WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.10.2024
Pronounced On	09.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.22819, 22820, 22830 and 22834 of 2022
and
W.M.P.Nos.21845, 21846, 21858 of 2022

M/s.PT.South Pacific Viscose,
A Company established under the laws of Indonesia
Having registered office at
Sampoerna Strategic Square,
South Tower,
22nd Floor, JI, Jend Sudirman Kav,
45 – 46 Jakarta – 12930, Indonesia
Represented by its Power of Attorney
Mr.Ravichandran Rangaraju ... Petitioner in all W.Ps

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi – 110 001.

2.The Directorate General of Trade Remedies,
Represented by the Designated Authority,
Having their address at Ministry of
Commerce and Industry,

https://www.mhc.tn.gov.in/judis

WEB COPY

5 – Parliament Street,
Jeevan Tara Building,
New Delhi – 110 005.

3.The Association of Man-Made Fibre
Industry of India,
5th Floor, Resham Bhavan,
78, Veer Nariman Road,
Mumbai – 400 020. ... Respondents in all W.Ps

Prayer in W.P.No.22819 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Common Order in Anti Dumping Appeal Nos.51490 of 2021 and 50570 of 2022 dated 19.05.2022 passed by the Principal Bench of CESTAT, New Delhi and quash the same.

Prayer in W.P.No.22820 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Order in Anti Dumping Appeal No.50571 of 2022 dated 19.05.2022 passed by the Principal Bench of CESTAT, New Delhi and quash the same.

Prayer in W.P.No.22830 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Sunset Review Initiation Notification No.07/03/2021-DGTR dated 22.02.2021 and all subsequent proceedings including the Final Findings Notification No.07/03/2021-DGTR dated 31.07.2021 issued by the Respondent No.2 and quash the same to the extent challenged herein as being without the authority of law.

https://www.mhc.tn.gov.in/judis

WEB COPY

Prayer in W.P.No.22834 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, to declare that no Anti-Dumping Duty can be levied by the Respondents on the Viscose Staple Fibre exported from Indonesia post 26.07.2015 in terms of the law laid down by the Hon'ble Supreme Court in **UOI** Vs. **Kumho Petrochemicals Company Limited**, 2017 (351) E.L.T. 65 (SC).

For Petitioner (In all W.Ps)	:	Mr.Karthik Sundaram
For Respondents (In all W.Ps)	:	
For R1	:	Mr.A.P.Srinivas Senior Standing Counsel
For R2	:	Mr.K.Srinivasamurthy Central Government Standing Counsel
For R3	:	Mr.R.Parthasarathy, Senior Counsel for Mr.Rahul Balaji

COMMON ORDER

C.SARAVANAN, J.

By this Common Order, all these four Writ Petitions are being disposed of.

2. The Petitioner has prayed for the following reliefs in the respective Writ Petitions as detailed below:-

https://www.mhc.tn.gov.in/judis

WEB COPY

Table No.1:-

Sl. No.	Writ Petition	Prayer
1	**W.P.No.22819 of 2022**	To call for the records of the Common Order in **Anti Dumping Appeal Nos. 51490 of 2021 and 50570 of 2022 dated 19.05.2022*** passed by the Principal Bench of CESTAT, New Delhi and quash the same.
2	**W.P.No.22820 of 2022**	To call for the records of the Order in Anti Dumping Appeal No.50571 of 2022 dated 19.05.2022 passed by the Principal Bench of CESTAT, New Delhi and quash the same.
3	**W.P.No.22830 of 2022**	To call for the records of the Sunset Review Initiation Notification No.07/03/2021-DGTR dated 22.02.2021 and all subsequent proceedings including the Final Findings Notification No.07/03/2021-DGTR dated 31.07.2021 issued by the Respondent No.2 and quash the same to the extent challenged herein as being without the authority of law.
4	**W.P.No.22834 of 2022**	To issue a Writ of Declaration that no Anti-Dumping Duty can be levied by the Respondents on the Viscose Staple Fibre exported from Indonesia post 26.07.2015 in terms of the law laid down by the Hon'ble Supreme Court in **UOI** Vs. **Kumho Petrochemicals Company Limited**, 2017 (351) E.L.T. 65 (SC).

* Common Final Order No. 50427 of 2022 dated 19.05.2022

3. The Petitioner had filed **W.P.No.22825 of 2022** along with the

https://www.mhc.tn.gov.in/judis

WEB COPY

aforesaid Writ Petitions. The said Writ Petition in **W.P.No.22825 of 2022** was filed to quash the **Final Findings No.15/09/2015-DGAD** dated **08.07.2016** of the 2nd Respondent and the **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016** issued by the 1st Respondent. The prayer in **W.P.No.22825 of 2022** reads as under:-

> "to call for the records of the Final Findings dated 08.07.2016 issued by the second respondent and the consequent Customs Notification No.43/2016-Customs (ADD) dated 08.08.2016 issued by the first respondent and to quash the same."

However, the same was **'dismissed as withdrawn'** vide **Order** dated **30.10.2024**.

SUBJECT MATTER OF CHALLENGE IN THESE WRIT PETITIONS:-

4. In **W.P.No.22819 of 2022,** the Petitioner has actually challenged the **Final Order No. 50427 of 2022** dated **19.05.2022** in **Anti Dumping Appeal Nos. 51490 of 2021** and **50570 of 2022** passed by the Principal Bench of CESTAT, New Delhi (hereinafter referred to as the 'Appellate Tribunal').

5. **Final Order No. 50427** of **2022** dated 19.05.2022 is a common order passed by the Appellate Tribunal. It encapsulates of the following

https://www.mhc.tn.gov.in/judis

WEB COPY

Anti-Dumping Appeals filed by the Writ Petitioner, the 3rd Respondent and other persons as detailed below:-

Table No.2:-

S.No.	*Anti-Dumping Appeal No.*	Name of the Appellant	Final Order No.
1	**50570 of 2021**	**PT South Pacific Viscose, Indonesia***	**50427 of 2022** dated **19.05.2022**
2	**51490 of 2021**	**Association. of Man Made Fibre Industry of India #**	
3	51832 of 2021	Southern India Mills Owners Association	
4	51833 of 2021	Indian Spinners Association	
5	51834 of 2021	Indian Man made Yarn Manufacturers Association	
6	51868 of 2021	Tamil Nadu Spinning Mills Association	
7	51869 of 2021	Pallava Taxtiles Private Limited	
8	51872 of 2021	PT Asia Pacific Rayon	

* The Writ Petitioner

The 3rd Respondent

6. In the aforesaid **Anti Dumping Appeals** at **S.Nos. 1, 2 and 3** of the above **Table**, the parties named therein had challenged the **Final Findings No.7/3/2021 DGTR** dated **31.07.2021** of the 2nd Respondent, Designated Authority and **Customs Notification No.44/2021-Customs (ADD)** dated **12.08.2021.** The Appellate Tribunal vide **Final Order No. 50427 of 2022**, disposed various appeals filed by the 3rd Respondent and others arising out

https://www.mhc.tn.gov.in/judis

WEB COPY

of aforesaid notifications as stated in the above Table.

7. Operative portion of the aforesaid **Final Order No. 50427** of **2022** dated **09.05.2022** of the Appellate Tribunal reads as under:-

"89. In the result, for all the reasons stated above,

*i. **Anti-Dumping Appeal No.51490** of **2021** is **allowed** to the extent that the designated authority shall reexamine and give a fresh finding as to whether cessation of anti-dumping duty would likely lead to continuation or recurrence of injury so as to warrant imposition of anti-dumping duty for a further period of five years. The final findings dated **30.07.2021*** of the designated authority, therefore, stand modified to this extent. The final findings shall thereafter, be submitted to the Central Government for further action in accordance with the provisions of the Tariff Act;*

*ii. Anti-Dumping Appeal Nos.51832 of 2021, 51833 of 2021, 51834 of 2021, 51868 of 2021, 51869 of 2021, 51872 of 2021 and **50570** of **2022** are **dismissed**."*

(actually, **31.07.2021**)*

8. In **W.P.No.22820 of 2022**, the Petitioner has actually challenged the **Final Order No. 50435 of 2021** dated **19.05.2022** in **Anti Dumping Appeal No.50571 of 2022. Anti Dumping Appeal No.50571 of 2022** was filed by the Writ Petitioner against the **Final Findings No.15/09/2015-DGAD** dated **08.07.2016** issued by the 2nd Respondent, Designated Authority and **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016** issued by the 1st Respondent. The details of which are as follows:-

https://www.mhc.tn.gov.in/judis

WEB COPY

S.No.	*Anti-Dumping Appeal No.*	*Final Order No.*	*Name of the Appellant*
1	50571 of 2022	50435 of 2021	**The Writ Petitioner**, the PT South Pacific Viscose, Indonesia

9. By the Final Finding in **Notification No.15/9/2015-DGAD** dated **08.07.2016,** the 2nd Respondent/Designated Authority concluded as follows:-

> **i. subject goods have been exported to India from the subject Countries below its normal value;**
> **ii. domestic industry has suffered injury;**
> **iii. there is a likelihood of recurrence of dumping and injury in case of cessation of anti-dumping duties.**

10. Pursuant to **Notification No.15/9/2015-DGAD** dated **08.07.2016** of the 2nd Respondent/Designated Authority, impugned **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** was issued by the 1st Respondent. Paragraph 2 of the said Notification reads as under:-

> *"2. The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be paid in Indian currency.*
> ***Explanation**.-*
> *For the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping shall be the rate which is specified in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), issued from time to time, in exercis of the powers conferred by Section 14 of the Customs Act, 1962*

https://www.mhc.tn.gov.in/judis

WEB COPY

(52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under Section 46 of the said Customs Act."

11. Operative portion of **Final Order** dated **19.05.2022** in **Anti-Dumping Appeal No. 50571 of 2022** passed by the Appellate Tribunal reads as under:-

*"31. In a sunset review, a notification is issued by the Central Government exercising powers under the first proviso to section 9A(5) of the Tariff Act, unlike the powers that are exercised by the Central Government under the second proviso to section 9A(5) of the Tariff Act for continuing the anti-dumping duty during the pendency of a sunset review for a maximum period one year. There is no requirement under the first proviso to section 9A(5) of the Tariff Act that the Central Government should issue the notification only during the lifetime of the earlier notification imposing anti-dumping duty. This aspect was considered by the Supreme Court in paragraph 33 of the judgment rendered in **Kumho Petrochemicals**. The Supreme Court observed that even if the review exercise is not completed within the extended period of one year under the second proviso, the effect would be that after lapse of one year there would not be any anti-dumping duty even if the review is pending. In such a situation it is only after the review exercise is completed and the Central Government forms an opinion that cessation of such duty is likely to lead to continuation or recurrence of dumping an injury, it can issue a notification for imposition of duty. The Supreme Court emphasized that the vacuum would be only during the interregnum beyond the period of one year and till the issuance of fresh notification by the Central Government. It, therefore, follows that there is no requirement that a notification has to be issued by the Central Government under the first proviso to section 9A(5) of the Tariff Act only during the lifetime of the earlier notification imposing anti-dumping duty for a period of five years.*

32. It also needs to be noted that the final findings dated 08.07.2016 of the designated authority and the consequential notification dated 08.08.2016 issued by the Central Government continuing the anti-dumping duty for a period of 5 years was assailed in an Anti-Dumping Appeal filed by Tangshan Sanyou Group Hong Kong International Trade Co. Ltd. The exporters from Indonesia were also impleaded as

https://www.mhc.tn.gov.in/judis

WEB COPY

respondents. This appeal was dismissed by the Tribunal by a detailed order dated 24.01.2017 and the notification dated 08.08.2016 issued by Central Government was upheld. This decision is reported in ***2017 (349) E.L.T. 667 (Tri.-Del.)****. The relevant paragraphs 1 and 12 of the decision are reproduced below:*

