IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5800 OF 2018

Bombay Dyeing & Manufacturing Co. Ltd, .. Petitioners

v/s.

The Union of India & Ors. ..Respondents

Mr. V. Sridharan, Senior Counsel with Mr. Viraj Bhate I/b PDS Legal for the petitioners
None for the respondents

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.

DATED : 2nd NOVEMBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the final findings as recorded in order dated 25th January, 2018 passed by the respondent no.2 – Designated Authority, Directorate General of Anti Dumping and Alied Duties, New Delhi. The impugned order dated 25th January, 2018 after considering the petitioners' application for initiation of Anti Dumping Investigation in respect of import of Polyester Staple Fibre (goods) under the Customs Tariff Act, 1975 (Tariff Act) r/w Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles for Determination of Injury) Rules, 1995 (Anti Dumping Rules) and

investigating into it found imposition of Anti Dumping Duty not warranted. The impugned order rejects the application by its final finding under Section 9B(b-ii) of the Tariff Act r/w Rule 14(b) of the Anti Dumping Rules. Thus, terminating the investigation for imposition of Anti Dumping duties on the goods.

2. Mr. Sridharan, learned Senior Counsel appearing in support of the petition points that this petition was filed on the basis that the impugned order is not appealable to Customs, Excise and Service Tax Appellate Tribunal (Tribunal) under Section 9C of the Tariff Act. This on the basis that the Tribunal itself had in ***M/s. Panasonic Energy India Co. Ltd. & Ors. Vs. Union of India*** (Anti- Dumping Appeal Nos. 50452–50455 of 2017) taken a view that no appeal under Section 9C of the Tariff Act is maintainable in case of termination of Anti Dumping enquiry / investigation. Thus, being without an alternative remedy, the petitioners had filed this petition invoking the extra-ordinary writ jurisdiction of this Court.

3. However, Mr. Sridharan, very fairly points out that after the petition was filed, the Hon'ble Delhi High Court in the case of ***Jindal Poly Film Ltd. Vs. Designated Authority & Anr.*** (Writ Petition (Civil)

No.8202 of 2017) decided on 20th September, 2018 has held that an appeal under Section 9C of the Tariff Act would be available even in case of an order of termination of proceedings for imposition of Anti-Dumping duties. This it held after considering the decision of the Tribunal in *M/s. Panasonic Energy India Co. Ltd.* (supra). This conclusion of the Court was on the basis of interpretation of the words "order of determination" and review thereof found in Section 9C of the Tariff Act. The Delhi High Court held that an effective and purposeful interpretation of Section 9C of the Tariff Act would necessarily require that the right of appeal be bestowed to an applicant whose application for imposition of Anti Dumping Duty has been rejected by final findings holding in the negative as in this case. In fact, the Hon'ble Delhi High Court has in particular observed as under :-

> *"38. Therefore, in this context of the statutory provisions we would reject the argument of the petitioner that Section 9C postulates an appeal only against "order of determination" in the form of notification imposing anti dumping duty and not against the negative final finding of the Designated Authority. <u>To say that in case of negative findings the Designated Authority in its order of determination goes into the question of existence, degree and effect of dumping, yet no appeal would lie, would be incongruous and clearly contradictory</u>."*
>
> *(emphasis supplied)*

4. In view of the above decision of the Hon'ble Delhi High Court in *Jindal Poly Film Ltd.* (supra), with which we agree, we are not entertaining this petition. This as an efficacious alternative remedy to the Tribunal is available from the impugned order dated 25th January, 2018. Therefore, we have not examined the merits of the petitioner's grievance. The petitioner is at liberty to file an appeal to the Tribunal under Section 9C of the Tariff Act.

5. However, we note that the petitioner had moved this Court under Article 226 of the Constitution of India within a period of 90 days from the impugned order on the basis of a bona fide understanding that no appeal is available under the Tariff Act. The time to file an appeal under Section 9C of the Act is 90 days from the date of the impugned order which is sought to be challenged. Therefore, in the above view, it would only be fair that in case the petitioner does file an appeal from the impugned order under Section 9C of the Tariff Act within a period of three weeks from today, then the Tribunal shall entertain the appeal on merits without raising any issue of limitation. This as we are condoning the delay, if the appeal is filed to the Tribunal from the impugned order dated 25th January, 2018 within three weeks from today.

6. Petition is disposed of in the above terms. All the contentions are kept open.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**