

Saudi Basic Industries and ors. Vs. Designated Authority, Ministry

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-2006

Reported in : (2006)(111)ECC106

Judge : R Abichandani, M Ravindran, S T T.V.

Appellant : Saudi Basic Industries and ors.

Respondent : Designated Authority, Ministry

Judgement :

1. These appeals under Section 9C of the Customs Tariff Act are filed against the final findings in the mid term review issued on 26.2.2004, and the Notification dated 20.4.2004 by the rival parties to the extent that they have been aggrieved thereby.

2. Appeal Nos. C/705/04 has been preferred by Saudi Basic Industries Corporation (SABIC), Riyadh, Saudi Arabia the exporters of the subject goods into India seeking to set aside the impugned final findings and the notification by which the anti-dumping duty imposed on the appellant was continued, pursuant to the mid-term review, for a period of five years. Appeal No. C/706/04-AS and C/988/04-AD which have been filed by the Indian Plasticizers Manufacturers Association and Lubrizol India (P) Ltd. who are the importers of the subject goods into India also seek the same relief.

2.1 The appellant of Appeal No. C/519/04-AD -Iran Petrochemicals Commercial Company also an exporter has challenged the imposition of the duty under the impugned notification on the ground that they had not dumped any of the subject articles and that there was no justification for the imposition of duty.

2.2 In Appeal No. C/993/05-AD, the domestic industry, Andhra Petrochemicals Ltd., has challenged the impugned notification and the impugned final findings on the ground that the mid term review was illegal and untenable, being against the mandate of the statute and the rules governing anti-dumping duty and that withdrawal of anti-dumping duty in respect of Korea and Indonesia was not justified. They also seek a prayer for holding that the designated authority had committed an error in excluding the product Iso Deconol from the purview of anti-dumping duty and that the dumping margin worked out in case of imports from South Arabia should be modified upwards.

3. The designated authority had initiated review investigation of antidumping duty imposed on imports of Oxo alcohols from Poland, Republic of Korea, Indonesia, Saudi Arabia, Russia, Iran, USA and European Union by notification dated 27.8.2002. The "mid-term review" was initiated in the context of the anti-dumping duties imposed on the subject goods from these countries under the notification issued by the Government of India on 18th August, 2000, as partially modified by the orders of this Tribunal made on 11.4.2001.

3.1 The review covered all aspects of the notification dated 17th July, 2000, under which final findings were notified. The period of investigation for the purpose of the mid-term review was 1st April 2001 to 31st March, 2002. By corrigendum dated 11th December, 2002, the designated authority considered it appropriate to restrict the scope of the product under consideration for the mid-term review in respect of five types of Oxo alcohols, namely, Normal Butanol, Iso Butanol, Iso Decanol, Iso Octanol and 2-Ethyl Hexanol.

3.2 As more than two and half years had lapsed since the imposition of anti-dumping duty in this case, and exporter Iran Commercial Co. had requested for review by its letter dated 27.1.2002, the designated authority initiated the present review in accordance with Rule 23 of Customs Tariff (Identification, Assessment

and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. During the investigations the authority found that Indu-Nissan who used to produce Iso Octanol and Iso Decanol had not re-commenced the production and that during the period of review there was no production of these articles by the domestic industry.

3.3 The designated authority had sent questionnaires to the known exporters of whom SABIC of Saudi Arabia, Iran Petrochemical Commercial Company of Iran, and Oxeno Olefinchemie GmbH of Germany, responded. The exporters from Poland, Republic of Korea, Indonesia, Russia, USA and EU, did not co-operate in furnishing information regarding "normal value" and "export price" in respect of 2-EHA, NBA and IBA. The authority, therefore, relied upon the secondary material for constructing the "normal value".

