IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.10893 of 2018(O&M)

Date of Decision:-13.12.2019

M/s Amit Enterprises.

......Petitioner.

Versus

Designated Authority office of The Deputy Commissioner of Customs, CFS (PSWC), Phase-V, Dhandari Kalan, Ludhiana.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Vishal Sharma, Advocate for the Petitioner.

Mr. Sharan Sethi, Advocate for the respondent.

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JASWANT SINGH, J.

1. The Petitioner-Partnership concern has filed present petition under Article 226 of the Constitution of India seeking quashing of demand notice dated 3.7.2015 (**Annexure P-3 to 5**) and 10.9.2015 (**Annexure P-6**) passed by designated authority as well order dated 2.1.2017 (**Annexure P6**) passed by Customs Excise and Service Tax Appellate Tribunal.

2. The conceded facts emerging from record are that Central Government in terms of Section 9A (2) of Customs Tariff Act, 1975 read with Rule 13 & 20 of Customs Tariff (Identification, assessment and collection of antidumping duty on dump articles and for determination of

injury) Rules, 1995; on the recommendation of Designated Authority vide notification No. 15/2014-Customs (ADD), for a period of six months, imposed provisional antidumping duty w.e.f. 11.4.2014 on notified goods originating and exported from notified countries. The aforesaid notification by the efflux of time expired ceased to exist on 10.10.2014. Government vide notification No. 21/2015-Customs (ADD) dated 22.5.2015 finally levied antidumping duty for a period of five years from the date of imposition of provisional duty i.e. 11.4.2014. The Petitioner is aggrieved from retrospective levy of duty for the period 10.10.2014 to 21.5.2015. The Respondent on the basis of aforesaid notification has raised demand of anti dumping duty with respect to 4 bills of entry filed during January' 2015 to 13.5.2015.

3. Counsel for the Petitioner contended that Respondent has no authority to levy duty for the gap period i.e. from the date of expiry of provisional levy and date of final levy. In support of his contention, he cited judgment of Hon'ble Supreme Court in the case of **Commissioner of Customs Vs G.M. Exports** **2015 (324) ELT 209 (S.C**) wherein it has been held there can be no levy of anti-dumping duty in the 'gap' interregnum period between the lapse of the provisional duty and the imposition of the final duty.

4. Counsel for the Respondent did not dispute on the basic issue involved, however pointed out that impugned orders are appealable and earlier petitions of the Petitioner has been dismissed on this sole ground, thus Court should not entertain present petition.

5. Having scrutinised record and heard arguments of both sides, we are of the considered opinion that issue involved in the present case is

squarely covered by judgment of Hon'ble Supreme in the case of G.M. Exports (Supra). Hon'ble Supreme Court has finally observed in Para 49 & 50 as under:

> " **49.** The High Court goes on to state that the construction suggested on behalf of the assessee would lead to a manifest absurdity as there would be no reason or justification to hold that the levy of anti-dumping duty must sustain a break during the period between the expiry of the provisional duty notification and the issuance of a notification imposing a final anti-dumping duty. The High Court went on to hold that the object and purpose underlying Section 9A would be defeated, as for the interregnum period where both dumping and material injury to domestic industry are found, no anti-dumping duty can be issued. This conclusion again cannot be countenanced for the simple reason that if Rule 20(2)(a) were to be construed in the fashion suggested by the High Court, it would be *ultra vires* Section 9A for the reasons already given by us. Further, the object and purpose of Section 9A is to impose an anti-dumping duty in consonance with the WTO Agreement, which Section 9A gives full effect to. These basic points have been missed by the High Court in arriving at the aforesaid finding. Further, the High Court fails to give due importance in its judgment to Rules 13 and 21. We have already seen how Rule 21(1) envisages precisely the situation spoken of by the High Court, and yet states that, in the circumstances mentioned therein, despite dumping and material injury to the domestic industry, differential duty cannot be collected from the importer. In fact, the High Court goes on to say that the expression "imposed and collected" in Rule 21, no being there in Rule 20(2)(a), cannot therefore be imported into the said sub-rule, so that "levied" cannot mean "imposed and collected". We have already held, in view of our construction of Rule 20(2)(a), that this need not be gone into. What has been missed by the High Court is that the expression "levied" has to be understood as "levied" under Rule 13 and once this is so, it becomes clear that such levy cannot exceed a period of 6 months or a maximum period of 9 months, as the case may be.
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> **50.** The Bombay High Court follows the Kerala High Court reasoning, which is to the same effect. For the reasons given by us in this judgment, we find it difficult to accede to such reasoning. We, therefore, allow the appeals of the assessees and dismiss Civil Appeal No. 3889 of 2006 of the revenue. We make it clear that we have only decided the point of levy of anti-dumping duty during the interregnum between the expiry of a provisional duty notification and the imposition of a final anti-dumping

> duty. If either the assessees or the revenue have succeeded on any other point, such point will remain untouched by this judgment. With these observations, all the said appeals are disposed of. ”

6. The issue involved in the case in hand is squarely covered by afore-cited judgment of Hon’ble Supreme Court and we do not find it appropriate to relegate the Petitioner to avail alternative remedy when issue stands settled by Apex Court.

Accordingly, we allow the present Petition and set aside demand of anti-dumping duty raised for the gap period i.e. interregnum period between 10.10.2014 to 21.5.2015. The impugned orders dated 3.7.2015 (Annexure **P-3 to 5**) & 10.9.2015 (Annexure **P-6**) are set aside.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

December 13, 2019
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*