

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on: 6/8/2018
Orders pronounced on: 14/11/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal Nos.412 to 414 of 2018

Saint Gobain India Private Ltd
rep. By its Team Leader - Finance &
Company Secretary
Mr.L.Venkateswaran
Sigapi Achi Building
VII Floor, 18/3 Rukmini Lakshmipathy Road
Egmore
Chennai 600 008. Appellant in all the
Writ Appeals

Vs

1. Union of India
Ministry of Finance
through Secretary
Department of Revenue
North Block
New Delhi 110 001. First respondent in
all the appeals
2. The Directorate General of
Anti-Dumping and Allied Duties
(Through the Designated Authority)
Ministry of Commerce
Udyog Bhawan
New Delhi 110 001. Second respondent in
all the appeals
3. Tariq Glass Industries Ltd
128 J Model Town
Lahore
Pakistan. Third respondent in
W.A.No.412 of 2018

Prayer in W.A.No.412 of 2018:- Appeal filed under Clause 15 of Letters Patent to set aside the impugned order dated 6/11/2017 in W.P.No.12950 of 2017, set aside the final finding recommendation dated 10/4/2017 issued by the second respondent and consequent Notification bearing No.30/2017-Customs (ADD) dated 16/6/2017 issued by the first respondent.

Prayer in W.A.No.413 of 2018:- Appeal filed under Clause 15 of Letters Patent to set aside the impugned order dated 6/11/2017 in W.P.No.14346 of 2017, set aside the final finding recommendation dated 10/4/2017 issued by the second respondent and consequent Notification bearing No.30/2017-Customs (ADD) dated 16/6/2017 issued by the first respondent.

Prayer in W.A.No.414 of 2018:- Appeal filed under Clause 15 of Letters Patent to set aside the impugned order dated 6/11/2017 in W.P.No.17696 of 2017, set aside the final finding recommendation dated 10/4/2017 issued by the second respondent and consequent Notification bearing No.30/2017-Customs (ADD) dated 16/6/2017 issued by the first respondent.

W.P.No.12950/2017:

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 10.4.2017 issued/passed by the Respondent No.2 as modified vide Corrigendum dated 12.4.2017 issued by the Respondent No.2 and quash the same.

W.P.14346/2017:

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 23.9.2015 issued/passed by the respondent No.2 and quash the same.

W.P.17696/2017:

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 appellant ... Mr.P.S.Raman, Sr. Counsel
and Jitender Singh
for Mr.Karthik Sundaram

For respondents ... Mr.A.P.Srinivas
for R.1
Mr.T.L.Thirumalaisamy
for R.2
Mr.R.Parthasarathy for R3
for M/s.Lakshmi Kumaran

C O M M O N J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

Instant writ appeals are directed against the judgment dated 6/11/2017, passed in W.P.Nos.12950, 14346 and 17696 of 2017.

2. Appellants have filed these writ petitions :1) challenging initiation notification dated 23.09.2015 bearing F.No.15/16/2015-DGAD issued by respondent No.2 herein, commencing new shipper review investigations on an application filed by respondent No.3 herein. 2) The final finding dated 10.04.2017 vide notification No.15/16/2015-DGAD issued by respondent No.2 as corrected by the impugned final finding recommendation dated 12.04.2017 and 3) Anti-Dumping and Allied Duties notification dated 16.06.2017 bearing No.30/2017-Customs (ADD) issued by the respondent No.1.

3. It was found that exporters of a particular Country were flooding domestic markets with goods at rate much lower than the rates at which these exporters normally sell the same in their own Country and also much lesser than the rates at which the manufacturers of the country to which such goods shall be exported were able to sell. This was resulting in a heavy loss/injury to the domestic market. The Imposition of Anti Dumping Duty was a result of General Agreement on Tariffs & Trade (herein after referred to as GATT) to which India is a party. GATT recognized the injury caused by this dumping of goods by the exporters of the Country and sought to remedy the injury. Purpose of GATT was to balance the rights of the exporters from other Countries and at the same time protect the interest of the domestic markets.

The decision of GATT translated with the introduction of Section 9A in the Customs Tariff Act, 1975.

4. Section 9 A of the Customs Tariff Act,1975 reads as under:-

"Where any article is exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

5. A perusal of Section 9 A of the Act, would show that Anti Dumping Duty is imposed on a person, who exports his goods into India, at a rate less than its normal value, which will de stabilise the domestic manufacturers. The Hon'ble Supreme Court, in S & S Enterprises Vs. Designated Authority and Ors {(2005) 3 SCC 337, has observed as hereunder:-

"The imposition of dumping duty is under Section 9A of the Customs Tariff Act 1975 and the Rules and is the outcome of the General Agreement on Tariff and Trade (GATT) to which India is a party. The purpose behind the imposition of the duty is to curb unfair trade practices resorted to by exporters of a particular country of flooding the domestic markets with goods at rates which are lower than the rate at which the exporters normally sell the same or like goods in their own countries so as to cause or be likely to cause injury to the domestic market. The levy of dumping duty is a method recognized by GATT which seeks to remedy the injury and at the same time balances the right of exporters from other countries to sell their products within the country with the interest of the domestic markets. Thus the factors to constitute 'dumping', is (i) an import at prices which are lower than the normal value of the goods in the exporting country; (ii) the exports must be sufficient to cause injury to the domestic industry."

6. Similarly, in Reliance Industries Ltd., Vs. Designated Authority & Ors {(2006) 10 SCC 368}, the Hon'ble Supreme Court, observed as under:-

The result was that an industrial base was created in India after independence and this has definitely resulted in some progress. The purpose of Section 9A can, therefore, easily be seen. The purpose was that our industries which had been built up after independence with great difficulties must not be allowed to be destroyed by unfair competition of some foreign companies. Dumping is a well-known method of unfair competition which is adopted by the foreign companies. This is done by selling goods at a very low price for some time so that the domestic industries cannot compete and are thereby destroyed, and after such destruction has taken place, prices are again raised.

