(2016) 09 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application Nos. 16426-16429 of 2016

Nirma Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Citation : (2017) 345 ELT 327

Hon'ble Judges : S.R. Brahmbhatt and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Shri Mihir Joshi and S.N. Soparkar Sr. Advocates with Gaurav S. Mathur, Ms. Reena Khair, Rajesh Sharma and Kuntal A. Parikh, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

S.R. Brahmbhatt, J. (Oral)—Heard learned counsels appearing for the petitioners.

2. As, in this group of four petitions there is a common challenge to the Disclosure Statements dated 14-9-2016 under Rule 16 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as "the Rules" for the sake of brevity), inviting the domestic industries to reflect upon and make their submissions on the mid-term review of dumping duty existing on the product called Soda Ash since 3-7-2012 and 18-4-2013, came to be imposed under Section 9A of the Customs Tariff Act, hence, they were heard together and this order is passed after hearing the counsels on the aspects of challenge to the said Disclosure Statements.

3. Learned counsels for the petitioners invited Court''s attention to the provision of Section 9A, 9B and the facts of the matter to indicate that the Anti-Dumping duty imposed and being levied from 3-7-2012 is ordinarily to enure for a period of five years, which would end on 3-7-2017. However, as provided under Rule 23

of the Rules, the provision of review of any Anti-Dumping duty imposed under Section 9A is provided on the parameters mentioned therein, which includes the exercise to be undertaken by the designated authority for arriving at a conclusion for making final recommendations to the Government. The period for investigation is ordinarily one year, but extendable by Union of India in a given case.

4. In the instant case, it was submitted that the notice for initiating of investigation under Rule 23 of the Rules was issued on 21-7-2015 and 1-10-2015, and ultimately the Rule 16 Disclosure of information came to be provided only on 14-9-2016, which runs into more than 50 pages and it was pointed out that essentially three factors, which were required to be considered and information whereon was required to be disclosed to the interested party, were not disclosed, as it is evident from close perusal of the paragraphs in the report. A disclosed statement in which against many columns the information, which is otherwise available with the designated authority, is withheld from being disclosed to the petitioners, which would render the petitioners'' reflection and reply under the submission handicapped and this is said to be not a correct exercise providing sufficient opportunity to the interested parties to reflect upon the disclosure facts in terms of the Rules specially Rule 16 of the Rules.

5. The second limb of submission being canvassed on behalf of the petitioners is that the authority i.e. Respondent No. 2, not taking into consideration the factors which are relevant for forming even prima facie opinion qua reviewing of existing Anti-dumping duty.

6. The counsels invited Court''s attention to the paragraphs of the Disclosure Statements and contended that those paragraphs can well be said to be rather disclosure of the final conclusion leaving no further room for any consideration of the material that may be placed by the interested party, as the Rule 16 statement is essentially an opportunity to all the concerned to receive facts and reflect thereupon. The said truncated disclosure, so to say, would actually be violative of principles of natural justice also and the exercise undertaken, under Rule 23 of the Rules, being quasi-judicial in nature. The principles of natural justice observance is sine qua non for validly undertaken exercise. In the instant case, the Disclosure Statement contains conclusion and it does not advert to the aspects of injury and when the statement contains a positive findings qua the price under cutting and that increased in dumping activities, then the paragraphs characterized to be final conclusion, would reveal lack of proper appreciation of even the facts, which were otherwise available to the authorities.

7. In that view of the matter, it was urged that let the authorities may not at least render its final findings, and it be directed to afford sufficient opportunity with all the requisite material to the petitioners, or else the petitioners and other interested parties will be subjected to a decision and a finding in which there will be clear breach of principles of natural justice.

8. We are of the considered view that prima facie the submissions made on behalf of the petitioners appears to be correct, as the essential aspects on the threat of injury to the domestic industries is conspicuously absent in its advertence, as could be seen from the Statements of Disclosure in question.

9. The counsels for the petitioners also are prima facie correct in submitting that the Respondent No. 2 could not have rendered its finding in the fact disclosure statement itself, as could be seen from Paragraph Nos. 59, 60 and 61 at Page Nos. 316, 317.

10. The said findings do not indicate anywhere that it is merely a tentative or it is likely to be changed, as development of the facts and instances and the time limit given for filing submission would be indicative of the fact that there is substance in the submission of the counsels that there is a lack of time and material for effectively put forth the case of the petitioners before the authority, which would be also one facet of the principles of natural justice so far as the final findings are required to be rendered by the authority.

11. The counsels for the petitioners also contended that, as could be seen from the factors to be taken into consideration under Annexure II, Item No. (vii) of the Rules, which have in fact been reproduced in paragraph as ''T'', which read as under :

"a. A significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.

b. Sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports.

c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely to increase demand for further imports, and

d. Inventories of the article being investigated."

But they have not been adverted to after taken into consideration the fact that even the authorities on findings during the period of investigation indicate that there exists dumping, despite the duty being levied. Therefore, the authorities ought to have adverted to these facts in light of the submissions of the petitioners and should have recorded the material, if any, in respect of the Items at a, b, c and d.

12. For the aforesaid reasons, we are of the view that as there is still some time left for the authorities to record its final finding and as authority is under obligation to record its finding after following principles of natural justice, as could be seen from the decisions cited at the bar, which are set out as under :

(i) in case of Meghani Organics Ltd. v. Union of India, reported in 2011 (267)

E.L.T. 440 (Guj.).

(ii) in case of Sandisk International Ltd. v. Designated Authority, reported in 2015 (322) E.L.T. 846 (Del.).

(iii) in case of Designated Authority, Ministry of Commerce & Industry and Another v. Indian Metals & Ferro Alloys Limited, reported in (2009) 2 Supreme Court Cases 510 : 2009 (234) E.L.T. 386 (S.C.).

The authorities be permitted to go on with the inquiry and petitioners may also shall place on record with the authorities their submissions, but the final findings may not be rendered without there being sufficient opportunity and supply of material legitimately admissible to the petitioners, as the Disclosure Statements, as on date, clearly indicates that there are vital information, which has gone into consideration by the authorities without they being available to the petitioners, as many columns have been containing asterisk marks, and figures have been withheld from the interested parties.

13. In that view of the matter, let there be Notice returnable on 17-10-2016.

14. In the meantime and till the returnable date, the Respondent No. 2 is restrained from rendering the final finding on the mid-term review undertaken pursuant to the notice dated 21-7-2015. It would be open to the respondents to proceed with the inquiry and investigation and also open to the petitioners to place on record to the authorities their submissions so as to avoid any unnecessary wastage of time, but final findings or any subsequent decision may not render till the next date of hearing.

15. This order is passed ex parte, therefore, it goes without saying that it would be open to the other side to approach the Court even prior to the returnable date for vacation and/or modification of the order.

16. Direct service permitted.

17. Office is directed to place copy of this order in each matter.