3.4 Based on the constructed normal value and the export price as per the information received from some exporters and as per the methodology for other non-co-operative exporters, the authority assessed the dumping margin on the basis of the principles governing the determination of normal value, export price and margin of dumping as laid down in Annexure I of the said rules. Accordingly, at the stage of the disclosure statement, dumping margin was worked out in case of Saudi Arabia at 3.43% for 2- EHA; in respect of Iran at 14.78% for 2-EHA and 17.07% for NBA; in case of Poland at 37.80% for NBA; in case of USA at 59.49% for NBA and at 50.79% for IBA and in case of EU at 31.02% for NBA and 14.91% for IBA. In respect of exporters from Russia, Republic of Korea and Indonesia the same dumping margin as for the original investigation, was adopted.

3.5 In the disclosure statement, the authority found that the margin of dumping in respect of the subject countries was more than 2% and the volume of exports collectively was 24.55% of the total imports. The authority found that it was appropriate to cumulatively assess the effect of imports of the subject goods on the domestically produced "like articles" in the light of the conditions of competition between the imported products and the like domestic products. The information had revealed that the importers and user industry had sourced the subject goods from the domestic producer as well as by imports from the subject countries and

same product had been sourced from different countries by users and used interchangeably. The authority found that there was a cumulative effect of injury by imports of subject goods from subject countries on the domestic industry. Having examined the injury parameters, it was found that the domestic industry continued to suffer injury on account of price undercutting which was in the range of minus 29.62% to plus 29.63% transaction-wise. It was also found that there was significant price underselling as a result of dumped imports from the subject countries by comparison of the landed value with the non-injurious price of the domestic industry. According to the authority, based on its assessment in the mid-term review, the domestic industry was suffering from injury and that it may not be appropriate to withdraw the existing anti-dumping measures as it may lead to continuance and recurrence of dumping and injury.

4. After giving opportunity to the interested parties to have their responses to the disclosure statement, the designated authority reiterated that it was of the view that closure of Indu-Nissan and NOCIL was sufficient reason to initiate the review. It also noted that more than two and half years had elapsed since the imposition of anti-dumping duty in this case and the exporter from Iran had requested for review by its letter dated 27.1.2002. As regards the Iso octanol, the authority found information to the effect that it was used for manufacturing additives and lubricants, and that Iso octanol was treated as "like article" to the domestically produced Oxo alcohols. It was, therefore, considered it appropriate to recommend the anti-dumping duty also on Iso octanol. As regards the Iso Decanol, the authority held that there was no sufficient evidence to treat Iso Decanol as "like article" to the domestic products and, therefore, it did not propose to recommend anti-dumping duty on Iso Decanol.

4.1 The designated authority examining the views of the domestic industry, and the response furnished by the exporter SABIC (Appeal No.C/705/04-AD) found that the said exporter exported only two consignments to India during 2001. However, during that period they had exported 2 EHA to Pakistan and the exports to that country were of a higher quantity during that period. Having regard to the geographical proximity of Pakistan to India, exports of sufficient quantity to Pakistan and the same period of exports were factors considered sufficient to

indicate that the export price to Pakistan was comparable representative price to an appropriate third country in accordance with Section 9A(1)(c) of the Act. The authority found that the information furnished by the exporter was sufficient to determine the normal value and export price of the goods, as recorded in the final findings (paragraph 10). The non-confidential version of the exporter's response was provided to the domestic industry and they were able to offer their comments.

4.2 The exporter IPCC, Iran (Appeal No. C/519/04-AD) had furnished information regarding their domestic sales and export of NBA, 2-EHA and Iso Butanol. They had made exports of 2-EHA and NBA during the period of investigation. The normal value of 2-EHA and NBA was worked out by the authority on the weighted average sales price in their domestic market after making necessary adjustments. As regards Poland, Republic of Korea, Indonesia, Russia, USA and EU, the designated authority resorted to constructing the normal value on the basis of facts available in accordance with Rule 6(8) of the said rules. It obtained price of raw materials for the respective countries and in respect of other elements of cost, it relied on the best available information.

4.3 As regards the Republic of Korea and Indonesia, the authority found that there were no exports from these countries of subject alcohols during the period of investigation. In the absence of exports, dumping margin could not be determined and without determining dumping margin, no anti-dumping duty could be levied by it. It was, therefore, of the view that it was not feasible to determine dumping margin for the period of investigation of the review, in the absence of clear information regarding exports of subject alcohols from Republic of Korea and Indonesia.

