

(2019) 07 GUJ CK 0048

In the Gujarat High Court

Case No : R/Special Civil Application No. 4461 Of 2019

Nocil Limited

APPELLANT

Vs

Union Of India & 3 Others

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 226, 226(2)
Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles for Determination of Injury) Rules, 1995 — Rule 3, 4, 5, 5(3), 6, 7, 10, 11, 12, 14, 16, 17(1), 20, 23, 23(IB), 23(3)
Customs (Tariff) Act, 1975 — Section 9A, 9A(1), 9A(1)(a), 9A(2), 9A(5)

Citation : (2019) 07 GUJ CK 0048

Hon'ble Judges : S.R.Brahmbhatt, J;A. P. Thaker, J

Bench : Division Bench

Advocate : Mihir Joshi, Gargi R Vyas, Devang Vyas, Nirzar S Desai

Final Decision : Allowed

Judgement

A. P. Thaker, J

1. Rule. Learned advocates appearing for the respective respondents waive service of rule. By filing this petition under Article 226 of the Constitution

of India read with Article 14, 19 (1) (g) of the Constitution of India, the petitioner has challenged the legality and validity of the action of respondent

no.2 to refuse initiation of investigation for review of anti-dumping duty for the purpose of continuation of existing anti-dumping duty for a further

period of 5 years in respect of imports of certain rubber chemicals viz. (a) MBT, CBS, TDQ, PVI and TMT (for short "subject goods"), originating

in or exported from China PR (for short "subject country") and (b) PX-13 (6PPD) (for short "subject goods") originating in or exported from

China PR and Korea RP (for short "subject country") by way of

communication/order dated 24.12.2018 with following prayers:-

â??27. â?|....

a) This Honâ??ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari so as to quash and set aside Impugned order

dated December 24, 2018 issued by the Respondent no.2 and annexed at Annexure-A hereo; and

b) This Honâ??ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus so as to direct the Respondent No.2 to initiate

Sunset Review investigation under the provisions of Section 9A(5) of the Act read with Rule 23 (1B) of the Rules and further direct the Respondent

No.3 to issue an appropriate notification in terms of 2nd proviso to Section 9A(5) of the Act for extension/continuation of the Duty imposed by way of

Customs Notification no.35/2014-Customs dated 24.07.2014 for a period not exceeding 1 year pending the outcome of Sunset Review before the

expiry of the period of original notification, that is, on or before July 23, 2019;

c) Pending hearing of the petition, this Honâ??ble Court be pleased to grant ad interim relief in terms of prayer (b) above;

d) Ex parte ad interim relief in terms of prayer (c) hereinabove; and

e) For cost; and

f) Such other and further orders as may be considered fit and expedient in the facts of the case be passed. â??

2. Petitioner No.1 is a company incorporated under the Companies Act, 1956 having its registered office at Mafatlal House, H.T.Parekh Marg, Back

bay Reclamation, Churchgate, Mumbai-400020 and one of its manufacturing facilities in the State of Gujarat at the address mentioned in the cause-

title of the petition and petitioner no.2 is the shareholder and director of the company. It is contended that respondent no.1 is the Ministry of

Commerce, Government of India under whose aegis and control the respondent no.2 (Designated Authority) is functioning. It is also contended that

respondent no.2 is the Designated Authority constituted under the provisions of Rule 3 of the Customs Tariff (Identification, Assessment and

Collection of Anti Dumping Duty on Dumped Articles for Determination of Injury) Rules, 1995 (for short â??the Rulesâ?) and carries out its duties

and functions as provided under Rule 4 of the Rules. It is also stated that respondent no.3 is Ministry of Finance, Government of India, responsible for

issuing Notification for imposition of Anti-Dumping Duty under the provisions of the Act and also under 2nd proviso to Section 9A (5) of the Customs

(Tariff) Act, 1975, whereas respondent no.4 is Central Board of Indirect Taxes and Customs and is a part of Department of Revenue under the

Ministry of Finance, Government of India, which deals with the tasks of formulation of policy concerning levy and collection of customs etc. It is also

contended that the Central Board of Indirect Taxes and Customs is the administrative authority for its subordinate organizations, including Custom

House, Central Excise and Central GST Commissionerates and the Central Revenues Control Laboratory and all the respondents are amenable to the

writ jurisdiction of this Court.

2.1 It is also contended that India is signatory to World Trade Organization and also a signatory to the General Agreement on Tariffs and Trade, 1994.

2.2 While referring to the provisions of the Customs and Tariffs Act and the Rules made thereunder, it has been contended that in the year 2008, the

petitioner filed a petition before respondent no.2 for investigation and recommendation of anti-dumping duties on the aforesaid goods and on the basis

of the said application, the respondent no.2 issued preliminary final finding on 28.2.2008 recommending provisional anti-dumping duty on imports of

subject goods from subject countries. That on 5.5.2008, Ministry of Finance also issued Notification No.61/2008-Cus imposing provisional anti-dumping

duty. Thereafter, respondent no.2 recommended imposition of definitive anti-dumping duty vide final finding and ultimately respondent no.3 issued

customs Notification No.133/2008-Cus implementing the recommendation of respondent no.2.

2.3 It is also contended that on 5.8.2011, respondent no.2 conducted mid-term investigation pursuant to an application filed by the petitioner and

recommended the enhancement of definitive anti-dumping duty in the mid-term review by way of final finding. That on 20.9.2011, the Central

Government issued customs notification No.92/2011 imposing anti-dumping duty. It is also contended that thereafter on 26.12.2012/1.1.2013,

respondent no.2 initiated sunset review and respondent no.3 issued customs notification No.17/2013-Cus (ADD) on 5.7.2013 and revived the anti-

dumping duty with retrospective effect and extended it upto 2.5.2014.

2.4 It is also contended that on 29.4.2014, respondent no.2, after following due

process issued a final finding recommending continuation of anti-dumping duty on imports of the subject goods and that respondent no.3 issued custom Notification No.35/2014 dated 24.7.2014 imposing anti-dumping duty on the subject goods for five years.

2.5 It is further contended that on 26.7.2014, Writ Petition (Civil) No.4810/2014 and Writ Petition (Civil) No.4886 of 2014 were filed by Forech India

Limited and M/s. Kumho Petro Chemical Company Limited respectively challenging the aforesaid Custom Notification No.35/2014 imposing anti-

dumping duty on the subject goods before the Delhi High Court, wherein by common judgment dated 31.5.2018, Delhi High Court allowed the writ

petition and set aside the Custom Notification No.35/2014 dated 24.7.2014 imposing anti-dumping duty on the subject goods for five years.

2.6 Against the order of the Delhi High Court, the petitioner herein has filed Special Leave Petition (C) No.15859-15861/2018 on 18.6.2018, wherein

order was passed by the Apex Court and due to that Notification was not withdrawn and anti-dumping duty continued to be collected on the imports

pursuant to aforesaid Notification No.35/2014-Customs (ADD).

2.7 It is also contended that thereafter on 26.10.2018, the petitioner has submitted an application in terms of Section 9A (5) read with Rule 23

justifying the need for initiation of sunset review and for continuation of the anti-dumping duty enforced on imports of subject goods from subject

countries for a further period of five years, to which necessary oral hearing was granted. The petitioner has also submitted written submissions.

2.8 On December 10, 2018, Respondent No.2 granted pre-initiation oral hearing to the Petitioner No.1 to present its views orally. Petitioner No.1

attended oral hearing, and thereafter submitted written submission on December 17, 2018 clearly establishing the need for review. Petitioner No.1

briefly submitted as follows to justify the need for review the anti-dumping duty to allow the Indian producers to maintain the market share, which had

a positive impact on the economic development of the domestic industry, the foreign producers did not stop dumping practice injury to the domestic

industry is likely to recur in the event of cessation of duty:

i. The information provided shows that the dumping has continued despite the imposition of anti-dumping duty. The dumping is likely to cause injury to

the domestic industry, in the event of cessation of anti-dumping duty.

