

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
 PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
 CUSTOMS APPEAL BRANCH

Dated: 01/01/2015

To .

Appellant as per address in table below

Respondent as per address in table below

Final Order No. AD/A/54808-54810/2014-CU|DB| dated 27/08/2014

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 9C of the Customs
 Tariff Act, 1975.

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1 AD/MISC/60369/2013, AD/MISC/61349/2013, AD/Stay/1085/2009	AD/6/2009	KUMHO PETROCHEMICALS CO. LIMITED, A COMPANY DULY REGISTERED UNDER THE COMPANY LAW OF SOUTH KOREA HAVING ITS OFFICE AT KUMHO ASIANA BUILDING, 57 SHINMUNNO 1-GA, JONGNO-GU SEOUL 110- 713, KOREA RP
2 AD/COD/93/2009	AD/7/2009	NATIONAL ORGANIC CHEMICAL INDUSTRIES LTD MAFATLAL HOUSE, H.T. PARK MARG, BACKBAY RECLAMATION, CHURCHGATE, MUMBAI.
3 AD/STAY/1449/2009, AD/MISC/60370/2013, AD/MISC/61348/2013	AD/9/2009	RISHIROOP POLYMERS PVT. LTD. 65, ATLANTA, NARIMAN POINT, MUMBAI

Name and Address of
Respondent

-DESIGNATED AUTHORITY
DIRECTORATE GENERAL OF ANTI-
DUMPING AND ALLIED DUTIES,
MINISTRY OF COMMERCE AND
INDUSTRIES, GOVERNMENT OF
INDIA, UDYOG BHAWAN, NEW
DELHI.

UNION OF INDIA, MINISTRY
OF FINANCE, SECRETARY-
REVENUE GOVERNMENT OF
INDIA, NORTH BLOCKS, NEW
DELHI.

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

Rajesh Sharma, Advocate
TRM, SOLICITORS &
CONSULTANTS,
K-3/A, SAKET,
NEW DELHI,

~~Rajeev Sharma, Advy
CHAMBER NO 131,
LAWYER CHAMBER,
SUPREME COURT OF
INDIA, NEW DELHI,~~

8 Additional Party's Name & Address :

9 Bar Association, CESTAT, Delhi

10 Director Publications, Customs, Excise. I.P. Estate, Delhi

11 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

12 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

13 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

14 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch,

List of Interested Parties

M/S LANXESS INDIA PVT LTD
KOLSHET ROAD, THANE(WEST)
MAHARASHTRA-400607

PMC RUBBER CHEMICAL
INDIA PVT LTD
103 G T ROAD WEST,
PO RISHRA HOOGHLY,
WEST BENGAL-712248

MERCHEM LTD
2ND FLOOR, MALANKARA
CENTRE, M.G.ROAD, ERNAKULUM
COCHIN-682305

AUTOMOTIVE TYRE MFG ASSOCIATION
PHD HOUSE, 4TH FLOOR
OPP ASIAN GAMES VILLAGE
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AREA, NEW DELHI-16

SINORGCHEM CO SHANDONG
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PEOPLES REPUBLIC OF CHINA.

SWARUP CHEMICALS PVT LTD
SWARUP BHAWAN
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NEW AREA, SHANGHAI-200136,
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M/S LAKSHMI KUMARAN&SRIDHARAN,ADV
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RISHIROOP POLYMERS PVT LTD
65, ATLANTA, NARIMAN POINT
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SWARUP CHEMICAL P LTD
SWARUP BHAWAN
35-A, CIVIL LINES,
BAREILLY-243001.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

Application Nos. AD/STAY/1085 & 1449/2009-CU[DB]
Application Nos. AD/MISC/60369, 61349, 60370 &
61348/2009-CU[DB]
Appeal Nos.AD/6, 7 & 9/2009-CU[DB]

M/s. Kumho Petrochemicals Co. Ltd.
M/s. National Organic Chemical
Industries
M/s. Rishiroop Polymers Pvt. Ltd.
Vs.

...Appellants

Designated Authority
Director General of Anti Dumping and
Allied Duties

... Respondents

Present for the Appellants

Mrs. Reena Khair, Adv
Mr. Rajesh Sharma,
Adv.