> *"The appellant is an exporter of Viscose Staple Fibre excluding bamboo fibre (subject goods) and is located in Hong Kong. They participated in the Sunset review investigation of the anti-dumping duty imposed on subject goods when imported from China PR and Indonesia.* ***The present appeal is against final finding dated 8-7-2016 of the Designated Authority*** *(DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Industry* ***and Customs Notification*** *No. 43/2016-CUS (ADD),* ***dated 8-8-2016 which was issued based on the said final finding of the DA.*** *The final finding now impugned is on conclusion of Sunset review of anti-dumping duty imposed on the subject goods. The Sunset review was done on a petition filed by Association of Man-made Fibre Industry of India on behalf of Domestic Industry (DI). M/s. Grasim Industries Ltd. is the sole producer who furnished all information for the review. The DA concluded that the subject goods continue to enter into the market with dumped prices. Dumping margin and injury margin are positive and significant. Performance of the Domestic Industry has worsened in terms of various economic parameters. There is likelihood of price under cutting in case of cessation of anti-dumping duty. Based on such finding he recommended continuation of definitive anti-dumping duty on all imports of subject goods. Accordingly, the Customs Notification dated 8-8-2016 was issued by the Ministry of Finance to give effect to the recommendations.*
>
> *12. After having carefully considered the rival submissions we note that anti-dumping duty is a trade remedy measure to counter dumping. Imposition of anti-dumping duty is authorized in terms of an international agreement under WTO. Protection of domestic industry of the Member country against unfair trade practices is the rationale in imposing such duty. Section 9A(5) of the Customs Tariff Act, 1975 provides for review of the anti-dumping duty imposed. If upon review, if the Government is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, extend the period of such imposition for a further period of 5 years. In the facts of the present case, we find the appellant*

https://www.mhc.tn.gov.in/judis

WEB COPY

> *could not place before us any empherical evidence to counter the final findings on Sunset review by the DA. It has been clearly recorded that cessation of existing anti-dumping duty on the subject goods is likely to result in recurrence of dumping and injury to the DI. Basically, we note that the present impugned findings are in continuation of the earlier findings as it has been recorded that there is a need to continue the imposition of anti-dumping duty in terms of applicable legal provisions after due consideration of the economic parameters.* ***We find no merit in the present appeal to persuade us to interfere with the impugned final findings or the customs notification issued based thereon. Accordingly, we dismiss the appeal.*** *The stay application linked to the appeal is also disposed of."*
>
> ***(emphasis supplied)***

33. It is also important to note that before the expiry of the period of five years from the issuance of the notification dated 08.08.2016 imposing anti-dumping duty for a period of five years, a second sunset review investigation was initiated by a notification dated 22.02.2021 to review the need for continued imposition of the duties in force in respect of the subject goods originating in or exported from the subject countries and to examine whether the expiry of such duty was likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The existing duties on the subject goods imposed by notification dated 08.08.2016 were to expire on 07.08.2021, and so the Central Government, by a notification dated 30.06.2021, extended anti-dumping duties upto 31.10.2021. In regard to the second sunset review initiated on 22.02.2021, the designated authority, in its final findings notified on 31.07.2021, concluded that there was no justification for recommending continuation of anti-dumping duty and accordingly recommended for withdrawal of anti-dumping duty on import of subject goods from the subject countries imposed by notification dated 08.08.2016, which period was subsequently extended upto 31.10.2021 by the notification dated 30.06.2021. Consequently, the Central Government, by a notification dated 12.08.2021, rescinded the notification dated 08.08.2016, as amended by notification dated 30.06.2021, except as respects things done or omitted to be done before such rescission.

34. It is for this reason that learned counsel for the respondent submitted that as the imposition of anti-dumping duty imposed by notification dated 08.08.2016 stood expired on 07.08.2021, this appeal has been rendered infructuous and in support of this contention reliance has been placed on the judgment of the Supreme Court in ***Reliance Industries****.*

https://www.mhc.tn.gov.in/judis

WEB COPY

35. Once it has been held that anti-dumping duty was validly imposed by notification dated 08.08.2016 for a period five years upto 07.08.2021, it would not be necessary to examine this issue.

*36. It, however, needs to be noted that the Supreme Court in **Reliance Industries** had examined a situation where the period stipulated for imposition of anti-dumping duty had lapsed and in view of the statement made by the learned Assistant Solicitor General of India, dismissed the Special Leave Petition. The observations are as follows:*

> *"Mr. R.N. Trivedi, learned ASG fairly admits that the five years period is already over. He states that this Special Leave Petition has become infructuous. The Special Leave Petition is dismissed as such. Question of law is left open."*

37. Learned counsel for the appellant also submitted that the designated authority committed an error in recommending duties which were higher than the dumping margin determined for the foreign exporter as this would be contrary to the provisions of section 9A(1) of the Tariff Act read with rule 4 of the Anti-Dumping Rules.

*38. This submission cannot be accepted. In a case where there is an affirmative order for extension of anti-dumping duty on the basis that there is a likelihood of recurrence of dumping and injury, the rigours of section 9A(1) of the Tariff Act would not be attracted. It would be competent for the designated authority to extend the period of imposition without modification of the rate of duty. This is what was observed by the Tribunal in **Thai Acrylic Fibre Co. Ltd.** vs. **Designated Authority14** and the relevant portion of the decision is reproduced below:*

> *"14. Sunset review entails a likelihood determination in which present levels of dumping is obviously not so relevant as is the likelihood of continuance or recurrence of dumping. Moreover, during the investigation period, the anti-dumping duty would be in force and hence, the current level of dumping may be non-existent or minimal. The exporters under investigation may also sell at a non-dumped price during this period knowing fully well that a sunset review would be in progress. Hence, the criteria under Section 9A(1) that the anti-dumping duty should not exceed the dumping margin would have no practical application for continuance of the duty under Section 9A(5). There is also no such warrant in law under the said Section 9A(5) to do so."*

https://www.mhc.tn.gov.in/judis

WEB COPY

*39. Earlier, in **Borax Morarji Limited** vs. **Designated Authority15**, a similar view was expressed by the Tribunal and the relevant portion of the decision is reproduced below:*

> *"Proviso to Section 9A(5) of Customs Tariff Act, 1975 primarily intends to undertake review to examine whether cessation of duty on the expiry of five years is likely to lead to continuance/recurrence of dumping and injury - Expression "likely to lead to recurrence" would cover situation where dumping and injury may not exist at time of review due to continuance of anti-dumping duty.*
>
> *During the period of investigation, the anti-dumping duty would be in force and hence, the "current" level of dumping may be nonexistent or minimal. The exporters under investigation may also sell at a non-dumped price during this period knowing fully well that a sunset review would be in progress. Hence, the criteria under Section 9A(1) that the anti-dumping duty should not exceed the dumping margin would have no practical application for continuance of the duty under Section 9A(5). There is also no such warrant in law under the said Section 9A(5) to do so.*

*40. The challenge to the final findings dated **08.07.2016** of the designated authority and the consequential notification dated **08.08.2016** issued by the Central Government imposing anti-dumping duty, therefore, for all reasons stated above, fails.*

41. This anti-dumping appeal is, accordingly dismissed."

12. In **W.P.No.22830 of 2022**, the Writ Petitioner has strangely challenged initiation of the 2nd Sunset Review by the 2nd Respondent vide **Sunset Review Notification No. 07/03/2021** dated **22.02.2021** and the **Final Findings Notification No.07/03/2021 DGTR** dated **31.07.2021** of the 2nd Respondent, although by the **Final Findings Notification No.07/03/2021**

https://www.mhc.tn.gov.in/judis

WEB COPY

DGTR dated **31.07.2021**, the 2nd Respondent has recommended for withdrawal of **Anti Dumping Duties** recommended vide **Notification No.15/09/2015-DGAD** dated **08.07.2021**.

13. In the 2nd Sunset Review by the 2nd Respondent vide **Sunset Review Notification No. 07/03/2021** dated **22.02.2021,** the Product under Consideration (PUC) was 'Viscose Staple Fibre except Bamboo Fibre'. The grievance of the Petitioner is that the domestic industry had curtailed the Product under Consideration (PUC) by excluding several types of subject goods i.e., Viscose Staple Fibre (VSF). It is stated that PUC was restricted to merely a portion of VSF. However, it contended that the domestic industry relied upon certain documents which contained information for VSF as a whole.

14. Paragraph No. 5 and 6 of the 2nd **Sunset Review Notification No. 07/03/2021** dated **22.02.2021** by the 2nd Respondent deals with **'Product under Consideration'**. It reads as under:-

https://www.mhc.tn.gov.in/judis

WEB COPY

Paragraph No.5 of the Notification	***Paragraph No.6 of the Notification***
The scope of the product under consideration in the previous investigation was as below:- "Viscose Staple Fibre (VSF) excluding Bamboo fibre", Viscose Staple Fibre is described as "Viscose rayon staple fibre not carded/combed" under the Customs Tariff and is also known as "Rayon Fibre" in some markets. The product under consideration is classified under Custom Headings 5504.10.00. The Customs classification is indicative only and is in no way biding on the scope of the present investigation..."	*The scope of product under consideration in the present investigation is restricted to only "Viscose Staple Fibre (VSF) exluding Bamboo Fibre, Dyed Fibre, Modal Fibre & Fire-retardant Fibre" All other types of Viscose Staple Fibre are kept outside the scope of product under consideration.*

15. Operative Portion of the **Final Findings Notification No.07/03/2021 DGTR** dated **31.07.2021** impugned in **W.P.No.22830 of 2022** reads as under:-

*"**M. Conclusion***

154. Having regard to the contentions raised, information provided, submissions made and facts available before the Authority as recorded in these findings and on the basis of the determination of dumping and consequent injury to the domestic industry made hereinabove, the Authority concludes that:

(a) Considering the normal value and export price for subject goods, the dumping margins for the subject goods from each of the subject countries have been determined, and the margins are significant. There is a likelihood of continuation of dumping from subject countries.

(b) Considering various parameters relating to material injury, the Authority notes that the volume of dumped imports from the subject countries have declined in the POI as compared to the previous two financial years. The domestic industry has seen a decline in the production and sales during POI. However, the decline in production and sales can be attributed to the fall in demand due to Covid-19 pandemic. The imports from subject

https://www.mhc.tn.gov.in/judis

WEB COPY

countries are not undercutting the prices of the domestic industry and price underselling is also negative. The profitability of the domestic industry has declined during the POI. However, profit earned by the domestic industry during POI are still reasonable. The landed price of imports during the POI is significantly higher than the cost of sales, selling price and NIP of the domestic industry. The domestic industry enjoys a dominant position in the Indian market and the market share of imports from subject countries is very low. Therefore, the imports cannot be said to be causing any price and volume effect on the domestic industry.

(c) From the information available on record, it is noted that there is a likelihood of continuation of dumping from subject countries. However, the likelihood of recurrence of injury to the domestic industry is not strong enough to warrant continuation of duties beyond 11 years. There are insignificant surplus capacities with the responding producers / exporters in subject countries, which can be used to increase their exports to India in event of revocation of duty.

(d) Therefore, based on objective examination of information on record, it is concluded that there is no justification for recommending continuation of anti-dumping duty in the present case.

N. Recommendation

155. In view of above, the Authority considers it appropriate to recommend withdrawal of antidumping duty on import of subject goods from the subject countries recommended vide Notification No.15/09/2015-DGAD dated 8th July 2016 and enforced vide Customs Notification No.43/2016-Customs (ADD) dated 8th August 2016 which was further extended vide Customs Notification No.39/2021-Customs (ADD) dated 30th June 2021 till 31st October 2021."

16. In **W.P.No.22834 of 2021**, the Petitioner has challenged the entire scope of levy of Anti-Dumping Duty imposed on the Viscose Staple Fibre exported from Indonesia vide the above mentioned notifications issued by

https://www.mhc.tn.gov.in/judis

WEB COPY

the 1st and 2nd Respondents in the light of the decision of the Hon'ble Supreme Court in **UOI Vs. Kumho Petrochemicals Company Limited,** 2017 (351) E.L.T. 65 (SC), wherein, the interpretation of Section 9A(1) and 2nd Proviso to Section 9A(5) of the Customs Tariff Act, 1975 fell under consideration.

