

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 01.10.2015

Judgment delivered on: 06.01.2016

+ **W.P.(C) 2310/2015 and CM Nos. 4139/2015(stay), 14336/2015(stay)& 21950/2015(stay)**

FAIRDEAL POLYCHEM LLP

... Petitioner

versus

UNION OF INDIA & ANR.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Balbir Singh with Mr Atul Gupta, Mr Bhargav Mansatta, Mr Angad Sandhu and Mr T.D. Satish

For the Respondents : Mr Vikas Mahajan with Mr Rohan Gupta and Mr S.S. Rai for the Respondent Nos.1 & 2
Mr Sandeep Sethi, Sr Advocate with Mr Rajesh Sharma for the intervenor/Domestic Industry

+ **W.P.(C) 2311/2015 and CM Nos.4141/2015(stay), 7722-7727/2015 (impleadment), 14269/2015(stay), 21951/2015(stay)**

KUMHO PETROCHEMICALS CO. LTD.

... Petitioner

versus

UNION OF INDIA & ANR.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Balbir Singh with Mr Atul Gupta, Mr Bhargav Mansatta, Mr Angad Sandhu and Mr T.D. Satish

For the Respondents : Mr Vikas Mahajan with Mr Rohan Gupta and Mr S.S. Rai for the Respondent Nos.1 & 2
Mr Sandeep Sethi, Sr Advocate with Mr Rajesh Sharma for the intervenor/Domestic Industry
Ms Namrita Raghuvanshi for the Intervenors

+ **W.P.(C) 3454/2015 and CM Nos.6167/2015(stay), 13132/2015(stay), 16058/2015(impleadment), 16836/2015(impleadment)**

CENTURY PLYBOARDS INDIA LTD

... Petitioner

versus

THE DESIGNATED AUTHORITY, DIRECTOR GENERAL OF ANTI-DUMPING & ALLIED DUTIES & ANR.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Balbir Singh with Mr Atul Gupta, Mr Bhargav Mansatta, Mr Angad Sandhu and Mr T.D. Satish

For the Respondents : Mr Vikas Mahajan with Mr Rohan Gupta and Mr S.S. Rai for the Respondent Nos.1 & 2
Mr Abhishek Goel for the respondent No. 3
Mr Rajesh Sharma for the Intervenors/Domestic Industry

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. This judgment will decide three writ petitions – WPC 2310/2015, WPC 2311/2015 and WPC 3454/2015. The first two writ petitions are concerned with the imposition of anti-dumping duty on Acrylonitrile Butadiene Rubber (NBR) imported from Korea RP. The third writ petition is concerned with the issue of anti-dumping duty on imports of Phenol.

2. In the first two writ petitions concerning NBR, the challenge, *inter alia*, is to the Office Memorandum No. 354/179/2002-TRU (Pt.V) dated

24.12.2014 issued by the respondent No. 1. There is also a prayer seeking the quashing of proceedings conducted after the end of 12 months from the date of initiation of the review initiated by notice bearing F.No. 15/29/2013 dated 31.12.2013. In the third writ petition, concerning Phenol, inter alia, quashing of the proceedings conducted after the end of 12 months from the date of initiation of the review initiated by the notice No. 15/21/2013-DGAD dated 28.10.2013 has been sought.

3. The point for consideration in these writ petitions is common. It is the case of the petitioners that by virtue of rule 23(2) 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”), a review when initiated in terms of sub-rule (1) of rule 23 has to be concluded within a period not exceeding 12 months from the date of initiation of such review. In all these writ petitions the factual position is that the reviews have not been concluded within the period of 12 months from the dates of their initiation. Consequently, the petitioners seek the quashing of the review proceedings and all steps pursuant thereto.