The purpose of Section 9A is, therefore, to maintain a level-playing field and prevent dumping, while allowing for healthy competition. The purpose is not protectionism in the classical sense (as proposed by the German economist Friedrich List in his famous book 'National System of Political Economy' published in 1841) but to prevent unfair trade practices. The 1995 Amendment to Section 9A was apparently made in pursuance to Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) which permitted anti-dumping measures as an instrument of fair competition.

The concept of anti-dumping is founded on the basis that a foreign manufacturer sells below the normal value in order to destabilize domestic manufacturers. Dumping, in the short term, may give some transitory benefits to the local customers on account of lower priced goods, but in the long run destroys the local industries and may have a drastic effect on prices in the long run."

7. The procedure for levying Anti Dumping Duty has been framed under the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. These Rules have been framed under the powers conferred by Section 9 A (6) of the Customs Tariff Act. Rule 2 e, 5, 11, 12, 13, 17, 18, 22 and 23 are reproduced hereunder:-

Rule 2 (e):- "provisional duty" means an anti dumping duty imposed under sub-section (2) of section 9A of the Act;

Rule 5:- Initiation of investigation. - (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by evidence of -

- (a) dumping
- (b) injury, where applicable, and
- (c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry : Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -

- (i) dumping,
- (ii) injury, where applicable; and
- (iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

(4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo moto if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3).

(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

Rule 11:- Determination of injury. - (1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic

producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if-

(i) there is a concentration of dumped imports into an isolated market, and

(ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

Rule 12:- Preliminary findings. - (1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain:-

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

(ii) a description of the article 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.

2. The designated authority shall issue a public notice recording its preliminary findings.

Rule 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.

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 reasons therefor and date of commencement of such retrospective levy:

Provided that the Central Government may, 5 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.

(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 impracticable, 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.

Rule 18:- Levy of duty. - (1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17.7

(2) In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to sub-rule (3) of rule 17, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed -

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value/ the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined:

Provided that the Central Government shall disregard for the purpose of this sub-rule any zero margin, margins which are less than 2 per cent expressed as the percentage of export price and margins established in the circumstances detailed in sub-rule (8) of rule 6. The Central Government shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation as referred to in the second proviso to sub-rule (3) of rule 17.

(3) Notwithstanding anything contained in sub-rule (1), where a domestic industry has been interpreted according to the proviso to sub-clause (b) of rule 2, a duty shall be levied only after the exporters have been given opportunity to cease exporting at dumped prices to the area concerned or otherwise give an undertaking pursuant to rule 15 and such undertaking has not been promptly given and in such cases duty shall not be levied only on the articles of specific producers which supply the area in question.

(4) If the final finding of the designated authority is negative that is contrary to the evidence on whose basis the investigation was initiated, the Central Government shall, within forty-five days of the publication of final findings by the designated authority under rule 17, withdraw the provisional duty imposed, if any.

Rule 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 antidumping 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.

Rule 23:- Review. - (1) The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.

(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.

8. It is also relevant to extract various Clauses of the Agreement on Implementation of the General Agreement on Tariffs and Trade, 1994.

Article 3 Determination of Injury

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The 9 Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article. 27 demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;

and

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

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.

5.2 An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed¹³ by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.¹⁴ The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously

(a) in the decision whether or not to initiate an investigation, and

(b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional

measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

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

Article 6 Evidence

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply. Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters¹⁶ and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for

in paragraph 5.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.

6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the

necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

(ii) the government of the exporting Member; and

(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member. This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

WEB COPY

Article 9

Imposition and Collection of Anti-Dumping Duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping

or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made. Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid

when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value 37 20 It is understood that the observance of the time-limits mentioned in this subparagraph and in subparagraph 3.2 may not be possible where the product in question is subject to judicial review proceedings. of the selected exporters or producers and the export prices of exporters or producers not individually examined,

provided that the authorities shall disregard for the purpose of this paragraph any zero and de minimis margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a 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 the importing Member during the period of investigation, provided that these exporters or producers can 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. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 10 Retroactivity

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the

time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and

(ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.

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 authorities 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.

Article 18
Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.

18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.

18.4 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.

18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.6 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

18.7 The Annexes to this Agreement constitute an integral part thereof.

9. Facts in brief are as follows:-

(i). Initiation Notification No.14/25/2012-DGAD, dated 11/4/2013, for initiation of investigation under Rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter called as ADD Rules for short)

was issued by the Directorate General of Anti Dumping Allied Duties, for initiating Anti Dumping Investigation, on imports of Float Glass, exported from Pakistan, Saudi Arabia and UAE. The period of investigation was fixed from 1/10/2011 to 31/12/2012 i.e., 15 months.

(ii). On the completion of investigation, Final investigation No.14/25/2012 - DGAD, dated 10/10/2014, under Rule 17 of ADD Rules was issued, recommending Anti Dumping Duty, at the rate of 123.61 US Dollars per MT. The conclusion and the recommendation of the Authority are as under:-

"N. Conclusion 101. After examining the submissions made by the opposing interested parties and the domestic industry and issues raised therein; and considering the facts available on record, the Authority concludes that the product under consideration has been exported to India from the subject countries below its associated normal value, thus, resulting in dumping of the product. The domestic industry has suffered material injury in respect of the subject goods. The material injury has been caused by the dumped imports from the subject countries.

O. Recommendations

102. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti dumping duty is required to offset dumping and consequent injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of the subject goods from the subject countries in the form and manner described hereunder.

103. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duty as per amount

specified in the table below is recommended to be imposed from the date of the Notification to be issued by the Central Government, on all imports of the subject goods originating in or exported from Saudi Arabia, United Arab Emirates and Pakistan.

(iii). The Government of India, issued Notification No.48/2014-Customs (ADD), dated 11/12/2014, under Rule 18 of ADD Rules fixing the Anti Dumping Duty at the rate of 123.6, for export of Float Glass, from Pakistan.

