

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 401/2015**

Judgment reserved on: 05.03.2015

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Judgment delivered on: 09.03.2015

BHARAT SOLVENT & CHEMICAL CORPORATION ...Petitioner

versus

UNION OF INDIA & OTHERS

...Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Balbir Singh with Mr Mahesh B. Chhibber and
Mr Angad Sandhu

For the Respondents : Mr Sandeep Sethi, Sr Advocate with Mr Neeraj Jain
and Mr Sarafraz Ahmad

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. In this writ petition, the petitioner seeks, *inter alia*, quashing of the Final Findings of the Designated Authority notified through the Notification dated 11.12.2014 issued under F.No.14/26/2012-DGAD by the Directorate General of Anti Dumping & Allied Duties, Department of Commerce, Ministry of Commerce & Industry, Government of India. The investigation was conducted under the provisions of the Customs Tariff Act, 1975 in respect of the alleged dumping of Pentaerythritol [hereinafter referred to as 'Penta'] originating in or exported from Russia. The Designated Authority [hereinafter referred to as 'the DA'] concluded in his said Final Findings that Penta had been exported to India from Russia below

its associated normal value resulting in dumping of the product and that, as a consequence, the domestic industry had suffered material injury in respect of the said goods.

2. The DA recommended that definitive anti-dumping duty as per the amounts specified in the table below be imposed from the date of the Notification to be issued by the Central Government on all imports of Penta originating in or exported from Russia:

Duty Table

S. No	Heading	Description of goods	Specification	Country of origin	Country of export	Producer	Exporter	Duty Amount	Unit of measurement	Currency
1	2905 42	Pentaerythritol	Any grade	Russia	Russia	Any	Any	474	MT	US\$
2	2905 42	Pentaerythritol	Any grade	Russia	Any	Any	Any	474	MT	US\$
3	2905 42	Pentaerythritol	Any grade	Any	Russia	Any	Any	474	MT	US\$

Point in issue

3. On 13.02.2015 when this matter came up for hearing, we had noted that the only point urged on the part of the petitioner was that the petitioner, being an interested party, was not given an opportunity of oral hearing prior to the issuance of the final findings by the designated authority. The contention on the part of the Central Government as also on the part of the Domestic Industry was that the petitioner did not fall within the definition of "interested party" as defined in Rule 2(c) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 [hereinafter referred to as 'the said Rules']. It was contended by Mr Sandeep Sethi, the learned senior counsel appearing on behalf of the Domestic Industry,

that the definition of 'interested party' is specific to the article which is subject to investigation for being dumped in India which necessarily must have a connection with (a) the period in question, (b) the Article in question and (c) the country of Export or Origin of the said article. He had submitted that the investigation was in respect of Penta-Erythritol, which was being exported from Russia and dumped into India. The period in question was 01.01.2012 to 31.12.2012. It was contended that the petitioner did not have any imports from Russia during this period and, therefore, cannot be regarded as an 'interested party'.

4. The learned counsel for the Central Government had also contended that while it is admitted that the petitioner was not granted an oral hearing, the submissions made by the petitioner in writing before the designated authority had been considered by the DA while issuing the final findings.

5. However, the learned counsel for the petitioner had submitted that the definition of 'interested party' given in Rule 2(c) of the said Rules is an inclusive definition and is not restricted to the entities mentioned therein and that the petitioner fell within the said definition.

Background Facts

6. Respondent No.3, claiming to be the sole producer of Penta in India, filed an application under the said Act and said Rules alleging dumping of Penta originating in or exported from Russia and sought imposition of anti-dumping duty on Penta. On 21.06.2013, the DA issued an Initiation Notification. As per

the said initiation notification, the DA found sufficient prima facie evidence of dumping of Penta originating in or exported from Russia and injury to the domestic industry and a causal link between dumping and injury and thereby initiated an investigation into the alleged dumping, and consequent injury to the domestic industry, in terms of Rule 5 of the said Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry. The period of investigation was specified as 01.01.2012 to 31.12.2012 (12 months). The injury investigation period was, however, specified to cover the periods April 2009 – March 2010, April 2010 – March 2011, April 2011 – March 2012 and the period of investigation. The Initiation Notification invited submissions from “interested parties” in the following manner:-

