be read together to find the answer.

88. The Customs Tariff Act, 1975 as originally enacted did not provide for number of levies including Anti Dumping Duty which now finds place in the Act of 1975.

89. At the time of its enactment, there was no provision for levy of Anti Dumping Duty and a few other type of imposts. The Anti Dumping Duty was introduced in the Act of 1975 vide amending Act No. 52 of 1982. The Scheme for levy and imposition of Anti Dumping Duty is encompassed under Sections 9A to 9C. The imposition of safeguard duty u/s 8B was introduced vide Finance Act, 1997 w.e.f. 14-5-1997, with an object to safeguard interest of domestic industry against injury that domestic industry may suffer on account of increased quantities in imports. The special provisions relating to impost on territorial product, special duty on imports from Peoples Republic of China was levied by inserting Section 8C w.e.f. 11-5-2002 vide Finance Act, 2002. All these new duties have come to be incorporated in the Act of 1975 as a result of obligation arising under International Treaties and trade agreements at the international forums to which India was a party or signatory and each in its terms was diverse in nature and different from the normal or the ordinary customs duties to be imposed on importation or exportation of goods in India or from India.

90. We are concerned with the imposition of Anti Dumping Duty. A question may arise whether it is an independent levy under the Act of 1975 otherwise than the Customs duty as imposed under the Act of 1962 or is a specie of customs duty. However, for the present controversy, this issue need not be addressed at this

stage.

91. Anti Dumping Duty is primarily levied not so much with object of raising revenue, but to protect the domestic industry from injury that is caused or likely to be caused due to imports at lower than normal price from exporting economy. In the present age of globalisation and free trade, the developed nations and economist favouring barrier free trade, seek advice of Adam Smith in his celebrated work "The Wealth of Nations" that "never attempt to make at home what it will cost more to make than to buy." This advise has been refined to contend that "if foreign country can supply us with commodity cheaper than we ourselves can make it, better buy it from them which some part of the produce of our own industry, employed in a way in which we have some advantage." This argument is marketed as theory of comparative advantage. Even the most ardent votaries of free trade founded on market economic principles do not favour unfair trade. Subsidising home product and dumping imports in buyer territory are recognised by most as unfair trade which hurt competitive market which is considered essential bedrock of free trade.

92. During the Tokyo run of multi-national Trade Deliberations at Geneva from 1973 to 1979, all measures to counter unfair trade through subsidies, and countervailing measures and Anti Dumping Rules were drafted laying down the detail rules to provide unification and certainty in the implementation of Article VI of the GATT. India was signatory to both the agreements and it was felt necessary to take steps to ensure the conformity of its domestic laws, Rules, Notifications and administrative procedure with the provisions of the GATT Agreement. With this object in mind, by Act No. 52 of 1982, Section 9 of the Tariff Act, 1975 was amended to provide for countervailing duty on bounty fed and subsidized articles whether or not such articles are chargeable with duty under the Act, and to provide for the imposition thereunder of Provisional Duty and of the refund of excess amount were the final duty as determined under it is found to be less than the prevailing duty.

93. Another amendment which was brought into the Act of 1975 was to insert Section 9A authorising Anti Dumping Duty on dumped products and for the imposition of Provisional Duty on dumped products and refund of excess amount in cases where the final duty as determined under the Section is less than the Provisional Duty. Section 9B was also introduced to provide for exemption from levy of countervailing duties u/s 9 or of the Anti Dumping Duties u/s 9A in the case of articles imported from the country or territory notified under the Section. The exemptions were not to be made in respect of import of any article if the import of such article causes or threatens the material injury to any industry established in India or materially retard the establishment of any industry in India. It enables the Central Government to specify for the purpose of such provision only a country or territory which by reason of it being party to the GATT or by reason of an agreement between it and India for giving it a most favoured nation treatment or for any other reason provides for a similar exemption with

respect to articles imported into such country or territory from India.

94. Closely analysed, three basic elements have to be pre-determined before the Central Government may exercise its authority to impose an Anti Dumping Duty. Firstly, that the article is exported from another country to India at a less than its normal value that such import causes material injury to domestic industry and that the Duty to be imposed cannot exceed the margin of dumping. Therefore, the determination of normal value and the export value is essential to find whether the exporter is dumping the goods to India, it is essential for the Central Government before levy of Anti Dumping Duty that it has determined what is the margin on dumping in relation to such article. This is so, because margin of dumping provides maximum ceiling of the rate at which duty can be imposed without this bench mark being before the Central Government, the power cannot be exercised. Thus, the determination of export price, normal price and the margin of dumping prior to the Central Government exercises its authority have to be determined.

95. Significantly, the determination of these essentials have not been left to the subjective satisfaction of the Central Government but it has to be determined by an independent agency. It has taken care to define what is meant by export price, normal price and margin of dumping which provides that Central Government may pending the determination in accordance with the provisions of Section 9A and the Rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin so determined, it also obligates the Central Government that it shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty and refund shall be made of so much of the anti-dumping duty which has been collected in excess of the anti-dumping duty so reduced. Sub-section (4) says that Anti Dumping Duty chargeable under this Section shall be in addition to any other duty imposed under the Act or any other law for the time being in force. The period during which Anti Dumping Duty imposed under Sub-section(5) shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition. However, the Central Government is authorised if in a review it has opined that it likely to lead to continuation or recurrence of dumping and injury to the domestic industry, it may from time to time extend the period of such imposition for a further period of 5 years. The period during which the review came to be initiated, before the expiry of period of 5 years, to the date of its conclusion, the anti dumping shall continue to remain in force for not exceeding one year. The margin of dumping duty as referred to in Sub-section (b) of Section 3 is to be considered and determined by the Central Government from time to time after such enquiry as it may consider necessary. Sub-section (6) of Section 9A provides that the Central Government after such enquiry, as may consider necessary and may by Notification in the official gazette make Rules for the purpose of Section 9A and

without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified and for the manner in which the export price and the normal value of article subject of investigation and the margin of dumping in relation to such articles may be determined and for the assessment and collection of such anti-dumping duty. Sub-section (8) was inserted vide Finance Act, 2000 extending the provisions of the Customs Act, 1962 and the regulations made thereunder relating to non-levy, short levy refunds and appeals shall, as far as may be, applied to the Duty chargeable u/s 9A as it applies to in relation to Custom Act. Section 9A was inserted, also vide Finance Act, 2000, providing for revision of Anti Dumping Duty in certain cases with which we are not presently concerned. Section 9B which was inserted along with 9A imposes certain restrictions and enables the Central Government to grant certain exemptions in the matter of countervailing duties u/s 9 and Anti Dumping Duty u/s 9A. Section 9C is in consonance with Article 13 of the GATT 1994 in providing an appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidies or dumping in relation to import of any article lies to the Customs and Excise Service Tax Appellate Tribunal constituted u/s 129 of the Customs Act. It also provides for the limitation and the procedure for filing and hearing of such appeal. It provides for Constitution of Special Bench presided over by the President of the Appellate Tribunal and that the Bench shall consist of the President and not less than two members which shall include one judicial member and one technical member.

96. Thus, a specialised Bench of Tribunal well equipped with the legal acumen and technical expertise of the experienced Presiding Officer is to hear the appeal against the determination made for the purpose of levy of Anti Dumping Duty.

97. The scheme of Section 9A, 9B and 9C envisages in clear terms that while the authority to impose Anti Dumping Duty has been authorised by law made by the competent legislature, but the fixing of the rate of the anti duty to be levied is left to be exercised by the delegate of the legislature. Since Anti Dumping Duty is authorised to be levied only on existence of certain facts, it is also envisaged that the delegate should exercise such power subject to determination of certain essential facts, in a comprehensive manner in accordance with the procedure laid down in the Rules framed by the Central Government.