4. To put some dates into the picture, we shall refer to the chronology of events in WPC 2311/2015. The anti-dumping duty imposed on NBR many years back was continued from time to time and the last period of 5 years was to expire on 01.01.2014. One day prior to that, on 31.12.2013, on an application by Omnova Solutions (India) Pvt. Ltd (as part of the domestic industry), the Designated Authority initiated a sunset review investigation to review the need for continued imposition of anti-dumping duties in force in respect of NBR, originating in or exported from Korea RP and to examine whether the expiry of such duty was likely to lead to continuance or recurrence of dumping and injury to the domestic industry. On 01.12.2014, the Designated Authority, expressing his inability to issue the final findings by 31.12.2014 (ie., the date on which the period of 12 months stipulated in rule 23(2) of the said rules was to expire), requested the Central Government for grant of extension of the time by six months (upto 30.06.2015), in terms of rule 17 of the said rules, to enable the Designated Authority to complete the review investigation. By virtue of the impugned Office memorandum dated 24.12.2014, the Central Government accorded approval for extension of time by 6 months (upto 30.06.2014) for completing the anti-dumping investigation and notifying

the final findings concerning imports of NBR originating in or exported from Korea RP. On 30.06.2015, the Designated Authority gave his final findings and was of the view that the anti-dumping measure was required to be extended and recommended the imposition of anti-dumping duty as specified therein. This was followed by a Notification dated 04.09.2015 issued by the Central Government imposing anti-dumping duty on NBR as specified in the table therein.

5. We may point out at this juncture itself that the order of review dated 30.06.2015 is an appealable order under section 9C of the Customs Tariff Act, 1975 (hereinafter referred to as 'the said Act'). And, as would be obvious, the respondents took the preliminary objection that the petitioners had an alternative remedy and that, therefore, the writ petitions were not maintainable. The response of the petitioners was that the fundamental question raised in these petitions was not whether the conclusions and recommendations of the designated authority was right or wrong on merits but whether the designated authority had the jurisdiction to proceed with the review beyond the period of 12 months from the initiation of the review? In other words, the challenge, which went to the root of the matter, was to the extension of 6 months granted by the Central Government.

According to the petitioners, the review had mandatorily to be concluded within the said 12- month period and no extension of that period was permitted in law. On the other hand, the respondents contended that by virtue of rule 23(3) of the said rules, the provisions of, inter alia, rule 17 were made applicable *mutatis mutandis* in the case of a review. And, since the first proviso to rule 17(1) permitted the Central Government, in its discretion in special circumstances, to extend the period of 1 year for submission of final findings by the designated authority by a further 6 months, applying the said proviso *mutatis mutandis* to a review, the period of 12 months stipulated in rule 23(2) for a review could also, in like manner, be extended by 6 months.

6. We are not called upon to examine the order of review on merits. We are also not going into the issue as to whether “special circumstances” existed or not for the grant of the extension. We are also not examining the question as to whether the Central Government exercised its discretion in a legal and valid manner or not. We are only required to examine the issue as to whether the provision of extension of time contained in the first proviso to rule 17(1) can be pressed into service for extending the time of 12 months for concluding a review under rule 23(2) because of the *mutatis*

mutandis prescription in rule 23(3)? The plea of alternative remedy, therefore, does not come in the way of this court, in exercise of its jurisdiction under article 226 of the Constitution of India, in considering the limited jurisdictional issue mentioned above.

7. On behalf of the petitioners it was contended that the said rule 23 is based on and is completely aligned with Article 11 of the “Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994” (hereinafter referred to as ‘the said agreement’) where, according to the learned counsel for the petitioners, the period for completion of review proceedings is restricted to 12 months from the date of initiation thereof. Reliance was placed on a recent Supreme Court decision in **Commissioner of Customs, Bangalore v. G.M. Exports: Civil Appeal No. 3889 of 2006** and other connected matters decided on 23.09.2015. The said decision was also relied upon to lay stress on the purported mandatory nature of rule 23(2) because of the use of words such as “shall” and “not exceeding”. In ***G.M. Exports (supra)***, the Supreme Court held the provisions of the second proviso to rule 13 of the said rules to be mandatory in view of similar words and expressions such as “shall”, “only” and “not exceeding”. In this context, it was contended that the

power of extension of time prescribed in the first proviso to rule 17(1) cannot apply to review proceedings as rule 23(2) clearly mandates that the review “shall” be concluded within a period “not exceeding” 12 months from the date of initiation of the review.

