(2016) 08 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Stay No. 978, 979, 980, 981, 982 Of 2012, Anti Dumping Appeal Nos. 6, 7, 8, 9, 10 Of 2012

M/s. Honest Enterprises Ltd. And Ors. APPELLANT

Vs

Designated Authority And Ors. RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Customs Tariff (Anti-dumping Duty on Dumped Articles), Rules, 1995 — Rule 6(8)
Customs Tariff Act, 1975 — Section 9A(I)(c)

Citation : (2016) 08 CESTAT CK 0007

Hon'ble Judges : Dr. Satish Chandra, J;Archana Wadhwa, J;B. Ravichandran, Technical Member

Bench : Full Bench

Advocate : Dhruv Gupta, Amit Singh, Govind Dixit, Sharad Bhansali

Final Decision : Dismissed

Judgement

1. These five appeals are on the same issue, challenging the Final Findings dated 11.10.2011 of Designated Authority (DA), Directorate General of

Anti- Dumping and Allied Duties, Ministry of Commerce & Industry and notification No.104/2011-Cus dated 25.11.2011 of Ministry of Finance. The

appellants are importers of hot rolled flat products of stainless steel (subject goods). Anti-dumping duty (AD duty) has been imposed on subject goods

originating in or exported from European Unin, Korea, RP. South Africa, Taiwan and USA.

2. The brief facts of the case are that based on a petition filed by the domestic industry, the DA initiated anit-dumping investigation in April, 2010. The

period covered is 1.4.2008 to 30.09.2009. The injury for the domestic industry was examined for period from April. 2005 to Sept. 2009. After

following the procedure set out by the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for

Determination of Injury) Rules, 1995, the D.A. arrived at Final Findings dated 11.10.2011. The D.A. concluded that imposition of anti-dumping duty is

required to offset dumping and injury to domestic industry. Notification No.104/2011-Cus dated 25.11.2011 was issued imposing AD duty on subject

goods.

3. Ld. Counsel appearing for appellants contested the Final Findings on various grounds. His submissions can be summarized as below:-

a) no anti-dumping duty could be recommended when the landed value of import was higher than the non-injurious price of domestic industry. The

price underselling for EU, Korea and Taiwan are in the negative. Therefore, there cannot be any injury from imports from these countries.

b) The domestic industry is selling the subject goods at prices higher than the non-injurious prices and hence there is no injury.

c) There is self-contradiction in the Findings of the D.A. when there is no price under-selling of subject goods from Taiwan, the D.A. attributed a

positive injury margin against all exporters from Taiwan. The negative injury margin attributed to exports from Korea is inexplicable when none of the

exporters were co-operating. There is no consistency in the approach by the DA in analyzing the impact of exports from cooperating

exporters/country and from non-cooperating exporters/country. In fact the findings penalizes the cooperating exporters / country by giving sweeping

/general recommendations against them.

d) The market share and sales volume of domestic industry has increased while the market share and sales volume of exports from subject countries

have declined. This will show that there is no injury to domestic industry.

e) No information regarding country-wise quantity imported and assessable value has been provided by the DA. Only a cumulative figure for the

subject countries has been given. The appellants could not put up an effective defence in their support in the absence full discolosure of information by

the D.A.

4. Ld. Counsel for the D.A. supported the Final Findings. He reiterated that while dumping and injury margins are determined for participating

producers and exporters from a country individually, dumping and injury margins for all non-participating producers and exporters from that country are determined in terms of Rule 6(8) of AD Rules using adverse data available. He emphasized that in case of Taiwan, the argument of the appellants

that despite of negative underselling for the country as a whole AD Duty was imposed for exports is not revealing full background facts. The

investigation clearly established, based on data of the cooperating exporter, that the margins of dumping and injury of that exporter was significantly

high.

5. Ld. Counsel for D.A. has relied on certain decided cases to state that the D.A. acted within his powers in analyzing data and recommending AD

duty.

6. Ld. AR for Revenue and Id. Counsel for domestic industry supported the Final Findings of the D.A. and customs notifications.

