(2011) 05 GUJ CK 0112

In the Gujarat High Court

Case No : Special Civil Application No. 15817 of 2010

Meghmani Organics Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Tariff Act, 1975 — Section 9, 9A, 9C

Citation : (2012) 281 ELT 528

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Saurabh Soparkar, Paresh M. Dave and Dhaval Shah, for the Appellant; P.S. Champaneri, ASG, Ravi Shankar Prasad, S.B. Vakil, Mukund, Pankaj Jain, B.H. Chhatrapati and A.M. Hava for Singh and Co., for the Respondent

Judgement

Akil Kureshi, J.—The petitioners, who are importers of certain chemicals/ intermediaries used for production of Pesticides, have in the present petition, challenged the orders passed by the Designated Authority under the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as, "the said Rules") as also the Notifications issued by the Government deciding to levy Anti-Dumping Duty on import of such products. The petitioners have prayed that the preliminary findings dated 25th May 2009; the consequential Notification No. 73/2009 issued by the Government dated 22nd June 2009 as well as Final Findings dated 6th May 2010 and the consequential Notification issued by the Government on 7th July 2010 be quashed and set aside. The litigation has a chequered history. Facts, in brief, may be noted at the outset.

1.1 Respondent No. 3 herein filed an Application before the Designated Authority in August 2008 alleging dumping in case of import of Diethyl Thio Phosphoryl Chloride (hereinafter to be referred to as, "the said Chemical") originating in or exported from China. The Directorate General of Anti-Dumping & Allied Duties the respondent no. 2 herein issued a Public Notice dated 17th November 2008 initiating investigation into the such allegations.

1.2 The present petitioners filed Special Civil Application No. 2201 of 2009 challenging such initiation of Anti-dumping investigation. Such petition was, however, disposed of as withdrawn on 8th April 2009 in light of the statement made by the respondent no. 2 that the preliminary objections raised by the petitioners as to the jurisdiction shall be dealt with and decided by the Designated Authority within four weeks, after hearing the petitioners.

1.3 The Designated Authority, however, by an Order dated May 6th 2009 turned down the objection to the initiation of the investigation. On 25th May 2009, the Designated Authority issued Preliminary findings and recommendations were made for imposing provisional Anti-dumping Duty on 22nd June 2009. These recommendations of the Designated Authority were accepted and the respondent no. 1-the Union of India, issued a Notification dated 22nd June 2009 imposing provisional Anti-dumping duty.

1.4 The petitioners thereupon filed Special Civil Application No. 6881 of 2009 before the Gujarat High Court challenging the said Notification. The Gujarat High Court, by its judgment dated 9th October 2009 Meghani Organics Ltd. and Another Vs. Union of India (UOI) and Others, allowed the petition on certain limited grounds; including that the claim of confidentiality was not well-founded and that such excessive and unwarranted claim of confidentiality defeats the right to appeal. The Bench, thereupon, directed as under :-

29. We, therefore, while not expressing any opinion on other issues decided by the designated authority in the impugned notification and reserving the petitioners'' right to challenge at the time of final finding, we disapprove the preliminary finding of the designated authority on the issue of confidentiality and direct the designated authority to provide all necessary details of findings which are kept blank while recording his preliminary findings and permit the petitioners to raise their objections in this regard and while recording the final finding, the designated authority shall take into consideration such objections and submissions that may be made in this regard. Not only this, the designated authority shall take into consideration the issues raised by the petitioners with regard to the respondent no. 4 and to decide as to whether they or their allied concerns have made any import of subject goods from China. The details as to finding recoded by the D.A. shall be provided to the petitioners. Till such exercise is undertaken by the designated authority and final finding is arrived at the petitioners shall not be saddled with the levy of provisional anti-dumping duty on an import of subject goods from China on condition that the petitioners shall file an undertaking within one week from today before the designated authority that in the event they are held to be liable to pay anti-dumping duty on the import of subject goods that may be made, hereinafter from China, while recording final finding on this issue, they will pay such antidumping duty subject to their right to appeal and obtaining stay against such duty from any competent Court or

Tribunal.