4.4 The dumping margin in respect of Saudi Arabia was determined at 1.87% for 2-EHA. For Iran it was determined at 14.78% for 2-EHA and 17.07% for NBA; for Poland it was determined at 37.80% for NBA; for USA at 55.46% for NBA; and 47.84% for IBA; for EU at 31.02% for NBA and 14.91% for IBA and for Russia at 103.29% for 2-EHA and 107.38% for NBA. 4.5 The authority made analysis of injury and threat of injury to the domestic industry and causal link and found in paragraphs 15 to 23 that the volume of imports of EHA from Saudi Arabia was

1414000 Kgs. of the value of Rs. 36690839 during the period of investigation, of 2-EHA from Iran it was 14400 Kgs., from Netherland, Germany, Poland and USA the volume of imports of NBA was 248750, 64200, 21300, 902480 Kgs.

respectively. From Germany, Iran and USA the volume of imports of NBA was 13200 (Barrels), 355049 and 14750 Kgs. The volume of imports of IBA from Saudi Arabia, U.K. and USA was 14400, 95400; and 5755250 Kgs.

respectively.

4.6 The authority had conducted verification and on analysis it worked out the information on various economic factors/indices of the domestic industry in paragraph 20 of the final findings. It also made assessment of injury parameters, as detailed in paragraph 21 of the order, cumulative assessment of injury in paragraph 22 and on overall assessment it found in paragraph 23 of its final findings that as a result of continued dumped imports from subject countries, the domestic industry had suffered injury. It was of the view that the domestic industry was suffering from injury and it may not be appropriate to withdraw the existing anti-dumping measures as such withdrawal may lead to continuance and recurrence of dumping and injury. It, therefore, considered it appropriate to continue to impose anti-dumping duty. The designated authority concluded that: (i) Subject Oxo Alcohols have been exported below their Normal value from Poland, Saudi Arabia, Russia, Iran, USA and European Union There was no evidence of dumping from Republic of Korea and Indonesia during them POI of this review; (ii) The domestic industry continued to suffer material injury on account of dumped imports from Poland, Saudi Arabia, Russia, Iran, USA and European Union; (iii) The injury had been caused to the domestic industry by the dumped imports from Poland, Saudi Arabia, Russia, Iran, USA and European Union; and (iv) The Authority considered it appropriate that anti-dumping duties may continue to be imposed in respect of imports from Poland, Saudi Arabia, Russia, Iran, USA and European Union and withdrawal thereof would lead to continuance and recurrence of dumping and injury.

The anti-dumping duty was recommended on imports of 2-EHA, NBA, IBA and Iso Octanol originating in or exported from Poland, Saudi Arabia, Russia, USA and

EU. The anti-dumping duty was recommended to be imposed on the difference between the amounts mentioned in column 9 and the landed value of imports in US\$ per Metric Tonne. The notification dated 26.2.2004 was issued in respect of the final findings, which, however, was amended by corrigendum dated 16.3.2004 by which the anti-dumping duty recommended as per the review was ordered to be valid for five years from the date of imposition of the provisional anti-dumping duty, i.e. 27.1.2000.

5. It was contended by the learned Counsel appearing for the exporters (C/705 and 706/04-AD and C/988/04-AD) that the impugned notification was bad to the extent that it purported to levy the duty from 21.6.2000 i.e. the date of the commencement of the provisional duty. It was submitted that the notification continuing imposition of anti-dumping duty on mid term review could not have been given such retrospective effect. It was further contended that the exporter SABIC was wrongly imposed anti-dumping duty because, the dumping margin from SABIC was less than 2%, being 1.87%. It was argued that if something was de minimis for the original investigation, it would also be de minimis for a mid term review. Therefore, de minimis dumping margin should have been treated as no dumping margin and no injury could result therefrom.

