

(2002) 02 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 2422 of 2001

Rishiroop Polymers Pvt. Ltd.

APPELLANT

Vs

Designated Authority

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 143 ELT 516

Hon'ble Judges : V.C. Daga, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : J.J. Bhatt, Rohan Shah and Sohail Nathani, instructed by Munir Merchant, S.A. Diwan and Lata Bachhani, instructed by S.R. Joshi, for Apar Industries, for the Appellant; B.M. Chatterjee and Y.A. Choudhari, for the Respondent

Judgement

V.C. Daga, J.—In this petition, the petitioners are seeking directions against the respondent No. 3, directing him to give reasoned speaking order, setting out detailed reasons in final imposition of anti dumping duty on the subject goods.

2. The facts, giving rise to the present petition, in nutshell, are as under :-

(i) The petitioner is a company who are engaged in the business of trading, selling and supplying Rubber and for the purpose of their business, are the importers of the product called "Styrene Butadiene Rubber" (hereinafter referred to as the subject goods, for short) of 1500,1700 and 1900 series, classified under Customs sub-heading No. 4002.19 of Customs Tariff Act.

(ii) The respondent No. 1 is the Designated Authority. Respondent No. 2 is supposed to be one of the largest manufacturers of the subject goods in India. The respondent No. 3 is the Ministry of Finance (Department of Revenue), who are entitled and have to issue the final Notification to finally impose the anti dumping duty, vide their notification.

(iii) The petitioners, being the importers of the aforesaid subject goods from

other countries, the respondent No. 2 appears to have felt an injury in their course of business, due to which, respondent No. 2, filed a petition before the respondent No. 1, praying that the anti dumping duty be imposed on the subject goods, imported by the petitioner from various countries. In response to the petition filed by the respondent No. 2, on behalf of domestic industry. Respondent No. 1 hereinabove (hereinafter referred to as Revenue, for short), under Customs Tariff (Amendment) Act, 1995 and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on dumped articles and Determination of Injury) Rules, 1995, notified a final finding, vide Notification No. 30/1/97-ADD, dated 2-6-1999 with regard to the subject goods originating in or exported from Japan, U.S.A., Taiwan, Turkey and Korea RP (hereinafter referred to as the subject countries, for short). The petitioners contend that in pursuance of the said notification, the respondent No. 1 imposed anti dumping duty on the import of subject goods, imported by the petitioners from the subject countries.

(iv) In pursuance of the aforesaid final findings dated 2-6-1999, the Ministry of Finance (Department of Revenue), vide their Notification No. 107/99-Customs, dated 24-8-1999, notified the imposition of final anti dumping duty on the subject goods being Styrene Butadiene Rubber of different grades in 1500,1700 and 1900 series, falling under Customs sub-heading No. 4002.19 of the Customs Tariff Act, originating and exported from the subject countries.

(v) Being arrived by the aforesaid notification dated 2-6-1999, the petitioners, along with Automotive Tyre Manufacturers' Association (ATMA), who are also one of the importers of the subject goods, requested for a review of the anti dumping duty imposed on the import of the subject goods under Rule 23 of the Rules of 1995. The petitioners along with said ATMA requested for a review of the anti dumping duty imposed on the subject goods on the ground that there is only one manufacturer of the subject goods in India and that is the M/s. Synthetic & Chemical Ltd. Bareilly (Uttar Pradesh), the Respondent No. 2 herein.

3. It is alleged in the petition that the respondent No. 2 has stopped their production with regard to the subject goods since July, 1999 and have also stopped their operations for over a year and, therefore, with the stoppage of the production by the sole Styrene Butadiene Rubber manufacturer in India, there is no domestic industry inasmuch as remedy to domestic as industry so far as anti dumping duty is concerned. Under these circumstances, the petitioners felt that it is only the user industries that are financially burdened by the continuation of the anti dumping duty.

4. In view of the aforesaid Review Application of the petitioner above named, the petitioner was granted a public hearing on 9-2-2001, when the petitioners brought the facts to light, and in pursuance whereof, the petitioner addressed a communication dated 14-2-2001 to the Designated Authority and Additional Secretary, Directorate of Anti Dumping and Allied Duties, referring to the public hearing held on 9-2-2001 and making their submissions with regard to the review. In the said communication, the petitioner had mentioned that the

respondent No. 2, by its own admission, had closed its production of Styrene Butadiene Rubber since then and, therefore, no domestic industry exists in India for 1500 and 1700 series of Styrene Butadiene Rubber.

