(2002) 01 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 11935 of 2001 and C.A. No''s. 96 and 148 of 2002

Surefaces Plus APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Customs Act, 1962 — Section 129

Citation : (2004) 117 ECR 548

Hon'ble Judges : D.M. Dharmadhikari, C.J;D.A. Mehta, J

Bench : Division Bench

Advocate : Mihir Thakor and R.S. Sanjanwala, for the Appellant; D.N. Patel and P.R. Nanavati, for the Respondent

Judgement

D.M. Dharmadhikari, C.J.—Civil Application Nos. 96 & 148 of 2002 : The Civil Applications are allowed and the applicants are ordered to be arrayed as respondents in Special Civil Application No. 11935 of 2001. Disposed of accordingly.

Special Civil Application No. 11935 of 2001:

2. We have heard Mr. Mihir Thakor, Senior Counsel with Mr. R.S. Sanjanwala for the petitioner, Mr. D.N. Patel, learned Counsel for the Union of India and Mr. P.R. Nanavati, learned Counsel for newly arrayed respondents.

3. By way of this petition, the petitioner seeks to challenge the preliminary findings of the Designated Authority under the provisions of Customs Tariff Act, 1975 read with Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. With the assistance of the learned Counsel for the department, we have gone through the relevant provisions of the Act and the procedure contained in the Rules. What we find from Rule 12 is that the Designated Authority after conducting the investigation and after hearing the parties concerned, who are

likely to be affected by imposition of anti-dumping duty, has to record a preliminary finding as recommendatory in nature to the Central Government/ whereupon the Central Government under Rule 13, has to take a decision for imposing a provisional duty which is to be followed by final finding of the Designated Authority under Rule 17 and payment of duty as necessary levy by the Central Government, under Rule 18 of the Rules.

4. After examining the relevant provisions of the Rules and in light of the order of the Supreme Court in case of Saurashtra Chemicals Ltd. Vs. Union of India (UOI), in our considered opinion, the present writ petition, which is instituted against the preliminary findings of the Designated Authority submitted to the Central Government, in accordance with Rule 12, is premature. The Central Government has to act on those preliminary findings and issue notification for imposing provisional duty.

5. Pursuant to the earlier order of this Court dated 27-12-2001 this case has been listed for considering the question as to whether an appeal lies against preliminary finding. Our answer to the same is that against preliminary finding, which is of a recommendatory nature, an appeal would not be tenable u/s 9C of the Act. The preliminary finding which is of a recommendatory nature is required to be considered by the Central Government under Rule 13 for the purpose of deciding the question of imposing provisional anti-dumping duty and the Central Government is required to issue notification for imposing antidumping duty. Such notification of imposing duty has not been issued so far by the Central Government. By our earlier order representation to the Central Government on the preliminary finding. However, at this stage, we direct the Central Government, before issuing the notification of provisional duty, to consider the representation of the petitioner in accordance with law. The interveners shall also be given an opportunity to make a representation along with other parties.

6. With these observations and directions, the petition is disposed of. Direct service is permitted.