That is why no anti-dumping duty could have been imposed on the said exporter. It was submitted that the injury analysis was flawed inasmuch as there was no valid reason to continue the imposition of duty having regard to the relevant injury parameters. It was argued that there was no price undercutting and no reasons were analyzed for price depression. Moreover, though the domestic industry (Appeal No.C/993/05-AD) was closed down between 1st April 2001 and 4th July 2001, that aspect was not duly considered. He also submitted that initiation of mid-term review was clearly warranted for the reasons given by the designated authority. Moreover, when there were no exports from the two excluded countries, no duty could have been continued. He also supported the exclusion of Iso Decanol since there was no domestic producer and hence there was no Injury to the domestic industry. He argued that where there was no dumping and hence no injury, there could not be any justification for continuance of the anti-dumping duty.

6. The learned Counsel appearing for the domestic industry contended that the criteria of de minimis did not apply to mid-term review since there was no question of terminating mid-term review. He contended that the very initiation of the mid-term review was bad because there were no sufficient grounds for initiating mid-term review. He submitted that changed circumstances were not indicated, nor was any positive information warranting initiation indicated by the designated authority. He further contended that mid-term review was required to be completed within twelve months and since the final findings and the notification were issued beyond twelve months, the entire mid term review was vitiated. He also argued that twelve months' period could not have been extended by the government because Rule 23 did not provide for extension and therefore, the extension in the present case by the government was not justified. He then argued that exclusion of two countries Korea and Indonesia from the purview of the duty was not warranted because dumping was likely to recur from those countries. He submitted that the designated authority did not consider the relevant aspects as to whether dumping was likely to recur, nor did he consider the factors, such as excessive production capacity, insignificant/lower demand in the domestic market of the exporter, past conduct in dumping goods and price behaviour. He submitted that there was no justification for removal of duty in respect of exports from these two countries, nor was there any justification for such withdrawal since the exporters had not responded to the mid-term investigation. He also submitted that exclusion of the two products namely Iso Decanol and IBA from EU was not justified and these should have been treated as like products to those which were produced by the domestic industry and the duty ought to have been continued. He further argued that the dumping margin of the appellant SABIC was wrongly worked out at 1.87%. He contended that the cost of raw material was not known and overheads were not considered, nor was it considered whether raw material was procured from the affiliated companies. The margin of dumping could have worked out to be more than 2% if the relevant aspects were considered. It was not known whether correct method of working out the cost of Production of 2-EHA was adopted. Moreover, SABIC did not file response to the questionnaire and therefore, should have been treated non-co-operative.

As regards the performance of the domestic industry, he submitted that it is because of the imposition of anti-dumping duty that the performance had improved. However, the improvement was only marginal and dumping continued from other sources. Even the improvement in sales were marginal. The profitability from the base year had declined though from previous year it had increased. The return of investment had remained negative and there was price undercutting and price depression. There was also difficulty in raising capital. The domestic industry had continued to be weak and there was no full recovery. There was, therefore, no valid reason to discontinue imposition of duty in respect of exports from any country or any article on which duty was imposed earlier. The learned Counsel referred to the EU report dated 14.8.2002, pointing from paragraph 150 that though the situation of the community industry had improved in the period considered, it was observed that it did not fully recover from past dumping and continued to be weak. Referring to the EU report dated 2.6.2003 [Council Regulation (EC) No. 964/2003], it was pointed from paragraph 76 of the report that recovery from the effects of past dumping was a material aspect required to be considered. On that aspect it was noted in the report, on the basis of the listed indicators, that the economic situation of the community industry had recovered from the injurious effect of dumped imports originating from the two countries concerned, but thereafter the situation deteriorated again resulting from the effect of increased dumped imports from other third countries. It was submitted that the designated authority ought to have considered all these aspects. The report of the panel (WT/DS 244/R dated 14.8.2003) on US-Sunset Review of Anti-Dumping Duties Corrosion-Resistant Carbon Steel Flat Products from Japan was referred and it was submitted, on the basis of paragraph 7.88, that the de minimis standard of Article 5.8 did not apply to sunset review. He also referred to paragraphs 11.54 and 11.55 from the Publication "EC Anti-Dumping Law- A Commentary on Regulation 384/96", by Dr. Wolfgang Muller Niclus, Khan and Neumann, for contending that a review on the basis of a request by the interested parties may only be opened if and when there is evidence of changed circumstances sufficient to justify the need for such review and that the initiation of review based on allegations and evidence if they are proved to be correct, would lead to an amendment of the anti-dumping measures in question.