“SUBMISSION OF INFORMATION”

13. The exporters in the subject country, Government through the Embassy, importers in India known to be concerned with this investigation and the domestic industry are being addressed separately to submit relevant information in the form and manner prescribed and to make their views known to the Designated Authority at the following address:

**The Designated Authority
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties (DGAD)
Room No. 240, Udyog Bhavan,
New Delhi-110011**

Any other interested party may also make its submissions, relevant to the investigation, within the time limit set out below.

TIME LIMIT

14. Any information relating to the present investigation should be sent in writing so as to reach the Authority at the address mentioned above not later than 40 (forty) days from the date of publication of this notification. The known exporters and importers, who are being addressed separately, are however required to submit the information within forty days from the date of the letter addressed to them separately. If no information is received within the prescribed time limit or the submitted information is incomplete, the Designated Authority may record its findings on the basis of the facts available on record in accordance with the Rules. It may be noted that no request, whatsoever, shall be entertained for extension in the prescribed time limit.”

7. On 31.07.2013 the petitioner submitted its response to the Initiation Notification to the effect that no case of imposition of anti-dumping duty was made out. It was, *inter alia*, submitted that Penta is an essential ingredient in the paint and resins industry and that the industrial requirement in India was approximately 22000 MT per annum whereas the respondent no.3's production capacity was only 6000 MT per annum. The petitioner also sought an opportunity of personal hearing before the DA made any recommendation.

8. On 14.08.2013 the respondent no.2 issued a letter to “known importers / users of the subject goods in India” informing them that they may be “interested in participating in the investigation” and, as such, providing them with an opportunity to defend their interest and in assisting the DA to arrive at a fair decision. They were requested to file their responses in the enclosed questionnaire. Importantly, they were also directed to send a written request in advance if they desired a hearing.

9. On 19.09.2013, the petitioner submitted its detailed response to the questionnaire in the prescribed format alongwith evidence to support its case that anti-dumping duty ought not to be imposed.

10. On 08.09.2014, a notice of oral hearing was issued to interested parties for a hearing scheduled to be held on 09.09.2014. The petitioner alleges that it did not receive any such notice and that it came to learn of the hearing of 09.09.2014 only from the Disclosure Statement dated 21.10.2014. It is admitted by respondent no.2 that the notice dated 08.09.2014 was not issued to the petitioner. But, it is contended by the said respondent as also by respondent no.3 that it was not at all necessary to issue such a notice to the petitioner as it was not an “interested party”. It was also contended that the non-grant of a hearing to the petitioner did not, in any event, cause any prejudice to the petitioner as all of its submissions were considered by the DA in his final findings.

11. As pointed out above, the petitioner came to know that a hearing was granted, though not to the petitioner, on 09.09.2014 from the disclosure statement dated 21.10.2014. Through the Disclosure Statement, respondent no.2 invited replies from interested parties in response to it. The replies/ comments were required to be sent by 27.10.2014. The petitioner submitted its response to the Disclosure Statement on 27.10.2014. The petitioner, inter alia, complained about the fact that despite being “acknowledged” as an interested party, it was not given any notice of the oral hearing and was therefore not given an opportunity of being heard which was in violation of the legal provisions and rules of natural justice.

12. On 11.12.2014, the impugned Final Findings were notified. The DA recommended that definitive anti-dumping duty as per the amounts specified in the table set out therein (and, extracted at the beginning of this judgment) be imposed from the date of the Notification to be issued by the Central Government on all imports of Penta originating in or exported from Russia. The petitioner is aggrieved by this.