1.5 It appears that the judgment of the High Court dated 9th October 2009 gave rise to three separate appeals before the Hon''ble Supreme Court. The private respondents herein i.e., the domestic industry challenged the judgment. Such judgment was independently challenged by the Union of India also. Even the petitioners to the extent that their contentions were not accepted by the High Court, approached the Supreme Court against this very judgment.

1.6 It appears that the judgment of the High Court was stayed by the Apex Court. Imposition of provisional Anti-dumping Duty was thus restored. During the pendency of such proceedings, the Designated Authority held a Public Hearing on 15th October 2009 and submitted its final findings and Union of India issued Notification dated 7th July 2010 imposing Anti-dumping duty in terms of such recommendations.

1.7 In view of these developments, the private respondents as well as the petitioners withdrew their appeals from the Apex Court. In particular, the petitioners herein withdrew their SLP on 28th September 2010, in which the following order was passed :-

Counsel for the petitioners states that in view of the final order and findings, rendered by the Designated Authority, he is not pressing this petition. He also pray that they may be allowed to withdraw this petition with liberty to take recourse to such remedy as may be available to them in accordance with law. Permission is granted.

Petition is dismissed as withdrawn with the liberty as aforementioned.

1.8 It is stated that the SLP filed by the Union of India is still pending, perhaps, because with respect to certain legal aspects arising out of the impugned judgment of the High Court, the Union of India would still like to pursue the appeal. We are, however, not concerned with this proceeding directly in this petition.

1.9 It will also be necessary to record at this stage that after the public hearing was held on 15th October 2009, the Designated Authority was changed. A new officer was appointed by the Government of India to act as a Designated Authority on 4th January 2010. The petitioners wrote a letter to the newly appointed Designated Authority on 7th April 2010 and demanded fresh public hearing so that all issues in the investigation can be brought to his notice. On 20th April 2010, another detailed letter was written by the petitioners to the Designated Authority highlighting that previously personal hearing had taken place before another Officer. It would, therefore, as laid down by the decision of the Apex Court, be necessary to hold fresh public hearing. It is not in dispute that no fresh public hearing was wanted. The newly appointed Designated Authority, on the basis of previously recorded proceedings, notings made by the earlier Designated Authority and the reports and other materials available, submitted his Final Findings. It is this procedure which has been at the center of the controversy in this petition and been the focal point of arguments from both the sides.

2. In response to the notice issued by us, the respondents have filed detailed replies.

2.1 The Union of India has preliminary contended that detailed procedure has been followed, as laid down under the Rules. The recommendations made by the Designated Authority have been examined and accepted. It is also contended that the entire exercise is time bound and ample opportunities were given to all the interested parties.

2.2 On behalf of private respondents also, detail replies have been filed to oppose the petition, mainly contending that the proper procedure was followed and that, even otherwise, alternative remedy is available to the petitioners.

2.3 Learned counsel appearing for both the sides requested us to take up the petition for final disposal at this stage. We have accordingly heard learned counsel for both sides at considerable length.

3. Learned Sr. counsel Mr. S.N. Soparkar appearing with Shri Paresh Dave vehemently contended that the entire procedure was illegal. The newly appointed Designated Authority was duty bound to give fresh personal hearing to the petitioners and other interested parties; that he could not have relied on the personal hearing granted by the previous Designated Authority. Heavy reliance was placed on Rule 6(6) of the Rules as well as other statutory provisions contained in the said Rules. Reliance was also placed on the decision of the Apex Court in the case of Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others, .

3.1 Counsel submitted that upon change of the person discharging functions of the Designated Authority, in view of the decision of the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra), newly appointed Officer was duty bound to give fresh personal hearing.

3.2 Counsel contended that availability of statutory right to appeal should not detain this Court from granting the relief''s claimed since the petitioners have made out a case of breach of principles of natural justice. In such a situation, as held by series of decisions of the Apex Court, availability of alternative remedy would not be a bar to entertain the present petition.

