

(2012) 11 MAD CK 0319

In the Madras High Court

Case No : Writ Petition No's. 25304 and 25669 of 2012 and connected M.Ps.

Vikash Trading Company

APPELLANT

Vs

Designated Authority, Directorate General of Anti-Dumping
and Allied Duties, Ministry of Commerce and Industry and
Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Competition Act, 2002 — Section 21, 62
Constitution of India, 1950 — Article 226, 226(2)
Customs Tariff Act, 1975 — Section 9, 9(C), 9A, 9B

Citation : (2013) 291 ELT 15 : (2013) 1 MLJ 907

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P.S. Raman, Shivakumar and Suresh, for the Appellant; G. Masilamani, A.S.G. for C.V. Ramachandramurthy, (CGC), Kumarpal R. Chopra, Arvind P. Datar for Karthick Sundaram, M.V. Swaroop and S. Seetha Raman for Lakshmikumaran, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned counsels appearing for the petitioners, as well as the learned counsels appearing on behalf of the respondents. The writ petition, in W.P. No. 25304 of 2012, has been filed to call for and quash the Disclosure Statement of the first respondent Designated Authority, dated 6.9.2012, issued under the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, hereinafter referred to as "the Rules", read with Section 9-A and 9-B of the Customs Tariff Act, 1975, hereinafter referred to as "the Act", in respect of the goods classified as Plain Gypsum Plaster Boards (hereinafter referred to as the "subject goods"), originating in or exported from China PR, Indonesia, Thailand and United Arab Emirates and consequently, to forbear the first respondent from proceeding further, based on the impugned Disclosure

Statement, dated 6.9.2012, and to further direct the first respondent to reconsider the submissions made by the petitioner, in accordance with law and to issue a fresh Disclosure Statement, in terms of Rule 16 of the said Rules.

2. It has been stated that the petitioner is engaged in the business of Gypsum Plaster Boards of various dimensions. The petitioner has been importing the subject goods at the inland container depot located, at Chennai. The subject goods have to be cleared from the bonded customs warehouse, at Chennai, by filing the Bills of entry, as per the provisions of the Customs Act, 1962, on payment of the Anti-Dumping duties, if any, as recommended by the first respondent Designated Authority.

3. It has also been stated that the assessment of duties upon the clearance of the subject goods, imported by the petitioner, has been taking place, at Chennai. It has also been stated that the petitioner is having its registered office and it has been carrying on its business, within the jurisdiction of this Court. In fact, the petitioner is already paying the provisional Anti-Dumping Duties, at Chennai, subject to the final result of the proceedings in the matter. Refund of the duties paid by the petitioner, if any, shall be made, at Chennai. As such, the cause of action for the filing of the present writ petitions has arisen, within the territorial jurisdiction of this Court. Therefore, this Court may be pleased to hear and decide the present writ petitions, on merits and in accordance with law.

4. It has been further stated that the first respondent Designated Authority is a statutory authority, set up under Rule 3 of the Rules. As per Rule 4 of the said Rules, the Designated Authority would recommend the payment of Anti-Dumping Duty, which, if levied, would be adequate to remove the injury that may be caused to the domestic industry. The second respondent is authorised, as per the provisions of the Customs Tariff Act, 1975, and the Rules, to impose Anti-Dumping Duties, as may be applicable, on the recommendation of the first respondent Designated Authority. The third respondent is authorised to collect the duty, for and on behalf of the second respondent. The fourth respondent the domestic industry, had filed the application before the first respondent Designated Authority, for the imposition of Anti-Dumping Duties, in respect of the subject goods being imported by the petitioner. The fifth respondent is another Indian producer.

