

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAMW.P.Nos.12950 & 14346 & 17696 of 2017 &
W.M.P.Nos.13816 & 13817 of 2017 & 15564 of 2017 & 19202 of 2017

Orders reserved on 11.10.2017	Orders pronounced on 06.11.2017
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W.P.No.12950 of 2017

Saint Gobain India Private Limited,
rep. By its Team Leader-Finance &
Company Secretary, L.Venkateswaran,
Sigapi Achi Building, 7th Floor,
18/3, Rukmini Lakshmiipathy Road,
Egmore, Chennai-600 008.

.. Petitioner

Vs.

1.Union of India, Ministry of Finance,
through its Secretary,
Department of Revenue,
North Block, New Delhi-110 001.

2.The Directorate General of Anti
Dumping and Allied Duties,
(through the Designated Authority),
Ministry of Commerce, Udyog Bhavan,
New Delhi.

3.Tariq Glass Industries Ltd.,
128 J, Model Town, Lahore, Pakistan.
[R3-impleaded as per order dated 28.07.2017
in WMP No.15734/2017 in WPN0.12950/2017]

.. Respondents

Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the Final findings bearing F.No.15/16/2015-DGAD dated 10.04.2017 issued/passed by the respondent No.2 as modified vide Corrigendum dated 12.04.2017 issued by the respondent No.2 and quash the same.

For Petitioner : Mr.Jithendra Singh
For Mr.Karthik Sundaram

For Respondents : Mr.G.Rajagopalan,
Additional Solicitor General of India
assisted by Mr.T.L.Thirumalaisamy
SPCCG for RR1 & 2
Mr.R.Parthasarathy, for R3

W.P.No.14346 of 2017

Saint Gobain India Private Limited,
rep. By its Team Leader-Finance &
Company Secretary, L.Venkateswaran,
Sigapi Achi Building, 7th Floor,
18/3, Rukmini Lakshmipathy Road,
Egmore, Chennai-600 008.

.. Petitioner

Vs. सत्यमेव जयते

1.Union of India, Ministry of Finance,
through its Secretary,
Department of Revenue,
North Block, New Delhi-110 001.

2.The Directorate General of Anti
Dumping and Allied Duties,
(through the Designated Authority),
Ministry of Commerce, Udyog Bhavan,
New Delhi.

.. Respondents

Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the Initiation Notification bearing F.No.15/16/2015-DGAD dated 23.09.2015 issued/passed by the respondent No.2 and quash the same.

For Petitioner : Mr.Jithendra Singh
For Mr.Karthik Sundaram

For Respondents : Mr.G.Rajagopalan,
Additional Solicitor General of India
assisted by Mr.T.L.Thirumalaisamy
SPCCG for RR1 & 2

W.P.No.17696 of 2017

Saint Gobain India Private Limited,
rep. By its Team Leader-Finance &
Company Secretary, L.Venkateswaran,
Sigapi Achi Building, 7th Floor,
18/3, Rukmini Lakshmipathy Road,
Egmore, Chennai-600 008.

.. Petitioner

Vs.

1.Union of India, Ministry of Finance,
through its Secretary,
Department of Revenue,
North Block, New Delhi-110 001.

2.The Directorate General of Anti
Dumping and Allied Duties,
(through the Designated Authority),
Ministry of Commerce, Udyog Bhavan,
New Delhi.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the Notification bearing

No.30/2017-Customs (ADD) dated 16.06.2017, issued by the respondent No.1, and quash the same.

For Petitioner : Mr.Jithendra Singh
For Mr.Karthik Sundaram

For Respondents : Mr.B.Rabu Manohar, SPCCG
for RR1 & 2

Mr.R.Parthasarathy, for R3

COMMON ORDER

All the three Writ Petitions have been filed by a Private Limited Company, who are engaged in the manufacture of float glass.

2.W.P.No.12950 of 2017 has been filed, challenging the final findings given by the second respondent, the Directorate General of Anti-Dumping and Allied Duties, dated 10.04.2017, as modified vide corrigendum dated 12.04.2017, by which the Designated Authority recommended Anti-Dumping Duty of USD 23.54 per MT be imposed on imports of clear float glass of nominal thicknesses ranging from 4 mm to 12 mm (both inclusive) produced and exported by M/s.Tariq Glass Industries Limited, Pakistan, the third respondent.