3.3 Counsel further submitted that the petitioners had been drawing attention of the newly appointed Designated Authority that a fresh hearing would be required. He has also pointed out series of defects and lacunae in the Disclosure Statement issued by the newly appointed Designated Authority on 13th April 2010. It was, therefore, submitted that personal hearing was required, as the prejudice caused to the petitioners was writ large on the face of the record. It was pointed out that such opportunity was demanded at the earliest point of time. In any case, it was the duty of the Designated Authority to grant personal hearing-whether demanded by the petitioners or not.

3.4 Counsel heavily relied on the decision in the case of Automotive Tyre Manufacturers'' Association (supra) to contend that in the present case, since public hearing was granted by one Officer and the Final Findings were submitted by the another person, the entire procedure was in violation of the principles of natural justice.

3.5 With respect to availability of alternative remedy, reliance was placed on the decision in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , wherein, the Apex Court held and observed as under :-

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point put to cut down this circle of forensic Whirlpool, we would reply on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

3.6 Reliance was placed on the decision of the Apex Court in the case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , wherein, relying on the decision in the case of Whrilpool Corporation (supra), the Apex Court reiterated that, "...So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or

(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

3.7 Reliance was also placed on the decision in the case of State of H.P. & Ors. v. Gujarat Ambuja Cement Limited & Anr. reported in [(2005) 6 SCC 499], wherein, it is observed that, "...There are two well-recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

3.8 Reliance was also placed on the decision in the case of Star Paper Mills Ltd. Vs. State of U.P. and Others, in which, same view was reiterated.

3.9 Reference was made to judgment in case of Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another, , wherein, the Apex Court observed as under :-

We have given our careful consideration to the rival submissions made by the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties. In our opinion, in the instant case, 3 of the 4 grounds on which writ petitions can be entertained in contractual matter were made out and hence it was completely wrong of the High Court to dismiss the writ petitions. In the instant case, 3 grounds as referred to in Whirlpool Corporation have been made out and accordingly the writ petition was clearly maintainable and the High Court has committed an error in relegating the appellant to the civil court.

4. On the other hand, appearing for the Union of India, learned Asstt. Solicitor General Mr. F.S. Champaneri opposed the petition contending that all necessary procedures were followed. The Designated Authority, after detailed investigation, submitted his final findings; such findings were scrutinized by the Union of India and after acceptance of the recommendations, Anti-dumping duty was imposed by the issuance of the impugned Notification.

5. On behalf of the respondent no. 3, learned Sr. Advocate Shri Ravi Shankar

Prasad opposed the petition, raising following contentions :-

(a) That the petitioners have statutory remedy available before the Central Excise and Service Tax Appellate Tribunal. In view of availability of such alternative efficacious remedy, this petition should not be entertained;

(b) The entire exercise of initiation of investigation and submission of the final findings is rigidly time-bound and would lapse, if not completed within maximum period of eighteen months. Thus, striking down the notification, at this stage, would leave the private respondents with no remedy.

(c) He further contended that the personal hearing is envisaged only under Rule 6(6) of the Rules and not at and further stage;

(d) He contended that the petitioners have not demonstrated any prejudice in not being granted personal hearing.

5.1 Counsel contended that even the conduct of the petitioners would disentitle them from claiming any relief. He pointed out that the previous Designated Authority was changed on 4th January 2010. The petitioners applied for fresh personal hearing only on 7th April 2010. The proceedings were getting time-barred by 16th May 2010.

5.2 Counsel relied on the following decisions of the Apex Court in the cases of (i) NITCO Tiles Limited v. Gujarat Ceramics Floor Tiles Mfg. Association & Ors. reported in [(2005) 12 SCC 454 = 2006 (199) ELT 198 (S.C.)] wherein, the Apex Court did not approve the High Court entertaining a writ petition, ignoring availability of alternative remedy (ii) In case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , wherein, in the background of the State Sales Tax Act, the Apex Court found that the assessee had adequate redress against the wrongful acts of the Department, (iii) In the case of Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, wherein also, the Apex Court held that assessee should prefer appeal before the appellate authority to redress the grievance raised, (iv) In case of City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwala and Others, , wherein, the Apex Court observed as under :-

30. The Court while exercising its jurisdiction under Article 226 is duty bound to consider whether :

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or efficacious remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