8. It was also submitted that the ‘rule’ of *mutatis mutandis* is one of adaptation and not of adoption. Reliance was placed on the following decisions:-

1. *Ashok Service Centre v. State of Orissa*: (1983) 2 SCC 82;
2. *Janba v. Gopikabai*: (2000) 4 SCC 1;
3. *Rajasthan State Industrial Development and Investment Corporation v. Diamond & Gems Corporation Ltd.*: (2013) 5 SCC 470.

9. The argument was that rule 17 is to be read with necessary changes as specifically provided in rule 23(2) and, therefore, since no extension is provided for in rule 23(2), that part of rule 17 which permits extension of time would not apply.

10. On the part of the respondents it was argued that by virtue of the provisions of rule 23(3), rule 17 has been incorporated in rule 23 which includes rule 23(2). Thus the first proviso to rule 17(1) would clearly apply, *mutatis mutandis*, to rule 23(2). Consequently, the learned counsel for the

respondents submitted, the initial period of 12 months laid down in rule 23(2) for concluding a review can be extended by 6 months by the Central government, by reading the first proviso to rule 17(1) into rule 23(2).

11. In respect of the argument of the petitioners which was founded on Article 11 of the said Agreement, the respondents contended that Article 11.4 uses the term “normally” when it refers to the period of 12 months from the date of initiation during which the review ought to be concluded. This in itself signifies that the period can be extended beyond 12 months.

12. Mr Sandeep Sethi, senior advocate, representing the interveners (domestic industry) supported the contentions raised by the respondents. He also submitted that the decision in *G.M. Exports (supra)*, rather than supporting the case of the petitioners, set the controversy at rest in favour of the interpretation that the period of 12 months could be extended by a further period of 6 months because such an interpretation was in line with the said WTO Agreement. He also referred to some decisions of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) but, as they are not binding on us, we need not consider them.

13. It would now be appropriate to set out the relevant provisions of the said Act, the said rules and the said Agreement.

The relevant articles of the said Agreement are set out herein below: –

“Article 1

Principles

An anti-dumping measure shall be applied only under the circumstances provided for in article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement. The following provisions governing the application of Article VI of GATT 1994 insofar as action is taken under anti-dumping legislation or regulations.”

“Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

XXXXX

XXXXX

XXXXX

XXXXX

XXXXX

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after the initiation.”

“Article 11

Duration and Review of Anti-dumping Duties and Price Undertakings

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authority shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the

imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.”

Section 9A of the said act deals with anti-dumping duty on dumped articles.

Subsection (5) is relevant for our purposes and the same reads as under: –

“(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such review for a further period not exceeding one year.”

Rules 17 and 23 of the said rules, to the extent relevant, are as under:-

“RULE 17. Final findings.-(1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article and the investigation is being dumped in India and submit to the Central government its final finding-

(a) as to,-

- (i) the export price, normal value and the margin of dumping of the said article;
- (ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;
- (iii) a causal link, where applicable, between the dumped imports and injury;
- (iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:

Provided that the Central government may, in its discretion in special circumstances, extend further the aforesaid period of one year by six months:

XXXXX XXXXX XXXXX XXXXX XXXXX”

(underlining added)

“RULE 23. Review. - (1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive anti-dumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of Rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19 and 20 shall be *mutatis mutandis* applicable in the case of review.”

(underlining added)

14. While rule 17 deals with ‘final findings’ of the designated authority on the conclusion of the investigation initiated under rule 5, rule 23 is concerned with the ‘review’ of the need for the continued imposition of any anti-dumping duty. By virtue of rule 23(3), many of the provisions relatable to the initial investigation and its aftermath have been specifically made applicable *mutatis mutandis* to a review also. For example, rule 6 which specifies the ‘principles governing investigations’ would also apply *mutatis mutandis* in the case of a review. Let us take another example: Rule 8, which deals with the issue of ‘accuracy of the information’ stipulates that – “*Except in cases referred to in sub-rule (8) of rule 6, the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.*” This rule applies to an investigation but, it has also been made applicable *mutatis mutandis* to a review. Thus, when we read rule 8 in the context of a review, we shall have to read the expression “during the course of investigation” as “during the course of review”. In other words Rule 8 would also apply to a review but, with this change.