Questions

13. The following questions require resolution in this case:-

1. Does the petitioner fall within the expression “interested party” as defined in Rule 2(c) of the said Rules?
2. If yes, is it mandatory for the DA to give an opportunity of oral hearing to an interested party?
3. If both the above questions are answered in the affirmative, what would be the effect of non-grant of an opportunity of hearing to the petitioner?

We must note that the above questions arise on the admitted position that the petitioner was not given any opportunity of oral hearing by the DA.

Question No.1

Submissions on behalf of the petitioner

14. Mr Balbir Singh, the learned counsel for the petitioner submitted that in terms of Rule 2(c) of the said Rules, the expression “interested party” includes an exporter or a foreign producer or “the importer” of an article subject to investigation. It was submitted that in the present case also, the Petitioner was an importer of an article subject to investigation. Furthermore, the DA in his Final Findings dated 11.12.2014 has treated the Petitioner as an “interested party”.

According to Mr Balbir Singh, this is evident from paragraph 68 of the Final Findings, where the DA has discussed the “Post Disclosure Statement / submissions by the Interested Parties”. The Response and Objections filed by the Petitioner have been mentioned by the DA under this head in Para D of the said paragraph 68. The contentions of the Petitioner have further been noted in sub- paras (xviii), (xx) and (xxi) of paragraph 70. It was submitted that this clearly demonstrates the fact that throughout the investigation, the DA treated and considered the petitioner to be an “interested party”. The learned counsel submitted that even if a party is not an importer of the subject goods “during the period of investigation”, such party can still be treated as an “interested party” in terms of Rule 2(c) of the said Rules. For persuasive value, Mr Balbir Singh referred to the following decisions of the Central Excise and Service Tax Appellate Tribunal (CESTAT):-

(a) **Lubrizol (India) Pvt. Ltd. v. Designated Authority: 2005 (187) ELT 402 (Tri.-Del)** (para 13.3);

(b) **Fragrances and Flavours of India v. Designated Authority: 2011 (270) ELT 733 (Tri.-Del.)** (para 11).

15. In *Lubrizol (supra)*, CESTAT was, inter alia, considering the preliminary objection raised by the respondent therein that the appeal under section 9C of the said Act was not maintainable as the appellant therein was not a “person aggrieved” because during the period of investigation it had no imports and that it was not even an “interested party” by virtue of any post-investigation imports. On this issue, CESTAT had this to say:-

“13.3 The expression “interested party” has an inclusive definition in Rule 2(c) and includes under sub-clause (i), inter alia, the importer of an article subject to investigation for being dumped in India. The

preliminary objection is based on this definition, which takes into consideration the importer who had imported the article which is investigated. However, since the definition is inclusive, it cannot be used in the context of Section 9C of the said Act to take away the right to appeal of an importer, who participated in the proceedings and opposed the imposition of anti-dumping duty. The Scheme of the said Act indicates that all importers would be subjected to anti-dumping duty, even if did not import during the period of investigation. The period of investigation is chosen by the Designated Authority with a view to detect whether the article identified was being dumped in the Indian market and the injury caused thereby to the domestic industry. The transactions during the period of investigation have evidentiary value for showing the existence of dumping, but when duty was imposed on the dumped imports, it obviously will apply to the subsequent imports to prevent injurious dumping and not on the imports that have taken place during the period of investigation. Therefore, an importer, who, like the appellant, Lubrizol (India) Private Ltd, had in fact participated in the proceedings and had shown past imports in response to the questionnaire and was authorised to oppose on behalf of the importers [the appellant, Castrol (India) Private Ltd.] who had signed letters of authorisation in its favour, would, in our view, be an interested party who is aggrieved by the imposition of the anti-dumping duty on all the exporters from the subject countries that would directly affect their duty liability on the imports from such countries....”