7. The learned Counsel appearing for the designated authority contended that the rule of de minimis will not apply in a mid-term review having regard to the provisions of Rule 23 of the said rules. He submitted that the real test was whether injury will recur. He argued that the factors such as whether imports were continuing, losses continued, ability to raise capital had diminished, there was price depression and price under-selling, were, amongst others, the relevant aspects considered by the designated authority. He submitted that the initiation was justified on the basis of the representation made for initiating the review. He submitted that there was a detailed representation dated 11.7.2001 from the importers to review and rescind the notification dated 18.8.2000. He pointed out from the record the representations to the court as well as to the learned Counsel for the parties. He supported the reasoning and findings of the designated authority and submitted that all the appeals deserve to be dismissed.

8. By the notification issued on 18.8.2000 by the Government of India anti-dumping duty was imposed under Section 9A(1) read with Sub-section (5) of the Tariff Act and Rules 18 and 20 of the rules framed thereunder on the eight countries mentioned therein in respect of the articles Normal Butanol, Iso Butanol, 2-Ethyl Hexanol, Iso Decanol, Iso Octanol and Normal Hexanol with effect from 27.1.2000, being the date of imposition of the provisional anti-dumping duty. The designated authority initiated the review investigation of anti-dumping duty imposed on imports of these Oxo alcohols from the said countries, namely, Poland, Republic of Korea, Indonesia, Saudi Arabia, Russian, Iran, USA and European Union by notification dated 27.8.2002. It has been strongly contended by the domestic industry that the initiation of mid-term review was unwarranted. Rule 23 provides for review of the need for the continued imposition of anti-dumping duty which can be done by the designated authority from time to time. Such review may be done if the designated authority is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty. At the stage of initiating such mid-term review, the designated authority can act on the basis of information received by it from the interested parties. It is during the investigation, after it is initiated, that disputes may arise as to the nature and efficacy of such information. However, the initiation will not be vitiated, if the designated authority has acted on the basis of information received

by it by being satisfied that a review was called for with a view to ascertain whether there was need for the continued imposition of the anti-dumping duty.

8.1 Under the provisions of Sub-rule (3) of Rule 23 of the said rules, the other provisions of the rules, namely, 6 to 11, 16 to 20 have been made applicable *mutatis mudandis* in the case of review. It has been provided in Sub-rule (2) of Rule 23 that any review so initiated shall be concluded within a period not exceeding twelve months from the date of initiation of such, review. It is on the basis of this provision that the domestic industry has contended that since the determinations were not made within twelve months, the impugned final findings and notification to the extent of discontinuing duties was illegal.

8.2 It will be seen from the provisions of Rule 23 that there has to be some information on the basis of which the designated authority can initiate review. In the present case, the designated authority had received such information, as is clear from the record. The authority had noted that more than two and half years had elapsed since the imposition of anti-dumping duty and that the exporter from Iran had requested for review by its letter dated 27.1.2002. It was noted that in the original investigation there were three producers of Oxo alcohols that were the subject matter of the investigation and that one of these three, Indu- Nissan had ceased production for almost three years. Indu-Nissan was the only producer of Iso Octanol and Iso Decanol that were subject to anti-dumping duty in the original investigation and the other two producers APL and NOCIL did not produce these articles. It is in the context of these changed circumstances that the interested parties IPMA, Lubrizol (importers) had approached the designated authority for a review of the existing anti-dumping duty.

The designated authority has placed on record copy of the communication dated 11.7.2001 from the Indian Plascitizers Manufacturers Association seeking review of the anti-dumping duty on imports of Oxo alcohols to India. It is a detailed, representation and since the designated authority has reached its subjective satisfaction on the basis of objective material and has given valid reasons, as reflected in paragraph 7 of the final findings, we hold that the initiation of mid-term review was validly done in exercise of the powers of the designated authority

under Rule 23 of the said rules.