- ii. Intensified dumping and consequent injury to the domestic industry is likely because Indian market is highly attractive to the foreign producers and exporters.
- iii. The subject producers hold huge surplus capacities and that the estimated Indian demand is a fraction of the available spare capacities of the subject producers.
- iv. Further capacity enhancements in China over the period further shows likelihood of injury.
- v. The subject exporters and producers are highly export oriented.
- vi. the imports from the subject countries have remained substantial over the years. The volumes were also in the same range throughout even in the presence of anti-dumping duties.
- vii. India is one of the leading consumption market and ranks 3rd for rubber consumption after China and United States.
- viii. India ranks among top 2-9 position in export destination market for China and Korea.
- ix. Indian demand remains strong and that the domestic market, because of its relatively large size and steadily increasing consumption, remains attractive for Chinese and Korean exporting producers.
- x. Freight cost from China PR to USA and EU is higher 3 to 5 times than that for India, making Indian market more lucrative to the Chinese producers.
- xi. Additional tariff of 10% imposed by US govt. on rubber chemicals, along with other rubber products has led to US market demand falling for the Chinese producers.
- xii. The domestic demand in China for subject goods is sluggish. Chinese domestic consumption of rubber chemicals has slowed down because of Anti-Dumping and Anti Subsidy Duties on Chinese tyre exports to EU and USA- two of the largest market.
- xiii. Various Chinese producers have recommended commercial production and in fact enhanced their production and capacity utilization, after taking measures to meet the pollution control norms.
- xiv. Pollution control measures invoked by China do not mean that China is no longer a threat to Indian producers. Even Pollution control measures

has been relaxed.

xv. Price is at least one of the decisive factors for customers to choose a specific product. For these reasons, the Indian market is highly price

sensitive. The purchases keep swinging their volumes depending on the additional discounts/benefits that the exporters may offer on top of the low

prices that are already offered, negotiated and settled. Given the similarities between the subject goods and goods produced by the domestic industry

and the availability of such low priced subject imports in the market, it is submitted that there is a likelihood that imports of dumped subject products

would drive down prices of domestic industry and have the negative impact on its performance.

xvi. Significant decline in Post POI Import Prices shows Chinese producers can {rationally reduce the prices in the POI for the case needs to be shifted

to more recent period. In other jurisdictions, like the European Union, the United States of America, Canada, Australia, etc., a whole host of other

factors weighed in favour of affirmative expiry review including evidence of (i) third country dumping, (ii) significant investments in future production

by the domestic industry, (iii) inventories of exporters, (iv) worldwide over-capacity, (v) export orientation of the exporters and (vi) price attractiveness

of the domestic market.

xviii. Exports of product under consideration from China PR and Korea RP to third countries are also at dumped prices. The prices prevailing in the

Indian market are quite attractive to the producers in subject countries, as is established by (a) current export price to India, and (b) current export

price to rest of the world.

xix. Significant investments in future production by the domestic industry in view of fair market condition.

2.9 On 24.12.2018, respondent no.2 issued the impugned letter, in a perfunctory manner and without appreciating the relevant material on record,

deciding not to initiate the sunset review on the grounds that:-

a. "Duties imposed have played a positive impact on the performance of the Domestic Industry. The domestic industry is earning reasonable

return.

b. It is also noted that the current imports are necessary to fulfil the demand and supply gap. Moreover, the current prices of imports (without anti-

dumping) is not injuring the applicant industry and therefore, possibility of their injuring applicant industry in the event of cessation of duties is also

unlikely.

c. It is also noted that there is no reason to suspect the current landed value of subject goods from subject countries. This shows that in the event anti-

dumping duties are revoked goods will still come at the current landed value only. Further, the Authority has also analyzed the likely profitability

situation of the petitioner industry and noted that at current levels of landed value, petitioner industry will make positive returns. This also shows that if

the duties are revoked, any injury to the petitioner industry is unlikely.

d. The petitioner is unable to explain why they are exporting the subject goods despite having demand of the same in the domestic market. It is further

noted that the price realization from the export market is lower than the price realized in the domestic market, except TMT.

e. The demand of PUC over the injury period and POI have increased and the sales of domestic industry has also increased. Moreover, the capacity

utilization also shows a positive growth and this shows that there would not be injury to petitioner in the event of revocation of duties.

f. It is also important to note that the domestic industry is enjoying the protection for last 10 years through various trade remedial measures.

In view of aforementioned, the Authority notes that the information on record shows that the petitioner industry is neither suffering any injury nor there

is any likelihood of injury to them in the event of cessation of duties. It is further noted that the current levels of imports are also inevitable, as there is

demand and supply gap in the Indian Market. IN view thereof, the authority has decided not to initiate the current sunset review investigation.

2.10 According to the petitioner, aforesaid order is wholly without jurisdiction, contrary to law, amounts to abdication of statutory duties, illegal, clearly

unwarranted, inconsistent with past practice, unjustified, arbitrary, issued with pre-determined mind and approach and suffers from bias with regard to

the period for which anti-dumping duty has been considered.

3. GIST OF SUBMISSIONS ON BEHALF OF PETITIONERS:-

3.1 It is submitted by Mr.Mihir Joshi, learned Senior Advocate appearing with Ms.Gargi Vyas, learned advocate for the petitioners that respondent

No.2 has raised contradictory pleas since while on one hand, it has been

submitted that the Petitioners could have only approached the Hon'ble Delhi High Court, since the Respondents are having their offices in Delhi, it has also been submitted that since the registered office/corporate office of the Petitioner No. 1 is in Mumbai, the Petitioners could have approached the Hon'ble Bombay High Court.

3.2 It is submitted that this Hon'ble Court has territorial jurisdiction to entertain the present petition as the Petitioner No. 1 has its manufacturing facility at Bharuch. The Petitioners therefore have the right to seek protection against dumping and injury which are integrally related to the manufacturing operations. The injury as contemplated under the Act and the Rules inter alia production, operation, employment, will be occasioned in Gujarat and therefore, the Impugned Order has a direct bearing on the manufacturing facility of the Petitioner no.1.

3.3 Further, the fact that the right of Petitioner no. 1 to produce the subject goods would get restricted in relation to its operations at its factory at Bharuch if the dumped imports are allowed to enter in the Indian market. There is sufficient cause of action arising within the jurisdiction of the High Court of Gujarat and this Court has jurisdiction to entertain the present petition.

3.4 The judgment of Hon'ble Supreme Court referred by the Respondent No.2 in the case of UOI v. Adam' Exports and it is submitted that the Hon'ble Supreme Court in this case has held that the territorial jurisdiction shall lie with the courts where the cause of action, in part of full, has arisen.

This case also rules that mere existence of a head office in a particular place shall not ipso facto confer jurisdiction. The ratio decided by the Hon'ble

Supreme Court in Adani's case it is submitted that part cause of action is arisen at Gujarat as the Petitioner No.1 is having manufacturing operations at Gujarat. The part cause of action is available to the petitioners as the factory of the petitioner No.1 is situated at Gujarat.

3.5 The concept of cause of action has been explained in the case of Rajasthan High Court Advocate Association v. Union of India [2001 (2) SCC 294], wherein the Hon'ble Supreme Court has held as under:

The expression ""cause of action"" has acquired a judicial-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit.

including not only the infraction of the right, but the infraction coupled with the right itself??

3.6 In this context Petitioners have relied upon on the following judgments of Honâ??ble Rajasthan High Court:

ELECTROLUX KELVINATOR LTD. VS UNION OF INDIA (UOI) AND ORS. (PARA-SO TO 36 AND 55) J .K. INDUSTRIES LTD.