(iv). The third respondent herein M/s. Tariq Glass Industries Ltd., filed an application, requesting for review of Anti Dumping Duty of Float Glass exported by them from Pakistan. The application was styled as New Shipper Review. The said application was considered under Rule 22 of the ADD Rules. The authority decided to initiate the New Shipper Review with regard to the import of Clear Float Glass in respect of M/s. Tariq Glass Industries Ltd. The period of investigation was fixed from 1/7/2015 to 31/3/2016 i.e., for a period of nine months.

(v). A Notification bearing No.53/2015-Cus (ADD), dated 30/10/2015, was issued ordering for provisional assessment for the third respondent till completion of New Shipper Review, initiated by the authority.

(vi). Investigation did not get over by March 2016. The appellant therefore, submitted various representations contending that Final Notification should not be issued, since the time limit for the New Shipper's Review was over. Representations dated 26/8/2016, 6/9/2016, 8/11/2016, 11/11/2016, 27/3/2017, 28/3/2017 and 5/4/2017 were given by the appellant. In all these representations, jurisdiction of the designated authority to continue that investigation was questioned.

(vii). On 10/4/2017, the second respondent, which is the designated authority, issued the Final Notification bearing No.15/6/2015-DGAD. The authority considered the objection of the appellant regarding the time limit for the New Shipper's Review and rejected the same, observing as under:-

20. As regards the period of investigation, the Authority is well within its bounds to determine a period shorter than 12 months, but longer than 6 months. In the case of a New Shipper, it is not uncommon for a shorter period of time to be considered as the period of investigation. It is pertinent to mention here that the period selected is partially retrospective and partially

prospective. The Authority notes the Domestic Producer's concerns regarding the risks of selecting a prospective period of investigation and indeed, the concerns are very valid. However, the factual situation of the present case is clearly distinguishable from the factual situation of the H&R Johnson (2007) case cited by the Domestic producers. In the H&R Johnson (2007) case, the CESTAT clearly noted the invalidity of the initiation of the new shipper review on the following grounds: i. The new shippers had not even begun production or exportation to India at the time of filing the new shipper review application. ii. The new shippers were found to be ineligible for initiating a new shipper review under Rule 22. iii. The entire period of review was prospective.

21. In the initiation of the subject review, the Authority was mindful of these requirements, as laid down by the CESTAT in H&R Johnson (2007) case and carefully considered these issues prior to initiation of the subject review. The Authority noted that the Applicants herein had begun production and exports to India in substantial quantity prior to the filing of the new shipper review application. The period selected is part retrospective and part prospective. Further, given the purport of Rule 22 of the AD Rules, it is noted that in a new shipper review, the entire period of investigation cannot always be retrospective. Thus, the selection of the period of investigation is justified.

22. The Authority notes that the Applicant began production of the subject goods subsequent to the period of investigation of the original investigation. The Authority notes that the primary business of the Applicant is the production and sales of all types and kinds of glass products, including the subject goods. The Applicant fired up their furnace and began commercial production of the subject goods in April 2013. The finished product is sold by the Applicant directly to unrelated companies in the domestic market as well as in the export market. There are only two principal 14 shareholders / owners of the Applicant Company

who are private individuals. The Authority also notes that the Applicant has three affiliate companies in Pakistan and all three of them have certified that they are not engaged in the manufacturing of the PUC and are not related to producers and exporters in Pakistan, Saudi Arabia or UAE who had exported the PUC to India during the period of investigation of the original investigation."

(viii). The conclusion of the Authority are as follows:-

"Examination by the Authority 36. The Authority notes that post-disclosure comments/submissions made by the interested parties are mostly reiterations of earlier submissions, which have already been examined suitably and properly addressed in the disclosure statement or in the relevant paragraphs of the present finding and therefore for the sake of brevity all of them are not repeated hereunder. The authority further considers appropriate to address some of the issues raised by the interested parties herein below: a) With regard to the submission of the Domestic Industry regarding the pricing of Clear Float Glass of 13 mm thickness, the authority notes that pricing of 13mm clear float glass has no relevance in the present investigation as the same is not part of the product under consideration. Further, prices of different thicknesses are determined based upon the market demand and supply and it is not correct to compare the price of one particular thickness with the price of other thicknesses. The claim of the domestic industry also does not bear any merit because they have not been able to demonstrate that the price of 13mm thickness clear float glass supplied by Tariq Glass is lower as compared to the price of 13mm thickness clear float glass imported from other countries. Thus, there is no reasonable basis to correlate the prices of subject goods with the Clear Float Glass of 13mm thickness supplied by the Applicant. 18 b) The Authority has examined the genuineness of the export prices reported by the Applicant from the DGCI&S data for exports to India and also compared the same with prices offered by Tariq Glass to other countries during the same period. The authority notes that there no significant variation between the export price

to India and other countries for the product under consideration. Accordingly, there is no merit in the contention of the Domestic Industry. c) With regard to the submission of Domestic Industry on completion of New Shipper Review Investigation, the authority notes that the final findings of the New Shipper Review investigations have been completed as per provisions stipulated in Anti-Dumping Rules. Final Findings and Recommendations of the Authority.

37. After considering the foregoing the Authority concludes that i) Export price of Clear Float Glass exported to India produced by M/s Tariq Glass Industries Ltd, Pakistan is below its normal value during the period of investigation. ii) The Authority, therefore, recommends the anti-dumping duty of USD *** per MT be imposed on imports of "Clear Float Glass of nominal thickness ranging from 4mm to 12 mm (both inclusive), the nominal thickness being as per BIS 14900:2000" falling under Chapter 70 of the Custom Tariff Act, 1975 produced and exported by M/s Tariq Glass Industries Ltd, Pakistan."