98. It is while giving effect to this scheme of Section 9A of the provisions relating to levying of anti dumping duties which as per the object stated in its enactment also is to give effect to the GATT agreement and other International Treaties and agreements to which India is signatory member. Under the Constitution of India it is also an obligation of the State to discharge the obligation arising under international treaty. The determination of essential facts in accordance with the procedure laid down under the Rules is in aid of the legislative function of the Parliament and its delegate and is not purely of the administrative or judicial or quasi judicial character but is legislative or quasi legislative in character.

99. Viewed in that light, the investigation envisaged under the Rules framed for the purposes of imposing the Anti Dumping Duty cannot be viewed in the light of the normal administrative or quasi judicial inquiries undertaken by the administrative, judicial or quasi judicial authorities to determine a lis between the two opposite parties but is exercised for the purpose of accumulating certain basic informations about facts on the basis of which Central Government can exercise its taxing authority under statutory authorisation. Such information is to be collected from all interested parties during the investigation envisaged under Rule 5 in the manner laid in subsequent rules. The finding is to be reached by considering such information with the aid of all concerned interests which would enable the Central Government to exercise its legislative function of imposing Anti Dumping Duty as authorised by the Act of 1975. That being the contours and the nature of the enquiry, in our opinion, it has to be viewed by keeping in view the object of the enquiry and the relative methodology to achieve that object delineated under the Rules of 1995.

100. Rule 3 of the Rules of 1995 envisages appointment of the Designated Authority for the purpose of the determination of facts necessary to find whether there is dumping and if so, what is the margin of dumping and it provides that the Central Government may provide to the Designated Authority, the services of such persons and such other facilities as it deems fits.

101. Thus, the function to find facts, both as a preliminary finding or final finding relevant for imposition of Anti Dumping Duty is vested in the Designated Authority who is not below the rank of the Joint Secretary to the Government of India and does not envisage it to be a body of persons or a multi personnel Tribunal, though in order to assist the Designated Authority, the Central Government is to provide the services of other persons as are necessary for the purpose of carrying on investigation and other facilities as may be required to hold the investigation expeditiously and in accordance with the procedure stated in that rules.

102. Rule 4 gives the framework of the duties assigned to the Designated Authority which are :

"(a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;

(b) to identify the article liable for anti-dumping duty;

(c) to submit its findings, provisional or otherwise to Central Government as to normal value, export price and the margin of dumping in relation to the article under investigation, and

(d) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries:

(e) to review the need for continuance of anti-dumping duty once it is imposed."

103. The aforesaid duties assigned to the Designated Authority does not need further elaboration as they lay down the foundation of exercise of the power by the Central Government bearing in mind further considerations as per the guiding principles clearly laid in the Act and Rules before Anti Dumping Duty can be imposed by it. Finding of the aforesaid facts relating to the dumping margin dependent on the difference between normal price and the export price of the article in the exporting countries and the injury to the industry because of such import with the causal connection between the import and the injury alone can enable the Central Government to levy Anti Dumping Duty.

104. Not only to determine the anti dumping margin, but the Designated Authority has further to recommend rate of Anti Dumping Duty not exceeding the margin of dumping which if levied is likely to remove the injury to the domestic industry. The function of the Designated Authority does not end with the determination of the findings and imposition of Anti Dumping Duty by the Central Government but is a continuous process. It requires periodical reviewing of the status of dumping and necessity of continuance of the Anti Dumping Duty once imposed.

105. The procedure for initiation of the investigation and final findings is provided in Rules 5 to 17.

106. Rule 5 envisages initiation of investigation to determine the existence, degree and effect of the alleged dumping duty only on receipt of the written application by the Designated Authority from the domestic industry. Exception to this rule is Sub-rule (4), which enables the Designated Authority to initiate an investigation suo motu if satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 or from any other source that sufficient evidence exists as to the existence of circumstances referred to in Clause (b) of Sub-rule (3).

107. The Sub-rule (3) envisages that Designated Authority does not initiate an investigation in pursuance to an application made under Sub-rule (1) without application of mind to the information submitted by the applicant in the parameters of certain norms envisaged under the Sub-rule (1). It envisages that if the application has been made by or on behalf of the domestic industry who does not aggregate in total for 25% or more of the total production of the like article, no investigation can be initiated on the basis of complaint made by the domestic industry representing less than 25% of the total production of the article in question. It has further to examine before initiating investigation the fact of dumping, injury where applicable; and where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

108. For the present purposes, Rule 6, Rule 12, Rule 13, 14, 16, 17 and 18 are relevant.

109. Rule 6 lays down the principle governing investigation i.e. to say procedure

for undertaking investigation.

110. Once the Designated Authority in terms of Rule 5 decides to initiate investigation, it has to investigate into the existence degree and effect of any alleged dumping of any article and is required to issue a public notice inviting comments of all parties interest and such public notice is to contain information relating to country or countries in the article involved; the date of initiating the investigation; and the basis on which the dumping is alleged. The summary of factors on which the allegation of injury is based, the address to which representatives of interested parties should be directed, and the time limit allowed to interested parties for making their view known.

111. Sub-rule (2) requires copy of public notice to be sent by the Designated Authority to known exporters of article alleged to have been dumped, the Government of exporting countries concerned and other interested parties.

112. Sub-rule (3) requires that the Designated Authority furnish a copy of application made under Rule 5 to known exporters, concerned trade associations whose community of exports is large, the Government of exporting countries and also to supply such copy on demand to other interested party.

113. Significantly, Sub-rule (4), (5) and (6) of Rule 6 deal with calling of information from different interests. Separate provision has been made for giving opportunity to furnish information to each of the interests identified earlier, with the stipulation that such information shall be transmitted to others subject to claim of confidentiality. These Rules also envisage oral submissions relating to information. Such opportunity to oral submission is conditional that oral submission shall be taken into consideration only if it followed with written submissions placing the oral submissions about information by the concerned party.

114. This Court in Rajasthan Textile Mills Association (*supra*) has taken the view that oral hearing is not an integral part of opportunity envisaged under the Rules. No insistence can be laid on oral hearing. The view which we are disposed to take in the present writ petition, refrain us from pursuing this argument any further at this stage.

115. Rule 10 and 11 relates to points on which Designated Authority has to reach its preliminary findings. Rule 12 requires the Designated Authority to record preliminary findings and issue a public notice of it. While for Designated Authority it is a step forward towards concluding the inquiry by recording final findings, it operates for the Central Government an objective material which may lead it to exercise its power to impose Provisional Duty. However, imposition of Provisional Duty is not the part of investigation to be conducted or procedure to be followed by the Designated Authority. For him it is stage for inviting comments and views of those interests which have come forward on such preliminary findings. Rule 14 and 15 concerns the contingencies in which the Designated Authority can terminate the proceedings before reaching final

findings. Such contingencies include appropriate voluntary undertaking from exporters to eliminate the margin of dumping by revising prices.

116. Having collected information from all sources and taking views and comments of all interests appearing before it, the Designated Authority has to determine within one year of initiation of investigation, extendable up to 18 months, whether or not the article under investigation is being dumped in India and submit to the Central Government its final findings under Rule 17. Before that the Designated Authority under Rule 16 has to make a disclosure of information before giving its final findings to all the interested parties of the essential facts under consideration which formed the basis for its decision. Though the Rule does not say so, as to practice followed by Designated Authority, the comments are invited by him from interested parties before recording final findings.

117. Along with its determination about dumping the Designated Authority has also to recommend the rate at which if Anti Dumping Duty is levied will remove the injury to domestic industries.

118. On submission of final finding, the Central Government under Rule 18 can within three months thereof impose Anti Dumping Duty not exceeding the margin of dumping. Rule 19 directs that Anti Dumping Duty is to be levied on non-discriminatory basis.

119. Rule 20 declares in unequivocal terms that Anti Dumping Duty levied under Rule 13 or Rule 18 shall take effect from the date of publication in official gazette only. It does not take effect earlier than that whether Provisional Duty or final duty.