VERSUS UNION OF INDIA [2005 (186) E.L.T. 3 (RAJ.)].(PARA 43)

IMPUGNED ORDER HAS NOT BEEN PASSED IN TERMS OF REQUIREMENTS OF SECTION 9A (5) READ WITH RULE 23 (1B)

3.7 It is submitted by learned counsel for the petitioners that refusal to initiate Sunset Review investigation amounts to misreading of Rule 23 (1B) and

Rule 4 of the Rules, read with Section 9A(5) of the Act on part of the Respondent No.2. Once a substantiated application is received by the

Designated Authority, itâ?? is incumbent on it to initiate the investigation so as to ascertain the likelihood of continuation or recurrence of dumping and

injury, after observing the procedure set out in Rules 6 to Rule 20 of the Rules.

3.8 As per Section 9A(5) of the Act and Rule 23, the Respondent No. 2 is required to conclude finally after initiation of investigation whether the

expiry of the anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. Rule 23 of the Rules sets

out the procedure for review and has consciously omitted in sub-rule (3) applicability of Rule 5 of the Rules with regard to adequacy and accuracy of

the information in the Petition. The only requirement under Rule 23 is substantiated application/request on behalf of domestic industry, only prima facie view is sufficient to initiated the sunset review investigation.

3.9 The mandate of the Section 9A(5) of the Act, as implemented through Rule 23(1B), Respondent No. 2, while considering the meaning of â??duly

substantiated petitionâ??, cannot stretch it to include (a) business sensitive confidential information of foreign producers, (b) information not in public

domain. It is required to apply the standard of information that is reasonably available publicly.

3.10 While in the present case sufficient prima facie information to justify investigation was provided by the Petitioner No.1, further information on this

account is required to be provided by the foreign producers and other interested parties and could have become available only after an investigation is

initiated.

3.11 Further, if the Anti-dumping duty has had the desired effect, the condition of the domestic industry is expected to have improved during the duty

period. Therefore, in a Sunset Review investigation the Designated Authority needs to address the question as to whether the domestic industry is

likely to be materially injured again, if duties are lifted which the Respondent No.2 has not done while considering the present petition.

3.12 In paragraph 4 (a) & (e) of the impugned order, Respondent no. 2 held that â??duties imposed have played a positive impact on the performance

of the Domestic Industry. The domestic industry is earning reasonable return. the demand of PUC over the injury period and P01 have increased and

the sales of domestic industry has also increased. Moreover, the capacity utilization also shows a positive growth and this shows that there would not

be injury to petitioner in the event of revocation of duties.

Thus, the rejection of the petition is based on absence of current injury. However, Petitioner No.1 itself did not claim current injury and has in fact

claimed likelihood of recurrence of injury. The Respondent no. 2 has not appreciated the mandate of sunset review and rejected the application on the

assumption that if the performance of domestic industry improved in view of anti-dumping duty in force, there is no likelihood of injury in the event of

cessation of anti-dumping duty.

3.13 Paragraph 4(b) of the impugned order records that â??current imports are necessary to fulfill the demand and supply gap in the country. â??

The Petitioners submit that no doubt, where a demand supply gap exists, the imports are inevitable, but that is no justification for imports coming into

India, at unfair and dumped prices. As the dumping continues unabated in the present case, the demand supply gap is no basis, for allowing such

imports.

3.14 In paragraph 4 (c) of the impugned order it is recorded that â??there is no reason to suspect the current landed value of subject goods from

subject countries. this also shows that in the event of anti-dumping are revoked goods will still come at the current landed value onlyâ??.

The landed value considered by the Respondent, was based on the import prices prevailing during the period July, 2017 to June, 2018. However,

Petitioner No.1 provided information in the subsequent months, that is from July

2018 to December 2018, there was a dramatic decline in prices which the Authority ignored while concluding that current prices will not change in future.

3.15 The most recent price, would normally be a more reliable indicator of future import prices. The Authority has considered the earlier price, as a benchmark for deriving future prices. Such a conclusion is absurd having regard to the fact, that the decline in prices has already taken place, and such decline can only be an indicator of a further decline in prices. In any case, in view of the volatility in prices, the prices adopted by the Authority for its examination, cannot be representative of future prices. and the conclusions based on such faulty assumptions, is devoid of logic and incorrect.

3.16 Paragraph 4(D) of the impugned order records that "the petitioner is unable to explain why they are exporting the subject goods despite having demand of the same in the domestic market. It is further noted that the price realization from the export market is lower than the price realized in the domestic market, except tmt.

Petitioner No.1/domestic industry is exporting the product only because of dumped imports into the country. It was specifically mentioned that the profitability in exports is worse than profitability in domestic market (the fact has even been recorded in Order dated 24th Dec., 2018). If the export profitability is adverse as compared to domestic, there is no reason why the Petitioner No. 1 will prefer exports and earn lower profits, rather than selling in the domestic market. The fact is that Petitioner No. 1 is forced to export in view of lack of demand for the products in the country due to dumped imports. In any case, the issue deserved initiation of investigations and not rejection of petition.

3.17 The Respondent No.2 has failed to appreciate the material on substantive application on likelihood test and its parameters, and has not considered essential facts such as the (a) surplus capacities in exporting countries, (b) inventories in exporting Countries, which may be diverted to India at dumped prices, (c) volumes of export by exporting countries to other countries, (d) price attractiveness of the Indian market.

3.18 While issuing the impugned order Respondent No.2 has failed to consider the material submitted by the Petitioner No. 1 which clearly demonstrated that there is a likelihood of dumping and injury in event of

cessation of duty. Such as:-

i. The Chinese and Korean producers have continued dumping of the product concerned from the subject countries.

ii Dumping of the product under consideration in so far as the volume of imports is concerned is likely to intensify from the subject countries should the

current anti-dumping duty be withdrawn, given the price undercutting in the current imports.

iii Petitioner No.1 has submitted information regarding capacity, production and demand of the subject goods in the subject countries and the surplus

capacity available on the basis of Market Research Report on Rubber Chemical Market as provided by Notch Consulting, China Rubber Industry

Association Report (CRIA) and IRSG-Rubber Statistical bulletin-Vol. 73 No. 1-3 July-September edition. This material submitted by the Petitioner

No. 1 clearly establishes that producers in subject countries maintain huge capacities to produce subject goods.

iv Petitioner No.1 have submitted the export data of the subject goods collected from General Administration. of Customs, Government of China

which shows that the volume of exports from subject countries to third countries are significantly high as compared to volume of exports to India and

were at price materially lower than the price at which goods have been exported to India. Thus, in a situation where in the current anti-dumping duties

are ceased, the producers in subject countries are likely to divert their product to India in order to get better price.

v Exporters from the subject countries are highly export oriented worldwide. The Chinese producers export 27.55%, 29.38% and 29.25% of the their

total production of PX-13, TDQ, PVI and Rubber Accelerators respectively and Korean producers export 91.84% of their total production of PX-13.