(ix). Since the amount for Anti-Dumping was left blank, a Corrigendum, was issued on 12/4/2017. Paragraph No.2 of the Corrigendum reads as under:-

"In partial modification thereof, necessitated because of typographical error in para No37 point (ii) which reads as:-

(ii). The Authority, therefore, recommends the anti-dumping duty of USD *** per MT be imposed on imports of "Clear Float Glass of nominal thickness ranging from 4 mm to 12 mm (both inclusive), the nominal thickness being as per BIS 14900:2000" falling under Chapter 70 of the Custom Tariff Act, 1975 produced and exported by M/s. Tariq Glass Industries Ltd., Pakistan.

The said Notification shall now read as "The Authority, therefore, recommends the anti-dumping duty of USD 23.54 per MT be imposed on imports of "Clear Float Glass of nominal thickness ranging from 4 mm to 12 mm (both inclusive), the nominal thickness being as per BIS 14900:2000" falling under Chapter 70 of the Custom Tariff Act, 1975 produced and exported by M/s. Tariq Glass Industrial Ltd., Pakistan."

10. The initiation notification and Orders of the Designated Authority, dated 10/4/2017 and 12/4/2017, were the subject matters of challenge, in W.P.Nos.12950, 14396. The notification dated 16.6.17 issued by the respondent No1 was the subject matter of challenge in W.P 17696 of 2017.

11. The principle argument was that the authorities had no jurisdiction to continue the investigation beyond a period of eighteen months, from the date of initiation, for the simple reason that New Shippers Review, which deals with only one exporter could not exceed the time period, which is prescribed for investigation, under Rule 17 of the ADD Rules which is the period for investigation, for all exporters.

12. Contention was that the fact that Rule 22 does not prescribe any period of investigation, does not mean that there is no time limit for concluding the investigation. The learned Single Judge by the order impugned herein, framed the following five questions, for consideration.

(i). Whether the New Shipper Review Investigation commenced by the Designated Authority vide initiation Notification, dated 23/9/2015, culminating in the final findings, dated 11/4/2017 is barred by time as it has exceeded 18 months.

(ii). Whether the New Shipper Review initiated under Rule 23 of 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

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

and answered the questions as under:-

(i). The New Shippers Review initiated vide Notification, dated 23/9/2015, culminating in the final findings dated 10/4/2017 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 and 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 9 C of the Customs Tariff Act."

13. It is this order, which is under challenge, in the instant Writ Appeals.

14. Heard Mr.P.S.Raman, learned Senior Counsel and Mr.Jitender Singh for Mr.Karthick Sundaram for the appellant, Mr.G.Rajagopalan, learned Additional Central Government Standing Counsel, for Union of India, assisted by Mr.A.P.Srinivas and Mr.T.L.Tirumalaisamy for the second respondent.

15. The learned counsel for the appellant submitted that,

a. The initiation of a New Shippers Review is governed by the provisions of Rule 22 of the ADD Rules, 1995. Rule 22 of the ADD Rules, 1995 is based on Article 9.5 of the Agreement on Implementation of Article VI of the GATT (WTO Anti Dumping Agreement). The entirety of the ADD Rules, 1995 are based on the provisions of the WTO Anti-Dumping Agreement and require to be interpreted strictly keeping in mind the provisions of the WTO Anti Dumping Agreement.

16. The learned counsel for the appellant would rely on Article 9.5 quoted supra and contend that it clearly stipulates that review shall be initiated and carried out on an accelerated basis compared to a normal duty assessment to ensure that review results in a determination of dumping in respect of such procedures and Anti Dumping Duty can be left retroactively to the date of initiation of review. Therefore, according to the appellant, review under Rule 22, cannot in any event exceed the period of 18 months. The learned counsel for the appellant would also rely on the answer given by India to Korea. Where on the pointed question regarding the time period for New Shipper Accelerated Review India categorically stated that the Rule 22 of Indian ADD Rules is based on Article 9.5 of WTO Anti-Dumping Agreement.

17. The appellant would therefore, submit that if the New Shipper Review is not completed, within a period of 12 months or 18 months, in exceptional circumstances, as prescribed in Rule 17, the following prejudice would be caused to the Domestic Industry.

(i). The New Shipper can seek provisional assessment and the ADD is not collected during the period of review. If the NSR results in a determination of dumping it will be imposed retrospectively from the date of initiation of the review.

(ii). Therefore for such period of review, if the dumped articles are allowed into India without any levy of ADD. The foreign exporter will capture the domestic market to the detriment of the Indian Domestic Industry which will go against the very purpose of ADD.

(iii). Since the second respondent has been taking a longer period of investigation for New Shippers Review, this coupled with the fact of provisional assessment being afforded and no ADD being imposed as determined during the original investigations during the period of review, has resulted in price manipulation and increased exports of dumped products into India thus having an adverse effect on domestic industry."

18. According to the appellant, under Rule 17 of the ADD Rules, the Designated Authority has to take the prices of all the exporters, investigate regarding the related persons for all the exporters the local market in the country of the another exporter fix the ADD. The exercise is therefore, much bigger compared to the exercise undertaken in a New Shippers Review where only limited number of exporters has to be investigated and in this case, only one is under consideration. The time taken for the New Shippers Review should therefore be much lesser. According to the appellant, the time period for completing the investigation must be read into Rule 22.

19. On the other hand, the Second respondent has in its written submission states as under:-

"6. The entire scheme of Section 9 A of the Act does not contemplate any period of limitation before which the authority constituted under the ADD Rules, 1995 shall make its investigation. The power to impose duty is traceable to Section 9 A of the Customs Tariff Act, 1975 and not from the rules themselves. Therefore, the rules provide for any

limitation regarding enquiry, if the said limitation applies to enquiry under Rule 22 of the ADD Rules, 1995, then it can only be regarded as directory and not mandatory in nature as rules themselves being subordinate legislation. Any rule of limitation is essentially of legislative character, part of substantive law cannot be read from subordinate legislation, and even if the subordinate legislation provides the same it could be only treated as directory and not mandatory.