120. The rest of the Rules relate to periodical review and ancillary matters which are not relevant for the present purposes.

121. Before embarking on the further enquiry, it would be appropriate to notice the co-relation between the relief that can be sought in exercise of extraordinary jurisdiction of this Court and the nature of function and of the enquiry by the Designated Authority in relation to reliefs which are sought. We have noticed while considering the question about territorial jurisdiction that any relief against legislative action whether primary, delegated, or subordinate, the cause of action arises only when the provisions of such legislation or some of them are implemented and which gives rise to civil or evil consequences to the petitioner complainant. This was so stated in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*,

122. If the function is legislative and any party is aggrieved with the legislative enactment or a legislative instrument, the cause of action will not arise until such legislation comes into existence and by implementation of which civil or evil consequences arise for the aggrieved party.

123. The principle is also well settled that writ of mandamus, prohibition or

certiorari are not the remedies available against the legislative acts.

124. As early as in *Province of Bombay Vs. Kusaldas S. Advani and Others*, the Supreme Court laid down the principle that the writ of prohibition will lie only against the judicial or quasi judicial proceedings and not against the action of legislative or executive.

125. In *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, the Court said that :

"The law is now well settled that a writ of certiorari will lie to control such a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice, or commits any error apparent on the face of the records, provided that, on a true construction of the statute creating such body, it can be said to be a quasi-judicial body entrusted with quasi-judicial functions. It is equally well settled that certiorari will not lie to correct the errors of a statutory body which is entrusted with purely administrative functions."

126. In *State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others*, the question arose in connection with the framing of Rules under Clause (2) of Article 229 of the Constitution. The issue was whether on a rules being framed by the Chief Justice or his delegate if no approval has been received from the Governor, whether a writ of mandamus could be issued directing, Governor to give his approval to the Rules made by the Chief Justice. The Court answered the said question in the negative considering that the function to be exercised in relation to framing of rule was legislative in character.

127. The principle was again considered by the Supreme Court in *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, wherein the Court said that :

"There can be no doubt that no Court can direct the Legislature to enact a particular law. Similarly when an executive authority exercises a legislative power by way of subordinate legislation pursuant to delegated authority of the legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."

128. In *State of Jammu & Kashmir v. A.R. Zakki and Ors. - (1992) (Suppl.) 1 SCC 548* the Court reiterated that, "a writ of mandamus cannot be issued to the Legislature to enact a particular legislation, same is true as regard the executive when he exercises the power to make Rules which are in the nature of subordinate legislation."

129. Broadly speaking, while the writs of prohibition and certiorari have for their object to keep the inferior courts or Tribunals within their jurisdiction by restraining them exercising jurisdiction which does not vest in them and/or to correct errors apparent from the face of its record. Such writs could be issued not only to courts but to all authorities exercising judicial or quasi judicial

functions. The mandamus is a command to protect any person, Corporation, inferior courts or Government, requiring him or them to do something particular, specified which belongs to his or their offices and is in the nature of public duty, or to forebear from doing something which they are prohibited to do under law or not to do contrary to law or against it. It differs from the writ of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Writ of prohibition and certiorari are usually issued whenever inferior Tribunal has wrongly exercised or exceeded its jurisdiction. The mandamus is available against any public authority, executive, administrative and local bodies or any person who is under a duty imposed by the Statute or by common law to do a particular act. If that person or authority refrains from doing the acts or refrains, from wrong motives, from exercising the power which it is his duty to exercise, the court will by order of mandamus order to do what he should do.

130. On the other hand, broadly speaking the difference between writ of certiorari and writ of prohibition lies in the stage at which they can be commanded, object being to control judicial or quasi judicial bodies. The object for which the prohibition and certiorari can be issued and the difference between the two was succinctly pointed out by the Apex Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others,

131. We may notice here also that the Supreme Court decision in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, explained under what circumstances, a prohibition lies against the administrative authority. It was a case where the Court held that where condition precedent for issuing notice u/s 34 of IT Act, 1922 (corresponding to Section 148 of IT Act, 1961) do not exist, a writ may be issued to the Assessing Authority not to proceed in furtherance of such invalid notice as it will amount to assumption of jurisdiction which does not lawfully vest in the officer. It was laid down by the Supreme Court that under Article 226, the High Court has the power to issue an order prohibiting a statutory, administrative authority from acting without jurisdiction or from proceeding in furtherance of wrongful assumption of jurisdiction.

132. From the aforesaid principles, noticed in broad terms without detailed niceties makes out one distinction clear that where the relief claimed is against an act which may result in bringing into existence a legislative instrument, no cause of action arises for which a petition in the nature of mandamus, prohibition or certiorari can be maintained until the legislative instrument comes into existence and in its implementation affects any person resulting in civil or evil consequences that may affect him adversely. Until then no cause of action arises and consequently no writ would lie to abstain the concerned legislative authority from completing the process by which the legislation can be brought into existence.

133. On the other hand, if the function is judicial, quasi judicial or administrative,

the cause of action may arise in a given case, even by the very initiation of proceedings under any law or in exercise of public duty aimed at bringing on civil consequences for a person against whom such action is initiated. In such case the action or inaction itself becomes cause of action if it abundantly affects petitioner's interests.

134. This issue takes us to enquire when cause of action arises to initiate a lis. If such cause of action has arisen for the petitioner to litigate to safeguard his interests which have been affected or likely to be affected by the investigation or proceedings in question, the petition cannot be said to be pre mature. Else it certainly is.

135. Answer to question when cause of action in relation to any proceedings for seeking a relief through a writ, order or direction under Article 226 and/or 227 arises, begets another question about nature of enquiry.

136. Section 9A is a charging Section for levy of Anti Dumping Duty and provides necessary pre condition to exist before Anti Dumping Duty can be imposed by the Central Government. The Parliament having enacted law authorising levy of Anti Dumping Duty u/s 9A, authorised the Central Government by publishing a Notification in the official gazette to impose Anti Dumping duty not exceeding the margin of dumping in relation to such article.

137. The power to impose such duty is not conferred on subjective satisfaction of the Central Government but the power is controlled by existence of certain rational founded facts.

138. Before exercising such power it has to be determined that an article is being exported from any foreign country or territory referred to India at less than its normal value and charging of such less price has casual link with material injury caused to domestic industry. Then alone upon the importation of such articles to India, the Central Government may by Notification in the official gazette impose an Anti Dumping Duty not exceeding the margin of dumping in relation to such article.

139. Anti-dumping Duty is in the nature of a tax imposed on determining the existence of certain facts with an object to protect the domestic industry against injury that may be caused to it because of unfair trade practice of exporters from the foreign country in selling their products at less than its normal price at home market to the buyers in India. It is not a tax as is ordinarily understood for the purpose of raising public revenue in generality or in the nature of a compensatory tax for services rendered by the State like road tax, but it certainly falls in the category of tax to regulate import of certain articles by subjecting it to an additional duty on finding existence of certain facts in order to protect the domestic industry from injury caused on account of unfair trade pursuits by the exporters of the goods from foreign country or territory to India. The imposition is not complete merely by enacting Section 9A authorising imposition of Anti Dumping Duty on certain conditions found to exist. Charge to

tax really comes into existence on Notification issued by the Central Government as authorised u/s 9A of the Act of 1975. Thus, not only the provision in the principal legislation enacted by the Parliament is legislative but the Notification which ultimately brings the charge into effect, too is legislative in character and is in the nature of delegated legislation.

140. In this connection, we may notice the principle succinctly explained in *Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others*,

"The power to impose a tax is undoubtedly a legislative power. That power can be exercised by the Legislature directly or subject to certain conditions the Legislature may delegate that power to some other authority. But the exercise of that power, whether by the Legislature or by its delegate is an exercise of a legislative power. The fact, that the power was delegated to the executive does not convert that power into an executive or administrative power. No Court can issue a mandate to a Legislature to enact a particular law. Similarly, no Court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact."

