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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 06.09.2022

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W.P.(C) 12894/2022 & CM Nos.39167-69/2022ALLEIMA MATERIALS TECHNOLOGY
(JIANGSU) CO LTD

..... Petitioner

Through: Mr Gopal Jain, Sr. Adv. with Mr
Mayank Jain, Mr Vikram Naik, Ms
Suvarna Kashyap and Mr Harsh
Makhija, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Ravi Prakash, CGSC with Mr
Farmaan Ali, Ms Vidhi Jain and Ms
Shruti Shivkumar, Advs. for R-1 & 2.
Mr Sandeep Sethi, Sr. Adv. with Mr
Pragyan Pradip Sharma, Mr Rajesh
Sharma, Mr Anoop George and Mr
Kartikay Dutta, Advs. for R-3 to 5.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MS. JUSTICE TARA VITASTA GANJU**

[Physical Court hearing/ Hybrid hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):**CM Nos.39168-69/2022**

1. Allowed, subject to just exceptions.

W.P.(C) 12894/2022 & CM No.39167/2022*[Application filed on behalf of
the petitioner seeking interim relief]*

2. Issue notice to the respondents.

3. Mr Ravi Prakash accepts notice on behalf of respondent nos.1 and 2,



while Mr Pragyan Pradip Sharma accepts notice on behalf of respondent nos.3 to 5, i.e., the representatives of the domestic industry.

4. Counsel for the respondents say that they do not wish to file counter-affidavits in the matter.

4.1. Furthermore, counsel for the parties state that the writ petition can be taken up for final hearing and disposal, at this stage itself.

5. This writ petition is directed against the disclosure statement dated 29.08.2022. In effect, the petitioner seeks a direction that the petitioner's categorization as "non-cooperative" should be set aside.

6. Before we proceed further it is relevant to note that the petitioner was formerly known as Sandvik Materials Technology (China) Co. Limited.

7. Mr Gopal Jain, learned senior counsel, who appears on behalf of the petitioner, says that information has been sought by the Designated Authority (DA) from the Indian company, i.e., Sandvik Materials Technology India Private Limited [hereafter referred to as "SMTIL"], which has no role to play in the investigation carried out by the DA.

7.1 In particular, in support of this plea, our attention has been drawn to paragraphs 82 and 83 of the aforementioned disclosure statement. For the sake of convenience, the said paragraphs are extracted hereafter:

"Export price for Sandvik Materials Technology (China) Co., Ltd.

82. The response filed by Sandvik Materials Technology (China) Co., Ltd., shows that the company imports product under consideration from its related entities and undertakes cold-drawn process on the same. The finished product is then sold in the home market as well as exported to India. The producers of the hot-rolled products have not participated in the present investigation. Since Sandvik Materials Technology (China) Co., Ltd., cannot be considered as a producer of product under consideration and the



producers of intermediate product (hot-rolled product) have not participated in the present investigation, individual duties cannot be granted to Sandvik Materials Technology (China) Co., Ltd.

83. Further, on analysis of response filed by the exporter, the Authority noted that the quantity of exports reported by the exporter did not match the Indian customs data. The Authority issued a letter dated 17th August 2022, providing an opportunity to the exporter to clarify the same. **The Authority additionally sorted information with regards to Sandvik materials Technology India Private Limited and its role in the sales process of the exporter. However, the Authority has not received any response from the exporter and accordingly, proposes to hold that the response filed by the exporter cannot be accepted.**

[Emphasis is ours]

7.2. It is, thus, contended by Mr Jain that because the petitioner has been categorized as “non-cooperative”, it has been put under residuary head for imposition of Anti-Dumping Duty (ADD).

8. Mr Jain also submits that, in the event, the DA chooses to recommend imposition of ADD, it has to be crystallized *vis-à-vis* “each known exporter or producer” of the article under consideration.

8.1. In this behalf, Mr Jain has referred to Rule 17(3) of the Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped Articles and for Determination of Injury), Rules 1995 [hereafter referred to as “1995 Rules”].

8.2. This apart, Mr Jain says that the petitioner has received the purported transaction data almost at the eleventh hour. According to him, the transaction data was submitted to the petitioner only on 05.09.2022, *albeit*, after 5 P.M.

9. Mr Ravi Prakash, who appears on behalf of the official respondents,



i.e., respondent nos.1 and 2, says that no intercession in the matter is called for at this stage, since the DA has not returned a final finding which, in any event, is only a recommendation.