15. Not all the provisions applicable in the case of an investigation have been made applicable in the case of a review because those provisions are

not relevant in the case of a review. Rules 12 (Preliminary findings), 13 (Levy of provisional duty), 14 (Termination of investigation) and 15 (Suspension or termination of investigation on price undertaking), which apparently are not germane in the case of a review, have not been made applicable under rule 23(3) to a review. So, only those provisions pertaining to investigation, final findings and levy of duty etc., which are relevant to a case of review have been made applicable *mutatis mutandis*. Rule 17, which includes the first proviso to rule 17(1), is one such provision.

16. The learned counsel for the petitioners had laid great stress on the use of the expression – *mutatis mutandis*. A reference was made to Black’s Law Dictionary (10th Edition: Thomson Reuters) where the meaning of the said expression has been given as:

“**mutatis mutandis** (myoo-tay-tis myoo-tan-dis). [Latin] (16c) All necessary changes having been made; with necessary changes <what was said regarding the first contract applies *mutatis mutandis* to all later ones>.”

Reliance was also placed on *Ashok Service Centre (supra)*, *Janba (supra)* and *Rajasthan State Industrial Development and Investment Corporation (supra)* [hereinafter referred to as **RSIDC**] in the context of the expression

mutatis mutandis. In *Ashok Service Centre*(*supra*), the Supreme Court observed as under:

“17. Section 3(2) of the Act which makes the provisions of the principal Act *mutatis mutandis* applicable to the levy of additional tax is a part of the charging provision of the Act and it does not say that only those provisions of the principal Act which relate to assessment and collection of tax will be applicable to the proceedings under the Act. Before considering what provisions of the principal Act should be read as part of the Act, we have to understand the meaning of the expression ‘*mutatis mutandis*’. Earl Jowitt's *The Dictionary of English Law* (1959) defines ‘*mutatis mutandis*’ as ‘with the necessary changes in points of detail’. *Black's Law Dictionary* (Revised 4th Edn., 1968) defines ‘*mutatis mutandis*’ as “with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. *Housman v. Waterhouse* [191 App Div 850 : 182 NYS 249, 251] . In *Bouvier's Law Dictionary* (3rd Revision, Vol. II), the expression ‘*mutatis mutandis*’ is defined as “[T]he necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like”. Extension of an earlier Act ‘*mutatis mutandis*’ to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. Section 3(2) of the Act shows that the State legislature intended not to depart substantially from the principal Act except with regard to matters in respect of which express provision had been made in the Act. The assumption made by the High Court that the Act was an independent Act having nothing to do with the principal Act is not correct. The Act only levied some extra sales tax in addition to what had been levied by the principal Act. The nature of the taxes levied under the Act and under the principal Act was the same and the legislature expressly made the provisions of the

principal Act *mutatis mutandis* applicable to the levy under the Act. The additional sales tax was in the nature of a surcharge over and above what was due and payable by an assessee under the principal Act. The Act, though it had a long title, a short title and other usual features of every statute, could not be considered as an independent statute. It had to be read together with the principal Act to be effective. In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the principal Act wherever the Act has manifested an intention to modify the principal Act.....”

(underlining added)

17. On the strength of these observations, it was contended by the learned counsel for the petitioners that the application of, inter alia, rule 17 ‘*mutatis mutandis*’ to a case of review under rule 23 does entail the concept of adaptation, but so far only as it is necessary for the purpose and subject to the express provisions made in rule 23. It was submitted that the express provision contained in rule 23(2) of fixing an outer limit of 12 months could not be whittled away. This appears to be a formidable argument but, as pointed out in the above decision, rule 23 and sub-rule (3) thereof, in particular, does not manifest an intention to give primacy to rule 23(2) over the first proviso to rule 17(1). On the contrary, from rule 23(3), which immediately follows rule 23(2), the clear intention appears to be to make

all the provisions of, inter alia, rule 17, which are applicable in the case of an investigation, to also apply with adaptation (with necessary changes) to the case of a review under rule 23.