3.W.P.No.14346 of 2017, has been filed by the petitioner, challenging the initiation notification issued by the second respondent dated 23.09.2015, by which the second respondent initiated a New Shipper Review of anti-dumping duties imposed on imports of clear float glass originating in or exported from Pakistan, Saudi Arabia and UAE as requested by the third respondent, M/s.Tariq Glass Industries Limited, under Rule 22 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 "ADD Rules").

4.W.P.No.17696 of 2017, has been filed by the petitioner, challenging the notification issued by the Government of India, the first respondent, notification dated 16.06.2017, issued by the first respondent imposing anti-dumping duty after considering the final findings of the second respondent at the rate of 23.54 USD per MT. This notification was kept in abeyance subject to the final outcome of the writ petition in W.P.No.12950 of 2017.

5. Though the petitioner had filed the first Writ Petition challenging the final findings of the second respondent dated 10.04.2017, and the

corrigendum dated 12.04.2017, by subsequent writ petition in W.P.No.14346 of 2017, the petitioner has questioned the very initiation of the proceedings by the second respondent. Thus, if the initiation is held to be bad in law, all the consequential proceedings that is the final finding and the notification issued by the Government of India have to be necessarily be set aside. Therefore, the Court proceeds to consider the submissions of the learned counsels as all of them had advanced arguments on the jurisdiction of the second respondent to initiate the New Shippers Review.

6.The learned Senior Counsel appearing for the petitioner had submitted that at this stage the merits of the matter need not be gone into and it would suffice if this Court hears the petitioner on the question of the jurisdiction of the second respondent to initiate proceedings, based on the request of the third respondent, the petitioner would be able to convince the Court, that the entire proceedings are liable to be set aside for lack of jurisdiction.

7. The facts, which are necessary for the disposal of these Writ Petitions, are as follows:-

The Designated Authority/the second respondent initiated anti-

dumping duty investigation concerning clear float glass of nominal thickness ranging from 4 mm to 12 mm originating in or exported from Saudi Arabia, UAE and Pakistan vide notification dated 11.04.2013. The Designated Authority, vide final findings dated 10.10.2014, recommended anti-dumping duty at USD 123.61 per MT for goods exported from Pakistan. The recommendation of the Designated Authority was accepted by the Government of India and anti-dumping duty was levied vide notification dated 11.12.2014. The third respondent filed an application before the Designated Authority under Rule 22 of the ADD Rules, requesting for a New Shipper Review, in respect of ADD imposed on imports of subject goods originating in or exported from Pakistan. The Designated Authority found that there is enough justification for initiation of the New Shipper Review investigation in accordance with Rule 22 of the ADD Rules and accordingly initiated review vide notification dated 23.09.2015 (impugned in W.P.No.14346 of 2017) and the period of investigation is for nine months from 01.07.2015 to 31.03.2016. Pending the New Shippers Review, the Designated Authority recommended provisional assessment on all exports of the subject goods made by the third respondent, till the review is completed in accordance with Rule 22 of the ADD Rules.

8. Having regard to the Customs Notification, dated 11.12.2014, the Designated Authority issued public notice, dated 23.09.2015, initiating the New Shippers Review Anti-Dumping Investigation and copy of the Notification along with the copy of the exporters questionnaire were forwarded to the third respondent/applicant with an opportunity to make their views known in writing. Copy of the notification was also forwarded to the Pakistan High Commission in New Delhi, and a copy was forwarded to the non-domestic producers in India, including the petitioner and gave them opportunity to submit their views in writing. The response in the form of exporters questionnaire was filed by the third respondent. Various interested parties during the course of investigation also placed evidence before the Designated Authority.

9. The Designated Authority heard the parties in person on 17.08.2016 and 02.11.2016 in accordance with Rule 6 of the ADD Rules. Subsequently, further information was sought for from the applicant and other interested parties and the data was examined.

