IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4495 of 2022

With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 4495 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA

and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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REALSTRIPS LIMITED & 1 other(s)
Versus
UNION OF INDIA & 1 other(s)

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Appearance:
MR MIHIR JOSHI, SR. ADVOCATE assisted by MS GARGI R VYAS(7983) for the Petitioner(s) No. 1,2
MR DEVANG VYAS, ADDL. SOLICITOR GENERAL WITH Mr. JASH THAKKAR, for the Respondent(s) No. 1,2
MR ARJUN M JOSHI for the Applicants in Civil Application

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CORAM: **HONOURABLE MR. JUSTICE N.V.ANJARIA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 02/09/2022

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

The crisp questions of law arising for consideration in this Special Civil Application, are as under:

(i) Whether in the midst of Sunset review investigation in respect of continuance of countervailing duty, already initiated and kept undecided, during the currency of the period of original Notification imposing such duty, was it open to the Central Government to straightway issue the Notification rescinding the countervailing duty;

(ii) Was it on part of the Central Government to issue such Notification in absence of any recommendatory exercise or recommendation by the designated authority, and without waiting for such recommendation;

(iii) Whether it was obligatory on part of the Central Government to act and issue Notification rescinding the countervailing duty only after the recommendatory procedure laid down and the exercise contemplated in Sub section (6) of Section 9 of the Customs Tariff Act, 1975 read with Rule 24 of Customs Tariff (Identification, Assessment and Collection of countervailing duty on Subsidized Articles and for Determination of Injury) Rules, 1995, are followed;

(iv) What is the import and purport of the words 'unless revoked earlier' occurring in sub-section (5) of section 9 of the Act.

(v) Whether the ingredients ‘continuation or recurrence of subsidization’ and ‘injury' are required to be determined and established *apriori* in review as per the First Proviso to sub-section (5) of section 9 of the Act and establishing such aspects is a condition precedent for issuance of the Notification of rescinding the countervailing duty by the Central Government?

1.1 Centripetal to the aforesaid questions, the controversy becomes centrifugal in its dimensions.

2. Filed under Article 226 of the Constitution, the challenge in this petition is directed against the following Notification.

(i) Notification dated 1.2.2022 issued by respondent No.1 rescinding the countervailing duty which was imposed by Notification dated 7.9.2017 for five years.

(ii) Notification dated 1.2.2021 and Notification dated 30.9.2021 issued by respondent No.1 whereby the countervailing duty was suspended and extended respectively upto 31.1.2021.

2.1 It is also prayed for direction to revive Notification dated 7.9.2017 which originally imposed

the countervailing duty.

2.2 There involved time-line as the period of Notification dated 07.09.2017 was of five years due to expire on 06.09.2022. In view of request, therefore, the Court took up the hearing of the petition on urgent and regular basis. The judgment was reserved as per order dated 22.08.2022.

2.3 Notification dated 1.2.2022 aforementioned came to be issued in purported exercise of powers under Sub-section (1) and Sub-section (6) of the Customs Tariff Act, 1975 read with Rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of countervailing duty on Subsidized Articles and for Determination of Injury) Rules, 1995.

Basic Facts

3. The facts and related aspects necessary for comprehending the controversy, as also in order to appreciate the rival contentions raised, may be set out.

3.1 Petitioner no.1, a Public Limited Company, is engaged in the business of manufacturing Cold Rolled Stainless Steel Strips/Coils. Petitioner no.2 is the share-holder and Director of petitioner no.1 Company.

3.1.1 The product in the manufacturing of which the petitioner Company is engaged is used for

architecture, building and construction; also in automobile, railway and transport, processed engineering and for consumer durable including household utensils. The product is stated to be highly capital intensive product. It is stated by the petitioner that the product in which it has been dealing in, public, private, medium, small and marginal enterprises have invested around Rs.450000 crores.

3.1.2 Respondent no.1 is the Department of Revenue, Ministry of Finance. In respect of imposition, discontinuance, etc. of the countervailing duty, respondents no.1 and 2 both, function and act under the Customs Tariff Act, 1975 and the aforesaid Rules. Respondent no.2 plays the role of recommending and respondent no.1 Central Government is supposed to act on the basis of such recommendation. Director General of Trade Remedies (DGTR) is appointed under Rule 3 of the Customs Tariff Rules 1995, aforementioned.

3.1.3 Notification dated 07.09.2017 came to be issued by respondent no.1 imposing definitive countervailing duty on the imports of the aforesaid product from China PR. Notification regarding levy of countervailing duty was preceded by exercise of undertaking investigation, which was initiated and notified to interested parties including Government

of China. Adequate opportunity was given to provide positive information on the aspects of subsidies, injury and causal links in terms of the Countervailing Rules. All interested parties including domestic producers, exporters, importers filed their submissions. These submissions were considered by respondent no.2 and respondent no.2 having ascertained and established positive subsidy margin as well as material injury to the domestic industry caused by said subsidised imports of Rolled Stainless Steel Strips/Coils, recommended imposition of definitive Countervailing Duties. The recommendation dated 04.09.2017 resulted into issuance of aforesaid Notification dated 07.09.2017 by the Central Government.

3.1.4 Under the said Notification dated 07.09.2017, the countervailing duty was imposed for a period of five years an was to remain in force for such period. It is the case of the petitioners that no case was made out by any interested party throughout the period that the countervailing duty imposed had any ill effect or that the circumstances had so fundamentally changed as to rule out adverse effect of imports, which was earlier found and recorded by respondent no.2 DGTR. The respondent no.1 however, unilaterally proceeded to temporarily suspend countervailing duty by issuing notification on 01.02.2021. The suspension of countervailing duty was extended till 31.01.2022 by another Notification

dated 30.09.2021.

3.1.5 The domestic manufacturers filed application and represented before the respondent no.2 to submit to the authorities that in accordance with the provisions of the Act and countervailing Rules, Sunset Review was initiated for investigation concerning imports of "Flat Rolled Products of Stainless Steel", originating in or exported from China PR. The Association called "All India Stainless Steel Cold Rolled Association" supported the request for extension of countervailing duty. Upon the representations by the domestic industry, the respondent no.2 initiated Sunset Review investigation.

3.1.6 The petitioner stated that while initiating investigations, the respondent no.2 had specifically noted that there was sufficient evidence that cessation of existing countervailing duty was likely to lead to continuation or recurrence of subsidy. It was stated that having satisfied itself on the basis of the prima facie evidence regarding likelihood of continuation or recurrence of subsidy and injury, the Sunset Review process was started in accordance with Section 9 of the Act read with Rule 24 of the countervailing duty Rules. Such process for Sunset Review was commenced by issuing Notification dated 08.10.2021.

3.1.7 It is further case of the Petitioners that while respondent no.2 called for relevant information from the stakeholders including the petitioners, none opposed to submit that the countervailing duty already imposed and in currency as per Notification dated 07.09.2017 was not required to be extended. In other words, the Petitioner stated that the domestic industry had not felt any need to discontinue the countervailing duty, but rather favoured the extension and continuation. It is stated that the neverthless, to the shock and surprise, respondent no.1 first suspended the countervailing duty as per the aforesaid Notification dated 01.02.2021 followed by its extension in subsequent notification dated 30.09.2021 till 31.01.2022. Respondent no.1 thereafter permanently withdrew the duty as per the impugned Notification dated 01.02.2022.

3.1.8 The Sunset Review was initiated on 08.10.2021 as aforesaid. It was despite the ongoing Sunset Review, investigation for extension of duty for further five years undertaken by respondent no.2 that respondent no.1 proceeded to rescind the duty. It is the case of the petitioners that respondent no.1 could not have acted in absence of and without waiting for the recommendations of the quasi-judicial authority-respondent no.2 to act unilaterally, when the respondent no.2 was already engaged in the investigation and inquiry to ascertain the aspects of continued subsidy and injury to the domestic industry

which was to be decisive for either extension or rescinding of the countervailing duty.

3.2 The countervailing duty or Anti-Dumping Duty is a trade remedy. These are the duties quite different in their nature and purpose of imposition, not similar to the levy of customs duty or other taxes. The countervailing duty is levied on a product, which may be imported to this country to which the exporting country extends artificial subsidies, to push the product into Indian market, which may ultimately lead to detriment to the domestic industry with adverse effect in general on the economy. Whereas, anti-dumping duty is imposed upon the imported products when the exporting country dumps such products in the Indian market at a lower price to the detriment to the domestic industry.

Recognised by GATT, 1994

3.3 India is a signatory to agreement on Implementation of Article VI of the General Agreement On Tariffs And Trade 1994, known as GATT Agreement. Under this agreement, the member countries have agreed to abide by the set of Rules relating to type of subsidies, which are permissible as per the Agreement of Subsidies and Countervailing Measures ('ASCM').