5. It has been stated that the fourth respondent domestic industry had filed an application before the first respondent Designated Authority, for the initiation of Anti-Dumping Duty investigation relating to the import of the subject goods, by the petitioner. Based on the said application, the first respondent Designated Authority had issued a public notice, dated 21.7.2011, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigation concerning the import of the subject goods and to recommend the imposition of the Anti-Dumping Duties, in accordance with the relevant provisions of the Act and the Rules. Accordingly, an investigation had been initiated, in respect of the relevant periods. Thereafter, the Designated Authority had issued the Preliminary

Findings, vide Notification No. 14/45/2010-DGAD, dated 19.3.2012, recommending the imposition of provisional Anti-Dumping Duties on the import of the subject goods. In accordance with Rule 6(6), the authority had provided another opportunity to all the known interested parties to present their views. Accordingly, an oral hearing had been held, on 10.4.2012. Written submissions and re-joinders had also been filed by the parties concerned. At that stage, a writ petition had been filed, before this Court, by the fifth respondent herein, in W.P. No. 10348 of 2012. By an order, dated 2.7.2012, this Court had directed the first respondent to consider the relevant objections raised by the petitioner, in the said writ petition, at the time of the rendering of the Final Findings and to pass appropriate orders, in accordance with law, after giving an opportunity to the petitioner, to substantiate its case. In view of the said directions issued by this Court, the first respondent Designated authority had granted an opportunity to the fifth respondent herein and the other interested parties, to make their submissions. However, no opportunity of hearing had been granted to the said parties. The interested parties concerned had raised serious objections stating that there was sufficient evidence to show that the import of the subject goods under consideration had not caused any injury to the domestic industry and that there were certain other factors responsible for the present health of the domestic industry. It had also been established that the inability of the domestic industry to increase the selling prices and to make profits, despite the increase in the import price, was clearly due to the prevailing domestic competition and due to the other circumstances, including the loss of production due to strike by the employees.

6. It had also been stated that the interested parties had clearly established that the movement in selling prices and the consequential profit and loss of the domestic industry are not attributable to the dumped imports. It had also been pointed out that the domestic industry had been affected due to various factors, including the incidence of high fixed cost coming out of the new production facilities, which could not be fully optimised, the start up operations, the movements in the costs, the domestic competition and the lack of demand to utilise the capacities. However, the first respondent Designated Authority had issued the impugned Disclosure Statement, based on a false premise, without taking into account the facts and circumstances of the case and the legal provisions applicable to the issues under consideration.

7. It has been further stated that the first respondent Designated Authority seems to hold that there is injury to the domestic industry due to dumping, even though there is no causal link between the dumping and the injury suffered by the domestic industry. In the Disclosure Statement of the first respondent Designated Authority, it had been noted that, as regards the contention of the interested parties the injury to the domestic industry is on account of internal competition caused by the entry of M/s. Boral Gypsum India Private Limited, a domestic producer. It has been noted that, while some of the market share of the domestic industry may have shifted to the new entrant, it cannot be considered

as the sole reason for the loss of the market share, by the domestic industry. The said authority had also noted that the loss of market share, by the domestic industry, has also been on account of the significant imports of the subject goods, from foreign countries. Such observations made in the Disclosure Statement, by the first respondent Designated Authority, is totally contrary to the factual position prevailing in the domestic industry. In such circumstances, if Anti-Dumping Duties are levied, based on the Disclosure Statement of the first respondent Designated authority, it would lead to an artificial increase in the price of the product manufactured by the petitioner and the other parties concerned. It is to be noted that the impugned Disclosure Statement, issued by the first respondent Designated Authority, would be the basis for his final decision. Further, the petitioner has received a copy of the Disclosure Statement, at Chennai, through E-mail. Accordingly, the petitioner has preferred the present writ petition before this Court, challenging the Disclosure Statement, dated 6.9.2012, issued by the first respondent Designated Authority.

8. In the writ petition filed by the petitioner, in W.P. No. 25669 of 2012, it has been stated that the petitioner is engaged in the business of manufacturing, importing and trading in non-combustible building materials, including plain gypsum boards, high quality/performance technical boards and lining products used in construction industry, as well as in other industries. The manufacturing unit of the petitioner is located, at Bhiwadi, in the State of Rajasthan, to serve the needs of the Northern and Western regional markets in India. Due to the high transportation cost involved in transporting the goods from the manufacturing units, at Bhiwadi, in the State of Rajasthan, the goods are imported through the Chennai Port, for catering to the South Indian Market, from its group companies in Thailand and in other such places.