Further, the producers of the subject goods are holding significant capacities which would be utilized for exports to India if current anti-dumping duties

are allowed to cease considering the growing demand in India, price attractiveness of the Indian market and the current prices at which exports are

being made at present.

vi Further, the Indian market is highly price attractive towards the export from subject countries. The price undercutting without anti-dumping duty is

positive and significant. This clearly establishes that imports from respective

subject countries are likely to undercut the prices of the Domestic

Industry by forcing the Domestic Industry to reduce its prices further in the event of cessation of anti-dumping duty.

vii Petitioner No.1 has submitted that recently USA has imposed 15% duty sanctions its well in addition to the 10% customs duty on the subject goods

due to which Chinese producers are likely to lose significant business market in the USA. Hence, there is strong likelihood of dumping of subject

goods from subject countries.

viii Petitioner No.1 submitted the material showing that India commands one of the 10 top positions in exports of subject rubber chemicals in subject

countries. The current level of demand in India and the future likely imports show that India is one of the major buyers of the subject goods.

ix. Petitioner No.1 submitted the material showing that Chinese producers are in the process of expanding their capacity, notwithstanding the existing

surpluses with them and weakening demand in China. One of the producers of the subject goods in China i.e. Shandong Yanggu Huatai Chemical Co.,

Ltd. is going for [PC for expansion of capacities. This clearly shows that in case of cessation of anti-dumping duty, the expanded capacity would be

used for production to dump and injure the Indian domestic industry. In this context it may not be out 'of place to note that despite having unutilized

capacities, the exporter is expanding its capacities further.

x. Petitioner No.1 also brought the fact that pollution control measures invoked by Chinese Govt. earlier might have led to various manufacturing units

suspending production. However, all these units have either already returned to their normal production, or are in the process of doing so. As per the

information available in public domain, Dongying Bochen Chemical CTP PVI Co. Ltd, Xinxiang Huarui Fine Chemical Co. Ltd. & Shanxi Xiangyu

Chemical Industrial Co. Ltd. has already complied with environmental norms. In fact, they have enhanced their production and Capacity utilization.

The Designated Authority however preferred rejection of application instead of undertaking investigations. Thus, the rejection of the petition is based

on a general belief about the Chinese Govt. & measures, and instead specific facts of the case.

xi. Despite anti-dumping duty in force significant volume of dumped imports continue to enter Indian market. This situation is likely to worsen if the

duties on the imports of subject goods from subject countries are allowed to expire.

It is evident that Petitioner No.1 submitted detailed facts and evidences before the Respondent No.2 while filing the Petition for initiation of

investigation and thereafter again after the oral hearing, which clearly establishes that there is need to undertake investigations. The Respondent No. 2

however proceeded with a predetermined mind and ignored the information and material provided by the petitioner to justify initiation.

3.19 The reliance placed by the Respondents on the Judgment in the matter of Kesoram Rayan v/s Designated Authority reported in (2018) 359 ELT

475 is in apposite. The Petitioners submit that Honâ??ble Delhi High Court examined the issue on merits and found that order is correct. In the present

case Designated Authority failed to appreciate the material in support of application and contrary held that no is made out for initiation of sunset

teview investigation. Even otherwise if the principle of two stage process; as laid down in Kesoram (supra) is accepted, it completely supports the

contention of the Petitioner No. 1 that the first stage is only for initiation of review based on duly substantiated application.

3.20 Petitioners submit that Judgment of this Honâ??ble Court in the matter of Jindal Saw Limited v/s Directorate General of Anti-Dumping & Allied

Duties reported in 2019 (365) ELT 81 (Guj) is directly applicable to the present case and would therefore be a binding precedent. In Jindal Saw

(Supra), this Honâ??ble Court held as under:

â??11. Examination of the impugned order in the background of these significant mandate as required under the Rules would suggest the absence of

following factors:

Nothing is evident to suggest that the designated authority called for information by supplying such copy of the application to known exporters or to the

concerned trade associations, foreign producers, calling for information factors on which the allegations of injury were made by the Review

Applicants.

Nothing is evident to suggest that there was any determination of normal value. export price and margin of dumping and its assessment in accordance

with the principles laid out in Annexure-I of the Rules.

Similarly, whether the determination of injury was done in accordance with the

principles laid out in Annexure II is also not discernible from the reading of the impugned order.

Extensive material in terms of Annexures was placed before the designated authority to make out a case for a review and continuance of the anti-dumping duty, in accordance with the Rules, particularly Rules 6, 7, 10 and 11. That these Rules applied even in carrying out a review is clear from sub-rule (3) of Rule 23.

The Order only records the submissions of the applicant without disclosing whether the data has been called for from exporting countries. A casual finding refusing to initiate sunset review investigation is recorded by stating that the applicant has failed to provide sufficient and satisfactory evidence in support of its prayer to initiate sunset review investigation.

The order therefore fails the test of having considered the application, as required under the mandate of the Section i.e. Section 9A (5) read with the Rules thereunder.

12. Accordingly, impugned order dated 17-5-2018 is set aside, as the same is without reasons. The respondent authority shall decide the application requesting a sunset review afresh, in accordance with law, within six months from the date of receipt of this order. Till such a decision is taken, the period of anti-dumping duty, which ceases to have effect on and from 9-10-2018, shall stand extended. Petition is allowed accordingly. Rule is made absolute. Direct service is permitted.

3.21 Similarly, in the matter of DCW LIMITED v/s. UNION OF INDIA, SCA No. 5798 of 2018 order dated 12.04.2019, this Hon'ble Court directed the Respondents to initiate the sunset review and extend the anti-dumping duty pending outcome of review. Relevant extract is reproduced below.

6.00. Under the circumstances, RULE, returnable on 19/4/2018.

In the meantime, there shall be ad interim relief in terms of para 23(A-1), which reads as under: 23.(A-1). Pending admission and final hearing of this Petition, this Hon'ble Court be pleased to direct the Respondent No.2 to initiate Sunset Review investigation under the provisions of Section 9A(5) of the Act read with Rule 23(IB) of the Rules on or before 16.04.2018 and further direct the Respondent No. 1 to issue an appropriate

notification in terms of 2nd proviso to Section 9A(5) of the Act for extension/continuation of the Duty imposed by way of Customs Notification dated

18.04.2013 for a period not exceeding 1 year pending the outcome of Sunset Review before the expiry of the period of original notification, that is, on

or before 17.04.2018.â??

Respondent No.2 cannot be permitted to justify the impugned order, on the basis of reasons not given the impugned order.

3.22 Respondent no. 2 cannot be permitted to justify or improvise the Impugned Order, on the basis of reasons not stated therein. In this context,

reliance is placed on the decision of the Apex Court in the case of Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi &

Ors. (1978) 1 Supreme Court Cases 405, wherein it has been held as under:

â??.....The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged

by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the

beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw

attention to the observations of Bose J. in Gordhandas Bhanji (1)

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer

making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have

public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with

reference to the language used in the order itself ""Orders are not like old wine becoming better as they grow older: â??

3.23 Mr.Mihir Joshi, learned Senior Advocate appearing with Ms.Gargi Vyas, learned advocate for the petitioners relied upon following decisions in

support of his submissions.

(i) Decision of Rajasthan High Court in the case of Electrolux Kelvinator Ltd. Vs Union of India (Uoi) and Ors. Reported in RLW 2005 (3) Raj 1949

(ii) J.K.Industries Ltd. v. Union of India reported in 2005 (186) ELT 3 (Raj.)

(iii) Jindal Saw Ltd. v. Directorate Gen. of Anti-Dumping & Allied Duties, reported in 2019 (365) ELT 81 (Guj.)

(iv) Decision of this Court in DCW Limited v. Union of India, Special Civil Application Nos.5798 of 2018 and 5808 of 2018 decided on 12.4.2018.

4. On the other hand, Mr.Nirzar Desai, learned advocate for the respondent while vehemently opposing the petition and inviting the attention of the

Court to the averments made in the petition submitted that this Court has no jurisdiction to entertain the petition as the head office of the petitioner is in

another State and the accounts are also maintained in another State. He has also submitted that there is no averment in the petition that all the

products of the subject goods are manufactured in Gujarat at the given address. According to him, the industry is not within the periphery of Gujarat

and the subject goods are wide range of products which are being manufactured in other parts of the country and there is no such rubber plant in

Gujarat. He has also contended that the petition is silent on the aspect of manufacturing process taking place in Gujarat itself. He has also contended

that there is no mention as to the user of the said products in Gujarat. He has also contended that in absence of specific averments regarding

jurisdiction of this Court and considering the facts that the application was made in Bombay and address has been given of Delhi and the order has

been passed by the respondent at Delhi, no cause of action has arisen within the jurisdiction of this High Court. He has also contended that probability

of manufacturing or manufacturing are different things. He has also submitted that this is a fiscal policy matter and, therefore, the Court may not

entertain present petition. According to him, only the pleadings and petition are required to be looked into for finding out the cause of action and in

absence of a specific pleading, it cannot be presumed that the cause of action or part thereof arose within the territorial jurisdiction of this High Court.