10. One of the contentions raised by the domestic industry before the Designated Authority was that the Designated Authority has no jurisdiction in the present matter due to lapse of time, as maximum

period available to the Designated Authority to conclude the investigation is 18 months in terms of Rule 17 and the same having expired, the initiation itself is bad in law. This contention was not accepted by the Designated Authority and the final findings were rendered vide order dated 10.04.2017 (impugned in W.P.No.12950 of 2017).

11. Mr.Jithendra Singh, learned counsel assisted by Mr. Karthik Sundaran, learned counsel for the petitioner prefaced his submissions by contending that the petitioner seeks to canvass the jurisdiction of the Designated Authority in initiating the proceedings and the final findings rendered and the consequential notification issued by the Government of India as being devoid of jurisdiction. It is further submitted that the petitioner has an excellent case on merits, but at this juncture, the petitioner does not propose to canvass the same in a Writ Petition and restrict the contentions with regard to the jurisdictional aspect. It is submitted that there is no power to undertake a New Shippers Review under the Act to make Rule 22 in exercise of power under Section 9A(6) of the Customs Tariff Act, 1975, as Section 9A(5) confers the power only to undertake a sunset review and not a New Shippers Review. The impugned final findings are without jurisdiction, as they have been

recorded after the maximum period prescribed under Rule 17 is already over. After expiry of 12 month period from the date of initiation, the Designated Authority becomes *functus officio* and cannot proceed further with any of the remaining steps to conclude the investigation under the Act and the Rules. The final findings are without jurisdiction, as the Designated Authority did not seek for any extension of time after the initial period of 12 months was over and in the absence of any order, the prescribed period cannot be extended by a statutory authority on its own or the first respondent. It is further submitted that in the absence of specific procedure prescribed elsewhere in the same statute has to be read into Rule 22 and by way of such interpretation Rule 23(3) read with Rule 17, is applicable to Rule 22 and the period to conclude the impugned investigation expired, after expiry of 12 months. Further, it is submitted that the Municipal Law namely, the Tariff Act And Rules made thereunder cannot be read contrary to treat the obligation specified under WTO Agreement on Anti-Dumping, wherein Article 9.5, it has been mandated that the member authorities "shall promptly carry out a review" and the word 'promptly' cannot be interpreted in a manner to read a larger period than 12 months (extendable by 6 months). This objection was raised before the Designated Authority, which has not been considered while rendering the final findings. It is further

submitted that the third respondent did not at the time of filing the New Shipper Review disclose its relationship with the Chinese Company and objections raised by the petitioner before the Designated Authority has not been duly considered while initiating or proceeding with the investigation. In support of his contention, the learned counsel placed reliance on the decision of the Delhi High Court in the case of ***Kalyani Steel v. UOI & others*** reported in **2008 224 E.L.T. 47 (Delhi)**.

12. The learned Additional Solicitor General appearing for respondents submitted that the limitation will not apply to a proceedings under Rule 23 and Section 9A of the Customs Tariff Act, does not speak of any limitation and in the present writ petition, the petitioner has challenged the final finding, which has been accepted by the Department and notification dated 16.06.2017 has been issued, over which if the petitioner is aggrieved, he can prefer an appeal.

13. Further, it is submitted that merely because Rule 18 and other Rules have been referred to in the notification, dated 16.06.2017, it cannot render the impugned notification as bad in law and mere quoting of the wrong provision, can at best be treated as a mistake and will not vitiate the notification. Further, it is submitted that the petitioner having

participated in the proceedings before the Designated Authority, he is not entitled to maintain the present writ petition and the petitioner cannot seek for re-writing Rule 22.