(underlining added)

Submissions on behalf of the Respondents

16. On the other hand, Mr Sandeep Sethi, the learned counsel for Respondent No.3, submitted that interested parties have been defined under Rule 2(c) as an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such article and therefore includes only importers of the product under consideration in

India or their trade association in India. A company which is not an importer of the product under consideration from the subject country during the period of investigation fixed by the DA cannot claim the status of an “interested party”. It was submitted that the proposition that Rule 2(c) refers to the product under consideration from the subject country gets established by the use of the word "article subject to investigation for being dumped in India". It was also submitted that Section 9A(1) refers to a specific article and a specific country of export or origin. And, the margin of dumping which is to be ascertained under section 9A(6) is also with reference to a specific article from a specific country of export or origin and in respect of the relevant period.

17. Mr Sethi further submitted that Rule 22 of the said Rules entitles an exporter, who has not exported the product during the period of investigation, for a new shipper review in respect of an individual margin of dumping. He also emphasized that Annexure- I (Principles governing the determination of normal value, export price and margin of dumping) and Annexure III (Principles for determination of non-injurious price) to the said Rules have reference to the period of investigation. It was thus submitted that import of an article by an entity from other countries not under investigation does not entitle such party to acquire the rights of an interested party defined under Rule 2(c). It was contended that the DA considers data for the injury period (3-4 years) and, therefore, if there were no imports by a company over the entire injury period, the information of the company is not relevant for determination of injury to the domestic industry.

18. It was also submitted that the questionnaire response and all the information filed by the petitioner made it evident that the petitioner had not imported the product under consideration from subject country during the period of investigation. Thus, according to Mr Sethi, the petitioner had failed to establish itself as an “interested party”.

19. Mr Sethi also referred to the following decisions of CESTAT in an attempt to counter the reliance placed by the petitioner on certain other decisions of CESTAT:-

- (1) **Linear Technologies India Pvt. Ltd v. Designated Authority:2005 (187) E.L.T. 307 (Tri. - Del.) (para 9);**
- (2) **Geeta Vinay Impex v. Designated Authority: 2006 (193) E.L.T. 558 (Tri. -Del.) (para 3 and 4).**

20. It was contended that the petitioner’s reference to the decision in **Lubrizol** (*supra*) was misplaced for the reason that in the stated decision, the status of the party as an “interested party” was not in dispute and the only issue was whether the party was entitled to file an appeal before CESTAT. The Tribunal held that the party was entitled to file an appeal as a “party aggrieved” by the order of the DA. It was submitted that in the present case, however, the writ petitioner was not even an “interested party” and, therefore, was not entitled to participate in the investigation being conducted by the DA and did not have a right to demand a hearing. Furthermore, since the petitioner was not an interested party, the writ petitioner had rightly not been granted an opportunity for hearing by the DA. In any event, since the petitioner had raised some concerns opposing the request of the domestic industry for imposition of anti-dumping duty, the DA considered and appropriately dealt with the same in the Final Findings. Thus, even though the petitioner was not an interested party, the DA, in fact, has gone ahead and has

addressed all the contentions of the petitioner. It was, therefore, submitted that the writ petition be dismissed.

21. The learned counsel for respondent nos. 1 & 2 endorsed these submissions of Mr Sethi and reiterated that the petitioner was not an “interested party” within the meaning of Rule 2(c) of the said Rules and was therefore not entitled to an oral hearing. It was also contended that, in any event, all the responses and comments of the petitioner were considered by the DA before he arrived at his concluding recommendations in the Final Findings.

Submissions in rejoinder on behalf of the petitioner

22. In rejoinder, Mr Balbir Singh submitted that the decisions in ***Geeta Vinay Impex (supra)*** and ***Linear Technologies (India) Pvt. Ltd (supra)*** are not applicable to the facts of the present case inasmuch as the appellants therein were not importing the goods either before the investigation or during the period of investigation and they had also not participated in the proceedings before the DA. Whereas, in the present case, the Petitioner has actively participated in the Anti-dumping investigation. It has submitted responses, comments and answered the detailed questionnaire.

