

\$~26 TO 29

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

Decided on: 02.12.2016

+ **W.P.(C) 5907/2016**

VYNOVA BELGIUM NV (FORMERLY KNOWN AS VYNOVA
TESSENDERLO NV) Petitioner

versus

THE DESIGNATED AUTHORITY DIRECTORATE GENERAL OF
ANTI-DUMPING AND ALLIED DUTIES, DEPARTMENT OF
COMMERCE & ANR. Respondents

+ **W.P.(C) 6065/2016**

VYNOVA WILHELMSHAVEN GMBH Petitioner

versus

THE DESIGNATED AUTHORITY DIRECTORATE GENERAL
OF ANTI DUMPING AND ALLIED DUTIES, DEPARTMENT OF
COMMERCE & ANR. Respondents

+ **W.P.(C) 7603/2016, C.M. APPL.31288/2016, 31289/2016,
31290/2016 & 31291/2016**

INOVYN SVERIGE AB Petitioner

versus

THE DESIGNATED AUTHORITY, DIRECTORATE GENERAL
OF ANTI-DUMPING AND ALLIED DUTIES, DEPARTMENT OF
COMMERCE, MINISTRY OF COMMERCE & INDUSTRIES &
ANR. Respondents

+ **W.P.(C) 8036/2016, C.M. APPL.33327/2016, 33328/2016,
33359/2016 & 3330/2016**

INOVYN CHLORVINYLS LTD. Petitioner

versus

THE DESIGNATED AUTHORITY DIRECTORATE GENERAL OF

ANTI DUMPING AND ALLIED DUTIES, DEPARTMENT OF
COMMERCE, MINISTRY OF COMMERCE & INDUSTRIES &
ANR. Respondents

Through : Sh. Balbir Singh, Sr. Advocate with Sh. Aashish Gupta, Sh. Aditya Mukherjee and Sh. Angad Sandhu, Advocates, for petitioners, in Item Nos. 26 to 29.

Sh. Abhishek Ghai, for Sh. Sanjeev Narula, CGSC, for UOI, in Item Nos. 26 and 27.

Sh. Anurag Ahluwalia, CGSC with Ms. Nisha Sharma, Advocate, for Respondent No.1 in Item No.28.

Sh. Amit Mahajan, CGSC with Sh. Sumit Misra, Advocate, for UOI, in Item No.29.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Each of the petitioner companies was earlier known by different names— Inovyn Chlorvinyls Ltd. was earlier known as Ineos Chlorvinyls Ltd.; Inovyn Svergie AB was known as Ineos Sverige AB; Vynova Tessenderlo NV (Now known as Vynova Belgium NV) was known as Ineos Chlorvinyls Belgium NV and Vynova Wilhelmshaven GMBH was known as Ineos Vinyls Deutschland GMBH and Ineos Vinyls Sales GMBH.

2. Pursuant to certain proceedings and reorganization in the corporate structure, a regrouping - accompanied by name change took place in these entities. Additionally, the shareholding of two companies, i.e. Inovyn Sverige AB and Inovyn Chlorvinyls Ltd. to the extent of 50% was transferred to Solvay SA. The other 50% shareholding continued to be with Ineos AG.

3. Ineos AG was the original holding company of all these four

companies. After the restructuring, the shareholding of Inovyn Sverige AB and Inovyn Chlorvinyls Ltd. was entirely that of joint venture company – Inovyn JV. The shareholding of this joint venture company was equally held by Ineos AG and Solvay SA.

4. The four petitioner companies had faced investigations for anti-dumping which culminated in final findings dated 04.04.2014 and the notification dated 13.06.2014 whereby all these four entities were treated as belonging to one group and anti-dumping duty at the rate of US\$ 39.65 per MT was imposed. For the other manufacturers/importers to India, i.e. residual entities, the recommended and finally imposed rate of duty was US\$ 189.99 per MT. Solvay SA, at the relevant time did not participate in the investigations which led to the final report and the notification and thus had to suffer a higher rate of anti-dumping duties for the exports to Indian markets. The petitioners had approached this Court earlier complaining that their application for apprising the Designated Authority about the name change pursuant to re-organization had been rejected. The Court had by its order dated 02.06.2016 directed the authority to consider the application and pass appropriate orders. The Designated Authority, by its order dated 28.06.2016 finally rejected the application [in W.P.(C) 7603/2016]. The Designated Authority reasoned as follows:

“iii. The petitioner companies are now owned by a joint venture namely Inovyn JV (hereinafter 'JV'), formed by the transfer of assets by INEOS and Solvay, under the joint ownership of INEOS and Solvay. The JV was approved by EU Merger Regulation on 8th May, 2014. On 1st July, 2015, the creation of JV was implemented.

iv. In the original investigation, INEOS and Solvay were known producers/exporters of the subject goods from subject countries. The Authority issued notices to the aforesaid producers/exporters eliciting necessary information in the prescribed format. Although INEOS group of companies participated and co-operated with the Authority by filing exporter questionnaire response, Solvay did not participate in the investigation and thereby remained non-cooperative.