17. There the amendment to notification for levy of anti-dumping duty was made with retrospective effect from 2009, after the lapse of the first preiod of Anti-Dumping Duty. Section 9A(1) and 9A(5) of the Customs Tariff Act, 1975 read as under:-

Table No.3:

Section 9A(1) of the Customs Tariff Act, 1975	**Section 9A(5) of the Customs Tariff Act, 1975**
(1) Where any article is exported by an exporter or producer 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. Explanation.—For the purposes of this section,— (a) "margin of dumping", in relation to an article, means the difference between its	*"(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:* *Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:* *Provided further that where a review*

https://www.mhc.tn.gov.in/judis

WEB COPY

Section 9A(1) of the Customs Tariff Act, 1975	**Section 9A(5) of the Customs Tariff Act, 1975**
export price and its normal value; (b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6); (c) "normal value", in relation to an article, means— (i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption] in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either— (a) comparable representative price of the like article when exported from the exporting country or [destined for consumption] in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or (b) the cost of production of the said article	*initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year."*

https://www.mhc.tn.gov.in/judis

WEB COPY

Section 9A(1) of the Customs Tariff Act, 1975	Section 9A(5) of the Customs Tariff Act, 1975
in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6): Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the count	

18. Interpreting 2nd Proviso to Section 9A(5) of the Customs Tariff Act, 1975, the Division Bench of the Delhi High Court in **M/s.Kumho Petrochemicals Company Limited and another** Vs. **Union of India and others**, 2014 SCC OnLine Del 3546 / (2014) 212 DLT 545 (DB), has concluded as follows in Paragraph 26 of the Judgement:-

> *"26. In the light of the above position, this court holds that what follows is that the levy of anti-dumping duty ended on January 1, 2014, with the lapse of the original notification. The second proviso to section 9A(5) precluded the Central Government from continuing the levy beyond that period or date, except to the extent its conditions were fulfilled, i.e., if the levy of the duty were to have been notified before such date. In such cases, the power under the second proviso to section 9A(5), after expiry of the date of the original notification, is unavailable. The notification in the present case states that—*
>
> > *"5.Notwithstanding anything contained in paragraph 2, this notification shall remain in force up to and inclusive of the first day of January, 2015, with respect to anti-dumping duty on acrylonitrile butadiene rubber originating in, or exported from Korea RP, unless revoked earlier".*

https://www.mhc.tn.gov.in/judis

WEB COPY

Neither does section 9A(1) nor section 9A(5) permit the extension of anti-dumping duty once the main period of five years lapses, as held earlier. The Central Government is not arguing that it had the benefit of section 21 of the General Clauses Act—for the simple reason that extension or amendment of an earlier notification can be only after following the procedure adopted while issuing the main notification. In the present case, the amendment is retrospective, as it were, and made effective from 2009. It was in fact made after the lapse of the first period."

19. The reasonings of the Delhi High Court in the aforesaid decision are in Paragraph Nos. 23, 24 and 25 of the Judgement. They read as under:-

"23. The next issue is the legality of the levy pending sunset review. The second proviso to section 9A(5) is conclusive on this aspect. Whilst the need for a sunset review has been described as compelling and mandatory in a decision of this court ***(Indian Metal and Ferro Alloys Ltd. v. Designated Authority (2008) 224 ELT 375 (Delhi)****, based on the Supreme Court ruling in* ***Reliance Industries v. Designated Authority (2006) 7 RC 579 ; (2006) 10 SCC 368,*** *the court had this to say:*

> *"... the first proviso to section 9A(5) of the Act casts an obligation on the Central Government to ensure that for the protection of the domestic industry (for the reasons given by the Supreme Court) withdrawal of anti-dumping duty should not lead to continuation or recurrence of dumping as well injury to the domestic industry. In other words, the Central Government has to ensure that the status quo ante is not restored, for that would then mean that the designated authority would have to conduct, all over again, a fresh investigation under rule 5 of the Rules and the subsequent statutory procedures would also have to be repeated. It is, therefore, not only to protect the domestic industry but to avoid repetitive exercises that a review is mandated by the Act and the Rules.*
>
> *28. The key words in section 9A(5) of the Act are contained in the first proviso thereto, namely, 'the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury'. It is possible that imposition of anti-dumping duty may control the problem, in so far as the domestic industry is concerned, during the five year period when the anti-*

https://www.mhc.tn.gov.in/judis

WEB COPY

dumping duty is exigible, but the problem may recur after the anti-dumping duty is withdrawn. If this is coupled with injury to the domestic industry, then the anti-dumping duty should continue. It is for this reason that a proper assessment, through a review, is necessary to determine whether anti-dumping duty should continue or not."

It could have been argued that section 9A and the notification published is a one-time measure ; however, the need for review was contemplated in articles 11.1, 11.2 and 11.3 of the agreement for implementation of article VI of the GATT ("Implementation Agreement"). The said provisions read as follows :

"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."

https://www.mhc.tn.gov.in/judis

WEB COPY

> *It is clear that section 9A(5) has echoed articles 11.1, 11.2 and 11.3. In the context of the present discussion, it is pertinent that the implementation agreement makes the imposition of duty during pendency of sunset review discretionary ("The duty may remain in force pending the outcome of such a review."). Likewise, the second proviso to section 9A(5) states that "where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year".*

24. The respondents' contention that continuing the anti-dumping duty during pendency of the sunset review is more or less automatic, is thus, belied by the terms of the implementing agreement, which was enacted in the second proviso. It consequently does not follow as a sequitur that whenever a sunset review is initiated under section 9A(5) first proviso, the duty existing as on that date, would continue. This inference is obvious because, in the first instance, the original levy has a life of only five years. Thus, the legality of such levy is supported—by virtue of section 9A(5) only for that duration. If the respondents wish to continue the levy for a period beyond that, during pendency of sunset review (which might not be concluded by the time the first period expires) they have to issue a notification, before the expiry of that period. It needs to be underlined here that but for the second proviso, there can be no legal extraction, during the sunset review, if the proceeding extends beyond the first five year period. In other words, the second proviso truly carves out an exception and makes the levy which otherwise would be invalid, on account of the operation of the main part, i.e., section 9A(5), valid if its conditions are fulfilled.

25. This court holds that the petitioners' submission that a notification under section 9A(1) issued after review is in the nature of temporary legislation, is merited. A statute is ordinarily perpetual, in the sense that no time is fixed for its duration. In that sense section 9A is perpetual. However, that provision is merely enabling; it authorises a levy of anti- dumping duty upon proof of injury, and upon fulfilment of other conditions. Once notified, the levy has effect - in terms of the notification and section 9A(5) for five years. That levy is consequently, temporary as the duration is finite. In these circumstances, section 6 of the General Clauses Act, which provides that notifications, bye-laws, etc., validly made under a repealed law can continue to be in force, would have no application. This position was clarified by the Supreme Court in District Mining Officer v. Tata Iron and Steel Co. [2001] AIR 2001 SC 3134,

https://www.mhc.tn.gov.in/judis

WEB COPY

where the question as to what is a 'temporary statute', was examined and it was observed that :

> *"19..... A statute can be said to be either perpetual or temporary. It is perpetual when no time is fixed for its duration and such a statute remains in force until its repeal which may be express or implied. But a statute is temporary when its duration is only for a specified time and such a statute expires on the expiry of the specified time, unless it is repealed earlier. .. Admittedly, to a temporary statute, the provisions of section 6 of the General Clauses Act, 1897 will have no application. .. A temporary statute even in the absence of a saving provision like section 6 of the General Clauses Act may not be construed dead for all purposes and the effect of expiry is essentially one of the construction of the Act."*

20. In an appeal filed by the Union of India against the above decision of the Division Bench of the Hon'ble Delhi High Court, the Hon'ble Supreme Court affirmed the views of the Hon'ble Delhi High Court in **Union of India** Vs. **Kumho Petrochemicals Company Limited**, 2017 (351) E.L.T. 65 (SC) with the following observations:-

> *"18. The first proviso to Section 9-A(5) of the Act, when read along with Rule 6 of the Rules, do not lead to the conclusion that the intention to review and extend the anti-dumping duty, in the facts of a given case, have to be necessarily published and made available to all, before the expiry of the original notification. Requirement of Section 9-A(5) of the Act is that the sunset review is to be initiated before the expiry of the original period for which the anti-dumping duty prevails. There is no additional requirement of making it public as well, necessarily before the said expiry date.*
>
> *19. We, thus, agree with the conclusion of the High Court that insofar as requirement of public notice or a gazette notification is concerned, no such stipulation is made in Section 9-A(5) and its proviso. On the other hand, Section 9-A(1), which deals with imposition of anti-*

https://www.mhc.tn.gov.in/judis

WEB COPY

dumping duty, specifically refers to such an imposition by way of publication in an Official Gazette. Therefore, as far as initiation of review is concerned, once a decision is taken by the Government on a particular date, that would be the relevant date and not the date on which it is made public.

....

34. After giving due consideration to the arguments advanced by the learned counsel for the parties, we are inclined to agree with the High Court that proviso to sub-section (5) of Section 9-A of the Act is an enabling provision. That is very clear from the language of the said provision itself. Sub-section (5) of Section 9-A gives maximum life of five years to the imposition of anti-dumping duty by issuing a particular notification. Of course, this can be extended by issuing fresh notification. However, the words ***"unless revoked earlier"*** *in sub-section (5) clearly indicate that the period of five years can be curtailed by revoking the imposition of anti-dumping duty earlier. Of course, provision for review is there, as mentioned above, and the Central Government may extend the period if after undertaking the review it forms an opinion that continuation of such an anti-dumping duty is necessary in public interest.* ***When such a notification is issued after review, period of imposition gets extended by another five years. That is the effect of the first proviso to sub-section (5) of Section 9-A.*** *However, what we intend to emphasise here is that even as per sub-section (5), it is not necessary that in all cases anti-dumping duty shall be imposed for a full period of five years as it can be revoked earlier.* ***Likewise, when a review is initiated but final conclusion is not arrived at and the period of five years stipulated in the original notification expires in the meantime, as per the second proviso "the anti-dumping duty may continue to remain in force".*** *However, it cannot be said that the duty would automatically get continued after the expiry of five years simply because review exercise is initiated before the expiry of the aforesaid period. It cannot be denied, which was not even disputed before us,* ***that issuance of a notification is necessary for extending the period of anti-dumping duty.*** *Reason is simple. There no duty or tax can be imposed without the authority of "law". Here, such a law has to be in the form of an appropriate notification and in the absence thereof the duty, which is in the form of a tax, cannot be extracted as, otherwise, it would violate the provisions of Article 265 of the Constitution of India. As a fortiori, it becomes apparent that the Government is to exercise its power to issue a requisite notification. In this hue, the expression "may" in the second proviso to sub-section (5) has to be read as enabling power which gives discretion to the Central*

https://www.mhc.tn.gov.in/judis

WEB COPY

Government to determine as to whether to exercise such a power or not. It, thus, becomes an enabling provision.

35. We are conscious of the fact that once sunset review is initiated, such initiation takes place only after a substantiated application/request is filed by the indigenous industry which is examined and a prima facie view is formed by the Central Government to the effect that such a review is necessitated as withdrawal of anti-dumping duty or cessation thereof may be prejudicial to the indigenous industry. Once such an opinion is formed and the sunset review is initiated, in all likelihood the Central Government would make use of the second proviso and issue notification for continuing the said anti-dumping duty. At the same time, it cannot be said that without any overt act on the part of the Central Government, there is an automatic continuation. The learned counsel for the respondent rightfully pointed out that the legislature has consciously used the expressions "may" and "shall" at different places in the same section i.e. Section 9-A of the Act. In such a scenario, it has to be presumed that different expressions were consciously chosen by the legislature to be used, and it clearly understood the implications thereof, therefore, when the word "may" is used in the same section in contradistinction to the word "shall" at other places in that very section, it is difficult to interpret the word "may" as "shall". Therefore, it is difficult to read the word "may" as "shall". Our conclusion gets strengthened when we keep in mind following additional factors.

36. The anti-dumping duty may continue, pending the outcome of the review, for a further period not exceeding one year. Thus, maximum period of one year is prescribed for this purpose which implies that the period can be lesser as well. The Government is, thus, to necessarily form an opinion as to for how much period it wants to continue the anti-dumping duty pending outcome of such a review. Moreover, since the maximum period is one year, if the review exercise is not completed within one year, the effect of that would be that after the lapse of one year there would not be any anti-dumping duty even if the review is pending. In that eventuality, it is only after the review exercise is complete and the Central Government forms the opinion that the cessation of such a duty is likely to lead to continuation or recurrence of dumping and injury, it would issue a notification extending the period of imposition of duty. Therefore, there may be a situation where even when the power is exercised under the second proviso and duty period extended by full one year, the review exercise could not be completed within that period. In that situation, vacuum shall still be created in the interregnum beyond the period of one year and till the review exercise is complete and fresh

https://www.mhc.tn.gov.in/judis

WEB COPY

notification is issued. This situation belies the argument that extension under the second proviso is to be treated as automatic to avoid the hiatus or vacuum in between."

21. The entire scope of challenge in these Writ Petition predominately relies on the outcome of the challenge in **W.P.No.22834 of 2022**, wherein the Petitioner has challenged the basis of levy of Anti-Dumping Duty on the subject product i.e., Viscose Staple Fibre exported from Indonesia in terms of the law laid down in the aforesaid decision of the Hon'ble Supreme Court.

FACTUAL BACKGROUND OF THE AFORESAID IMPUGNED NOTIFICATIONS AND ORDERS OF THE TRIBUNAL:-

22. The Petitioner is an Indonesian Company, having its manufacturing plants in Indonesia. It manufactures Viscose Staple Fibre (VSF) and had exported Viscose Staple Fibres (VSF) to its customers in India.