3.3.1 The Supreme Court in **S & S Enterprise Vs. Designated Authority [2005 185 ELT 375 (SC)]** observed

in relation to the anti-dumping duty thus, which would also apply to countervailing duty,

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

3.3.2 In **Union of India Vs. Kumho Petrochemicals Co. Ltd.[(2017) 351 ELT 65 (SC)]**, the Supreme Court stated,

> India is a signatory to the Marrakesh Agreement establishing the World Trade Organization in 1994. Pursuant to this, it has implemented the Agreement on Implementation of Article VI of the GATT 1994 referred to as the Anti-dumping Agreement (ADA), which is one of the Agreements that forms part of the WTO treaty. In terms of Article 18.4 the ADA, each Member country is required to ensure the conformity of its laws,

> regulations and administrative procedures with the provisions of the ADA. As a consequence, Sections 9A, Section 9AA, Section 9B and Section 9C of the Act were enacted.
>
> (para 39)

Based on GATT & ASCM

3.4 The group of Articles in Part V captioned as 'Countervailing Measures' in the agreement on Subsidies and Countervailing Measures(ASCM) may be noticed with relevance. Article 10 is about application of Article VI of GATT, 1994. It says that the members shall take necessary steps to ensure that the imposition of countervailing duty on any product of the territory of any Member imported into the territory of another Member is in accordance with Article VI of the GATT and the terms of the agreement-ASCM. It is stated that countervailing duty may only be imposed pursuant to investigation initiated and concluded in accordance with the provisions of the Agreement.

3.4.1 Article 11 of ASCM is in relation to initiation and subsequent investigation. Articles 12 and 13 are about evidence and consultations; Article 14 deals with the calculation of amount of subsidy in terms of benefit to recipient. Article 15 of the ASCM mentions about the determination of injury. Article 15.1 says that determination of injury for the purpose of Article VI of GATT shall be based on positive evidence and involving objections, examining

(a) The volume of subsidies, imports and effect of subsidies, imports on the prices in the domestic market for like products; (b) The consequent impact of this imports on domestic industry on such products.

3.4.2 Article 15 is regarding determination or injury, Articles 15.7 says that determination of threat of material injury shall be based on facts and not merely on allegations of remote possibility or conjecture. It outlines the factors which the investigating authorities may consider to determine the injury, which may be imminent and clearly forceable judging by the factors (i) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom; (ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation; (iii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports; (iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and (v) inventories of the product being investigated.

3.4.3 Article 19 speaks about imposition and

collection of countervailing duty. The countervailing duty may be imposed upon determination of the existence an amount of subsidy, its effect and upon investigation and deciding about the causal effect of injury on the domestic market. Article 21 is relevant, as it mentions about the duration and review of countervailing duty and undertakings.

3.4.4 The Article 21 of ASCM is reproduced,

> **Duration and Review of Countervailing Duties and Undertakings**
>
> 21.1 A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury.
>
> 21.2 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 countervailing 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 subsidization, 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 countervailing duty is no longer warranted, it shall be terminated immediately.
>
> 21.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive countervailing 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 subsidization 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 subsidization and injury. The duty may remain in force pending the outcome of such a review.

21.4 The provisions of Article 12 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

21.5 The provisions of this Article shall apply mutatis mutandis to undertakings accepted under Article 18.

Statutory provisions

3.5 The Central Government legislated on the lines of aforementioned international agreement. Section 9 and section 9-A in the Customs Tariff Act, 1975 came to be enacted and the rules regarding imposition of countervailing duty and anti-dumping duty came to be framed.

3.5.1 Section 9 of the Act is in respect of countervailing duty on subsidised articles. The entire provision is extracted hereinbelow.

"Countervailing Duty on Subsidized Articles.- (1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if-

(a).....
(i)....
(ii) .....
(iii) .....
(iv) ......

(b).....

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined, -

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and

(b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced.

(3)Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that -

(a) the subsidy relates to export performance;

(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or

(c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles;

(4) If the Central Government, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-

section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.

(5)The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.
(6)The countervailing 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 subsidization 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 initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(7)The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the

> assessment and collection of any countervailing duty imposed upon the importation thereof under this section.
>
> (7A)The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.
>
> (8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

3.5.2 Section 9-B says that there shall be no levy under section 9 or 9A in certain cases. It reads as under,

> **"9-B No Levy under Section 9 or Section 9A in Certain Cases.** — (1) Notwithstanding anything contained in section 9 or section 9A, -
>
> (a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;
>
> (b) the Central Government shall not levy any countervailing duty or antidumping duty -
> (i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation :

Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India; (c) the Central Government may not levy -

(i) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

Working of the provisions

3.6 As per the provisions of section 9(1) of the Act, any country pays or bestows, either directly or indirectly any subsidy upon manufacturer or production or exportation therefrom, of any article, in such eventuality, upon the importation of such article into India, the Central Government may after inquiry, impose countervailing duty. This duty is not to exceed the amount of such subsidy. It is significant to notice that the imposition of countervailing duty is after an inquiry as contemplated.

3.6.1 As per sub-section(2), the Central Government may, pending the determination in accordance with the determination of the amount of subsidy, etc., in accordance with the provisions of

sections and rules, may impose provisional countervailing duty. Provisional imposition of countervailing duty is also upon undertaking an inquiry. The provision contains procedural and substantive aspects to be followed by the authorities. As per section section (4), it is also open to the Central Government to levy countervailing duty retrospectively. As per sub-section (5), the countervailing duty under the provisions shall be in additional to any other duty.

3.6.2 As per Sub-section 9(6), countervailing duty shall cease to have effect on expiry of 5 years from the date of imposition, unless revoked earlier. The scope and manner in "unless revoked earlier" is the bone of contention in the present controversy.

3.6.3 Proviso to sub-section (6) of section 9 says that if the Central Government in review is of the opinion that the cessation of the duty is likely to lead to continuation or recurrence of subsidisation and injury, the Central Government may extend the period of duty for further five years. Section provides that where the review initiated before the expiry of five years, which period is not over, before such expiry, the countervailing duty may continue to remain in force for further period not exceeding one year pending the outcome of such review.

Prevalent Rules

3.7 The Customs Tariff (Identification, Assessment and Collection of countervailing duty on Subsidised Articles and for Determination of Injury) Rules, 1995, came to be framed by the Central Government in exercise of powers conferred by sub-section(7) of Section 9 and sub-section(2) of section 9B of the Customs Tariff Act, 1975.

3.7.1 Having a bird's eyeview of the rules and pinpointing the relevant, under Rule 3, the Central Government appoints designated authority which is respondent no.2 DGTR herein. Rule 4 deals with the duties of the designated authority, rule 5 is about the decision as to country of original and Rule 6 refers to initiation of investigation. Rule 7 contains the principles governing the investigation, Rules 8 and 9 are about confidential information and accuracy of information respectively, whereas Rule 10 is about investigation in the territory of the other specified countries, Rule 11 mentions about nature of subsidy and rule 12 states about calculation of the amount of countervailing duty.

3.7.2 Rule 13 refers to the determination of injury and Rule 14 mentions about designated authority to proceed satisfactorily with conduct of investigation and to record preliminary findings, Rule 15 is about levy of provisional duty and Rule 16 is termination of investigation, Rule 17 speaks of

suspension or termination of investigation on acceptance of price undertaking. Rule 18 is about disclosure of information and Rule 19 states about final findings, Rule 20 is about levy of duty. Rule 21 is imposition of duty on non-discriminatory basis, Rule 22 is for commencement of duty, Rule 23 is refund of duty.

3.7.3 Rule 24 is about review and the same is quoted as is relevant,

> **"Review.-** (1) Any countervailing duty imposed under section 9 of the Act shall remain in force so long as and to the extent necessary, to counteract subsidisation, which is causing injury.
>
> (2) The designated authority shall review the need for the continued imposition of countervailing duty, where warranted, on its own initiative or upon request by any interested party who submits necessary information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive countervailing duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, when it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said countervailing duty is removed or varied and is therefore no longer warranted.
>
> (3) Any definitive countervailing duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition. The designated authority may upon coming to a conclusion, on a review initiated before that period either on its 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 the expiry of that period, that the expiry of the said countervailing duty is likely to lead to continuation or recurrence of subsidisation and injury to the domestic industry, make recommendation for extending the period of such imposition in accordance with provisions of section 9 of the Act.

(4) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

[Provided that notwithstanding anything contained in rule 19, such review shall be completed at least three months prior to expiry of the countervailing duty under review.