18. Let us now consider the decision in *Janba (supra)*. The question before the Supreme Court was indicated in the first paragraph of the said judgment thus:

“The question involved in this appeal is with regard to the interpretation of Section 50(1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as “the Tenancy Act”) which *inter alia* provides that where tenancy is created after 1-4-1963, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase during one year from the commencement of the tenancy so much of such land as he may be entitled to purchase under Section 41 and the provisions of Sections 41 to 44 shall *mutatis mutandis* apply to such purchase. For this purpose, as provided under Section 43 he is required to make an offer to the landlord stating the price at which he is ready to purchase the land and such price shall not exceed 12 times the rent payable by him. It is the contention of the appellant tenant that as the respondent landladies were widows, his right to purchase the land is postponed under Section 41(2) of the Tenancy Act till their disability ceases. As against this, the High Court of Bombay by impugned judgment dated 5-7-1985 in Special Civil Application No. 792 of 1975 held that Section 41(2) would not be applicable in case of purchase specified under Section 50. That judgment and order is challenged by filing this appeal.”

19. To understand the ratio of the said Supreme Court decision it would be necessary to set out the relevant provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as ‘the said tenancy act’):

“41. *Right of tenant to purchase land.*—(1) Notwithstanding anything to the contrary in any law, usage or contract but subject to the provisions of Section 42 to 44 (both inclusive) a tenant other than an occupancy tenant shall, in the case of land held by him as a tenant, be entitled to purchase from the landlord the land held by him as a tenant and cultivated by him personally.

(2) Where the landlord is of the following category, namely—

(a) a minor,

(b) a widow,

(c) ***

(d) a person subject to any physical or mental disability,

such tenant **shall be entitled to purchase the landlord's interest under this section after the expiry of two years** from the date on which—

(i) the landlord of category (a) attains majority,

(ii) ***

(iii) the landlord of category (d) ceases to be subject to such disability, and

(iv) the interest of the landlord of category (b) in the land ceases to exist:

XXXXX XXXXX XXXXX XXXXX XXXXX”

“50. *Rights of tenant holding land under tenancy restored or created after specified date to purchase land.*—(1) Where a tenancy is restored under Section 7, 10, 21, 52 or 128-A or is created by a landlord (not being a landlord within the meaning of Chapter III-A) in any area after the date specified in sub-section (1) of Section 49-A, every tenant holding land under such tenancy and cultivating it personally **shall be entitled to purchase within one year** from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase under Section 41 and the provisions of Section 41 to 44 (both inclusive) shall *mutatis mutandis* apply to such purchase.”

(emphasis supplied)

20. It appears that while under section 50 of the said tenancy act the entitlement of the tenant to purchase the land is limited to one year, under section 41 the tenant's right to purchase the landlords interest is postponed by two years. The issue before the Supreme Court was whether, because the provisions of inter alia section 41 which were made applicable *mutatis mutandis* to a purchase by the tenant under section 50, the limitation of one year in section 50 would not get supplanted by the postponement by two years as provided in section 41. The Supreme Court noted that the scheme of Section 50 was different from Section 41. It held that, while section 41 talked of purchase of the land by a tenant and carved out an exception as provided in sub-section (2) in favour of a landlord of specified categories (minor, widow or person subject to physical disability), under

Section 50 no such exception has been carved out in favour of a landlord or a tenant who is a minor, a widow or a person subject to any physical or mental disability. Moreover, under section 50, the prescribed time-limit for exercise of such option to purchase the land is only one year and no provision has been made for postponing such right to purchase, if the landlord or the tenant was a minor, a widow or a disabled person.

In this backdrop, the Supreme Court held as under:

“14. Mr Uday U. Lalit, learned counsel for the appellants submitted that Section 50 specifically provides that provisions of Sections 41 to 44 would *mutatis mutandis* apply and, therefore, sub-section (2) of Section 41 would automatically apply and the right of the tenant to purchase the land is postponed till the period prescribed therein is over.