The main plank of argument is that this Court has no jurisdiction to entertain present petition and there is alternative remedy available to the petitioner

to approach CESTAT. While supporting the finding of Designated Authority and relying upon following decisions, he has prayed to dismiss present

petition.

(i) Bombay High Court in the case of Sachee Agro Trading Pvt. Ltd. v. Union of India, reported in 2017 (345) ELT 346 (Bom.) observed as under:-

â??7. The law, by now, is well-settled right from the judgment of the Honâ??ble Apex court in the case of State of Rajasthan & others v. M/s.

Swaika Properties & another (cited supra). Even if the part of cause of action arises within the territorial jurisdiction of this Bench, then this Bench

will have a territorial jurisdiction to entertain the petition. We find that various judgments of the Honâ??ble Apex Court are on the same line. Though

the judgments are in plenty, we would not like to quote all of them in order to avoid the order being bulky and we will restrict us only to two judgments,

which are cited by Shri Gordey.

9. Now, let us consider the facts of the said case. In the said case (Navinchandra N. Majitha), the petitioner was Managing Director of one company

at Mumbai. The said company had entered into a business transaction with the respondent (first informant) at Mumbai and there was business dispute

between the petitioner and the respondent complainant. A civil suit with regard to the business dispute between the parties was filed in the original side

of the High Court at Bombay. Thereafter, the first informant lodged the first information report at Shillong. Contending that though all the transactions

between the parties had at Mumbai, only in order to harass the petitioner, the first information report was lodged at Shillong in the State of Meghalaya,

the petition came to be filed under Article 226 of the Constitution at Mumbai. In this background, the Honâ??ble Apex Court, considered as to what

is meant by the term, â??cause of actionâ?. It has been held by Their Lordships that while considering as to whether the part of cause of action

arises within the territorial jurisdiction of the Court, the Court will have to look into the pleadings made in the petition and the relief sought in the

petition. Their Lordships in unequivocal terms observed that though the entire transactions between the parties had taken place at Mumbai, only in

order to harass the petitioner, the first information report was lodged at Shillong. In this background, the Apex Court held that the Bombay High Court

erred in holding that it had no territorial jurisdiction to entertain the petition.

â?|.....

13. Now, let us take the facts of the present case. The Honâ??ble Apex Court has held in the case of Navinchandra N. Majithia that while

considering as to whether the Court has cause of action or not, only pleadings in the petition are required to be looked into. Unfortunately, there are no

pleadings in the present petition to show as to how this Court is of territorial jurisdiction and as to how the cause of action or a part of cause of action

arose within the territorial jurisdiction of this Court. In spite of that, we have permitted Shri Gordey, learned senior Counsel to take us to averments

made in the petition so as to examine as to whether any part of cause of action arises within the territorial jurisdiction of this Court.â??

(ii) In the case of Alchemist Ltd. And Another v. State Bank of Sikkim and Others, reported in (2007) 11 SCC 335, Supreme Court observed as

under:-

â??20. It may be stated that the expression 'cause of action' has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It

may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts

would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

21. The classic definition of the expression 'cause of action' is found in Cooke v. Gill, (1873) 8 CP 107 : 42 LJ PC 98, wherein Lord Brett observed:

'Cause of action' means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court".

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.â??

In the peculiar facts of that case, the order of the High Court rejecting the petition under Article 226 on the ground that it has no territorial jurisdiction has been upheld.

(iii) In the case of State of Rajasthan and Others v. M/s Swaika Properties and Another, reported in (1985) SCC 217, while dealing with the meaning

of â??cause of actionâ?? the Court observed as under:-

â??8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure :

The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a Judgment of the Court.

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant.â??

In the facts of that case, it was found that the concerned High Court had no jurisdiction to entertain the petition and, therefore, the order of the High

Court was set aside on the ground that mere service of notice cannot give rise for cause of action to entertain writ by the concerned High Court.

However, it has been observed that whether the service of notice is an integral part of cause of action within the meaning of Article 226 (2) of the

Constitution of India must depend upon the nature of the impugned order giving rise to a cause of action.

(iv) In the case of *Venus Jewel v. Commissioner of Service Tax-I, Mumbai*, reported in 2012 (285) ELT 167 (Guj.), it is observed by this Court as

under:-

18. Jurisdiction may be defined to be the power or authority of a Court to hear and determine a cause, to adjudicate and exercise any judicial

power in relation to it. In other words, by jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take

cognizance of matters presented in a formal way for its decisions. Jurisdiction of a court may be classified into various categories; (i) territorial

jurisdiction; (ii) pecuniary jurisdiction; (iii) jurisdiction as to subject matter etc. Every court has its own local or territorial limits beyond which it cannot

exercise its jurisdiction.

31. Viewed from the angle, the expression 'cause of action' means the bundle of facts which the petitioner must prove, if traversed, to entitle him to a

judgment in his favour by the Court. Every fact, which, if traversed, would be necessary for the petitioner to prove in order to support his right to a

judgment of the Court. It is a bundle of facts which taken with the law applicable to them gives the petitioner a right to relief against the respondents.

In legal parlance the expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action

in a Court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a

remedy in the court from another person. Each and every fact pleaded in the Writ Petition does not ipso facto lead to the conclusion that those facts

give rise to a cause of action which the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis

or dispute involved in the case. The facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so

as to confer territorial jurisdiction on the Court concerned. The territorial

jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averment made in the petition being immaterial. To confer jurisdiction on a Court even if a part of the cause of action arises within its jurisdiction, it is sufficient. It is purely a question of fact.â??

(v) In the case of Union of India v. Adani Exports Ltd. reported in 2001 (134) ELT 596 (SC), the Supreme Court observed as under:-

â??15. Article 226(2) of the Constitution of India which speaks of the territorial jurisdiction of the High Court reads :-

The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High

Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power,

notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

16. It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause

of action, wholly or in-part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this

regard, it would suffice for us to refer to the observations of this Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.

(1994 4 SCC 711 at 713) wherein it was held :-

Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights

conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to

which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction,

order or writ is issued is not within the said territories. The expression ""cause of action"" means that bundle of facts which the petitioner must prove, if

traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the court must

take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or

otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the

averments made in the petition being immaterial.

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case,

the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to

empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every

fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the

court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which

have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court

concerned. â?|.....â??

(vi) Jindal Saw Ltd. v. Directorate Gen. of Anti-Dumping & Allied Duties, reported in 2019 (365) ELT 81 (Guj.)

(vii) Kesoram Rayon v. Designated Authority, reported in 2018 (359) ELT 475 (Del.)

5. The Court has considered rival contentions of the learned counsel for the parties and the pleadings. The certain undisputed facts emerge on record,

which are as under:-

(i) The petition is filed for the imports of (a) MBT, CBS, TDQ, PVI and TMT originating in or exported from China PR and (b) PX-13 (6PPD)

originating in or exported from China PR and Korea RP.

(ii) On 1.10.2008, the petitioner filed an application for investigation and recommendation of anti-dumping duty on the subject goods originated in or

exported from the subject countries.

(iii) On 28.2.2008, pursuant to the investigation, respondent no.2 issued preliminary final finding recommending for provisional anti-dumping duty on the import of subject goods from the subject countries.

(iv) On 5th May 2008, the Ministry of Finance, Government of India, issued Notification No.610/2008-Cus. imposing provisional anti-dumping duty.

(v) On 12.12.2008, respondent no.3 issued custom Notification No.133/2008 for implementation of the recommendation of respondent no.2.