[(5) Subject to sub-rule (4), the provisions of rules 7,8,9,10,11,12,13,18,19,20,21 and 22 shall apply *mutatis mutandis* in case of review.:]"

3.7.4 It would be seen from the above Rules that the designated authority will undertake the process of investigation, shall thereupon, on ascertainment of continuance of subsidy and injury, domestic market to recommend the Central Government, if the recommendation is for withdrawal of duty, it would lead to revocation of the notification and withdrawal of duty. In the alternative, the Central Government may extend the duty for further period of five years.

3.7.5 It is noticeable that Rule 13 of the Rules mentions about determination of injury and for determining of injury, principle are set out to be taken into account by the designated authority.

3.7.6 Such principles listed at Annexure-I to the Rules contemplate extensive inquiry into different aspects, extracted below.

> "(1) A determination of injury for purposes of rule 13 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.
>
> (2) With regard to the volume of the subsidized imports, the designated authority shall *inter-alia* consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India.
>
> (3) With regard to the effect of the subsidized import on prices, the designated authority shall, consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree.
>
> (4) Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the designated authority may cumulatively assess the effect of such imports only if it determines that (a) the amount of subsidization established in relation to the imports from each country is more than one percent advolorem and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the

conditions of competition between the imported products and the like domestic product.

(5) The designated authority while examining the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments and, in the case of agriculture, whether there has been an increased burden on government support programmes."

3.8 It would be seen that the contents of the relevant provisions of the Act and the Rules above are on the lines and conceptually match the different corresponding Articles in the agreement-ASCM on subsidy and countervailing measures.

3.8.1 Section 9 is with regard to countervailing duty on subsidised articles. Section 9-A is in respect of anti-dumping duty on dumped articles. Both are measures to protect the domestic "exported market force". Both sections contain similar provisions with similar import.

3.8.2 Therefore, whatever legal principles are enunciated by the courts in the context of the scheme of the provisions and the judgments are rendered in relation to the anti-dumping duty, and theywould apply in their reasoning and ratio, *mutatis mutandis*

to the countervailing duty.

Contentions of petitioners

4. Proceeding to consider the rival contentions canvassed, the learned senior counsel for the petitioners Mr. Mihir Joshi with learned advocates Ms. Gargi Vyas and Mr. Arjun M. Joshi highlighted the concept of countervailing duty to submit that the provisions of Section 9 and 9A of the Act are pursuant to GATT and based on ASCM and that India being a signatory to the treaty has bound herself to the manner in which it can impose, modify, suspend or revoke the countervailing duty. It was submitted that as per the scheme of the Act read with the GATT agreement, respondent no.1 does not have any inherent or suo motu powers to impose, modify or withdraw the countervailing duty in absence of recommendations of respondent no.2.

4.1 It was submitted that the designated authority, respondent no.2 has to follow the procedure contemplated in section 9(6) of the Act read with Rule 24 of the Rules and after making such inquiry, it needed to ascertain whether there has been significant change in the facts, which may necessitate withdrawal of countervailing duty. He then submitted that continuation and recurrence of subsidy and injury are essential elements to be established after investigative and adjudicatory

process. He highlighted that the task of the designated authority in this regard is quasi judicial in nature.

4.1.1 It was further submitted that respondent no.1 has to act either in relation to imposition of countervailing duty or withdrawal or revocation thereof only after receiving recommendation in that regard, from respondent no.2 and that such recommendations could be made only after complying with the prescribed procedure of inquiry and arriving at its findings. It was submitted that as the said requirement was not complied with, the impugned notifications would not sustain. It was then submitted that though impugned Notifications purportedly issued in exercise of powers under Section 9(1) and 9(6) of the Act read with Rules 20 and 22 of the Rules stand illegal, when respondent no.1 has not followed the due process of law.

4.1.2 Learned senior counsel for the petitioners submitted that on the contrary, Sunset Review proceedings were underway, which was after sufficient prima facie satisfaction that cessation of the present countervailing duty was likely to lead to continuation or recurrence of injury to the domestic industry. It was sought to be submitted that the powers of the Central Government for imposition or revocation of countervailing duty could be exercise only at a stage post recommendation by respondent

no.2. It was submitted that if the contention of the respondent is accepted, and a review and revocation of CVD were to be undertaken in every case by following the approach that has resulted in the issuance of the impugned notification dated 01.02.2022, the provisions of Rule 24 of the CVD Rules would be rendered redundant and otiose.

4.1.3 Learned senior advocate for the petitioners submitted that determination of material injury to domestic industry depends on series of complex factors which are to be segregated from other factors, which may also cause injury to the industry. It was submitted that after undertaking exercise to ascertain such factors and arriving at the decision on the recurrence of subsidy and injury, the decision regarding the imposition or withdrawal has to be taken.

4.1.4 Learned senior advocate for the petitioners then referred to section 21 of the General Clauses Act to submit that respondent no.1 does not have the benefit of section 21 for the reason that cessation or amendment to earlier notification could be done only following the procedure in the same manner to the procedure adopted while imposing the duty. For the purpose of the proposition that section 21A of the General Clauses Act would come into aid of the authority, learned senior advocate pressed into service the decisions of the Supreme Court including

in State of Bihar vs. D.N. Ganguly [AIR 1958 SC 1018, paras 9-11 and 14].

4.1.5 Learned senior advocate for the petitioners in order to buttress the submission that the powers exercise by respondent no.1 under the Act in relation to countervailing duty is quasi-judicial, relied on the decision of the Supreme Court in Saurastra Chemicals Ltd. Vs. Union of India [2000 (118) ELT 305 (SC)] as also in Tata Chemicals Ltd. Vs. Union of India [(2008) 17 SCC 180, paragraph 4 and 5]. Yet another decision in PTC India Ltd. Vs. General Electricity Regulatory Committee [(2010) 4 SCC 603, paragraph 48 to 50].

4.1.6 Learned senior advocate for the petitioners finally submitted that the Sunset review process was initiated pursuant to the application and representation to examine whether cessation of existing duty was likely to lead to continuation or recurrence of subsidy and injury and that there was sufficient evidence that cessation of existing duty is likely to lead to continuation and recurrence of subsidy and injury. It was submitted that Sunset review is unlikely to be completed on or before 06.09.2022 and it will lead to creation of vacuum to the serious prejudice of the petitioners. He submitted that powers in terms of section 9(6) of the Act are required to be exercised.

4.1.7 For the above proposition, learned senior advocate drew support from the following decisions, (i) **Comptroller & Auditor General of India, Gian Prakash, New Delhi vs. K.S. Jagannathan & Anr.[(1986) 2 SCC 679, para 20]**, (ii) **Hari Krishna Mandir Trust vs. State of Maharashtra & Ors.[(2020) 9 SCC 356, paras 100-104]**, (iii) **DCW Ltd. Vs. Union of India, order dated 15.06.2018 in MCA No. 2 of 2018 in SCA No. 14202 of 2017 (para 20)**, (iv) **Aarti Drugs Ltd. vs. Designated Authority, Director General of Anti-Dumping & Allied Duties[2017 (354) ELT 161 (DEL.).**

Submissions of Respondents

4.2 Affidavit in reply was filed on behalf of respondent no.1 raising contentions. It was emphasised that the decision of the Central Government in issuing the Notification rescinding the countervailing duty was guided by considerations of public interest. It was sought to be highlighted that in the Union budget speech 2022-23, the decision to revoke the countervailing duty was announced. The words 'unless revoked earlier' appearing in Section 9(6) was referred to contend that it empowered the central Government to withdraw the countervailing duty at any time, even if the notification imposing the duty was in operation and that such notification could be issued even without recommendation from the designated authority-DGTR. It was contended in paragraph 15 that 'even if it is considered that

initiation of Sunset review by DGTR indicates sufficient prima facie evidence that cessation of CVD is likely to lead to injury to the Indian industry, the Central Government still may not extend countervailing duty in public interest.'

4.2.1. Learned Additional Solicitor General Mr. Devang Vyas assisted by learned advocate Mr. Jash Thakkar, on behalf of the respondents, raised the following further submissions,

(i) The impugned decision is taken in public interest and keeping in view the development of nation and the economic interest.

(ii) It is in the realm of policy making powers of the Government.

(iii) The Central Government has exercised its sovereign power in issuing the impugned notification.

(iv) The policy decision cannot be said to be in contravention of statutory provisions.

(v) While taking policy decision, which is a complex process, number of factors and inputs from various quarters are taken into account.

(vi) As per the statutory scheme, imposition of any tax duty or revocation notification in that regard is the prerogative of the Central Government. Such decisions are taken after taking into consideration

the various factors as is done in the present case.

(vii) The decision taken was part of budgetary provision and allocation and was approved by the highest authority.

