(2016) 09 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Appeal Nos. 3854, 3855 Of 2012, Anti Dumping Condonation of Delay Nos. 4867, 4868 Of 2012

M/s. Surabhi Enterprises Pvt. Ltd. APPELLANT

Vs

Designated Authority And Ors. RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 — Rule 14, 23

Citation : (2016) 09 CESTAT CK 0002

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

Bench : Full Bench

Advocate : T.D. Satish, Amit Singh, Govind Dixit, Rajesh Sharma, Reena Khair

Final Decision : Dismissed

Judgement

1. Both the appeals are being disposed of by a common order as they are directed against a common cause of action of the Designated Authority. The

appeals are essentially against the Final Finding dated 10.2.2012 of the Designated Authority passed in the Mid-term Review investigation concerning

Anti-Dumping duty imposed on imports of Sodium Tripoly Phospate (STPP) originated in or exported from China PR; though in the appeal

memorandum, the appellants have impugned the original Final Finding of the Designated Authority recorded on 3.5.2011 and the consequent

notification No.58/2011-Cus. dated 8.7.2011.

2. As per facts on record, M/s. Tata Chemical Ltd., Mumbai, a domestic manufacturer of STPP filed an application before Designated Authority

requesting initiation of Anti-Dumping investigation for levy of Anti Dumping duty on the imports of the subject goods originating in or exported from

China. After due process of law and after due investigations made by the Designated Authority, Final Findings were given by him on 3.5.2011

recommending the imposition of Anti-Dumping duty from the date when earlier the provisional Anti-Dumping duty was imposed with effect from

21.9.2010. Based upon the said Final Finding of the Designated Authority, Customs Notification No.58/2011-Cus dated 8.7.2011 was issued.

3. Thereafter, on 21.7.2011 a request came from Indian manufacturers i.e. M/s. Tata Chemical Ltd. and M/s. Rhodia Specialty Chemicals India Ltd.

intimating the Designated Authority that the production of STPP was stopped by them with effect from 1.3.2011 and the Anti-Dumping duty imposed,

based upon the Final Finding of the Designated Authority may be withdrawn in the interest of larger public.

4. Based upon the above request of the Indian Manufacturers, the Designated Authority initiated the mid-term review on 22.9.2011 and conducted

investigation. Accordingly, after notifying the known exporters or producers of the subject goods in the Subject Country and known domestic importers

and after taking into consideration the entire facts and circumstances, it was concluded by the Designated Authority that with the stoppage of

production of STPP by M/s. Tata Chemicals Ltd. and M/s. Rhodia Specialty Chemicals India Ltd. and there being no other known manufacturer for

the said goods, there was no justification for continuation of the Anti-Dumping duty. The Designated Authority also observed that the Domestic

Industry i.e. M/s. Tata Chemicals had stopped their production in March, 2011 itself i.e. during the period of initial investigation, on the basis of which

the Final Finding proposing imposition of Anti Dumping duty were arrived at but the said information was not provided to the Designated Authority by

M/s. Tata Chemicals. Further, M/s. Rhodia Specialty Chemicals India Ltd. had also stopped their production and surrendered their registration

certificate to the Central Excise authority but did not inform the Designated Authority accordingly. He observed that if the Domestic manufacturing

industry would have informed the authority about the stoppage of production of STPP by them, the said fact could have been considered by the

Designated Authority and he could have considered termination of the investigation under Rule 14 of the Anti Dumping Rules. Further, after observing

so, the Designated Authority concluded that inasmuch as the purpose of Anti-Dumping duty, in general is to eliminate injury caused to the Domestic

Industry by unfair trade practice of dumping and since there being no Domestic Industry presently producing the subject goods in the country, there is

no justification for continuation of imposition of Anti-dumping duty. Accordingly, vide his Final Finding dated 10.2.2012, he recommended withdrawal

of Anti-Dumping duty, which was originally recommended by the Designated Authority vide earlier Final Finding dated 3.5.2011, on the basis of which

Customs Notification No.58/2011-Cus dated 8.7.2011 was issued.