7. We have heard all the sides and examined appeal records. As already noted, the appeals are to set aside the Final Findings and customs notification

imposing AD duty on subject goods from stated countries. We have perused the Final Findings dated 11.10.2011 carefully. The D.A. after examining

the information furnished by the cooperating exporters and also arriving at the normal value for residual category further worked at the dumping

margin. Such margin is arrived by comparing normal values and export prices of subject goods. Para-40 of the Findings listed the dumping margin

arrived at consequent upon such analysis. As the anti-dumping investigation covered imports from various countries simultaneously the DA followed

the procedure in terms of para (iii) of Annexure-II of AD Rules for cumulative assessment. Accordingly, the injury to domestic industry cumulatively

from the subject countries was considered by the D.A.

8. The appellants contested the Findings on the ground of decline in volume of imports. We note that there is increase in absolute terms during POI

compared to base year (para 48 of Finding). Regarding increase in market share of domestic industry it has been noted that they chose not to increase

the prices commensurate with the increase in costs in order to retain the market share and consequently suffered significant loss. It is apparent that

market share alone is not a fair indicator of presence of injury or otherwise in a given case.

9. We also note that domestic prices have been undercut by imports from the subject countries throughout the injury investigation period. Further, the

prices of domestic industry has not increased m line with increase in costs. The profitability of the domestic industry has been shown to be adversely

affected during the said period.

10. The appellant strongly contended that the injury analysis for Taiwan is contradictory. The facts recorded show that there was negative injury for

country as a whole, hence the AD duty imposed vide Sl. nos. 13 to 16 of table to notification are not tenable. We note that the investigation has

shown, based on data of the cooperating exporter from the said country, that the margins of dumping and injury of that exporter was significantly high.

Further, as per the data recorded (para 49 of Finding) for EU the injury margins for the cooperating exporters was negative and country as a whole

also the margins was negative. But adverse inference has been drawn by the DA against the other non-cooperating exporters and residual duty has

been imposed based on facts available, taking the lowest transaction value, as per standard procedure. The same has been done for Taiwan also.

11. We note that the Hon'ble Supreme Court in D.A. Vs. Haldor Topsoe - D.A. No.487 of 2000/4109 of 2000 decided on 20.07.2000 held that when

interested party withholding necessary information or does not cooperate with the investigation, thus cause impediment to the investigation -

Investigation Authority has discretion to rely on material as available before it and not bound to look into material which is produced by the interest

party - Discretion of the authority in the area of appreciation of evidence cannot be restricted on the ground that Anti-dumping Duty is 'manufacturer

specific' or 'country specific' - Investigation Authority can make ""Best Judgement Assessment"" and can draw adverse inferences as per Rule 6(8) of

the Customs Tariff (Anti-dumping Duty on Dumped Articles), Rules, 1995 - Section 9A(I)(c) of the Customs Tariff Act, 1975.

12. Further, the Tribunal in Kothari Sugars & Chemicals Limited Vs. Designated Authority [Final Order No.14/2005-AD and Misc. Order

No.M/06/2005-AD, dated 4.8.2005 in Appeal Nos. C/270/2003-AD] held that if the volume of imports at a particular price level is sufficient enough to

have adverse impact on domestic selling prices, the same should not be taken into account and given due weightage in the analysis. It otherwise meant

that even if there are high priced transactions and low price transactions from a country, the very fact that the low priced transactions cause injury (with positive injury margin) justifies imposition of duty on the entire country.

13. Regarding appellant's plea on non-disclosure certain information by the DA we have perused specifically the disclosure details, contests by

interested parties and examination by the DA, post disclosure. Regarding source data it has been recorded that the DGCI & S and IBIS data have

been used wherever required. The methodology for arriving the NIP has been disclosed. 22% return on investment has been granted to domestic

industry as per consistent practice followed in this regard. We have noted that the injury margin calculation for residual exporters of a country follows

a methodology different from that adopted for price underselling which is determined in respect of a country as a whole.

14. In view of the discussion and analysis as above, we find no merit in the present appeals and accordingly dismiss the same and stay applications are

also disposed of

[Order pronounced 24.08.2016]

