Aiigma Vs. Designated Authority

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-2000

Reported in : (2000)(119)ELT333TriDel

Appellant : Aiigma

Respondent : Designated Authority

Judgement :

1. These appeals arise out of Final Findings reached by the Designated Authority in the Antidumping investigation concerning import of calcium carbide from the People's Republic of China and Romania. The finding of the authority has been published as per Notification dated 22nd January, 1999 by the Ministry of Commerce in the Gazette of India Extraordinary. Appeal G/160/99-AD is by M/s. AIIGMA, an importer of calcium carbide from Romania. Appeals C/161-162/99/-AD are at the instance of M/s. DCW Ltd. and M/s. Senka Carbon, importers of calcium carbide from China. Contentions raised by the appellants in these appeals are identical. So, we consider it advantageous to dispose of these appeals by a common order.

2. Main arguments advanced by the learned Counsel representing the appellants were two-fold. The first one was that domestic industry which moved the Designated Authority for initiating proceedings had no locus. The second argument was that the imports of calcium carbide from China and Romania did not cause any injury to the domestic industry.

The finding arrived at by the Designated Authority on the question of injury and causal link with the importer, according to the learned Counsel are incorrect and hence unsustainable. We shall proceed to deal with these arguments hereinbelow.

3. Before proceeding with the above contentions, it may be mentioned here that the learned Counsel representing the appellants tried to challenge the normal value fixed by the Designated Authority in the final order. Argument was that since normal value was not correctly fixed, dumping margin arrived at by the Designated Authority is incorrect. Consequently, it was contended that anti-dumping duty imposed is unsustainable. As stated earlier, these appeals are at the instance of importers of calcium carbide from the People's Republic of China and Romania, subject countries. Appellants are not manufacturers or exporters from subject countries. They are the Indian importers.

They seek to question the correctness or otherwise of the normal value fixed by the Designated Authority. Are they persons entitled to question the correctness of the normal value? Annexure 1 to 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) lay down the principles governing determination of normal value, export price and margin of dumping. Clause (1) of that Annexure specifically states that determination of normal value should be based on the records kept by the exporter or producer of the article in question. Those records which are kept in accordance with the generally accepted accounting-principles of the exporting company need alone be relied on.

It further states that those records should reasonably reflect the cost associated with the production and sale of that article. From this it is clear that in determining the normal value, Designated Authority is to take into consideration the records kept by exporter or the producer of the article in question. Documents maintained by others are not relevant. In the instant case, manufacturers and exporters from subject countries did not cooperate. Consequently, the Designated Authority resorted to the procedure allowed by the Rules. Fixation of normal value, so made, cannot be challenged by anyone other than the exporter or manufacturer of that article. Annexure 1 to the Rules supports this conclusion. It therefore follows that

the appellants herein are not entitled to question the correctness or otherwise of the normal value of calcium carbide fixed by the Designated Authority.

4. Main argument advanced by the appellants is regarding the competence of the domestic industry in initiating proceedings before the Designated Authority. As per Rule 5(3) of the Rules for initiating proceedings before the Designated Authority, application has to be filed by domestic producers who are producing more than 25% of the like article in India. Petitioners in the instant case even though produced more than 25% of like article in India did not constitute producers of more than 50% of the total production. In other words, argument advanced was that petitioners before the Designated Authority do not manufacture 50% of the total production of the like article in India and so they had no standing or locus to initiate proceedings.

5. In support of this contention reference was made to paragraph 4 of the main petition, non-confidential version, submitted to the Designated Authority, wherein it was stated that there are many tiny producers manufacturing calcium carbide in the country. When the quantity of calcium carbide manufactured by those tiny producers, spread over the nook and corner of the country, is reckoned, the quantity turned out by the petitioners before the Designated Authority would fall far below 50% of the domestic production. In this circumstance, it was argued that the petitioners before the Designated Authority had no locus standing to maintain the petition. On that short ground the entire proceedings before the Designated Authority should be quashed.