23. The 3rd Respondent i.e., the Association of Man-Made Fibre Industy of India had filed a complaint before the Directorate General of Trade Remedies regarding alleged dumping of Viscose Staple Fibres (VSF) by the Petitioner. Thus, an investigation was commenced on **19.04.2009** by the 2nd Respondent/ Designated Authority under the provisions of the

https://www.mhc.tn.gov.in/judis

WEB COPY

Customs Tariff (Identification, Assessment and Collection of AntiDumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 under Section 9A and 9B of the Customs Tariff Act, 1975.

24. The 2nd Respondent/ Designated Authority thereafter gave its final finding vide **Notification No.14/2009-DGAD** on **17.05.2010** and recommended imposition of Definitive Anti-Dumping Duties on the imported into India by the Petitioner from Indonesia under the provisions of the Customs Tariff Act, 1975 read with relevant rules framed thereunder.

25. In this backdrop, the 1st Respondent first issued **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** whereby Anti-Dumping Duty was levied on imports from Indonesian manufactures of Viscose Staple Fibres (VSF). Anti-Dumping Duty was initially levied for a period of five years upto **25.07.2015** in terms of Section 9A(5) of the Customs Tariff Act, 1975.

26. Aggrieved by the finding of the 2nd Respondent/Designated Authority vide **Notification No.14/2009-DGAD** dated 17.05.2020 and

https://www.mhc.tn.gov.in/judis

WEB COPY

Notification No.76/2010-Customs (ADD) dated **26.07.2010**, the Petitioner herein filed an appeal before the Appellate Tribunal under the provisions of the CEGAT (Countervailing Duty and Anti-Dumping Duty) Procedure Rules, 1996.

27. The Appellate Tribunal vide **Final Order No. AD/31-51/2011-AD** dated **11.08.2011** set aside the final finding of the 2nd Respondent/ Designated Authority recommending imposition of Definitive Anti-Dumping Duty on **17.05.2020** vide **Notification No.14/2009-DGAD** and directed the 2nd Respondent/ Designated Authority to grant post decisional hearing.

28. The Appellate Tribunal had further observed that if the decision of the 2nd Respondent vide **Notification No.14/2009-DGAD** dated **17.05.2020** is annulled, **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** would have no legs to stand.

29. Pursuant to **Final Order No. AD/31-51/2011-AD** dated **11.08.2011** of the Appellate Tribunal, the 2nd Respondent/ Designated

https://www.mhc.tn.gov.in/judis

WEB COPY

Authority passed a **Final Order 14/6/2009-DGAD** dated **10.04.2012** after post decisional hearing. In the aforesaid proceedings, the 2nd Respondent/ Designated Authority reaffirmed its earlier decision taken on **17.05.2010** vide **Notification No.14/2009-DGAD.** Thus, the levy of Anti-dumping Duty imposed vide **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** was upheld and continued till **25.07.2015**.

30. Three days before the expiry of the period fixed for levy of Anti-dumping Duty imposed on the Petitioner vide **Notification No.76/2010-Customs (ADD)** dated **26.07.2010**, the 2nd Respondent initiated the **1st Sunset Review** on **22.07.2015**.

31. As per the 2nd proviso to Section 9A(5) of the Customs Tariff Act, 1975, if before the expiry of original notification for levy of Anti-Dumping Duty, the review for extending the period of levy of tax is initiated but not completed, it can be extended for a period not exceeding **one year** pending sunset review. This view is in consonance with the view of the Hon'ble Supreme Court in **Union of India** Vs. **Kumho Petrochemicals Company Limited,** content of which has been already extracted in the earlier part of this Order.

https://www.mhc.tn.gov.in/judis

WEB COPY

32. Thus, in the excise power / excise duty provided under Section 9A(5) of the Customs Tariff Act, 1975, the 1st Respondent issued **Notification No.37/2015-Customs (ADD)** dated **06.08.2015** for the period upto **25.07.2016**. Thereafter, pursuant to the **1st Sunset Review** initiated on **22.07.2015**, the 2nd Respondent/ Designated Authority gave its finding vide **Notification No.15/9/2015-DGAD** dated **08.07.2016** and recommended continuation of levy of Anti-Dumping Duty on the Petitioner after Sunset Review for a period of further 5 years.

33. Thus, Anti-Dumping Duty was to continue up to **07.08.2021**. **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** was also issued by the 1st Respondent which meets the text in Paragraph No. 34 of the Hon'ble Supreme Court in **Union of India** Vs. **Kumho Petrochemicals Company Limited** (cited *supra*) as extracted above.

34. Aggrieved by **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** of the 1st Respondent/Central Government and recommendation

https://www.mhc.tn.gov.in/judis

WEB COPY

in **Notification No.15/9/2015-DGAD** dated **08.07.2016** of the 2nd Respondent, the Petitioner filed a Writ Petition in **W.P.No.22825 of 2022**. As mentioned in Paragraph No.2 of this Order, the above Writ Petition was dismissed as withdrawn on 30.10.2024, perhaps in view of the above decision of the Hon'ble Supreme Court.

35. Thus, challenge to levy of Anti-Dumping Duty pursuant to **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** of the 1st Respondent/Central Government and recommendation of the 2nd Respondent/Designated Authority in **Notification No.15/9/2015-DGAD** dated **08.07.2016** stands withdrawn. The levy of Anti-Dumping Duty on the goods mentioned therein were to continue upto **08.08.2021.** The goods which were shortlisted for continuance of levy of Anti-Dumping Duties vide **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** of the Central Government pursuant to the Final Finding of the 2nd Respondent/Designated Authority are as under:-

S. No	*Tariff Item*	*Description of goods*	*Country of origin*	*Country of export*	*Producer*	*Exporter*	*Amount*	*Unit of measure -ment*	*Currency*
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	5504	'Viscose	Indonesia	Indonesia	P T South	P T	0.103	kilogram	US Dollar

https://www.mhc.tn.gov.in/judis

WEB COPY

S. No	***Tariff Item***	***Description of goods***	***Country of origin***	***Country of export***	***Producer***	***Exporter***	***Amount***	***Unit of measure -ment***	***Currency***
	10 00	Staple Fibre (VSF) excluding Bamboo fibre'			Pacific Viscose	South Pacific Viscose			
2.	5504 10 00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Indonesia	Indonesia	Any Combination other than at S.No.1		0.512	kilogram	US Dollar
3.	5504 10 00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Indonesia	Any country other than attracting anti-dumping duty	Any	Any	0.512	kilogram	US Dollar
4.	5504 10 00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Any country other than attracting anti-dumping duty	Indonesia	Any	Any	0.512	kilogram	US Dollar
5.	5504 10 00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	People's Republic of China	People's Republic of China	Tangshan Sanyou Group Xingda Chemical Fibre Co. Ltd.	Tangshan Sanyou Group Hong-kong Inter-national Trade Co. Ltd.	0.180	kilogram	US Dollar
6.	5504 10 00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	People's Republic of China	People's Republic of China	Any Combination other than at S.No.5		0.194	kilogram	US Dollar
7.	5504 10 00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	People's Republic of China	Any country other than attracting anti-dumping	Any	Any	0.194	kilogram	US Dollar

https://www.mhc.tn.gov.in/judis

WEB COPY

S. No	Tariff Item	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit of measure -ment	Currency
				duty					
8.	5504 10 00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Any country other than attracting anti-dumping duty	People's Republic of China	Any	Any	0.194	kilogram	US Dollar

36. Therefore, the 2nd Sunset Initiation Review vide Notification **No.07/03/2021-DGTR** dated **22.02.2021** was issued by the 2nd Respondent/ Designated Authority to extend the levy of Anti-Dumping Duty on the basis of duly substantiated Written Applications filed by or on behalf of the domestic industry, wherein the Product under Consideration was restricted to “Viscose Staple Fibre (VSF) excluded Bamboo fibre” as mentioned above.

37. In the 2nd Sunset Initiation Review vide **Notification No.07/03/2021-DGTR** dated **22.02.2021,** the 2nd Respondent stated that it was satisfied, on the basis of the *prima facie* evidence submitted by the domestic industry substantiated likelihood of continuation / recurrence of dumping and injury of product under consideration originating in or

https://www.mhc.tn.gov.in/judis

WEB COPY

exported from the subject Countries, in accordance with Section 9A of the Customs Tariff Act, 1975 read with Rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

38. In the said 2nd Sunset Initiation Review vide Notification **No.07/03/2021-DGTR** dated **22.02.2021**, the 2nd Respondent/Designated Authority, stated that the period of investigation was for the period between **01.09.2019** and **31.10.2020** i.e., for the period much prior to the expiry of period covered by **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** issued by the 1st Respondent which imposed Anti-Dumping Duty for a period of five years.

39. The Injury Investigation Period and the Period of investigation are tabulated below:-

Details	Time period
Injury Investigation Period	01.04.2017-31.03.2018, 01.04.2018-31.03.2019 and 01.04.2019-31.03.2020
Period of investigation	01.09.2019-31.10.2020.

40. By a corrigendum dated **05.03.2021** to **2nd Sunset Initiation**

https://www.mhc.tn.gov.in/judis

WEB COPY

Review Notification No.07/03/2021-DGTR dated **22.02.2021**, certain products were excluded from the purview of investigation by the 2nd Respondent/Designated Authority as detailed below:-

a) Bamboo Fibre
b) Modal Fibre
c) Non-Woven Fibre
d) Flame Retardant Fibre
e) Eco Fibre (Eco Vero or EV)
f) Spun Dyed Fibre
g) Tencel Fibre (or Lyocell) and Outlast Viscose Fibre

41. The **Viscose Staple Fibre (VSF)** was not excluded. Since the investigation was not completed, the 1st Respondent in the exercise of power conferred under Section 9A(5) of the Customs Tariff Act, 1975 read with Rules 18 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 amended **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** vide **Notification No.39/2021-Customs (ADD)** dated **30.06.2021** to levy Anti-Dumping Duty till 31st October, 2021.

42. By virtue of the aforesaid Notification, after Paragraph 2 and before the **Explanation** to **Notification No.43/2016-Customs (ADD)** dated **08.08.2016**, **Paragraph No.3** was inserted to read as under:-

https://www.mhc.tn.gov.in/judis

WEB COPY

"3. Notwithstanding anything contained in paragraph 2, the anti-dumping duty shall remain in force up to and inclusive of the 31st October, 2021, unless revoked, superseded or amended earlier."

43. The 2nd Respondent, the Designated Authority gave its final finding in the Sunset Review for imports of Viscose Staple Fibre (VSF) originating in or exported from People's Republic of China (China PR) and Indonesia on **31.07.2021** in **F.No.7/03/2021-DGTR**. On **31.07.2021**, the 2nd Respondent, the Designated Authority concluded as extracted above and recommended withdrawal of Anti-Dumping Duty vide **Notification No.15/9/2015-DGAD** dated **08.07.2016**.

44. In this background, the 1st Respondent issued **Notification No.44/2021-Customs (ADD)** dated **12.08.2021** and thereby revoked Anti-Dumping Duty imposed on **"Viscose Staple Fibre excluding Bamboo Fibre",** falling under **Tariff Item 5504 10 00** of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from **People's Republic of China** and **Indonesia**, and imported into India and thus rescinded **Notification No.43/2016-Customs (ADD)** dated **08.08.2016**.

https://www.mhc.tn.gov.in/judis

WEB COPY

45. In the light of the above, the 2nd Respondent recommended withdrawal of Anti-Dumping Duty on import of Viscose Staple Fibre which was earlier recommended vide Notification No. 14/2009-DGAD on 17.05.2010 and enforced vide Notification No.76/2010-Customs (ADD) dated 26.07.2010 and thereafter recommended vide **Notification No.15/09/2015-DGAD** dated **08.07.2016** and enforced vide Customs **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** which was further extended vide **Notification No.39/2021-Customs (ADD)** dated **30.06.2021** till **31.10.2021**.

46. It is in this background, the 1st Respondent issued **Notification No.44/2021-Customs (ADD)** dated **12.08.2021** whereby the Anti-Dumping Duty levied under the above mentioned Notifications, particularly vide **Notification** dated **08.07.2016** and enforced vide Customs **Notification** dated **08.08.2016** and was further extended vide **Notification** dated **30.06.2021** till **31.10.2021** were rescinded except in respect of the things done or omitted to be done before such decision.