8.3 The contention that the period of concluding the review could not have been extended beyond twelve months from the date of initiation of such review, as provided under Sub-rule (2) of Rule 23, is misconceived, because, Rule 17 has been incorporated by reference in the context of such review by Sub-rule (3) of Rule 23. Under Rule 17, though it is stated in Sub-rule (1) that the designated authority shall within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit its final findings to the central government, it has been provided in the first proviso to Sub-rule (1) of Rule 17, that the central government may in its discretion, in special circumstances, extend further the aforesaid period of one year by six months. The said first proviso would also be applicable *mutatis mutandis* in the context of Sub-rule (2) of Rule 23, which requires the review proceedings to be concluded within a period not exceeding twelve months from the period of investigation of such review. Therefore, the initial period of twelve months laid down in Sub-rule (2) of Rule 23 for concluding the review can be extended by the central government, by reading the first proviso of Rule 17(1) in Rule 23(3), by six months.

In the present case, there is no dispute that the period was so extended and that the review proceedings were concluded within the extended period. It was pointed out that the government had extended the period of one year on 26.8.2003 and the final findings were issued on 26.2.2004 with the final notification following on 24.4.2004 i.e.

well within the extended period. The contentions raised on behalf of the domestic industry against the initiation of the mid-term review and the validity of the impugned final findings and the notification on the ground that are beyond the period prescribed by Rule 23(2) cannot, therefore, be accepted.

9. It has been argued on behalf of the exporters SABIC that having found that the dumping margin was only 1.87%, no anti-dumping duty could have been continued on the said exporter. It was submitted that when *de minimis* was relevant for the purpose of initiation, there was no valid reason why the rule of *de minimis* should

not apply while reviewing the matter under Rule 23. In this connection, it will be noted from Sub-rule (3) of Rule 23 that the provisions of Rule 14 have not been made applicable in the case of review while specifying the other rules which are applied *mutatis mutandis* in case of review. The concept of *de minimis* is reflected in Rule 14(c) which provides that the designated authority shall, by issuing of a public notice, terminate an investigation immediately if it determines that margin of dumping is less than 2% of the export price. It will be seen from the provisions of Rule 14 that by their very nature they apply to the initial investigations where there may arise a question of terminating an investigation. In a mid-term review proceedings, there would be no question of terminating the investigation especially when Rule 14 has been scrupulously omitted from the purview of Rule 23. *De minimis* would be a ground for termination of investigation because it is to be judged in the context of the prior period when there was no duty imposed and in cases where *de minimis* rule applies, it would be treated as if no duty was called for, by considering "*de minimis*" i.e. an insignificant dumping margin on the same footing as if there was no dumping margin.

However, *de minimis* dumping margin during the currency of anti-dumping duty imposition, cannot be equated with *de minimis* dumping margin when there was no duty imposed and the matter was under investigation which was required by Rule 14(c) to be dropped when there was no dumping margin or where it was insignificant being below 2%. The imposition of anti-dumping duty would have the effect of suppressing imports at a higher dumping margin. Moreover, marginal decrease below the *de minimis* line, as in the instant case, while the anti-dumping duties are operative will not warrant discontinuance of anti-dumping duty on the ground that injury has ceased because, no such inference can be drawn, due to the difference in situation of the dumping margin going below *de minimis* line during the anti-dumping duty regime and earlier its being below the *de minimis* line when no anti-dumping duty was yet imposed. It is, therefore, difficult to agree with the contention that the analogy of Rule 14(c) should be applied where the dumping margin is found to be below 2%. The volume of imports from Saudi Arabia were large and we find that the authority has cumulatively assessed the injury holding that the margin of dumping in respect of each of the subject country was more than 2% and the volume of imports from these countries was 24.55% of the total

imports (paragraph 22 of the final findings).