8. Without prejudice to above submission, it is submitted that on the face of Rules 22 of the ADD Rules, 1995, there is no limitation contemplated less or more than what is contemplated under Rule 17 or Rule 23 of the ADD Rules, 1995. Reading any time limit into Rule 22 of the ADD Rules, 1995 would only amount to rewriting the rule which the appellant/writ petitioner cannot compel the Court to do while deciding the case and if it is done it will be hit by the Principle of Causus Omissus.

10. On the very reading of 22 of the ADD Rules, 1995, it is very clear that the rule making authority has consciously not provided the limitation though it is specifically provided for Rule 23 of the ADD Rules, 1995. Therefore, the ADD Rules, 1995. Therefore, the ADD Rules, 1995 being a domestic law will prevail over an international agreement i.e, GATT, as held by the Supreme Court in the case of GRAMOPHONE COMPANY OF INDIA LTD Vs. BIRENDRA BAHADUR PANDEY {1984 (2) SCC 534}, relevant portion extracted hereunder:-

"There can be no question that nations must march with the international community and the municipal law must respect rules of international law even as nations respect international opinion. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of nations or no, municipal law must prevail in case of conflict. National Courts cannot say yes if parliament has said no to a principle of international law. National Courts will endorse international law but not if it conflicts with national law...."

12. In any event, the Appeal is not maintainable as the appellant have adequate

alternative remedy under Section 9 C of the Customs Tariff Act and hence the present appeals are not maintainable and liable to be dismissed."

20. The learned Additional Solicitor General would contend that writ petition was not maintainable, in view of a right of appeal provided, under Section 9 (c) of the Customs Tariff Act. He would also contend that since the determination to impose duty is a procedure to Section 9 A of the Customs Tariff Act, which does not prescribe any period of limitation, the time limit prescribed in Rule 17 that too for a normal investigation can be held only to be procedural in nature and therefore directory and not mandatory. He would further submit that since no limitation has been prescribed under 9 A and no limitation has been prescribed under Rule 22, the literal Rule of interpretation should be applied and the Courts are only to see what the Law is and what Law ought to be. He would submit that Rule 17 and 23 prescribes the period under which investigation must be completed. There is a conscious omission of prescribing a time period in Rule 22 and therefore, one cannot read the period of limitation, to complete investigation, under Rule 22, in view of the conscious omission by the Legislature. According to the learned Additional Solicitor General, principle of Causus Omissus should not be applied when the intention of the legislature is extremely clear. Placing reliance on a judgment of the Hon'ble Supreme Court in GRAMOPHONE COMPANY OF INDIA LTD Vs. BIRENDRA BAHADUR PANDEY & OTHERS {1984 (2) SCC 534}, he would contend that National Courts cannot say 'yes', if legislative particularly has said 'no' to a principle. According to him, Clause 9.5 of GATT, cannot be read as a Statute.

21. The question that arises for consideration is that while carrying out the investigation, under Rule 22 of the "ADD Rules", can the authorities exceed the time limit, as provided, under Rule 17, i.e., original Notification or under Rule 23, which is a review commonly known as sunset review. In other words, the question is as to whether the time limit whether which the investigation has to be completed should be read into Rule 22 of the ADD Rules which does not prescribe any time limit.

22. As discussed earlier, the imposition of Anti-Dumping Duty was the outcome of the General Agreement on Tariffs & Trade, 1994, to which India is a party. The purpose behind the imposition of the duty was to curb the unfair trade practices resorted to by the exporters of a particular country of flooding the Domestic Markets with goods, at the rate which are lesser than the rate at which the exporters normally sell the same in their own countries which is the effect of causing injury to the domestic market. Section 9 A was therefore, brought in, to maintain a level playing field and prevent dumping the goods

into India while allowing the healthy competition. The Hon'ble Supreme Court, in Reliance Industries Ltd., Vs. Designated Authority & Ors {(2006) 10 SCC 368}, has observed that "the concept of anti-dumping is founded on the basis that a foreign manufacturer sells below the normal value in order to destabilize domestic manufacturers. Dumping, in the short term, may give some transitory benefits to the local customers on account of lower priced goods, but in the long run destroys the local industries and may have a drastic effect on prices in the long run.

23. The procedure to find out as to whether the Anti Dumping Duty is to be left or not has been elaborately given in ADD Rules. The relevant Rules have already been extracted supra.

24. Rule 5, remarks the initiation of Investigation. For finding out as to whether Anti Dumping Duty should be levied or not, Under Rule 5, the application for initiation of investigation has to be supported by dumping, injury, causal link between dumped imports and alleged injury. The Principles governing investigation are laid down in Rule 6. Under Rule 6, the Designated Authority, after taking a decision to initiate investigation to determine the existence, degree and effect of alleged dumping of any article, issues a public notice, notifying its decision and such public notice has to contain adequate information regarding

- a. the name of the exporting country or countries and the article involved.
- b. the date of initiation of investigation
- c. the basis on which dumping is alleged in the application
- d. a summary of the factors on which the allegation of injury is based
- e. the address to which representations by interested parties should directed and

- f. the time limits allowed to interested parties for making their views known.

25. Rules 9, 10, 11 and 12 deal with Investigation in the territory of other specified countries, Determination of normal value, export price and margin of dumping and Determination of injury. On conducting investigation, Rule 12 provides for Preliminary findings by the Designated Authority regarding export price, normal value, margin of dumping and in respect of imports from specified Countries. Rule 17 prescribes that 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. This finding is submitted to the Central Government. The finding is regarding

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

26. Proviso to Rule 17 provides that the period of one year has given. Rule 17 can be extended by an another period of six months.

27. A perusal of the above Rules would show that investigation conducted by the Designated Authority, deals with a number of exporters who are exporting their goods into India. Information is called for from such exporters regarding their price of production, regarding the price at which the goods are being sold in their countries and all other information.

28. Rule 22 deals with determination of margin of dumping for exporters not originally investigated. A perusal of Rule 22 would show that it deals with determining the individual margins of dumping for an exporters, 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 exporters or producers, who are subject to Anti Dumping Duties on the product. The process of investigation in case of original investigation and in case of investigation under Rule 22 is the same. Though Rule 22 is called periodical review, it actually is a fresh look at those exporters, who have not exported during the period, when the original investigation was going on. Rule 22 does not prescribe any time period within which the investigation has to be completed.