Present for the Respondents

Mr. Amit Singh, Adv.
For D.A.
Mr. Govind Dixit, DR

Coram: Hon'ble Justice G. Raghuram, President
Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble R.K. Singh, Technical Member

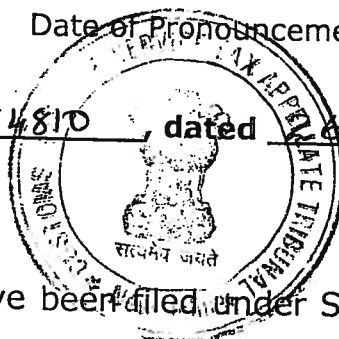
Date of Hearing: 27.08.2014

Date of Pronouncement: 26-12-2014

Final Order Nos. 54808-54810, dated 26-12-2014

PER: R.K. SINGH

The present appeals have been filed under Section 9C of the Customs Tariff Act, 1975 against Notification No.133/2008-Cus, dated 12.12.2008 read with Final Findings dated 01.10.2008 in terms of which anti-dumping duty was imposed



on imports of rubber chemicals including PX 13 (6PPD) from Korea and China.

2. The brief facts of the case are that consequent to an application filed by the domestic industry, the Designated Authority recommended imposition of an anti-dumping duty on exports of 6PPD from *inter-alia* Kumho Petrochemicals Co. Ltd. The Authority found that the exports from Korea were being made below their normal value and the domestic industry had suffered material injury, cumulatively from the subject imports. In respect of the Korean exporter, the Authority constructed its cost of production for 6PPD by considering the international price of the major raw material, that is, 4 ADPA instead of the actual procurement cost of the said raw material from China.

3. Appeal Nos.AD/6 & 9/2009 have been filed by Kumho Petrochemicals Co. Ltd., exporter from Korea and Rishiroop Polymers, importer in India of subject goods, praying for setting aside of the impugned notification and final findings. Appeal No.AD/7/2009 has been filed by domestic industry seeking modification / enhancement of duties on the exports from Korea.

Arguments of Exporter and Importer

4. The Id. counsel appearing for the exporter submitted that the normal value for 6PPD had not been appropriately determined by the Designated Authority. The exporter had been sourcing 4ADPA from Sinorghem China PR, which was a cooperating exporter from China in the investigations. The Authority committed a serious error in rejection of the actual cost of 4ADPA, in the absence of any legal provision to justify rejection of the actual cost of procurement of 4ADPA, since Korea is a market economy, and not subject to provisions of Paragraphs 7 and 8 of Annexure 1 to the Customs Tariff (Identification, Assessment and Collection of Duty or Additional duty on Dumped Articles, and for Determination of Injury) Rules, 1995 ('Anti-Dumping Rules'). It was also contended by the Id. counsel that:-

- i. There is no dispute that the actual cost of 4ADPA had been reflected in their books of accounts, and therefore the same ought to have been adopted for determination of normal value in terms of Para 3 of Annexure 1 to the Rules.
- ii. The source of procurement of the input is immaterial for determination of normal value, since only actual cost of production is relevant in terms of Section 9A(1)(c) of the Act.

- 7
- iii. If the actual cost of 4ADPA is not accepted, the price of 4ADPA from China to India ought to have been considered.
- iv. The basis for adoption of an alternate value of 4ADPA has not been disclosed to them either in the disclosure statement or in the final findings.
- v. Adequate opportunity should have been given to them to address arguments on selection of alternate values of 4ADPA.
- vi. In paragraph 58 of the Disclosure Statement it was held as under:-

*"Further the import price of this very raw material when sourced from a market economy country into India was found to be US***Kg, incidentally Sinorgchem happened to be a participating exporter from China PR in the present investigations, and verification of the said exporter revealed that they are operating under non-market economy conditions.*

Therefore in a situation, where major input, that i.e., 4ADPA, used in production of 6PPD was solely sourced from a non-market economy country, the Authority proposes to hold that use of actual purchase price of Kumho Petrochemical for 4ADEPA would not reasonably reflect the cost associated with production of 6PPD. In view of the above, the Authority proposes to adjust the cost of production and sale by the difference between the international price of 4ADPA from a market economy country and actual purchase price of Kumho Petrochemicals. Accordingly, the revised

*cost of sales of PX13 (6PPD) works out to US***Kg."*

Since the international price adopted for 4ADPA had not been made available to the exporter, they had no opportunity to offer their comments on such price. They also submitted that no disclosure had been made to them about the average profit added to the constructed cost of production.