141. If this principle applies to the present case and we think it does apply, Section 9A as well as Notification that the Central Government may issue in exercise of its authority under it, on considering existence of certain facts as found through an elaborate procedure laid for such purpose is a legislative act and no writ of mandamus, prohibition or certiorari can reach for restraining the Central Government from not issuing a Notification to impose Anti Dumping Duty which it has been authorised u/s 9A of the Act of 1975.

142. The nature of delegation legislation as is contemplated u/s 9A squarely falls in the category of conditional delegation of legislative function which depends not on subjective satisfaction of the delegate but depends on objective facts to be reached before the power can be exercised. As per the principle enunciated in *State of T.N. v. K. Subanayagan - AIR 1998 SC 344*, the Notification when issued falls in the third category of conditional delegated legislation.

143. However, the purpose of investigation is to find facts objectively for laying foundation for imposing Duty which shall be effective in future and not to adjudicate some existing dispute about past acts, the Designated Authority's function also falls in the category of quasi legislative and not administrative. The distinction was tersely stated by Schwartz in his *Administrative Law* quoting Scalia, J. from (1988) US 217 in *Bowen v. Georgetown University Hospital* :

"a Rule is statement that has legal consequence only for the future and adjudication deals with what the law was, rule making deals with what the law will be."

144. The same principle was stated by Chinnappa Reddy J. in *UOI v. Cynamide* laying down the distinction between the legislative act and administrative

adjudication as under :

"Adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action."

145. The above distinction was approved by the Supreme Court recently in *State of Tamil Nadu v. K. Subanayagan* - AIR 1998 SC 344.

146. Coupled with this, if we consider the ratio enunciated by the Supreme Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and *Another*, as to when a cause of action arises in respect of legislative action, it comes to the fore that mere passing of a legislation does not give rise to a cause of action but a cause of action arises only when the provisions of the Act or some of them are implemented which gives rise to civil or evil consequences to the petitioner.

147. Applying this test to the present case, it can be said that so far as the relief relates to prohibiting or preventing the Central Government from exercising its legislative function by issue of any writ contemplated under Article 226 is concerned, cannot be said to be ripe for consideration, unless the required Notification is issued and is sought to be implemented by the authorities concerned for levy and collecting Anti Dumping Duty imposed by such Notification.

148. Notwithstanding that relief has directly not been claimed for restraining the Central Government from issuing the Notification in exercise of authority u/s 9A, the real imprint of the petitioner's relief is to thwart the Central Government from exercising this authority by infructuating the process of finding necessary facts. At this stage, if the issue would have been restricted to that, that would have been end of our quest.

149. However, it is contended that while issuance of Notification, ultimately may be in the realm of legislative function, but the requirement of holding an enquiry by laying down the elaborate procedure for giving opportunity to the respective interests, for placing the relevant information before the Designated Authority and requiring the Designated Authority to record his finding after considering all the contentions submitted by interested parties makes the investigation a lis between the two opposite interests namely the interest of the exporter at less than the normal value at which the article in question is exported to India, and the right of importers to import such goods at that price on one side as players in a barrier free trade, and on the other hand stands interests of domestic industry who are manufacturers of the like product in India who petition that their interests are likely to be injured by the activity of the exports which falls within the precincts of dumping and industrial users or representative consumer organisation. Therefore, the nature of investigation contemplated under Rules of 1995 is quasi judicial. Hence, the petitioner can challenge the initiation of proceedings if it was not warranted under the provisions or can challenge at any time so far relief against the continuance of proceedings which are being conducted in breach of principles of natural justice.

150. Our attention is drawn to the elaborate procedure under the Rules with particular emphasis to Rules 5 and 6 of the Rules of 1995 which we have noticed above in detail. To focus consideration relevant part of Rule 5 and 6 are reproduced herein below :-

"5. Initiation of Investigation.- (1) Except as provided in Sub-rule (4), the Designated Authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under Sub-rule (1) shall be in the form as may be specified by the Designated Authority and the application shall be supported by evidence of -

(a) dumping

(b) injury, where applicable, and

(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The Designated Authority shall not initiate an investigation pursuant to an application made under Sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry;

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding-

(i) dumping

(ii) injury, where applicable; and

(iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total product of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

(4) Notwithstanding anything contained in Sub-rule (1) the Designated Authority" may initiate an investigation suo motu if it is satisfied from the

information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in Clause (b) of Sub-rule (3).

(5) The Designated Authority shall notify the government of the exporting country before proceeding to initiate an investigation.

6. Principles governing investigation. - (1) The Designated Authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice, notifying its decision and such public notice shall, inter alia, contain adequate information on the following :-

- (i) the name of the exporting country and the article involved;
- (ii) the date of initiation of the investigation;
- (iii) the basis on which dumping is alleged in the application;
- (vi) a summary of the factors on which the allegation of injury is based;
- (v) the address to which representations by interested parties should be directed; and
- (vi) the time limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the Designated Authority to the known exporters of the article alleged to have been dumped. The Governments of the exporting countries concerned and other interested parties.

(3) The Designated Authority shall also provide a copy of the application referred to in Sub-rule (1) of Rules 5 to -

- (i) the known exporters or to the concerned trade association where the number of exporters is large; and
- (ii) the governments of the exporting countries;

Provided that the Designated Authority shall also make available a copy of the application to any other interested party who makes a request therefore in writing.

(4) The Designated Authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the Designated Authority may allow on sufficient cause being shown.

Explanation : For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the

date on which it was sent by the Designated Authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The Designated Authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organizations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.

(6) The Designated Authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the Designated Authority only when it is subsequently reproduced in writing."

151. It has been contended that firstly, the initiation of investigation is subject to fulfilment of condition precedent about submitting of an application in specified form supported by evidence of (a) dumping; (b) injury where applicable; and (c) where applicable causal link between the alleged injury and the import. The second pre condition is couched in negative, imposing an obligation on the Designated Authority not to initiate proceedings pursuant to an application made under Sub-rule (1) unless it satisfies itself by examining the accuracy or adequacy of evidence produced by the applicants, or by the information received from Collector of Customs which may enable the Designated Authority to suo motu initiate the investigation as to (1) dumping; (2) injury where applicable; (3) injury to domestic market; and (4) a causal link between such terms imports and alleged injury.

152. It also provides under proviso to Rule 5(3) that no notice of such complaint can be taken note of if the domestic producers expressly supporting the application account for less than 25% of the total production of the like article by the domestic industry and the Designated Authority further examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is a sufficient evidence regarding; (1) dumping; (2) injury where applicable; and (3) where applicable causal link between such dumped imports and the alleged injury to justify initiation of investigation.

153. This provision, the petitioner contends, makes it imperative firstly; that the applicants do make an application in specified form supported by evidence, relied on by them and secondly to place before the Designated Authority material that the application is supported by that portion of domestic producers who account for 25% or for more than 25% of the total production of the like article by the domestic industry. Thereafter, it is for the Designated Authority to objectively apply its mind to existence of necessary production capacity of the complainant organisation of the applicants, the material that has been placed before it for prima facie coming to a satisfaction about the existence of sufficient evidence to support the necessary facts required to be determined for the purpose of imposing Anti Dumping Duty, but having not done so, the Designated Authority

could not have assumed jurisdiction to initiate the investigation. Hence, the proceedings by the Designated Authority suffers from inherent lack of jurisdiction.

154. Rule 6 lays down the procedure which is participatory in nature so much so that opportunity is required to be given to all concerned parties by the Designated Authority before recording its finding. Such opportunity includes oral submissions and furnishing of information desired to be furnished.

155. The interested parties as defined under Rule 2(c) includes the industrial users of the article under investigation and the representative consumer organisations in cases where the article is commonly sold at retail level as envisaged under Rule 6(5) are the persons interested in the investigation and all of them are to be provided with opportunity as required under Rule 6 to different interests. Parties are also provided with an opportunity to make oral representations and it is only after considering the rival submissions made by the diverse interests that the Designated Authority has to record its finding, whether preliminary or final, in respect of the following matters respectively.