29. It is also not in dispute that Rule 22 would deal with much lesser number of exporters. Rule 23 (1-A) provides that Designated Authority shall review the need for continued imposition of Anti Dumping Duty either upon a request by interested party, who submits positive information, substantiating the need of such review or when the reasonable period of time has elapsed since the imposition of the definitive Anti Dumping Duty and upon such review, the Designated Authority has to 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, and is not warranted. The period for conducting the review is specified as twelve months. A perusal of the above would show that the

period of twelve months (not exceeding 18 months) is provided for the original investigation, a period of 12 months is provided, under Rule 23, but no period has been specified for Rule 22, which is for exporters, who have not been originally investigated because they did not export the goods in question into India. It is to be noted that both under investigation conducted under Rule 17 and 23, the number of exporters are much more compared to the exporters who are scrutinized under Rule 22.

30. As stated earlier India is the signatory to the agreement on implementation of VI of the General Agreement of Operations and Trade 1994 (GATT). Article 9 (extracted supra) deals with Imposition and Collection of Anti Dumping Duties. Rule 9.5 deals with the situation as specified in Rule 22. Rule 9.5 stipulates:

a. If a product is subject to anti-dumping duties, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping, for any exporters or producers in the exporting Country who have not exported the product to the importing member during the period of investigation.

b. These exporters 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.

c. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member.

d. No anti-dumping duties shall be levied on imports from such exporters or producers while the review has been carried out.

e. The authorities may, withhold appraisement and/or request guarantees to ensure that should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

31. A perusal of the above mentioned clause would show that these review has to be carried out on an accelerated basis, compared to normal duty assessment. The agreement therefore, clearly stipulated that the period taken for these assessment cannot exceed the original investigation.

32. The Committee on anti-dumping practices has received communications from India regarding reviews specified in Rule 22. The question and the answer reads as under:-

4. Newcomer's accelerated review

Article 9.5 of the WTO Agreement stipulates:
"....authorities shall promptly carry out a review for any exporters ... who have not

exported the product to the importing Member during the period of investigation. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment."

Article 22.1 of India's A.D Law, however only provides that "authority shall carry out a periodical review for the and does not contain any explicit provisions for ensuring the newcomer's accelerated reviews".

In the absence of an explicit provision, how will India ensure the conformity of its practice with Article 9.5 of the WTO Agreement?

4. Answer: The designated authority intends to deal with such newcomers reviews expeditiously. The term "periodical reviews" implies accelerated reviews."

33. A perusal of Clause 9.5 of GATT and the reply given by India would show that Review under Article 22 has to be done on an accelerated basis compared to the original review.

34. As stated above, the Hon'ble Supreme Court in G.M.Exports's case, stated supra, has categorically held that when 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, 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.

35. Learned counsel for the appellant is justified in contending that if the time taken in review under 22 is longer than the original investigation, then this would allow the foreign exporter to dump its goods into India, on the basis of provisional assessment, to the detriment of the Indian Domestic Industry. The exporter can manipulate his prices and create documents, if the period for investigation, under Rule 22 is not shorter than the original investigation.

36. The counsel for the assessee would rely on an observation made by the CESTAT Principal Bench in H & R Johnson (India) Limited Vs. Designated Authority {Union of India {2008 (232) ELT 390 (Del.)}, on the following observations.

"12.4. It is clear from the scheme of the

new shipper review provisions, requiring determination of individual dumping margin of the new shipper, that period of review (POR) has to be fixed by the designated authority for the purpose of initiating the review investigation. For determining 'dumping margin', 'normal value' and the 'export price' for such period of review, the transactions taking place during the period of review will be relevant, in an anti-dumping proceeding. A new shipper review under Rule 22 should normally cover production, exports or sales during the period of review will be relevant, in an anti-dumping proceeding. A new shipper review under Rule 22 should normally cover production, exports or sales during the period preceding the initiation of review. Fixing review period, for such investigation, that falls subsequent to the date of the application for such review is not at all warranted, and would be like spreading a red carpet to manipulations by projecting figures during the prospective period of review so tailored as to bring about a dumping margin favourable to the new shipper who can then be a conduit pipe for flowing exports of other exporters and producers whose exports would otherwise have been subjected to the existing anti-dumping duty. Selecting new shipper review for a period subsequent to the application for such review would distort the entire scheme and purpose of imposition of anti-dumping duty, to the grave disadvantage of the domestic industry that had earned the protection of anti-dumping duty. The contention that the new shipper review proceedings are in the nature of 'advance ruling', for which the period of review ought to be after the date of initiation of new shipper review is, therefore, totally misconceived."

37. Judgment of the Tribunal has not been accepted by the High Court while considering the interim relief in the appeal filed by the appellant against the judgment of the Tribunal. It is well settled that findings rendered during the grant of interim relief cannot be taken as an authority to pronouncement of law.

38. Material on record reveals that the writ petition in the above said matter was withdrawn. Therefore, the findings of the Tribunal extracted supra, holds the field.

39. A perusal of Rule 23 which deals with the sunset review would show that Rule prohibits the period of 12 months within

which the review should be concluded.

40. As stated earlier, a perusal of the Clause 9.5 of GATT and the stand of the Country to specific questions posed to it would indicate that the Government had expressed categorically that the procedure under Rule 22 would be an accelerated review definitely to indicate that it should take lesser time compared to the original investigation. Viewed in this light, the Courts would have to read into Rule 22. The period within which the exercise under Rule 22 should be completed. The Court cannot interpretate Rule 22 in such a way that there is no time period fixed for the purpose of carrying out the exercise in Rule 22.

41. Bennion, on statutory interpretation (sixth edition), has dealt with constructions against Absurdity'. At page 869, it is stated as under:-

"The Court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. Here the Courts give a very wide meaning to the concept of 'absurdity', using it to include virtually any result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief.