15. This submission, in our view, cannot be accepted firstly, because Section 50 only provides that the tenant would be entitled to purchase so much of such land as he may be entitled to purchase under Section 41 and to “such purchase” the provisions of Sections 41 to 44 would *mutatis mutandis* apply. The concept of *mutatis mutandis* as understood in the context of Section 50 would be — Sections 41 to 44 would be applicable with necessary changes in the points of detail to “such purchase”, that is to say, where a tenant has exercised his right to purchase the land he can purchase it to the extent permissible under Section 42. Thereafter, those parts of the sections which are pertaining to “such purchase” are made applicable but there is no question of postponing “such purchase” as provided under Section 41(2). Sub-section (2) cannot be made applicable in case of purchase under Section 50, as it does not pertain to the purchase but it is with regard to postponement of “such purchase”. This is consistent with other provisions, namely, Sections 46 and 49-A.

Under Section 46 deemed purchase is provided from 1-4-1961 except in those cases where the tenant was a minor, a widow, a serving member of the armed forces or a person subject to any physical or mental disability and in those cases deemed purchase was postponed till the disability ceased as mentioned therein. No exception is carved out in favour of a landlord who is a minor, a widow or a disabled person. Finally, Section 49-A was added which *inter alia* provides that notwithstanding anything contained in Section 41 or 46 ownership of land held by a tenant being land which is not transferred to the tenant under Section 46 or which is not purchased by him under Sections 41 or 50 shall stand transferred to and vest in such tenant and from that date he shall be the full owner of such land, if such land is cultivated by him personally. Exception is carved out in favour of the landlord belonging to any of the categories specified in sub-section (2) of Section 38 i.e. in favour of a minor, a widow or a person subject to any physical or mental disability. No such exception is carved out under Section 50. Secondly, Section 50 specifically provides that every tenant holding land under such tenancy i.e. tenancy created or restored after 1-4-1963, and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase under Section 41. That period of one year cannot be changed by holding that sub-section (2) would be applicable and “such purchase” is to be postponed for an indefinite period i.e. after two years from the date of cessation of disability of the landlord. If this contention is accepted, “such purchase” would be postponed for a period of two years after happening of an uncertain eventuality, namely, a minor landlord becoming a major, a widow ceasing to be the owner or in case of a disabled person, till cessation of the mental or physical disability. That is neither the intention of the legislature nor is it provided. What is provided for is — to “such purchase” Sections 41 to 44 *mutatis mutandis* shall apply.”

(underlining added)

21. It is evident from the said discussion that (a) the scheme of section 50 was entirely different from that of section 41; (b) consequently, the purchase under section 50 was different from the purchase under section 41; (c) the expression “such purchase” meant purchase within one year as stipulated in section 50 and not the purchase contemplated in section 41; and (d) therefore, it was the intention of the legislature to apply the provisions of sections 41 to 44 mutatis mutandis to a purchase within one year under section 50 (ie., “such purchase”). It is in these circumstances that the postponement of two years provided for in section 41 was not engrafted in section 50. The position in the present petitions is entirely different. As pointed out earlier, rule 23 and sub-rule (3) thereof, in particular, does not manifest an intention to give primacy to rule 23(2) over the first proviso to rule 17(1). On the contrary, from rule 23(3), which immediately follows rule 23(2), the clear intention appears to be to make all the provisions of, inter alia, rule 17, which are applicable in the case of an investigation, to also apply with adaptation (with necessary changes) to the case of a review under rule 23. The scheme of review is substantially similar to the scheme of investigation. Therefore, the decision of the Supreme Court in *Janba* (*supra*) does come to the aid of the petitioners.

22. The expression *mutatis mutandis* was again considered in **RSIDIC** (*supra*) in the following manner:

“II. *Mutatis mutandis*—Meaning of

17. In *Ashok Service Centre v. State of Orissa* [(1983) 2 SCC 82 : 1983 SCC (Tax) 90 : AIR 1983 SC 394] this Court held as under: (SCC p. 93, para 17)

“17. ... Earl Jowitt's *The Dictionary of English Law* (1959) defines ‘mutatis mutandis’ as ‘with the necessary changes in points of detail’. *Black's Law Dictionary* (Revised 4th Edn. 1968) defines ‘mutatis mutandis’ as:

‘With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like.’