9. It has been further stated that the first respondent Designated Authority had initiated an investigation against the import of "Plain Gypsum Plaster Boards" (hereinafter referred to as the "subject goods") from China PR, Indonesia, Thailand and the United Arab Emirates, on 21.7.2011, under Rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, hereinafter referred to as "the Rules". In the initiation notification the first respondent had required all the exporters from the subject countries, namely, China PR, Indonesia, Thailand and the United Arab Emirates and the importers of the subject goods in India, to submit the relevant information in the manner and form that had been prescribed. The petitioner and its related exporters from Thailand had filed the required information in the prescribed format, on 10.10.2011. They had also made their detailed submissions regarding the investigation, on 19.12.2011. Supplementary suggestions had also been made, on 5.1.2012. Thereafter, the first respondent Designated Authority had issued the Preliminary Findings, vide notification, dated 19.3.2012, recommending to the second respondent, for the imposition of Anti-Dumping Duty on the subject goods imported by the petitioner from its related producers in Thailand. The said

notification had been challenged, by the petitioner, before this Court, in W.P. No. 10348 of 2012. By an order, dated 2.7.2012, this Court had directed the first respondent therein to consider the objections raised by the petitioner at the time of the passing of the Final Findings. While so, the Ministry of Finance had imposed provisional Anti-Dumping Duty, by issuing Customs Notification No. 32/2012-Customs (ADD), dated 7.6.2012. It is clear from the order passed by this Court that, before passing the Final Findings, the first respondent ought to consider the objections raised by the petitioner, by giving an opportunity to the petitioner to substantiate its case and by following the procedures provided under the Customs Tariff Act, 1975, and the Rules applicable to the case.

10. It has been further stated that an opportunity had been provided, by the first respondent, as per the order issued by this Court, on 2.7.2012, by asking for comments. The petitioner had made its submissions, dated 25.7.2012, and had also filed a rejoinder to the submissions made by the third respondent. Under Rule 16 of the Rules, the first respondent is required to inform all interested parties of the essential facts under consideration, which would be forming the basis of its decision. Accordingly, the Disclosure Statement containing the facts considered by the first respondent Designated Authority had been issued, on 6.9.2012. Based on the impugned Disclosure Statement, the respondent would be issuing the Final Findings.

11. It has been further stated that the petitioner is aggrieved by the partial recording of its submissions, as well as the non-application of mind, by the first respondent Designated Authority, while considering the submissions made by the petitioner, as seen from the Disclosure Statement, dated 6.9.2012. It has been further stated that the issue of re-sale price raised by the petitioner had been rejected, without due application of mind. Further, the issue raised in respect of the method of determination of the injury margin, which forms the basis for quantifying the rate of Anti-Dumping Duty had not been properly considered by the first respondent Designated Authority. It has been made clear, by the petitioner, that it has to incur significant selling and administrative expenses for marketing the product in question, due to which imports are resold at prices which are 40% higher than the landed prices. The contention of the petitioner that the difference between the non-injurious price and the resale price, at which the end customer can buy the product, would be sufficient to remove the injury to the domestic industry. Instead of considering such relevant factor in imposing of the Anti-Dumping Duty, the first respondent Designated Authority had taken into account a number of irrelevant factors, while issuing the Disclosure Statement. Therefore, the petitioner has been constrained to prefer the present writ petition before this Court challenging the Disclosure Statement issued by the first respondent Designated Authority, dated 6.9.2012, and to forbear the first respondent from proceeding further with the investigation, based on the said statement.

12. The learned counsels appearing on behalf of the respondents 1 to 3, in W.P.

No. 25304 of 2012 and the first and the second respondents in the writ petition, in W.P. No. 25669 of 2012, had raised their preliminary objections with regard to the territorial jurisdiction of this Court to hear the writ petitions. It has been stated that the petitioners ought not to have moved this Court by filing the present writ petitions, as there is no cause of action that has arisen for being challenged before this Court. It had also been submitted that no injury has been caused to the petitioners, at this stage, by the issuance of the impugned Disclosure Statement, dated 6.9.2012, by the Designated Authority. It had also been stated that this Court, in *Outokumpu Stainless OY Ltd. v. UOI and Others*. (W.P. Nos. 29672 to 29674 of 2011), had held vide its order, dated 10.7.2012, that as no Anti-Dumping Duty is levied at the stage prior to the Final Findings rendered, under Rule 17 of the Anti-Dumping Rules, 1995, and, as such the assessment and payment of Anti-Dumping Duty on the subject goods is only an anticipatory event and therefore, it would not give rise to any cause of action, at that stage. Anti-Dumping Duty, if any, would be payable only when the goods concerned are cleared.