14. The learned counsel appearing for the third respondent submitted that the limitation imposed in Rule 23 cannot be imposed in Rule 22, as there is no provision similar to Sub-Rule 3 of Rule 23 in Rule 22 and Rule 22 is a New Shipper Review and no time limit is prescribed. Further, the period of investigation is from 01.07.2015 to 31.03.2016 and the proceedings have been done expeditiously and there is no delay. Thus, in the absence of a time limit for conducting a New Shipper Review, which was done keeping in view the peculiar requirements of the New Shipper Review, the impugned notification does not suffer from lack of jurisdiction. Further Rule 23(3) of the ADD Rules has been provided whereby, Rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19 and 20 are specifically made applicable mutatis mutandis in the cases of review under Rule 23. However, no such provision has been provided under Rule 22 and this conspicuous omission was a conscious omission on the part of the legislature not to make the aforesaid Rules applicable in view of the nature of review contemplated under Rule 22. The learned counsel referred to various cases, where the New Shipper Review

investigation has exceeded 18 months and listed as many as 8 such cases where final findings were rendered by the Designated Authority much after 18 months. In support of his contention, the learned counsel referred to the decision of the Delhi High Court in ***H&R Johnson (India) Limited vs. Union of India and another*** in MANU/DE/0076/2008. With regard to maintainability of the Writ Petitions, the learned counsel referred to the decision in ***Spacewood Furnishers Pvt. Ltd., v. Designated Authority*** reported in **(2010) 252 ELT 321** and in ***NITCO Tiles Ltd., v. Gujarat Ceramic Floor Tiles Mfg. Assn. & others*** reported in **(2005) 12 SCC 454** and in ***Designated Authority & others v. Sandisk International Limited & others*** reported in **(2017) SCC online (SC) 319**.

15. The learned counsel for the petitioner in reply referred to the objections filed before the Designated Authority, more particularly, paragraphs 10, 11 & 12. Further, it is submitted that the decision by the Delhi High Court in ***H&R Johnson*** (supra) is an interim order and the third respondent cannot place reliance.

16. Heard the learned counsels appearing for the parties and perused the materials placed on record.

17. The following questions arises for consideration in these writ petitions.

i) whether the New Shipper Review Investigation commenced by the Designated Authority vide initiation notification, dated 23.09.2015 culminating in the final findings, dated 10.04.2017 is barred by time as it has exceeded 18 months;

ii) whether the New Shipper Review initiated under Rule 22 of the ADD Rules is required to be completed within a period of 12 months from the date of initiation, failing which the same will lapse or in 18 months if extension is granted for a further period of 6 months;

iii) whether the procedures on time limits for carrying out the New Shipper Review should be in consonance with the time limit prescribed under Rule 23(3) read with Rule 17 of the ADD Rules;

iv) whether the present Writ Petitions are maintainable before this Court;

v) to what other remedy, the petitioner is entitled to.

18. The Rules, which are relevant for the purpose of this case, are Rules 17, 22 and 23, which are quoted herein below:

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 under 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 casual link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reason 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:

Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into

account while calculating the period of said one year,
[(b) recommending the amount of duty which,
if levied, would remove the injury where applicable,
to the domestic industry [after considering the
principles laid down in the Annexure III to these
rules]

(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding-

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:

Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination

inpracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned:

Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

(4) The designated authority shall issue a public notice recording its final findings.

22.Margin of dumping, for exporters not originally investigated. - (1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that

these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

(2) The Central Government shall not levy anti-dumping duties under Sub-section (1) of Section 9A of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.

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 the 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 a 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 any 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 applicabe in the case of review.

19. At the instance of the third respondent, the Designated Authority initiated New Shipper Review Investigation pursuant to notification dated 23.09.2015. This review was initiated invoking the power under Rule 22 of the ADD Rules. In terms of Sub-Rule (1) of Rule 22, if a product is subject to anti-dumping duties, the Designated Authority shall carryout the periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporter country in question, who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country, who are subject to the anti-dumping duties on the products.

20. Sub-Rule (2) of Rule 22 places an embargo on the Central Government not to levy anti-dumping duties under Sub-Section (1) of Section 9A of the Customs Tariff Act, during the period of review under Rule 22(1). Proviso under Rule 22(2) provides that the Central Government may resort to provisional assessment and may ask guarantee from the importer to safeguard the interest of the revenue. The impugned notification dated 10.04.2017, is a result of the review undertaken in terms of Rule 22. It appears that this review being

sought for by a producer in a foreign country, who has not exported his product into India, is referred to as a New Shipper Review, though such a term does not find place in the ADD Rules.