(viii) The decision was also laid before the Parliament and the same received approval of the Parliament.

(ix) The decisions of the nature impugned are not open to judicial review unless shown to be malafide or contrary to the settled principles of law. Merely because one part is affected by such decision or some technical aspect with regard to the recommendatory authority is raised, it cannot be called in question.

(x) The factors like general policy, diplomatic ties with various countries, international trends, market factors such as price hike, policies of other countries, having direct impact on the product concerned or the industries and such other domestic factors, are taken into consideration before the decision.

(xi) The impugned decision is based on the opinion of various experts like economic experts, industrial experts and trade experts. The decision is in nature of sovereign power.

(xii) The Court should be slow in interfering

with the economic policy matters as the Court lacks expertise on the subject.

(xiii) In relation to fiscal policy decisions, the government enjoys legislative entitlement to take policy decision.

4.2.2 The following further submissions were made.

(a) The task performed by the designated authority/Director General of Trade Remedies is limited to computation. It is of recommendatory nature and the Central Government is within its right to take its own decision on such recommendation.

(b) The recommendation of DGTR are neither binding or mandatory for Government of India and it has unfettered right of taking its own decision keeping in min other relevant factors, which may be outside the purview of DGTR.

(c) In respect of operation of Section 9(6) of the Customs Tariff Act, 1975, provisions do not require review by DGTR as pre-condition for revocation of countervailing duty by the Central Government.

(d) It is explicit in Section 9(6) that the countervailing duty can be revoked earlier. It was submitted that there is no reason to interpret the

provisions in the manner that revocation of countervailing duty prior to the expiry of its validity should be based only on review by the designated authority.

(e) In past also the Central Government had revoked the countervailing duty on certain items without seeking any recommendation of the DGTR.

(f) It was clear that the Central Government could revoke including revoking temporarily the countervailing duty in accordance with the power under sub-section(6) of Section 9 of the Act by mode of subordinate legislation, that is, by issuing necessary notification.

(g) Such powers flow from the provisions of Section 9(6) of the Act read with Rules 20 and 22 of the anti-subsidy Rules even if there is no recommendation from the DGTR.

4.2.3 Learned Additional Solicitor General for the respondents in order to substantiate his submission that in policy matters, the court would not interfere relied on decision of the Supreme Court in **Small Scale Industries Manufacturers Association Vs. Union of India [(2021) 8 SCC 511].** By pressing into service, another decision of the Apex Court in **Sales Tax Officers and Another Vs. Shree Durga Oil Mills and Another [(1998) 1 SCC 572],** it was submitted that the promissory estoppel would not

apply. From **Arun Kumar Agarwal Vs. Union of India [(2013) 7 SCC 1],** it was submitted that in the matters of economic issues, the court will not interfere as it does not possess expertise. The decision in **Everyday Industries India Limited Vs. Union of India and Another [(2019) SCC Online Del 7865], Sankar Ram & Co.Vs. Kasi Naicker and Others [(2003) 11 SCC 699]** and **M.Ahammedkutty Haji Vs. Tahsildar, Kozhikode, Kerala and Others [(2005) 3 SCC 351]** were also relied on in support of his submissions.

Sequence of Notifications

5. Before proceeding further, the sequence of Notifications may be recollected with relevance.

(1) On 04.07.2017, respondent no.2 issued Notification No.14/18/1015-DGAD recommended the imposition of definitive countervailing duty on the product on imports from China PR for a period of five years.

(2) Notification dated 07.09.2017 came to be issued imposing the countervailing duty for a period of five years, that is upto 06.09.2022.

(3) By issuing notification dated 01.02.2021 under Section 9(1) and 9(6) of the Act read with Rules 20 and 22, read with countervailing duty Rules, the countervailing duty was temporarily suspended till

30.09.2021.

(4) The suspension of countervailing duty was further extended till 31.01.2022 by Notification dated 30.09.2021.

(5) While the extended suspension period was in currency and the period of original notification dated 07.09.2017 was in operation, respondent no.2 initiated Sunset Review investigation on 08.10.2021.

(6) By notification dated 01.02.2022, the countervailing duty came to be rescinded, which was imposed vide notification dated 07.09.2017.

5.1 In terms of notification dated 07.09.2017, the period of countervailing duty would come to an end on 06.09.2022. Under Rule 24(4) of the Rules, the Sunset Review will be required to be concluded within a period not extending 12 months from the date of initiation of such review and as per Proviso to Rule 24(4), it will be required to be completed at least three months prior to expiry of countervailing duty. Pending the outcome of the Sunset review, the countervailing duty can be extended upto a period not extending one year under Second Proviso to Section 9(6) of the Act.

Obligation Emanating from Treaty

5.2 Prefacing the discussion on the aspects of law involved in the controversy and the application

of provisions of the Act and the Rules, it has to be recollected that the provisions regarding countervailing duty, are based on the international treaty obligation. Therefore, the approach to the construction of the statutory provisions which have the origin from the treaty covenants has to be impugned with the treaty obligations.

5.2.1 The Supreme Court in **Commissioner of Customs, Bangalore Vs. G.M. Exports and Ors. [(2016) 1 SCC 91]** surveyed various decisions to summarise the following principles -

> "23. A conspectus of the aforesaid authorities would lead to the following conclusions:
>
> (1) Article 51(c) of the Constitution of India is a Directive Principle of State Policy which states that the State shall endeavour to foster respect for international law and treaty obligations. As a result, rules of international law which are not contrary to domestic law are followed by the courts in this country. This is a situation in which there is an international treaty to which India is not a signatory or general rules of international law are made applicable. It is in this situation that if there happens to be a conflict between domestic law and international law, domestic law will prevail.
>
> (2) In a situation where India is a signatory nation to an international treaty, and a statute is passed pursuant to the said treaty, it is a legitimate aid to the construction of the provisions of such statute that are vague or ambiguous to have recourse to the terms of the treaty to resolve such ambiguity in favour of a

meaning that is consistent with the provisions of the treaty.

(3) In a situation where India is a signatory nation to an international treaty, and a statute is made in furtherance of such treaty, a purposive rather than a narrow literal construction of such statute is preferred. The interpretation of such a statute should be construed on broad principles of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them.

(4) In a situation in which India is a signatory nation to an international treaty, and a statute is made to enforce a treaty obligation, and if there be any difference between the language of such statute and a corresponding provision of the treaty, the statutory language should be construed in the same sense as that of the treaty. This is for the reason that in such cases what is sought to be achieved by the international treaty is a uniform international code of law which is to be applied by the courts of all the signatory nations in a manner that leads to the same result in all the signatory nations.

5.2.2 While applying the domestic legislation, which has originated with reference to the international treaty, the application of the provisions has to conform the principles agreed in the treaty. In **G.M. Exports (supra)**, it was observed,

"48. We have already held that this would fly in the face of all the judgments referred to in paragraphs 15 to 22 hereinabove, and principles (3) and (4) of paragraph 23 of this judgment

which speak of how domestic legislation must be construed when it is made in furtherance of an international treaty. In particular, in the facts of these cases, it would also ignore the effect of Article 18.4 of the WTO Agreement, which expressly states that all the signatory member nations have to make their laws "conform" to the provisions of the WTO Agreement, something which the Central Government itself states in its internet website which deals with the law of anti-dumping."

Attendant Aspects Canvassed

(a) Whether sovereign power exercised

6. Before analysing the scheme stemming from Section 9, in particular Section 9(6), 9(7) read with Section 9-B of the Act read with Rules, more particularly Rule 24 of the Rules, certain incidental aspects and submissions raised by both the sides may be dealt with.

6.1 On behalf of the respondent it was claimed that issuance of Notification dated 1.2.2022 rescinding the countervailing duty was in exercise of sovereign power by the Government. Thereby, it was sought to be suggested that once the sovereign power is exercised by the Central Government, the rescinding of the duty was justified, at whatever stage it was done.

6.1.1 The submissions were based on the misconception of sovereign power of the state and the attributes of sovereignty.

6.1.2 The concept of sovereignty is an all time assertion of authority by the nation country to the outside world. The concept of sovereignty is in its essence that the country is independent in its all actions, decisions, reactions and in taking its own stand as a nation before the outside world. It signifies that the State will have the final authority to make or enact laws of the governance in all spheres.

6.1.3 There would be no gainsaying that when the Parliament enacts laws, it exercises the sovereign power. The Customs Tariff Act, 1975 and the Rules of 1995 are themselves the product of a sovereign exercise by our Parliament. The authority of the provisions in the enactment not only binds the subjects it governs, but also binds the authorities functioning and playing role thereunder, including the Central Government. There cannot be any separate limb sovereign power exercise, distinct from the enactment and the rules and the functional mandate flowing therefrom. It would be paradoxical and unpalatable to claim that State could disregard the obligations flowing from provisions of particular law or Act to initiate and assert its sovereign power to breach them.