13. It has been further stated that this Court, after considering the decisions of the Supreme Court, in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, and *Alchemist Limited and Another Vs. State Bank of Sikkim and Others*, has held that no cause of action would arise at the stage of the Final Findings and that a cause of action should exist as a condition precedent for the filing of a writ petition. In the present writ petitions, the petitioners have stated that they would have to pay Anti-Dumping Duties, if the payment of such duties is recommended by the Designated Authority and levied by the Union of India. As such, it is clear that no prejudice had been caused to the petitioners, at this stage. Further, the provisional Anti-Dumping Duties, levied under Rule 13 of the Anti-Dumping Rules, 1995, had not been challenged by the petitioners in the present writ petitions.

14. It has been further stated that the mere communication of certain essential facts under consideration, by an E-mail, in the form of a Disclosure Statement, dated 6.9.2012, cannot give rise to a cause of action to sustain the present writ petitions. No Final Findings have been rendered, under Rule 17 of the Anti-Dumping Rules, 1995, and therefore, the present writ petitions, filed by the petitioners, are premature in nature. Further, no final Anti-Dumping Duty had been levied, under Rule 18 of the said Rules, as no notification has been issued by the Central Government, till date. It has also been stated that no final Anti-Dumping Duty is being paid by the petitioners. As such, no cause of action had arisen for the filing of the writ petitions, before this Court, invoking its extraordinary jurisdiction, under Article 226 of the Constitution of India.

15. The learned counsel appearing on behalf of the respondents concerned had relied on the decision of the Supreme Court, in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, and the decision in *Outokumpu Stainless OY Ltd v. UOI and Others (supra)* (W.P. Nos. 29672 to 29674 of 2011, dated

10.7.2012), in support of his contentions. As such, the Disclosure Statement issued by the Designated Authority cannot be challenged, at this stage, by way of the writ petitions filed before this Court, as it does not have the effect of causing any prejudice to the parties concerned.

16. It had also been stated that the Supreme Court, in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, had held, inter alia, that findings of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned, by way of writ proceedings. The mere communication of certain essential facts under the consideration of the authority cannot be said to be prejudicial to the interests of the "interested parties". Thus the Disclosure Statement issued by the Designated Authority, under Rule 16 of the Anti-Dumping Rules, 1995, cannot be challenged, by way of the present writ petitions. Therefore, the present writ petitions, filed by the petitioners, with the sole purpose of delaying the process of issuance of the "Final Findings", by the Designated Authority, is an abuse of the process of law. If the process is not completed within the specified time limit it would result in the entire process being started afresh, from the beginning, resulting in huge loss of time and money. Further, the present writ petitions, filed by the petitioners, are contrary to the order passed by this Court, on 2.7.2012, in W.P. No. 10348 of 2012. Further, if Final Findings are issued in terms of Rule 17 of the Anti-Dumping Rules, 1995, and after the Central Government notifies the same, in terms of Rule 18 of the said Rules, it may be open to the petitioners to challenge the levy of Anti-Dumping Duties, if any, as per Section 9-C of the Customs Tariff Act, 1975, by filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal concerned. Further, the submission made on behalf of the petitioner, in W.P. No. 25669 of 2012, that the Designated Authority concerned cannot render the Final Findings, without referring the matter to the Competition Commission, under the provisions of the Competition Act, 2002, cannot be held to be valid in the eye of law. The issuance of the Disclosure Statement, by the Designated Authority, under Rule 16 of the Anti-Dumping Rules, 1995, cannot be said to be in violation of the provisions of the Competition Act, 2002, as the Final Findings, in terms of Rule 17 of the said Rules, are yet to be recorded.

