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(2016) 08 CESTAT CK 0014

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Anti Dumping Appeal Nos. 55114, 57090, 57102, 57103 Of 2013, Anti Dumping Condonation of Delay Nos. 57665, 57673, 57674 Of 2013

M/s Technova Imaging Systems (P) Ltd And Ors. APPELLANT

Vs

Union of India/DA RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

Customs Tariff Act, 1975 — Section 9C
Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 — Rule 11(2)

Citation : (2016) 08 CESTAT CK 0014

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

Bench : Full Bench

Advocate : Parthasarthi, Arkur Sharma, Darpan Bhugan, Reena Asthana Khalr, Rajesh Sharma, Rita Jha, Amit Singh, Govind Dixit, Balbir Singh, Shlvar Patadia, Juhi Chawla, Mayank Singhal, Suhail Nathani, Somnath Shukla

Final Decision : Dismissed

Judgement

1. These are four appeals against final findings dated 03/10/2012 by the Designated Authority (the DA), Directorate General of Anti-Dumping and

Allied Duties, Ministry of Commerce and Industry and Notification No.51/201 -CUS (ADD) dated 03/12/2012 of Ministry of Finance.

2. Before proceeding further with the merits of the appeal, it is necessary to examine and decide three applications filed by three appellants [Fujifilm

India Pvt. ltd., Fujifilm Printing Plate (China) Co. Ltd. and Fujifilm Printing Plate Co. Ltd.] for condonation of delay in filing their appeals. As these

appeals challenged customs notification issued on 03/12/2012, the statutory period for filing the appeal under Section 9C of Customs Tariff Act, 1975

expired on 03/3/2013. These appeals were filed on 28/3/2013, resulting in a

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delay of 26 days. The learned Counsel for the appellants explained the

reasons for delay. The Counsel who had handled the matter was down with swine flue and hence process of filing got delayed. Medical records in

support were submitted. Considering that the delay caused has been satisfactorily explained we condone the delay and allow the appeals to be taken

on record for disposal.

3. The brief facts of the case are that based on an application filed by M/s Technova Imaging System Pvt. Ltd., Mumbai (the Domestic Industry /DI),

the DA initiated investigation regarding dumping of digital plates (subject goods) from China and Japan. On 16/3/12, in a preliminary finding the DA

recommended reference - price based AD duty on various types of subject goods from China/Japan. Provisional AD duty was levied with effect from

04/6/2012 vide Customs Notification No.3/2012 - CUS (ADD). After following the set procedure in terms of Customs Tariff (Identification,

Assessment and Collection of Anti - Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the DA issued Final Findings

on 03/10/12. AD duty was recommended only for China with reference to benchmark form for various types of subject goods. The impugned customs

notification dated 03/12/2012 was issued imposing AD duties as recommended by the DA.

4. The learned Counsel appearing for three appellants - one Indian importer an two Chinese producers - all part of same group company - Fujifilm -

submitted that the DA's Findings are based on erroneous interpretation of facts and legal provisions. Her arguments can be summarized as below :-

(a) the Chinese producers are operating under market economy conditions and the provision of para 1 to 6 of Annexure I of the AD Rules

are applicable to them.

(b) there would be no injury from China, if the effect of safeguard duty imposed on import of aluminium flat rolled products are removed.

These are raw material imported by DI which affected their production cost of subject goods.

(c) the NIP was fixed wrongly. The enhanced capacity of DI was not considered in correct perspective by the DA.

(d) there is no valid ground for the finding regarding injury. The DI production has increased by 400% during the injury period, negating

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the claim of injury. The market share has gone up dramatically, from 51% to 71% during POI. Further, the competition between analog

plate and digital plate is one of the 'other' cause of injury to the DI. The requirement of causal link and non-attribution analysis laid down

under Annexure - II specifically refers to injury parameters and not non-injurious price.