5. The petitioners have further alleged that the respondent No. 1 issued final notification dated 3-7-2001 in review of the anti dumping duty on the subject goods. In the said findings, the respondent No. 1, after taking into consideration the entire facts as mentioned therein, imposed anti dumping duties on all imports of all grades of Styrene Butadiene Rubber 1900 series. In the said finding, the respondent No. 1 mentioned the name of product under Series No. 1900 as High Styrene resin, master batch. However original name of the said product is Styrene Butadiene Rubber, is the allegation of the petitioner. The respondent No. 1, under Customs Tariff (Amendment) Act, 1995 and Rules of 1995, notified a final finding vide Notification No. 30/1/97-ADD, dated 2-6-1999 with regard to the subject goods originating in or exported from Japan, U.S.A., Taiwan, Turkey and Korea RP.

6. The petitioners say that by virtue of the said notification, the Respondent No. 1 imposed anti dumping duty on the import of the subject goods imported by the petitioners from the subject countries and in pursuance of the aforesaid final findings dated 2-6-1999, the Ministry of Finance (Department of Revenue), Respondent No. 3 herein, vide their Notification No. 107/99-Customs, dated 24-8-1999, notified the imposition of final anti dumping duty on the subject goods being Styrene Butadiene Rubber of different grades in 1500, 1700 and 1900 series falling under Customs sub-heading No. 4002.19 of the Customs Tariff Act, originating the exported from the subject countries.

7. It was further contended that in the final findings issued by the respondent No. 1, it was mentioned that the petitioner can prefer an appeal against the aforesaid notification to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT, for short). The petitioners further say that in a latest Supreme Court judgment in the matter of Saurashtra Chemicals Ltd. Vs. Union of India (UOI), . whereby the Apex Court has clearly laid down that any party aggrieved by the final findings issued by the Respondent No. 1, cannot prefer an appeal to the CEGAT, unless the said imposition of the duty is further notified by the Ministry of Finance (Department of Revenue), i.e. respondent No. 3 herein. It is further contended that as the respondent No. 3 had not issued the said notification finally notifying the imposition of the duty imposed by the Ministry of Commerce, the petitioner addressed a letter dated 26-9-2001, to the respondent No. 3, requesting the respondent No. 3 to issue its final notification/ finally imposing the anti dumping duty on the subject goods. The petitioners allege that even after a specific request made by the petitioner to the respondent No. 3 to issue its final notification, the respondent No. 3 failed to do so. In the aforesaid circumstances, the petitioners have filed this petition, claiming the directions and calling upon the respondent No, 3 to issue final notification, in view of the notification issued by the respondent No. 1 and to finally notify imposition of anti

dumping duty on the subject goods, imported from subject countries, so that the petitioner can avail remedy of an appeal against the said notification.

8. On being notice of the petition, the respondents appeared and filed one affidavit dated 4th December, 2001, sworn by Mr. Satish Kumar, Joint Director General of Foreign Trade, Mumbai, stating therein that final findings have not been accepted by the Central Government, Department of Revenue, so far being final authority to decide upon the subject matter (Recommendations). On the face of the aforesaid statement in the affidavit, the respondent No. 3 was directed to take final decision in the matter either way and to file an affidavit in this behalf. In spite of the aforesaid directions, the respondents chose to file an affidavit of one Assistant Commissioner of Central Excise and Customs, Nashik and made a vague statement to the effect that, after examining the final findings in review, the Central Government have decided to continue with the existing levy of anti dumping duty, and made further statement in Para No. 4 of the affidavit dated 4-2-2002, that, after examining the final findings in review in all aspects, the Central Government have decided to continue with the existing levy of anti dumping duty.

9. Having heard parties, we are of the view that it is obligatory on the part of the Central Government to pass a final order in this behalf, either accepting to continue or refusing to continue the existing levy of anti dumping duty. A specific query was made to the learned Counsel appearing on behalf of the respondent in this behalf and he was asked to produce order, if any, passed by the respondent No. 3. We were informed that no specific order in this behalf has been passed. Under these circumstances, having left with no other alternative, we are constrained to issue direction to the respondent No. 3 to take a decision, either way in this behalf, within four weeks from the date of this order. We do not think that we should dwell upon other reliefs claimed in the petition. In the event of appropriate decision taken in this behalf by the respondent No. 3, the petitioners will have their own remedy in accordance with law. With the above observations, the petition stands disposed of with no order as to costs.