- vii Thus, the findings had been passed in violation of the principles of natural justice and the determination of the normal value was therefore vitiated.

Arguments of domestic industry

5. The Id. counsel for the domestic industry submitted that the actual cost of procurement of 4ADPA from Sinorgchem was not reliable, since it did not reflect the intrinsic cost of the input. In this context, they invited attention to Annexure 1 to the Rules, which reads as under:-

*"The elements of costs referred to in the context of determination of normal value shall **normally** be determined on the basis of records kept by the exporter or producer under investigation, **provided** such records are in accordance with the generally accepted accounting principles of the exporting country, and **such records reasonably reflect the cost associated with production and sale of the article under consideration.**"*

It was argued that since the Designated Authority has held that Sinorgchem is not operating under market economy conditions in terms of para 8 of Annexure-1 to the Rules, it has rightly concluded that the cost and price of the goods produced and sold by Sinorgchem does not represent fair market value. Such being the case, it is evident that the price at which Sinorgchem has sold 4ADPA to Petrochemicals does not reasonably reflect the costs associated with its production and sale and export price of 4ADPA requires adjustment on account of benefits of non-market economy being shared by Sinorgchem with Kumho Petrochemicals. As the export prices of 4ADPA of Sinorgchem did not reflect their true value, their prices from China to other exporters in India, were also not reliable for fixation of normal value.

6. It was submitted that Para 1 of Annexure 1 is to be construed in the context of the words "normal" and "ordinary" used in Section 9A (1) of the Act. The elements of cost cannot be based on the records kept by the exporter, unless they reasonably reflect the cost associated with production and sale of the product under consideration. This is a condition precedent for determination of costs based on the records of the exporter. In this context, they referred to the WTO Panel Report in the case of China Anti-Dumping and Countervailing Duty measures on Broiler products from the United States [WT/DS427/R] wherein it was held that although Article

2.2.1.1 sets up a presumption that the books and records of the respondent shall normally be used to calculate the cost of production for constructing normal value, the investigating authority retains the right to decline to use such books if it determines that they are either (i) inconsistent with GAAP or, (ii) do not reasonably reflect the costs associated with the production and sale of the product under consideration. They also relied on the decisions of the Apex Court in the case of ***Haldor Topsoe [2000 (120) E.L.T. 11 (S.C.)]*** and ***Reliance Industries [2006 (202) E.L.T. 23 (S.C.)]***, for the proposition that the exports were country specific and not exporter specific. They also referred to the WTO Panel Report in the cases of:-

- i. US - Lumber V [WT/DS264/R (Para 7.237)]***
- ii. US - DRAMS [WT/DS99/R (Para 6.66)]***
- iii. Egypt - Steel Rebar [WT/DS211/R (Para 7.393)]***

7. They relied on the judgment of the General Court (European Union) in the matter of ***Acron OAO and Anr Vs. Council of the European Union*** relating to Ammonium Nitrate (T-235/08) decided on 07.02.2013, wherein it was held that when the prices of raw materials are regulated in such a way that they are artificially low on the domestic market, it may be presumed that the cost of producing the product concerned is affected by a distortion. The General Court

considered that under such circumstances, the Union institutions are entitled to conclude that cost of one of the items in the records cannot be regarded as reasonable and that, consequently, the same can be adjusted. They also referred to EU Regulations as under:-

- i. Council of the European Regulation (EU) No.1194/2013 in the matter of Biodiesel from Argentina and Indonesia followed the judgement of General Court and constructed the cost of production of raw material on the basis of international price.
- ii. Council Regulation (EEC) No.3836/91 relating to dihydrostretomycin from China, the Commission adjusted the raw material price on the basis of international price due to distortion.
- iii. Council Regulation (EC) No.237/2008 relating to imports of Ammonium Nitrate originating from Ukraine, the Commission adjusted the price of gas from Russia on the basis of international price due to distortion.
- iv. Council Regulation (EEC) No.2818/91 relating to provisional anti-dumping duty on imports of cotton yarn originating in Brazil, the Commission adjusted the raw material price on the basis of international price due to distortion.

8. On the aspect of non-disclosure of the international price of 4ADPA, the domestic industry pointed out that the international price of US \$ 3.09 had been disclosed to the parties by their letter dated 06.02.2008, which had not been rebutted by the exporter.

