

(2011) 02 P&H CK 0467

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2425 of 2011

Merino Panel Products Limited

APPELLANT

Vs

Designated Authority and
Another

RESPONDENT

Date of Decision: Feb. 9, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1)
- Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 - Rule 18 , 20

Citation: (2011) 162 PLR 770 : (2011) 5 RCR(Civil) 647

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Judgement

Adarsh Kumar Goel, J.

This petition seeks declaration that Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 are ultra vires the Constitution. Direction has also been sought for amending notification No. 15/31/2010-DA dated 26.11.2010 initiating mid term review of anti dumping duty on Korea RP alone with consequential direction for reimbursement of excess anti dumping duty and prohibition against collection thereof. It will be appropriate to reproduce the prayers in the petition:

(i) Writ of a suitable nature declaring the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed u/s 9A ultra vires to the Constitution of India;

ii) Writ of suitable nature for amending the notification No. 15/31/2010-DA dated 26.11.2010 (Annexure P-6) issued by Respondent No. 1 initiating mid-term review of anti dumping duty on Korea RP alone and direct the Respondent No. 1 to include all other countries from where import of the subject goods is subject to Anti-Dumping

Duty within the scope of the review under this notification.

iii) Writ in the nature of mandamus commanding the Respondents to assess and reimburse the excess anti dumping duty levied and collected on the imported phenol pursuant to various notifications.

iv) Writ in the nature of mandamus commanding the Respondents not to impose and collect the anti dumping duty in excess of margin of dumping or injury, as applicable, on all imports from the countries subject to antidumping duty.

2. Case of the Petitioner is that it is manufacturing high pressure laminated sheets, plywood and laminated boards etc. It imports "phenol" as one of the key inputs in its manufacturing process. Vide notification dated 3.3.2008 Annexure P-3, the Designated Authority under the Customs Tariff Act, 1975 read with Rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 recommended imposition of anti dumping duty equal to margin of dumping and margin of injury on imports from United States of America, Korea RP and Taiwan. Thereafter, vide notification dated 1.12.2010 recommendations for anti dumping duty was made in respect of imports from the other countries i.e. Japan and Thailand. In exercise of its powers under Rule 23 and on receipt of a petition from M/s LG Chem Ltd., Korea RP the designated authority initiated mid-term review on the anti dumping duty imposed vide notification dated 3.3.2008. The Petitioner vide legal notice dated 5.1.2011 approached the Designated Authority for issuance of corrigendum for the initiation of notice to cover all the countries in the process of review of anti dumping duty. Finding no response, this petition has been filed.

3. Case of the Petitioner is that selected review in respect of imports from one country is violative of fundamental right of the Petitioner under Articles 14 and 19(1)(g) of the Constitution. The impugned Rules to the extent Designated Authority was enabled to review the levy of anti dumping duty in respect of imports from one country alone are discriminatory. Power conferred under Rule 23 was arbitrary and void being without any guidelines.

4. We have heard learned Counsel for the Petitioner.

5. Learned Counsel for the Petitioner submits that power of levying anti dumping duty has to be exercised fairly based on the injury margin and dumping margin and loss to the domestic industry. Such power should be exercised in interest of consumers and general public and not arbitrarily and whimsically. Power under Rule 23 to selectively review the levy in respect of imports only from one country was arbitrary and discriminatory. In any case, the impugned notification dated 26.11.2010 confirming mid-term review to imports from Korea was illegal.

6. We are unable to accept the submission.

7. It is well known that provisions for anti dumping duty have been incorporated to safeguard the domestic industry against practice of exporting countries dumping their goods at less than normal value resulting in injury to the domestic industry. To achieve this object, the Central Government has been authorised to impose anti dumping duty not exceeding the margin of dumping. If it is proved that anti dumping duty has been imposed in excess of margin of dumping, the importer is entitled to refund u/s 9AA. The Rules provide for manner in which the effect of dumping and margin of dumping are determined. Designated Authority is to be appointed by Central Government not below the rank of Joint Secretary to investigate as to existence and effect of dumping and to make recommendations about the amount of anti dumping. The said authority also has to review the need for continuance of anti dumping. Procedure and principles governing investigation have been laid down. Rule 23 provides for review from time to time. There is guidelines in the form of purpose for which anti dumping duty is provided and the Designated Authority has to act on the principles laid down for determining the injury and also to review the need for continuance of anti dumping duty from time to time. Order of determination or review is appealable u/s 9C. The Rules have stood the test of time. The Petitioner never felt aggrieved by the levy of antidumping duty and no appeal is stated to have been filed. Moreover, dumping margin in exports from different countries could be different. There is, thus, nothing in the rules which may go against the mandate of the statute. Conferment of such power is necessary for effectuating the object for which the provisions have been enacted. It cannot be held that the Rules are arbitrary and without any guideline. Mere fact that power under Rules may not be exercised properly cannot be a ground to set aside the Rules. There is no presumption that power under the rules will not be exercised to carry out its objectives.

8. As regards the impugned order initiating review on anti dumping duty on "phenol" originating from Korea RP on a petition filed by M/s LG Chem Ltd., Korea RP, the same cannot be held to be illegal only on the ground that scope of review does not include other country from where the same product originated. Mere issuance of said initiation notification, there is no bar against mid-term review in respect of imports from other countries. The Petitioner is said to have been made an application for the purpose. There is no reason to presume that the said application will not be considered on its own merits. We, thus, do not find any ground to entertain this petition at this stage except to observe that the Designated Authority may take an appropriate decision on the application of the Petitioner in accordance with law.

9. The writ petition is disposed of.