9.1 As regards the SABIC from Saudi Arabia, the authority had noted that it had made only two export consignments to India during June 2001. However, it had exported 2-EHA to Pakistan during that period and those exports were of a higher quantity. Having regard to the geographical proximity of the countries and the exports of sufficient quantity to the neighbouring country, the authority adopted the export price to "an appropriate third country", in accordance with Section 9A(1)(c) of the Act. It found that the information furnished by the exporter was sufficient to make determination regarding normal value and export price. It was also noted that non-confidential version of the exporters' response was provided to the domestic industry and they were able to offer their comments. It appears from the communication dated 16.02.2004 by SABIC that non-confidential version submitted by SEBIC was sent to Shri A.K. Gupta for information. The communication dated 13.10.2002 by SABIC to the Director attached to the designated authority in the Ministry of Commerce, would show that the questionnaire was replied by fax and the original documents were sent through courier by SABIC. Therefore, SABIC could not have been considered as a non-co-operative exporter as was sought to be contended on behalf of the domestic industry. By communication dated 15.7.2003 addressed on behalf of SABIC to the designated authority the relevant information was supplied. It was also stated that the income statements of various products put together make up the producer company as a whole and that it was very easy to verify cost of production for the product concerned from the income statements of the period from April 2001-March 2002. As noted in paragraph 10 of the final findings adjustments were made on account of marketing fee, overseas freight, clearance and handling as per exporter's information available. We do not find any valid reason to take a different view of the matter in view of the designated authority having adopted a valid course for making the determinations in the context of SABIC.10. It has come on record that Indu-Nissan who used to produce Iso Octanol and Iso Decanol did not recommence their production. Moreover, no evidence was placed before the designated authority which would warrant imposition of anti-dumping duty on Iso Decanol. Indu-Nissan did not re-commence their production despite their letter dated 30.6.2003.

Therefore, since Iso Decanol or its like product were not manufactured in India, there could arise no question of any injury or threat of injury to the domestic industry in the context of that product. We agree with the reasoning and findings of the designated authority for excluding the said product.

11. As regards exclusion of Republic of Korea and Indonesia, it is evident from the record that there were no exports from these countries of the subject alcohols during the period of investigation. When there were no exports from these countries, no dumping margin could have been determined and in the absence of determination of dumping margin, there could arise no question of imposing anti-dumping duty. There was no situation where dumping margin and injury margin could be compared, when there were no exports. If the contention that the possibility of recurrence of exports is to be countenanced, when admittedly there have been no exports, on the ground that the exports may have discontinued because of the imposition of duty, then it would not be possible to discontinue duty earlier imposed in any case where there have been no exports. Such an extreme position would not be warranted. There was nothing placed on record before the designated authority which would indicate that notwithstanding discontinuance of exports there was every possibility of these countries resuming their exports on discontinuance of the duty. There has to be some facts or material which can be objectively assessed with a view to draw a legitimate inference that discontinuance of duty would not be justified and that stoppage of exports was strategic. We, therefore, do not find any valid reason to take a different view of the matter as regards discontinuance of duty in respect of Republic of Korea and Indonesia.

12. We note from the record that the designated authority has taken into consideration the relevant parameters for making its determinations on the issues of dumping margin, injury and causal link.

On assessment of injury parameters, it appears that the market share of the domestic industry came down from 55.18% in 1991-2000 to 45.93% during the period of investigation. The domestic industry suffered price depression as a result of dumped imports. Its losses during the period of investigation were to the tune of Rs. 93.36 million in the period of investigation. The price undercutting was found to

be in the range of minus 29.62% to plus 29.63% transaction-wise which, however, was not significant. The authority found that there was significant price under-selling as a result of dumped imports in the range of 4% to 45% by comparison of the landed value with the non-injurious price of domestic industry, in respect of exports of IBA from EU. The return on investment continued to be negative during the period of investigation and the capacity of domestic industry declined from 86.51% to 76.95%.

The domestic industry continued to suffer losses and it found difficulty in raising capital investment (see paragraphs 22 and 23 of the final findings).