9. In respect of the appeal filed by domestic industry, it was argued that the import price of 6PPD into Korea may be considered for determination of normal value. However, since the notification under challenge had already expired, they did not press this point, at this stage. It was further submitted that adequate disclosure had not been made to them, on the methodology adopted by the Authority for computation of the cost of production of the exporter, with special emphasis on the interest cost, steam cost, SGA expenses, captive inputs, etc. It was submitted that interest income not relating to the product under consideration, cannot be set off against interest expense relating to the product, as has been claimed by Kumho Petrochemicals in a number of cases. They also submitted that negative input duty drawback adjustment had been given on the export price of 6PPD, even though the duty on 4ADPA had not been considered in the cost of production, in terms of Para 62 of the Findings. They requested that the methodology adopted for fixation of the aforesaid costs and export price may be disclosed to them so that they could offer

their comments thereon. They requested for enhancement of duties on the Korean exporter.

Arguments on behalf of the respondent Designated Authority

10. The Id. counsel for the Designated Authority supporting the reasoning contained in the final finding and the validity of the impugned notification contended that since 4ADPA used in production of 6PPD was solely sourced from a non-market economy company, the use of actual purchase price of Kumho Petrochemical for 4ADPA would not reasonably reflect the cost associated with production of 6PPD. The Authority had correctly revised the cost of sales of 6PPD. On the aspect of inadequate disclosure, it was argued that the international market price was given in Paragraph 58 of the Final Findings as USD 3.09 per Kg, as also in the letters of domestic industry, which were available in the public file. It was also argued that the methodology adopted for fixation of normal value and export price had been appropriately given in the disclosure statement.

Arguments on behalf of Revenue

11. Ld. Departmental Representative for Revenue supported the notification on the ground that it was based on valid legal considerations. He referred to the Panel Reports on the point, that where the accounts do not appropriately reflect the

intrinsic value of an input, the Authority was justified in adoption of international price.

Analysis

12. In the context of the aforesaid arguments, the following issues arise for consideration:-

- i. Whether the Authority was right in constructing the cost of production of 6PPD, disregarding the cost of 4ADPA.
- ii. Whether due process has been following by the Designated Authority, with regard to disclosure of relevant information to the affected parties.

13. As regards the first issue, we find that Kumho Petrochemicals is sourcing 4ADPA exclusively from Sinorgchem China for its manufacturing operations in Korea. Sinorgchem is also a producer and exporter of 6PPD, and in this context participated in the investigation. The Authority in Paragraph 38 of the Findings has held as under:-

"Authority notes that Shandong Sinorgchem Co. Ltd., emerged in August 1998 during the property right reform of state owned enterprises. As per business licence, the company was in operation since 14th May, 1999. The company was set up by means of promotion and was established by Heze Import & Export Co.; Shandong, Shandong Caoxian Sinorgchem Chemical Factory, Cookian Kemic Co; Shandong, Caoxian, He Rubber Additive Agent Co; Shandong and Caoxian He Chang

Rubber Additive Agent Co; Shandong. From the information available on record, it is noted that both Shandong Heze Area Import and Export Company and Shandong Cao county Sinorgchem Five Chemical Plant were state owned enterprises having majority shares with these state owned enterprises. After establishment, the shares of the company have been transferred several times. In Oct 2005, Sinorgchem headquarter was established in Shanghai. In Feb., 2006 Sinorgchem Group was established in Shanghai. On June 8, 2006 the first stage of *** ton 4-ADPA was put into operation and production capacity reached *** tons per annum. Authority notes that prior to capacity expansion on June 8, 2006 the capacity of *** tons 4-ADPA per annum existed. Further, as per article of association of both of Sinorgchem Group Co. As well as Sinorgchem Co. Shanghai, it is noted that both these companies shall accept the supervision of Government and the public. During spot verification by the investigating team it came to the fore that Examination of the status of the company and the process of its transformation from a State-owned enterprise to private ownership reveals that the state owned assets of over *** Million RMB were transferred for a nominal price of *** Million RMB. The verification of records conclusively proved that the company is operating under a non-market economy regime. A detailed verification report to this effect has already been supplied to the producer / exporter concerned as well as their legal representatives in India. The Authority therefore concludes that the responding exporter is operating under non-market economy conditions."