17. It has been further submitted that all the issues could be raised by the petitioners, at a later stage, after the process had reached its finality. Further, no interim orders are to be granted by the Courts of law, at this stage, restraining the issuance of the Final Findings, under Rule 17 of the Anti-Dumping Rules, 1995, as held by the Supreme Court, in *Association of Synthetic Fibre Industry v. J.K. Industries Ltd.*, 2006 (199) ELT 196 (SC). In such circumstances, this Court may be pleased to dismiss the writ petitions, in limine, as they have been filed before this Court, without jurisdiction and without having any merits.

18. Mr. P.S. Raman, the learned counsel appearing on behalf of the petitioner, in W.P. No. 25304 of 2012, had submitted that this Court would have the necessary jurisdiction to hear and dispose of the said writ petition, filed by the petitioner,

under Article 226 of the Constitution of India. He had submitted that this Court would have the territorial jurisdiction to hear the matter, as per Article 226(2) of the Constitution of India. Further, the Disclosure Statement issued by the Designated Authority and the Final Findings to be issued by the said authority would have statutory force and they would be binding on all the interested parties concerned, even though they may be at different places in India. The petitioner company has its registered office, at Hosur, in the State of Tamilnadu, and the import of the subject goods are made through the Chennai and the Tuticorin Ports. He had relied on the decision of the Supreme Court, in *Union of India and Others Vs. Adani Exports Ltd. and Another*, , in support of his contentions.

19. It had been further submitted that the proceedings of the Designated Authority, who is at New Delhi, would apply to all the parties concerned throughout the territory of India. It had also been stated that this Court had passed an order, dated 2.7.2012, in W.P. No. 10348 of 2012, directing the Designated Authority to consider the objections raised by the petitioner therein, at the time of the passing of the Preliminary Findings. This Court had not dismissed the writ petition on the ground of maintainability. Similarly, a Division Bench of this Court had passed an order, dated 27.4.2012, in W.A. No. 193 of 2012 etc. (batch) holding that a writ petition against the Preliminary Findings published by the Designated Authority is maintainable, especially, when the writ petitioner has raised the point of jurisdiction. The learned counsel had also relied on the decision of the Supreme Court in *Union of India and Others v. Adani Exports Ltd. and Another* (supra), to state that the bundle of facts which would constitute a cause of action giving rise to the dispute should be looked at, as a whole, while examining the issue relating to the territorial jurisdiction of this Court. Accordingly, this Court, would have the jurisdiction to hear and dispose of the matter, on merits and in accordance with law. Even if a part of the cause of action arises within the territorial jurisdiction of this Court it would be sufficient for this Court to entertain the writ petition and to pass appropriate orders, as prayed for by the petitioner, in the present writ petition. Similar submissions have been made by the learned counsel appearing on behalf of the petitioner in the writ petition, in W.P. No. 25669 of 2012.

20. In reply, Mr. Seetha Raman, the learned counsel appearing on behalf of the petitioner, in W.P. No. 25669 of 2012, had submitted that, as per the provisions of Section 21 of the Competition Act, 2002, the Designated Authority should refer the matter pending before the said authority to the Competition Commission, for its decision, before rendering its Final Findings. Therefore, the Designated Authority ought not to be proceeding with the Anti-Dumping investigation, relating to the subject goods, pursuant to its Disclosure Statement, dated 6.9.2012. He had relied on the following decisions in support of his contentions:

1) *Union of India Vs. Competition Commission of India and Others*,

2) Hemant Sharma and Others Vs. Union of India and Others,

3) All India Chess Federation v. Union of India and Others, L.P.A. No. 972 of 2011 (Delhi), dated 22.11.2011

4) Competition Commission of India Vs. Steel Authority of India Ltd. and Another,