9.1. Furthermore, Mr Prakash says that an opportunity was given to the petitioner to respond to the disclosure statement and therefore, this Court need not interdict the ongoing investigation being carried out by the DA.

10. Mr Sandeep Sethi, learned senior counsel, who appears on behalf of respondent nos.3 to 5, i.e., the respondents who represent the domestic industry, supports the submissions made by Mr Prakash.

10.1 It is also Mr Sethi's contention that, at this juncture, this Court need not intervene the process set in motion by the DA. In this regard, Mr Sethi referred to various provisions of the 1995 Rules.

11. We have heard the learned counsel for the parties and perused the record.

12. The concern of the petitioner is that the DA, for the purposes for the investigation has, *inter alia* taken steps to gather information from SMTIL, which, according to Mr Jain, is a process that is not contemplated under the 1995 Rules.

12.1 The petitioner is apprehensive, that if SMTIL were to not furnish the information, then the consequences of such an approach would have to be borne by the petitioner, who is the exporter of the final product.

13. We may note that in the course of arguments, reference was made by Mr Sethi to Rule 6(4) read with Rule 2(c) of the 1995 Rules.

13.1 Based on these provisions, it is contended by Mr Sethi that the DA could seek information from the Indian company i.e., SMTIL, as it is an "interested party".



13.2 Furthermore, Mr Sethi also says that the Indian company/SMITL and the exporter are related parties and therefore, this information, in any event, can be sought by the DA from the Indian company/SMITL.

14. In our view, these are the aspects which the DA will have to deal with, while returning a final finding under Rule 17 of the 1995 Rules.

15. The other concern of the petitioner is that it has already been labelled as “non-cooperative”, disregarding the fact that the petitioner has been furnishing information, as and when information has been sought by the DA.

15.1. In this context, our attention has been drawn to paragraph 95 of the disclosure statement, which sets out in tabular form the dumping margins for various entities

15.2. Insofar as the entities that are categorized as “non-cooperative/residual exporters” are concerned, the dumping margin is shown as the highest.

16. It cannot be accepted by learned counsel for the respondents that the categorization of the petitioner as “non-cooperative”, at this point in time, is only preliminary in nature.

16.1. The DA will have to consider the information supplied by the petitioner and thereafter conclude one way or the other as to whether or not the petitioner ought to be categorized as “non-cooperative”.

16.2. The facts concerning this aspect of the matter, will obviously, have to find mention in the final recommendation made by the DA.

16.3. Furthermore, as indicated above, as to whether or not the DA has any jurisdiction over the Indian company/SMTIL is also an aspect which the DA will have to deliberate on, while returning a final finding under Rule 17 of the 1995 Rules.

16.4. The DA will bear in mind the observations made hereinabove while



returning a final finding under Rule 17 of the 1995 Rules.

17. At this stage, Mr Jain says that since the purported transaction data, as noted above, was furnished to the petitioner only on 05.09.2022 (after 5:00 P.M.), the petitioner would require a couple of days to respond to the same.

17.1. Mr Prakash says that in terms of Rule 17 of the 1995 Rules, the DA is required to conclude the investigation within one year from the date of initiation of the investigation.

17.2. On the other hand, our attention has been drawn by Mr Jain to the proviso appended to Rule 17 (1), which, *inter alia*, states that the “Central Government may, in its discretion in special circumstances, extend further the aforesaid period of one year by six months.”

18. Given this circumstance, the official respondents i.e., respondent nos.1 and 2, are put to notice that they would bear in mind the assertion made by the petitioner, which is, that the transaction data was furnished only on 05.09.2022, and therefore, it would require, if not more, at least a couple of days for responding to the same.

18.1 If this requires extension of time, respondent no.1/UOI will take the necessary steps in that behalf.

18.2. However, at this juncture, this aspect is left to be dealt with by respondent no.1/UOI.

18.3. In case, it is found that refusal to grant extension of time compromised the interests of the petitioner, the appropriate forum will deal with this aspect of the matter, provided the petitioner chooses to agitate its rights *qua* the final notification, if any, issued by respondent no.1/UOI.

19. Needless to add, the rights and contentions of the parties are kept open to be agitated as and when a final notification is issued by respondent



no.1/UOI.

20. The writ petition is disposed of in the aforesaid terms.
21. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

SEPTEMBER 6, 2022/aj