(v) In case of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, in which, the observations made in the case of City & Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala & Ors. (supra) were reiterated, (vi) In case of United Bank of India Vs. Satyawati Tondon and Others, , wherein, the Apex Court expressed its displeasure about High Court entertaining the writ petitions, despite availability of statutory remedy available under the D.R.T. Act. (vii) In case of State Bank of India v. Allied Chemicals Laboratories & Anr. reported in [(2006) 9 SCC 252], wherein, in context of availability of alternative remedy before the D.R.T., the Apex Court observed that, "..the mere fact that the respondent had not been given an opportunity to cross-examine the deponent did not enable the respondent to by-pass the provision for appeal and approach the High Court directly, (viii) In case of Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs. and Others, , wherein also, the Apex Court was of the opinion that in view of availability of alternative remedy, writ petition ought not to have been entertained.

6. Counsel also relied on the following decisions, in support of his contention viz., (a) in the case of Sohan Lal Gupta (Dead) thr. L.Rs. and Others Vs. Smt. Asha Devi Gupta and Others, to contend that the principles of natural justice cannot be put in a straitjacket formula. In a given case, the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby (b) For the same purpose, reliance was also placed on the decision of Apex Court in the case of N.K. Prasada Vs. Government of India and Others, .

6.1 Relying on the case of Bhaskar @ Prabaskar and Others Vs. State Represented by Inspector of Police, Vellore Taluk Police Station, Vellore, , it was contended that after the verdict of the Constitution Bench of the Apex Court in Gullapalli Nageswara Rao v. A.P. State Road Transport Corporation''s case reported in [1959 Suppl (1) SCR 319] that "one who hears, must decide" has under gone a considerable change.

6.2 Reliance was also placed on the decision in the case of Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court, , wherein, the Apex Court upheld the decision of the Chief Justice of the High Court to dismiss a Judge of a subordinate Court on the basis of an inquiry conducted by some one else.

6.3 In case of Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another, , wherein, it was observed that, "...Here the issue is one of grant of approval by the government and not any particular officer statutorily designated. It is also perfectly clear on the records that the officer who passed the order has taken full note of all the objections put forward by the petitioners. We are fully satisfied, therefore, that the requirements of natural justice have been fulfilled in the present case."

6.4 In case of an unreported judgment of the Bombay High Court in the matter of Huawei Technologies Co. Ltd. Vs. Designated Authority, , wherein, the Bombay High Court was pleased to relegate the parties to the appellate authority; even after noticing the decision of the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra).

7. Learned Sr. Advocate Shri S.B. Vakil appearing for the respondent no. 4 stressed on the need to demonstrate prejudice, without which according to him, no relief could be granted to the petitioners.

8. Having thus heard learned counsel for the parties and having perused the documents on record and the statutory rules and provisions applicable in the present case, we find that the Customs Tariff Act, 1975 [hereinafter referred to as, "the Act"] provides for imposition of Anti-dumping duty on dumped articles in Section 9 thereof. Sub-section (6) of Section 9A of the Act empowers the Central Government to ascertain and determine the margin of dumping referred to in sub-sections (1) & (2) of the said section; after such inquiry, as it may consider necessary. Section 9C provides for an Appeal against the order of determination or review thereof regarding existence, degree and effect of any subsidy or dumping in relation to import of any article, which shall lie to the Customs, Excise & Service Tax Appellate Tribunal. The said rules set-out a detail procedure for imposing anti-dumping duty. Rule 3 of the Rules empowers the Central Government, by issuing Notification in the Official Gazette, to appoint 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, as the Designated Authority for the purpose of the Rules. Rule 4 lays down the duties of the Designated Authority. Rule 5 of the Rules pertains to initiation of investigation with respect to allegations of dumping of an article. Rule 6 of the Rules pertains to principles governing investigations. Sub-rule (6) thereof, which is relevant for our purpose, reads as under:-

(6) The designated authority may allow an interest 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.