47. Relevant portion of the **Notification No.44/2021-Customs (ADD)**

https://www.mhc.tn.gov.in/judis

WEB COPY

dated **12.08.2021** reads as under:-

> "G.S.R. (E).- In exercise of the powers conferred by sub-sections (1) and (5) of Section 9A of the Customs Tariff Act, 1975 (51 of 1975), the Central Government revokes the anti-dumping duty imposed on "Viscose Staple Fibre excluding Bamboo Fibre", falling under tariff item 5504 10 00 of the First Schedule to the said Act, originating in or exported from People's Republic of China and Indonesia, and imported into India and hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.43/2016-Customs (ADD) dated the 8th August, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 777 (E), dated the 8th August, 2016, except as respects things done or omitted to be done before such rescission.
>
> **Notification No.44/2021-Customs (ADD)** dated **12.08.2021**

48. Aggrieved by **Notification No.44/2021-Customs (ADD)** dated **12.08.2021** rescinding levy of Anti-Dumping Duty vide **Notification No.43/2016-Customs (ADD)** dated **08.08.2016**, the 3rd Respondent namely the Association of Man-Nade Fibre Industry of India filed **Appeal No.51490 of 2021** before the Appellate Tribunal under the provisions of the CEGAT (Countervailing Duty and Anti-Dumping Duty) Procedure Rules, 1996 .

49. It is in this background, the Writ Petitioner had also challenged the

https://www.mhc.tn.gov.in/judis

WEB COPY

Final Findings No.15/09/2015-DGAD dated **08.07.2016** and **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016** before the Appellate Tribunal in **Anti Dumping Appeal No.50571 of 2022** in view of the **Final Order No.50427 of 2022**.

50. The Appellate Tribunal vide **Final Order No. 50427 of 2022**, allowed the various appeals as filed by the 3rd Respondent and others arising out of **Final Findings No.7/03/2021-DGTR** dated **31.07.2021** and **Customs Notification No.44/2021-Customs (ADD)** dated **12.08.2021** as stated above to the extent that the 2nd Respondent, the Designated Authority was to re-examine and give a fresh finding as to whether cessation of Anti-Dumping Duty would likely lead to continuation or recurrence of injury so as to warrant imposition of Anti-Dumping Duty for a further period of five years.

51. The **Final Findings** dated **31.07.2021** bearing **F.No.7/03/2021-DGTR** of the 2nd Respondent pursuant to the 2nd Sunset Initiation Review **Notification No.07/03/2021-DGTR** dated **22.02.2021** and the **Corrigendum** dated **05.03.2021**, therefore, stood modified to this extent.

https://www.mhc.tn.gov.in/judis

WEB COPY

The 2nd Respondent was to thereafter submit its recommendation to the Central Government for further action in accordance with the provisions of the Customs Tariff Act, 1975.

52. Thus, the challenge to **Final Findings** dated **31.07.2021** of the 2nd Respondent in the **Anti-Dumping Appeal Nos. 51832 of 2021** and **50570 of 2021** filed by the Southern India Mills Owners Association and the Writ Petitioner were dismissed by the Appellate Tribunal vide the impugned **Final Order** dated **19.05.2022** while the **Anti-Dumping Appeal No. 51490 of 2021** filed by the 3rd Respondent challenging the **Final Findings** dated **31.07.2021** was allowed vide the impugned Final Order dated 19.05.2022.

53. Furthemore, the other Anti-Dumping Appeals filed by the Writ Petitioner and the various other persons including the appeal in **Anti Dumping Appeal Nos. 50570 & 50571 of 2021** filed by the Petitioner as stated in the Table above were dismissed by the Appellate Tribunal vide the impugned Final Orders dated 19.05.2022

54. The Appellate Tribunal vide **Final Order No.50435 of 2022** in

https://www.mhc.tn.gov.in/judis

WEB COPY

Anti Dumping Appeal No.50571 of 2022 filed by the Petitioner arising out of **Final Findings No.15/09/2015-DGAD** dated **08.07.2016** and **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016** was dismissed.

55. It is in this background, these Writ Petitions have been filed.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:-

56. The learned counsel for the Petitioner would submit that the CESTAT erred in upholding the unilateral alteration of the 'Product under Consideration' (PUC) by the domestic industry, violating Section 2A(5) of the Customs Tariff Act, 1975 and Rule 23 of the Anti-Dumping Rules.

57. It is submitted by the learned counsel for the Petitioner that the Tribunal allowed changes to the PUC without providing an opportunity for other parties to comment, thus breaching principles of procedural fairness. It is further submitted that over multiple investigations, the PUC had been narrowed repeatedly, including the exclusion of various VSF grades, and these changes were made unilaterally by the domestic industry, violating natural justice.

https://www.mhc.tn.gov.in/judis

WEB COPY

58. Learned counsel for the Petitioner would further submit that the sunset review should have been conducted under Section 9A(5) of the Customs Tariff Act, 1975 and Rule 23 of the Anti-Dumping Duty (ADD) Rules. These provisions stipulate that Anti-Dumping Duties can only be extended if their cessation would lead to the continuation of dumping and injury. It is stated that Rule 23(1B) emphasizes the need for the duty and review process, ensuring input from all parties. Therefore, it is submitted the scope of the PUC should not have been altered during the review, but rather extended if necessary.

59. Learned counsel for the Petitioner submitted that there was a 11 days gap between the expiry of Anti-Dumping Duty (ADD) imposed under the original **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** which expired on **25.07.2015**, and the subsequent extension of the Anti-Dumping Duty for one year under **Notification No.37/2015-Customs (ADD)** dated **06.08.2015**.

60. In support of this contention, the Petitioner relied on the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Kumho**

https://www.mhc.tn.gov.in/judis

WEB COPY

Petrochemicals Company Limited, 2017 [351] E.L.T. 65 [SC], wherein it was held that there cannot be an extension of Anti-Dumping Duty notification after the expiry of the original notification. The Petitioner highlighted that the Tribunal, in **Appeal No. 50571 of 2022**, accepted this position and declared **Notification No.37/2015-Customs (ADD)** dated **06.08.2015**, to be non-est in law.

61. The learned counsel for the Petitioner relied on the Judgment of the Hon'ble Supreme Court in **Kumho Petrochemicals Case** (*cited supra*), which clarified that Anti-Dumping Duty notifications under Section 9(1) of the Customs Tariff Act, 1975, are temporary in nature and can only be extended during the pendency of the original levy. It was emphasized that a levy cannot be extended once it has expired, as such an extension would be invalid. This principle was formulated under the second Proviso to Section 9A(5) of the Customs Tariff Act, 1975 and applies equally to the first proviso, as both provisions underscore the requirement for the levy to exist at the time of extension.

https://www.mhc.tn.gov.in/judis

WEB COPY

62. Learned counsel for the Petitioner further submitted that despite this finding, the Principal Bench of CESTAT, New Delhi surprisingly upheld the validity of the notification issued after the sunset review (SSR), extending the original levy for five years, even though there was a clear gap between the expiry of the original levy on **25.07.2015**, and the issuance of the **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016.** The Petitioner argued that on **08.08.2016**, when **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** sought to extend the levy for five years, there was no Anti-Dumping Duty in existence. Thus, such an extension was invalid due to the lack of continuity.

63. It was also argued by the counsel for the Petitioner that this principle has been reinforced by the Hon'ble Delhi High Court in **Forech India Ltd. Vs. Designated Authority,** 2018 [361] E.L.T. 671 [Del.] and affirmed in **Saint Gobain India (P) Ltd.** Vs. **Union of India**, 2019 [9] GSTR-OL 499. These judgments held that continuity in the imposition of Anti-Dumping Duty is essential and that any break nullifies the authority to extend the levy.

https://www.mhc.tn.gov.in/judis

WEB COPY

64. The learned counsel for the Petitioner therefore contended that the Principal Bench of CESTAT, New Delhi failed to follow these binding precedents, which emphasize the importance of uninterrupted validity for any extension to be lawful.

65. Learned counsel for the Petitioner further submitted that Section 9A(5) of the Customs Tariff Act, 1975, and Rule 23 of the Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, make it clear that reviews must be completed within specified timelines, and extensions must occur during the period of the levy's validity. Post 2021 amendment to Rule 23, it was highlighted that reviews must be concluded at least three months before the expiry of the Anti-Dumping Duty under review, thereby ensuring timely and valid extensions.

66. The Petitioner concluded that the Principal Bench of CESTAT, New Delhi erred in ignoring these statutory principles and binding precedents established by the Hon'ble Supreme Court and the Delhi High Court. By failing to adhere to judicial discipline, as emphasized in **Union of**

https://www.mhc.tn.gov.in/judis

WEB COPY

India Vs. **Kamakshi Finance Corporation Limited,** 1991 [55] ELT 433 [SC] that the Tribunal's decision to validate the Anti-Dumping Duty extension was without legal authority. Therefore, the learned counsel for the Petitioner asserted that the absence of requisite continuity in the levy rendered the extension unsustainable and that these Writ Petitions are liable to allowed.

67. In support of the above contention, the learned counsel for the Petitioner relied on the various decisions of the Hon'ble Supreme Court and High Courts which are as follows:-

1. **PT South Pacific Viscose Vs. UOI & Ors**., W.P.No.42644 of 2016 dated 09.10.2022.
2. **UOI Vs. Kumho Petrochemicals Company Ltd.**, 2017 8 SCC 307.
3. **Automotive Tyre Manufacturers Association Vs. Designated Authority**, 2011 (263) ELT 481 (SC).
4. **Kumho Petrochemicals Company Ltd vs. UOI.**, 2014 (306) ELT 3 (Del).
5. **Forech India Ltd Vs. The Designated Authority & Ors.**, 2018 (361) ELT 671.
6. **The Principal Commissioner of Customs Vs. M/s Huawei Telecommunications (India)**, Writ Appeal No. 1489 of 2018.
7. **Union of India Vs. Umosh Dhaimode**, 1998 (98) ELT 584 (SC).

https://www.mhc.tn.gov.in/judis

WEB COPY

8. **Kaluram and Anr Vs. Mehtab Bai and Anr.**, AIR 1959 MP 18.
9. **M.R.M. Periannan Chettiar and Anr Vs. Commissioner of Income of Tax.,** AIR 1960 Mad 406.
10. **Ravishankar and Anr Vs. VIIth Additional District Judge, Bhopal.**, 1994 MP LJ 783.
11. **Rishiroop Polymers (P) Ltd Vs. Desginated Authority.,** 2006 (196) ELT 185 (SC).
12. **Association of Synthetic Fibre Industry Vs. J.K.Industries Ltd.,** 2006 (199) E.L.T. 196 (S.C.)
13. **Saurahtra Chemicals Ltd Vs. UOI.,** 2000 (118) E.L.T. 305 (S.C.).
14. **Nirma Limited Vs. Saint Gobain Glass India Ltd.,** 2012 (281) E.L.T. 321 (Mad)
15. **Fairdeal Polychem LLP Vs. UOI.**, 2016 (334) E.L.T. 241 (Del).

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT:-

68. On the other hand, learned Senior Standing Counsel for the 1st Respondent would submit that Section 9A(5) of the Customs Tariff Act, 1975, provides that the Central Government may extend the period of Anti-Dumping Duties for up to five years if it believes that cessation would lead to the continuation or recurrence of dumping and injury under the first proviso, while the second proviso allows the duties to continue for up to one year during a review process.

https://www.mhc.tn.gov.in/judis

WEB COPY

69. In support of the above submission, the learned Senior Standing Counsel for the 1st Respondent highlighted that the Hon'ble Supreme Court in **Kumho Petrochemicals case** *(*cited *supra)*, acknowledged that a hiatus between Anti-Dumping Duty periods is inevitable, and such a gap does not invalidate the imposition of duties. It is further submitted that while the Hon'ble Supreme Court emphasized that while a review is pending, the duties may be extended, and any delay in completing the review does not prevent the imposition of duties once the Central Government forms an opinion.

70. The Respondents relied on **Kumho Petrochemicals case** *(cited supra)* to stress that the gap between the expiry of duties and the issuance of a fresh notification is a necessary outcome and does not imply invalidity. Furthermore, it is submitted that the Principal Bench of CESTAT, New Delhi vide Final Order dated 19.05.2022, allowed **Anti-Dumping Appeal No.51490 of 2021**, directing the Designated Authority (DGTR) to re-examine whether the cessation of Anti-Dumping Duties would likely lead to injury and warrant a further extension of the duties for five years, following which, the DGTR conducted oral hearings on **26.07.2022**, after which

https://www.mhc.tn.gov.in/judis

WEB COPY

written submissions were made, and additional representations were filed by stakeholders.

71. It is submitted by the Respondents that the DGTR is currently reviewing these submissions and post-period of investigation data, preparing a disclosure statement, and seeking feedback from interested parties before taking further action. Therefore, the Respondents argued that any interference with the ongoing proceedings, which are in accordance with the CESTAT's directions, would compromise the process.