23. It was also submitted that the submissions made by the Respondents so as to suggest that, as during the period of investigation, the Petitioner had no imports from Russia and, therefore, they had not qualified as an “interested party”, is not correct in law, in as much as Rule 2(c) of the said Rules does not prescribe any such condition. Although, the so-called “period of investigation” has neither been

defined in the said Act or the said Rules, the same has only been adopted as a matter of practice. It is further submitted that in the past also, the DA, while investigating cases has not only considered the data for the period of investigation but also data for the period post the period of investigation. One instance cited by the learned counsel for the petitioner was the Final Finding dated 24.12.2009 in respect of imports of Carbon Black used in rubber applications originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand. A specific reference was made to paragraph 134 of the said final findings wherein it was stated as under:-

“As regards consideration of post POI data, the Authority observes that use of post POI data for the assessment of threat of material injury to the domestic industry is fully consistent with the AD Rules.”

It was submitted that, therefore, in the present case also, since the petitioner has imported in the period Post POI, it was certainly an “interested party” and an opportunity of personal hearing should have been provided to it.

24. Mr Balbir Singh further submitted that the DA has proposed a standard anti-dumping duty for all producers/exporters based in Russia, which is not exporter specific and, therefore, the plea taken by the Respondents that the anti-dumping duty is producer/ exporter specific is not tenable in the facts of the present case. With regard to Annexures I and III, it was submitted that these annexures do not specifically provide for anti-dumping investigation to be period specific and producer/exporter specific. It was further submitted that the proposition with respect to “New Shipper’s Review” as put forth by the Respondents would not apply to the present case inasmuch as the provisions

relating to “New Shipper Review” are applicable only to the exporters in the exporting country and not to the importers, such as the petitioner, based in India.

Discussion

25. At this juncture, it would be appropriate to set out the definition of “interested party” as appearing in Rule 2(c) of the said Rules:-

“2. Definitions.— In these rules, unless the context otherwise requires, -

xxxx xxxx xxxx xxxx xxxx

(c) “interested party” includes -

(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;

(ii) the government of the exporting country; and

(iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;

xxxx xxxx xxxx xxxx xxxx”

It is apparent that the definition is an “includes” definition and, therefore, it cannot be regarded as having a restrictive meaning. Such a definition not only refers to the normal, natural and ordinary meaning of the expression sought to be defined but also to other things which may not have otherwise fallen within the expression. In **CCT v. T.T.K. Health Care Ltd: (2007) 11 SCC 796** (at page 799) the Supreme Court observed as under:-

“13. In *Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union* [(2007) 4 SCC 685 : (2007) 2 SCC (L&S) 82 : (2007) 5 Scale 57] this Court has held that when the word “includes” is used in the definition, as is the case under Section 2(g) of the 1994 Act, the legislature does not intend to restrict the definition; it makes the definition enumerative and not exhaustive, that is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within the term certain matters which in its ordinary meaning it may or may not comprise. Applying the above test to the term “cooked food” in Section 2(g) of the 1994 Act we find that the said term uses the word “includes” in the definition. The said term “cooked food” makes the definition enumerative when it includes within the said term sweets, batasha, mishri, shrikhand, doodhpak, tea and coffee. When it enumerates items like sweets, mishri, batasha, doodhpak, tea and coffee the enumerated items help us to probe into the legislative intent. The legislative intent in the present case under Section 2(g) is to include consumables. “Fryums” in the present case at the relevant time were not directly consumable. They were undercooked items. They were semi-cooked items. They required further process of frying and addition of preservatives to make them consumables even after the specified time. But for the preservatives, the items would have become stale.”

(underlining added)

26. In ***Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union***: (2007) 4 SCC 685 (at page 695) the Supreme Court pointed out the difference between a definition which uses the expression “means” and a definition which uses the word “includes” in the following manner:-

“23. It is trite to say that when in the definition clause given in any statute the word “means” is used, what follows is intended to speak exhaustively. When the word “means” is used in the definition, to borrow the words of Lord Esher, M.R. in *Gough v. Gough* [(1891) 2 QB 665 : 60 LJQB 726 : 65 LT 110] it is a “hard-and-fast” definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see *P. Kasilingam v. P.S.G. College of Technology* [1995 Supp (2) SCC 348 : AIR 1995 SC 1395] .) On the

other hand, when the word “includes” is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise....”