12.1 In a review investigation under Rule 23, the authority is required to examine whether injury was likely to continue or recur if duty were removed. Therefore, the impact of various determinations made in the review investigation was required to be viewed in their overall context to find out whether there was no justification for the continued imposition of the duty. The factors which may be relevant for initiation of the anti-dumping duty proceedings under Rule 5, such as identification of the article under consideration and the situation where investigation may be required to be terminated as per Rule 14, would not govern the issue of deciding whether there is no justification for continued imposition of duty because, they have a bearing on imposition of duties rather than on the impost being continued. Section 9A(5) contemplates revocation of anti-dumping duty even earlier than the period of its expiry after five years from the date of imposition. Therefore, it contemplates not only a "sunset review", but also a "mid-term review" and as per the first proviso, the period of imposition could be extended for five years, if in a review, the central government is of the opinion that the cessation of such duty was likely to lead to continuation or recurrence of dumping and injury. Therefore, dumping and injury are two important aspects which are required to be kept in mind by the designated authority while deciding whether cessation of duty is likely to lead to continuation or recurrence of dumping and injury.

12.2 While considering the scope of mid-term review the Hon'ble the Supreme Court has in paragraphs 35 and 37 of the judgment in *Rishiroop Polymers Pvt. Ltd. v. Designated authority and Additional Secretary* held as under: 35. ...we are of the

opinion that scope of the review inquiry by the Designated authority is limited to the satisfaction as to whether there is justification for continued imposition of such duty on the information received by it. By its very nature, the review inquiry would be limited to see as to whether the conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is no longer justification for continued imposition of the duty. The inquiry is limited to the change in the various parameters like the normal value, export price, dumping margin, fixation of non-injury price and injury to domestic industry. The said inquiry has to be limited to the information received with respect to change in the various parameters. The entire purpose of the review inquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffer.

37. The final findings recorded by the Designated authority at the time of initial imposition of anti-dumping duty on the existence of injury to the domestic industry must be considered to continue to remain valid, unless it is proved to be otherwise, either by the Designated authority in suo motu review or by the applicant seeking review.

12.3 In the present case, the designated authority has, on the basis of the material on record and for valid reasons found that as a result of continued imports of dumped subject goods, the domestic industry had suffered injury during the period of investigation and that it was not appropriate to withdraw the existing anti-dumping measures, as it may lead to continuance and recurrence of dumping and injury on account of dumped imports from Poland, Saudi Arabia, Russia, Iran, USA and European Union. We find ourselves in agreement with the final findings of the designated authority and there is no warrant for interfering with any of these findings on the basis of the contentions raised on behalf of the contesting parties in this group of appeals.

13. We, however, find that the notification to the extent that it gives retrospective effect to the anti-dumping duty imposed under it with effect from the date of imposition of provisional anti-dumping duty i.e. 27.1.2002, is not warranted because, the notification issued pursuant to a mid-term review cannot be given

such retrospective effect from the date of the imposition of provisional anti-dumping duty. Under Rule 20, the anti-dumping duty levied under Rule 18 will take effect from the date of its publication in the official gazette. Sub-rule (2)(a) of Rule 20, which speaks of levying anti-dumping duty from the date of imposition of provisional duty is clearly intended to apply to the initial imposition of the final duty under Rule 18 and not to the continued imposition of duty pursuant to a mid-term review. Even the learned Counsel for the designated authority was not in a position to support such retrospective effect given to the impugned notification.

In fact, the Ministry of Commerce by letter dated 22.8.2005 had pointed out that normally the anti-dumping duty recommended under mid-term review has a prospective effect. We, therefore, while dismissing all these appeals direct that the anti-dumping duty imposed under the impugned notification shall be levied with prospective effect i.e. from the date of the notification dated 20.4.2004 and paragraph 2 of the impugned notification will be accordingly amended by the central government.

14. For the foregoing reasons, all the appeals are dismissed subject to the direction that paragraph 2 of the impugned notification will be suitably amended by the Government of India by imposing the anti-dumping duty pursuant to the mid-term review prospectively with effect from the date of the impugned notification dated 20.4.2004.

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