21. The learned counsel appearing on behalf of the petitioner, in the writ petition, in W.P. No. 25669 of 2012, had further submitted that the Designated Authority had not collected the proper data necessary for considering the relevant issues which had arisen for his consideration. Further, the petitioner should have been given an opportunity to submit its comments on the data relied on by the Designated Authority. The Designated Authority had made certain decisions, as he had not accepted certain statements made by the petitioner. As such, the Disclosure Statement cannot be termed as a mere intimation. The Disclosure Statement issued by the Designated Authority would have a serious influence on the Final Findings to be issued by him. He had further submitted that it is mandatory on the part of the Designated Authority to refer the matter to the Competition Commission, as per Section 21 of the Competition Act, 2002. Therefore, the Disclosure Statement issued by the Designated Authority, without following the procedures provided, u/s 21 of the said Act, is arbitrary and invalid in the eye of law. He had further submitted that if Anti-Dumping Duty is levied on the petitioner it would cause serious repercussions on it, causing irreparable loss to the petitioner. Therefore, the petitioners have filed the present writ petitions before this Court, being aggrieved by the Disclosure Statement issued by the Designated Authority, dated 6.9.2012.

22. However, the learned counsels appearing on behalf of the respondents concerned had submitted that there is no need for the Designated Authority to refer the matter to the Competition Commission, for obtaining its opinion, as per Section 21 of the Competition Act, 2002. It had been stated that Section 62 of the Competition Act, 2002, makes it clear that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Accordingly, Section 21 of the Act could not have a binding force on the Designated Authority, especially, in view of the fact that the said provision states that the authority concerned may make a reference, in respect of the relevant issue, to obtain the opinion of the Competition Commission, in appropriate cases. It had been further stated that the petitioner is raising such grounds only with the mala fide intention of delaying the proceedings before the Designated Authority.

23. Mr. Arvind P. Datar, the learned counsel appearing on behalf of the fourth respondent, in W.P. No. 25304 of 2012 and the third respondent, in W.P. No. 25669 of 2012, had also submitted that the petitioners do not have a cause of action to file the present writ petitions. They cannot rely only on the E-mail communication to claim that this Court has the jurisdiction to hear the writ petitions. He had also submitted that the issue relating to the reference of the

matter, by the Designated Authority, to the Competition Commission had not been raised by the petitioners, at; any stage, earlier. He had further submitted that the writ petitions are premature in nature, as they have been filed challenging the Disclosure Statement issued by the Designated Authority, under Rule 16 of the Anti-Dumping Rules, 1995. Therefore, no cause of action would arise at the stage of the issuance of the Disclosure Statement, by the Designated Authority. The Disclosure Statement issued by the Designated Authority cannot be said to be adversely affecting the interests of the petitioners, as it is only recommendatory in nature. Based on the Disclosure Statement the designated authority has to render the Final Findings, as per Rule 17 of the Anti-dumping Rules. Thereafter, the Central Government may issue a notification, with regard to the levy of Anti-Dumping Duty, if any. He had further submitted that, in view of the order, dated 2.7.2012, passed by this Court, in *Boral gypsum India Private Limited v. Designated Authority*, (W.P. No. 10348 of 2012), it would not be open to the petitioner to challenge the Disclosure Statement issued by the Designated Authority and therefore, the writ petitions are premature in nature. No Writ of certiorari could be issued, by this Court, to quash the Disclosure Statement issued by the Designated Authority, as it has no binding force on the interested parties. As such, the writ petitions filed by the petitioners are devoid of merits and therefore, they are liable to be dismissed.

24. The learned counsel had further stated that, since, no Anti-Dumping Duty is levied at the stage of the Final Findings, under Rule 17 of the Anti-Dumping Rules, 1995, the assessment and payment of Anti- Dumping Duty, on the subject goods, that may take place, is only an anticipatory event and therefore, it could not give rise to a cause of action for the filing of the writ petitions, as per the order passed by this Court on 10.7.2012, in W.P. Nos. 29672 to 29674 of 2011.

25. The learned counsel had also relied on the decision of the Supreme Court, in *Kusum Ingots and Alloys Limited v. Union of Another* (supra) and *Alchemist Limited v. State Bank of Sikkim* (supra), that no cause of action lies, even at the stage of the Final Findings, and that the cause of action must exist as a condition precedent before the initiation of a writ petition. Further, the levying of provisional Anti-Dumping Duty, under Rule 13 of the Anti-Dumping Rules, 1995, cannot give rise to a cause of action for the filing of the present writ petitions.