(underlining added)

27. The same view has been expressed by the Supreme Court in **Ramanlal Bhailal Patel v. State of Gujarat**: (2008) 5 SCC 449 (at page 461) as follows:

“23. The word “person” is defined in the Act, but it is an inclusive definition, that is, “a person includes a joint family”. Where the definition is an inclusive definition, the use of the word “includes” indicates an intention to enlarge the meaning of the word used in the statute. Consequently, the word must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Thus, where a definition uses the word “includes”, as contrasted from “means”, the word defined not only bears its ordinary, popular and natural meaning, but in addition also bears the extended statutory meaning (see *S.K. Gupta v. K.P. Jain* [(1979) 3 SCC 54 : AIR 1979 SC 734] following *Dilworth v. Commr. of Stamps* [1899 AC 99 : (1895-99) All ER Rep Ext 1576 : 79 LT 473] and *Jobbins v. Middlesex Country Council* [(1949) 1 KB 142 : (1948) 2 All ER 610 (CA)]).”

(underlining added)

28. Viewed in this light, it is clear that the definition of “interested party”, being an inclusive one, cannot be regarded as an exhaustive or as a “hard and fast” definition. The expression “interested party” as defined would therefore refer to its natural, ordinary and popular meaning as also to the particular entities which are stated to be included, namely, an exporter or a foreign producer or the importer

of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article; the government of the exporting country; and a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India. In its natural and ordinary sense “interested party” would have reference to a party who is interested in the investigation and the ultimate outcome of it. He may be in support of the imposition of the anti-dumping duty or he may be opposed to it. His interest, however, must be real and proximate and not just a casual or academic interest. As long as the interest of the party is of the former kind, he would fall within the expression “interested party” and, it does not matter even if it does not fall within the categories of persons/parties specified in the “includes” part of the definition. The contention of the respondents that only those importers who imported Penta from Russia during the period of investigation would be covered by the expression “interested party”, cannot be accepted as that would ascribe a very restrictive meaning to the said expression when the law suggests that such a definition is not a restrictive one. The petitioner was an importer of Penta from other countries such as Sweden and Germany during the period of investigation. But, in the post POI period, the petitioner had imports of Penta from Russia. In any event, the petitioner was a prospective importer of Penta from Russia. It was therefore vitally interested in the outcome of the investigation into the complaint regarding dumping of Penta from Russia. The result of the investigation would affect the petitioner, one way or the other. In **Swaran Singh v. State of Punjab: (1994) 3 SCC 544** (at page 549) the Supreme Court held that:-

“9. The test for determining whether or not a particular person is a “party interested” within the contemplation of the proviso is, whether he is likely to be affected by the decision or the result of the proceedings.”

29. Applying this test, it is evident that the petitioner would be an “interested party”. In fact, as pointed out by Mr Balbir Singh, even the DA considered the petitioner to be an “interested party” and treated it as such in the impugned Final Findings. We are also in agreement with the views of CESTAT in the ***Lubrizol*** case with regard to the meaning to be ascribed to the expression “interested party”. The CESTAT decisions cited by Mr Sethi are clearly distinguishable as in those cases the concerned party had not participated in the investigation conducted by the DA. Therefore, the answer to question no.1 is that the petitioner falls within the expression “interested party” as defined in Rule 2(c) of the said Rules.