5. The learned Counsels for M/s Technova Imaging Systems P. Ltd., the DI, the fourth appellant in this case, submitted that the NIP calculation was

not correctly made. The injury to DI was not correctly arrived at. Increase in production and market share are not the only criteria for determining

injury. Though the demand increased by 3 times the capacity increase in DI is not commensurate with the demand.

6. The learned Counsel for the DA supported the Final Findings of the DA. He submitted that price undercutting from China is significant during POI.

In spite of increase in market share and capacity utilization the DI suffered injury as analyzed by the DA in his findings.

7. The learned AR for Revenue supported the Final Findings of DA and the AD duties levied by the impugned customs notification. He submitted that

there is a causal link as per Rule 11(2) and Annexure II of AD Rules. There is increase in import and dumping.

8. We have heard the parties as above. Considered the appeal papers and written submissions.

9. The legality and correctness of levy of AD duties on subject goods are under challenge. The first point of agitation is that the Chinese producers

should have been considered as operating in market economy conditions. We note that the DA has recorded that in the past three years China PR has

been treated as non-market economy in the anti-dumping investigations by other WTO Members. Hence, a rebuttable presumption of non-market

economy status has been made in terms of para 8(2) of Annexure I of AD Rules. The DA on analyzing the responses provided by the

producers/exporters of the subject goods from China PR and the DI, concluded that there is significant government interference in the aluminium

industry in China. Reliance was also placed on the findings of Canadian authorities in their anti-dumping and subsidy investigation. It was concluded

that the price of major raw material, aluminium, is not market determined and hence I the market economy treatment was denied by the DA to the

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appellants. On careful perusal of the analysis, we find no material reason to differ from such finding.

10. The second point was regarding impact of safeguard duty on imported raw material by the DI and consequently the determination NIP. The

transitional, product specific, safeguard duty was in force on the imports of aluminium coils from China PR from 23/3/2009 to 22/3/2011. Safeguard

duty of 14% and 12% for first and second year were imposed. The duty was to remedy the market disruption caused by increased imports. The DA

examined the impact of this duty on domestic industry who use this as raw material to produce subject goods. Noting that such imports by DI are only

negligible, the DA concluded that the impact of safeguard duty on arriving at NIP is not significant.

11. The next point of contest was on erroneous fixation of NIP by the DA. We have perused the detailed analysis made by the DA in this regard. All

the points raised now in appeal have been dealt with extensively by DA in the Final Findings. The methodology adopted for arriving at the NIP is well

within the guidelines framed under AD Rules. The rate of return, costing parameters, differential treatment to violet and thermal plates, exclusion of

selling/distribution cost, exchange note fluctuation etc. have all been taken into consideration by the DA. We find no material point in the present

appeal to interfere with the reasoning adopted by the DA while arriving at the NIP.

12. The final point of contest by the appellants is relating to wrong determination of injury to DI. The imports from subject countries have shown

significant increase in absolute terms during injury period including POI. The demand for subject goods increased every year. The DA categorically

recorded that there has been a significant price undercutting by the dumped imports as compared with the price of like product in India. The table in

para 169 of the Final Findings brought out the impact on domestic prices due to dumped imports. The NSR, NIP of DI has been compared with the

landed cost of imports from China. It was noted that the DI is adversely affected by the reason of price depression (decline in NSR). Upon

examination of various factors like capacity, production and capacity utilization, domestic sales, inventories, profits, cash flows, return on capital

employed and ability to raise investments, employment, wages and productivity etc. the DA concluded that there is a significant increase in the volume

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of dumped imports from subject countries at the absolute level. The dumped imports have adversely impacted the inventory levels of DI and had

adverse price effect. The DA held that there is material injury to DI caused by the dumped imports of subject goods. Recommendation was,

thereupon, made for imposition of AD duties. We find no material ground with supporting evidence to interfere with the findings of the DA and the

final customs notification imposing AD duties. Accordingly, we hold that these appeals are devoid of merit and accordingly dismiss the same.

(Order pronounced in the open court on 31/08/2016)

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