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

+ **W.P.(C) 6267/2017 & CM APPL. No. 25968/2017 (Stay)**

M/S SUNCITY SHEETS PVT. LTD. Petitioner

Through: Mr. Akhil Sibal, Sr. Advocate with Mr.
Aashish Gupta, Mr. Aditya Mukherjee, Mr.
Saurav Roy, Advocates.

Versus

THE DESIGNATED AUTHORITY & ORS. Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Ms. Pallavi Shah, Advocate for R1
and R2.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

24.07.2017

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Dr. S. Muralidhar, J.:

1. The challenge in this writ petition under Article 226 of the Constitution is to a Notification No. 14/18/2015-DGAD dated 4th July 2017 issued by the Designated Authority (DA) in the Directorate General of Anti-Dumping and Allied Duties, publishing the Final Finding recommending the levy of an Anti-Subsidy/Countervailing Duty of 18.95% on import of "Flat rolled products of stainless steel, whether hot rolled or cold rolled of all grades/series; whether or not in plates, sheets, or in coil form or in any shape, of any width, of thickness 1.2 mm to 10.5 mm in case of hot rolled

coils, 3 mm to 10.5 mm in case of hot rolled plates & sheets; and upto 6.75 mm in case of cold rolled flat products" (excluding razor blade grade steel) from the People's Republic of China.

2. At the outset, a query was posed to Mr. Akhil Sibal, learned Senior Counsel for the Petitioner, as to why this Court should exercise its discretionary jurisdiction under Article 226 of the Constitution of India to entertain this petition. The query was in the context of the following two factors:

- (i) The Final Finding is yet to be accepted by the Central Government and a notification implementing it is yet to be issued. Therefore, the petition is premature.
- (ii) Even if such a notification accepting the Final Finding was issued by the Central Government, the Petitioner at that stage has the statutory remedy of filing an appeal before the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') against both the Notification and the Final Finding.

3. Mr. Sibal submitted that there was non-compliance by the DA of specific directions issued by this Court in the order dated 7th October, 2016 in W.P.(C) 9462/2016 which challenged the Notification dated 12th April, 2016 initiating the investigation which has resulted in the Final Finding challenged in this writ petition. He pointed out that in the said order, this Court had directed the DA to take into consideration all the contentions raised by the Petitioner and pass a speaking order on each of the questions

urged. According to him, the DA failed to pass a speaking order on each of the questions urged.

4. Mr. Sibal was, however, unable to dispute that this very contention that the DA had not complied with the directions issued by this Court on 7th October, 2016 can be urged by the Petitioner as and when it challenges the Final Finding and the consequent notification before the CESTAT. Mr. Sibal then submitted that this Court should interfere since the petition involves violation of principles of natural justice. However, he could not dispute that even this ground can be urged before the CESTAT.

5. Mr. Sibal referred to decision dated 23rd February, 2017 of the Gujarat High Court in C/SCA/16426/201 (*Nirma Limited v. Union of India*) where in similar circumstances, that High Court had rejected the challenge to the maintainability of the writ petition challenging an ADD notification notwithstanding the availability of a statutory remedy of appeal before the CESTAT.

6. This Court has in its order dated 16th May, 2017 in W.P.(C) 2632/2017 (*Hindustan Lever Ltd. v. Union of India*) declined to entertain a writ petition, challenging the Final Finding of the DA on account of the availability to the Petitioner there of an efficacious statutory remedy of appeal before the CESTAT. In the said decision, this Court referred to and distinguished the above decision of the Gujarat High Court in *Nirma Limited v. Union of India* (*supra*). This Court preferred to follow its earlier decisions in *Alcatel-Lucent India Ltd. v. Designated Authority 2016* (338

ELT 397 (Del.); PTA Users Association v. Union India 2016 (340) ELT 125 (Del.) and Balaji Action Buildwell v. Union of India 2016 (337) ELT 166 (Del.) in which this Court had consistently declined to entertain a petition under Article 226 of the Constitution of India challenging the Final Finding of the DA without the Petitioner exhausting the statutory remedy of an appeal before the CESTAT. In *Hindustan Lever Ltd. v. Union of India (supra)*, the Court explained:

"10. The question is not whether this Court can entertain the present writ petition. The question is whether, in the facts and circumstances, it should? The power under Article 226 of the Constitution is an extraordinary one and should not be exercised in a routine manner especially when the Petitioner has an efficacious and adequate alternative statutory remedy available. Otherwise, the Court would be supplanting the functioning of the statutory appellate authority tasked specifically with reviewing the correctness of the orders of the subordinate statutory authorities. Therefore, while acknowledging that this Court does have the jurisdiction to entertain the writ petition, in the facts and circumstances of the present case the Court finds that no case has been made out to persuade it to exercise its jurisdiction under Article 226 of the Constitution to examine the correctness of the Final Finding of the DA. The Court is of the firm view that every ground urged in the present writ petition can well be urged before the CESTAT."

7. This Court is not persuaded to take a different view in the present petition for both the reasons noted hereinbefore viz., the petition is premature since no notification has yet been issued by the Central Government consequent upon the Final Finding dated 4th July, 2017 and secondly, even if such a notification is issued, the Petitioner has an alternative statutory remedy of an appeal before the CESTAT.

8. This Court accordingly declines to entertain the present petition. However, it is clarified that it would be open to the Petitioner to urge all the grounds raised in the present petition, and any other grounds it may have, to challenge the Final Finding as well as the consequential Notification, if any, before the CESTAT. It would also be open to the Petitioner, in such event, to seek an expeditious disposal of the appeal by the CESTAT.

9. Accordingly, this writ petition and the application are dismissed with the above observations.

CM APPL. No. 25969-71/2017

10. Allowed, subject to all just exceptions.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 24, 2017

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