9.1 Under Rule 11, the Designated Authority has to determine the injury to any industrial establishment in India on account of such alleged dumping. Rule 12 pertains to preliminary findings which the Designated Authority, upon conduct of investigation, has to submit on the basis of such preliminary findings. Under Rule 13, the Central Government is empowered to impose provisional duty. Rule 14 of the Rules pertains to termination of investigation by the Designated Authority under certain circumstances. Rule 15, on the other hand, permits the Designated Authority either to suspend or terminate an investigation. Rule 16 of the Rules pertains to disclosure of information and reads as under :-

Rule 16. Disclosure of Information. - The designated authority shall, before giving its final findings, inform all interested parties to the essential facts under consideration which form the basis of its decision.

Rule 17 pertains to Final findings that the Designated Authority has to submit. The said Rule 17 reads as under :-.

RULE 17. Final Findings. - (1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding - (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 casual link, where applicable, between the dumped imports and injury;

(iv) Whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy :

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.

(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding -

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product 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;

(v) the main reasons leading to the determination.

(3) The designated authority shall determine an individual margin of dumping for

each known exporter or producer concerned of the article under investigation. Provided that in case where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned.

Provided further that the Designated Authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

(4) The designated authority shall issue a public notice recording its final findings.

9.2 From the above, it can be seen that within one year of the date of initiation of an investigation, the Designated Authority has to determine and submit its final finding as to whether or not an article under investigation is dumped in India. Such time may, however, be extended by the Government at its discretion for a further maximum period of six months.

9.3 Rule 18 of the Rules pertains to Levy of Duty and provides, inter alia, that the Central Government may, within three months of the date of publication of final findings by the designated authority under Rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under Rule 17.

10. These, in nutshell, are the statutory provisions relevant for our purpose.

10.1 With this statutory frame-work in mind, if we revert to the facts of the case, it emerges as an undisputed position that after initiation of investigation into the alleged dumping of chemical in question, entire proceedings were undertaken by the Designated Authority. Hearing, as envisaged under Rule 6(6) of the Rules was granted. Even public hearing was conducted on or around 15th October 2009. At this stage, the Designated Authority who had undertaken such proceedings right upto the stage of conducting the public hearing was changed on 4th January 2010. The petitioners thereupon addressed two letters to the newly appointed Designated Authority. On 7th April 2010, the petitioners urged the newly appointed Designated Authority to grant fresh personal hearing. A further detailed representation was made on 20th April 2010 contending that in view of the change in the Designated Authority, fresh personal hearing would be required.

10.2 Admittedly, no such hearing was given. The new Designated Authority relied on the materials collected by his predecessor and proceeded on the basis of notings made by him, and submitted his final findings to the Government on 6th May 2010. The Union of India accepted the recommendations made in such final findings and issued the impugned Notification imposing Antidumping duty.

11. In light of these facts, a pointed argument that was canvassed before us was that in view of the newly appointed Designated Authority submitting his final findings, without granting any personal hearing to the petitioners, relying solely on the previously recorded proceedings by the predecessor Designated Authority, there was a clear breach of principles of natural justice.

12. On the other hand, counsel for the respondents vehemently contended before us that the petitioners have no right to personal hearing at the stage, after the Designated Authority had informed all the interested parties of the essential facts under consideration which formed the basis of its decision, as provided under Rule 16 of the Rules. It was contended that though no such hearing was necessary, the previous Designated Authority had granted such personal hearing. It was, therefore, contended that in absence of any statutory right to personal hearing, the principle that "one who hears must decide" cannot be pressed in service.

13. We are of the view that the issue is no longer res Integra. The decision of the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra) squarely covers the present position. Before the Apex Court, in the said case, primarily two issues were debated. Firstly, the contention of the authorities was with respect to the nature of powers being exercised under the said Rules. The Tribunal held that the imposition of anti-dumping duty being legislative in character, principles of natural justice were not applicable to the proceedings before the Designated Authority. The Apex Court answered this question in the following terms :-

75. The cumulative effect of all these factors leads us to an irresistible conclusion that the DA performs quasi- judicial functions under the Tariff Act read with the 1995 Rules.