72. Additionally, it was contended that the Writ Petition filed under Section 226 of the Constitution of India against the Final Order of the CESTAT is not maintainable, as the proper remedy lies under Section 130 of the Customs Act, 1962. The respondents referred to the decision of this Court in **Super Sales India Limited** Vs. **Commissioner of Central Excise** and **3M India Ltd.** Vs. **Commissioner of Customs**, where Writ Petitions challenging CESTAT's orders were dismissed as non-maintainable. Based on these submissions, the respondents prayed for the dismissal of the Writ Petitions, asserting that they are devoid of merits.

https://www.mhc.tn.gov.in/judis

WEB COPY

DISCUSSION:

73. We have heard the learned counsel for the Petitioner, the learned Senior Standing Counsel for the 1st Respondent, the learned Senior Panel Counsel for the 2nd Respondent and the learned counsel for the 3rd Respondent in these Writ Petitions.

74. At the outset, we must state that we are not impressed with the submissions made on merits on behalf of the Petitioner both on merits and on the question of jurisdiction.

75. In our view, the Petitioner has resorted to forum shopping. The respective impugned **Final Orders** both dated **19.05.2022** in **Anti-Dumping Appeal No. 51490 of 2021** filed by the 3rd Respondent and in **Anti-Dumping Appeal No.50571 of 2022** filed by the Writ Petitioner were passed by the Appellate Tribunal situated at New Delhi along with other appeals as stated in **Table No. 2** of this Order.

76. Therefore, the Petitioner ought to have approached the Delhi

https://www.mhc.tn.gov.in/judis

WEB COPY

High Court for appropriate relief. Instead, the Petitioner has approached this Court even though practically there is no causal connection for the Petitioner to invoke the jurisdiction of this Court.

77. As per the decision of the Hon'ble Supreme Court in **Kusum Ingots and Alloys Ltd. v. Union of India.**, 2004 (168) E.L.T. 3 (S.C.), even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a Writ Petition would be maintainable at both the places.

78. The Hon'ble Supreme Court observed that order of the appellate authority constitutes a part of cause of action and therefore a Writ Petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority. In the present case, not only all the respondents are outside the jurisdiction of this High Court but also the Appellate Tribunal which has passed the impugned order.

https://www.mhc.tn.gov.in/judis

WEB COPY

79. The Court further observed that in appropriate cases, the Court may even refuse to exercise its discretionary jurisdiction by invoking the doctrine of "*forum conveniens*".Therefore, these Writ Petitions are liable to be dismissed also on account of the doctrine of "*forum conveniens*".

80. The Hon'ble Supreme Court there further observed that, "*We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit.*"

81. The Court referred the decision in **Bhagar Singh Bagga v. Dewan Jagbir Sawhany.**, AIR 1941 Cal.; **Mandal Jalan v. Madanlal**, (1945) 49 CWN 357; **Bharat Coking Coal Limited v. M/s. Jharia Talkies & Cold Storage Pvt. Ltd.** (1997) CWN 122; **S.S. Jain & Co. & Anr. v. Union of India & Ors.**, (1994) CHN 445; **M/s. New Horizon Ltd. v. Union of India**, AIR 1994 Delhi 126).

82. Therefore, these Writ Petitions are liable to be dismissed as none

https://www.mhc.tn.gov.in/judis

WEB COPY

of the respondents are within the jurisdiction of this Court.

83. Even otherwise, these Writ Petitions are liable to be dismissed in the light of Section 130 and Section 130E of the Customs Act, 1962 as in force as the challenge is relating to rate of duty in the impugned **Final Orders** both dated **19.05.2022** passed by the Appellate Tribunal in **Anti-Dumping Appeal No. 51490 of 2021** filed by the 3rd Respondent and **Anti-Dumping Appeal No. 50571 of 2022** filed by the Writ Petitioner.

84. As per Section 130E of the Customs Act, 1962, only the Hon'ble Supreme Court in its appellate jurisdiction can entertain appeals from the orders of the Appellate Tribunal in respect of rate of duty of customs and valuation of goods under the Act.

85. Section 130E of the Customs Act, 1962 as it stands today and as it stood amended but is not in force read as under:-

Section 130E of the Customs Act, 1962 (Act 52 of 1962) *[As amended by National Tax Tribunal*	***Section 130E of the Customs Act, 1962 (Act 52 of 1962)*** *prior to amendment which is still applicable.*

https://www.mhc.tn.gov.in/judis

WEB COPY

Act, 2005 (49/2005 dated 20.12.2005 with effect from 28.12.2005) vide S.O.1826(E) dated 28.12.2005].	
Appeal to Supreme Court : *An appeal shall lie to the Supreme Court from -* *(a) any judgment of the High Court delivered -* *i. in an appeal made under Section 130; or* *ii. on a reference made under Section 130 by the Appellate Tribunal before the 1 st day of July, 2003;* *iii. on a reference made under Section 130A, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or* *(b) any order passed before the establishment of the* ***National Tax Tribunal by the Appellate Tribunal*** *relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.*	***Appeal to Supreme Court:*** *An appeal shall lie to the Supreme Court from -* *(a) any judgment of the High Court delivered -* *i. in an appeal made under Section 130; or* *ii. on a reference made under Section 130 by the Appellate Tribunal before the 1 st day of July, 2003;* *iii. on a reference made under Section 130A, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or* *(b)any order passed by the* ***Appellate Tribunal*** *relating, among other things, to the determination of any question having a relation to* ***the rate of duty of customs or to the value of goods for purposes of assessment.***

86. A reading of Section 130E of the Customs Act, 1962 indicates that a statutory appeal is maintainable only before the Hon'ble Supreme Court against Order of the Appellate Tribunal herein, among other things,

https://www.mhc.tn.gov.in/judis

WEB COPY

pertaining to determination of any question having a relation to the rate of duty of customs or value of the goods for the purpose of assessment.

87. Therefore, these Writ Petitions are liable to be dismissed as only the Hon'ble Supreme Court has jurisdiction to interfere with the impugned **Final Orders** dated **19.05.2022** of the Appellate Tribunal impugned in **W.P.No.22819 of 2022** and **W.P.No.22820 of 2022**.

88. Even if these Writ Petitions were entertained as Civil Miscellaneous Appeal under Section 130 of the Customs Act, 1962 as per the Appellate Side Rules, they are liable to be dismissed in view of the embargo under Section 130(1) of the Customs Act, 1962. There is a specific embargo on this Court from entertaining a statutory appeal under Section 130 of the Customs Act, 1962 in respect of "**rate of duty**" of customs and "**valuation**".

89. For the sake of clarity, Section 130 of the Customs Act, 1962 is reproduced below:

https://www.mhc.tn.gov.in/judis

WEB COPY

*"130. **Appeal to High Court.**-*

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1 st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub section shall be-

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Customs or the other party;

(b) accompanied by a fee of two hundred rupee where such appeal is filed by the other party; in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial

https://www.mhc.tn.gov.in/judis

WEB COPY

question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which –

a) has not been determined by the Appellate Tribunal; or

b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub- section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided in accordance to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

https://www.mhc.tn.gov.in/judis

WEB COPY

90. Therefore, **W.P.No.22819 of 2022** and **W.P.No.22820 of 2022** have to be dismissed on account of jurisdiction and availability of an alternate remedy before the Hon'ble Supreme Court.

91. Even otherwise, on merits also, these Writ Petitions are liable to dismissed in the light of the decision of the Hon'ble Supreme Court in ***Union of India Vs. Kumho Petrochemicals Company Limited***, 2017 (315) ELT 65. Ironically, the Petitioner has placed reliance on the same to canvass a contra view based on a skewed reading of the said decision which affirmed the view of the Delhi High Court in **Kumho Petrochemicals Company Limited Vs. Union of India** rendered on 11.07.2014. We shall explain the position.

92. The way in which the decision were read and explained to us and the ratio of the said case was sought to be portrayed, impels us to conclude that the Petitioner resorted to ocular deception to confuse us.

93. If few sentences from the decisions are read selectively as was attempted, they could result in incorrect deduction of the ratio of the court.

https://www.mhc.tn.gov.in/judis

WEB COPY

Socrates, the great Greek Philosopher said unexamined life is not worth living. Like wise, we cannot author this decision without proper examination of facts and the case laws. Decisions without proper examination of facts and the case laws neither further cause of justice nor help the courts in settling the law in its quest for the march of law. Decisions authoured in hurry bury justice.

94. The decision of the Delhi High Court in **Kumho Petrochemicals Company Limited Vs. Union of India** was rendered in the context of levy of Anti-Dumping Duty vide **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** for the period of **five years** up to **01.01.2014.**

95. The levy under **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** lapsed on **01.01.2014**. No sunset review for continuance of the levy had commenced before the Designated Authority before **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** lapsed on **01.01.2014**.

96. There, the levy was however extended on **23.01.2014** *vide* **Notification No.06/2014-Customs (ADD)** dated **23.01.2014** although **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** had lapsed on

https://www.mhc.tn.gov.in/judis

WEB COPY

01.01.2014.

97. It was in this background, the Delhi High Court in its decision held that if the review exercise is not completed within one year, the effect of that would be that after the lapse of one year, there would be no scope for continuing anti-dumping duty, even if the review was pending before the 2nd respondent/Designate Authority.

98. The Delhi High Court held that amendment to the parent **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** was to be made before the said Notification ceazed to be in force. The High Court, thus, rightly observed that **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** was in the nature of temporary legislation and could not be amended after it had lapsed.

99. The decision of the Division Bench of the Delhi High Court in **M/s.Kumho Petrochemicals Company Limited's case** (cited *supra*) was affirmed by the Hon'ble Supreme Court in **Union of India** Vs. **M/s.Kumho Petrochemicals Company Limited**, 2017 (315) ELT 65.

https://www.mhc.tn.gov.in/judis

WEB COPY

100. In fact in Paragraph No. 34, the Hon'ble Supreme Court observed as under:-

> "*34. After giving due consideration to the arguments advanced by the learned counsel for the parties, we are inclined to agree with the High Court that proviso to sub-section (5) of Section 9-A of the Act is an enabling provision. That is very clear from the language of the said provision itself. Sub-section (5) of Section 9-A gives maximum life of five years to the imposition of anti-dumping duty by issuing a particular notification. Of course, this can be extended by issuing fresh notification. However, the words "**unless revoked earlier**" in sub-section (5) clearly indicate that the period of five years can be curtailed by revoking the imposition of anti-dumping duty earlier. Of course, provision for review is there, as mentioned above, and the Central Government may extend the period if after undertaking the review it forms an opinion that continuation of such an anti-dumping duty is necessary in public interest. **When such a notification is issued after review, period of imposition gets extended by another five years. That is the effect of the first proviso to sub-section (5) of Section 9-A.** However, what we intend to emphasise here is that even as per sub-section (5), it is not necessary that in all cases anti-dumping duty shall be imposed for a full period of five years as it can be revoked earlier. **Likewise, when a review is initiated but final conclusion is not arrived at and the period of five years stipulated in the original notification expires in the meantime, as per the second proviso "the anti-dumping duty may continue to remain in force".** However, it cannot be said that the duty would automatically get continued after the expiry of five years simply because review exercise is initiated before the expiry of the*

https://www.mhc.tn.gov.in/judis

WEB COPY

> *aforesaid period. It cannot be denied, which was not even disputed before us,* ***that issuance of a notification is necessary for extending the period of anti-dumping duty.*** *Reason is simple. There no duty or tax can be imposed without the authority of "law". Here, such a law has to be in the form of an appropriate notification and in the absence thereof the duty, which is in the form of a tax, cannot be extracted as, otherwise, it would violate the provisions of Article 265 of the Constitution of India. As a fortiori, it becomes apparent that the Government is to exercise its power to issue a requisite notification. In this hue, the expression "may" in the second proviso to sub-section (5) has to be read as enabling power which gives discretion to the Central Government to determine as to whether to exercise such a power or not. It, thus, becomes an enabling provision."*

101. In Paragraph No.36, the Hon'ble Supreme Court in **Union of India** Vs. **M/s.Kumho Petrochemicals Company Limited** (cited *supra*), thus observed as under:-

> "*36. The anti-dumping duty may continue, pending the outcome of the review, for a further period not exceeding one year. Thus, maximum period of one year is prescribed for this purpose which implies that the period can be lesser as well. The Government is, thus, to necessarily form an opinion as to for how much period it wants to continue the anti-dumping duty pending outcome of such a review. Moreover, since the maximum period is one year, if the review exercise is not completed within one year, the effect of that would be that after the lapse of one year there would not be any anti-dumping duty even if the review is pending. In that eventuality, it is only after the review exercise is complete and the Central Government forms the*

https://www.mhc.tn.gov.in/judis

WEB COPY

opinion that the cessation of such a duty is likely to lead to continuation or recurrence of dumping and injury, it would issue a notification extending the period of imposition of duty. Therefore, there may be a situation where even when the power is exercised under the second proviso and duty period extended by full one year, the review exercise could not be completed within that period. In that situation, vacuum shall still be created in the interregnum beyond the period of one year and till the review exercise is complete and fresh notification is issued. This situation belies the argument that extension under the second proviso is to be treated as automatic to avoid the hiatus or vacuum in between."