6.1.4 There cannot be separation of concept of sovereignty by the State to claim that in its sovereign power it could disregard and discard the

mandates in the statute which is enacted by itself in exercise of such power, on the other hand to assert that there is an independent power in the nature of sovereign power to act de hors the governing statute. It is absurd to suggest that the State will disregard its own laws to act independent of legal requirements, thereby acting sovereign.

(b) No public interest in abstract

6.2 Emphasis was laid by learned Additional Solicitor General that the Notification in question rescinding the countervailing duty was issued in public interest. According to him various inputs were taken into account before issuing the Notification. There is a hollowness in the submission inasmuch as while no facts or details were given as to how the public interest is made to subserve, on the other hand the abstract plea and general concept of public interest would be irrelevant.

6.2.1 When the countervailing duty was imposed, it was by following the procedure in law, undertaking the investigation to determine the aspects of subsidy and injury as provided. This itself was an exercise in public interest. The case of the petitioner is that the Notification of the Central Government is in disregard to the compliance of procedure to be undertaken in law. Abiding by the provisions of law and following the statutory prescriptions is by

themselves in public interest. The first step to sub-serve public interest is to follow the statutory mandates. Therefore the submission based on public interest is not well-conceived.

6.2.2 In any view, even as learned Additional Solicitor General harp on the public interest, not an iota of material was shown or relied on to substantiate as to what were the considerations relating to public interest.

(c) Not a policy decision in generic sense

6.3 Proceeding to examine the emptiness in the next submission canvassed by learned Additional Solicitor General that impugned notification rescinding the countervailing duty is in the realm of policy, it is trite that it will not be permissible for the State to implement any purported policy decision when the policy decision is a product to be preceded by statutory exercise for taking such decision, without acting in accordance with provisions of law.

6.3.1 Examining the line of decisions on this count, in **K.K. Bhalla Vs. State of M.P. [(2003) 6 SCC 581]**, the question was regarding grant of lease of land on concessional terms under the MP Nagar Niyam, 1975. The proposal for the said purpose could be made only by the Development Authority and power of the State Government was limited for grant of previous approval thereto and to ultimate grant of

lease on concessional terms. It was ruled that none of the relevant provisions enable the State to usurp the jurisdiction of the Development Authority.

6.3.2 The principle was propounded that the statutory authority cannot act contrary to the scheme framed by them or contrary to the purpose for which they were supposed to act under the Scheme. The Supreme Court held that when the State had no role to play in the matter, even advise given by it would be ultra vires,

> "The State, as noticed hereinbefore, could not implement its purported policy decision as regard allotment of land on concessional rates. Such a direction or even a policy decision in this behalf is ultra vires being contrary to the statutory rules framed by it. An action by way of policy decision or otherwise at the hands of a statutory authority must be in consonance with the statutory rules and no de'hors the same."
>
> (para 67)

6.3.3 The Supreme Court referred to its own decision in **Punjab SCB Ltd. Vs. Zora Singh [(2005) 6 SCC 776] and in Union of India vs. V. Ramkrishnan [JT 2005 (9) SC 422]**, and proceeded to observe that passing of an order for unauthorised purpose in unauthorised manner constitutes even malice in law. The Supreme Court in **K.K. Bhalla (supra)** stated that "when the State has framed rules and adopted a procedure for disposal of land, both the State and JDA were bound thereby. They could not have taken

any decision contrary thereto or inconsistent therewith."

6.3.4 The primacy of statutory enactment and the obligation to act in accordance with law by the authorities concerned was stressed by the Apex Court also in **Punjab Water Supply & Sewerage Board Vs. Ranjodh Singh & Ors. [(2007) 2 SCC 491].** It was on the context of statutory recruitment rules to be applied to the statutory bodies. It was held that a scheme issued under Article 162 in the nature of policy decision adopted by the State cannot prevail over statutory rules or Article 309 or proviso to Article 309. It was held that the terms and conditions of the service are governed either by statutory rules or article 309 proviso rules, any policy decision adopted by State Government under Article 162 would be illegal and without jurisdiction.

6.3.5 It may be true that the decision of the Central Government in issuing the Notification rescinding the countervailing duty is in the economic area. However, in view that the countervailing duty authorities which would included the Government have to act in accordance with the statutory prescriptions in exercise of their functions and powers, it would not be right to view the Notification to be a pure policy decision. It is the statutory exercise which culminates into the Notification, in which the

countervailing authorities have to follow the codified procedure. It is an outcome of quasi-judicial exercise. It involves investigation of facts and determination of jurisdictional elements.

6.3.6 When the decision is arrived at after complying with the mandatory statutory provisions, it becomes a statutory decision. It is not a policy decision so simply stated. The judicial review would extend to such decision on the ground that the action of decision or notification issued thereunder is vitiated by non-compliance of statutory requirements.

(d) Laying before the Parliament

6.4 There was yet another attempt to submit on part of the respondent that in respect of the impugned Notification, judicial review would not be permissible. Section 7(3) of Customs Tariff Act initially referred to by learned Additional Solicitor General, which contains the provision about laying the Notification issued under Section 7(2) before each house of the Parliament and will come into effect upon approval of the Parliament after modification etc., if any. This Section deals with the Notification in respect of customs duty, which provision is not applicable here. Therefore the entire reliance on Section 7(3) was misconceived.

6.4.1 However, in Sub Section (8) of Section 9, there is provision about laying the Notification

before the each house of the Parliament. The provision does not say any further except that ‘every Notification issued under this Section shall, as soon as may be after it is issued, be laid before each house of Parliament’.

6.4.2 The Parliament, more often than not, on the subordinate legislation and on the working thereof as well as in respect of the functioning of the authorities under the subordinate legislation, exercises control and supervision by enacting provision in that regard. One of the well known mechanism is to place the rules or notifications before the Parliament, leaving it thereafter for the Parliament to modify, approve or just notice etc. the same. One of such mode is that the rule or notification is placed before the Parliament without providing anything further.

6.4.3 In **M.K.Paplah & Sons Vs. The Excise Commissioner & Anr. [(1975) 1 SCC 492]** the Supreme Court quoted from Bernard Scwartz's "An Introduction to American Administrative Law",

> In Britain, Parliamentary control over delegated legislation is exercised through the various forms of 'laying' prescribed in enabling Acts. Through them, the legislature is enabled at least in theory to exercise a continuing supervision over administrative rules and regulations."

6.4.4 In **M/s. Atlas Cycle Industries Ltd. Vs. State of Hariyana, [(1979) 2 SCC 196,** referring to its own another decision in Hukum Chand Vs. Union of India[(1972) 2 SCC 601], the Supreme Court noted the observations made in paragraphs 305 to 307 of 7th edition of Craies on statute law, that there are three kinds of laying, which are generally used by legislature, (i) laying without further procedure, (ii) laying subject to negative resolution and (iii) laying subject to affirmative resolution.

6.4.5 I.P.Massey in his 'Administrative Law' [6th Edition, 2005] mentions about laying before the Parliament in different ways,

> 'Laying' may take various forms:
>
> (a) Laying with no further direction,-In this type of laying the rules and regulations come into effect as soon as they are laid. It is simply to inform the House about the rules and regulations.
>
> (b) Laying subject to negative resolution.- In this process the rules come into effect as soon as they are placed on the table of the House but shall cease to have effect if annulled by a resolution of the House.
>
> (c) Laying subject to affirmative resolution.- This technique may take two shapes -
>
> (i) that the rules shall have no effect or force unless approved by a resolution of each House of Parliament;

(ii) that the rules shall cease to have effect unless approved by an affirmative resolution.

In both these processes, it is the duty of the government to move a resolution.

(d) Laying in draft subject to negative resolution.-Such a provision provides that when any Act contains provision for this type of laying the draft rules shall be placed on the table of the House and shall come into force after forty days from the date of laying unless disapproved before that period.

(e) Laying in draft subject to an affirmative resolution.- In this type of laying the instruments or draft rules shall have no effect unless approved by the House."

6.4.6 Section 9(8) of the Act, as noted above, provides only for placing the notification before each house of the Parliament. There is no further requirement or condition. In the provision of laying of such nature, the underlying idea and intention of the legislature is only to inform the Parliament. The notification is only laid on table and it does not require anything further. It is a laying without further provisions for control. Such rule or notification would become operative from the date it is laid before the House.

