

(2013) 01 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 10277 of 2011

M/s. Rishiroop Polymers Private Limited and Another

APPELLANT

Vs

Designated Authority, Directorate General of Anti-dumping
and Allied Duties. and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 129, 129A, 130, 130(1), 130E
Customs Tariff Act, 1975 — Section 8B, 9A, 9A(1), 9A(8), 9C

Citation : (2013) 3 ALLMR 313 : (2013) 4 BomCR 691 : (2013) 294 ELT 547 :
(2014) 43 GST 10 : (2013) 18 GSTR 409 : (2013) 2 MhLj 152

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : V. Sridharan, with Mr. Prakash Shah and Mr. Jas Sanghavi instructed by PDS Legal, for the Appellant; G.R. Sharma, Spl. Counsel with Mr. Rui A. Rodrigues, Parag Vyas and Mr. D.P. Singh instructed by . Mr. Parag A. Vyas for Respondent Nos. 1 and 2, Mr. Pradeep S. Jetly for Respondent No. 3 and Mr. Rajesh Jhaima with Mr. Ricab Chand instructed by . Mr. Rakesh Sawant, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—These proceedings under Article 226 of the Constitution have been filed essentially to challenge an order passed by the CESTAT on 3 August 2011. The decision of the CESTAT upheld a notification dated 2 January 2009 (Notification 1/2009) issued by the Union of India in the Ministry of Finance (Department of Revenue) imposing definitive Anti-dumping duty on Acrylonitrile Butadiene Rubber originating in or exported from the Republic of Korea and Germany pursuant to the findings recorded by the Designated Authority on 4 October 2008 in a second sunset review of Anti-dumping duty. The appeal before the CESTAT was filed under the provisions of Section 9C of the Customs Tariff Act, 1975. A preliminary objection has been raised to the maintainability of the Petition on the ground that an appeal would lie against the order passed by the CESTAT u/s 9C of the Customs Tariff Act,

1975.

2. Section 9A (1) of the Customs Tariff Act, 1975 provides that where any article is exported from any country or territory to India at less than its normal value, then upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such an article. Sub-section 4 provides that the anti dumping duty chargeable under the section shall be in addition to any other duty imposed under the Act or any other law for the time being in force. Section 9C (1) provides that an appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Tribunal constituted u/s 129 of the Customs Act, 1962.

3. The Customs Tariff Act, 1975 provides in Section 9A (8) as follows:

(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to the date for determination of rate of duty, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

By this provision, the provisions of the Customs Act and the rules and regulations made thereunder, relating inter alia to appeals, have been made applicable to the duty chargeable u/s 9A as far as may be as they apply in relation to the duty leviable under the Customs Act, 1962. u/s 130 of the Customs Act, 1962, an appeal has been provided to the High Court from every order passed in appeal by the Tribunal on or after 1 July 2003 on a substantial question of law (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment). Section 130E (b) provides an appeal to the Supreme Court from an order of the Tribunal relating among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment.

4. The plain effect of Section 9A (8) of the Customs Tariff Act, 1975 is that the provisions of the Customs Act, 1962 relating to appeal have been made applicable, as far as may be, to the duty chargeable under the provision. The order of the Tribunal passed in appeal would, therefore, clearly be subject to appeal, either to this Court u/s 130 or to the Supreme Court u/s 130E where the appeal relates to the rate of duty or to a valuation of the goods for the purposes of assessment.

But, it is sought to be urged on behalf of the Petitioners that what appears to be a consequence flowing out of a literal interpretation of Section 130(1) may not be an appropriate interpretation having regard to the following submissions: (i) Section 130(1) must be read harmoniously with the other provisions including sub-section (2) under which an appeal has to be filed by the Commissioner of

Customs or the other party. Where anti-dumping duty is in question, the Commissioner of Customs would have no occasion to file an appeal since proceedings are against the designated authority; (ii) The scheme of Section 130 must be read with Section 129A under which an appeal to the Appellate Authority can be filed either by a person aggrieved or by the Commissioner of Customs; (iii) An appeal u/s 9A (8) would follow the issuance of a notification. An appeal against the imposition of safeguard duty u/s 8B has been provided in sub-section 4A. The appellate provisions must be regarded as those relating to matters of assessment and such other consequential matters after the issuance of a notification.

5. We do not find any merit in the submissions which have been urged on behalf of the Petitioners. The Court is bound to adopt a plain and literal meaning of the words which have been used by Parliament in Section 9A (8) of the Customs Tariff Act, 1975. The statutory provision specifically incorporates all the provisions of the Customs Act, 1962 relating to appeal as far as may be, in their application to the duty chargeable u/s 9A. u/s 130, an appeal has been provided to the High Court against a determination that has been made by the Tribunal and similarly u/s 130E an appeal has been provided to the Supreme Court against an order of the Tribunal on a question involving rate of duty or of valuation of the goods for the purposes of assessment. In relation to the Customs Act, an appeal under sub-section (2) of Section 130 can be filed by the Commissioner of Customs or the other party aggrieved. The provisions of the Customs Act, 1962 inter alia in relation to appeals have been incorporated in Section 9A (8) of the Customs Tariff Act, 1975 and must, therefore, necessarily apply in a manner that would make the appellate provision intelligible and workable. We do not find any merit in the contention that the appeal would lie only after the issuance of a final notification. To hold so would be to read a restriction in the provisions of Section 9A (8) which the Parliament has not legislated. For these reasons, we are of the view that it would not be appropriate for this Court to exercise the jurisdiction under Article 226 of the Constitution, having regard to an alternate remedy by way of an appeal which is available in accordance with law. We accordingly dismiss the Petition on that ground leaving it open to the Petitioners to take recourse to the appellate remedy. There shall be no order as to costs.