(vi) On 5.8.2011, respondent no.2 conducted mid-term review investigation pursuant to the application filed by petitioner no.1.

(vii) On 20.9.2011, Central Government imposed anti-dumping duty by Customs Notification No.92/2011.

(viii) On 20.12.2012/1.1.2013, petitioner no.1 filed an application for initiation of sunset review before respondent no.2.

(ix) On 30.4.2013, respondent no.2 initiated sunset review.

(x) On 5.7.2013, respondent no.3 issued Customs Notification No.17/2013-Customs (ADD) and revived the anti-dumping duty with retrospective effect and extended it upto 4th May 2014.

(xi) On 29.4.2014, after following due process, respondent no.2 issued the final finding recommending continuation of anti-dumping duty on imports of the subject goods.

(xii) On 24.7.2014, respondent no.3 implemented Final Findings of respondent no.2 and issued Customs Notification No.35/2014 imposing anti-dumping duty on the subject goods for five years.

(xiii) On 26.7.2014, Forech India Limited and M/s.Kumho Petro Chemical Co. Ltd. filed Writ Petition (C) No.4810/2014 and Writ Petition No.4886/2014 respectively challenging the aforesaid Customs Notification No.35/2014 imposing anti-dumping duty on the subject goods before the High Court.

(xiv) By common judgment dated 31.5.2018, Delhi High Court allowed the petition and set aside the Custom Notification No.35/2014 dated 24.7.2014, by which anti-dumping duty is imposed on the subject goods for five years.

(xv) Against above order, the petitioners filed Special Leave Petitions on 18.6.2018.

(xvi) On 9.7.2018, the Supreme Court issued notice. In view of the proceedings before the Apex Court, notification has been withdrawn and anti-dumping duty continues to be collected on the imports by the respondents pursuant to Notification No.35/2014-Customs (ADD) dated 24.7.2014.

(xvii) On 26.10.2018, petitioner no.1 filed substantiated application in terms of Section 9A(5) read with Rule 23 justifying the need for initiation of sunset review investigation and for continuation of anti-dumping in force on imports of subject goods from subject countries for further period of five

years.

(xviii) On 10.12.2018, petitioner no.1 was granted oral hearing by respondent no.2. Petitioner no.1 attended oral hearing on 17.12.2018 and submitted written submission for the need of review.

(xix) On 24.12.2018, respondent no.2 issued the impugned order, rejecting the substantive application seeking initiation of sunset review.

6. The Court is called upon to examine the rival contentions of the parties, which needs to be examined in light of the aforesaid undisputed aspects set out herein above.

7. Regarding territorial jurisdiction, it appears from the record that petitioner no.1 has categorically averred that its manufacturing unit is functioning at

Baroda in Gujarat. This fact has not been controverted by the respondent. The petitioner seeks protection against dumping and injury, which are inter-

related to the manufacturing operations and it will also inter alia affect production operation, employment, and that which will be occasioned in Gujarat.

The submission of the petitioner that the right of the petitioner to produce subject goods is restricted in relation to its operations at its factory at

Baroda, if the dumped goods are allowed to enter in the Indian market is acceptable and considering the facts the cause of action could be said to

have arisen in the territorial jurisdiction of this Court, this Court has jurisdiction to entertain and decide this petition.

8. The petition is based upon observation of the provisions of Section 9A (5) of the Customs Tariff Act as well as the various rules of the Customs

Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles for Determination of Injury) Rules, 1995, which are

reproduced hereunder:-

â??Section 9A.

â??9A. Anti-dumping duty on dumped articles. â?" (1) Where any article is exported by an exporter or producer from any country or territory

(hereinafter in this section referred to as the exporting 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 article.

Explanation. - For the purposes of this section, - (a) "margin of dumping", in relation to an article, means the difference between its export price

and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there

is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the

importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent

buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined

in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means -

(I) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as

determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when

because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not

permit a proper comparison, the normal value shall be either -

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as

determined in accordance with the rules made under sub-section (6); or (b) the cost of production of the said article in the country of origin along with

reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section

(6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped

through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the

normal value shall be determined with reference to its price in the country of origin.

(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such antidumping duty exceeds the margin as so determined:-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless, â?

(I) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Explanation. â?" For the purposes of this sub-section, the expression â??hundred per cent export-oriented undertakingâ? shall have the meaning

assigned to it in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944).

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(I) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that

such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported

article dumped and other circumstances is likely to seriously under-mine the remedial effect of the anti-dumping duty liable to be levied, the Central

Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-

dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything

contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time

being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of

such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of

dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall

commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry,

the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central

Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for

the purposes of this section, and without prejudice to the generality of the

foregoing, such rules may provide for the manner in which articles liable for any antidumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer : (6A)

Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, 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.

9AA Refund of anti-dumping duty in certain cases. " (1) Where upon determination by an officer authorised in this behalf by the Central

Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty

imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central

Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such

article or such importer, and such importer shall be entitled to refund of such excess duty:

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section

(2) of section 9A.

Explanation " For the purposes of this sub-section, the expressions, "margin of dumping", "export price" and "normal value" shall have

the meanings respectively assigned to them in the Explanation to sub-section (1) of section 9A.â??

RULES:-

â??RULE 5. Initiation of investigation. - (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by

evidence of -

(a) dumping

(b) injury, where applicable, and

(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the

like product, that the application has been made by or on behalf of the domestic industry :

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of

the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -

(i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a casual link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

3 Substituted vide Customs Notification No. 44/99-Cus(NT) dated 15.7.1999 (Annexure â?" II)

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported

by those domestic producers whose collective output constitute more than fifty

per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

(4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo moto if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3) .

(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

RULE 6. Principles governing investigations.- (1) The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following:-

- (i) the name of the exporting country or countries and the article involved;
- (ii) the date of initiation of the investigation;
- (iii) the basis on which dumping is alleged in the application;
- (iv) a summary of the factors on which the allegation of injury is based;
- (v) the address to which representations by interested parties should be directed; and
- (vi) the time-limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to -

- (i) the known exporters or to the concerned trade association where the number of exporters is large, and
- (ii) the governments of the exporting countries : Provided that the designated authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing.

(4) The designated authority may issue a notice calling for any information, in

such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.

Explanation : For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week

from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer

organizations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding

dumping, injury where applicable, and causality.

(6) The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such

oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation.

(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or

significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such

recommendations to the Central Government as it deems fit under such circumstances.

RULE 10. Determination of normal value, export price and margin of dumping. - An article shall be considered as being dumped if it is exported from

a country or territory to India at a price less than its normal value and in such circumstances the designated authority shall determine the normal value,

export price and the margin of dumping taking into account, inter alia, the principles laid down in Annexure I to these rules.

RULE 11. Determination of injury. - (1) In the case of imports from specified countries, the designated authority shall record a further finding that

import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if-

- (i) there is a concentration of dumped imports into an isolated market, and
- (ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

RULE 12. Preliminary findings. - (1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain:-

- (i) the names of the suppliers, or when this is impracticable, the supplying countries involved;
 - (ii) a description of the article which is sufficient for customs purposes;
 - (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;
 - (iv) considerations relevant to the injury determination;
- and
- (v) the main reasons leading to the determination.

2. The designated authority shall issue a public notice recording its preliminary findings.

RULE 14. Termination of investigation. - The designated authority shall, by issue of a public notice, terminate an investigation immediately if -

(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;

(b) it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;

(c) it determines that the margin of dumping is less than two per cent of the export price;

(d) it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three per cent of the

imports of the like product, unless, the countries which individually account for less than three per cent of the imports of the like product, collectively

account for more than seven per cent of the import of the like product; or

(e) it determines that the injury where applicable, is negligible.

RULE 16. Disclosure of information. - The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.

