(2016) 08 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Appeal Nos. 15, 16, 17, 18 Of 2012

M/s. Sandeep Organics Pvt. 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 14, 23

Citation : (2016) 08 CESTAT CK 0010

Hon'ble Judges : Dr. Satish Chandra, J;S.K. Mohanty, J;B. Ravichandran, Technical Member

Bench : Full Bench

Advocate : Darpan Bhuyan, Dhruv Gupta, T.D. Satish, Amit Singh, Govind Dixit

Final Decision : Dismissed

Judgement

1. There are four appeals against the final finding dated 10.02.2012 of Designated Authority (DA), Directorate of Anti-dumping and Allied Duties,

Ministry of Commerce and consequent notification no.13/2012-Cus dated 22.02.2012 imposing anti dumping duty on Sodium Tri Poly Phosphate

(subject goods) (STPP) imported from China PR.

2. The brief facts of the case are that M/s. Tata Chemicals Ltd. supported by M/s. Albright and Welson Chemicals India Ltd. have filed an application

for imposing anti-dumping duty on the subject goods. The DA initiated original investigation on 5.11.2009. Further, on 21.05.2009 based on preliminary

finding, the DA recommended provisional anti-dumping duty on the import of subject goods. The same was imposed vide notification no.96.10-Cus

dated 21.09.2010. After due inquiry, the DA notified final finding, recommending definitive anti-dumping duty on the imports of subject goods

originating in or exported from China PR. The definitive Anti-dumping duty was imposed vide Customs Notification no.58/2011-Cus dated 8.7.2011.

3. M/s. Tata Chemicals Ltd. vide their letter dated 21.07.2011 informed the DA that they have closed down the STPP Plant and there is no domestic

industry for STPP in India. They requested for withdrawal of anti-dumping duty applicable on STPP imported to India. The other domestic

manufacturer, M/s. Albright also informed the DA vide their letter dated 17.08.2011 about the stoppage of production of the subject goods by them.

Accordingly, in terms of Rule 23 of the Rules, the DA initiated mid-term review. After due inquiry, he recommended withdrawal of anti-dumping duty

vide final finding dated 10.02.2012. The anti-dumping duty was withdrawn vide notification no.13/2012-Cus dated 22.02.2012, which rescinded the

earlier notification no.5812011-Cus dated 8.7.2011.

4. The common plea of all the appellants in the present appeals is that no anti-dumping duty can be levied from the date of closure of plant of domestic

manufacturer i.e. 1.3.2011 till the actual revocation of duty viz. 22.02.2012. It was argued that the anti-dumping duty is to eliminate injustice caused to

the domestic industry by unfair trade practices of dumping. In the present case, when there is no domestic industry, during the relevant period, there is

no question of imposing anti-dumping duty. In other words, the ld. Counsel submitted that while recommending for revocation of anti-dumping duty, the

Designated Authority should have recommended such revocation from the date of closure of domestic industry.

5. Ld. Counsel appearing on behalf of the Designated Authority submitted that the initial inquiry was based on the application by affected domestic

industry. Due action was taken as per the procedure laid-down by the law. Thereafter, on receipt of the intimation about stoppage of the production by

the domestic industry, the Designated Authority exercising his powers under Rule 23, recommended for revocation of the said anti-dumping duty.

There is no provision for recommending revocation of anti-dumping duty with retrospective effect. As such, Id. Counsel for the Designated Authority

submitted that the Designated Authority has followed the laid down procedure and there is nothing in the present appeal to contest the impugned

findings.

6. Ld. Authorised Representative appearing for Revenue reiterated the above submissions.

7. We have heard all the sides and examined the appeal records.

8. The admitted facts are that the action for anti-dumping duty was initiated and finalized based on the applications received from the domestic

industry. Thereafter, upon stoppage of production by the domestic industry, the said anti-dumping duty was withdrawn. The only point of dispute is that

the said withdrawal should have been from the date of closure of manufacture by the domestic industry. We have perused the impugned order dated

10.02.2012. It is clear that both during initial proceedings of imposition of provisional anti-dumping duty and of definitive anti-dumping duty, all the

interested parties have taken part in the proceedings. The Designated Authority followed the procedure and there is no contest on these admitted

facts. We find that the following observation by the Designated Authority correctly brings out the factual and legal position relevant to the present

appeals:-

The Authority had notified the Final Findings in the original investigation on 3.5.2011 recommending imposition of definitive anti-dumping

duty on the imports of subject goods, originating in or exported from the subject country. The definitive anti dumping duty was imposed by

the Central Government on 8th July, 2011. After the final findings were issued by the Authority and after the imposition of the duty by the

Central Government, M/s. Tata Chemicals and M/s. Rohdia informed the Authority about stoppage of production of subject goods by them.

Even other interested parties did not bring the facts to the notice of the Authority with documentary evidence. Under the Rules, the

Designated Authority has no power either to impose or terminate duty. The Rules empower the Designated Authority only to investigate and

to recommend. By the time the concerned domestic producers brought to the notice of the Authority the fact of stoppage of production by

them the duty was already in place. In view of that instead of initiating action under Rule 14 of the Rules, the Authority initiated the present

mid-term review for reviewing the changed circumstances under Rule 23 of the Rules.

vi. There is no provision under the Rules empowering the Designated Authority to recommend suspension of collection of anti-dumping duty.

vii. The Authority has initiated the present MTR in terms of Rule 23 of the Rules and the investigation has been conducted as per the

rules/procedure.

viii. With regard to the submission of the opposite interested parties that the Designated Authority should allow relief back dated and the

importers should be allowed refund of anti-dumping duty on retrospective basis. the Authority notes that the subject MTR anti-dumping

investigation has been conducted under Rule 23 of the Anti-dumping Rules. There is no provision under the said Rules for backdated relief

in such circumstances.

9. We, specifically, asked the Id. Counsel for the appellants as to provision under which the relief is sought by them, with retrospective effect. No

pointed submission on such legal provision could be made by the Id. Counsel for the appellants. He repeated that for the period when there is no

production by the domestic industry, anti-dumping duty cannot be imposed. We find that the Designated Authority has followed the procedure as

mandated by the Rules in respect of all the proceedings relevant to the present case. In absence of any legal provision for acceding to the plea of the

appellants, as recorded by the Designated Authority in his findings, we find no merit in the present appeals. Accordingly, all the appeals are dismissed.

[Order pronounced on 24.08.2016]