6.4.7 **In Dai-Ichi Karkaria Limited Vs. Union of India and Others [(2000) 4 SCC 57]** the Supreme Court observed that the mere fact of laying the

notification before the Parliament does not make substantial difference as regards jurisdiction of the court to pronounce its validity. In that case it was notification under Section 25 of Customs Act required to be laid before the Parliament under Section 159 of the Act.

Notification is Quasi-Judicial

6.5. It was another submission in vain on behalf of respondents seeking to assert that notification rescinding the countervailing duty is of legislative character and amounts of exercise of legislative power by the Central Government and therefore, not amenable to judicial review.

6.5.1 The submission is devoid of substance, if we examine the decisions on this score. The decision of the Supreme Court in **PTC India Ltd. Vs. Central Electricity Regulatory Commission [(2010) 4 SCC 603]** also explain the point. Under the Electricity Act, 2003, the term tariff "is not defined, but includes within its ambit not only the fixation of rates, but also the rules and regulations relating to it. As per Section 61 and 62 of the 2003 Act, the appropriate commission shall determine the actual tariff in accordance with the provisions of the Act including the terms and conditions, which may be specified by the appropriate commission under Section 61 of the Act". The Supreme Court observed that if one reads section 62 with Section 64, it is clear

that, "although tariff fixation like price fixation is legislative in character, the same under the Act is made appealable vide section 111". It was stated that the provisions of section 61, 62 and 64 indicate the dual nature of functions performed by the regulatory commission, that is, decision making and specifying the terms and conditions for tariff determination. It was stated that tariff fixation under Section 62 when made appealable under section 111, it is rendered quasi-judicial.

6.5.2 In **National Thermal Power Corp. Vs. Madhya Pradesh State Electricity Board [(2011) 15 SCC 580],** the similar view was expressed that though price fixation is of legislative character, but since an appeal is provided under Section 111 of the Act, it becomes quasi-judicial.

6.5.3 In **Reliance Industries Vs. Designated Authorities [(2006) 10 SCC 368],** it was held,

> We do not agree with the Tribunal that the notification of the Central Government under Section 9A is a legislative Act. In our opinion, it is clearly quasi-judicial. The proceedings before the DA is to determine the lis between the domestic industry on the one hand and the importer of foreign goods from the foreign supplier on the other. The determination of the recommendation of the DA and the Government notification on its basis is subject to an appeal before the CESTAT. This also makes it clear that the proceedings before the DA are quasi-judicial.
>
> (para 39)

6.5.4 Under Section 9-C of the Customs Tariff Act, appeal lies against the order of determination or review of the countervailing duty before the Customs, Excise and Service Tax Appellate Tribunal, constitution under Section 129 of the Customs Act, 1962. In view of this, the Notification necessarily takes a quasi-judicial colour. In **Tata Chemicals Ltd. Vs. Union of India[(2008) 17 SCC 180],** it was observed and held that the orders of the designated authority, which were recommendatory, the appeal against the tribunal was premature and that the appeal would lie against determination by challenging notification of the Central Government may pass.

Scheme is Quasi-Judicial Process

7. A bare reading and even prima facie analysis of the provisions of Section 9, in particular sub-section (6) and sub-section (7) thereof read with Rule 24 would go to show that the process of issuance of notification to impose the countervailing duty or to revoke the same is based on an inquiry. It is after investigation in respect of applicable factors relating to continuance or recurrence of subsidisation and the injury to the domestic industry, that the opinion will be formed. Only the ascertainment of such aspects after such inquiry about the subsidy etc., would be the basis for issuance of notification by the Central Government.

7.1 Section 9(6) read with Rule 24(2) makes it obligatory with the designated authority shall review the need for continued imposition of countervailing duty and recommend upon investigation to the Central Government for withdrawal of the duty when it comes to conclusion that the injury to the domestic industry is not likely to continue or recur if the said countervailing duty is removed for varied and is therefore no longer warranted. This exercise is the exercise in realm of quasi-judicial powers and the decision to be rendered also acquire the character of quasi-judicialness.

7.1.1 The inquiry involves going into the umpteen aspects of aspects relating to the market forces, subsidy from the exporting country, the resultant injury to the domestic industry, in which process the view of the stakeholders are also considered by extending them the opportunity. The contemplation of undertaking an inquiry along with other attendant aspects such as determination of injury and considering the objections etc., are the attributes making the whole process quasi-judicial in nature. Even when the review process was undertaken under sub-section (6) and (7) of section 9 of the Act, such inquiry is necessary before the recommendation is made by the designated authority and thereafter, which may end up notification by the Central Government.

7.1.2 The Supreme Court discussed the nature of quasi judicial exercise and about the quasi judicial function, in **Indian National Congress Vs. Institute of Social Welfare [(2002) 5 SCC 658].** It was observed in para 24 that, "the legal principle as to when an act of statutory authority would be a quasi-judicial act, is that where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of said authority is quasi-judicial."

7.1.3 The Apex Court in **Indian National Congress (supra)** was considering the question whether while exercising powers under Section 29A of the Representation of People Act, 1951, while registering a political party, the Election Commission exercises quasi judicial power or not. It was held that in view of the requirement under the provisions of Section 29A that the Commission is to give decision only after making an inquiry, the Commission acts quasi judicially and the decision rendered by it is a quasi judicial order.

7.1.4 The Supreme Court observed that what distinguishes an administrative act from a quasi judicial act is, in the case of quasi judicial

function under the relevant law, the statutory authority is required to act judicially. In other words, the law requires that an authority before arriving at a decision, must make an inquiry, such a requirement of law makes the authority a quasi judicial authority. It was observed in light of that Section 29A (i) requires for making an application for registration as a political party, further requires as per its sub-sections (2) and (3) to provide the contents of the application and the further sub-section (7) enjoins the Commission to give reasonable opportunity to the representative of the Association or body while registering a political party or refusing the registration. In the scheme of countervailing duty, the investigation and inquiry is similarly envisaged.

7.1.5 The Court further held that in order to make the function quasi judicial and the decision quasi judicial, it is not necessary that there must exist a lis between the parties. It was observed thus -

> "But there are cases where there is no lis or two contending parties before a statutory authority yet such a statutory authority has been held to be quasi-judicial and decision rendered by it as quasi-judicial decision when such a statutory authority is required to act judicially. In Queen vs. Dublin Corporation (1878) 2 Ir. R. 371, it was held thus :
>
> " In this connection the term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question, a judicial act seems

> to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights. And if there be a body empowered by law to enquire into facts, makes estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts."
>
> (Para 27)

7.1.6 In the scheme of imposition etc., of countervailing duty, the investigation and inquiry is contemplated in the similar way. In **Reliance Industries (supra),** the Supreme Court in terms observed that the notifications regarding countervailing duty are quasi-judicial notifications.

Analysis and Judicial Decisions

7.2 Having finally noticed that the countervailing duty notifications under the Act are quasi-judicial exercise and that these notifications are amenable to appeal and the challenge, and are also subject to judicial review in the writ jurisdiction also, the essential aspects of the provisions concerning the controversy may be analysed, also with reference to the judicial decisions in that regard.

7.2.1 As noted above, the notification levying the countervailing duty once issued under Section 9(1) of the Act, has an expiry period from the date of imposition, unless revoked earlier. It also provides that respondent no.1 may extend the period

further, if it is of the opinion that "the cessation of such duty is likely to lead to continuation or recurrence of subsidy and injury".

7.2.2 Two important pre-requisites are postulated by the first proviso of Section 9(6) of the Act. They are, (a) a review being conducted by respondent no.2, and (b) subsequent formation of an opinion by respondent no.1 on the basis of the review, that is, whether cessation of countervailing duty would lead to "continuation or recurrence of subsidisation and injury." These pre-requisites are required to be satisfied at the time of imposing as well as discontinuing the countervailing duty.

7.3 In **Rishiroop Polymers Steel Ltd. Vs. Designated Authority and Additional Secretary[(2006) 4 SCC 303],** the Supreme Court while indicating the scope of mid-term review in respect of anti-dumping duty under Section 9-A(5) & (6) stated about the parameters to be adopted and the nature of examination to be undertaken.

