
(2016) 08 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Appeal No. 4023 Of 2012

M/s. Jindal Stainless Ltd.

APPELLANT

Vs

Designated Authority And Ors.

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Customs Tariff (Anti-dumping Duty on Dumped Articles), Rules, 1995 — Rule 4, 4(d)

Citation : (2016) 08 CESTAT CK 0011

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

Bench : Full Bench

Advocate : Sharad Bhansali, Jitendra Singh, Amit Singh, Govind Dixit

Final Decision : Dismissed

Judgement

1. The appeal is against the Final Finding dated 14.11.2011 of Designated Authority (DA), Directorate General of Anti-Dumping and Allied Duties,

Ministry of Commerce and Industry and Notification No. 46/12-CUS (ADD) dated 4.10.2012 of Ministry of Finance imposing Anti Dumping Duty

(AD Duty) on cold rolled flat products of stainless steel of specified dimension (subject goods) originating in/ or exported from Korea R P, E U and

USA. The appellant is engaged in the manufacture of, inter alia, subject goods in India. The grievance of the appellant is restricted to the point that

AD duty recommended and imposed was connected to a reference price rather than a fixed quantum of such duty. In other words, while the

appellants supported imposition of AD duty on subject goods, they are aggrieved by the method for quantification of calculation of such duty.

2. Learned Counsel on behalf of the appellant submitted that recommendation by the Designated Authority is without proper consultation with

Domestic Industry. The disclosure statement or the Final Finding did not give any justification for resorting to variable duties instead of fixed AD

Duties. It is the case of the appellant that the recommendation of the Designated Authority is arbitrary and contrary to the provisions of Rule 4(d) of

Anti Dumping rules. The type of duty imposed has a direct implication for the effectiveness of such imposition. The learned counsel submitted that the

AD duty linked to reference price does not fully solve the problem of dumping and injury to domestic industry as it does not take into consideration

rising price of the inputs and finished goods. In view of the wide fluctuation of these parameters, the reference based AD duty will not serve the

intended purpose.

3. The learned Counsel for the Designated Authority and learned AR for the Revenue defended the Final Finding of the Designated Authority and

notification issued thereafter. It is submitted that the margin of dumping and consequent injury to the domestic industry has been evaluated by the

Designated Authority and AD duties has been recommended keeping in view the overall analysis and conclusions drawn by the Designated Authority.

There is no deviation of any procedure or requirement in the process.

4. Having heard all the sides, as above, we find that the appellant is apparently aggrieved by the Final Finding and the Customs Notification only to the

effect of methodology of calculating AD duty. We note that AD duty in the present case was fixed as amount equal to the difference between a fixed

reference price and the landed value of the subject goods in case the landed value at the time of importation is below the said reference price, The

landed value means the 'assessable value' in terms of Customs Act, 1962.

5. We have perused carefully the Final Findings of the Designated Authority. We note that none of the data or analysis made by the Designated

Authority has been questioned in the present appeal. The dispute is on the final recommendation on the methodology of AD duty calculation. The

dumping margin and the magnitude of injury and injury margin has been elaborately dealt with by the Designated Authority. Injury margin has been

indicated in percentage terms [para 44 of the finding]. The Designated Authority having initiated and conducted an investigation into dumping, injury

and the causal link thereof, in terms of Anti Dumping Rules finally established positive dumping margin as well as material injury to the Domestic

Industry. Considering the said dumping margin, the Designated Authority recommended AD duty to offset dumping and consequently injury to the

Domestic Industry. It is clear that the Designated Authority followed lesser duty Rule and recommended definitive Anti Dumping having reference

price as constant.

6. While the appellant challenged the methodology of fixing AD duty as above, they are not able to convincably establish about need for alternative

method of having Anti Dumping duty. The Designated Authority having vested with the powers, on exercising the same in accordance with the AD

Rules, more specifically with reference to Rule 4. Rule 4(d), recommended the amount of AD duty equal to the margin of dumping or less which if

levied, would remove the injury to the domestic industry, and the date of commencement of such duty. The reference price based AD duty imposed is

based on analysis of various parameters, more specifically of the price behavior of the imported goods, domestic goods, dumping margin and the injury

to the domestic industry. Unless it is established with positive evidence that serious error has happened in any of these analysis, Tribunal will not be

interfering with the finding of the Designated Authority as the finding of the Designated Authority were based on material facts and the same cannot

be overturned based on purported subjective grievance of the appellant. We find no merit in the present appeal and the same is accordingly dismissed.

(Pronounced in the open Court on 30.8.2016)