(2016) 08 CESTAT CK 0015

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Appeal No. 3735 Of 2012, Anti Dumping Stay No. 4713 Of 2012

M/s Hubei Hongyuan Pharmaceutical Co. Ltd. APPELLANT

Vs

Designated Authority. DGAD. MoF. RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:
Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 — Rule 2(b), 5(3), 23

Citation : (2016) 08 CESTAT CK 0015

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

Bench : Full Bench

Advocate : Rathim M, Amit Singh, Govind Dixit, Reena Khair, Rajcsh Sharma, Rita Jha

Final Decision : Dismissed

Judgement

1. The present appeal is by M/s Hubci Hongyuan Pharmaceutical Co. Ltd., China P.R.. a manufacturer and exporter of metronidazole (subject

goods). The appeal is against the Notification dated 29.06.2012 of the Designated Authority. Directorate General of Anti-Dumping and Allied Duties.

Ministry of Commerce and Industry (the D.A.) recommending extension of anti-dumping duty in subset review and Notification No.40/2012-Cus

(ADD) dated 30.08.2012 of Ministry of Finance.

2. The brief facts of the case are that M/s Aarti Drugs Ltd. and M/s Unichern Laboratories Limited filed application with the DA, who initiated a

sunset review investigation on 30.05.2011 under Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on

Dumped Articles and for Determination of Injury) Rules, 1995. The definitive anti-dumping duty was originally recommended on 14.07.2000 on import

of subject goods originating in or exported from China P.R. After First sunset review the AD duty was continued vide Notification dated 05.04.2006

(Customs notification No.61/2006-Cus. dated 15.06.2006). The present impugned notification of the D.A. consequent upon second sunset review is

under challenge now.

3. The Id. Counsel for the appellants contested the Findings of the O.A. on various grounds. The main points are-

a) majority of imports are made by domestic producer itself. Hence, the D.A. should have terminated the investigation.

b) the form of duty is determined by completely ignoring Drugs Price Control order (DPCO) ceiling price.

c) there is no cansal link and no evidence to show likelihood of humping and injury.

The Id. Counsel for domestic industry countered the arguments of the appellant and submitted that the sunset review by the DA has been conducted

within four corners of prescribed procedure after following all the legal requirements.

The Id. Counsel for the DA and the Id. AR for Revenue supported the findings of the D.A.

4. We have heard all the parties as above and examined appeal records and written submissions. We have carefully perused the findings by the D.A.

5. The first issue raised by the appellant is that the domestic industry is also one of the major importer of subject goods and hence the investigation on

anti dumping should not have continued. We note that this issue was considered by the DA and alter noting these facts excluded M/s Aarti Drugs

from the purview of domestic industry. He concluded that M/s Unichem Laboratories Constitutes. the domestic industry. being the only remaining

producer of the subject goods and satisfy the requirement of Rule 2(b) of the AD Rules. The Honble Madras High Court in Nirma Limited vs. Saint

Cobain Glass India Ltd. - 2012 (281) ELT 321 (Mad.) held that even if the only producer of subject goods in the country produced only 4%, by a

combined reading of Rule 2(b) and Rule 5(3) proviso the said producer is considered as a domestic industry and is entitled to maintain the application

for investigation. As such we find no merit in the appellant's contention on this point.

On the second point regarding incorrect calculation of injury margin by taking wrong DPCO price. We note that the Central Government by

Notification dated 04.08.2008 had fixed the maximum sales price of subject goods at Rs.526/ kg. which was applicable during the POI - 01.01.2010 to

31.12.20 I 0. The price was fixed at Rs. 514/ kg. vide Notification dated O 1.07.2011 and again at Rs. 588/ kg. Notification dated 16.11.2012. The DA

has correctly applied the rate of Rs. 526/ kg. applicable to the relevant time.

The appellant also contended that the DA failed to establish the casual link for likelihood of dumping/ injury in the event of revocation of AD duties.

We note that the exporters/ producers from China P.R. continued to export the subject goods at dumped prices even after the imposition of the AD

duty. The original dumping margin of about 48% increased to 69% in First sunset review and was 29% in the present second review. The dumping

margin continued to be significant. The D.A. examined the possibility of intensified dumping in case AD duty is revoked. His findings in para 72 to 83

are elaborate and can not be contested on merit. The known capacities available with the Chinese producers (about 24000 MT) and the Indian

demand (less than about 2000 MT) indicate the strong likelihood that the entire Indian demand may be met by Chinese producers. There is continued

dumping which may intensify unless AD duty measures are taken. We find the DA's finding on this count is well reasoned and backed by clear data

and analysis.

6. Considering the above discussion and analysis we find that the present appeal is without merit. The same is accordingly dismissed.

(Pronounced on 31.08.2016).