21. The petitioner's contention is that Rule 23 provides for two types of reviews; one is popularly called as the mid-term review, which is done after a reasonable period of time has elapsed, since the imposition of the anti-dumping duty. At the end of the 5 years period, the Designated Authority is entitled to undertake one more review in terms of Section 23(1B), for extending the period of the notification beyond 5 years, this is popularly known as the 'sunset review'. Any review initiated under Sub-Rule (1) that is both under Sub-Rule 1A and 1B shall be concluded within a period of not exceeding 12 months from the date of initiation of such review. Sub-Rule (3) of Rule 23 states that 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.

22. The petitioner's contention is that final findings are to be rendered in terms of Rule 17, which shall be within one year from the date of initiation of investigation, determining as to whether or not, the article under investigation is to be dumped into India and submit to

Central Government. In terms of the first proviso, the Central Government in its discretion in special circumstances extend further period of one year by 6 months. Thus, the final findings have to be rendered by the Designated Authority not later than 12/18 months from the date of initiation of investigation.

23. It is the argument of the learned counsel for the petitioner that Rule 23 speaks of review and Sub-Rule (3) of Rule 23 states that Rule 17 will apply in case of review. Thus, the exercise undertaken by the Designated Authority in the instant case had to be necessarily concluded and finding should have been rendered within 12 months from the date of initiation, that is, not later than 22.09.2016. Even assuming, the Central Government has extended time, which has not been done, 18 months period will come to an end on 21.03.2017 and the final finding rendered on 10.04.2017, is without jurisdiction.

24. In my considered view, the submission is wholly misconceived. A plain reading of the scheme of the Rules clearly shows that there is no overlapping between Rule 22 and Rule 23. Rule 22 deals with periodic review at the instance of any exporter or producer in the exporting country. Such an application for review under Rule 22 is maintainable

only if such an exporter or producer in the exporting country satisfies two conditions, namely, he should not have exported the product to India, during the period of investigation and the exporters or producers show that they are not related to any of the exporters or producers in the exporting country, who are subject to anti-dumping duties on the product. However, the review under Rule 23 is distinct and different. Sub-Rule (1) of Rule 23 states that the anti-dumping duty imposed under Rule 9A shall remain in force to the extent necessary, to counteract dumping, which is causing injury. The question would be how long the anti-dumping duty should be continued to be imposed, as the purpose of imposing such anti-dumping duty is to counteract dumping, which is causing injury. Therefore, the rule contemplates two types of review, the first is done after a reasonable period has lapsed, since the imposition of anti-dumping duty. This review can be on the own initiative of the Designated Authority or on request by any interesting party, who submits positive information substantiating the need for such review. The third respondent, who sought for review under Rule 22 is not an interested party, in respect of the period of investigation, which led to the issuance of the notification, dated 11.12.2014, the said period being 01.10.2011 to 31.12.2012. Therefore, Rule 23(1A) is not applicable to the present case. Rule 23 (1B) is a review to be

undertaken notwithstanding anything contained in Sub-Rule 1 or 1A and this review is undertaken prior to the expiry of the period of 5 years from the date of imposition of anti-dumping duty and this review can be undertaken by the Designated Authority on his own initiative or upon a duly substantiated request made by or on behalf of the domestic industry. This contingency does not arise in the present case. Therefore, Rule 23 (1B) does not apply. The review under Sub-Rule (1) of Rule 23 shall be concluded within a period of 12 months from the date of initiation. Thus, both in the cases of mid-term review and sunset review, (as popularly known in the industry), the time limit is 12 months. While undertaking such review, the other Rules enumerated in Sub-Rule (3) of Rule 23 would apply. Thus, Rule 22 and Rule 23 operate in different spheres and well defined compartments and the plea that subject Rule 23(3) read with Rule 17 should be superimposed in Rule 22 to fix a time limit amounts to re-writing the Rule, which is impermissible. Thus, the Court is fully convinced that the interpretation sought to be given by the petitioner lacks merit.