... Extension of an earlier Act ‘mutatis mutandis’ to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. ... In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the principal Act wherever the Act has manifested an intention to modify the principal Act.”

Similarly, in *Prahlad Sharma v. State of U.P.* [(2004) 4 SCC 113 : 2004 SCC (L&S) 621] , the phrase “mutatis mutandis” has been explained as under: (SCC p. 120, para 11)

“11. The expression ‘mutatis mutandis’ itself implies applicability of any provision with necessary changes in points of detail.”

(See also *Mariyappa v. State of Karnataka* [(1998) 3 SCC 276 : AIR 1998 SC 1334] and *Janba v. Gopikabai* [(2000) 4 SCC 1 : AIR 2000 SC 1771] .)

18. Thus, the phrase “mutatis mutandis” implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail.”

(underlining added)

23. This decision, also, would not come to the aid of the petitioners as rule 17 of the said rules would apply to a case of review under rule 23 “*as it is with certain changes in points of detail*”. Consequently, the extension by six months permissible under the first proviso to rule 17(1) would also apply to the case of a review as it does to an investigation. And, that is the discernible intention behind rule 23(3).

24. We are now left to examine the recent decision of the Supreme Court in *G.M. Exports (supra)*, which, in our view, clinches the case against the petitioners. The question of law which arose for consideration before the Supreme Court was whether anti-dumping duty imposed with respect to imports made during the period between the expiry of the provisional anti-dumping duty and the imposition of the final anti-dumping duty is legal and valid? As Rule 13 of the said rules would be relevant for the discussion on the said decision, it is reproduced below:

“13. Levy of provisional duty - The Central Government may, on the basis of the preliminary findings recorded by the designated authority, impose a provisional duty not exceeding the margin of dumping:

Provided that no such duty shall be imposed before the expiry of sixty days from the date of the public notice issued by the designated authority regarding its decision to initiate investigations:

Provided further that such duty **shall** remain in force **only** for a **period not exceeding six months** which may upon request of the exporters representing a significant percentage of the trade involved be extended by the Central Government to nine months.”

Paragraph 31 of the said decision was heavily relied upon by the learned counsel for the petitioners. It reads as follows:

“**31.** Rule 13, in line with clause 7.4 of the WTO Agreement, enables the Central Government to impose provisional anti-dumping duty not exceeding the margin of dumping, with two provisos. First, no such duty can be imposed before the expiry of 60 days from the date of public notice issued by the designated authority regarding its decision to initiate investigations. And second, such duty cannot remain in force for a period of more than six months, which is only extendable on request made by the foreign exporters who represent a significant percentage of the trade involved, to a maximum period of 9 months. The important words used in the second proviso are “shall”, “only”, and “not exceeding”, all of which point to the fact that the time period mentioned in the said proviso is mandatory and cannot be exceeded by even a single day.”

This passage was relied upon by the petitioners to submit that, as rule 23(2) also employs words and expressions such as “shall” and “not exceeding”,

the period of twelve months for completing the review in mandatory and inalterable. This argument cannot be accepted. First of all, despite the use of similar words and expressions in rule 13, the said rule itself provided that the stipulated period of six months could, “*upon request of the exporters representing a significant percentage of the trade involved be extended by the Central Government to nine months*”. Thus, even though the period of six months is definitive and mandatory, provision has been made for extension, under certain circumstances, upto nine months. Similarly, by applying *mutatis mutandis* the provisions of the first proviso of rule 17(1) to the case of review under rule 23, the period of 12 months stipulated in rule 23(2) can be extended by 6 months under certain conditions by the Central Government. Secondly, the stipulation of the time period remains mandatory subject to the limited extension under certain conditions. So, there is actually no quarrel with the argument that the time period prescribed is mandatory subject to the inbuilt extension period. It is nobody’s case that a review can be concluded even beyond the period of 18 months (12 months under rule 23(2) and a further 6 months under the first proviso of rule 17(1) applied *mutatis mutandis*) from the date of initiation of the review.