5. Based upon the above recommendations of the Designated Authority, Government of India vide its notification No.13/2012 -Cus (ADD) dated

22.2.2012 rescinded the earlier notification No.58/2011- CUs dated 8.7.2011 except as respects things done or omitted to be done before such

rescission.

6. As such, it is seen that during the period prior to mid-term review and prior to issuance of Notification No.13/2012 dated 22.2.2012, the imports in

the country has attracted Anti-Dumping duty and the same was withdrawn with effect from 22.2.2012 with a clause of non-applicability to the things

done or omitted to be done before such rescissron.

The Appellant is aggrieved with the said exception clause of the Notification and it is their plea that the Designated Authority should have

recommended withdrawal of the Anti-Dumping duty with retrospective effect.

7. After hearing both sides duly represented by Shri T D Satish, learned Advocate appearing for the Appellant and Shri Amit Singh, learned Advocate

appearing for the Designated Authority and Shri Govind Dixit, learned DR appearing for the Revenue, we note that the facts in the present case are

not in dispute. Admittedly, during the first investigation before the Designated Authority, covering the period of investigation, M/s. Tata Chemicals on

whose behest, the investigation had been initiated, discontinued with the production of goods with effect from 1.3.2011. Similarly, the second Domestic

Manufacturer M/s. Rhodia Specialty Chemicals India Ltd. also stopped manufacture of the subject goods STPP. However, the said facts were not

brought to the notice of Designated Authority, during the course of investigation, which led to passing of Final Finding by the Designated Authority on

3.5.2011. It is only subsequently, at the request of Domestic Industry itself, the mid-term review was taken by the Designated Authority and after

appreciating the fact of production stoppage by the two domestic manufacturer of the product and after taking note of the fact that there is no other

industry similarly situate, he recommended for discontinuation of the imposition of Anti-Dumping duty. Such recommendation stand accepted by the

Government of India.

8. The appellants grievance is that such recommendations to discontinue the Anti-Dumping duty should have been with retrospective effect inasmuch

as it is the Designated Authority itself, who has observed that had the Indian manufacturers informed the Designated Authority during the period of

first investigations, the investigation might have been discontinued. However, we note that such observations of the Designated Authority are in the

realm of conjectures. There is no categorical finding of the Designated Authority that such information would have definitely led to stopping of

investigations. No doubt the Indian Domestic Industry was under an obligation to reveal the fact of stoppage of production to the Designated Authority

during the course of first investigation itself. However, having not disclosed, the Designated Authority proceeded ahead on the basis of information

available on records and came to a categorical Final Finding vide his order dated 3.5.2011. Such Final Finding by the Designated Authority were not

challenged by the appellant or the exporters and as such, attained finality. It is only vide mid-term review that a conclusion contrary to the first Finding

was arrived at and according to us Designated Authority has rightly observed that such conclusion would be applicable only prospectively. Such mid-

term review for reviewing the changed circumstances was in terms of Rule 23 of the Anti Dumping Rules and making recommendations for

withdrawing the duty Based upon such mid term review, the Designated Authority could not have upset, its own Final Finding recorded in original

investigation, inasmuch as having not put to challenge the same had attained finality. He has rightly observed that there is no provision under Rules

empowering the Designated Authority to recommend discontinuation of Anti Dumping Duty with retrospective effect. In other words, Rule 14

enabling power of Designated authority to terminate the proceedings is not available for review proceedings in terms of Rule 23. Learned Advocate

appearing for the appellant has not been able to show us any provisions of law enabling the Designated Authority or empowering him to allow

backdated relief in such circumstances. As such, we find no justifiable reason to interfere in the Final order dated 10.2.2012 of the Designated Authority.

9. Accordingly, the appeals are rejected.

(Pronounced in the open Court on 1.9.16)