25. One more aspect to be noted is that the period of investigation for the new shipper review was from 01.07.2015 to 31.03.2016, for which notification was issued on 23.09.2015. Therefore, all steps, which

are required to be taken, pursuant to the initiation can take place only after 01.04.2016. Therefore, to state that by superimposing Rule 23(3) into Rule 22 and hold that the period of limitation will commence from 23.09.2015 and end with 22.09.2016 is a plea to be rejected. Admittedly, the Designated Authority can assess whether the new shipper review is warranted for continued imposition of duty or reduction thereof, only after the investigation is over for the fixed period of investigation, which came to an end on 31.03.2016. Obviously the investigation report could not have been submitted on the close of 31.03.2016. Thus, the contention raised by the petitioner is wholly devoid of merits.

26. In **NITCO Tiles Ltd** (supra), an appeal was preferred from an interim order passed by the High Court of Gujarat on a writ petition filed by Gujarat Ceramics challenging final findings of the Designated Authority on new shipper review. Subsequent to the filing of the writ petition, final findings was notified by the Central Government and the writ petition was amended and the subsequent notification was also challenged. The High Court refused to accede to the preliminary objections raised by the Union of India that Gujarat Ceramics should be relegated to the alternate remedy available to it under the Customs

Tariff Act. The writ petition was entertained by the High Court, as it opined that the writ petition raised is not only important, but also sensitive affecting the people of the country at large. The Hon'ble Supreme Court while setting aside the order of the High Court held that the reason for entertaining the writ petition cannot be sustained and if such writ petitions are entertained, then the provisions for appeal against the order passed by the Designated Authority in respect of anti-dumping issues would be rendered otiose and a person aggrieved by a final finding of the Designated Authority despite express provision of Section 9C of the Customs Tariff Act invoked jurisdiction with impunity and accordingly appeal was allowed and the parties were relegated to approach the CESTAT. The facts of the present case is identical to that of the case before the Hon'ble Supreme Court and by applying the said decision, the petitioner has to necessarily be asked to avail alternate remedy available to it under the Customs Tariff Act.

27. In a recent decision in the case of **Sandisk International Limited** (supra) filed by the Designated Authority, challenge was against the judgment and order of the Delhi High Court interfering with the final findings of the Designated Authority. On going through the facts of the case, the Hon'ble Supreme Court observed that the High

Court was not justified in exercising its writ jurisdiction and in setting aside the final findings of the Designated Authority and the High Court should have asked the writ petitioner to await the issuance of final notification under Rule 18 and to challenge the same before the appropriate forum under Section 9C of the Customs Tariff Act.

28. The arguments based on the replies to the questions posed by Korea concerning the notification provided by Government of India before the World Trade Organisation does not in any manner advance the case of the petitioner, as the reply given by India before the WTO is that the term "periodical reviews" (as appearing in Rule 22) implies accelerated review. Thus, it is clear that there are no time lines prescribed for a review undertaken under Rule 22 and going by the dates and events, it is seen that the initiation notification is dated 23.09.2015, period of investigation is from 01.07.2015 to 31.03.2016. After the investigation was over, the Designated Authority has forwarded a notification to the applicant/third respondent, the domestic producers (the petitioner & others), the interested parties giving them opportunity to make their views in writing. The non confidential version of the evidence presented by the various interested parties were provided for inspection by the interested parties. Personal hearing was granted on

17.09.2016 and 02.11.2016. Further, information was sought for from the applicant and other interested parties to the extent deemed necessary. In accordance with Rule 16, the Designated Authority informed all the interested parties of the essential facts under consideration, which form the basis for its decision and this was required to be done before giving its final finding and this disclosure of information was made on 27.03.2017. Then, the confidentiality claims of various interested parties in respect of data submitted by them were examined and the final findings were issued on 10.04.2017. Thus, the procedure adopted by the Designated Authority is undoubtedly an accelerated review and suffers from no error.

29. In view of the above reasons, questions framed are answered in the following terms:-

(i) The New Shippers Review initiated vide notification, dated 23.09.2015, culminating in the final findings dated 10.04.2017, is not barred by time.

