

Linear Technologies India Pvt. Vs. Designated Authority

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-22-2005

Reported in : (2005)(187)ELT307TriDel

Judge : R Abichandani, S Kang, Vice-, M T K.C.

Appellant : Linear Technologies India Pvt.

Respondent : Designated Authority

Judgement :

1. On the petition filed by the Domestic Industry the Anti-dumping proceedings were initiated by the Designated Authority vide Notification No. 34/1/2001 dated 16th August, 2001. On the basis of preliminary findings dated 2-11-2001 by Notification No.128/2001-Customs dated 21-12-2001, anti-dumping duty in respect of the export of Compact Fluorescent Lamps imported into India from China PR and Hong Kong was imposed on provisional basis. Thereafter, taking into consideration the various submissions made by the interested parties, the designated authority issued a disclosure statement dated 28-10-2002 and, thereafter, notified the final findings on dated 14th November, 2002. On the basis of final findings, Government of India issued a Notification No. 138/2002-Cus., dated 10-12-2002 imposing antidumping duty on Compact Fluorescent Lamps into India from China PR and Hong Kong.

2. The present appellant challenged the notification imposing antidumping duty in respect of Compact Fluorescent Lamps imported into India from China PR and

Hong Kong.

3. Learned Counsel appearing on behalf of the Domestic Industry and designated authority raised a preliminary objection regarding the maintainability of the appeal by the present appellant on the ground that the present appellant never participated in the proceedings before the designated authority and the appellant is not interested party. The appellant had not responded to the initiation notification issued by the authority and even after the preliminary finding was notified there was no response by the present appellant. The public hearing was notified to the interested parties and present appellant had not participated in the public hearing. It is also contended that appellant is neither a manufacturer nor an importer of the articles under investigation and there is no evidence on record to show that appellant ever made import of the articles under investigation prior to the period of investigation or after the investigation. In such a situation, the contention is that appellant had no Locus-Standi to file the present appeal as interested party or appellant can be considered as aggrieved by imposition of duty.

4. The contention of the appellant in response to this preliminary objection is that the appellant filed written submissions on 10-5-2002 before the designated authority. Thereafter, appellant also submitted their objection to the disclosure statement vide letter dated 17-5-2002 and 5-11-2002. Their objection was duly noticed by the designated authority but were not considered by the designated authority in the final findings only on the ground that the Consultant who filed the submissions have not indicated which is the interested party/parties he is representing in response to the disclosure statement. The contention is that in the letter dated 5-11-2002, the appellant specifically mentioned that their contentions were not dealt in the disclosure statement and they reiterated their submissions. In this situation, the contention is that the findings where the Consultant has not indicated which is the interested party/parties he is representing in response to the disclosure, are not sustainable. The contention is that the appellant after the final findings vide letter dated 30-11-2002 specifically mentioned that the appellants are importers. Therefore, the Designated Authority cannot ignore their contention raised in respect of the imposition of duty in respect of articles in question.

As the appellants participated in the proceedings before the designated authority and their contentions were also noted in the disclosure statement as well in the final finding, hence they were treated as interested parties by the designated authority.

5. On merits, the appellant contended the normal value of the articles in question was determined by the designated authority in violation to the provisions provided in Para 7 of Annexure-I of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped articles and for Determination of Injury) Rules, 1995 (referred to hereafter as 'the Rules'). The contention is that articles under investigation are being imported from China and China being non-market economy, the normal value has to be determined on the basis of the price or constructed value in a market economy third country, or the price from such third country to other countries, including India, or where is it not possible, on any other reasonable basis then the price actually paid or payable in India for the like product can be made basis for arriving at the normal value of the articles in question imported from non-market country such as China. The designated authority without giving any finding that regarding possibility of determination of normal value on the basis of export third country to other countries considered India as surrogate country for determination of normal value. The contention is also that the normal value in respect of the articles in question imported from the Hong Kong was also determined on the basis of normal value of such articles imported from China. The contention is that the articles in question are not manufactured in Hong Kong and from Hong Kong, the articles in question are only traded. Therefore, the normal value determined by designated authority in respect of articles in question imported from Hong Kong is also not sustainable.

6. In response to the contention of the appellant on merits, the contention of the domestic industry and designated authority is in the petition filed by the domestic industry, it was specifically mentioned that for arriving at the normal value of the articles in question imported from China, the normal price prevalent in India may be treated as normal value as the same is more or less at the same level of development as found in China. The production technology used for manufacture of articles under investigation in India and China is almost the same. In these

circumstance, as there is no other suitable country which may be treated as 'surrogate country' for the purpose of determining the normal value of the articles in question imported from China and India can be treated as 'surrogate country'. The contention is that this contention made by the domestic industry was accepted by the designated authority and this was not opposed by any interested parties during the proceedings before the designated authority.

Therefore, the appellants cannot challenge the method adopted by the designated authority for determining the normal value in respect of the articles under investigation at this stage.