> "...scope of the review inquiry by the Designated Authority is limited to the satisfaction as to whether there is justification for continued imposition of such duty on the information received by it. By its very nature, the review inquiry would be limited to see as to whether the conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is no longer justification for continued imposition of the duty. The inquiry is limited

> to the change in the various parameters like the normal value, export price, dumping margin, fixation of non-injury price and injury to domestic industry. The said inquiry has to be limited to the information received with respect to change in the various parameters. The entire purpose of the review inquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffer."
>
> (para 36)

7.3.1 The Supreme Court proceeded to state and explain further,

> "It is of vital importance to note that in the initial imposition of duty, the appellant has accepted the position that determination of injury by the Designated Authority was proper and in conformity with the requirements of Annexure-II of the Anti-Dumping Rules. The appellant did not challenge the final finding of the Designated Authority before the Tribunal that parameters mentioned in para (iv) of Annexure-II had not been considered or satisfied. We have declined the permission to the appellant to raise this point before us in Civil Appeal Nos. 773 and 774 of 2001 which were directed against the final findings recorded by the Designated Authority based on which the Government of India had imposed the anti-dumping duty for a period of five years. Under Section 9A(1), the said initial imposition of anti- dumping duty is ordinarily contemplated to be continued and remain in effect for a full period of five years, at the end of which it would be subject to Sunset review, the possible consequence of which would be the extension of the operation of the period of anti-dumping duty for another period of five years. This is subject to the provisions of sub-rule (1) of Rule 23 of the Anti-Dumping Rules, under which

> the Designated Authority is empowered to review the anti-dumping duty imposed from time to time.
> (para 37)

7.3.2 The followings observations are to be pertinently noticed,

> "Having regard to the scheme of the above mentioned provisions of the statute, once anti- dumping duty has been initially imposed, it would be ordinarily continued for five years unless on a review it is found by the Designated Authority that there has been such a significant change in the facts and circumstances, that it is considered necessary either to withdraw or modify appropriately the anti-dumping duty which has been imposed. It is, therefore, clear that unless the Designated Authority suo motu or the applicant for review is in a position to establish clearly that there has been a significant change in th\e facts and circumstances relating to each of the basic requirements or conditions precedent for imposing duty, the finding given by the Designated Authority at the time of initial imposition of anti-dumping duty must be considered to continue to hold the field."
> (para 37)

7.3.3 The Apex Court further observed that the final finding recorded by the designated authority at the time of initial imposition of anti-dumping duty on the existence of injury to the domestic industry must be considered to continue to remain valid, unless it is proved to be otherwise, either by the designated authority in suo motu review or by the applicant seeking review. In that case, the review

was initiated by the designated authority. No record either placed by the applicant or with the designated authority to displace the findings given by the designated authority at the stage of levy of initial anti-dumping duty. The Court observed that when there was no material to show that there was a change in parameters or criteria relating to the injury, which would warrant withdrawal of anti-dumping duty, it was not open for the designated Authority to re-analyze the issue of injury.

7.4 In **Kumho Petro Chemicals Company Limited Vs. Union of India [2014 (306) ELT 3 (Delhi)]**, the Delhi High Court held in relation to the anti-dumping duty that the procedural requirements included finding of causal link between dumping and inquiry to domestic inquiry. It was held that the injury is to be determined on objective examination of positive evidence of extent of dumping assessed through loss of market share of domestic inquiry in comparison to dump imports on the effective prices of said goods. In para 14 of the decision, the High Court delineated as to what was the comprehensive procedural requirements relating to investigation.

7.4.1 The aforementioned decision of the Delhi High Court was appealed against before the Supreme Court by the Union of India. The appeal failed as per the decision in **Kumho Petrochemicals Co.Ltd. [(2017) 351 ELT 65 (SC)].** Highlighting the Scheme, the

Supreme Court stated that review exercises is necessary before expiry of original notification which review is commonly known as Sunset review.

> "There may be situations where the Sunset review is undertaken but the review exercise is not complete before the expiry of the period of original notification. It is because of the reason that the exercise of Sunset review also demands complete procedure to be followed, in consonance with the principles of natural justice that was followed while imposing the anti-dumping duty in the first instance. To put it otherwise, this exercise contemplates hearing the views of all stakeholders by giving them adequate opportunity in this behalf and thereafter arriving at a conclusion that the continuation of the anti-dumping duty is justified, otherwise injury to the domestic industry is likely to continue or reoccur, if the said anti-dumping duty is removed or varied. Since this exercise is likely to take some time and may go beyond the period stipulated in the original notification imposing anti-dumping duty, in order to ensure that there is no vacuum in the interregnum, second proviso to sub-section (5) of Section 9A of of the Act empowers the Central Government to continue anti-dumping duty for a further period not exceeding one year, pending the outcome of such a review."
>
> (para 30)

7.4.2 The Supreme Court agreed with the High Court that the proviso to sub-section (5) of section 9-A of the Act is an enabling provision, which gives maximum life for five years to the imposition of anti-dumping duty by issuing a particular notification, which can of course be extended by issuing fresh notification.

7.4.3 However, the enabling power not to continue the anti-dumping duty/countervailing duty available under the provision, would not obliterate the requirement for the Countervailing Authorities to disregard or overlook the statutory requirement of fulfiling condition to establish about the prejudicial effect to the domestic industry and the ingredients mentioned in the section such as continuation or recurrence of subsidisation and the resultant injury to the domestic industry. Establishing these elements are *sine qua non* even before withdrawal or rescindment of the duty under the scheme of the provisions.

Jurisdictional Aspects

7.5 In the scheme of the statutory provisions noticed as above, a recommendation from the designated authority-respondent no.2 herein. A recommendation from the respondent no.2 is a necessary jurisdictional pre-condition for the Ministry of Finance to either impose or modify or withdraw countervailing duty. Any proposition proposition that the Ministry of Finance can act in relation to countervailing duty, either imposition or withdraw, *de hors* the recommendation of the respondent no.1 cannot be accepted,

7.5.1 Firstly, it would be totally contrary to the applicable provisions of law. Secondly, it would create uncertainty in the administration of

countervailing duty laws, inasmuch as the entire investigative, and evidentiary process prescribed under the countervailing duty laws before respondent no.2 designated authority would stand overwritten and discarded. Thirdly, it would result in a situation where the respondent no.1 will enjoy in a way *carte blanche* in levying and modifying the countervailing duty on the convenient generic grounds like public interest without recommendation by the designated authority in bypass of such statutory requirement.

7.5.2 It has to be held that as per the scheme of the Act read with the GATT and ASCN Agreement, the Central Government does not have any independent or inherent power to impose or modify or withdraw the countervailing duty in absence of, and without considering the recommendation in that regard from the Designated Authority. The determination and establishment of the jurisdictional ingredients about the continuation or recurrence of subsidy and injury to domestic industry, which are indispensable and inextricable elements for levy or revocation of the countervailing duty.

7.6 All the above are the essential operational considerations emanating from the statute provisions. Before the Central Government may issue any notification regarding levy of countervailing duty, the procedure prescribed under the Act and Rules regarding the recommendation to be arrived at by the

designated authority, is mandatory. These requirements cannot be bypassed. The notifications regarding countervailing duties have to be based on the determination and establishment of ingredients namely ‘likelihood of continuance or recurrence of subsidy’ and ‘injury’ which would result for the domestic industry. These are the founding facts before the Central Government can act to issue the notification. These facts are to be established through statutory procedure contemplated in the provisions of the Act and the Rules, as explained above.

7.6.1 The recommendations of the designated authority would contain the findings on these facts and aspects. They are the jurisdictional facts. They are the foundations for the Central Government to take a decision and to issue the notification. The jurisdictional facts cannot be bypassed.

7.6.2 The words 'unless revoked earlier' in section 9(6) of the Act cannot be viewed as denoting powers to the Central Government to revoke the notification of countervailing duty, which is operational, without complying with the requirement of recommendatory exercise. The revocation of the countervailing duty notification, even if to be resorted earlier, it must be preceded by ascertainment by the essential ingredients which are jurisdictional aspects and after having the

recommendation of the designated authority in that regard.

7.7 In the present case, the Central Government acted without having with it recommendation of the Designated Authority in issuing the Notification rescinding the countervailing duty. The recommendation of the designated authority secured after statutory exercise and after going into the relevant considerations and criteria, was to be the source material for the Central Government to act. The Central Government acted without availability of foundational aspects and jurisdictional facts to proceed to issue the notification. Conferring such licence and power to act in such a way on the Central Government would be extending unfettered and arbitrary powers.

7.8 In **Alembic Limited Vs. Union of India [2013 (291) E.L.T. 327 (Gujarat)]** the Division Bench of this Court held that the recommendations of the designated authority are not binding on the Central Government. It may be true that the Central Government may have its own decision, after the recommendations of the designated authority are made available to it in accordance with the statutory procedure. It has to be observed however that it does not imply even remotely that the statutory exercised could be bypassed and Central Government can act without tabled before it the statutory recommendation

from the designated authority, the process and procedure of which is *sine qua non* in the scheme of the countervailing laws. In **Alembic (supra)** the court also held that the powers of the Central Government in issuing the Anti-dumping notification are quasi judicial and the writ is maintainable.