13.1 Having come to the above conclusion, the Apex Court also examined whether the decision of the Designated Authority in the said case was in breach of the principles of natural justice. We may note that in the said case also, the facts were that a particular Officer, acting as a Designated Authority, had conducted all proceedings upto the stage of granting a Public hearing to all the parties on 1st September 2004. On 1st November 2004, the Officer functioning as the Designated Authority, who had conducted such investigation, was transferred and a new officer took over as a Designated Authority. On 6th January 2005, the appellants before the Apex Court requested the newly appointed Designated Authority to grant fresh public hearing before finalizing the report and/or recommendations. On 12th January 2005, the newly appointed

Designated Authority sent the Disclosure Statement to all the parties. On 17th January 2005, the appellants wrote a protest letter, inter alia, contending that their submissions were not examined and the newly appointed Designated Authority failed to grant them a public hearing. Despite this, the newly appointed Designated Authority proceeded to submit his final findings without granting the personal hearing. It was in this background that the Apex Court held and observed as under:-

80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that even the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds goods irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application.

81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters, that the question of application of the said principle can be properly determined.

83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demean our of the witnesses, etc., and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli, if one person hears and other decides, then personal hearing becomes an empty formality.

84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form an order were recorded by the successor DA. who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly.

14. The present case, on all material facts, is identical to one decided by the Apex Court in case of Automotive Tyre Manufacturers'' Association (supra). We have no hesitation to come to the conclusion that on the basis of ratio laid down by the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra), the proceedings in the present case must also be held to have vitiated. To reiterate, the previous Officer holding the position of Designated Authority from the initiation of the investigation proceeded right upto the stage of the public hearing. All these proceedings were completed by October 2010. The Officer was changed on 4th January 2010. Thereafter, no further hearing was granted despite a demand by the petitioners. The newly appointed Designated Authority supplied the Disclosure Statement to all the parties. The petitioners pointed out what according to them were omission and lacunae in such statement. The Designated Authority proceeded to submit the final findings, without offering personal hearing to the petitioners.

15. Three principal contentions of the respondents, however, need to be dealt with before any relief can be granted to the petitioners. First contention refers to availability of alternative efficacious remedy in the form of an appeal before the CESTAT. It is by now well settled that availability of alternative efficacious remedy is not a total bar to entertain a writ petition. It is, of course, a sell-imposed restriction which the Courts ordinarily adhere to. This rule, however, is subject to certain exceptions. In certain situations, the Courts often ignore availability of alternative remedy and entertain the writ petition. Such circumstances are (a) breach of fundamental rights; (b) violation of principles of natural justice; or (c) if it is found that the order or action of the authority inherently lacks jurisdiction. This has been discussed and laid down by the Apex Court in number of decisions, in particular in case of Whrilphool Corporation (supra). It is, therefore, not necessary to refer to series of judgments of the Apex Court on the issue. Even otherwise, we fail to see what different view the CESTAT could take in light of the decision of the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra).

15.1 The next contention pertains to conduct of the petitioners. As noted, it was vehemently contended before us that the petitioners belatedly demanded hearing knowing fully well that the proceedings were rigidly time-bound. We may recall that the previous Designated Authority was changed on 4th January 2010. The petitioners wrote their first letter requesting for a fresh personal hearing on 7th April 2010, followed by a detailed representation vide communication dated 20th April 2010. We are unable to see how the petitioners'' conduct would disentitle them from seeking the relief. Firstly, it is not even brought on the record that as soon as new Designated Authority was appointed, the petitioners were informed regarding such a change. Secondly, the petitioners cannot presume that the newly appointed Designated Authority would not grant a fresh hearing, though the law required the same. Its approaching the Designated Authority after waiting for about two months cannot be termed as an act so deceitful as to disentitle them from seeking relief from the Court. The Designated

Authority on its own - whether demanded by the petitioners or not, was required to follow the principles of natural justice and grant hearing as held by the Apex Court. In view of the above observations, we are not able to accept the contentions of the respondents that on account of late approach by the petitioners to the Designated Authority demanding personal hearing, the petition should be dismissed.