(ii) In the absence of any time limit fixed in Rule 22, a review undertaken under Rule 22 is not required to be completed within 12/18 months as required under Rule 23(3), but an accelerated procedure.

(iii) As Rule 22 & Rule 23 of the ADD Rules operate in different fields spheres & well defined compartments the limitation prescribed under Rule 23(3) read with Rule 17 cannot be superimposed in Rule 22, in doing so, it would amount to rewriting the Rule, impermissible in law.

(iv) For the reasons assigned and in the light of the law laid down in **NITCO Tiles Ltd** and **Sandisk International Limited**, Writ Petitions are not maintainable.

(v) The petitioner is entitled to avail the alternate remedy available under Section 9C of the Customs Tariff Act.

30. For the above reasons, all the Writ Petitions are dismissed, leaving it open to the petitioners to avail the alternate remedy available to them under the Customs Tariff Act, as against the notification dated 16.06.2017, bearing No.30 of 2017, with a direction to the first respondent to forthwith give effect to the notification. No costs. Consequently, connected miscellaneous petitions are closed.

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06.11.2017

Index : Yes/No
abr/pbn

To

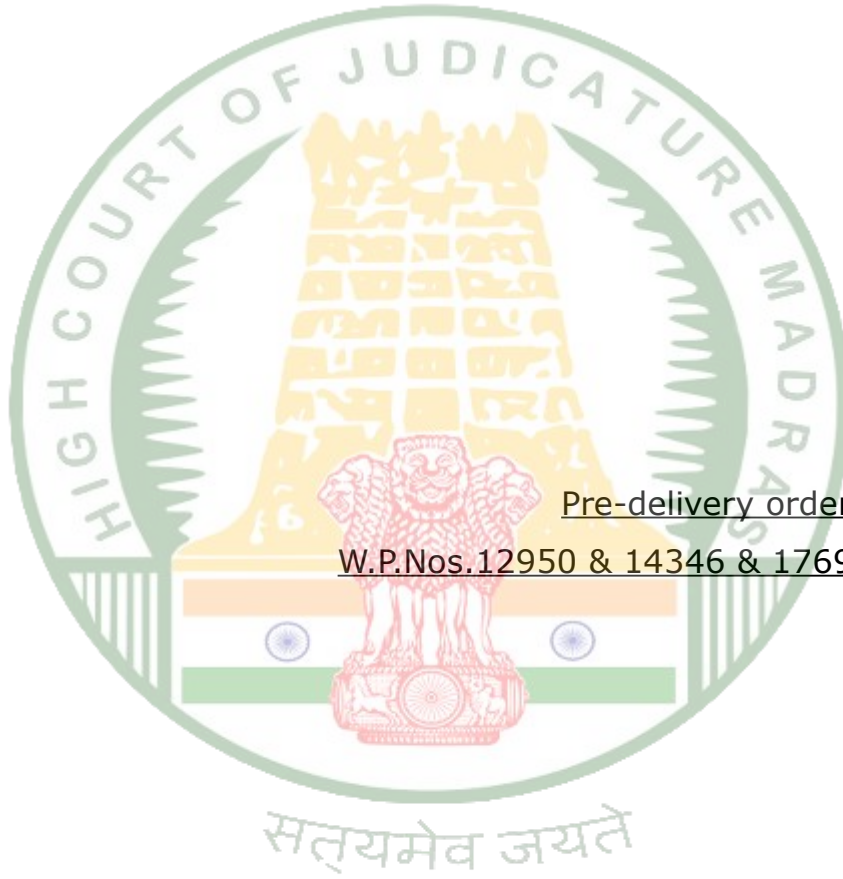
- 1.The Secretary, Union of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.
- 2.The Directorate General of Anti
Dumping and Allied Duties,
(through the Designated Authority),
Ministry of Commerce, Udyog Bhavan,
New Delhi.



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T.S.SIVAGNANAM, J.

pbn



Pre-delivery orders made in
W.P.Nos.12950 & 14346 & 17696 of 2017

WEB COPY 06.11.2017