(2). In rare cases, there are overriding reasons for applying a construction that produces an absurd result, for example where it appears that Parliament really intended it or the literal meaning is too strong."

Similarly, at page No.870, it is observed as under:-

The Court seeks to avoid a construction of an enactment that produces an unworkable or an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong.

42. The Hon'ble Apex Court, in Shailesh Dhairyawan vs. Mohan Balkrishna Lulla {(2016) 3 SCC 619 has stated that the principle of purposive interpretation is based on the understanding that the Court is supposed to attach that meaning to the provision which serve the purpose behind such a provision. Paragraph No.31, 32 and 33, are apt for this case, and the same reads as under:-

31. The aforesaid two reasons given by me,

in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/ purpose of such a provision is achieved thereby. The principle of 'purposive interpretation' or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realise. As Aharan Barak puts it:

"Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language." [3] Of the aforesaid three components, namely, language, purpose and discretion 'of the Court', insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualize. It is the function that the text is designed to fulfil.

We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the 'golden rule', it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal

process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well.

43. Similarly, at paragraph Nos.31 to 33 of the Indian Performing Rights Society Limited vs. Sanjay Dalia {(2015) 10 SCC 161, it is held thus:-

31. In *Busching Schmitz Private Ltd. v. P.T. Menghani* [1977 (2) SCC 835], it has been observed that purposive interpretation may be made having regard to the object of the provisions and to avoid any obvious lacuna.

32. The learned author Justice G.P. Singh in *Interpretation of Statutes*, 12th Edn. has also observed that it is the court's duty to avoid hardship, inconvenience, injustice, absurdity and anomaly while selecting out of different interpretations. The doctrine must be applied with great care and in case absurd inconvenience is to be caused that interpretation has to be avoided. Cases of individual hardship or injustice have no bearing for enacting the natural construction. The relevant discussion at pages 132-133 and 140-142 is extracted hereunder :

"(a) Hardship, inconvenience, injustice, absurdity and anomaly to be avoided In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things" [*Holmes v. Bradfield Rural District Council*, (1949) 1 All ER 381, p. 384] as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". [*Simms v. Registrar of Probates*, (1900) AC 323, p. 335 CPC] If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. [*Grey v. Pearson*, (1857) 6 HLC 61, p. 106]. Similarly, a construction giving rise to anomalies should be avoided. [*Veluswami Thevar v. G.Raja Nainar*, AIR 1959 SC 422, pp. 427, 428]. As approved by VENKATARAMA AIYAR, J., "Where the language of a statute, in its

ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." [Tirath Singh v. Bachittar Singh, AIR 1955 SC 830]."

x x x x x

"Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument *ab inconvenienti*", said LORD MOULTON, "is one which requires to be used with great caution". [Vacher & Sons v. London Society of Compositors, (1913) AC 107]. Explaining why great caution is necessary LORD MOULTON further observed: "There is a danger that it may degenerate into a mere judicial criticism of the propriety of the Acts of Legislature. We have to interpret statutes according to the language used therein, and though occasionally the respective consequences of two rival interpretations may guide us in our choice in between them, it can only be where, taking the Act as a whole and viewing it in connection with existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words cannot have been used in the sense to which the argument points". [Vacher & Sons v. London Society of Compositors, (1913) AC 107]. According to BRETT, L.J., the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an "absurd inconvenience". Moreover, individual cases of hardship or injustice have no bearing for rejecting the natural construction, [Young & Co. v. Leamington Spa Corporation, (1993) 8 AC 517], and it is only when the natural construction leads to some general hardship or injustice and some other construction is reasonably open that the natural construction may be departed from. It is often found that laws enacted for the general advantage do result in individual hardship; for example laws of Limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the

supposed hardship or injustice in such cases. [Lucy v. Henleys Telegraph Works, (1969) 3 All ER 456]. "It is the duty of all courts of justice", said LORD CAMPBELL, "to take care for the general good of the community, that hard cases do not make bad law". [East India Company v. Odichurn Paul, 7 Moo PC 85]. 'Absurdity' according to WILLES, J., should be understood "in the same sense as repugnance that is to say something which would be so absurd with reference to the other words of the statute as to amount to a repugnance". [Christopherson v. Lotinga, (1864) 33 LJ CP 121]. "Absurdity", said LORD GREENE, M.R., "like public policy, is a very unruly horse". [Grundt v. Great Boulder Proprietary Gold Mines Ltd., (1948) 1 All ER 21]. He proceeded to add: "There is one rule, I think which is clear that, although the absurdity or the non-absurdity of one conclusion as compared with another may be and very often is, of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which must be applied with great care, remembering that judges may be fallible in this question of an absurdity and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to re-write the language in a way different from that in which it was originally framed". [Grundt v. Great Boulder Proprietary Gold Mines Ltd. (supra)]. The alternative construction contended for must be such which does not put an undue strain on the words used; [Kanailal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907] and does not require recasting of the Act or any part of it. It must be possible to spell the meaning contended for out of the words actually used. [Shamrao V. Parulekar v. District Magistrate, Thana AIR 1952 SC 324].

No doubt in cases of ambiguity that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the Legislature in forming its policy to consider these elements. [IRC v. Mutual Investment Co. (1966) 3 All ER 265]. If no alternative construction is open, the court cannot ignore a statutory provision "to relieve what it considers a distress resulting from its

operation; a statute has to be given effect to whether the court likes it or not". [Martin Burn Ltd. v. Calcutta Corporation, AIR 1966 SC 524]. The function of the court is to find out what is legal and not what is right. [Chandavarkar Sita Ratna Rao v. Ashalata S.Guram, (1986) 4 SCC 447]. It is presumed that a legislative body intends which is the necessary effect of its enactments; the object, the purpose and the intention of the enactment is the same; it need not be expressed in any recital or preamble; and it is not competent for any court judicially to ascribe any part of the legal operation of the statute to inadvertence. [Kariapper v. Wijesinha, (1967) 3 All ER 485].