14. There is no challenge to the finding that Sinorgchem is not operating under market economy conditions. The decisions of non-market economy firms regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are not made in response to market signals reflecting demand and supply and are often also not free from state interference. The Authority has found that the transformation of Sinorgchem from a state owned concern to a private owned concern was made at a nominal price. The cost of production of both 4ADPA and 6PPD was therefore, affected by non-market considerations. In such a scenario, the Authority rightly rejected the export price of Sinorgchem for 4ADPA as not reliable. The Act and the Rules, envisage determination of a normal value, which reflects the true cost of production.

15. As per paragraph 1 of Annexure 1 to the Anti-Dumping Rules, the elements of costs referred to in the context of normal value shall normally be determined on the basis of records kept by the producer or exporter under investigation provided such records are in accordance with the generally accepted accounting principles (GAAP) of the exporting country, and such records reasonably reflect the cost associated with production and sale of the article under consideration. Thus, what is contemplated in Paragraph 1 is the records prepared on the basis of market economy

conditions because only then they will reasonably reflect the cost associated with production and sale of the goods. This is clear from the scheme of Annexure 1, which applies paragraphs 1 to 6 to firms operating under market economy conditions responsive to market signals and paragraphs 7 and 8 to firms operating under non-market economy conditions.

16. The element of cost referred to in the context of normal value can therefore not be determined based on the records kept by the producer in the exporting country, even if they are kept in accordance with GAAP of the country, because such records would not correctly reflect the cost associated with the production of the article under consideration, in which the raw material produced within the non-market economy country is used even if its actual purchase price is reflected in the cost of the article, unless the distortion caused due to non-market economy conditions is corrected. This position is clearly elucidated in the WTO Panel Report in the case of **Broiler** (*supra*), a relevant part of which is reproduced below:-

"7.164. In sum, the Panel is of the view that although Article 2.2.1.1 sets up a presumption that the books and records of the respondent shall normally be used to calculate the cost of production for constructing normal value, the investigating authority retains the right to decline the use such books if it determines that they are either (i) inconsistent with GAAP or, (ii) do not reasonably reflect the costs associated with the production and sale of the product under consideration.

However, when making such a determination to derogate from the norm, the investigating authority must set forth its reasons for doing so."

17. The WTO Panel Report in Egypt - Steel Rebar [WT/DS211/R (Para 7.393)] the Panel noted that both Articles 2.2.1.1 and 2.2.2 "emphasize two elements, first, that cost of production is to be calculated based on the actual books and records maintained by the company in question so long as these are in keeping with generally accepted accounting principles but that second, the costs to be included are those that reasonably reflect the costs associated with the production and sale of the product under consideration." It is clear that both the requirements must be independently met.

18. In the judgement of the General Court (European Union) in the matter of **Acron OAO and Anr Vs Council of the European Union relating to Ammonium Nitrate (T-235/08)** decided on 7 February 2013, it has been held as under:-

"Since the price of gas in Russia was regulated, it may indeed be presumed that the cost of producing the product concerned was affected by a distortion of the domestic Russian market regarding the price of gas, as that price was not the result of market forces.

45. *In addition, the interpretation of the first sentence of Article 2(5) of the basic regulation put forward by the appellants, namely that the costs of production are*

calculated solely on the basis of the records of the party under consideration, would be tantamount in factg to precluding recourse to the constructed normal value in particular where the costs of production do not result from the ordinary course of trade, even though such recourse is expressly provided for in Article 2(3) of that regulation.

46. The institutions were therefore fully entitled to conclude that one of the items in the applicants' records could not be regarded as reasonable and that, consequently, that item had to be adjusted by having recourse to other sources from markets which the institutions regarded as more representative and, consequently, the price of gas had to be adjusted."

19. In dumping investigations, the Authority routinely requests both price and cost information in order to check whether domestic sales are made below cost. In determining normal value, sales of the like product in the domestic market of the exporting country at prices below per unit (fixed and variable) costs of production plus SGA costs will be treated as not being in ordinary course of trade by reason of price. In order to ascertain the comparable price for the like article when meant for consumption in ordinary course of trade in the exporting country under Section 9A (1) (c) (i) *ibid*, the sales reflected in the accounts / record for the relevant period at the price shown therein will normally be accepted when the record reasonably reflects the cost associated with the production and sale of such article. However, when a major input is imported