Question No.2

Submissions of parties

30. It was submitted by Mr Balbir Singh that the Final Findings dated 11.12.2014 have been arrived at in complete violation of principles of natural justice and the law laid down by the Supreme Court. He submitted that public hearing under Rule 6(6) of the said Rules was held on 09.09.2014 and was attended by the domestic industry alone. Apart from the fact that notice for the hearing was issued to some parties (almost all of whom were outstation parties) only on 08.09.2014, which was too short a notice, it is an admitted position that insofar as the petitioner is concerned, no notice of the hearing was given to it, even though the petitioner is an interested party and was treated as such by the DA. According to the learned counsel, the non-grant of an oral hearing to the petitioner was clearly contrary to the principles of natural justice and law laid down by the Supreme Court in the case of **Automotive Tyre Manufacturers Association v. Designated Authority & Ors: (2011) 2 SCC 258.**

31. The respondents acknowledged that Rule 6(6) of the Rules provides for an opportunity to an interested party to present information orally before the DA and that principles of natural justice also require that the DA grants hearing to the interested parties before giving his Final Findings. But, it was contended that as the petitioner was not an “interested party”, no rule or principle of natural justice had been violated by the DA not having given a hearing to the petitioner. In view of our decision on question no.1, the latter contention cannot hold good.

Discussion

32. Let us examine what the Supreme Court held in ***Automotive Tyre Manufacturers (supra)***. One of the questions examined by the Supreme Court in that case was – whether the function of the DA was administrative or quasi-judicial in character? After discussing the relevant case law and the scheme of the said Act and said Rules, the Supreme Court concluded that the DA exercises quasi-judicial functions and is bound to act judicially. It observed as under:-

“68.A cursory look at the relevant Rules would show that the DA determines the rights and obligations of the “interested parties” by applying the objective standards based on the material/ information/ evidence presented by the exporters, foreign producers and other “interested parties” by applying the procedure and principles laid down in the 1995 Rules.”

And, again–

“70. It is manifest that while determining the existence, degree and effect of the alleged dumping, the DA determines a “lis” between persons supporting the levy of duty and those opposing the said levy.”

33. The next question for consideration before the Supreme Court was whether or not the decision of the DA in that case was in breach of the principles of natural justice, resulting in vitiating the subject notification under Rule 18 of the said Rules? In this context the Supreme Court held as under:-

“80. 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 straitjacket nor is it a general rule of universal application.

81. 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* [(1970) 2 SCC 458] .)

82. In the light of the aforementioned legal position and the elaborate procedure prescribed in Rule 6 of the 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. Insofar as the instant case is concerned, though it was sought to be pleaded on behalf of the respondents that the incumbent DA had issued a common notice to the advocates for ATMA and Ningbo Nylon, for oral hearing on 9-3-2005, however, there is no document on record indicating that pursuant to ATMA's letter dated 24-1-2005, notice for oral hearing was issued to them by the incumbent DA. Moreover, the alleged opportunity of oral hearing on 9-3-2005, being in relation to the price undertaking offer by

Ningbo Nylon, cannot be likened to a public hearing contemplated under Rule 6(6) of the 1995 Rules.

83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in *Gullapalli* [AIR 1959 SC 308] , if one person hears and other decides, then personal hearing becomes an empty formality.

84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly.”

(underlining added)

34. From the above decision, it is evident that the DA functions as a quasi-judicial authority and decides a “lis” between persons supporting the levy of duty and those opposing the levy. Furthermore, the DA is bound to follow the principles of natural justice and to give an opportunity of hearing to all interested parties, in fact, “*to all the parties, who have filed objections and adduced evidence*”. The petitioner, being an interested party and at least a party who had filed objections and adduced evidence was required to be heard, particularly, when it repeatedly asked for a hearing. It is also clear from the Supreme Court decision that written arguments / submissions / comments are no substitute for an oral hearing. In the backdrop of the clear enunciation of law by the Supreme Court, it

has to be held that it is mandatory for the DA to give an opportunity of oral hearing to an interested party. Question No.2 is answered accordingly.

Question No.3 and Conclusion

35. The obvious conclusion, based upon the affirmative answers given to questions 1 & 2, is that the DA has violated the principles of natural justice in not giving an opportunity of hearing to the petitioner. And, that is fatal. Consequently, the Final Findings, having been rendered in violation of the principles of natural justice, stand vitiated and cannot be sustained. As a result, the impugned Final Findings are quashed. The writ petition is allowed to this extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

March 09, 2015
HJ