The Courts should as far as possible avoid a construction which results in anomalies. [N.T.Veluswami Thevar v. G.Raja Nainar, AIR 1959 SC 422]."

33. Bennion on 'Statutory Interpretation' has mentioned law to same effect under section 312 and has observed that there is a presumption that absurd result is not intended and in section 314 it has been observed that the court has to avoid an inconvenient result while interpreting a provision. It was stated that it can be presumed that Parliament intends that while construing an enactment the court will avoid a construction that is unworkable or impracticable, inconvenient, anomalous or illogical as the same is unlikely to be intended by the Parliament. In Rosali V. v. Taico Bank and Ors. [2009 (17) SCC 690], this Court referring to Halsbury's Commonsense construction rule held that it is a well-settled principle of law that common sense construction rule should be taken recourse in certain cases.

44. The Hon'ble Supreme Court in Commissioner of Customs, Bangalore Vs. G.M.Exports and Ors {2015 (324) ELT 209 (SC)}, has observed as under:-

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.

It is in the light of these principles that we must now examine the statute in question.

24. Section 9A(1) refers to an anti-dumping duty. Such duty is only imposed when an article is exported from a country outside India to India at less than its normal value. Such duty can, in the Central Government's discretion, be imposed at a

rate that does not exceed the margin of dumping, which only means the difference between the export price and the normal value of such article in international trade. It is clear that sub-section (1) refers to a "final" or "definitive" duty, and has to be read with sub-section (3) thereof, which authorises the levy of the "final" or "definitive" anti-dumping duty retrospectively in the circumstances mentioned in sub-section (3). The scheme therefore of Section 9A(1) and (3) is that an anti-dumping duty is normally to be imposed with prospective effect unless, inter alia, because of massive dumping of an article in a relatively short time the remedial effect of the anti-dumping duty to be levied would be seriously undermined. This would therefore require a retrospective duty being levied, but not beyond a period of 90 days, to undo the effect of undermining the anti-dumping duty to be levied. Short of sub-section (3), no other part of Section 9A authorises the Central Government to levy an anti-dumping duty with retrospective effect.

25. Section 9A(2) speaks of an anti-dumping duty which the Central Government levies on the basis of a provisional estimate, thus referring to a provisional anti-dumping duty. The Section further goes on to say that after a final determination is made in accordance with the Rules, the Central Government may reduce such provisional anti-dumping duty, having regard to the final determination made by the designated authority under the Rules. If and when this happens, what is important to note is that refund shall be made of so much of the anti-dumping duty which has been collected in excess of the final anti-dumping duty so reduced. Under sub-section (5), a maximum period of five years is allowable on the anti-dumping duty imposed. This is extendable only for a further period of five years and not beyond. Sub-section (6) in turn refers to the Central Government's power to make rules, inter alia, to assess and collect anti-dumping duty.

26. It is important to note that neither sub-section (2) nor sub-section (6) authorises the Central Government, either expressly or by necessary implication, to make rules and/or to levy anti-dumping duty with retrospective effect. This is in contrast with sub-section (3) which

expressly so authorises the Central Government in the circumstances mentioned in the sub-section.

45. Coming back to the case on hand, the Tribunal though placed reliance on Clause 9.5, did not extract it fully. It omitted to notice the crucial lines of para 9.5, which reads "such review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing member."

(emphasis supplied)

46. The agreement to which India is a signatory, is the basis of the ADD, and therefore, the purpose behind that must be the guiding force while interpreting Rule 22. The learned Single Judge in our respectful opinion erred in applying the literal Rule of Interpretation, to come to a conclusion that to fix the time limit in Rule 22 would amount to rewriting the Rule. In our opinion, the Rule of purpose of interpretation should have been applied. Keeping in view the spirit of GATT, to which India is a signatory and the stand which India has taken in answering various questions. If the time taken in review under 22 is longer than the original investigation, then this would allow the foreign exporter to dump its goods into India, on the basis of provisional assessment, to the detriment of the Indian Domestic Industry. The exporter can manipulate his prices and create documents, if the period for investigation, under Rule 22 is not shorter than the original investigation and the very purpose of imposing Anti-Dumping duty will be lost.

47. The time limit for completing the New Shippers Review must be read into Rule 22 of ADD. In the present case, the procedure under Rule 22, was initiated on 23/9/2015 and it culminated on 12/4/2017, after 18 months, which is more than the time prescribed in Rule 17 and Rule 23. The new Shippers review initiated by Notification dated 23/9/2015, and culminating in final finding dated 10/4/2017, is clearly barred by time. Even in the absence of time limit fixed in rule 22, a review undertaken under Rule 22 is required to be completed on an accelerated basis i.e., definitely before the time period prescribed in Rule 17 or Rule 23.

48. Even though, the order of the Designated Authority is appealable, yet that does not take away the jurisdiction of the High Court in entertaining the writ petition. The writ petition raises substantial questions of law regarding the scope and ambit of Rule 22 of the ADD Rules, and as to whether the period of limitation must be read into the Rule, an exercise which the appellate authority could not have undertaken as a creature under the Statute would be bound by the literal Rule of Construction.

49. The Writ Appeals are allowed. The judgment of the learned Single Judge and the Tribunal are set aside. No costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

mvs.

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 Bhawan
New Delhi 110 001.

3. Taria Glass Industries Limited
128 J Model Town
Lahore, Pakistan.

+3 Ccs to Mr.Karthik sundaram, Advocate sr 77500, 77499, 77498.

+1 CC to Mr.T.L. Thirumalaisamy, Advocate sr 77611.

+1 CC to Mr. Lakshmikumaran, Advocate sr 77735.

+2 CCs to Mr.T.L. Thirumalaisamy, Advocate sr 77611.(22/11/2018)

+1 CC to Mr. Lakshmikumaran, Advocate sr 77735. (22/11/2018)

W.A.Nos.412 to 414 of 2018

WEB COPY

JP (CO)

SP(16/11/2018)