25. The decision in *G.M. Exports (supra)*, after examining Article VI of GATT, the said Agreement, Article 51(c) of the Constitution and several earlier decisions of the Supreme Court set out the following conclusions:

“23. A conspectus of the aforesaid authorities would lead to the following conclusions:

(1) Article 51(c) of the Constitution of India is a Directive Principle of State Policy which states that the State shall endeavour to foster respect for international law and treaty obligations. As a result, rules of international law which are not contrary to domestic law are followed by the courts in this country. This is a situation in which there is an international treaty to which India is not a signatory or general rules of international law are made applicable. It is in this situation that if there happens to be a conflict between domestic law and international law, domestic law will prevail.

(2) In a situation where India is a signatory nation to an international treaty, and a statute is passed pursuant to the said treaty, it is a legitimate aid to the construction of the provisions of such statute that are vague or ambiguous to have recourse to the terms of the treaty to resolve such ambiguity in favour of a meaning that is consistent with the provisions of the treaty.

(3) In a situation where India is a signatory nation to an international treaty, and a statute is made in furtherance of such treaty, a purposive rather than a narrow literal construction of such statute is preferred. The interpretation of such a statute should be construed on broad principles of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them.

(4) In a situation in which India is a signatory nation to an international treaty, and a statute is made to enforce a treaty

obligation, and if there be any difference between the language of such statute and a corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty. This is for the reason that in such cases what is sought to be achieved by the international treaty is a uniform international code of law which is to be applied by the courts of all the signatory nations in a manner that leads to the same result in all the signatory nations.”

(underlining added)

26. India is a signatory to Article VI of GATT and the said Agreement of 1994. In pursuance of the same, amendments were made in the said Act (customs Tariff Act, 1975) in 1995 and, inter alia, new section 9A was inserted. The said rules have been framed in exercise of powers conferred by section 9A(6) of the said Act. Therefore, when we consider, inter alia, section 9A of the said Act and the provisions of the said Rules, the conclusions outlined in ***G.M. Exports*** (*supra*) would come into play. It follows that if any of the said rules are vague or ambiguous then recourse could be had to the said Agreement as a legitimate aid to construction and any such ambiguity could be resolved in favour of a meaning that is consistent with the provisions of the said Agreement. Furthermore, if there be any difference between the language employed in the said rule and a corresponding provision of the said Agreement, the former is to be construed in the same sense as that of the said Agreement.

27. Now, Article 11.4 of the said Agreement inter alia stipulates that the review contemplated under Article 11 shall be carried out expeditiously and shall “normally” be concluded within 12 months of the date of initiation of the review. Rule 23(2) of the said rules is modelled on Article 11.4 of the said Agreement. Thus, while construing rule 23(2) if any ambiguity is noticed, the same can be resolved by having recourse to Article 11.4. The use of the word “normally” in Article 11.4 is of great significance. It means that the review under Article 11 is to be completed expeditiously and “normally” within 12 months but that is not an inflexible period. Considered in this light, and to bring the provisions of rule 23(2) in harmony with Article 11.4, rule 23(2) would have to be read as – *any review initiated under sub-rule (1) shall “normally” be concluded within a period not exceeding twelve months from the date of initiation of such review*. And, when the first proviso of rule 17(1) is applied (with necessary changes) to the case of a review it becomes immediately clear that the period of 12 months can be further extended by the Central Government in its discretion by 6 months but only if special circumstances exist. Such a construction would be in keeping with the conclusions enumerated in ***G.M. Exports*** (*supra*).

28. That being the case, we hold that the Central Government has the power to grant an extension of 6 months for concluding a review. We, however, are making it clear once again that we have not examined and were not called upon to examine whether this power has been exercised legitimately. That would have to be agitated by the petitioners if they so desire before an appropriate forum. We are of the view that the provision of extension of time contained in the first proviso to rule 17(1) can be pressed into service for extending the time of 12 months for concluding a review under rule 23(2) because of the *mutatis mutandis* prescription in rule 23(3). As such, the writ petitions are liable to be dismissed and they are dismissed. However, the petitioners have the liberty to challenge the extensions and their fall-outs on merits before the appropriate forum.

29. The parties are left to bear their own costs.

BADAR DURREZ AHMED, J

**JANUARY 06, 2016
HJ**

SANJEEV SACHDEVA, J