15.2 The last contention is with respect to prejudice. According to the respondents, the petitioners must demonstrate that on account of breach of principles of natural justice prejudice was caused. It is, of course, true that the Courts, in addition to examining whether any principles of natural justice have been violated or not, also examine whether on account of any such breach, any prejudice is caused to a party or not. Particularly, after the decision of the Apex Court in Union of India and others Vs. Mohd. Ramzan Khan, wherein, it was held that a delinquent Government servant would be entitled to a copy of Inquiry Report before any punishment could be imposed on him, discussed in the subsequent judgments also stressed need to establish prejudice on account of non-supply of the Inquiry Officer''s report. Such law was discussed at length in the subsequent decisions in case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and State Bank of Patiala and others Vs. S.K. Sharma, .

16. In the present case, however, we are not concerned with the departmental proceedings. We are concerned with the imposition of Anti-dumping duly and the effect of such imposition of duty on industries on one hand and the importers on the other. The petitioners had not only in clear terms and after referring to the decision of the Apex Court asserted their right for personal hearing, after change of the Designated Authority. We are also informed that to the newly appointed Designated Authority it was pointed out that on account of non-hearing, the number of issues have arisen. They had pointed out that in the Disclosure Statement there are omissions and lacunae. Their contentions have not been taken into account. We have not gone into details of these contentions. We, therefore, do not express any final opinion on these averments of the petitioner. We have only recorded such grievances to note that the petitioners have been urging that hearing by the new Designated Authority is not an empty formality. To our mind, it cannot be said that the petitioners suffered no prejudice. We have also noticed that the question of prejudice and need to establish such prejudice was also agitated before the Supreme Court in the case of Automotive Tyre Manufacturers'' Association (supra). Despite such contentions, the Apex Court was pleased to strike down the final findings and the Notification imposing the anti-dumping duty. With respect to the refund claim of the appellants, however, the Apex Court declined the same on certain grounds, with which we are not concerned in the present petition.

17. In addition to the above principal objections, we may also notice that the Counsel for the respondent no. 3 stated that the decision of the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra) is referred to the

Larger Bench and is under reconsideration. At this stage, as the law stands, we are bound by the decision of the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra). It was pointed out that in case of Automotive Tyre Manufacturers'' Association (supra), the question of availability of alternative remedy had not arisen. We are conscious of this fact. We, however, follow the decision of the Apex Court in the case of Automotive Tyre Manufacturers'' Association (supra) to the extent it lays down the ratio that the newly appointed Designated Authority cannot rely on in the hearing given by the previous officer holding the position of Designated Authority. We have followed the ratio laid down in the case of Automotive Tyre Manufacturers'' Association (supra) as is applicable in the facts of the present case. To entertain the petition, despite availability of alternative remedy, we have referred to and relied upon the other judgments. Further, counsel also emphasized that the rules do not envisage any personal hearing after the Designated Authority informs to all the interested parries the essential facts as envisaged under Rule 16 of the Rules. To our mind, in view of the decision in the case of Automotive Tyre Manufacturers'' Association (supra), this distinction is of no consequence so far as the present case is concerned.

18. In the result, by allowing this petition, the impugned Final Findings dated 6th May 2010 issued by the Designated Authority and the Notification dated 7th July 2010 issued by the Union of India on the basis of such final findings, are set aside. It is, however, clarified that the preliminary findings and the notification issued pursuant to such preliminary findings is not disturbed since the decision of the Gujarat High Court disturbing such preliminary findings and the consequential notification is still at large before the Apex Court in an Appeal filed by the Union of India. It is further clarified that we have not touched the question of refund of duty already collected from the petitioners under the Notification dated 7th July 2010. We leave it to the petitioners to apply for such refund, which may be decided by the competent authority in accordance with law.

19. With the above direction, the petition is disposed of.

20. Counsel for the Union of India, at this stage, prays that this judgment may be stayed for reasonable period to enable the Union to approach the Apex Court. To such a request, counsel for the petitioners strongly opposed. Looking to the controversy involved and the fact that the Notification of the Government was issued as far back as on 7th July 2010 - since when it is in operation, this judgment is stayed till 10th July 2011.

