Inovyn Chlor Vinyls Ltd. Vs Designated Authority

Court: DELHI HIGH COURT

Date of Decision: June 3, 2016

Citation: (2016) 339 ELT 539

Hon'ble Judges: Dr. S. Muralidhar and Vibhu Bakhru, JJ.

Bench: Division Bench

Advocate: Shri Aashish Gupta, Advocate, for the Petitioner; S/Shri Ravi Prakash, CGSC with Aditya Dewean and Rajesh Sharma, Advocates, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.â€"CM 22941/2016 (for exemption) : Allowed, subject to all just exceptions. W.P. (C) 5501/2016 & CM 22940/2016 (for

stay) :

2. The challenge in this petition by Inovyn Chlor Vinyls Ltd., a company incorporated under the laws of the United Kingdom is to a letter dated 7th

March, 2016 issued by the Office of the Designated Authority ("DA") Directorate General of Anti-Dumping and Allied Duties (Respondent No.

1) requiring the petitioner to go in for a mid-term review pursuant to the petitioner"s application dated 18th December, 2015 seeking amendments

in the Final Findings dated 4th April, 2014 of the DA in the anti-dumping investigation concerning import of PVC Suspension Resin from European

Union ("EU") and Mexico.

3. The petitioner, earlier known as Ineos Chlor Vinyls Ltd., is a company incorporated in the United Kingdom (U.K.) and is a producer and

exporter of PVC Suspension Resin. The petitioner participated in the investigation undertaken by the DA. By the Final Findings dated 4th April,

2014, the DA recommended a duty of USD 39.65/MT on the import of PVC Suspension manufactured by the petitioner.

4. During the pendency of the investigation before the DA on 16th September, 2013, INEOS AG and SOLVAY SA (a Belgium based entity)

decided to acquire joint control of a newly established joint venture ("JV") by way of transfer of assets. In compliance with Regulation 139 of

2004, dated 20th January, 2004 of the European Commission and undertakings, INEOS AG and SOLVAY SA notified the European

Commission of their proposal to establish a newly created JV to be called Inovyn.

5. Subsequent to the Final Findings dated 4th April, 2014, the European Commission on 8th May, 2014 approved the Inovyn JV under the EU

Merger Regulation. On 1st July, 2015 the creation of Inovyn JV was implemented including inter alia by transfer of the entire share capital of the

petitioner to Inovyn JV.

6. It is further stated that name of the petitioner was changed from Ineos Chlor Vinyls Ltd. to the present name, i.e., Inovyn Chlor Vinyls Ltd. The

petitioner has enclosed with the petition a copy of the ''Certificate of Incorporation on Change of Name'' dated 26th June, 2015, issued by the

Registrar of Companies for England and Wales under the Companies Act, 2006 of the U.K. It is however stated that the petitioner''s cost of

production, sources for procurement of raw material, production facilities, sales channels and cost of sales for sale both within the EU market and

the Indian market continued to remain the same.

7. It is stated that on account of the change in name, the petitioner could not avail the benefit of the definite determination of anti-dumping duty in its

favour, by the Final Findings and the consequent notification, in respect of the PVC Suspension Resin produced by it.

8. The petitioner along with Inovyn Sverige AB jointly filed an application before the DA on 18th December, 2015 for change of their names in the

Final Findings. The petitioner states that with the said application it had placed on record before the DA all the materials to show that but for the

change in the name, the operation of the petitioner continued to remain the same. The above application jointly filed by the petitioner with Inovyn

Sverige AB was not considered by the DA and a letter dated 7th March, 2016 was issued to each of them asking them to go in for a mid-term

Review.

9. The letter dated 7th March, 2016 issued to Inovyn Sverige AB was challenged by the said entity by way of Writ Petition (C) No. 4749 of 2016

which was allowed by a detailed judgment by this Court on 2nd June, 2016. The Court, therefore, does not consider it necessary to repeat the

reasons spelt out in the said judgment. It should be read as applying to the present petition as well since the facts are more or less similar. The

following paragraphs of the said decision dated 2nd June, 2016 of this Court in W.P. (C) No. 4749 of 2016 will apply to the present case, with

the only difference being that the reference to the Swedish Companies Registration Office should be replaced by the Registrar of Companies

England and Wales :

18. In the present case it was incumbent on the DA to have first examined whether, on the basis of the documents submitted by the Petitioner, the

change in its name has altered or impacted the basis for the imposition of the anti-dumping Duty in terms of the Final Findings dated 4th April,

2014. In order to come to such conclusion there has to be preliminary level examination, with the participation, if necessary, of the Petitioner. From

the certificate issued by the Swedish Companies Registration Office on 2nd July, 2015 it appears that the only change was in its name. A mere

change of name cannot alter the legal status of the entity. For instance, if a company is a party before a Court in a litigation and the name of the

company has undergone a change in terms of the Companies Act then the Court would on an application by the party concerned permit the

amendment to the memo of parties and to the cause title of the case. This is a routine exercise. After all the Court cannot examine if such a change

in name is justified since that takes place with the approval of the Registrar of Companies. Likewise here the Swedish Companies Registration

Office has recorded the change in the name of the Petitioner and has issued a certificate to that effect. This has happened subsequent to the Final

Findings. This fact has to be taken note of by the DA and nothing more. The consequential change of the name of the Petitioner as recorded in the

Final Findings should not ordinarily require an elaborate exercise of a mid-term Review.

19. The question is not so much about the prejudice caused to the Petitioner by the mid-term Review but whether in fact it is called for at all. A

mid-term Review would undoubtedly not get over in a short time. It would undoubtedly further delay the availing of the benefit of the anti-dumping

duty notification by the Petitioner. The Court suggests that the DA must issue a further set of instructions to account for the need to make routine

clerical corrections in the Final Findings or for that matter in any other Findings rendered by the DA particularly where such corrections are

occasioned by changes that take place after the issuance of the Findings or notification as the case may be. The contingency of change in name is

one such.

20. The failure to devise a procedure for dealing with such contingencies cannot constitute a valid reason to compel the initiation of a mid-term

Review to effect changes that are of a routine nature and which do not affect the basis of the Findings. It is made clear, however, that if on

examination of application made by such entity together with relevant documents the DA is of the view that such change in name affects the basis of

the Findings, then it may, for reasons to be recorded, order a mid-term Review.

10. Just as in the case of Inovyn Sverige AB, in the present case too the impugned communication dated 7th March, 2016 issued to the petitioner

gives no reason whatsoever for requiring the petitioner to go in for a mid-term Review. It is also silent on whether the application made by the

petitioner on 18th December, 2015 with the enclosed documents was examined by the DA. Accordingly, the said decision as communicated by

means of the impugned letter dated 7th March, 2016 of the DA is hereby set aside.

11. A direction is now issued to DA to examine the petitioner''s application dated 18th December, 2015 and the enclosed documents and take a

decision, in writing, after hearing the petitioner, if considered necessary, within a period of four weeks from today. The said decision shall be

communicated to the petitioner forthwith. If aggrieved by such decision, it will be open to the petitioner to seek further remedies in accordance with

law.

12. The writ petition is allowed in the above terms but with no order as to costs. The application is disposed of.