26. He had further submitted that this Court would not have the territorial jurisdiction to entertain the present writ petitions, as per the decision of the Supreme Court, in *ONGC v. Utpak Kumar Basu* (supra). Further, no prejudice had been caused to the petitioners by the Disclosure Statement issued by the Designated Authority, under Rule 16 of the Anti-Dumping Rules, 1995. The Disclosure Statement issued by the designated authority is only a disclosure of all the essential facts under consideration, by the said Designated Authority before arriving at the Final Findings, under Rule 17 of the said Rules. The challenging of certain findings of fact arrived at by the Designated Authority is impermissible in law, as held by the Supreme Court., in *Syed Yakoob v. K.S.*

Radhakrishnan (supra).

27. The learned counsel had also stated that the filing of the writ petitions, by the petitioners herein, for the purpose of delaying the issuance of Final Findings, by the Designated Authority, is an abuse of process of law, as held in *Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others*,). The writ petitions filed by the petitioners are premature in nature and contrary to the order passed by this Court, in *Boral gypsum India Private Limited v. Designated Authority*, (W.P. No. 10348 of 2012, dated 2.7.2012). Further, an efficacious appellate remedy is available to the petitioners to challenge the levy of Anti-Dumping Duty, if any, u/s 9-C of the Customs Tariff Act, 1975. As such, the writ petitions, filed by the petitioners, are not maintainable and they are also liable to be dismissed, as devoid of merits.

28. In *Union of India v. Competition Commission of India and Others* (supra), the Delhi High Court had held that the competition commission is not concerned with the aspect of breach of contract or with regard to the implementation of the contract. Its mandate is to ensure the compliance of the provisions of the Competition Act, 2002, which are in addition to and not in the derogation of the provisions of any other law for the time being in force.

29. In *Hemant Sharma and Others v. Union of India and Others* (supra), it had been held that the preamble of the Competition Act, 2002, when closely read, shows that the said Act has been enacted to provide, keeping in view the economic development of the country, for the establishment of the Commission to prevent practices having adverse effects on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in the markets, in India, and for matters connected therewith or incidental thereto.

30. In *Competition Commission of India v. Steel Authority of India Limited and Another* (supra), the main objective of the competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are threefold: allocative efficiency, which ensures the effective allocation of resources; productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency to promote innovative practices. These factors, by and large, had been accepted all over the world as the guiding principles for effective implementation of competition law.

31. Mr. G. Masilamani, the learned Additional Solicitor General, appearing on behalf of the first and the second respondents in the writ petitions had relied on the decision of the Supreme Court in *Alchemist Ltd. v. State Bank of Sikkim* (supra), to submit that this Court has no territorial jurisdiction to entertain the present writ petitions filed by the petitioners. No cause of action had arisen for the petitioners to file the present writ petitions challenging the Disclosure Statement issued by the Designated Authority, under Rule 16 of the Anti-

Dumping rules. He had further submitted that the writ petitions filed by the petitioners are premature in nature, as it would not be open to the petitioners to challenge the Disclosure Statement issued by the Designated Authority, based on which Final Findings would be issued, under Rule 17 of the Anti-Dumping Rules. Thereafter, if a notification is issued by the Central Government, accepting the findings of the Designated Authority, it would be open to the parties concerned to challenge the same, by way of an appeal, before the Customs Excise and Service Tax Appellate Tribunal, u/s 9(C) of the Customs Tariff Act, 1975. He had further submitted that a Writ of Certiorari cannot be issued to correct errors of fact, as in the present case. Only errors of law, if any, could be corrected by the issuance of such writs. He had relied on the decision in *Syed Yakoob v. K.S. Radhakrishnan* (supra) in support of his contention. The filing of the writ petitions by the petitioners, for quashing the Disclosure Statement issued by the Designated Authority, is an abuse of the process of the Court, especially, in view of the fact that all the objections raised by the petitioners are all relating to factual issues, which this Court cannot go into in the present writ petitions, filed under Article 226 of the Constitution of India. He had further submitted that no injury had been caused to the petitioners, at this stage. As such, the writ petitions have been filed by the petitioners only on a mere apprehension and based on surmises and doubts, which have no relevance to the issues arising for the consideration of the Designated Authority concerned. It cannot be presumed that the Designated Authority would not perform his legal obligations, as per the provisions of law. On the contrary, there is a presumption that the statutory authorities would act in accordance with the provisions of law.