156. Preliminary findings are required to be in respect of :

- (i) the names of the suppliers, or when this is impracticable, the supplying countries involved;
- (ii) a description of the article which is sufficient for customs purposes;
- (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;
- (iv) considerations relevant to the injury determination; and
- (v) the main reasons leading to the determination.

Final findings are required to be :

(a) as to, -

- (i) the export price, normal value and the margin of dumping of the said article;
- (ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;
- (iii) a causal link, where applicable, between the dumped imports and injury;
- (iv) whether a retrospective levy is called for and if so, the reasons therefore and date of commencement of such retrospective levy :

Provided that the Central Government may, (in its discretion in special circumstances) extend further the aforesaid period of one year by six months:

Provided further that in those cases where the Designated Authority has suspended the investigation on the acceptance of a price undertaking as provided in Rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year.

(b) recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry.

157. According to the petitioner the elaborate procedure to be followed by the Designated Authority for reaching objective findings in respect of facts required for laying foundation for the Central Government to exercise its power of imposing Anti Dumping Duty, by issuing a Notification in that regard, makes the investigation before issue of Notification by the Designated Authority appointed under Rule 3 of the Rules of 1995 for the purposes of finding necessary facts, skeleton of which has been provided u/s 9A quasi judicial in nature. Even if it is not considered quasi judicial in nature, the assumption of jurisdiction by the Designated Authority to initiate the investigation which may ultimately result in evil consequences for the importers, gives rise to a cause of action to importer to challenge the proceedings at the very inception and may invite interference by the Court on principle set out in Calcutta Discount Company Limited case (supra), it is further contended that if at any stage, the proceedings are conducted not in conformity with the mandatory requirement of the Rules, it gives a cause of action to the petitioner for seeking direction to the authority to quash the proceedings or to issue necessary directions to conclude the investigation in terms of the requirement of the Rules.

158. The question about the distinguishing line between the pure executive action and judicial or quasi judicial act is attracting considerations of the Courts for more than a century. While for the purposes of examining the validity of any action of a State or its instrumentality, the demarcating line between the administrative, executive and quasi judicial act is getting thinner and thinner and in most cases, it is not easily discernible. The development in administration of justice between State and citizens has reached high point when Supreme Court in E.P. Royappa Vs. State of Tamil Nadu and Another, enunciated the scope of reach of guarantee to equality before law and said :

"In fact equality and arbitrariness are sworn enemies, one belongs to rule of law in a republic while the other to whim and caprice of an absolute monarch. Where an act is arbitrary, it is now implicit in that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14."

159. The principle giving a third dimension to equality before law was carried further to its zenith in Jetha Bai and Sons, Jew Town, Cochin and Others Vs. Sunderdas Rathenai and Others, wherein Bhagwati J. speaking for the Court said :

"Whenever therefore there is arbitrariness in State action whether it be of the legislature or the executive or of an authority under Article 12, Article 14 immediately springs into action and strike down such State action. In fact, the concept of reasonableness and non arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the constitution."

160. However, the test of arbitrariness and reasonableness is neither like Proverbial Chancellor's foot nor like an unruly horse. It has to be discerned in the context of nature of the public duty to be performed, the object of legislation and purpose of inquiry to be carried, and the effect it has on the interest sought to be protected. This makes it relevant to consider the nature of action impugned and effect emanating therefrom on the interest sought to be protected, which includes consideration of appropriate time of considering the challenge.

161. Fundamental principle which have been applied to different fact situations making out distinction between judicial and quasi judicial acts on the one hand and administrative action on the other while inquiring into challenge to any State action while testing it on the scale of judicial scrutiny may be viewed in brief.

162. May, C.J. in the Irish v. Get - 1878 LR (2) IR 571 observed :

"In this connection terms judicial does not necessarily to mean act of a judge or legal tribunal stating for the determination of matters of law. For the purpose of this question judicial acts seem to be act generally by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights of other and it be a body empowered by law to enquire into facts, make estimates to himself a rate of a district, it would some to mean that the acts of such a body involving such consequence would be judicial acts."

163. The principle was to some extent deviated by Lord Atkin in the King v. The Electricity Commissioner - 1924 (1) KB 171. While considering the scope of a writ of certiorari, he opined :

"Wherever any body of person having legal authority to determine the questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these writs."

164. Later in King v. London Country Council - (1931) 2 KB 215 Scrutton L.J. observed that :

"It is not necessary that it should be a Court in the sense in which this Court is a Court. It is enough if it is exercising after hearing evidence, judicial functions in the sense that it is to decide on evidence between a proposal and an opposition and which is not necessary to be strictly a Court; if it is a Tribunal, which has to decide rights after hearing evidence and opposition it is amenable to the writ of certiorari."

165. Lord Justice Slesser in the same judgment, has detailed the four conditions laid down by Lord Atkin under which a rule of certiorari may issue as under :-

"Wherever any body of persons (1) having legal authority; (2) to determine questions affecting rights of subjects; (3) having the duty to act judicially; and (4) act in excess of their legal authority a writ of certiorari may issue."

166. The issue which invites our attention in somewhat like circumstances as are present in the instant case, came for consideration before the Court of Appeal in *Franklin v. The Minister of Town and Country Planning* - (1948) A.C. 87. The question that arose for consideration was that in respect of the town and country planning undertaken under the relevant statute on the order of the Minister following a public local enquiry under the provisions of the Act. The question was whether the order of the Minister was quasi judicial act or a purely administrative one. The provisions of the Act under which the order was made, prescribed certain methods or steps to be taken in discharge of that duty. Before making the draft order, the Minister was to have made elaborate enquiry into the matter and have consulted any local authority who appear to him to be concerned, and with the other departments of the Government. The Minister was required to satisfy himself that it was a sound scheme before he took serious step of issuing a draft order, for the purpose of inviting objections and wherever they are not withdrawn, of having of public enquiry to be held by someone other than the respondent to whom they present reports was for the further information of the respondent final consideration of the soundness of the scheme. Lord Thanterdan opined :

"I am of the opinion that no judicial duty is laid on the respondents in discharge of these statutory duties and only question is whether he has complied with statutory directions to combine an apposite person to hold the public enquiry and to consider that person's report."

167. Apart from decisions referred to above, the decision of the appellate Court in *Franklin v. Minister of Town and Country Planning* was considered by the Apex Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*,

168. The Full Court of the Supreme Court in separate judgments by five of the members constituting the Bench came to unanimous conclusion that writ of certiorari lies only when a body of persons having legal authority to determine questions affecting the rights of subjects and such determination is founded on duty to act judicially, it acts in excess of their legal authority. It does not lie to remove or to act upon an order which is of an administrative or ministerial nature. The aforesaid decision in *Franklin's* case found its approval in the leading judgment of the Court by Chief Justice Kania.

169. On the applicability of the principle on the merit of the case before it viz. whether the authority concern was to act judicially under the scheme of Statute, the Court was split into 4:2, to find that the judgment of the Bombay High Court holding the act to be quasi judicial was not the correct view but approved the

test of determining the question whether in a given case, the enquiry to be conducted under the provisions of relevant statute, even if through elaborate procedure, is quasi judicial or administrative, as succinctly stated by Hon"ble Chagla Chief Justice of Bombay High Court, from judgment under appeal. It was quoted by Hon"ble Justice Mahajan as under :

"In the first place, a duty must be cast by the legislature upon the person or persons who is or are empowered to act to determine or decide some fact or facts. There must also be some lis or dispute resulting from there being two sides to the question he has to decide. There must be a proposal and an opposition. It must be necessary that he should have to weigh the pros and cons before he can come to a conclusion. He would also have to consider facts and circumstances bearing upon the subject. In other words, the duty cast must not only be to determine and decide a question, but there must also be a duty to determine or decide that fact judicially."