from a non-market economy country, the sale price reflected in the record will have to be scrutinized to detect and correct the distortion resulting from the non-market economy price of the input used, the cost of which is required to be worked out in order to correct the distorted cost of production of the article. The Authority is justified in rejecting the domestic sales price shown as the record when the input in question was produced within a non-market economy country, because the price for such input would be distorted, as they do not reflect the normal market economy purchase price. The prices or costs in non-market economies are not accepted as an appropriate basis for the calculation of normal value on the ground that prices and costs are controlled and regulated by the government and therefore not subject to market forces. Export price of 4ADPA from China to India, would also suffer from the same distortions. Thus, in our view, the international price, as evidenced by the import data for 4ADPA from a market economy country to India, is a fair basis for ascertaining the actual value of 4ADPA. The Apex Court in the case of ***Reliance Industries [2006 (202) ELT 23 (SC)]***, held that the normal value is country specific not exporter specific, and hence the accounts of the exporter are to be considered only, where they reflect the normal or ordinary cost of inputs. The Apex Court in para 31 of the judgement observed:-

"31. In the present case, the DA has recorded a finding that the normal value is exporter specific. In our opinion this is contrary to the Supreme Court judgement in *Designated Authority (Anti-dumping Directorate v. Haldor Topsoe A/S., 2000 (6) SCC 626*. In page 635 of the said judgment, this Court observed:

"With respect, we are unable to accept this finding of the Tribunal. From a careful reading of section 9A of the Tariff Act and Rule 6 of the Rules, it is clear that the statute has nowhere put such a restriction on the investigating authority. On the contrary, a perusal of the said provisions clearly shows that the "normal value" will have to be determined with reference to comparable price, the words "comparable price" in the context can only be with reference to the price of similar articles sold under similar circumstances irrespective of the manufacturer. By holding anti-dumping duty to be export-specific, the Tribunal could not have restricted the scope of the investigation only to materials to be produced by a party against whom an investigation is being conducted. Such an interpretation of the statute is wholly contrary to the very scheme of the statute."

In our opinion, both normal value and NIP are not exporter or domestic industry specific respectively but exporting country specific and importing country specific (India)."

Findings and Order

20. In the light of the foregoing, we are of the view that the Authority rightly rejected the price of 4ADPA from Sinorgchem, and opted for construction of normal value, based on the

international price of 4ADPA. However, having rightly rejected the 4ADPA price from China and opting for construction of normal value based on the international price of 4ADPA, it was incumbent on the Authority to make adequate disclosure, and call for information / comments from the interested parties as regards evidence of international price. We find that the domestic industry had brought on record evidence of the import prices of 4ADPA from Germany to India. But the Authority before recording the Final Findings, did not give opportunity to the other interested parties, to comment on acceptability / appropriateness of such evidence. To this extent, the Authority has not observed due process and violated the principles of natural justice and adversely affected the rights of the Korean exporter. We also find merit in the submission of domestic industry, that the methodology followed for fixation of export price, normal value, and dumping margin has not been given in sufficient detail, to enable them to offer meaningful comments. The Apex Court in the case of Automotive Tyre Manufacturers Association [2012 (263) 481 (SC)] in the context of anti-dumping case has held as under:-

"58. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is

made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. [See. : Union of India v. Col. J.N. Sinha & Anr. (1970) 2 SCC 458].

59. In the light of the aforementioned legal position and the elaborate procedure prescribed in Rule 6 of 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said Rules."

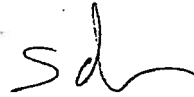
21. We, therefore, direct the Designated Authority to make disclosure of the international price of 4ADPA adopted by the Authority as well as the methodology used for fixation of normal value, export price and dumping margin. The Designated Authority shall grant post-decisional hearing to the

parties and re-determine for 6PPD the export price, normal value, and the dumping margin in the light of the observations made above, in so far as they relate to Kumho Petrochemicals. The respondent-domestic industry and other interested parties, if any, shall also be allowed to participate in such post-decisional hearing. Any modifications thus made in the Final Findings would be considered by the Government for the purpose of amending the impugned anti-dumping notification. This process shall be completed expeditiously, preferably within 6 months from the date of this order. *Status quo* shall be maintained in the meanwhile.

(Pronounced in Open Court on 26. 12. 2014)



(Justice G. Raghuram)
President



(Archanā Wadhwa)
Member (Judicial)



(R.K. Singh)
Member (Technical)

genuine & Certified True Copy

SSK

Registrar
Central Board of Secondary Education
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