

Reviews including Judicial Reviews

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Reviews

- Mid term reviews
- New Shipper Reviews
- Sunset Reviews

Mid term Reviews

- Rishiroop Polymers Vs DA [SC]
 - Scope of review limited to satisfaction as to whether
 - there is a justification for continued imposition of duty
 - Conditions that existed at the time of imposition have altered to such an extent that there is no longer a justification to levy duty
 - Purpose of review
 - not to see whether there is need for imposition of duty
 - But to see whether in the absence of such continuance, dumping would increase and DI would suffer

MTR2

- Kalyani Steel Vs DA [Tribunal]
 - Rule 23 flows from Sec.9A(5)”unless revoked earlier”
 - It is an investigation in the direction of withdrawal by checking up whether
 - the basis on which the duty was imposed no long existed
 - There was no injury or threat or
 - level is so reduced to justify partial withdrawal of duty imposed

MTR ...3

- Where dumping does not exist, ground for withdrawal made out
 - Kalyani Steel Ltd Vs DA
- If the injury margin is negative, duty to be withdrawn
 - Jindal Stainless Ltd Vs DA
 - Forum of Acrylic Fibre Manufacturers Vs DA
 - Graphite Manufacturers Assn Vs DA

MTR ..4

- expression “continued imposition” would be at the rates determined in the review
- *Indian Graphite Manufacturers Association v. Designated Authority* reported in 2006 (199) E.L.T. 722 (T),
 - purpose of review will be frustrated if D.A. cannot recommend higher or lower anti-dumping duty than the original definitive anti-dumping duty

No recurrence of dumping

- Borax Morarji Limited Vs Designated Authority 2007 (215) ELT 33 (Del)- Paragraph 16.2

Negative Dumping Margin of -1.38% in a Mid Term Review

Importers resold the goods at a significantly higher price

Established that Indian market was capable of absorbing price of imported goods

Therefore no likelihood of recurrence of dumping

DI ceased to manufacture

- Saudi Basic Industries Vs Designated Authority, 2006 (200) ELT 488 , Para 10 ;
- Andhra Petrochemicals Limited VS Designated Authority 2006 (201) ELT 481 (Del), Para 5.4
 - If DI has ceased to manufacture
 - no question of injury to the DI

No exports during Review

- SABIC Vs DA [2006 (200) ELT 488]
 - If no exports, no dumping margin could be determined
 - DM and IM cannot be compared
 - If the ground that exports discontinued because imposition of duty is accepted
 - Then, it would not be possible to discontinue duty earlier imposed in any case where there have been no exports.
 - Such an extreme position would not be warranted.
 - Records to show every possibility of recurrence despite no dumping

New Shipper Reviews

- Who can seek NSR?
- When a NSR application be filed?
- Period of investigation

Who can file for NSR?

- The expression “exporters or producers in the exporting country who are subject to anti-dumping duties on the product” would mean
 - only those who had exported in the earlier period of investigation
 - Not those who fall under ‘All others rate’
 - H& R Johnson VS UoI [2004 (218) ELT 273]

When a NSR application be filed?

- H&R Johnson Vs UOI [2004 (218) ELT 273]
 - Initiation of NSR after publication of final findings but before levy of final duty does not make the application non est
 - DA has jurisdiction to entertain such applications; In case of NSR
 - Once a declaration has been made by the producer that goods produced by them have been exported by an unrelated exporter, then application or declaration by exporter not necessary;
 - establishing relation between the exporter and the producer not necessary before initiation of investigation

Period of Investigation in NSR

- It cannot be prospective
 - CESTAT in H&R Johnson VS UoI [2007(28)ELT 273]
- It cannot be retrospective
 - Delhi High Court in H&R Johnson Vs UOI
 - [2008(232)ELT 390]

Sunset Review

- When should one initiate?
- Is it mandatory?
- Can duty be modified/withdrawn or both?

SSR – when should one initiate?

- Before the expiry of 5 year period
 - From the date of levy of existing duty
 - In original investigation or an earlier SSR
 - Not from the date of imposition of duty in a MTR
- Kalyani Steel Ltd Vs UoI [2008(224)ELT 47] Delhi HC
 - Original levy w.e.f 26 Dec 2000
 - Pursuant to MTR duties withdrawn on 19 July 2005
 - CESTAT set aside withdrawal 2 Aug 2006 but declined to extend duty beyond 5 year period
 - HC directed initiation of NSR

SSR – Is it mandatory?

- If a petition is filed, SSR has to be initiated; application cannot be rejected without a review
 - Indian Metal & Ferro Alloys Ltd Vs DA [2008 (224)ELT 375 Delhi HC]
- DA has taken a stand that SSR is mandatory in every case

Can duty be modified?

- Recent three cases
 - Thai Acrylic Fibre Co Ltd Vs DA [2010(253) ELT 564]
 - BASF Vs DA [2010(253)ELT 554]
 - Assn. of Synthetic Fibre Industry VS DA
- Ratio in all the three cases
 - Dumping margin need not be re-determined
 - Duty can be altered based on changes in NIP

Can duty exceed dumping margin

- No, it has to be upto the dumping margin or less as per Section 9A(1)
 - Graphite Electrodes [2006 (199) ELT 722]
- Yes, it can exceed the dumping margin because
 - Current dumping may be nil; but it can recur
 - Thai Acrylic and other two recent cases

Likelihood examination

- BASF Ltd Vs DA
 - Bordering on conjecture
 - Remanded back to the authority for fresh determination

Powers of CESTAT

- Section 9(C)
 - CESTAT is empowered to
 - annul, modify or confirm the order passed by DA.
- Catalysts from Denmark
 - CESTAT said it had no power to remand
- Vitrified Tiles from China PR and UAE
 - CESTAT has stated remanding to DA

Who can file an appeal?

- Any interested party can file an appeal
- Jujo thermal Ltd v DA [2000(122) ELT 695 (Tri)]
where an exporter is not exporting in the original investigation period, its not open to him to challenge the notification. Only remedy is to seek review.
- In CFL Case
 - A person who had
 - neither participated in the proceeding before DA
 - Nor imported the goods
 - Was held to be ineligible for filing an appeal by CESTAT

When can you file an appeal?

- No appeal against PF or FF
- Appeal only against levy of Provisional duty or Final duty

Second appeal

- Against CESTAT order
 - SLP before the Supreme Court
 - WP before the HC



Thank you very much