8. In this case the designated authority as well as the domestic industry raised preliminary objection regarding the Locus standi to challenge the imposition of duty by the appellant.

9. After considering the relevant provisions of the rules we find that as per provisions of Rule 4 of the Rules, the designated authority is to initiate an investigation to determine the existence, degree and effect of any alleged dumping only on receipt of a written application by or on behalf of the domestic industry. The application has to be supported by the evidence of dumping, injury, causal link between such dumped imports and alleged injury. Rule 6 of the Rules provides that 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 in respect of name of the exporting country or countries and the articles involved, the date of initiation of the investigation, the basis on which dumping is alleged in the application, a summary of the factors on which the allegation of injury is based, the address to which representations by interested parties is to be directed and the time-limits allowed to interested parties for making their views known.

The copy of the public notice is to 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. The Rule further provides that the designated authority shall also make available a copy of the

application to any other interested party who makes a request therefore in writing. The interested party, as per Rule 2(c) is an exporter or a foreign producer or import of an article subject to investigation for being dumped into India or a trader or business association, a majority of the members of which are producers, exporters or importers of such articles. In the present case the designated authority on receipt of a complaint from the domestic industry issued a notification for initiation of the proceedings. The present appellant was neither known as a producer or an importer of the goods in question. In pursuance to the public notice for initiation of the investigation, the appellant had also not made any request to the designated authority asking for participation in the investigation. Thereafter, the designated authority notified preliminary findings. While notifying the preliminary findings, it was made clear by the designated authority that any interested parties may also give their views within forty days from the date of publication of these findings. The appellants at this stage also had not taken any action to show his interest to join the investigation. Further, we find that as per record maintained by the designated authority in respect of the public hearing held on 11-4-2002, numerous representatives of interested parties attended the public hearing but none appeared on behalf of the appellant. The contention of the appellant is that vide letters dated 10-5-2002, 17-5-2002 and 5-11-2002, appellant raised certain objections before the designated authority which were mentioned in the disclosure statement as well as in the final findings. We have gone through the above-mentioned letters. In these letters in the column subject, it is mentioned that written submissions on behalf of the Council of Energy Efficiency Companies and M/s. Linear Technologies India Pvt. Ltd. (appellant). From the record of public hearing, we find one Shri P.K. Sood and Shri Sanjay appeared on behalf of the Council of Energy Efficiency Companies. Further, we find that Council of Energy Efficiency Companies vide letter dated 3-4-2002 requested the designated authority for grant of suitable opportunity to express their view in the larger interest of India. This request of the Council of Energy Efficiency Companies was accepted by the designated authority and they were invited at the time of public hearing. The submissions on their behalf were submitted by the Consultant of the Council of Energy Efficiency Companies. In these submissions the name of M/s. Linear Technologies India Pvt. Ltd. (appellant) was also mentioned but there is no

authorisation by M/s. Linear Technologies India Pvt. Ltd. (present appellant) to the Consultant to attend the hearing on their behalf or to submit the submissions on their behalf. In these circumstances, participation by the present appellant in the investigation before the designated authority is not proved. The Consultant was only appearing on behalf of the Council of Energy Efficiency Companies and written submissions were submitted by Council of Energy Efficiency Companies only. From the record, we find only letter written by the present appellant is dated 30-11-2002. As the public hearing was held on 11-4-2002 and the final findings were notified by the designated authority on 14-11-2002, hence, the letter written on 30-11-2002 was after the final findings. The appellant in response to specific query made by the Bench could not produce any evidence to show that they made any import prior to the period of investigation or during the period of investigation and even after the investigation of the articles in question. In these circumstances, as the appellant is neither importer nor producer of articles in question hence cannot be considered as interested party and had also not participated in the proceedings before the designated authority, hence the preliminary objection raised by the domestic industry has merit and the appellant is neither the interested party nor aggrieved by the imposition of duty on articles in question.

10. Even on merits, we find that the domestic industry in the complaint filed before the designated authority for initiation of the anti-dumping proceedings specifically mentioned the fact that the articles in question are being imported from China and China is non-market economy country, therefore, for arriving at the normal value of articles in question, India be treated as a 'surrogate country' as per provisions of Para 7 of the Annexure-I of the Rules. This contention of the domestic industry was not objected to by any of the interested parties who appeared before the designated authority. The appellants are also not disputing the fact that China is a non-market economy. The only contention is that the designated authority has determined the normal value of articles in question without following the procedure as prescribed under Para 7 of the Annexure of Rules. In the present case, the designated authority has determined the normal value of the articles in question after taking into consideration India as a 'surrogate country' as contended by the domestic industry. The interested parties who appeared before the designated authority raised no objection to the method adopted by the designated authority

regarding determination of the normal value by the designated authority during the investigation. In view of this factual position, we find no substance in the arguments of the appellant even on merit.

11. In view of the above discussion, we find no merit in the appeal, the same is dismissed.

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