v. In the original investigation on the basis of the responses filed by the INEOS group of companies, the normal value and export price of the subject goods were determined for each company of INEOS group and thereafter the dumping margin and injury margin for INEOS group were determined on weighted average basis by treating them as a single entity. Accordingly, on the basis of lesser duty rule a single duty was recommended by the Designated Authority and imposed by the Central Government.

vi. In respect of the injury analysis also, the injury margin was determined on weighted average basis for the related companies together taking them as one single entity.

vii. The assets of other entities of INEOS group namely INEOS ChlorVinyls Belgium NV, INEOS Vinyls Deutschland GmbH and INEOS Vinyls Sales GmbH were sold to International Chemical Investors Group SE, Luxemburg ("ICIG")

10. Sub Rule (1) and (1A) of Rule 23 of the Anti-Dumping Rules, as amended vide Customs Notification No. 15/2011 dated 1st March 2011, reads as follows:

"(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 antidumping 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 antidumping 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.

11. In terms of the aforesaid rules, the Authority is required to review from time to time, 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 if it is satisfied that there is no justification for continued imposition of such duty, the Authority may recommend to the Central Government for its withdrawal.

12. As it is evident from the facts stated above, the various entities of the INEOS group were individually examined for the determination of dumping and injury margins and a determination was made, on weighted average basis, to arrive at a common anti-dumping duty for the INEOS group as a whole. Since the ownership of the subsidiary companies are now transferred to different holding companies, this now warrants determination of fresh individual dumping and injury margins for each entity separately through a review investigation.

13. During the hearing and through subsequent submissions, the petitioners requested to unbundle the weighted average injury margin determined for the four subsidiaries as a single entity and recommend duties for the petitioner companies on

the basis of injury margin already computed for them by the Authority in the original investigation.

14. In view of the facts and circumstances explained above and keeping in view the relevant legal provisions, the Authority notes that the request of the petitioners to amend the names of the concerned companies in the duty table simply vide a corrigendum notification is not feasible. Moreover, after issuing final findings, the Designated Authority becomes functus officio and it is not legally permissible to revisit the findings and the recommendations without initiating and undertaking a review investigation as per the Anti-Dumping Rules.”

5. It was contended by the petitioners that the important consideration which appeared to have dominated the mind of the Designated Authority was that Solvay SA which was the non-participating party in the original anti-dumping proceedings had obtained significant interest in the joint venture entity and thus became a significant shareholder in two of the petitioner entities. Therefore, the Designated Authority was of the opinion that “*unbundling of the weighted average injury margin*” determined for the four subsidiaries had to be reworked which necessitated virtually fresh investigation which it could not undertake. Learned counsel for the respondents argued that the authority’s assumptions are correct and are borne-out by the record since Solvay SA’s significant shareholding in the joint venture company places it in a favourable light to enter into transactions with the petitioner companies.

6. During the course of hearing, it was pointed on behalf of the petitioner that Solvay SA had, in the meanwhile, restructured and divested itself of the shareholding in the joint venture company, i.e. Inovyn JV, and that this transaction was approved by the concerned regulatory body on 08.06.2016. It

relies upon the copy of the order of the Directorate General, Competition European Commission.

7. This Court has considered the submissions.

8. The basic enquiry as to the present petitioner's margin of profit and the normal price at which they sold the goods was conducted and a detailed investigation which culminated in the final findings resulted in the notification which fixed the margin of anti-dumping duty at US\$ 39.65 per MT for all the four group companies. At that point in time, Solvay SA had no connection with these companies. There is no material on record to point to the contrary. The interregnum as it were, with the reorganization and renaming of the petitioners being accompanied by Solvay SA's acquisition of shareholding in two petitioner companies through joint venture had resulted in the order of the Designated Authority, which quite correctly felt that closer investigation was necessary. Since then, the position appears to have altered again because on 08.06.2016, the European Commission gave a green signal for the divestment of Solvay SA's shareholding in Inovyn JV entirely. As a result, this Court, having regard to the fact that the basic circumstances, i.e. market conditions under which the petitioner companies exported to India and the nature of injury caused by them has already undergone detailed investigation, this Court is of the opinion that the Designated Authority should restrict its enquiry into the genuineness of the transaction whereby Solvay SA is said to have divested itself of the shareholding of the Inovyn JV resulting in restoration of *status quo ante* as it were on the date of rendering of submission of final report dated 04.04.2014, culminating in the notification dated 13.06.2014. In case the authority concludes that as a matter of fact Solvay SA has no shareholding any longer

in the joint venture company which owned 50% or any such significant percentage of shareholding in the petitioner companies, it should proceed to grant the request for change of name in the notification and recommend to that effect to the central government so that appropriate changes can be made by way of corrigendum.

9. The authority shall endeavour to complete its hearing and pass final orders at its earliest convenience and in any case within two months. The writ petitions are allowed in the above terms.

DECEMBER 2, 2016
ajk



S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)