170. From these principles, one essential element which makes an act of any authority quasi judicial or not is that in order to be a judicial or quasi judicial, it ought to be determination of a lis between the two parties, and adjudication of that lis in accordance with the principle of normal adjudication must result in determination or adjudication of rights of rival parties. On the other hand, if the entire proceedings, though required to be elaborately conducted under the provisions of the Statute does not adjudicate any lis between the two parties or adjudication upon the rights of any of them, but are only for the purpose of laying foundation for the final decision making authority who has to take into consideration, the findings reached through such enquiry in aid of legislative function, and then to decide act or not to act upon it.

171. The subject squarely fall within the precincts of ratio laid in Franklin's case (supra) - (1948) A.C. 87 and this distinction between adjudication and non adjudicatory function has been approved by the Apex Court in Province of Bombay Vs. Kusaldas S. Advani and Others, This distinction does not appear to have so far been obliterated or clouded.

172. If in the light of the aforesaid distinction, we examine the whole gamut of the scheme of imposition of Anti Dumping Duty, the following aspects become clear :-

173. u/s 9A of the Act of 1975 the levy of Anti Dumping Duty is authorised by Parliament, laying down the conditions on the existence of which Anti Dumping Duty can be imposed. The imposition is a tax.

174. The authority has been vested in the Central Government to find whether such conditions exist, and on finding that such conditions exist the power to impose Anti Dumping Duty on such imports at rate not exceeding margin of dumping by issuing a Notification also vest in the Central Government.

175. The guiding factor on which the Central Government may decide to issue

Notification in the official gazette to impose an Anti Dumping Duty are stated that where any article is exported from any country or territory to India at less than its normal value then only the Central Government may impose Anti Dumping Duty.

176. The maximum limit upto which Anti Dumping Duty can be imposed has also been prescribed by the parent legislation that it should not exceed the margin of dumping in relation to such article.

177. Sub-section (2) makes two fold provisions. Firstly, it envisages that the Central Government may impose on the importation of such article into India an Anti Dumping Duty on the basis of a provisional estimates of normal value and margin of dumping if such Anti Dumping Duty exceeds the margin determined. Thus, enabling the Central Government to levy a provisional Anti Dumping Duty before determination of the normal value of the article, and the margin of dumping, pending investigation. Simultaneously, it also envisaged that determination of normal value of articles, export price of article and the margin of dumping in relation to any article in question shall be made in accordance with the provisions of Section 9A and the Rules made thereunder. The Rule making authority under the provisions of the Act for the purpose was conferred on the Central Government.

178. In exercise of this power, the Central Government framed the Rules of 1995.

179. We may notice that what is the ambit and scope of the expression margin of dumping, export price in relation to an article and normal price in relation to an article, the alternative methods that can be adopted for the purpose of determining three values essentials for finding whether Import of the article under investigation falls within the expression of dumping or not has been laid in Explanation to Sub-section (1) of Section 9A.

180. This gives contours of the basis of arriving at these conceptional values and methodology of objective estimation of such value estimates, which emanate from the statute itself.

181. A comparison of the agreement reached on implementation of Article IV of the GATT, 1994 and the Rules of 1995 framed by the Central Government would reveal that the anti dumping rules 1995 have been framed broadly in consonance with the obligations arising under GATT, 1994 which was aimed primarily to minimise and restrict anti-dumping duties which are generally considered as an obstruction to free trade.

182. Be that as it may, it is not the province of the present enquiry to go into the details of the comparison and to what extent the provisions of Rules of 1995 are in line with the GATT, 1994. But it is relevant to notice that Article (1) of the GATT, 1994 bares the principle that the provisions made in the succeeding articles are to govern application of Article VI of GATT, 1994 in so far as action is taken under the and dumping duties.

183. We shall presently notice that merely finding by the Designated Authority the facts leading to conclusion that a case of dumping and specific injury in domestic industry is made out by itself, does not obligate the Central Government to levy anti dumping duties as a matter of course. But the decision of the Central Government to impose Anti Dumping Duty after it receives the findings and the recommended rate which would remove the injury to the domestic industry is still governed by number of other considerations on which the Central Government alone has to decide.

184. Rules of 1995 under Rule 3 envisages appointment of a Designated Authority by the Central Government. Such Designated Authority has to be a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government may think fit for the purposes of rules. Apparently, the reference to person to be appointed as Designated Authority is a natural person and not a juristic person or a body of persons. Before going to the details of the enquiry to be conducted by the Designated Authority and the procedure he has to follow for discharging his duties in respect of such enquiry what is essential for the present purposes is that the proceedings which commences by initiation of investigation under Rule 5, by the Designated Authorities on receipt of written application on behalf of domestic industry which may trigger off investigation into alleged dumping may ultimately culminate into final findings under Rule 17. But reaching such finding itself does not bring into existence any charge, so as to give rise to any liability to duty ex hypothesi.

185. Before reaching the stage of final findings the Designated Authority is also empowered to record preliminary findings under Rule 12 regarding export price, normal value and margin of dumping in respect of imports from specified country and further finding regarding injury to the domestic industry. He has to issue a public notice regarding its preliminary findings inviting comments from various interests. However, the issue of public notice recording preliminary findings also by itself does not result in levy of Provisional Duty. For Designated Authority, it is only a step forward to procure desired information from all interested parties and their views on the dumping activities. The power to impose Provisional Duty rests with the Central Government which has to decide, on the basis of preliminary findings recorded by the Designated Authority whether to impose Provisional Duty not exceeding the margin of dumping.

186. The expression used under Rule 13 enabling the Central Government to exercise its power of imposing a Provisional Duty is couched in enabling manner as the expression "may" has been used, communicating that issue of a public notice on preliminary finding by the Designated Authority does not mean necessarily that the Central Government shall impose a Provisional Duty as a matter of course. It operates as a safeguard against subjective imposition of Provisional Duty envisaged in Sub-section (2) of Section 9A read with the rules and ensure that no such Provisional Duty can be imposed before the expiry of 60 days from the date of public notice issued by the Designated Authority regarding

its decision to investigate which itself is founded on due application of his mind to matters detailed in Rule 5. It also ensures that the imposition of Provisional Duty may not continue indefinitely to render the investigation an empty formality by ordaining that the Provisional Duty can remain in force only for a period of 6 months in the first instance but which may upon request of the exporters representing the percentage of the trade involved be extended by the Central Government maximum up to 9 months. Beyond 9 months from the date it is first imposed, Provisional Duty cannot be continued.

187. Effect of final findings recorded under Rule 17 is in the like manner no different. The recording of finding by the Designated Authority does not result in automatic levy and imposition of Anti Dumping Duty u/s 9A nor it becomes imperative for the Central Government to impose such Duty as recommended by the Designated Authority. The matter again rests with the Central Government which is the delegate of the Parliament to impose in given circumstances Anti Dumping Duty not exceeding the margin of dumping.

188. Under Rule 18, the Central Government is not required to act immediately on publication of the finding which is required to be published, like preliminary finding under Rule 17 by a public notice. Rule 18 provides that the Central Government "may" within a period of three months of the publication of final findings of the Designated Authority under Rule 17 by Notification in the official gazette impose Anti Dumping Duty on importation into India of the articles covered by the final findings, not exceeding the margin dumping as determined under Rule 17.

189. The Central Government's authority to impose Anti Dumping Duty is hedged by multiple considerations. Section 9B of the Act of 1975 provides that no article can be subject to countervailing duty leviable u/s 9 and Anti Dumping Duty imposable u/s 9A simultaneously. This appears to be so because both the levies primarily concern not so much with raising of public revenue, as much they concern the protection of domestic industry against injury that may be caused or threatened due to unfair trade practice of home subsidisation by the Government of Exporting Country or dumping of such article by the exporters. It becomes a matter of choice for the Central Government to opt either of the measures, keeping in mind considerations apart from mere quantity of export and its effect on home product. Clauses (b) and (c) of Section 9B(1) entails further considerations of circumstances under which Central Government is not to levy countervailing duty or Anti Dumping Duty u/s 9 or 9A respectively. Such consideration includes the circumstances, in which subsidies have been provided a soft consideration towards member of WTO or a country with which India has an agreement of most favoured nation, etc.