6. The above argument of learned Counsel representing the appellants is not borne out from the provisions of Rule 5(3) of the Rules. For a proper understanding of the provision contained therein, we read the same: "(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 - (iii) Where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

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." As per this provision, for initiating an investigation by the Designated Authority application should be filed by domestic producers who produce not less than 25% of the total quantity of like articles produced in India. It means that unless the petitioners together manufacture not less than 25% of the total quantity, petition will not be maintainable. Learned Counsel representing the appellants submits that petitioners before Designated Authority should satisfy another basic requirement as well. That requirement is that they must be producers who produce more than 50% of the total production of the like article. This condition is not satisfied and so petition must fail. If this argument is accepted, we fail to see why Rule fixed basic requirement of 25% of the total production at the initial stage to see whether application is maintainable or not. So pensioners before Designated Authority need not constitute producers of more than 50% of the total domestic produce. Fifty percent-made mention of in the Explanation is that portion of domestic industry, expressing either support for or opposition to the application as the case may be. In a given case, producers who account for more than 25% of the like article may approach the Designated Authority to initiate investigation under the Act and the Rules. That application may, be supported or opposed by domestic industry. In a case where domestic industry opposes or supports an application pending before the Designated Authority, Applicants must constitute producers of 50% of the quantity manufactured by all these groups. In other words, as against three categories of producers present before the Designated Authority, namely, applicants, supporters and those who oppose, applicants should account for more than 50% of the total production of all of them. In the

instant case, it is conceded before us that the application before the Designated Authority was at the instance of producers who account for more than 33% of the domestic production. This is the finding arrived at by the Designated Authority as well. Therefore they satisfy the preliminary requirement for initiating proceedings as per the provisions quoted above. No portion of the domestic industry opposed the application before the Designated Authority. Petitioners before the Designated Authority accounted for more than 50% of produce manufactured by persons represented before that authority. So they satisfied the requirement contained in the Explanation to the Rule as well. In these circumstances, we have no hesitation in holding that the petition filed by domestic industry before the Designated Authority for initiating proceedings was a valid one on behalf of the domestic industry. We do not find any merit in the first contention raised by the learned Counsel representing the appellants. Accordingly we overrule the first contention raised on behalf of the appellants.

7. Designated Authority went into the different parameters, which adversely affected the domestic industry as a result of import of calcium carbide from China and Romania, subject countries. In majority of those parameters, the Designated Authority found that domestic industry suffered injury. In assessing the quantum of injury sustained by domestic industry, the Designated Authority found the fair selling price taking into consideration the optimum level of efficiency. Injury to domestic industry was assessed on the basis of optimum cost of production as well. The cost of production and sale price were fixed on the basis of generally accepted accounting principles. We perused the work sheet made available to us on behalf of the Designated Authority.

We are convinced that the Designated Authority acted on sound principles and on acceptable data. We do not find any ground to interfere with the finding on extent of injury sustained by the domestic industry. Designated Authority has also correctly found causal link between the injuries sustained by the domestic industry as a result of the imports from subject countries.

8. In the instant case, anti-dumping duty has been imposed on calcium carbide imported from subject .countries in Indian Currency. This Tribunal is consistently

taking the view that anti-dumping duty must be in US $ to safeguard the interest of the domestic industry. If anti-dumping duty is fixed in Indian Currency, its effect will get reduced on appreciation of the value of US $ vis-a-vis Indian Rupee.

So, it is our considered view that anti-dumping duty should always be fixed in terms of American Dollars. In the case on hand, anti-dumping duty has been imposed on calcium carbide imported from China and Romania at the rate of Rs. 499 and Rs. 873 respectively. These duties will have to be converted into US $ at the exchange rate prevalent during the period of investigation. During the period of investigation the exchange rate was Rs. 35.93 for one US $. So, anti-dumping duty in respect of calcium carbide coming from China should be 13.88 US $ per metric ton and that from Romania must be at the rate of 24.29 US $ per metric ton.

9. Subject to the above modification regarding dumping duty in US $, the order passed by the Designated Authority is confirmed. Appeals are accordingly dismissed.