(2021) 11 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Appeal No. 51048 Of 2021

M/s. Apcotex Industries Limited — APPELLANT

Vs

Union Of India And Ors. — RESPONDENT

Date of Decision : 01-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0004

Hon'ble Judges : Delip Gupta, J;Sulekha Beevi C.S., J;P. Venkata Subba Rao, Technical Member

Bench : Full Bench

Final Decision : Allowed

Judgement

1. M/s. Apcotex Industries Limited, the appellant has filed this appeal feeling aggrieved by the failure of the Central Government to levy anti-dumping duty on the imports of "Acrylonitrile Butadiene Rubber (NBR)", the subject goods originating in or exported from Korea RP, the subject Countries, even though the designated authority, in its final findings notified on 24.11.2020, had recommended imposition of anti-dumping duty for a period of five years. The relief claimed in this appeal is for setting aside the Office Memorandum dated 03.12.2020 issued by the Ministry of Finance, Department of Revenue, Tax Research Unit in connection with the final findings dated 24.11.2020 notified by the designated authority. This memorandum states that the Central Government has decided not to impose any anti-dumping duty on the imports of the subject goods originating in or exported from the subject countries. A further relief that has been claimed is for issuance of a direction to the Central Government to issue a notification for imposition of anti-dumping duty, based on the recommendation made by the designated authority.

2. In Jubilant Ingrevia Limited vs. Union of India and five others, Anti-Dumping Appeal No. 50461 of 2021 decided on 27.10.2021, the same issues as have been raised in this appeal were raised. The decision taken by the Central Government not to impose anti-dumping duty, despite a recommendations having been made

by the designated authority for an imposition of anti-dumping duty, was set aside and the matter was remitted to the Central Government to take a fresh decision on the recommendation made by the designated authority. The operative part of the order passed by the Tribunal in Jubilant Ingrevia Limited is reproduced below:

"46. Thus, for all the reasons stated above, it is not possible to sustain the decision taken by the Central Government, contained in the Office Memorandum dated 14.12.2020, not to impose anti-dumping duty despite a recommendation having been made by the designated authority for imposition of anti-dumping duty. The matter would, therefore, have to be remitted to the Central Government to take a fresh decision on the recommendation made by the designated authority.

47. Though rule 18 provides that the Central Government has to take a decision within three months of the date of publication of final findings by the designated authority, but as the matter is being remitted to the Central Government for taking a fresh decision, this limitation would not apply, as was observed by the Tribunal in M/s S. I. Group India Private Limited vs. Designated Authority, Directorate General of Antidumping and Allied Duties, Anti-dumping Appeal No. 50430 of 2019 decided on 21.02.2020.

48. The Office Memorandum dated 14.12.2020 is, accordingly, set aside and the matter is remitted to the Central Government to reconsider the recommendation made by the designated authority in the light of the observations made above. The appeal would, therefore, have to allowed and is allowed to the extent indicated above."

3. For the reasons stated in the aforesaid decision of the Tribunal in Jubilant Ingrevia Limited, the Office Memorandum dated 03.12.2020 is set aside and the matter is remitted to the Central Government to reconsider the recommendation made by the designated authority in the light of the observations made in the said decision. The appeal would, therefore, have to allowed and is allowed to the extent indicated above.

(Pronounced on 01 November, 2021)