190. The Central Government is also not to levy such duty if the Government of country from which the export of subject commodity originates, gives a satisfactory voluntary undertaking agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporters agree to revise the

price of the article, which satisfies the Central Government that it will eliminate the injurious effects of subsidy or dumping as the case may be.

191. These are all matters to be considered by the Central Government before it decides to impose Anti Dumping Duty on the basis of finding recorded by the Designated Authority and recommendations made by it. The period within which such consideration has to take place is 3 months from the publication of final findings under Rule 18.

192. The prescription of a period of three months under Rule 18 of the Anti Dumping Duty Rules of 1995 or for that matter Rule 20 of Countervailing Duty Rules of 1995 is an indication that on receipt of finding from the Designated Authority, Government is not to act in a mechanical manner to issue Notification imposing the duty, but has to consider all relevant factors prescribed for its guidance before it takes its decision on the findings and recommendations made by the Designated Authority. Section 9B of the principal Act and consequent provisions made in Rules of 1995 make the imposition of Provisional Duty subject to Notification under Rule 18, if any, and rates notified therein. If the Central Government does not levy any Anti Dumping Duty or decides to levy the Duty at rate lower than the rate of duty notified under Rule 13, the importer who has paid the Anti Dumping Duty becomes entitled to refund of whole or excess amount paid by him as Provisional Duty within a time frame.

193. These provisions make it abundantly clear that the Designated Authority does not decide any lis between the rival parties to it, nor does it decide upon the rights of any party who participate in investigation before him.

194. Notwithstanding identifying the interested parties in the Statute, their appearance before the Designated Authority is not compulsive. No power has been conferred on the Designated Authority to compel appearance of any interested party or compel the production of documents or information. It depends on voluntary participation, so much so that except the parties detailed in Rule 6(3) it has been left to option of all other interested parties to obtain copy of the application under proviso to Rule 6(3) of the Rules of 1995.

195. This scheme fortifies us in our conclusion that function of Designated Authority is neither judicial or quasi judicial nor pure administrative in character. The proceedings are in aid of exercise of legislative power by the Central Government as a delegate of parliament. Hence, cause of action in respect of proceeding leading to final findings that may lead to imposition of duty arises only on issuance of Notification u/s 9A and not before it.

196. So far as cause of action in respect of levy of preliminary finding is concerned, it arises on issue of Notification imposing Provisional Duty u/s 9A(2) read with Rules 12 and 13 of the Rules of 1995, enforcement of which affects the petitioner as an importer who became liable to such duty. A Division Bench of this Court in Rajasthan Textile Mills Association case (supra) has also opined that the writ is maintainable against preliminary findings and provisional imposition of

duty.

197. However, maintainability of writ is not to be confused with right to get the desired direction on merit. Whether court will interfere in a given case, is a matter of discretion to be exercised by the Court which depends in each case on its own facts and circumstances.

198. It has to be seen from the aforesaid gamut that ultimate authority rests with the Central Government to impose or not to impose Anti Dumping Duty after the necessary determination about the facts referred to in Section 9A are found by the Designated Authority in the manner prescribed under Rules and preliminary finding and final findings are published under Rule 12 and Rule 17 respectively.

199. It can be said, therefore, safely that merely determination of preliminary finding and its publication or determination of the final findings and its publication cannot result in affecting rights of anybody. In fact, the entire scheme reveals that the duty of the Designated Authority is not to determine any lis or dispute between the exporters or importers or domestic industry but it has duty to find certain facts by eliciting information from all sources on which depends its conclusion whether exportation and importation of the subject article results in dumping and whether as a result of such dumping any injury is caused to the domestic industry and if so, the extent of injury which is caused to the domestic industry.

200. The fact about the margin of dumping as explained and defined in Explanation to Section 9A is also to enable the Central Government while exercising its legislative function of imposing Anti Dumping Duty to make up its mind as to the extent of duty which is to be imposed, if it decides to impose such Duty.

201. We are, therefore, of the opinion that notwithstanding an elaborate procedure having been provided for finding facts which may enable the Central Government to decide whether to impose or not to impose Anti Dumping Duty and if it is to be imposed at what rate it is to be imposed, the authority to impose Duty remains with the Central Government and until Notification imposing Anti Dumping Duty is published in official gazette, no impact falls on any interest and no adjudication of individual or collective rights is made by the Designated Authority. It remains a fact finding authority for the purpose. It collects information from all interested parties, draw conclusions therefrom and places its conclusions before the Central Government who alone is really been empowered to impose duty to enable it to act upon it.

202. However, without going into the merits of the contention but assuming for the sake of arguments that the Central Government is not to substitute its finding for the findings recorded by the Designated Authority and the only recommendatory part of its finding is the suggested rate at which if Anti Dumping Duty is levied would remove the injury to domestic industry, the fact

remains that notwithstanding the Central Government may have no power to substitute its own finding for the findings recorded by the Designated Authority, the Central Government is not obligated to impose Anti Dumping Duty notwithstanding the findings recorded by the Designated Authority about normal price, export price and substantial margin of dumping and injury to domestic industry with a causal connection, still the domestic industry would not be entitled to a mandamus to the Central Government to impose anti dumping duties by accepting those findings and recommendations if the Central Government does not impose Anti Dumping Duty as noticed by us above.

203. The principle is well settled that no mandamus can be issued to enact or not to enact any legislative instrument whether by parent or subordinate or delegate legislative authority.

204. This will also be the result if we look at the scheme of the rules that until Notification is issued, no adverse effect falls on the prospective tax payers because no consequence, civil or evil reaches the importers merely from the recording of the findings and its publication, preliminary or final, until the Central Government in exercise of its legislative functions decides to issue Notification under Rule 13 or Rule 18 as the case may be.

205. Therefore, our conclusion in this aspect of the matter is that the enquiry by the Designated Authority, notwithstanding the elaborate procedure it has to follow, is not in the nature of a judicial or quasi judicial enquiry because it is not aimed at determining the rights of any of the parties who participate in the enquiry. It does not decide a lis between all or any of them. It remains an auxiliary limb of the State in its legislative manifestation to gather necessary information, consider the various interests involved and draw inference therefrom to provide a foundation for exercise of legislative function of imposing a tax in an objective manner. It merely place its conclusion before the Central Government for taking its own decision. The whole exercise by itself does not result in any adverse effect on the interest of any of the parties appearing before it. It does not enter into any adversarial litigation. Therefore, unless the legislative instrument comes into existence on issue of Notification by the Central Government, on implementation of which, its civil or evil consequences reach the petitioner, no cause of action arises for initiating a lis.

206. Our this conclusion is supported from interpretation of Section 9C of the Act which has been construed by the Supreme Court to mean that appeal u/s 9C lies only against the determination of Anti Dumping Duty by the Central Government and not against publication of findings by Designated Authority. Our attention was invited to the decision in Saurashtra Chemicals Ltd. Vs. Union of India (UOI), In its short order the Supreme Court has said :-

"We see no reason whatever to entertain these special leave petitions. It is perfectly, clear that we have seen the provisions of the Act that the order of the Designated Authority is purely recommendatory. The appeal lies is against the

determination and that determination has to be by the Central Government. For this reason we decline to exercise jurisdiction under Article 136 of the Constitution of India and dismiss the special leave petition."

207. Thus the scheme of the Rules have been clearly interpreted by the Supreme Court and given the findings recorded by the Designated Authority status of recommendatory nature for the purpose of decision making by the Central Government and the determination, which ultimately becomes appealable, is the determination by the Central Government to levy or not to levy duty on the premises stated by the Designated Authority.