RULE 23. Review. - [(1) Any anti-dumping duty imposed under the provision of section 9 A of the act, shall remain in force, so long as and to the extend necessary, to counteract dumping, which is causing injury.

(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or

upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has

elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central

Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-

dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive anti-dumping duty levied under the Act, shall be effective for a period

not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period

on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the

expiry to that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic

industry.]

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9/10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.â??

9. The principles for determination of injury has been provided in Annexure-II under Rule 11 (2). The relevant portion thereof is abstracted herein

below:-

â??(iv) The examination of the impact of the dumped imports to the domestic industry concerned, shall include an evaluation of all relevant economic

factors and indices having a bearing on the State of the industry, including natural and potential decline in sales, profits, output, market share,

productivity, return on investments or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and

potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

(v) it must be demonstrated that the dumped imports are, through the effects of dumping, as set forth In paragraphs (ii) and (iv) above, causing injury

to the domestic industry. The demonstration of a casual relationship between the dumped imports and the injury to the domestic industry shall be based

on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the

dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the

dumped imports. Factors which may be relevant in this respect include, inter-alia, the volume and prices of not sold at dumping prices, contraction in

demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers,

developments in technology and the export performance and the productivity of

the domestic industry.

(vi) The effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available data permit the

separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate

identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the

narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

(vii) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in

circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a

determination regarding the existence of a threat of material injury, the designated authority shall consider, inter alia, such factors as :

(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 markets, 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 increase

demand for further imports; and

(d) inventories of the article being investigated.

9.1 At the same time, principles for determination of non-injurious prices under Rule 17 (1) are required to be taken note of, which are abstracted

herein below:-

(4) The following elements of cost of production are required to be examined for working out the non-injurious price, namely:-

(i) The best utilization of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation, and at

period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of raw materials.

(iv) The Propriety of all expenses, grouped and charged to the cost of production

may be examined and any extraordinary or non-recurring expenses

shall not be charged to the cost of production and salary and wages paid per employee and per month may also be reviewed and reconciled with the

financial and cost records of the company.

(v) To ensure the reasonableness of amount of depreciation charged to cost of production, it may be examined that no charge has been made for

facilities not deployed on the production of the subject goods, particularly in respect of multi-product companies and the depreciation of re-valued

assets, if any, may be identified and excluded while arriving at reasonable cost of production.â??

10. Admittedly, the petitioner herein filed an application for sunset review of anti-dumping duty in force in relation to subject goods from subject

countries, wherein it has been stated as under in paragraphs 60 and 61 :-

â??60. Considering the Normal Value and the Export Price determined as discussed above, the dumping Margin has been calculated in accordance

with Section 9 A(1)(a) of the Customs Tariff Act, 1975 and shown in the enclosed Annexure 3.4 to the application. Applicant submits that the

comparison made must be considered fair comparison. The prices represent the same level of trade. Further, both the normal value and export price

have been determined at ex-factory level. Both the normal value and export price pertain to the same period. There are no known differences in the

conditions and terms of sale. Thus, the comparison made by the applicant constitutes a fair comparison.

61. It may be seen that the dumping margins are not only above de-minimis but also substantial in case of each of the Rubber Chemicals.â??

11. Detailed information regarding likelihood of dumping and injury, it is provided in certain data and ultimately it is submitted as under in para 105:-

â??105. From the above tables, it is amply clear that there are huge surplus capacities in the subject countries which are essentially catering to the

export market as the domestic demand is limited. The above data demonstrates that the domestic demand of:

- PX-13 in the China PR and Korea is only 61% and 90% of the total capacities in China PR and Korea RP respectively.

- TDQ in the China PR is only 52% of the total capacities in China PR.

- PVI in the China PR is only 75% of the total capacities in China PR.

- MBT in the China PR is only 93% of the total capacities in China PR.

- CBS in the China PR is only 70% of the total capacities in China PR.

TMT in the China PR is only 58% of the total capacities in China PR.â??

12. Regarding subject countryâ??s export to third countries, while providing information in tabular form as specifically stated in para 109 as follows:-

â??109. It would be seen that:

a. The total exports of PX-13, in terms of volume, made by China PR to the world are about 15 times of the volume exports made to India, in the POI.

Further, about 5 times of the exports to the rest of the world were exported at a price lower than the price at which the product is exported to India.

b. The total exports of PX-13, in terms of volume, made by Korea RP to the rest of the world are about 12 times of the volume of exports made to

India, in the POI. Further, about 4 times of the exports to the rest of the world were exported at a price lower to India lower than that on which the

product is exported to India.

c. The total exports of TDQ and PVI, in terms of volume, made by China PR to the world are about 31 times and 7 times respectively of the volume

of exports made to India, in the POI. Further, about 10 times and 5 times of the exports to the rest of the world for the respective products were

exported at a price lower to India lower than that on which the product is exported to India.

d. The total exports of the rubber accelerations, in terms of volume, made by China PR to the world are about 12 times of the export made to India, in

the POI. Further, about 6 times of the exports to the rest of the world were exported at a price lower to India lower than that on which the product is

exported to India.â??

13. While referring to the export orientation of producers from subject countries and the price attractiveness in the Indian market, while providing in

tabular form, it is stated as under:-

â??112. From the evidence collected, it is evident that the exporters from the subject countries have highly export orientation worldwide. The data

below shows that the Chinese produces export 27.55%, 29.38%, 33.53% and 29.25% of their total production of PX-13, TDQ, PVI and Rubber

Accelerators respectively. Further, the Korean producers export 91.84% of their

total production of PX-13.â??

14. It is also stated that imports from respective subject countries are likely to undercut the prices of domestic industries in the event of cessation of

anti-dumping duty. While referring to the additional tariff imposed by USA and resultant loss of market to the Chinese producers, it is submitted in

para 117 as under:-

â??117. The Chinese products are now facing additional customs duty in USA. Very recently, rubber chemicals, along with other rubber products

have been subjected to an additional 10% customs duty in USA. Relevant evidence is enclosed as Annexure 4.4. Resultantly, the Chinese producers

are likely to lose significant business in the US market. This is already reflected in the decline in the Chinese prices in the most recent period and after

these measures has been invoked.â??

15. Regarding vulnerability of the domestic industries due to price sensitivity of the product in the Indian Market it is submitted as under:-

â??124. The Indian market for the product under consideration is highly price sensitive. The consumers decide their source, with the price being the

foremost consideration. Majority of the products under consideration consumption is in tyres. Further, about 13 companies constitute about 90% of

tyre production, Given large size of these companies, each of these companies are equipped with professional purchase department, who are well

aware of day to day developments in the market. Typical tyre companies consider contract pricing, which are valid for three months. These contracts

are placed after elaborate negotiations and counter-negotiations with various suppliers. Further, despite quarterly contracts, the purchases keep

swinging their volumes depending on the additional discounts/benefits that the exporters may offer on top of the low prices mat are already offered,

negotiated and settled. Such being the case, availability of such low priced subject imports in the market would definitely cause an adverse impact onto

the Domestic Industry.

125. In the event of cessation of current anti-dumping duty, the domestic industry will have to either reduce the selling price by the amount of ADD or

the domestic industry would lose sales volumes. In either case, domestic industry will suffer injury.

126. Further, in the event of cessation of current anti-dumping duty, should the

Domestic Industry choose to maintain its price at the same level, the import volume will increase, given significant price difference between the domestic and import prices. This is likely to cause significant deterioration in sales, production and capacity utilization of the domestic industry.â??

16. While referring to dumped imports into India over the years, it is specifically stated in paragraphs 130 and 131 as follows:-

â??130. It would be seen that:

(a) PX-13: The imports from the subject country have remained substantial over the years. The volumes were also in the same range throughout.

(b) TDQ: The imports from the subject country have remained substantial over the years. The volumes were also in the same range throughout.