7.9 It is settled principle as propounded long back in **Nazir Ahmed Vs. King Emperor [AIR 1936 PC 253]** and universally followed in several judgments including **Rao Shiv Bahadur Singh Vs. State of V.P [AIR 1954 SC 322], State of U.P Vs. Singhara Singh [AIR 1964 SC 358]** and **Shin- Etsu Chemical Company Limited Vs. Aksh Optifibre Limited and Another [(2005) 7 SCC 234]**, that where power is given in law to do a certain thing in certain way, the thing must be done in that way or not at all.

8. On behalf of the petitioners, learned senior counsel sought to submit that Section 21 of the General Clauses Act, under which power to issue notification would include power to rescind notification, would not apply and would not come to aid.

8.1 Section 21 of the General Clauses Act reads as under.-

> "21. Power to issue, to include power to add to , amend, vary or rescind, notifications, orders, rules or bye-laws.-Where, by any Central Act or Regulation, a power to issue

> notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued."

8.2 The provision contemplates that wherever power is conferred to issue notification etc., such power would include the power to rescind the Notification as well. Such power, the provision says, is exercisable "in the like manner" and "subject to the like sanction and conditions (if any)". What was submitted by the learned counsel for the petitioner that when the countervailing duty was imposed by issuing notification dated 07.09.2017, the procedure was followed and the relevant consideration was gone into, therefore, even if the power to rescind is to be conceded to the Government, the rescission of the notification would have to be in the same manner and after satisfying the similar procedure and conditions.

8.3 The words "unless revoked earlier occurring in sub-section (6) in section 9 of the Act would have to be construed accordingly. The same procedure including making of inquiry and ascertaining the aspect injury to the domestic industry, will have to be read into before power to revoke is exercised. It would be reasonable to apply Section 21 by construing the words ‘like manner’by equating them, for the

purpose of present issue, with the procedure required under the statutory provisions of Customs Tariff Act, 1975 and relating to imposition of countervailing duty.

Answers to the Questions & Conclusion

9. In light of foregoing discussion and reasons, the answers to the questions, are as under,

(i) The issuance of Notification dated 01.02.2022 by the Central Government rescinding the countervailing duty imposed by the Notification dated 07.09.2017 was a irregular and illegal exercise. The Notification rescinding the countervailing duty could not have been issued when the exercise in law required to be undertaken pursuant to the commencement of the process of Sunset review not completed. The process of Sunset review investigation could not have been disregarded and it must be taken to its logical end in accordance with the procedure prescribed. Any Notification either for continuance, withdrawal or rescindment of the duty could have been issued by the Central government only thereafter.

(ii) It was not permissible for the Central Government to issue the Notification rescinding the countervailing duty in absence of any recommendatory exercise and without waiting for such recommendations of the designated authority in

accordance with prescribed procedure. The Central Government has no power to issue Notification in the manner issued, in absence of any without waiting for the recommendation by the designated authority.

(iii) It is obligatory on part of the Central Government to act and issue Notification only after the procedure laid down and the exercise contemplated in sub-section(6) of Section 9 of the Customs Tariff Act, 1975 read with Rule 24 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995.

(iv) The procedure and exercise contemplated in Section 9(6) and 9(7) of the Customs Tariff Act read with the relevant Rules could not be treated directory. Treating the exercise as per the provision to be directory would amount to negating the whole scheme of the countervailing duty laws and would mean negation thereof. The Central Government cannot treat the procedure in the Act and the Rules as optional on the spacious grounds.

(v) The determination that 'cessation of such duty is likely to lead to continuation or recurrence of subsidisation and injury' is sine qua non in the scheme of the provisions before notification to rescind the duty could be issued. The establishing

the ingredient 'continuance or recurrence of subsidization' by the exporting counter, and 'injury to the domestic industry' are the founding facts, in the nature of jurisdictional facts.

10. The **Supreme Court in Hari Krishna Mandir Trust Vs. State of Maharashtra and Others [(2020) 9 SCC 356]** stated that the "High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority". It further observed,

> "In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the government or the public authorities should have passed, had it properly and lawfully exercised its discretion. **In Directors of Settlements, Andhra Pradesh and Others v. M.R. Apparao and Anr.[(2002) 4 SCC 638],** observed:
>
> "…One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, "Mandamus" means a command. It differs form the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to

> direct any person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law."
>
> (para 102)

10.1 In **Association of Synthetic Fibre Industry vs. J.K. Industries Ltd. & Ors.[(2005) 11 SCC 482],** the Supreme Court observed,

> "Needless to say, all these steps including the imposition of anti-dumping duty, in the event of the Central Government forming an opinion to do so, would be subject to the result of the writ petition pending in the High Court and the High Court does have power to grant an interim relief at any stage of the proceedings subject to a case in that regard being made out. That is what the law is. The decision of the Central Government in the matter of anti-dumping duty is appealable and also subject to writ jurisdiction on well-settled parameters of constitutional law."
>
> (para 8)

11. As the court has held herein that the Notification dated 1.2.2022 of respondent No.1 rescinding the countervailing duty stand illegal having been issued dehors the scheme of the provisions of Customs Tariff Act, 1975 and the applicable rules without undertaking the exercise in mandatory provisions of law and it is unilateral decision impressible in law as taken without waiting for recommendation of designated authority and thereby violating the jurisdictional requirements. It is therefore liable to be set aside.

11.1 The sequator would be that it would revive the effect of original notification dated 7.9.2017. The countervailing duty would become leviable.

11.2 It may be true that in view of the Notification dated 1.2.2021 and 30.9.2021 suspending the countervailing duty upto 31.1.2022 presently the levy of countervailing duty is not operational. But when the notification of rescindment is being set aside, the order of the court cannot stand devoid of its effect. It is trite that any order of the court does not extend in vacuum or without bringing for the subjects it would govern, necessary consequences.

11.3 As per direction no.(i) in the succeeding paragraph, as Notification dated 01.02.2022 is being set aside, whereby the countervailing duty was

rescinded and which would result into revival of the original Notification dated 07.09.2017, which has operational period till 06.09.2022, for five years.

12. At the same time, the Sunset Review proceedings are pending, therefore, the Court is inclined to ensure that no hiatus in the intervening period, till the decision in the Sunset Review, as directed in directions no. (ii) and (iv) hereinbelow, it would be trite if the quashment of the notification dated 01.02.2022 does not remain in vacuum.

13. Notifications dated 01.02.2021 and 30.09.2021 whereby the countervailing duty was extended temporarily, have worked out for their period, therefore, no orders with regard to those notifications are required to be passed. Such part of the prayer qua these notifications stand infructuous.

Directions

14. As a result of the above discussion and reasons, the present petition is allowed in terms of following order and directions,

(i) The Notification No.1/2022-Customs (CVD) dated 01.02.2022 issued by respondent no.1 rescinding the countervailing duty is hereby quashed and set aside.

(ii) Respondent no.2 shall immediately proceed in respect of Sunset review process in relation to the continuance or otherwise of the countervailing duty already commenced as per Notification dated 08.10.2021.

(iii) The exercise of inquiry and investigation pursuant to Notification dated 08.10.2021, shall be completed in accordance with the statutory provisions and rules for determining about continuation or recurrence of subsidy and injury to domestic industry in respect of the product in question.

(iv) Respondent no.2 shall thereupon make necessary recommendations to respondent no.1. Thereafter it would be open for the respondent no.1 Central Government to take appropriate action and/or decision in accordance with law at its end.

(v) As the Notification dated 01.02.2022 is set aside, the original Notification dated 07.09.2017 shall revive and countervailing duty shall become leviable on the product in question.

(vi) The Sunset review initiated by Notification dated 08.10.2021 shall be completed in accordance with law.

(vii) Since the review process pursuant to Notification dated 08.10.2021 is underway, and is required to be completed by Respondent no.1-

designated authority as per the directions No.(ii), (iii) and (vi) herein, in the interregnum, that is from the date of the Notification dated 01.02.2022, till the respondent no.1 takes appropriate decision in review, the levy of countervailing duty shall continue.

Rule is made absolute in the aforesaid terms.

Civil Application does not survive as the counsel for the applicants were heard. It is accordingly disposed of

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

FURTHER ORDER

At this stage, learned advocate Mr. Siddharth Dave, appearing on behalf of learned Additional Solicitor General, Mr. Devang Vyas requested that the implementation of the judgment and order may be suspended for eight weeks. In support of this request, he submitted that since the notification regarding countervailing duty was suspended by earlier notifications, the present order is required to be stayed.

In the facts and circumstances of the case and in view of the reasons assigned and what is held in

the judgment, the Court is not inclined to accede to the request. Accordingly, the request is rejected.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

BIJOY PILLAI/MANSHI