208. This view is further strengthened by the recent decision of the Supreme Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, to which we have adverted to above, that cause of action in respect of a legislative act will arise only when the provisions thereof or some of them are implemented to result in civil consequences to the petitioner.

209. Thus, we are of the view that the essential functions which the Central Government exercises u/s 9A read with Rule 13 and Rule 18 of Anti Dumping Rules, 1995 are legislative in character. Since the imposition is authorised by law only on the basis of certain facts to be found to exist to reach a conclusion about dumping of article by exporters from foreign country or territory, and injury to the domestic industry. The functions of the Designated Authority remains of collecting information from different sources which include submissions of the interested parties engaged in the exportation, importation or manufactures and user of the article under investigation and by considering all the informations coming from all the sources, the findings are recorded to be transmitted to Central Government for its consideration in deciding whether to impose Anti Dumping Duty, and if so to what extent, in order to remove the injury to domestic industry or to eliminate the threat of retarding of establishing of domestic industry. Such findings are not reached by the Designated Authority in exercise of any legislative power vesting in it for the purpose of deciding any litigious contentions between the various interests or to adjudicate or decide upon rights of any party to lis. Therefore, until the legislative instrument comes into existence and the civil consequences thereof reaches the petitioner through its implementation, no cause of action can arise for which the petition can be maintained.

210. If we view the facts of the present case, then it is discernible that so far as the imposition of provisional Anti Dumping Duty by Notification dated 4th July, 2004 is concerned, the legislative instrument, the Notification imposing Provisional Duty has come into existence and it has affected the petitioner also as it became subject to Anti Dumping Duty as importer and was also effected as industrial user of the subject article. Therefore, so far as challenge to recording and publication of preliminary findings by the Designated Authority is concerned on imposition of provisional Anti Dumping Duty on that basis, cannot be said to be premature nor can it be said that in respect of it cause of action has not

arisen.

211. However, there is no dispute about the circumstances existing today that the maximum period for provisional Anti Dumping Duty could have remained in force has almost reached its end and the provisional Anti Dumping Duty is not going to be continuing cause. The levy of Provisional Duty is also not the final but is subject to the decision of the Central Government ultimately to impose Anti Dumping Duty after receiving the final findings. The preliminary finding of the Designated Authority merges into the final findings. Final findings become subject to remedial proceedings if the Central Government notifies the imposition of Duty. If no Duty is levied, the Duty already paid becomes refundable without determining the liability of preliminary findings. If the Duty is imposed, the amount adjustable against final levy cannot be refunded until challenged appropriately and the same are set aside.

212. Therefore, the comparative harm to the petitioner at this stage is negligible, than the harm that may be irretrievably caused if the proceedings before the Designated Authorities are thwarted at this stage.

213. In our opinion challenge to that part of the cause of action at this juncture not only suffers from delay but in the facts and circumstances of the case, it is not the stage at which this court ought to exercise its discretion for enquiring into the validity of reaching the preliminary findings and imposition of Provisional Duty as it being subject to the final findings and imposition of the duty. If it is not so levied, the petitioner becomes entitled to the refund of Anti Dumping Duty already paid or recovered from him under the provisions of parent Act as well as the Rules framed thereunder.

214. Therefore, neither the petitioner is under a continued injury nor it is advisable to express any opinion on the merit of the issue relating to initiation of proceedings and the determination of preliminary findings at this stage, lest it may affect the final findings too keeping in view that the last date for reaching final finding is shortly at hand, to be precise on 28-4-2005. Interfering with the ongoing proceedings at such a close quarter to its final leg, would irretrievably allow the current proceedings to lapse. But on the other hand, even if, the ultimate final findings supports imposition of Anti Dumping Duty and Central Government decides to impose such duty, the petitioner will not be remedy-less. He still will have a right to challenge the final findings and consequently Notification imposing Anti Dumping Duty founded thereon by way of appeal to CESTAT or approaching High Courts/Supreme Court, as the case may be. On no duty being ultimately levied or lesser duty is imposed, then too, the petitioner shall not suffer, as he will be entitled to claim refund of said sum as envisaged u/s 9BB. Therefore, we decline to go into the merits of challenge to the initiation of the proceedings and challenge to provisional Anti Dumping Duty.

215. So far as the relief claimed by the petitioner which is indirectly aimed at preventing the Central Government from exercising its power, which is legislative

in character, by quashing the proceedings before the Designated Authority which may otherwise be amenable to be reviewed in appeal if the Designated Authority records a finding recommending levy of Anti Dumping Duty until the Central Government finally decides to levy Anti Dumping Duty within three months of the publication of such final findings, no cause of action arises even to file an appeal for withholding the proceedings before the Designated Authority either by issue of a writ of prohibition, certiorari or mandamus.

216. We may notice that maintainability of the writ petition against the preliminary findings and imposition of provisional Anti Dumping Duty has also been accepted by the Division Bench of this Court in Rajasthan Textiles Mills Organization case (*supra*).

217. In the aforesaid circumstances, we also refrain from expressing any opinion at this juncture whether one is entitled to challenge the very initiation of enquiry if conditions precedent of initiating the enquiry into the complaint of the applicant does not exist, or no foundation for suo motu initiation of investigation is laid for want of necessary material, primarily because we are of the opinion that to permit this ground to be raised at this stage is to put a premium on the petitioner's lapse to challenge the initiation of investigation at the threshold to the detriment of the larger interest of domestic industry which is likely to suffer the injury on account of dumping, if it exists. Assuming that such a course was open for the petitioner to seek a mandamus at the inception of the initiation of proceedings because that could have been only on the ground that assumption of jurisdiction itself was bad. The challenge at the threshold may have left room for commencement of fresh investigation in accordance with law, which has to be completed within statutory time frame. But petition seeking a prayer at this stage when even extended period to complete the investigation is expiring a few days from now. Had the petitioner come at earliest time, pointing out the non-existence of the pre-conditions, it would have been open for the Designated Authority to review the proceedings in accordance with law by first determining the pre-conditions and to complete the proceedings within the period envisaged under the Rules.

218. The petitioner having not done so, cannot be permitted to upset the whole cart at this late stage by falling back on the defects which could have been raised at the initial stage.

219. We make it clear that by any observations made in the writ petition we have not expressed any opinion on the merit of the contention of the petitioner or the non-petitioner relating to any defect in procedure or about the non-existence of the condition precedent for initiating the proceedings or the essentials of hearing envisaged under the Anti Dumping Rules. The petitioner is free to agitate all these grounds if the occasion so arises.

220. We also need not go into the question at this juncture on the issue of nature of the oral hearing and the effect of alleged oral hearing offered by the

predecessor in office of the current Designated Authority and denial of the opportunity of making fresh oral submission, on the validity of the proceedings.

221. To summarise we hold that this court has territorial jurisdiction to entertain this petition and we decline to sustain the preliminary objection to entertain this petition on the ground of delay and laches. Demonstrably, the petitioner is an interested party and on this ground we hold that the petitioner has necessary locus standi to raise grievance about the matters relating to the findings recorded by the Designated Authority and the procedure adopted by him. We have not expressed any final opinion whether assumption or non-assumption of jurisdiction to initiate investigation by Designated Authority can provide a cause of action to challenge the same. But assuming it to be so, in our view so far as the subject-matter of the petition concerning challenge to initiation of investigation and the determination of preliminary findings resulting in imposition of Provisional Anti Dumping Duty, it is not a fit case for exercise of extra-ordinary jurisdiction at this stage of the proceedings before the Designated Authority. We further hold that the levy of Anti Dumping Duty is a legislative function to be exercised by Central Government and investigation by Designated Authority is in aid of said legislative function. Therefore, the cause of action to challenge the continued proceedings relating to investigation, which may ultimately lead to final findings and levy of Anti Dumping Duty, has not arisen so far to restrain the Designated Authority from continuing and completing the proceedings within the period of limitation.

222. Accordingly, the petition fails and is hereby dismissed. No order as to costs.