(c) PVI: The subject imports have increased substantially over the years, from 707 MT in 2009-10 to 2,265 MT in proposed period of investigation for

the present petition.

(d) CBS: The imports of CBS from the subject country have followed the same trend as that of PVI. The same has increased from 929 MT in 2009-

10 to 2,665 MT in proposed period of investigation for the present petition.

(e) MBT: The imports from the subject country have remained substantial over the years. The volumes were also in the same range throughout.

(f) TMT: The volume of imports has declined over the injury period.

131. The above analysis clearly demonstrates that despite anti-dumping duty in force significant volume of dumped imports continue to enter Indian

market. This situation is likely to worsen if the duties on the imports of subject goods from subject countries are allowed to expire.â??

17. The petitioner has also provided further information showing that in case of cessation of the anti-dumping duty, there will be dumping of subject

goods from the subject countries in India and ultimately, it will be injury to the domestic industries.

18. On perusal of the conclusion in impugned order dated 24.12.2018, it is found that the authority therein in paragraph 4 and 5 observed as under:-

â??4. Whereas, on examination of facts in details, the Authority notes as under:

(a) Duties imposed have played a positive impact on the performance of the Domestic Industry. The domestic industry is earning reasonable return.

(b) It is also noted that the current imports are necessary to fulfill the demand

and supply gap. Moreover, the current prices of imports (without anti-dumping) is not injuring the applicant industry and therefore, possibility of their injuring applicant industry in the event of cessation of duties is also unlikely.

(c) It is also noted that there is no reason to suspect the current landed value of subject goods from subject countries. This shows that in the event anti-dumping duties are revoked goods will still come at the current landed value only. Further, the Authority has also analyzed the likely profitability situation of the petitioner industry and noted that at current levels of landed value, petitioner industry will make positive returns. This also shows that if the duties are revoked, any injury to the petitioner industry is unlikely.

(d) The petitioner is unable to explain why they are exporting the subject goods despite having demand of the same in the domestic market. It is further noted that the price realization from the export market is lower than the price realized in the domestic market, except TMT.

(e) The demand of PUC over the injury period and POI have increased and the sales of domestic industry has also increased. Moreover, the capacity utilization also shows a positive growth and this shows that there would not be injury to petitioner in the event of revocation of duties.

(f) It is also important to note that the domestic industry is enjoying the protection for last 10 years through various trade remedial measures.

5. In view of the aforementioned, the Authority notes that the information on records shows that the petitioner industry is neither suffering any injury nor there is any likelihood of injury to them in the event of cessation of duties. It is further noted that the current levels of imports are also inevitable, as there is demand and supply gap in the Indian market. In view thereof, the Authority has decided not to initiate the current sunset review investigation.â??

19. At this juncture, observation of this Court in *Jindal Saw Limited v. Director General of Anti-dumping and Allied Duties* reported in 2019 (365) ELT

81 (Guj.), para 11 is required to be reproduced as under:-

â??11. Examination of the impugned order in the background of these significant mandate as required under the Rules would suggest the absence of following factors:

Â· Nothing is evident to suggest that the designated authority called for information by supplying such copy of the application to known exporters or to the concerned trade associations, foreign producers, calling for information factors on which the allegations of injury were made by the Review

Applicants.

Â· Nothing is evident to suggest that there was any determination of normal value, export price and margin of dumping and its assessment in accordance with the principles laid out in Annexure I of the Rules;

Â· Similarly, whether the determination of injury was done in accordance with the principles laid out in Annexure II is also not discernible from the reading of the impugned order;

Â· Extensive material in terms of annexures was placed before the designated authority to make out a case for a review and continuance of the anti-

dumping duty, in accordance with the Rules, particularly Rules 6, 7, 10 &

11. That these Rules applied even in carrying out a review is clear from sub-rule(3) of Rule 23.

Â· The Order only records the submissions of the applicant without disclosing whether the data has been called for from exporting countries. A casual

finding refusing to initiate sunset review investigation is recorded by stating that the applicant has failed to provide sufficient and satisfactory evidence

in support of its prayer to initiate sunset review investigation.

Â· The order therefore fails the test of having considered the application, as required under the mandate of the Section I.e. Section 9A(5) read with

the Rules thereunder.â??

20. It appears that the competent authority has rejected the application for sunset review based on absence of current injury. This assumption is not

proper. Impact of likelihood of injury is required to be looked into by the Designated Authority. Further one of the grounds is regarding the gap of

demand and supply in the country. This is also not proper. Where gap of demand and supply exists, the imports are inevitable but that is not a

justification for imports coming into India at unfair and dumped prices. In view of the information made available by the petitioner to the authority, it is

clearly found that there is continuous dumping, in the present case and, therefore, the demand and supply gap is not the basis for allowing such import.

21. It also appears that while considering normal value, the authority has based its decision on the import price prevailing during the period July 2017 to

June 2018. However, the petitioner has also provided information from July 2018 to December 2018, which shows that there was a dramatic decline in

prices, which has been ignored by the authority while concluding that the current prices will not change in future.

22. It also appears from record that respondent no.2-authority has failed in appreciating the material and accompanying documents to the substantive

application, on likelihood test and its parameters and has not considered essential facts such as (a) surplus capacities in exporting countries (b)

inventories diverted to India at dumped prices, (c) volumes of export by exporting countries to other countries and (d) price attractiveness of the Indian market.

23. The aforesaid discussion based upon the material provided in substantive application, in our considered view was sufficient to persuade the

Designated Authority at least in initiating the sunset review and the perfunctory brushing aside of the substantive application cannot be said to be in

any manner answering the requirement of examining the substantive application for coming to prima facie conclusion for initiation of sunset review.

The Court at this stage has two options, either to remand the matter asking the authority to re-examine the substantive application in light of the

discussion made herein above, or direct the authority to initiate the sunset review itself, as the material contained in substantive application, if viewed in

the light of the discussion made herein above would leave no other room but to hold that the substantive application fulfilled the basic criteria for

ordering initiation of the sunset review. The Court needs to be mindful of the fact that in any manner the exercise that is required to be undertaken is

in light of the final statutory limit to complete the sunset review, as in any case, anti-dumping duty cannot exceed and continued after the statutory

period of limitation is over, as provided under Section 9A (5). Therefore, the Court is of the view that when the Court has elaborately discussed herein

above, mere remand of the matter may consume avoidable time and that may affect the very process of sunset review as in that process the authority

also will have to give sufficient time to all the concerned for putting forward their viewpoints and material to substantiate them. Therefore, if sunset

review is ordered, no harm is likely to cause to either side and it can be brought to its logical conclusion after complying with the provisions of law.

24. In view of the material placed on record, it clearly transpires that while rejecting the application for sunset review, without appreciating the

material placed in substantive application, the authority has rejected the petition at the threshold. It clearly transpires from the record that the authority

has not considered various Rules, as referred to herein above regarding necessity of ascertaining the likelihood of continuation or recurrence of the

dumping and injury to the domestic industries as would be seen from Rule 23. The only requirement is substantive application or request on behalf of

the domestic industries and only prima facie view is sufficient to initiate sunset review. However, in the present case, though the petitioner has

provided sufficient prima facie information justifying initiation of investigation, the authority has not considered it in proper perspective. It is also

pertinent to note that information relating to foreign producers and other interested parties could be made available only after investigation is initiated.

In absence of initiation of any investigation, this information may not be available with the authority and with the petitioner. Further, it is necessary for

the DA to appreciate the question as to whether the domestic industry is likely to be materially injured again, if duties are lifted. This exercise has not

been carried out by the respondent and at the threshold it has rejected the application of sunset review.

25. In view of above, as there is sufficient and substantive material available for initiation of sunset review, the impugned order dated 24.12.2018 is set

aside. The respondent-authority is hereby directed to initiate sunset review and also suitably extend anti-dumping duty in accordance with the

provisions of law. The petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.