32. In view of the averments made on behalf of the petitioners, as well as the respondents, and in view of the submissions made by the learned counsels appearing on behalf of the parties concerned, and on a perusal of the relevant records available before this Court, and on considering the decisions cited supra, this Court is of the considered view that the petitioners have shown that they have sufficient cause of action for this Court to entertain the writ petitions. It has been shown that the petitioners are carrying on their business operations having their offices in Chennai, in the State of Tamilnadu. It has also been shown that certain imports of the subject goods are being made through the Chennai and the Tuticorin Ports. Provisional Anti-Dumping Duties have also been levied on the imported goods, by the authorities in Chennai. As such, it can be held that, atleast a part of the cause of action for the filing of the writ petitions had arisen within the territorial jurisdiction of this Court. Further, it is noted that, on certain earlier occasions, this Court had entertained writ petitions, wherein, similar issues had arisen, as in the present cases. Therefore, the contentions raised on behalf of the respondents concerned stating that this Court does not have the jurisdiction to entertain the writ petitions cannot be accepted. Accordingly, this Court holds that the writ petitions are maintainable, before this Court.

33. However, the contentions raised on behalf of the respondents stating that the present writ petitions filed by the petitioners, challenging the Disclosure

Statement, dated 6.9.2012, issued by the Designated Authority, are not sustainable in law. It is noted that the Designated Authority has issued the Disclosure Statement, dated 6.9.2012, under Rule 16 of Anti-Dumping Rules, 1995. The Disclosure Statement cannot be said to have a binding authority on the interested parties, including the petitioners herein. Based on the Disclosure Statement, the Designated Authority is to render Final Findings and thereafter, it is for the Central Government to issue an appropriate notification, if it finds it appropriate to do so. Till such a notification is issued by the Central Government it cannot be said that the petitioners could be aggrieved parties. Even otherwise, it would be open to the petitioners to challenge the notification that may be issued by the Central Government, before the Customs, Excise and Service Tax Appellate Tribunal, Section 9 of the Customs Tariff Act, 1975. Thus, it is clear that the writ petitions filed by the petitioners, challenging the Disclosure Statement issued by the Designated Authority, are premature in nature. Further, the contentions raised on behalf of the petitioners that the Designated Authority ought to have referred the matter to the Competition Commission, u/s 21 of the Competition Act, 2002, cannot be accepted. It is noted that Section 62 of the Competition Act, 2002, makes it clear that the provisions of the said Act shall be in addition to and not in derogation of any other provision or any other law for the time being in force. As such, it cannot be said that it would be mandatory on the part of the Designated Authority to refer the matter to the Competition Commission, u/s 21 of the said Act, especially, in view of the fact that specific time limits have been prescribed for the Designated Authority to perform its functions, as per the provisions of Rule 16 of Anti-Dumping Rules. Further it has been stated, in Section 21 of the Competition Act, 2002, that the authority concerned "may" make a reference to the Commission, if the statutory authority concerned finds it fit to do so. In view of the decisions cited supra, relating to the provisions of the Anti-Dumping rules it is clear that it would not be appropriate for this Court to interfere with the proceedings of the Designated Authority, at the stage of the issuance of the Disclosure Statement, by the said authority, under Rule 16 of the Anti Dumping rules, especially, in view of the fact that the petitioners have not shown sufficient cause or reason for such interference. As such, the writ petitions are found to be premature in nature and that they have been filed based on a mere apprehension that the impugned Disclosure Statement issued by the Designated Authority would have an adverse effect on the petitioners, at the later stages of the proceedings. As such, the writ petitions are liable to be dismissed. Hence, they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.