102. In Paragraph 43 in **Kumho Petrochemicals Company Limited** (cited *supra*), the Hon'ble Supreme Court held as under in the facts of the case therein:

"*43. Two things which follow from the reading of Section 9-A(5) of the Act are that not only the continuation of duty is not automatic, such a duty during the period of review has to be imposed before the expiry of the period of five years, which is the life of the notification imposing anti-dumping duty. Even otherwise, Notification dated 23-1-2014 amends the ealrier Notification dated 2-1-2009, which is clear from its language, and has been reproduced above.* ***However, when Notification dated 2-1-2009 itself had lapsed on the expiry of five years i.e., on 1-1-2014, and was not in existence on 23-1-2014 question of amending a non-existing notification does not arise at all. As a sequitur, amendment was to be carried out during the lifetime of the Notification dated 2-1-2009. The High Court, thus, rightly remarked that the Notification dated 2-1-2009 was in the nature of temporary legislation and could not be amended after it lapsed."***

https://www.mhc.tn.gov.in/judis

WEB COPY

103. The Court further held that issuance of a notification is necessary for extending the period of anti-dumping duty, However, if the review exercise is not completed within one year from the date of initiation, the effect of that would be that after the lapse of 1 year, there would not be any Anti-Dumping Duty even if the review is pending.

104. Therefore, the decision of the Delhi High Court as affirmed by the Hon'ble Supreme Court in Union of India Vs.Kumho Petrochemicals Company Limited., 2017 (315) ELT 65 cannot be interpreted to mean that the continuance of anti dumping levy whether vide Notification No.37/2015-Customs (ADD) dated 06.08.2015 and/or Notification No.43/2016-Customs (ADD) dated 08.08.2016 was contrary to the law settled by the Hon'ble Supreme Court as both the 1st and the 2nd Sunset Review were initiated before the Notification imposing Anti-Dumping Duty ceased to exist.

105. There, the **1st Sunset Review** of Anti-Dumping Duty was initiated only on **06.01.2014** before the Designated Authority, after **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** lapsed on

https://www.mhc.tn.gov.in/judis

WEB COPY

01.01.2014. **Notification No.06/2014-Customs (ADD)** dated **23.01.2014** was issued thereafter. Since the 1st **Sunset Review** was initiated after **Notification No.01/2009-Customs (ADD)** dated **02.01.2009** had ceased to exist to operate from **01.01.2014**, the Delhi High Court *vide* its order dated **11.07.2014** held that continuation of levy vide **Notification No.06/2014-Customs (ADD)** dated **23.01.2014** was without the authority of law.

106. The Hon'ble Supreme Court thus upheld the decision of the Delhi High Court in **Union of India Vs. Kumho Petrochemicals Company Limited.,** 2017 (351) ELT 65. As per the ratio of the Hon'ble Supreme Court, if the **Sunset Review** of Anti-Dumping Duty imposed commences before the expiry of initial period of **five years**, pending such review, Anti-Dumping Duty can be extended for a period of one year. This is the also scheme under the Customs Tarriff Act, 1975.

107. The Notification to continue the levy beyond the initial period can be even after the expiry of the initial period of levy, provided the Sun Set Review should have commenced before the expiry of the initial period of levy.

https://www.mhc.tn.gov.in/judis

WEB COPY

108. Thus, only if the **Sunset Review** is not initiated before the expiry of the period prescribed in Notifications imposing Anti-Dumping Duty, continuation of the levy cannot be permitted.

109. All that is required is that Sunset Review should have commenced before the expiry of the initial period of levy. Notification extending the levy can be issued thereafter. Mere delay in issuance of Notification under the Customs Act, 1962 by the 1st Respondent is not fatal to the levy as per the decision of the Hon'ble Supreme Court in Paragraph 34 in **Kumho Petrochemicals**.

110. Only, if the **Sunset Review Notifications** are initiated after expiry of **five years period** imposed under a notification, the Anti-Dumping Duty cannot be continued as held by the Hon'ble Supreme Court in **Union of India Vs. Kumho Petrochemicals Company Limited's case** (cited *supra*).

111. As per Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all the Courts within the

https://www.mhc.tn.gov.in/judis

WEB COPY

territory of India. It is the law of the land. There cannot be any different interpretation to 2nd proviso to Section 9A(5) of the Customs Tariff Act, 1975.

112. Thus, the Petitioner is harbouring a mistaken notion to state that the ratio of the Hon'ble Supreme Court in the above case comes to its rescue. Therefore, **W.P.No.22834 of 2022** also has to fail.

113. In our view, the interpretation of the learned counsel for the Petitioner based on the decision of the Hon'ble Supreme Court in **Union of India Vs. Kumho Petrochemicals Company Limited**., (cited *supra*) is incorrect.

114. The undisputed facts of the cases is that Anti-Dumping Duty on the subject goods viz. **Viscose Staple Fibre (VSF)** and other goods were imposed and levied for the first time by the 1st Respondent vide **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** for a period of **5 years**. The said levy came to an end on **25.07.2015**.

https://www.mhc.tn.gov.in/judis

WEB COPY

115. In the present case, **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** was in the background Initiation of investigation before the 2nd Respondent/Designated Authority which commenced on **19.04.2009.** The 2nd Respondent/Designated Authority gave its final finding on **17.05.2010**.

116. This levy under **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** was to extend up to **25.07.2016** for a period **one year** from the expiry of **five-year** period on **25.07.2015** vide **Notification No.37 of 2015 Customs (ADD)** dated **06.08.2015** since sunset review had commenced on **22.07.2015**.

117. Before the expiry of period one year, under **Notification No.37 of 2015 Customs (ADD)** dated **06.08.2015,** the 2nd respondent/Designated Authority gave its final finding on **Final Finding** in **Notification No.15/9/2015-DGAD** dated **08.07.2016**, pursuant to which **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** was issued.

118. The **2nd Respondent/Designated Authority** vide **Final Finding**

https://www.mhc.tn.gov.in/judis

WEB COPY

in **Notification No.15/9/2015-DGAD** dated **08.07.2016** recommended for extending the period of levy of Anti-Dumping Duty for a period of **five years**. This finding was before the expiry of the extended period till **25.07.2016** under **Notification No.37 of 2015 Customs (ADD)** dated **06.08.2015**.

119. Thus, **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** was issued by the 1st Respondent pursuant to the **Final Finding** dated **08.07.2016** of the **2nd Respondent/Designated Authority** vide **Notification No.15/9/2015-DGAD**.

120. Again there was a 2nd hiatus between **25.07.2016** and **07.08.2016** for a period of **13 days** since **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** was issued for a period of **5 years** pursuant to the final findings of the **2nd Respondent/Designated Authority** in **Notification No.15/9/2015-DGAD** dated **08.07.2016**. Thus, the levy was expired on 07.08.2021.

121. The levy was further extended vide **Notification No.39/2021-**

https://www.mhc.tn.gov.in/judis

WEB COPY

Customs (ADD) dated **30.06.2021** till **31.10.2021** pending final finding.

122. However, the hiatus between the initial notifications and their continuance of is of no significance but for a skewed and distorted reading of the decision of the Dehi High Court in **Kumho Petrochemicals Company Limited Vs. Union of India** (cited *supra*) which decision stand affirmed by the Hon'ble Supreme Court in **Union of India Vs. Kumho Petrochemicals Company Limited**.,(cited *supra*).

123. Since the sunset review commenced before the expiry of the initial period of expiry of **5 years** on **25.07.2015** under **Notification No.76/2010-Customs (ADD)** dated **26.07.2010,** the Government was justified in issuing **Notification No.37/2015-Customs (ADD)** dated **26.08.2015**.

124. As the final finding was given by the 2nd Respondent on **08.07.2016**, pursuant to which **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** was issued cannot be questioned even as per the decision of the Hon'ble Supreme Court in **M/s.Kumho Petrochemicals Company Limited's case** (cited *supra*).

https://www.mhc.tn.gov.in/judis

WEB COPY

125. The following tabulation explains the position:-

S. No	Event	Date	Relevant date for period commencement of levy.	Expiry date of the levy period
1	Notification for initiating investigation before the 2nd Respondent/Designated Authority.	19.04.2009	N.A	N.A
2	Final Finding of the 2nd Respondent/Designated Authority.	17.05.2010	N.A	N.A
3	Notification No.76/2010-Customs (ADD)	26.07.2010	26.07.2010	25.07.2015
4	Initiation of 1st **Sunset Review** by the 2nd Respondent/Designated Authority.	22.07.2015	Initiation before 25.07.2015	
6	Notification No.37/2015-Customs (ADD).	06.08.2015	25.07.2015	25.07.2015
5	Final Finding of the 2nd Respondent/Designated Authority vide Notification No.15/9/2015-DGAD pursuant to **1st Sunset Review** dated 22.07.2015.	08.07.2016		
7	Notification No.43/2015-Customs (ADD)	08.08.2016		07.08.2021
8	Notification of the 2nd Respondent/Designated Authority No.07/03/2021 initiating **2nd Sunset Review**.	22.02.2021		
9	Notification No.39/2021 Customs (ADD)	30.06.2021		31.10.2022
10	Final Finding of the 2nd Respondent/Designated Authority vide Notification No.07/03/2021 pursuant to **2nd Sunset Review**	08.08.2017		
11	Notification No.44/2021 Customs (ADD)	12.08.2021	Rescinding of the Notification No.43/2015 Customs (ADD)	

https://www.mhc.tn.gov.in/judis

WEB COPY

126. Since in the present case, the **1st Sunset Review** was initiated by the 2nd Respondent/Designated Authority on **22.07.2015**, 3 days before the expiry of the five year period under **Notification No.76/2010-Customs (ADD)** dated **26.07.2010**, the levy continued vide **Notification No. 37 of 2015 Customs (ADD)** dated **06.08.2015** cannot be held to be contrary to the law settled by the Delhi High Court as affirmed by the Hon'ble Supreme Court in **Kumho Petrochemicals Company Limited Vs. Union of India** (cited *supra*).

127. This was on the strength of the 2nd proviso to Section 9A(5) of the Customs Tariff Act, 1975. As per Sub-Section 5 to Section 9A of the Customs Tariff Act, 1975, Anti-Dumping Duty imposed shall remain in force for a period of 5 years from the date of such imposition unless it is revoked earlier, in which case, it can cease to have effect.

128. As per 2nd Proviso to Section 9A(5) of the Customs Tariff Act, 1975, when review is initiated before the expiry of five years, but a conclusion has not been arrived before the aforesaid period of five years, the Central Government may by notification, extend the levy for a period not

https://www.mhc.tn.gov.in/judis

WEB COPY

exceeding one year pending the outcome of review. This was permissible under Section 9A(1) & (5) of the Customs Tariff Act, 1975.

129. Merely because there was a hiatus of **11 days** between **25.07.2015** and **06.08.2015** i.e., between the end of the **1st five years** period under **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** and levy imposed for a further period of **one year** vide **Notification No.37 of 2015 Customs (ADD)** dated **06.08.2015** pending Final Finding of the 2nd Respondent/Designated Authority which was initiated on **22.07.2015,** will not mean, that the levy continued vide **Notification No.37 of 2015 Customs (ADD)** dated **06.08.2015** was without the authority of law and contrary to Art.265 of the Constitution of India.

130. If the submission of the learned counsel for the Petitioner that since the initial levy of Anti Dumping Duty vide **Notification No.76/2010-Customs (ADD)** dated **26.07.2010** came to an end on **25.07.2015** and was continued only *vide* **Notification No.37/2015-Customs (ADD)** dated **06.08.2015** after a hiatus of 11 days, these Writ Petitions have to be accepted, it would result in absurd situation and also contrary to the scheme of the Customs Tariff Act, 1975.

https://www.mhc.tn.gov.in/judis

WEB COPY

131. As far as the challenge to the impugned **Final Order** dated **19.05.2022** passed by the Appellate Tribunal in **Anti-Dumping Appeal No.50571 of 2022** impugned in **W.P.No.22820 of 2022** filed by the Petitioner on merits is concerned, it was held that is hopelessly time-barred before the Appellate Tribunal.

132. The challenge in the aforesaid **Anti-Dumping Appeal No.50571 of 2022** before the Appellate Tribunal which had culminated in the impugned **Final Order** dated **19.05.2022** impugned in **W.P.No.22820 of 2022** was against the **Final Findings No.15/09/2015-DGAD** dated **08.07.2016** of the **2nd Respondent/Designated Authority** and **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016** of the **1st Respondent**.

133. **Anti-Dumping Appeal No.50571 of 2022** against the **Final Findings No.15/09/2015-DGAD** dated **08.07.2016** of the **2nd Respondent/Designated Authority** and **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016** issued by the **1st Respondent** was belated and long after other notifications came to be issued.

https://www.mhc.tn.gov.in/judis

WEB COPY

134. We find no reason to differ with the conclusion arrived in the impugned **Final Order** dated **19.05.2022** in **Anti Dumping Appeal No.50571 of 2022.**

135. The challenge was perhaps inspired from a skewed reading of the decision of the Delhi High Court in **Kumho Petrochemicals Company Limited Vs. Union of India** (cited *supra*) which was rendered on **11.07.2014** which decision stands affirmed by the Hon'ble Supreme Court in **Union of India Vs. Kumho Petrochemicals Company Limited**., (cited *supra*). As mentioned above, both decisions do not come to the aid of the petitioner. We shall explain the position in the ensuing paragraphs.

136. In the present case, the **2nd Respondent/Designated Authority** had also given its **Final Findings** subsequently on **31.07.2021** and recommended for withdrawing Anti-Dumping Duty imposed vide **Notification No.7/03/2021-DGTR** dated **31.07.2021** pursuant to which **Notification No. 44/2021 (ADD)** dated **12.08.2021** was issued to rescinding **Notification No.43/2016-Customs (ADD)** dated **08.08.2016**. The Petitioner

https://www.mhc.tn.gov.in/judis

WEB COPY

itself was the appellant before the Principal Bench of CESTAT, New Delhi in **Anti Dumping Appeal No.50570 of 2022** against the finding of the 2nd Respondent/Designated Authority in **Notification No.7/3/2021-DGTR** dated **31.07.2021** (wrongly mentioned as **30.07.2021** in the impugned order) pursuant to which **Notification No.44/2021-Customs (ADD)** dated **12.08.2021** was issued by the 1st Respondent.

137. **Anti-Dumping Appeal No.50571 of 2022** which was also filed by the Petitioner was filed belatedly against the **Final Findings No.15/09/2015-DGAD** dated **08.07.2016** and **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016**. It has been rightly dismissed by the Principal Bench of CESTAT, New Delhi and impugned in **W.P.No.22820 of 2022**.

138. Yet, the petitioner has filed these Writ Petitions.

139. The 3rd Respondent/Private Respondent was the appellant before the Principal Bench of CESTAT, New Delhi in **Anti-Dumping Appeal**

https://www.mhc.tn.gov.in/judis

WEB COPY

No.51490 of 2022 against the second final finding of the 2nd Respondent/Designated Authority pursuant to the 2nd Sunset Review vide **Notification No.7/3/2021-DGTR** dated **31.07.2021** (wrongly mentioned as **30.07.2021**) in **Final Orders Nos.50436 to 50442 of 2022** of the Principal Bench of CESTAT, New Delhi.

140. Subsequent Notification **No.43/2016** dated **08.08.2016 Customs (ADD)** which was issued was pursuant to the conclusion of the **1st Sunset Review** based on the **Final Finding** of the **2nd Respondent Designated Authority** in **Notification No.15/9/2015-DGAD** dated **08.07.2016**.

141. Thus, continuation of Anti-Dumping Duty was strictly in accordance with Paragraph No. 34 of the decision of the Hon'ble Supreme Court in **UOI Vs. Kumho Petrochemicals Company Limited** (cited *supra*), wherein it was held that when a review is initiated but final conclusion is not arrived at and the period of five years stipulated in the original notification expires in the meantime, as per the second proviso the anti dumping duty may continue to remain in force.

https://www.mhc.tn.gov.in/judis

WEB COPY

142. The argument that there was a hiatus between **25.07.2015** and **06.08.2015** and therefore **Notification No.37/2015-Customs (ADD)** dated **06.08.2015** was issued belatedly cannot be countenanced as the review commenced on **22.07.2015** i.e., before **25.07.2015** (being the end of 5 year period) from **Notification No.76/2010-Customs (ADD)** dated **26.07.2010**.

143. Though, the initiation of the **2nd Sunset Review** vide Review **Notification No.07/03/2021-DGTR** dated **22.02.2021** has culminated in **Final Finding** of the **2nd Respondent/Designated Authority** vide **Notification No.07/3/2021-DGTR** dated **31.07.2021** and rescinding of **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016** of the 1st Respondent vide issuance of **Notification No.44/2021-Customs (ADD)** dated **12.08.2021**. Yet, the petitioner has filed **W.P.No.22819 of 2022**.

144. The stand of the Petitioner is absurd and self defeating. Therefore, **W.P.No.22819 of 2022** is liable to be dismissed.

https://www.mhc.tn.gov.in/judis

WEB COPY

145. The challenge to the **Sunset Review Initiation Notification No.07/03/2021-DGTR** dated **22.02.2021** and the final finding of the 2nd Respondent/Designated Authority in **Notification F.No.07/03/2021-DGTR dated 31.07.2021** cannot be countenanced as the 2nd mentioned notification itself recommends that there is no justification for recommending the continuation of Anti-Dumping Duty.

146. Therefore, the challenge to the levy under the Notification cannot be countenanced. The 1st Respondent Government in its wisdom based on the findings of the 2nd Respondent has concluded not to extend the levy and thus, issued **Notification No.44/2021-Customs (ADD)** dated **12.08.2021**.

147. The decision to issue **Notification No.44/2021-Customs (ADD)** dated **12.08.2021** preceded a **2nd sunset review** of the **2nd Respondent/Designated Authority** which culminated in a finding of the 2nd Respondent dated **31.07.2021** recommending withdrawal of Anti-Dumping Duty recommended vide **Notification No.15/9/2015-DGAD** dated

https://www.mhc.tn.gov.in/judis

WEB COPY

08.07.2016 and enforced vide **Customs Notification No.43/2016-Customs (ADD)** dated **08.08.2016**.

148. The said **Anti-Dumping Appeal No.50571 of 2022** was perhaps inspired from an incorrect deduction of the ratio of the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Kumho Petrochemicals Company Limited**, 2017 (351) E.L.T. 65 (SC). Therefore, **W.P.No.22820 of 2022** also has to fail.

149. Even if there was a hiatus, it is of no significance in the light of the decision of the Hon'ble Supreme Court in **Kumho Petrochemicals Company Limited** (cited *supra*). Even if there was a delay in giving the finding within the stipulated period, the question of not extending the notification for levy of Anti-Dumping Duty would not arise in terms of the decision of the Hon'ble Supreme Court in **M/s.Kumho Petrochemicals Company Limited's case** (cited *supra*), if the Sunset Review was commenced before the expiry of the Notification.

https://www.mhc.tn.gov.in/judis

WEB COPY

150. We find no error in the conclusion arrived in Paragraph 81 of the **Impugned Order** dated **19.05.2022** in **Anti-Dumping Appeal No.51490** of **2021** and **Anti-Dumping Appeal No.50570 of 2022** content of which has been extracted.

151. Consequently, **W.P.No.22819 of 2022** is liable to be dismissed and is accordingly dismissed.

152. The challenge to the **impugned Order** dated **19.05.2022** passed in **Anti-Dumping Appeal No.50571 of 2022**, which is impugned in **W.P.No.22820** of **2022**. The petitioner had challenged the **Final Finding** of the 2nd Respondent dated **08.07.2016** recommending continuation of the definitive Anti-Dumping Duty and the consequential **Notification No.43/2016-Customs (ADD)** dated **08.08.2016** also cannot be countenanced in the light of decision in ***Tangshan Sanyou Group Hong Kong International Trade Co. Ltd Vs. Union of India,****2017 (349) E.L.T. 667 (Tri-Del).* The aforesaid decision of the Principal Bench of CESTAT, New Delhi has not been disturbed.

https://www.mhc.tn.gov.in/judis

WEB COPY

153. The Appellate Tribunal in the impugned order followed the decision of the Tribunal in the aforesaid case. Relevant portion reads as under:-

> "*The appellant is an exporter of Viscose Staple Fibre excluding bamboo fibre (subject goods) and is located in Hong Kong. They participated in the Sunset review investigation of the anti-dumping duty imposed on subject goods when imported from China PR and Indonesia.* ***The present appeal is against final finding dated 8-7-2016* of the Designated Authority*** *(DA), Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce and Industry* ***and Customs Notification No. 43/2016-CUS (ADD), dated 8-8-2016 which was issued based on the said final finding of the DA.*** *The final finding now impugned is on conclusion of Sunset review of anti dumping duty imposed on the subject goods. The Sunset review was done on a petition filed by Association of Man made Fibre Industry of India on behalf of Domestic Industry (DI). M/s. Grasim Industries Ltd. is the sole producer who furnished all information for the review. The DA concluded that the subject goods continue to enter into the market with dumped prices. Dumping margin and injury margin are positive and significant. Performance of the Domestic Industry has worsened in terms of various economic parameters. There is likelihood of price under cutting in case of cessation of anti-dumping duty. Based on such finding he recommended continuation of definitive anti-dumping duty on all imports of subject goods.*

https://www.mhc.tn.gov.in/judis

WEB COPY

Accordingly, the Customs Notification dated 8-8-2016 was issued by the Ministry of Finance to give effect to the recommendations.

12. After having carefully considered the rival submissions we note that anti-dumping duty is a trade remedy measure to counter dumping. Imposition of anti-dumping duty is authorized in terms of an international agreement under WTO. Protection of domestic industry of the Member country against unfair trade practices is the rationale in imposing such duty. Section 9A(5) of the Customs Tariff Act, 1975 provides for review of the anti-dumping duty imposed. If upon review, if the Government is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, extend the period of such imposition for a further period of 5 years. In the facts of the present case, we find the appellant could not place before us any empherical evidence to counter the final findings on Sunset review by the DA. It has been clearly recorded that cessation of existing anti-dumping duty on the subject goods is likely to result in recurrence of dumping and injury to the DI. Basically, we note that the present impugned findings are in continuation of the earlier findings as it has been recorded that there is a need to continue the imposition of anti-dumping duty in terms of applicable legal provisions after due consideration of the economic parameters. ***We find no merit in the present appeal to persuade us to interfere with the impugned final findings or the customs notification issued based thereon. Accordingly, we dismiss the appeal.*** *The stay application linked to the appeal is also disposed of." * (para 32)*

https://www.mhc.tn.gov.in/judis

WEB COPY

154. This was taken note of by the Appellate Tribunal while passing Order dated **19.05.2022** in **Anti-Dumping Appeal No.50571 of 2022**. The Appellate Tribunal has also taken note of the decision of the Hon'ble Supreme Court in **Kumho Petrochemicals** referred to *supra*.

155. We therefore agree with the views expressed by the Appellate Tribunal in the impugned **Final Order No.50435 of 2021** dated **19.05.2022** in **Anti-Dumping Appeal No.50571 of 2022** that there is no requirement that a notification has to be issued by the Central Government under the first proviso to Section 9A(5) of the Customs Tariff Act only during the lifetime of the earlier notification for continuation of anti-dumping duty for a period beyond five years.

156. Consequently, **W.P.No.22820 of 2022** is also liable to be dismissed. It is accordingly dismissed. Therefore, **W.P.No.22830 of 2022** is also liable to be dismissed and is accordingly dismissed.

https://www.mhc.tn.gov.in/judis

WEB COPY

157. In the light of the above discussion, **W.P.No.22834 of 2022** is also liable to be dismissed and is accordingly dismissed.

158. In the result, all the four Writ Petitions are dismissed. No costs. Connected Writ Miscellaneous Petitions are closed.

[R.S.K., J.] **[C.S.N., J.]**

09.05.2025

arb/mrr

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order (or) Non-Speaking Order

To
1.The Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001.

2.The Designated Authority,
Directorate General of Trade Remedies,
Having their address at Ministry of
Commerce and Industry,
5 – Parliament Street,

https://www.mhc.tn.gov.in/judis

WEB COPY

Jeevan Tara Building,
New Delhi – 110 005.

3.The Association of Man-Made Fibre Industry of India,
5th Floor, Resham Bhavan,
78, Veer Nariman Road,
Mumbai – 400 020.

https://www.mhc.tn.gov.in/judis

WEB COPY

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

arb/mrr

W.P.Nos.22819, 22820,
22830 & 22834 of 2022

09.05.2025

https://www.mhc.tn.gov.in/judis